

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Comptroller of the Treasury
(DLS Control No. 16-157)**

Overview and Legal and Fiscal Impact

These regulations establish requirements for operators that host fantasy sports competitions in the State.

The regulations present no legal issues of concern. However, additional comments have been included in the *Technical Corrections and Special Notes* section below for the consideration of the Joint Committee on Administrative, Executive, and Legislative Review.

General fund revenues and local income tax revenues potentially minimally increase annually due to fantasy sports operators being required to disclose potential tax liabilities to fantasy sports players, which may lead taxpayers to report previously unreported fantasy sports gaming revenues on their income tax returns.

Regulation of COMAR Affected

Comptroller of the Treasury:

Online Fantasy Competitions: General Provisions: COMAR 03.11.01.01 through .14

Legal Analysis

Background

Under Chapter 346 of 2012, a specified “fantasy competition” is not subject to prohibitions against betting, wagering, and gambling included in State law. Chapter 346 authorized the Comptroller’s Office to adopt regulations to carry out the provisions of the Act. Subsequent to the enactment of Chapter 346, daily fantasy sports emerged as a new form of fantasy competition in which participants’ fantasy teams compete against each other based on professional player or team statistics. Daily fantasy sports competitions operate on a shorter time table than traditional fantasy sports competitions.

In January 2016, the Office of the Attorney General issued a letter of advice on whether Chapter 346 had the effect of expanding commercial gaming in the State and should have been subject to a voter referendum as required by Article XIX of the Maryland Constitution. The Attorney General’s Office concluded that Chapter 346 clearly authorized traditional fantasy sports competitions that do not constitute commercial gaming and are therefore not subject to a voter referendum. However, to the extent that Chapter 346 authorized daily fantasy sports competitions,

the Attorney General's Office concluded that the Act should have been referred to voter referendum.

Due to the substantial uncertainty surrounding the issue, the Attorney General's Office recommended that the General Assembly clarify whether daily fantasy sports competitions are authorized in Maryland. While several bills concerning the authorization and regulation of daily fantasy sports competitions were introduced during the 2016 session, those bills ultimately failed.

Summary of Regulations

Definitions

Regulation .01B defines certain terms. The regulation defines a "fantasy sports competition" as a fantasy competition in which (1) a prize is awarded; (2) one or more players are subject to and must pay an entry fee; and (3) the fantasy sports operator offering the competition receives compensation in connection with the competition regardless of the outcome. The regulation defines a "fantasy sports operator" as any person that offers services in connection with fantasy sports competitions to individuals who include residents of Maryland by means of (1) the internet; (2) a smart phone application; or (3) any other electronic, digital media, or communication technology. The term does not include an individual who (1) organizes a fantasy sports competition in which the individual also participates; (2) receives no compensation for organizing the fantasy sports competition; and (3) is not affiliated with any fantasy sports operator.

Prohibition on Fantasy Sports Competition Play by Minors

Regulation .01B(12) defines a minor as any individual younger than 18 years old. Regulation .02A prohibits a minor from participating in a fantasy sports competition. Regulation .02B provides that no person may allow a minor to participate in a fantasy sports competition.

Restrictions on Fantasy Sports Competition Play by Individuals Associated with Operators

Regulation .03A prohibits an employee, principal, officer, director or contractor of a fantasy sports operator, or a member of that individual's immediate family, from participating in a fantasy sports competition offered by any fantasy sports operator.

Regulation .03B provides an exception to the prohibition under Regulation .03A. An individual associated with a fantasy sports operator may participate in a fantasy sports competition if (1) the individual uses a clearly marked test account for testing purposes including evaluating a fantasy sports competition platform; (2) the individual fully discloses the affiliation with a fantasy sports operator to each fantasy sports player in the fantasy sports competition; and (3) the individual using a test account is not eligible to win a prize.

Prohibition on Fantasy Sports Competition Play by Athletes and Others

Regulation .04A prohibits an athlete, sports agent, team employee, referee, or league official, or a member of that individual's immediate family, from entering fantasy sports competitions based on underlying sporting events in which the individual is a participant.

Regulation .04B provides an athlete, sports agent, team employee, referee, or league official, or a member of that individual's immediate family, may not enter fantasy sports competitions based on underlying sporting events in which the individual is a participant through another person as a proxy.

Regulation .04C provides that a person may not allow an athlete, sports agent, team employee, referee, or league official, or a member of that individual's immediate family, to enter a fantasy sports competition based on underlying sporting events in which the individual is a participant or in which the individual is a participant through another person as a proxy.

Self Exclusion

Regulation .05A authorizes an individual to request exclusion from entering a fantasy sports competition.

If an individual requests exclusion, Regulation .05B requires a fantasy sports operator to take reasonable measures to prevent that individual from entering a fantasy sports competition.

Limits on Deposits

Regulation .06A prohibits a fantasy sports player from depositing more than \$1,000 in a single calendar month with a fantasy sports operator.

Regulation .06B authorizes a fantasy sports player to request a fantasy sports operator to temporarily or permanently increase a deposit limit above \$1,000 per calendar month under the following conditions:

- the fantasy sports operator must have established and prominently published procedures for considering a request from a fantasy sports player to increase the deposit level, and the procedures shall include an evaluation of information, including evidence of income or assets, sufficient to confirm the financial ability of a fantasy sports player to afford losses which may result from fantasy sports competition play at the deposit level requested by the fantasy sports player;
- when a temporary or permanent deposit level increase is approved, the fantasy sports player must undergo an annual evaluation by the fantasy sports operator of information sufficient to confirm the continued financial ability of a fantasy sports player to afford losses which may result from fantasy sports competition play at the increased deposit level; and
- it is at the discretion of a fantasy sports player to provide income or asset information to a fantasy sports operator.

Prohibition on Extensions of Credit

Regulation .07 prohibits the extension of credit from a fantasy sports operator to a fantasy sports player for purposes of participating in a fantasy sports competition.

Prohibition on Fantasy Sports Competitions Based on Amateur Sports

Regulation .08 prohibits fantasy sports competitions that include amateur, college, high school, or student sporting events.

Ensuring Skill Based Outcomes in Fantasy Sports Competitions

Fantasy Sports Scripts

Regulations .09A(1) and (2) prohibit a fantasy sports player from using unauthorized scripts that provide a competitive advantage on a fantasy sports competition platform and require a player violating the prohibition to be banned from further play. Regulation .09A(3) provides that scripts will be treated as offering a competitive advantage if potential uses include (1) facilitating changes in many lineups at one time; (2) facilitating use of commercial products designed and distributed by third parties to identify advantageous game strategies; or (3) gathering information about the performance of others for the purpose of identifying or entering competitions against fantasy sports players who are less likely to be successful. Regulation .09A(4) authorizes scripts that are either incorporated as a game feature or prominently published and thereby made available to all fantasy sports players.

Beginner Games and Identification of Highly Experienced Players

Regulation .09B(1) provides that fantasy sports players may only participate, and persons may only allow participation, in fantasy sports competitions that are provided by fantasy sports operators that offer some fantasy sports competitions that are limited to beginner players.

Regulation .09B(2) provides that fantasy sports players may only participate, and persons may only allow participation, in fantasy sports competitions that are provided by a fantasy sports operator that clearly and conspicuously identifies a highly experienced player in a fantasy sports competition by attaching a symbol to the username of the highly experienced player, or by other easily visible means, on a fantasy sports competition platform.

Competition Entries

Regulation .09C(1) provides that a fantasy sports player may only participate in fantasy sports competitions that are provided by a fantasy sports operator that discloses the number of entries a fantasy sports player may submit to each fantasy sports competition.

Regulation .09C(2) prohibits a fantasy sports player from using a fantasy sports operator that does not take reasonable steps to prevent fantasy sports players from submitting more than the allowable number of entries.

Limit on Number of Accounts

Regulation .09D(1) prohibits a fantasy sports player from establishing, or being permitted to establish, more than one username with a fantasy sports operator.

Regulation .09D(2) prohibits a fantasy sports player from establishing, or being permitted to establish, more than one account with a fantasy sports operator.

Financial Account Protections

Regulation .10A prohibits a fantasy sports player from being permitted to participate in a fantasy sports competition provided by a fantasy sports operator unless the fantasy sports operator creates segregated accounts separating player funds from operational funds and maintains a reserve in the form of cash, cash equivalents, an irrevocable letter of credit, a bond, or a combination thereof in an amount sufficient to pay all prizes offered to winning fantasy sports players.

Regulation .10B prohibits a fantasy sports player from being permitted to participate in a fantasy sports competition provided by a fantasy sports operator unless the fantasy sports operator complies with all applicable state and federal requirements for data security.

Notification

Regulation .11A prohibits a fantasy sports player from being permitted to participate in a fantasy sports competition unless the fantasy sports operator offering services has notified the agency prior to offering any fantasy sports competition that the fantasy sports operator is qualified to do business in the State.

Regulations .11B, C, and D provide the process for the collection of notification information.

Financial Auditing

Regulation .12A prohibits a fantasy sports player from being permitted to participate in a fantasy sports competition provided by a fantasy sports operator unless the operator contracts annually with a certified public accountant to perform a financial audit that complies with generally accepted accounting principles and is submitted to the agency.

Regulation .12B provides that the financial audit does not preclude any State or federal agency from conducting an audit of a fantasy sports operator.

Regulation .12C prohibits the same certified public accountant from performing more than two consecutive financial audits for a fantasy sports operator.

Tax Laws and Disclosures

Regulation .13A requires a fantasy sports operator to comply with all applicable tax laws and regulations.

Regulation .13B requires a fantasy sports operator to disclose potential tax liabilities to fantasy sports players before the fantasy sports competition begins and again at the time of award of any prize in excess of \$600.

Advertising

Regulation .14A prohibits fantasy sports operator advertisements from depicting minors who are not professional athletes, students, schools or colleges, or school or college settings.

Regulation .14B provides that the incidental depiction of nonfeatured minors will not be a violation.

Legal Issues

The regulations present no legal issues of concern. However, additional comments have been included in the *Technical Corrections and Special Notes* section below for the consideration of the committee.

Statutory Authority and Legislative Intent

The Comptroller cites Section 12-114 of the Criminal Law Article as statutory authority for the regulations. Section 12-114(b) exempts a “fantasy competition” from the prohibitions against betting, wagering, and gambling in State law. Section 12-114(a) defines fantasy competition as any online fantasy or simulated game or contest such as fantasy sports in which (1) participants own, manage, or coach imaginary teams; (2) all prizes and awards offered to winning participants are established and made known to participants in advance of the game or contest; and (3) the winning outcome of the game or contest reflects the relative skill of the participants and is determined by statistics generated by actual individuals. Section 12-114(c) authorizes the Comptroller to adopt regulations to carry out the provisions of the section.

This authority is correct and complete. Except as noted in the *Technical Corrections and Special Notes* section below, the regulations comply with the legislative intent of the law.

Technical Corrections and Special Notes

The Attorney General’s Office has advised that, although the legality of daily fantasy sports competitions is uncertain, Section 12-114 of the Criminal Law Article likely cannot be read to authorize these competitions because it was not subject to voter referendum. Consequently, although the matter is not free from doubt, the Attorney General’s Office has concluded that daily fantasy sports competitions are more likely than not illegal under Maryland law.

Fiscal Analysis

General fund revenues and local income tax revenues potentially minimally increase annually due to fantasy sports operators being required to disclose potential tax liabilities to fantasy sports players, which may lead taxpayers to report previously unreported fantasy sports gaming revenues on their income tax returns.

Agency Estimate of Projected Fiscal Impact

The regulations establish requirements for fantasy sports operators that host daily fantasy sports competitions in the State. The department advises that the regulations potentially minimally increase general fund revenues and local income tax revenues. The Department of Legislative Services concurs. Requiring fantasy sports operators to disclose potential tax liabilities to fantasy sports players may lead to taxpayers reporting winnings from fantasy sports competitions on their tax returns, thus potentially minimally increasing State and local income tax revenues. Given the average prize per entry winning is \$22.43, according to the Fantasy Sports Trade Association, any revenue increase is likely minimal.

Impact on Budget

There is no material impact on the State operating or capital budget as general fund revenues potentially minimally increase annually.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs that there is a minimal impact as fantasy sports operators must contract annually with a certified public accountant. This requirement may burden any small fantasy sports operators but benefit certified public accountants.

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