



STATE OF DELAWARE  
DEPARTMENT OF FINANCE  
DIVISION OF REVENUE  
CARVEL STATE BUILDING  
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## DIVISION OF REVENUE

### TECHNICAL INFORMATION MEMORANDUM 96- 2

Date: April 11, 1996

#### I. INTRODUCTION

This Technical Information Memorandum is issued under the authority of 30 Del. C. §§ 354, 563, and 2103, and it explains in general the Division's view of the application of the business license tax to Delaware's new video lottery agents.

#### II. BACKGROUND

The Horse Racing Redevelopment Act, 69 Del. Laws c. 466, authorized the Delaware State Lottery to conduct a video lottery at restricted locations where wagering was already permitted and where controls existed. These locations are Delaware's harness and horse racing tracks. Tracks that in 1993 held a harness or horse racing meet pursuant to Title 3 of the Delaware Code and which meet certain fitness and background standards are eligible to apply for a license and become video lottery agents. Video lottery agents receive a commission for their services as lottery agents just as the State Lottery's other agents receive commissions for their services.

Some tracks intend to conduct the video lottery in free-standing facilities and will receive receipts from parking, the sale of food and beverage, gift shop, and other business activities incident solely to the conduct of the video lottery. Other tracks intend to integrate the video lottery into existing grandstand facilities and enhance their receipts from parking, food service and the like by increased attendance at the video lottery, but in these instances it is understood that the facilities for the play of the video lottery will be separate and apart from the place where wagering on races will occur. The video lottery will be available for play from 8:00 a.m. till 2:00 a.m. daily. Horse or harness racing is generally not conducted during all of these hours.

A. Harness Racing. Harness racing operators pay a gross receipts tax on commissions on pari-mutuel and totalizator pools, as well as on amounts received for admissions, parking, catering, program sales or any other source at a harness race meet. 30 Del. C. § 2305.

A track licensed under Chapter 100 of Title 3 and which conducted races on 30 or fewer days in 1993 is able to forgo the opportunity to apply for a license to become a video lottery agent and, if it does so, becomes eligible to receive payments from other video lottery agents so long as harness racing continues at the track and certain minimum purse awards are maintained.

B. Horse Racing. Licensees to conduct horse racing meets and those licensed to conduct pari-mutuel or totalizator wagering under Chapter 101 of Title 3 are exempt from the license and fees imposed by Chapter 23 of Title 30 to the extent their activities are related to the conduct of horse racing meets. These same licensees are similarly exempt from the Retail and Wholesale Merchants Tax, Chapter 29 of Title 30, to the extent their activities are related to the conduct of horse racing meets. Those conducting horse racing meets pay a tax of .75% on their commissions on pari-mutuel and totalizator pools conducted each day. 3 Del. C. § 10165. The Delaware Thoroughbred Racing Commission awards dates for racing and the conduct of race meets. The dates available for award are limited except that the Thoroughbred Commission can award without limit dates for accepting wagers or bets on electronically televised simulcasts of horse races.

### III. REGULATION

(A) General Rule. Receipts from the conduct of a video lottery, i.e., commissions for acting as an agent of the State Lottery, as well as receipts from parking, the service of food and beverage and other receipts ancillary to the conduct of the video lottery are neither related to the conduct of a horse racing meet nor connected with a harness racing meet.

Conducting a video lottery is a trade or business separate and apart from conducting the business of a harness racing or horse racing meet. Each separate occupation is regulated by and requires a license from a different agency of state government. Since each occupation is different, the statutes taxing the operation of harness racing or horse racing meets are not applicable to the taxation of video lottery agents.

Video lottery agents are therefore subject to the Delaware gross receipts tax on those receipts connected with or related to the conduct of a video lottery. For example, lottery commissions and parking related to the lottery and not related to racing are subject to tax under 30 Del. C. §2905; and sales of food not related to racing are subject to tax under 30 Del. C. §2906.

Payments made to harness racing meet operators by virtue of their forgoing the opportunity to apply for a license to become a video lottery agent are subject to tax under 30 Del. C. § 2305.

(B) Apportionment and Separate Accounting. Receipts from incidental sales, such as sales of food, souvenirs, drink and parking, should be allocated between video lottery and other events according to either of two methods: (1) Percentage apportionment according to gross revenues (i.e. "handle") received from video lottery and other events; or (2) Separate accounting, under a method approved by the Division of Revenue for a specific facility. Under separate accounting, food and drink, for example, dispensed at a facility that is a part of the video lottery facility or which adjoins such facility such that its purpose is largely to serve video lottery customers shall be considered attributable to the conduct of the video lottery.

C. Reporting. Reporting of receipts from video lottery activities and payment of tax thereon for months ending before April 1, 1996, made before May 15, 1996, shall be considered timely filed. No late file or late payment penalty or interest will be assessed with regard to amounts reported on such returns. Receipts not reported as of such time shall be subject to appropriate penalties under Chapter 5 of Title 30. Returns for months beginning after March 31, 1996, are to be filed according to the time specified by law.

D. Questions about these regulations or requests for approval of proposals for separate accounting may be directed to:

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