

**238.536 Amount and use of net receipts retained by charitable organization -- Penalties imposed upon charitable organization failing to retain certain percentage of adjusted gross receipts -- Submission of financial plan -- Petition for reconsideration.**

- (1) The net receipts from charitable gaming retained by a charitable organization for the previous calendar year, provided the charitable organization was licensed at the start of the calendar year, shall be equal to or greater than forty percent (40%) of the adjusted gross receipts of the charitable organization for the same period. A licensed charitable organization shall expend net receipts exclusively for purposes consistent with the charitable, religious, educational, literary, civic, fraternal, or patriotic functions or objectives for which the licensed charitable organization received and maintains federal tax-exempt status, or consistent with its status as a common school, an institution of higher education, or a state college or university. No net receipts shall inure to the benefits or financial gain of an individual. Any charitable organization which permits its license to expire or otherwise lapse shall still be subject to the retention requirement. The following fees and taxes shall be excluded from the calculation of the percentage retained, retroactive to calculations made for calendar year 1999:
  - (a) All fees paid to the department during the calendar year;
  - (b) Any sales or use taxes levied under KRS Chapter 139 on charitable gaming supplies and equipment that are paid by a licensed charitable organization during the calendar year; and
  - (c) Any federal excise taxes levied under 26 U.S.C. secs. 4401 and 4411 and paid by a licensed charitable organization during the calendar year.
- (2) The following actions shall be imposed on a licensed charitable organization that fails to retain the requisite percentage of adjusted gross receipts required in subsection (1) of this section. The calculation of percentages shall be rounded to the nearest tenth of a percent:
  - (a) If the percentage retained is between thirty-five percent (35%) and thirty-nine and nine-tenths percent (39.9%), the licensee shall be placed on probation for a period of six (6) months and shall be required to submit to the department an acceptable financial plan detailing corrective actions to be taken by the licensee to achieve the forty percent (40%) threshold by the end of the calendar year in which the probation is imposed;
  - (b) If the percentage retained is between thirty percent (30%) and thirty-four and nine-tenths percent (34.9%), the licensee shall be placed on probation for a period of one (1) year and shall be required to submit to the department a financial plan as described in paragraph (a) of this subsection. The department shall conduct a six (6) month review of the charitable gaming activities of a licensee placed on probation pursuant to this subsection to evaluate the licensee's compliance with its financial plan;
  - (c) If the percentage retained falls between twenty-nine and nine-tenths percent (29.9%) and twenty-five percent (25%), the licensee shall be placed on

probation for a period of one (1) year, shall submit to the department an acceptable financial plan as described in paragraph (a) of this subsection, and shall participate in a mandatory training program designed by the department. The department shall conduct a quarterly review of the licensee's activities to evaluate the licensee's compliance with its financial plan and its progress toward achievement of the forty percent (40%) threshold during the probationary period;

- (d) If the percentage falls below twenty-five percent (25%) or if the licensee fails to attain the forty percent (40%) threshold for a second consecutive calendar year, the licensee shall have its license suspended for a period of one (1) year; and
  - (e) For purposes of paragraphs (a), (b), (c), and (d) of this subsection, periods of probation and suspension shall commence, unless appealed, from the date the department notifies the licensee of its failure to satisfy the retention requirement for the previous calendar year. If a probation or suspension is appealed, the action shall commence on the date final adjudication of the matter is complete.
- (3) Any licensee that has had its license suspended under the provisions of subsection (2)(d) of this section shall be required to submit to the department an acceptable financial plan as described in subsection (2)(a) of this section, upon applying for reinstatement of its license. As a condition of reinstatement, the licensee shall be on probation for a period of one (1) year and shall be subject to quarterly review by the department in accordance with subsection (2)(c) of this section.
- (4) Any licensee that has had its license revoked, has had its renewal application denied, or has had action initiated to revoke, suspend, or deny its license for failure to meet the forty percent (40%) retention threshold prior to July 14, 2000, may petition the department for reconsideration of its action or proposed action. Upon petition for reconsideration, the department shall apply the standards contained in subsection (2) of this section and shall adjust the license status of the petitioner accordingly. The department shall give credit for the amount of time a license has been revoked in assessing penalties under subsection (2) of this section not to exceed the amount of time imposed under the new penalty.

**Effective:** July 15, 2010

**History:** Amended 2010 Ky. Acts ch. 24, sec. 541, effective July 15, 2010. -- Amended 2000 Ky. Acts ch. 374, sec. 9, effective July 14, 2000. -- Created 1998 Ky. Acts ch. 232, sec. 7, effective April 1, 1998.