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Resolution No. 2006-01 (Adopted 06/29/2006)-A Board Resolution Regarding Vendor Exemptions and Waivers From Supplier-Licensing Requirements Pursuant to Rule 432.1322(4) and Rule 432.1223 and Delegation of Authority to the Executive Director

**STATE OF MICHIGAN
THE MICHIGAN GAMING CONTROL BOARD**

RESOLUTION NO. 2006-01

A Board Resolution Regarding Vendor Exemptions and Waivers From Supplier-Licensing Requirements Pursuant to Rule 432.1322(4) and Rule 432.1223 and Delegation of Authority to the Executive Director to Grant Vendor Exemptions and Waivers.

WHEREAS, the Michigan Gaming Control Board ("Board") is empowered by the Michigan Gaming Control and Revenue Act, MCL 432.201 et seq., ("Act") to promulgate rules as may be necessary to implement, administer, and enforce the Act; and,

WHEREAS, the Board has adopted and promulgated administrative rules ("Rules") with respect to the licensing of persons providing goods and services to casinos licensed under the Act and Rules; and,

WHEREAS, Rule 432.1322(1) requires that a person shall not, on a regular and continuing basis, supply goods or services to a casino licensee unless that person holds a supplier license; and,

WHEREAS, Rule 432.1322(3) provides that a person shall be deemed to be transacting business with a casino licensee on a "regular and continuing basis" whenever the total dollar amount of the nongaming-related business transactions with 1 licensee will be equal to or greater than \$200,000, or equal to or greater than \$400,000 with 2 or more licensees in a twelve-month period; and,

WHEREAS, MCL 432.202(hh) defines a "vendor" as "a person who is not licensed under this act who supplies any goods or services to a casino licensee or supplier licensee"; and,

WHEREAS, MCL 432.204a(1)(s) gives the Board the power and authority to "perform a background check, at the vendor's expense, of any vendor using the same standards that the board uses in determining whether to grant a supplier's license"; and,

WHEREAS, the Board has adopted and promulgated Rule 432.1322(4) that provides that the Board may exempt any person or field of commerce from the supplier-licensing requirements of its administrative rules if the Board determines that any of the following provisions apply to the person or field of commerce:

- (a) The person or field is an agency of state, local, or federal government.
- (b) The person or field is regulated by another regulatory agency in Michigan.
- (c) The person or field will provide goods or services of insubstantial or insignificant amounts or quantities.
- (d) Licensing of the person or field is not deemed necessary to protect the public interest or accomplish the policies and purposes of the act[; and,]

WHEREAS, certain prospective providers of goods and services have asked for or inquired about exemption from the supplier-licensing requirements under Rule 432.1322(4); and,

WHEREAS, the Board believes it is necessary to clarify and define certain circumstances under which the Board believes that one of the four provisions of Rule 432.1322(4) generally applies to a person requesting exemption from the supplier-licensing requirements; and,

WHEREAS, it is necessary to create a system by which licensed casinos can easily verify whether suppliers from whom they are obtaining goods or services or from whom they are contemplating obtaining goods or services comply with the supplier-licensing requirements of the Act and Rules; and,

WHEREAS, MCL 432.204(8) provides for the Executive Director to perform any and all duties that the Board shall assign to him or her; and,

WHEREAS, the Board has adopted and promulgated Rule 432.1214 delegating to its Executive Director all power and authority to act in the name of the Board with respect to all reasonable, necessary, and appropriate actions to administer and carry out the administrative and executive functions of the Board; and,

WHEREAS, Rule 432.1214(j) specifically provides that the Executive Director has the power to "[g]rant requests and waivers, answer inquiries, issue interpretations, and otherwise take any action that is reasonably requested by applicants, licensees, and holders of certificates of suitability in furtherance of, and consistent with, the efficient administration and enforcement of the provisions of the act and these rules, as determined to be necessary or appropriate by the executive director"; and,

WHEREAS, the Board believes that it is necessary and appropriate for purposes of administrative efficiency to expressly delegate its power and authority to the Executive Director to waive the supplier-licensing requirements in certain circumstances described herein and to exempt persons providing goods or services to a casino licensee from the supplier-licensing requirements where the persons meet the criteria for exemption set forth in Rule 432.1322(4) and this resolution;

IT IS RESOLVED that the provisions of R 432.1322(4) generally apply to people described below and that the Executive Director may grant vendor exemptions from the supplier-licensing requirements to nongaming-related suppliers described in each of the following sections.

- I. Rule 432.1322(4)(a): The person or field is an agency of state, local, or federal government.

The Executive Director may grant an exemption on this basis if the applicant is a governmental agency or the United States Postal Service, but only to the extent that the applicant provides services related to its governmental agency function to a casino licensee.

- II. Rule 432.1322(4)(b): The person or field is regulated by another regulatory agency in Michigan.

The Executive Director may grant an exemption on this basis if the applicant is:

1. A medical corporation, partnership, sole proprietorship, or other business entity authorized to transact business in Michigan, to the extent that the applicant provides medical-related services to a casino licensee.
2. An insurance company licensed or authorized to transact business in Michigan by the Michigan Office of Financial and Insurance Services to the extent that it provides insurance-related services to a casino licensee.
3. A Michigan public institution of higher education to the extent that it provides education-related services to a casino licensee.
4. A public utility regulated by the Michigan Public Service Commission to the extent that it provides regulated utility-related services to a casino licensee.

- III. Rule 432.1322(4)(c): The person or field will provide goods or services of insubstantial or insignificant amounts or quantities.

1. The Board automatically grants an exemption on this basis to a person providing no more than \$600 worth of nongaming-related goods or services to casino licensees in any rolling twelve-month period. A person in this category need not apply for an exemption. This automatic exemption will remain effective for 30 days after the \$600 limit has been reached.

2. The Executive Director may grant an exemption on this basis if the applicant is:

- a. A person providing more than \$600 but less than \$50,000 worth of nongaming-related goods or services to casino licensees in any rolling twelve-month period who:
 - i. submits an application to a casino licensee it serves in which it certifies that, in the reasonable exercise of commercial business judgment, the person will be providing less than \$50,000 worth of nongaming-related goods or services to casino licensees; and
 - ii. is issued a vendor number by the Board after filing its application and certification.

An exemption granted on this basis exists until it appears that, in the reasonable exercise of commercial business judgment, the person will provide casino licensees with \$50,000 or more of nongaming-related goods or services. At that point, the person must cease providing goods or services to casino licensees until it obtains a different exemption from the supplier-licensing requirements, a temporary supplier's license, or a supplier's license.

- b. A person who is providing casino licensees with nongaming-related goods or services on a regular and continuing basis, but who does not reach the \$200,000/400,000 thresholds specified in Rule 432.1322(3). To obtain an exemption on this basis, the person must submit an application to a casino licensee it serves in which it certifies that, in the reasonable exercise of commercial business judgment, the person will not be reaching the thresholds specified in R 432.1322(3).

An exemption granted on this basis exists until it appears that, in the reasonable exercise of commercial business judgment, the person will reach a monetary threshold specified in R 432.1322(3). At that point, the person must cease providing goods or services to casino licensees until it obtains a different exemption from the supplier-licensing requirements, a temporary supplier's license, or a supplier's license.

A person granted an exemption on the basis of R 432.1322(4)(c), as described in this section, cannot assess charges to a casino licensee, or receive payment from a casino licensee, in excess of the dollar limit applicable to the exemption until it obtains a different exemption from the supplier-licensing requirements, a temporary supplier's license, or a supplier's license.

- IV. Rule 432.1322(4)(d): Licensing of the person or field is not deemed necessary to protect the public interest or accomplish the policies and purposes of the act.

The Executive Director may grant an exemption on this basis if the applicant is:

1. A publicly-traded United States corporation under the regulation of the United States Securities and Exchange Commission, or a wholly-owned subsidiary of such a corporation, that also meets all of the following criteria:

- a. The corporation's annual overall gross revenues from doing business with casino licensees constitutes less than 5% of the publicly-traded corporation's annual gross revenues; and

- b. The corporation agrees to provide the Executive Director with documentation of overall gross revenues and the gross revenues derived from doing business with casino licensees on a semi-annual basis in the manner and form directed by the Executive Director as part of the ongoing, confidential background investigation to determine the corporation's continuing eligibility for an exemption on this basis.
2. A person who is engaging in a one-time transaction with a single casino and is not supplying goods or services on a regular and continuing basis, even though the transaction may exceed the \$200,000 threshold specified in Rule 432.1322(3) at which a person is deemed to be supplying goods or services on a regular and continuing basis. A vendor exemption in this category will be effective for only the transaction for which it is requested. It is not available to persons supplying goods or services for the construction of the permanent casinos.
3. A professional entertainer, sports figure, or other celebrity engaged by a licensed casino to appear at a casino-sponsored special entertainment or promotional event, or an agent of a professional entertainer, sports figure, or celebrity who does not otherwise provide services to casino licensees on a regular and continuing basis. This exemption is not available to promoters or agents who provide their services to a casino licensee on a regular and continuing basis.
4. A person who provides facilities, promotion, or advertising to a casino licensee and is one of the following:
 - a. A media outlet (defined as a newspaper, a magazine, an outdoor advertising business, or a radio or television outlet) that:
 - i. derives less than 5% of the person's annual overall gross revenues from advertising by casino licensees; and,
 - ii. agrees to provide the Executive Director with documentation of overall gross revenues and the gross revenues derived from advertising purchased by casino licensees on a semi-annual basis in the manner and form directed by the Executive Director.
 - b. A provider of a facility or a host or sponsor of an event that presents advertising on behalf of or promotes a casino licensee, including but not limited to theatres, ballrooms, halls, arenas, parks, stadia, golf courses, and other entertainment, recreational, and sports facilities located in the State of Michigan.
 - c. A provider of a facility that provides entertainment, recreational, or hospitality services to a casino licensee and is a theatre, ballroom, hall, arena, park, stadium, golf course, or special-event venue located in the State of Michigan.
5. A person providing goods or services to a casino licensee as part of the distribution of complimentary to casino patrons by that person, a person associated with the casino, or the casino itself. For purposes of this resolution, "complimentary" are considered to be amenities provided to casino patrons to reward their patronage or to provide goodwill, and the process for the distribution of these amenities will be known as the casino's "Comp Program." An exemption granted on this basis is subject to the following conditions:
 - a. the person must not accept comp cards or coupons, or their equivalent, as payment for alcohol or convert comp cards or coupons, or their equivalent, to cash or its equivalent;
 - b. the person must not charge a casino licensee for any portion of a comp card or coupon, or their equivalent, that is unused by the casino patron to whom it was distributed;
 - c. the person must permit Board inspection of its accounting records and business premises;

- d. the person must properly account for all transactions in which it provides goods or services for a casino licensee's Comp Program and must retain itemized records documenting each good or service provided to casino patrons in exchange for comp cards or coupons, or their equivalent.

An exemption on this basis is available only to providers that make their services available to all licensed casinos on a non-exclusive basis under similar or reasonably comparable terms and conditions.

6. A person who is a party to any contract or subcontract related to the construction of one or more of the permanent casino complexes who does not have a direct contract with a casino licensee or any of its affiliates related to construction of a permanent casino complex and whose contract for work to be performed on any single permanent casino complex is worth less than \$8 million over the life of the contract. An exemption granted on this basis does not authorize a person to perform work at a permanent casino complex that has started operating, as determined by the Board. An exemption on this basis is not available to:

- a. A person providing gaming-related goods or services for the construction, maintenance or operation of a casino or casino enterprise;
- b. A person who will be involved in the installation, operation, testing, or maintenance of any of the following work areas or systems after the rough construction is completed:
 - i. The main cage and all secondary cages;
 - ii. The vault and vault annex;
 - iii. Security systems;
 - iv. Surveillance systems;
 - v. On-Line gaming systems;
 - vi. Gaming monitoring systems;
 - vii. Hard and soft count rooms.
- c. All other persons providing goods or services for the construction or operation of a permanent casino complex or casino enterprise when the Executive Director believes that licensing is necessary to protect the public interest and to carry out the purposes of the Act and Rules.

7. A Michigan or federally chartered depository financial institution to the extent that it provides financial-related services to a casino licensee. The Executive Director may not grant an exemption to a financial institution on this basis if the financial institution provides financing to a casino licensee.

- 8. A person or entity that provides professional legal services to a casino licensee.

IT IS FURTHER RESOLVED that a person is ineligible for an exemption from the supplier-licensing requirements if that person has outstanding fees owed to the Board or outstanding Board-related fees owed to the Michigan Department of Treasury.

IT IS FURTHER RESOLVED that persons who request or obtain a vendor exemption from the supplier-licensing requirements under this resolution must submit any application that the Board requires and provide whatever additional information may be requested by the Board or the Executive Director to assure compliance with the purposes of the Act and Rules.

IT IS FURTHER RESOLVED that all persons receiving vendor exemptions from the supplier-licensing requirements under this resolution, except those who are exempt on the basis that they provide no more than \$600 worth of goods or services to casino licensees, will be issued a vendor number. A casino licensee cannot obtain goods or services from anyone who is subject to the supplier-licensing requirements unless (1) the person is automatically exempt on the basis that the person provides no more than \$600 worth of goods or services, (2) the person has an exemption, or (3) the person has a

temporary supplier's license or supplier's license. It is the duty of the licensed casinos to verify that they are only obtaining goods or services from persons who have complied with the Act, Rules, and this resolution.

IT IS FURTHER RESOLVED that a casino licensee that obtains goods or services from a person exempt under Category III (insubstantial or insignificant amounts or quantities) may not obtain goods or services worth more than the dollar limit applicable to the exemption and may not pay a person more than the exemption category permits until the person obtains a different exemption, a temporary supplier's license, or a supplier's license. A casino licensee that receives an application or certification from a person as described in Category III must retain the signed application or certification in its files and electronically submit the application to the Board.

IT IS FURTHER RESOLVED that an exemption that is based on the type of good or service provided permits the exempt person to provide only the goods or services encompassed by that exemption.

IT IS FURTHER RESOLVED that the Executive Director may grant an exemption from the supplier-licensing requirements on a basis other than that relied upon in a person's exemption application if the Executive Director determines that another basis for granting exemption applies and is more specifically tailored to the type of goods or services the person intends to provide to casino licensees, based on the circumstances described in the person's application and other information that the Executive Director receives from the applicant.

IT IS FURTHER RESOLVED that each casino licensee must submit a report each month that lists the date and amount of each payment made to each person with an exemption from the supplier-licensing requirements and a yearly report that summarizes the total paid to each exempt person that calendar year. A casino licensee must submit its monthly report before the 15th day of the following month; it must submit its yearly report before January 31 of the following year. These reports do not need to list payments to persons who are automatically exempt on the basis that they provide no more than \$600 worth of goods or services in a twelve-month period. For payments made in 2006, the reporting requirement applies only to payments made in the final quarter of the year, beginning October 1, 2006. Each report must be in a format prescribed by the Board.

IT IS FURTHER RESOLVED that all persons who currently have an exemption from the supplier-licensing requirements, regardless of the basis on which it was granted, will be granted vendor exemptions from the supplier-licensing requirements under this resolution when they submit a certification acknowledging their acceptance of the terms, conditions, and procedures specified in this resolution. All such persons will have 60 days from the date of this resolution to submit the required certification. If a person does not submit the required certification within 60 days from the date of this resolution, that person's current exemption will automatically cease to exist and that person will not be permitted to provide goods or services to a casino licensee.

IT IS FURTHER RESOLVED that any vendor exemptions granted under this resolution will only be in effect so long as all of the requirements for their issuance continue to be met. A vendor exemption is not a license and is merely a conditional waiver of the supplier-licensing requirements of the Rules. In the event that the necessary conditions for exemption from the supplier-licensing requirements are no longer being met, the Executive Director may summarily suspend the vendor exemption and inactivate that person's vendor number. The Executive Director may also summarily suspend the vendor exemption if it appears that the public health, safety, or welfare requires emergency action. Actions or omissions that will require emergency action include, but are not limited to, the following:

1. Termination of the person's contractual or business relationship with the casino licensee(s) or the person's subcontractor relationship.
2. Making material misrepresentations to the Board.
3. Failing to timely disclose information upon request of the Board or Executive Director.
4. Failing to comply with Board resolutions or applicable provisions of the Act or Rules.
5. Discovery of evidence that demonstrates that licensing of the person is necessary to protect the public interest or accomplish the policies and purposes of the Act.

If the circumstances that caused the summary suspension are corrected or ameliorated to the satisfaction of the Executive Director, he or she may reinstate the vendor exemption.

IT IS FURTHER RESOLVED that a person who has had a vendor exemption summarily suspended may request a hearing. The hearing will be scheduled to commence within no more than 21 days after the date that the Board receives the request for hearing. To the extent not addressed herein, a hearing on the summary suspension of a vendor exemption will proceed as provided for in Part 11 of the Rules. The hearing will be presided over by the Executive Director or a hearing officer designated by the Executive Director or assigned by the State Office of Administrative Hearings and Rules. A written recommendation, based upon the record from the hearing, will be filed within 21 days of the conclusion of the hearing and a copy will be served on Board Staff and the petitioner at least two weeks before the recommendation would be considered by the Board at the next scheduled public hearing. Board Staff and the petitioner may submit objections to the recommendation. At any point in the hearing process the Executive Director may grant stays or other interim relief as may be appropriate in the circumstances. Denial of the requested stay or other interim relief may be appealed and will be heard at the next scheduled Board meeting.

IT IS FURTHER RESOLVED that the limitation in Rule 432.1325(2) that temporary supplier licenses are not valid for more than 90 days is waived until further notice from the Board for both gaming and non-gaming suppliers.

IT IS FURTHER RESOLVED that the Executive Director may "[p]erform a background check, at the vendor's expense, of any vendor using the same standards that the board uses in determining whether to grant a supplier's license." See MCL 432.204a(1)(s).

IT IS FURTHER RESOLVED that:

1. The Executive Director is delegated and authorized to exercise all power and authority of the Board to exempt, or grant waivers to, any person or field of commerce from the supplier-licensing requirements of the Rules as provided for in this resolution, the Act, and Rules 432.1223 and 432.1322(4), upon the Executive Director's determination that the requirements and criteria for such exemption, as set forth in the Rules and this resolution, are established;
2. A person or entity requesting an exemption must complete an application (unless the automatic exemption described in Category III(1) applies) and provide any information requested by the Board or its representative. The Executive Director must report all requests for exemptions to the Board at the first regularly scheduled public meeting that follows receipt of the request;
3. A person or entity requesting a vendor exemption from the supplier-licensing requirements must certify that the person making the request has read this resolution and accepts and acknowledges that all exemptions granted under this resolution are conditioned upon that person's acceptance of, and consent to, the conditions, requirements, and procedures described in this resolution;
4. The Executive Director must issue a written notice to grant or deny a request for a vendor exemption from the supplier-licensing requirements and must provide a copy of the notice to the person requesting the vendor exemption;
5. The Board may reverse the decision of the Executive Director to grant or deny a vendor exemption on its own motion;
6. A person whose request for a vendor exemption from the supplier-licensing requirements is denied by the Executive Director may petition the Board for review as provided for in Part 7 of the Rules;
7. In all hearings provided for in this resolution, the petitioner shall carry the burden to show by clear and convincing evidence that the petitioner has met the requirements for a vendor exemption.
8. Board Staff will be prepared to accept applications for vendor exemptions from the supplier-licensing requirements under this resolution on July 5, 2006.

IT IS FURTHER RESOLVED that exemptions granted under this resolution do not affect the requirement of Rule 432.1331 that all individuals doing work for an exempt person who perform work in a restricted area of a casino or in the gaming area of a casino shall hold an occupational license of the level required for the individual's position.

IT IS FURTHER RESOLVED that Board Resolution No. 1998-07, Board Resolution No. 1998-09, Board Resolution No. 2003-07, Board Resolution No. 2005-03, and Executive Director Order No. 1998-01 are collectively rescinded and superseded by this resolution.

ADOPTED AND ISSUED THIS 29TH DAY OF JUNE 2006.

STATE OF MICHIGAN
MICHIGAN GAMING CONTROL BOARD

Damian Kassab, Chairperson

Attest:

Received and Filed:

Patricia S. James
Board Secretary

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