From:	Martha Gregory
To:	Tonya Fulford
Subject:	FW: Submission for Rule Hearing
Date:	Wednesday, July 15, 2026 11:47:54
Attachments:	2026-7-13 Letter to DOR Concerning Changes to Rule-ZachemLaw.pdf

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From: Jon Zachem <jon@zachemlaw.com>
Sent: Tuesday, July 14, 2026 11:59 AM
To: Martha Gregory <Martha.Gregory@floridarevenue.com>
Subject: Submission for Rule Hearing

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Ms. Gregory,
Please see the attached information regarding last week's Rule Hearing. If you have any questions or concerns, please let me know.

Jonathan Zachem, Managing Shareholder
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July 14, 2026

Florida Department of Revenue
P.O. Box 7443
Tallahassee, Florida 32314-7443
Attention; Ms. Martha Gregory
Via electronic mail

Re: Letter in Response to Proposed Changes to Rule 12A-1.097

Dear Ms. Gregory,

This letter follows up on the noticed and requested rule hearing conducted on July 7, 2026, at the Florida Department of Revenue (DOR), 2450 Shumard Oak Boulevard, Building 1, Room 1221, Tallahassee, Florida 32399. We are submitting the following information for the record.

Zachem Law, P.A., represents the Amusement Machine Operators Association of Florida (AMOAF). AMOAF distributes multiple types of machines and devices for the legal and compliant entertainment of clients in Florida. Our games include pool tables, dart boards, juke boxes and multiple other items that give us standing as effected parties to this rule. The proposed rule changes to the forms listed in 12A-1.097 would create confusion and likely violations of both criminal and licensing statues in Florida.

The current iteration of the forms DOR suggests changes have been in place for between nine and ten years, and in some elements of the forms longer. We asked at the rule hearing if there was a statutory change or petition for rule making, and DOR staff confirmed that neither occurred. After a more thorough review of Florida Cabinet meetings that the DOR is required to attain approval for rulemaking, it appears that the only time that this form was on the agenda for review over the last 6 months was after the first workshop was held (May 21, 2026) and the suggested forms were already drafted for June 9, 2026, Cabinet meeting. This would suggest that these changes did not come from any noticed Cabinet meeting. After review of the meeting, there was no discussion or explanation as to the authority or effect of the suggested changes by any member of the Cabinet. But a party did submit some form of suggestions. We request a complete copy of the workshop submissions.

The proposed changes, including an attestation by the applicant, would add a substantial penalty to items that need clarity. The new language suggested is as follows:

Under penalties of perjury, I certify that I have read this application and:
- The facts stated in it are true, and
- Each machine described herein is only a game of skill and is not:
(a) A machine using mechanical slot reels, video depictions of slot reels or symbols, or video simulations or video representation of any casino game, including, but not limited to, any banked card game, poker, bingo, pull-tab, lotto, roulette, or craps.
(b) A game in which the player does not control the outcome of the game through skill or a game where the outcome is determined by factors not visible, known, or predictable to the player.
(c) A video poker game or any other game or machine that may be construed as a gambling device under the laws of this state.
(d) Any game or device defined as a gambling device in 15 U.S.C. s. 1171, unless excluded under 15 U.S.C. s. 1178.

This is relevant due to the statutory penalties for this type of requirement.

92.525 Verification of documents; perjury by false written declaration, penalty.—

(1) If authorized or required by law, by rule of an administrative agency, or by rule or order of court that a document be verified by a person, the verification may be accomplished in the following manner:

(a) Under oath or affirmation taken or administered before an officer authorized under s. 92.50 to administer oaths;

(b) Under oath or affirmation taken or administered by an officer authorized under s. 117.10 to administer oaths; or

(c) By the signing of the written declaration prescribed in subsection (2).

(2) A written declaration means the following statement: "Under penalties of perjury, I declare that I have read the foregoing [document] and that the facts stated in it are true," followed by the signature of the person making the declaration, except when a verification on information or belief is permitted by law, in which case the words "to the best of my knowledge and belief" may be added. The written declaration shall be printed or typed at the end of or immediately below the document being verified and above the signature of the person making the declaration.

(3) A person who knowingly makes a false declaration under subsection (2) is guilty of the crime of perjury by false written declaration, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) As used in this section:

(a) The term “administrative agency” means any department or agency of the state or any county, municipality, special district, or other political subdivision.

(b) The term “document” means any writing including, without limitation, any form, application, claim, notice, tax return, inventory, affidavit, pleading, or paper.

(c) The requirement that a document be verified means that the document must be signed or executed by a person and that the person must state under oath or affirm that the facts or matters stated or recited in the document are true, or words of that import or effect.

History.—s. 12, ch. 86-201; s. 1, ch. 2015-23; s. 10, ch. 2025-163.

The suggested changes do not include any reference to “knowingly,” but to expose the applicant to a felony of the third-degree. The possible penalties for a third-degree felony under Florida Statute 837.02 (penalty in an official proceeding) are a fine of up to $5,000.00 and possible incarceration for up to 5 years. The DOR has not provided any authority (Florida Statute 120.54(1)(e))to implement penalties of this nature for these forms. They have not needed them in the past, and no information was provided to show they are needed in the future.

DOR staff confirmed that they do not understand the nuances of the items at issue and cannot differentiate between skill-based or non-skill-based games. DOR staff were asked if they were going to confirm compliance at the time of the application or conduct inspections. They replied that they do not have the staff or expertise to do so. It might come up in an audit, but that would be the only time their agency could confirm the affidavit was accurate. For reference, one of our long-time members confirmed that his company’s records have only been audited two times in over twenty-five years. This isn’t a slight to the agency, but to confirm that the staff needed to review every location would require a huge addition to the current agency and it is unlikely that this affidavit would be used by DOR for compliance issues.

The current forms are used for more than skill-based games currently. Suggested changes include other possible machines like a juke box, telescope, mechanical rides, music machines and other areas. It would be questionable if any of these machines met the requirements of skill-based games, but you would be required to submit an affidavit that they are if you are going to register them to pay taxes. If you fail to register a machine for tax purposes, you expose yourself to probable financial penalties. The suggested changes implemented will create conflict and more confusion over correct use while attempting to follow the law.

Amusement machines are already defined in statute, and DOR does not have any rulemaking authority to change or limit the statute. Noticeably and conspicuously, the affidavit excludes the following from the statue;

546.10 Amusement games or machines.—

(3) As used in this section, the term:

(a) "Amusement game or machine" means a game or machine operated only for the bona fide entertainment of the general public which a person activates by inserting or using currency or a coin, card, coupon, slug, token, or similar device, and, by the application of skill, **with no material element of chance inherent in the game or machine**, the person playing or operating the game or machine controls the outcome of the game.

This is relevant, due to the statutory requirements for gambling devices, specifically slot machines, that focus on the requirement that there be an element of chance (Florida Statute 849.15(1)(b)). The penalty for illegal slot machines in Florida, or illegal gambling (Florida Statutes 849.08) is a second-degree misdemeanor, with a possible penalty of sixty days in county jail and a fine of up to $500.00. In other words, the DOR would be increasing penalties without authority for a possible illegal gambling device, through an affidavit, from a second-degree misdemeanor to a third-degree felony without statutory authority or approval. The required element of chance dates to the 1950's in Florida with the Florida Supreme Court decision in Deeb (Deeb v. Stoutamire, 53So.2d973, 1951).

As a point of reference for DOR, this issue has been part of the last three legislative sessions in Florida, including an agency bill from the Florida Gaming Control Commission (FGCC) in 2026, where they attempted to increase penalties for illegal gambling to felonies (SB1580). The Florida Legislature did not approve this bill, and multiple legislators took issue with increasing penalties without more clarity. DOR would directly contradict the work that has been done and will continue to be done to create this clarity over the last few years. We urge you to not implement these changes in an area that you acknowledge you do not fully have the expertise to enter. This point should have been supplied by the FGCC, who attended the Rule Hearing on July 7, 2026, but only commented they support the suggested changes.

We also question whether a Statement of Estimated Regulatory Costs (SERC) should be implemented. Adding multiple possibly felonies for form violations would likely exceed the $200,000.00 threshold. In February 2026 alone, my clients had over 12 locations in northeast Florida charged with possible violations of law. This would add a necessary defense of a felony to their legal fees (estimated at over $5,000.00 per location using Legal Match website and other resources) and this has also led to Administrative Cases dealing with Florida Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, alcohol licenses. This would add a significant legal fee to the licenses, and to the local State Attorney's office and prisons. We have already had one case dropped, but the fees will never be recovered. To be sure that the need for a SERC is not needed, DOR needs to work with local State Attorneys to determine what new costs this would add to their budget and likely to the accused.

In an effort to provide clarification for the amusement industry, we would like to suggest a possible helpful change to the form. In form DR-18, the Name of the Operator is creating confusion. We would suggest that the forms be amended to be specific to the location of the machines. The location is in better position to pay the taxes on the machine, and most contracts place the responsibility on the location to make payments. Operators, if defined as suppliers, might be in multiple counties and the confusion by the locations can be in direct conflict with contracts.

Furthermore, a new requirement to list the type of machine is irrelevant to the collection of taxes. Machines are rotated due to demand, it is immaterial to the DOR what the machine is, only that the number of machines is correct and the taxes are paid accurately. This proposed change to the reporting form lacks specific statutory authority and will only drive-up regulatory costs while not providing any benefit or clarity to the regulator or regulated.

We thank the DOR for their time and consideration to this matter. Please let us know if you would like any more clarifications or specifics as to this submission.

Sincerely,

Jonathan R. Zachem
Managing Shareholder
Zachem Law, P.A.