

CERTIFICATION OF INDEPENDENT TESTING LABORATORIES

Issue:

The Nebraska Department of Revenue (Department) has historically contracted with a single independent testing laboratory to test and examine bingo equipment and county/city lottery (keno) equipment on behalf of the Department. Is it permissible for the Department to certify independent testing laboratories in lieu of contracting with a single laboratory to provide testing services?

Conclusion:

The Department may require a manufacturer of bingo equipment or a manufacturer-distributor of keno equipment to use the services of an independent testing laboratory which has been certified by the Department to test and examine this equipment. This revenue ruling establishes the criteria for the certification of independent testing laboratories.

Definitions:

Bingo equipment. Bingo equipment means any equipment which is made, sold, or used to conduct bingo and includes, but is not limited to:

- bingo balls;
- bingo card monitoring devices and site systems;
- bingo hard cards, disposable paper bingo cards, and instant bingo cards;
- blower devices;
- facsimile of a bingo card electronically displayed on a bingo card monitoring device;
- flash boards;
- instant bingo boards;
- mechanical cages or machines or other devices from which bingo balls are withdrawn;
- reusable shutter bingo cards; and
- any other device used in the direct operation of the game.

Director. Director means the Director of the Lottery and Charitable Gaming Division.

Lottery (keno) equipment. Lottery (keno) equipment means all proprietary devices, machines, and parts used in the manufacture or maintenance of equipment which is used in and is an integral part of the conduct of the lottery. This equipment directly affects the outcome of the lottery or monitors the operation of the lottery and includes, but is not limited to:

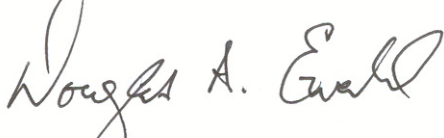
- automated ball draw systems, and other electronic selection devices;
- keno ball selection devices, including electrically operated blower machines;
- keno balls;
- keno systems; and
- random number generators.

Analysis:

[Neb. Rev. Stat. § 9-255.10](#) of the Nebraska Bingo Act and [Neb. Rev. Stat. § 9-635](#) of the Nebraska County and City Lottery Act require a manufacturer of bingo equipment or a manufacturer-distributor of keno equipment to obtain approval from the Department prior to offering or marketing equipment in Nebraska. Approval is based upon conformance with specifications imposed by the Department. Any costs associated with the testing and examination of the equipment is the responsibility of the manufacturer or manufacturer-distributor who submitted the equipment for testing.

[Neb. Rev. Stat. §§ 9-226\(12\)](#) and [9-620\(13\)](#) authorize the Department to adopt and promulgate rules and regulations necessary to carry out the Acts. The certification of independent testing laboratories for the purpose of the testing and examination of bingo and keno equipment, as required by [Neb. Rev. Stat. §§ 9-255.10](#) and [9-635](#), is within the regulatory powers legislatively granted to the Department.

APPROVED:



Douglas A. Ewald
Tax Commissioner

October 26, 2010

See attached [Procedures for Certification of Independent Testing Laboratories](#)

PROCEDURES FOR CERTIFICATION OF INDEPENDENT TESTING LABORATORIES

The following procedures apply to any business seeking certification as an independent testing laboratory in Nebraska for the purpose of testing and examination of bingo and lottery (keno) equipment.

Application

An application for certification must be submitted to the Nebraska Department of Revenue (Department) in writing on company letterhead and include the following:

1. Applicant Identification and Information –

- full company or corporate name;
- address of the company's headquarters;
- entity organization (corporation, limited liability company, partnership, proprietorship);
- state in which the company is incorporated or otherwise organized to do business;
- year in which the company was first organized to do business;
- whether the name and form of organization has changed since first organized; and
- federal employer identification number and/or Social Security number.

2. Financial Statements –

If publicly held, include a copy of the corporation's most recent audited financial reports and statements, and the name, address, and telephone number of the fiscally responsible representative of the applicant's financial or banking organization.

If not publicly held, include either the reports and statements required of a publicly held corporation, or a description of the organization, including size, longevity, client base, areas of specialization and expertise, and any other pertinent information submitted in such a manner that the Department may reasonably formulate a determination about the stability and financial strength of the applicant. Additionally, a non-publicly held firm must provide a banking reference.

The applicant must disclose any and all court judgments, pending or expected litigation, or other real or potential financial reversals, which might materially affect the viability or stability of the applicant, or state that no such condition is known to exist.

3. Change of Ownership –

If any change in ownership or control of the applicant is anticipated during the 12 months following the application for certification, the applicant must describe the circumstances of this change and indicate when the change will likely occur. Any change of ownership after certification requires written notification to the Department within 30 days of the effective date of the change. The Department reserves the right to revoke prior certification if the change of ownership is not in the best interests of the Department.

4. Office Location –

The applicant must identify the office location responsible for the performance of testing services. If the applicant has more than one location where testing services are performed, the applicant must identify the locations where testing services will be performed for Nebraska purposes. The applicant must perform all testing and certification of gaming equipment at the applicant's places of business or another location approved by the Department.

5. **Testing Facilities –**

The applicant must provide a detailed description of its test facilities including a description of the nature of security it relies upon to ensure the integrity and safety of its laboratory and processes. The applicant must include a description of its internal controls and procedures for employee integrity and its business practices, including receipt, processing, and testing of gaming equipment, accounting and billing, physical storage, data storage, and Internet security, and any other processes, systems, or business practices related to providing testing services to the Department.

6. **Contract Performance –**

If the applicant has had a testing services contract terminated for default or a vendor/supplier license cancelled during the past five years, all of these instances must be described as required below. Termination for default is defined as a notice to stop performance delivery due to the applicant's non-performance or poor performance, and the issue was either not litigated due to inaction on the part of the applicant, or litigated determining the applicant to be in default.

The applicant must submit full details of all termination for default or vendor/supplier license cancellations experienced during the past five years, including the other party's name, address, and telephone number. The response must present the applicant's position on the matter. The Department will evaluate the facts and will consider the applicant's request accordingly. If no termination for default or vendor/supplier license cancellation has been experienced by the applicant in the past five years, the applicant must indicate this.

If at any time during the past five years, the applicant has had a contract terminated or vendor/supplier license cancelled for convenience, non-performance, non-allocation of funds, or any other reason, the applicant must describe fully all circumstances surrounding this termination or cancellation, including the name and address of the other contracting party or licensing entity.

7. **Summary of Experience –**

The applicant must provide a summary of its experience during the past five years, in the testing of bingo and keno equipment or equivalent types of systems.

- a. **Contract/License Identification.** The applicant must provide a list of other state regulatory jurisdictions in which it is currently contracted with, licensed, or certified as an independent testing laboratory for bingo and keno equipment, or any other types of gaming equipment. For each state regulatory jurisdiction, the applicant must provide the following.
 - i. Name of the state regulatory jurisdiction;
 - ii. Length of time the applicant has served as an independent testing laboratory for the regulatory jurisdiction;
 - iii. Testing responsibilities; and
 - iv. For reference purposes, the name of a contact person, a current telephone number, and e-mail address.

8. Summary of Personnel/Management –

The applicant must identify the specific professionals who will be directly involved in the performance of the testing services and their individual responsibilities. A brief description of the qualifications and experience of each professional and the extent of their involvement in the testing and/or document process must also be provided. Once certified, the applicant must notify the Department within 30 days of any changes in personnel who are directly involved in the performance of the testing services. The Department may conduct background investigations of any new personnel, as deemed necessary, to determine suitability for performing testing services.

If the applicant intends to subcontract any of the testing services, the applicant must provide the name, address, and telephone number of the subcontractors and the specific tasks that each subcontractor will perform.

9. Background Investigation –

Any company applying to the Department for certification as an independent testing laboratory may be required to undergo a thorough background investigation and a review and evaluation of the applicant's competence, integrity, background, and character as a condition of certification. The background investigation will be conducted by the Department's investigative personnel and, at the discretion of the Department, include inspection of the applicant's testing facilities and offices where testing services will be performed for Nebraska purposes. Background investigations and inspections will be performed at the expense of the applicant. The applicant must pay for all reasonable and necessary expenses, including travel (round-trip), meals, and lodging, for up to two individuals designated by the Department for the purpose of the background investigations and inspections.

10. Annual Inspections –

If determined necessary by the Department, the applicant must allow up to two Department employees one visit annually to inspect each of the laboratory sites where testing is performed to ensure the integrity of work is maintained and for review of new technology being considered for approval. The applicant must pay for all reasonable and necessary expenses, including travel (round-trip), meals, and lodging, for up to two individuals designated by the Department for the purpose of the inspections.

11. Technical Requirements –

The applicant must provide sufficient detail regarding its ability to perform the testing services required.

- a. The ability to generate and apply test scripts and test plans for the testing and approval of gaming equipment. This ability must include demonstration of proficiency and timely knowledge about technological innovation, cheating methodology, patron protection, and field conditions. The applicant must submit test scripts which it has used previously in the testing and evaluation of electronic bingo card monitoring devices, computerized keno systems, and random number generators. These test scripts and test plans will be considered confidential / proprietary information. These procedures need not specifically address Nebraska's laws, but may include a test script or test plan for evaluating compliance with Nebraska's laws.

- b. The applicant must maintain current International Organization of Standardization (ISO) 17025IT certification and accreditation. The applicant must provide the Department documentation reflecting this certification and accreditation.
- c. The applicant must provide the Department a unique identification code or signature utilizing an industry-acceptable means for generating this unique identification code or signatures, such as Secure Hash Algorithm (SHA-1) or Cyclical Redundancy Check (CRC 16 and CRC-32) to all Critical Program Storage Media (CPSM). The unique identification code or signature and the means for generating these codes or signatures must be included in all documents and reports.
- d. The applicant's verification tools and/or mechanisms used to provide unique identification codes or signatures and the means for generating such codes or signatures to CPSM's must be approved by the Department. The applicant must provide the Department with step-by-step verification procedures for each tool and/or mechanism.
- e. The applicant must provide the Department any verification tool and/or mechanism that is proprietary to the laboratory and which is required for the Department's authorized personnel to verify the unique signature of CPSMs.
- f. The applicant must provide the Department a recommended format for the submission of gaming equipment for testing by a manufacturer and the required documentation to be included with the submission.
- g. The applicant must provide the Department a proposed format for its Test Result/Certification Reports, and must maintain flexibility in the format and content of its Test Result/Certification Reports, to meet changing regulatory philosophies and conditions.
- h. Upon completion of any required testing, the applicant must fully document, in a written report, the tests performed and the results of those tests. The applicant must submit a draft certification letter to the Department. This letter must certify that appropriate tests were conducted and that the specified gaming equipment complies with Nebraska's laws, regulations, and test criteria. If the gaming equipment does not comply with Nebraska's laws, regulations, and test criteria, the applicant must advise the Department in writing of the deficiencies which prevented certification of the gaming equipment. The Department will notify the applicant of any changes which are required to the draft certification letter prior to the issuance of a final certification letter to the manufacturer.
- i. The applicant must maintain a repository of approved software for all gaming equipment tested and certified. The applicant must provide the Department with real-time online access to the repository of reports maintained by the applicant relative to testing performed on gaming equipment submitted by manufacturers of bingo and keno equipment licensed by the Department.

12. Additional Requirements –

- a. The applicant must provide the Department a 24 hours per day, seven days per week, customer support/regulatory compliance contact.
- b. If requested by the Department, the applicant must perform on-site field inspections of gaming equipment.

- c. The applicant must have sufficient resources available to provide consulting services to the Department, if required.
- d. The applicant must not provide consulting services (including, but not limited to, product development testing, product design, or product evaluation) to Nebraska manufacturer licensees, unless otherwise authorized by the Department. Additionally, the applicant must not knowingly provide testing or consulting services to Nebraska manufacturer licensees in support or furtherance of illegal gaming in Nebraska.
- e. The applicant must provide the Department regulatory support and assistance in regulatory processes, including drafting of rules and regulations and gaming equipment test criteria, if required.
- f. The applicant must provide regular and on-demand training to the Department's Charitable Gaming Division and Investigative Services staff as needed. The applicant must describe a means of establishing and offering opportunities for regular training to the Division.
- g. The applicant must provide all facilities, labor, equipment, tools, and storage, for the performance of the testing services required.
- h. The applicant must perform gaming equipment testing services in a timely manner, and must document the cause when it does not meet standards of timeliness. For the purpose of this section, "timely manner" means within 60 calendar days of the receipt of a complete submission by the applicant, or as otherwise agreed to by the Department. The applicant must notify the Department when delays are encountered which will prevent the completion of testing services within 60 days or any agreed upon time frame for completion.
- i. The applicant must respond within one business day, via telephone or e-mail, to requests from the Charitable Gaming Division for technical assistance when critical incidents arise which require the Division's immediate attention. For the purpose of this section, a "critical incident" includes, but is not limited to: an equipment malfunction or software deficiency which jeopardizes the integrity of the game; or an equipment modification is required in order to prevent cheating or equipment failure.
- j. No owner, employee, or agent (or spouse of an owner, employee, or agent) of an applicant certified as an independent testing laboratory may play in any gambling activity which is authorized or regulated under Chapter 9 of the Nebraska Revised Statutes.
- k. All costs associated with the testing and examination of the equipment are the responsibility of the manufacturer or manufacturer-distributor who submitted the equipment for testing and must be billed directly to the manufacturer or manufacturer-distributor. A manufacturer or manufacturer-distributor may negotiate directly with the applicant relative to any testing costs. The applicant must provide monthly invoices to the manufacturer or manufacturer-distributor for any testing services performed. The monthly invoice must itemize all services actually performed during the monthly reporting period, by date and type of service provided. Copies of the monthly invoices must be provided to the Department.

The applicant may exercise discretion in determining how to collect the fees for services to be rendered. This includes, but is not limited to: payment in advance;

deposit in advance; payment at regular intervals; or payment upon completion of services. However, the State shall not be a party to any payment agreement between the applicant and any manufacturer or manufacturer-distributor, nor shall the State be deemed to guarantee or insure payment of any services rendered by the applicant.

The applicant may, at its discretion, refrain from providing the Department with its final report regarding test results of a manufacturer's or manufacturer-distributor's gaming equipment or conducting further testing for a manufacturer or manufacturer-distributor only for the purpose of securing, and solely in order to secure, full payment for services rendered. Any questions or disputes concerning the applicant's billing statements will be formally resolved between the applicant and the manufacturer or manufacturer-distributor.

- I. The applicant must indicate all costs that are to be charged to the Department for the provision of consulting services, regulatory support including drafting of rules and regulations and test criteria, staff training, and any other miscellaneous services.

13. Certification Approval –

Upon completion of the review of the company's application and the performance of the background investigation, if required, the Department will notify the applicant in writing whether certification has been approved. If the Department denies a company's application for certification, a letter will be sent to the applicant explaining the reasons for disapproval. The decision of the Department may be appealed to the Tax Commissioner. The appeal must be in writing, explain the basis for the appeal, and be filed with the Department within 30 days of notification of the Department's disapproval. Any decision of the Tax Commissioner will be final and not subject to appeal. An applicant which has been disapproved, may reapply for certification after a period of 12 months has elapsed, unless the Director waives this requirement.

The Department's certification of an independent testing laboratory is valid for a period of two years from the date certification was approved unless sooner terminated by the Department. A certified testing laboratory must notify the Department, in writing, at least 30 days prior to the expiration date of the certification of its desire to be re-certified.

The Department reserves the right to revoke the certification of an independent testing laboratory for cause. Prior to revocation of certification, the Department shall serve advance notice on the applicant by certified mail, return receipt requested, of the time, date, and place of an administrative hearing before the Tax Commissioner, or his or her designee, for the purpose of responding to the proposed revocation. Any decision of the Tax Commissioner will be final and not subject to appeal.

14. Confidentiality –

All materials and information provided by the Department, or acquired by the applicant on behalf of the Department, are regarded as confidential information, and must be handled in accordance with Federal and State law and ethical standards.

15. Proprietary Information –

Data contained in the application for certification and all documentation provided in it, become the property of the State of Nebraska and the data is public information. If the applicant wishes to have any information withheld from the public, this information must fall

within the definition of “proprietary information” contained within Nebraska’s public record statutes. All proprietary information the applicant wishes the Department to withhold must be submitted in a sealed package, which is separate from the remainder of the application. The separate package must be clearly marked PROPRIETARY on the outside of the package.

“Proprietary information” is defined as trade secrets, academic and scientific research work which is in progress and unpublished, and other information which if released would give advantage to business competitors and serve no public purpose (see [Neb. Rev. Stat. § 84-712.05\(3\)](#)). In accordance with [Attorney General Opinions 92068 and 97033](#), applicants submitting information as proprietary may be required to prove specific, named competitors who would be advantaged by release of the information and the specific advantage the competitors would receive. Although every effort will be made to withhold information that is properly submitted as proprietary and meets the State’s definition of proprietary information, the Department is under no obligation to maintain the confidentiality of proprietary information and accepts no liability for the release of such information.