

## Promotional Expenses Deductible for Gaming Tax

A nearly unanimous Pennsylvania Supreme Court reversed the Commonwealth Court and held that certain promotional expenses were deductible in calculating *gross terminal revenue* for purposes of the 34 percent Pennsylvania tax on slot machines. *Greenwood Gaming & Entertainment v. Commonwealth*, No. 50 MAP 2012 (Pa. Apr. 28, 2014). The commonwealth imposes its tax on gross terminal revenue. 4 Pa. C.S. § 1103. The term is defined as cash or cash equivalent wagers received, less certain items including personal property distributed to a patron as a result of playing a slot machine. 4 Pa. C.S. § 1103. The definition excludes from *personal property distributed*, travel expenses, food, refreshments, lodging or services, often referred to as “comps.” The commonwealth argued that the statutory language required that the personal property be distributed as the result of a particular play. The promotional expenses were incurred for distributions to persons who had used player cards. The court held that there was ambiguity whether the disputed promotional expenses were deductible. Under the canons of statutory construction, the ambiguity should be resolved in favor of the taxpayer. The court noted that the exclusion for comps would have been irrelevant if personal property distributed was required to be tied directly to a particular play of a slot machine. One justice dissented on the grounds that he did not believe that the legislature intended for taxpayers to bear the economic burden of promotional expenses when such expenses are a cost of doing business of the casinos.

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To discuss any questions you may have regarding the opinion discussed in this Alert, or how it may apply to your particular circumstances, please contact: Joseph C. Bright at [jbright@cozen.com](mailto:jbright@cozen.com) or 215.665.2053, Dan A. Schulder at [dschulder@cozen.com](mailto:dschulder@cozen.com) or 717.703.5905 or Cheryl A. Upham at [cupham@cozen.com](mailto:cupham@cozen.com) or 215.665.4193.



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