



The Commonwealth of Massachusetts
Department of the State Treasurer
Unclaimed Property Division
Boston, Massachusetts 02108-1608

Deborah B. Goldberg
Treasurer and Receiver General

By US Mail & Email (DFSregs@state.ma.us)

January 15, 2016

Office of the Attorney General
c/o DFS Regulations
One Ashburton Place
Boston, MA 02108

Re: Comments to Proposed Daily Fantasy Sports Regulations

Dear Attorney General Healey:

We write on behalf of the Unclaimed Property Division of the Office of the State Treasurer and Receiver General (the "Treasury") to comment upon your Office's proposed Daily Fantasy Sports ("DFS") regulations. In our review, we noted that Section 34.05(6) concerning the timing of the payment of inactive DFS consumer account balances to the Treasury appears inconsistent with the statutory provisions and regulations applicable to unclaimed property. Consequently, we write to request that your Office consider revising the language of proposed Section 34.05(6) and to suggest alternative language as discussed below.

The proposed Section 34.05 states in relevant part:

- (6) Account Closures Due to Inactivity; Unclaimed Funds in DFS Consumer Accounts:
- a. A DFSO will close any DFS Consumer account that is inactive for **two years** and notify the account holder that the account has been closed by email and by mail to the account holder's last known address.
 - b. When a DFS Consumer account is closed due to inactivity, the DFSO will refund all funds in the DFS Consumer account within thirty days.
 - c. In the event that funds in a closed DFS Consumer account cannot be refunded and remain unclaimed, the DFSO will provide annual notice of the existence of funds to the DFS Consumer no less often than semi-annually for **three years**. Such notice will be provided by email and by mail to the account holder's last known address and will provide a process for claiming the funds.

- d. In the event that funds in a closed DFS Consumer Account cannot be refunded and remain unclaimed by the DFS Consumer after **three years**, such funds will be paid by the DFSO to the Commonwealth of Massachusetts Unclaimed Property Fund in the Office of the State Treasurer unless the DFS Consumer has established a last-known address in another state.

See Draft 940 C.M.R. 34.05 (emphasis added).

Thus, inactive DFS consumer account balances will not be paid to the Treasury until at least five years have expired, namely two years of inactivity, plus another three years during which the funds are not refunded and are unclaimed. As discussed below, this time frame is inconsistent with the law pertaining to unclaimed property.

The treatment of unclaimed property is governed by Massachusetts General Laws chapter 200A and associated regulations (see 960 C.M.R. 4.00). We understand that DFS characterizes its consumer accounts as credit balances and, in any event, the treatment of such accounts would be governed by the catch-all provision Chapter 200A, section 5, which provides that such accounts are presumed abandoned, unless claimed within three years after a date prescribed for payment or delivery.

Specifically, Section 5 provides in pertinent part:

Subject to the provision of section one A, all intangible personal property not otherwise presumed to have been abandoned under any other section of this chapter, including but not limited to ... claims for money and credits ... shall be presumed abandoned unless claimed by the beneficiary or person entitled thereto within **three years** after the date prescribed for payment or delivery.

G.L. c. 200A, § 5 (emphasis added).

Once deemed abandoned, an account must be reported and corresponding balance transferred to the Treasury. G.L. c. 200A, § 7; 960 C.M.R. 4.03. However, at least sixty (60) days before reporting and transferring the amounts to the Treasury, a holder of abandoned property is required to send notice to the owner. G.L. c. 200A, § 7A. After receipt of the abandoned property, Treasury is charged with giving notice of the property in its possession and identifying the proper owner(s). See, e.g., G.L. c. 200A, § 8; 960 C.M.R. 4.04. Thus, under Chapter 200A, § 5, after a three year period of abandonment, an account balance must be reported and paid to the Treasury.

In light of the foregoing, we propose two alternative revisions to Section 34.05(6) as follows:

- **Remove and replace Section 34.05(6)(a) – (d).**

Revise Section 34.05(6) to provide as follows:

- (6) Account Closures Due to Inactivity; Unclaimed Funds in DFS Consumer Accounts: DFSOs will comply with G.L. c. 200A, §§ 5, 7 – 7B, and 8A and 960 C.M.R. 4.00 with respect to DFS Consumer accounts.

OR

• **Conform Section 34.05(6) to Certain Sections of Chapter 200A and 960 C.M.R. 4.00.**

Revise Section 34.05(6) to provide as follows:

(6) **Account Closures Due to Inactivity; Unclaimed Funds in DFS Consumer Accounts:**

- a. Subject to the provisions of G.L. c. 200A, §§ 1 and 5 and 960 C.M.R. 4.00, if a DFSO consumer account remains unclaimed for three (3) years after the balances are payable or deliverable to the DFS Consumer, the DFSO shall presume the account to be abandoned.
- b. The DFSO shall report and deliver all DFS Consumer accounts presumed abandoned to the treasurer as provided for by G.L. c. 200A, §§ 7 and 8A and 960 C.M.R. 4.03.
- c. Subject to G.L. c. 200A, § 7A and 960 C.M.R. 4.03, at least sixty (60) days prior to reporting any DFS Consumer accounts to the treasurer, the DFSO shall provide notice to the DFS Consumer's last known address and email address and conduct due diligence to locate the DFS Consumer.

The Treasury supports your Office's efforts to protect Massachusetts consumers from unfair and deceptive acts and practices that may occur while playing DFS and appreciates the opportunity to comment upon the proposed regulations.

Please do not hesitate to contact me at 617.367.9333 ext. 421 should you or your Office wish to discuss any of the foregoing.

My Best,

A handwritten signature in black ink, appearing to read 'Mark Bracken', with a stylized flourish at the end. The initials 'JA' are written in the upper right corner of the signature area.

Mark William Bracken, J.D.
Assistant Treasurer
Unclaimed Property Division

cc: Deborah B. Goldberg, Treasurer and Receiver General
James A. MacDonald, First Deputy Treasurer
David Falcone, Chief of Staff
Sarah G. Kim, General Counsel
Shawn Collins, Legislative and Policy Director