



MASSACHUSETTS GAMING COMMISSION MEETING

June 27, 2013

9:30 am

Boston Convention and Exhibition Center

415 Summer Street, Room 106

Boston, MA



Massachusetts Gaming Commission

84 State Street, 10th Floor, Boston, Massachusetts 02109 | TEL 617.979.8400 | FAX 617.725.0258 | www.massgaming.com



NOTICE OF MEETING and AGENDA
June 27, 2013 Meeting

Pursuant to the Massachusetts Open Meeting Law, G.L. c. 30A, §§ 18-25, notice is hereby given of a meeting of the Massachusetts Gaming Commission. The meeting will take place:

Thursday, June 27, 2013
9:30 a.m.

Boston Convention and Exhibition Center
415 Summer Street, Room 106
Boston, Massachusetts

PUBLIC MEETING - #70

1. Call to order
2. Approval of Minutes
 - a. June 13, 2013
3. Administration – Rick Day, Executive Director
 - a. General Administrative Update
 - i. Draft 2014 Budget
 - b. Master Schedule
 - c. Gaming Consultant Contracts
4. Racing Division - Jennifer Durenberger, Director
 - a. Administrative Update
 - b. Regulations/Small Business Impact Statement
 - c. Tax Withholding
5. Investigations and Enforcement Division – Karen Wells, Director
 - a. Phase 1 Qualifier and Site Determination Deadline Discussion – John Ziemba, Ombudsman
 - b. Suitability Assessment Process Discussion – Catherine Blue, General Counsel
6. Other business – reserved for matters the Chair did not reasonably anticipate at the time of posting

I certify that on this date, this Notice was posted as “Gaming Commission Meeting” at www.massgaming.com and emailed to: regs@sec.state.ma.us, melissa.andrade@state.ma.us, brian.gosselin@state.ma.us

6/24/13
(date)


Stephen P. Crosby, Chairman

Date Posted to Website: June 24, 2013 at 5:00 p.m.



Massachusetts Gaming Commission



Meeting Minutes

Date: June 13, 2013

Time: 9:30 a.m.

Place: Division of Insurance
1000 Washington Street
1st Floor, Meeting Room 1-E
Boston, Massachusetts

Present: Commissioner Stephen P. Crosby, Chairman
Commissioner Gayle Cameron
Commissioner James F. McHugh
Commissioner Enrique Zuniga

Absent: Commissioner Bruce Stebbins

Clicking on the time posted in the margin will link directly to the appropriate section of the video.

Call to Order

See transcript page 2.

9:30 a.m. Chairman Crosby opened the 69th public meeting.

Approval of Minutes

See transcript pages 4-5.

9:33 a.m. Commissioner McHugh stated that the minutes for the May 30 meeting are ready for approval. Commissioner Crosby recommended one correction to the minutes.

Motion made by Commissioner McHugh that the minutes of May 30, 2013 be accepted with the one correction discussed. Motion seconded by Commissioner Zuniga. The motion passed 4-0.

Administration

Report by Executive Director Day. See transcript pages 5-47.

- 9:35 a.m. Executive Director Day stated that the next Commission meeting will primarily involve discussion on the suitability of Category 2 applicants. In regard to hiring matters, the Commission has started interviewing for the Chief Information Officer position. The RFR responses for the financial advisor are due June 28, the building and site design RFR will be released June 21, the economic development RFR will be released by June 28, and the project manager RFR will be released on June 14.
- 9:39 a.m. The project manager initially will assist in the selection of additional advisors and will then coordinate among the five evaluation teams. Commissioner Ziembra stated that the project manager may also be a valuable role after the award of the license to oversee the construction of the gaming establishments.
- 9:45 a.m. Commissioner Zuniga described the preliminary budget for the Commission. The budget anticipates the hiring of 14 full time equivalent staff and implementing a licensing system. The costs of the advisors that the Commission will be using to help evaluate the RFA-2 applications will be assessed on the applicants. Due to the new costs for fringe on salaries and audits, the Racing Division is projected to have a slight negative cash flow. Chairman Crosby recommended that the Commission nevertheless allocate a portion of the overhead to racing because the Racing Division may have positive cash flows in the future. The Commission anticipates that it will only spend \$5.6 million of the approved \$6.7 million budget for fiscal year 2013.
- 10:04 a.m. The Commission discussed the financial advisor for the RFA-2 evaluations, which may be very costly due to the specialized expertise required. The Commission discussed the possibility of reducing costs by hiring fewer consulting firms, with each being skilled in multiple disciplines. The Commission will also be seeking assistance from the Massachusetts Transportation and the Environmental Affairs agencies.
- 10:10 a.m. Executive Director Day introduced Mark Vander Linden, the Commission's new Director of Research and Problem Gambling. The Commission has delegated the power to Executive Director Day to make hiring decisions, and there will be no public interview during this meeting.
- 10:13 a.m. Chairman Crosby left the meeting for a previously scheduled appointment. Commissioner McHugh led the meeting in the Chair's absence.
- 10:13 a.m. Mr. Vander Linden expressed his enthusiasm for the opportunity to promote responsible gambling in the Commonwealth. The Commission approves Executive Director Day's selection and the qualification of Mr. Vander Linden for this position. Mr. Vander Linden's anticipated start date is June 26, 2013.

RFA-2 Application

Report by General Counsel Blue and Attorney Grossman. See transcript pages 47-96.

- 10:21 a.m. General Counsel Blue and Attorney Grossman began discussion on the revised steps to licensing and the RFA-2 application. Commissioner McHugh asked for clarification on step 32 in the process, and Attorney Grossman stated that step 32 provides the latest date by which surrounding community and live entertainment venue agreements can be submitted if the arbitration takes the entire time allocated. The public hearing can occur before this date but must occur after the Commission determines what communities are surrounding communities and what live entertainment venues are impacted live entertainment venues.
- 10:27 a.m. Commissioner McHugh highlighted some of the features of the RFA-2 application such as the fact that it can be filled out electronically, segregates sensitive information from non-sensitive information to allow for a rapid process of public release, and contains a mechanism for identifying confidential information.
- 10:30 a.m. The application form does not request redacted copies of any materials submitted. The form instead includes an additional Section C, which lists material that the Commission believes may be exempt and requires applicants to specify which documents actually contain information exempt from public disclosure. Response to public records requests is anticipated to be conducted in three phases: first the actual application form will be released with no redaction; second the Commission will briefly review the attachments that the applicants did not mark confidential and release those as well; and lastly the Commission will, on a case-by-case basis, review the content of any documents marked confidential and release information as required by the public records laws.
- 10:44 a.m. The Commission will also be recommending a pre-application consultation meeting with Executive Director Day to ensure that applicants are aware of their public records requirements and how to properly submit their application materials. Commissioner Zuniga recommended that the Commission consider how long to hold certain materials confidential. Some of the materials may lose their competitive sensitivity after the application process is complete. Commissioner McHugh also emphasized that the Commission should only release information marked confidential after consulting with the applicant.
- 10:49 a.m. Attorney Grossman walked through the changes to the RFA-2 application and the Commissioners provided comment and requests for further changes. Due to storage constraints, the Commission agreed that it will not accept physical models of the proposed casino project as part of the application materials.
- 11:12 a.m. The Commission took a brief recess.
- 11:18 a.m. The Commission resumed discussion of the RFA-2 application and asked Attorney Grossman to make the changes discussed and any minor corrections necessary so that the application will be ready for release on Monday, June 17, 2013.

- 11:23 a.m. Commissioner McHugh brought up the letter of June 12, 2013 from J. Raymond Miyares of Miyares and Harrington. The Commission did not continue discussion of its substance as not everyone had a chance to read it. The question, as it relates to processing the results of the background investigations, will be addressed in the overall plan that Executive Director Day is working on.

Racing Division

Report by Director Durenberger. See transcript pages 96-112.

- 11:26 a.m. Director Durenberger presented a request from Suffolk Downs for the Commission to approve an additional individual to be a racing official. This request is consistent with other requests that the Commission has approved.

Motion made by Commissioner Cameron to approve Noelle Rand as a racing official, pending the completion of a State Police background investigation. Motion seconded by Commissioner Zuniga. The motion passed 3-0.

- 11:28 a.m. Director Durenberger discussed the recent changes to the tax law. The federal tax law requires that when winnings are over \$5,000 or from 300 to 1 odds or greater, then a portion of the winnings must be withheld for tax purposes. With the Expanded Gaming Act, winnings over \$600 in Massachusetts now trigger the W-2G reporting requirement and mandatory withholding for state taxes. Unlike federal tax law, Massachusetts does not have exceptions for bingo, Keno, lottery tickets and slot machines, nor does Massachusetts tax law aggregate all losses when deducting against winnings. In Massachusetts, only the cost of the winning ticket is deducted against any winnings from that ticket. Although taxation is outside of the Commission's regulatory domain, the Commission should be aware of the changes as they do affect the racing industry in the Commonwealth.

- 11:35 a.m. General Counsel Blue presented two delegations of authority for the Commission's approval. First, the Commission is asked to delegate certain authority over track matters to the Director of Racing. The second delegation is a delegation of authority to the Executive Director to be able to make payments and approve and enter into any documents that are required under chapter 128A § 5(h).

- 11:39 a.m. *Motion made by Commissioner Zuniga that the Commission delegate, as set forth in the memorandum, to the Director of Racing the authority to approve track matters pertaining to racing licensees to ensure the efficient operation of the racing division and regulation of the racing licensees. Motion seconded by Commissioner Cameron. The motion passed 3-0.*

- 11:40 a.m. *Motion made by Commissioner Zuniga that the Commission approve a delegation of authority, as set forth in the memorandum, to the Executive Director to approve and make payments required under §5 (h) of c. 128A; to negotiate, enter into and execute all necessary agreements and documents to make such payments; and to*

take all steps necessary to comply with the requirements of §5(h). Motion seconded by Commissioner Cameron. The motion passed 3-0.

11:42 a.m. Meeting adjourned.

List of Documents and Other Items Used at the Meeting

1. Massachusetts Gaming Commission June 13, 2013 Notice of Meeting and Agenda
2. Massachusetts Gaming Commission May 30, 6 2013 Meeting Minutes
3. June 11, 2013 Massachusetts Gaming Commission Cash Flow Projection with Draft FY'14 Budget
4. Massachusetts Gaming Commission Press Release – Massachusetts Gaming Commission Hires Mark Vander Linden as Director of Research and Problem Gambling
5. Curriculum vitae of Mark Vander Linden
6. Draft 38 Simple Steps to Issue a Gaming License – Category 1 Regions A, B
7. Draft 38 Simple Steps to Issue a Gaming License – Category 1 Region C
8. Draft 37 Simple Steps to Issue a Gaming License – Category 2
9. Massachusetts Gaming Commission RFA-2 Application for Category 1 or Category 2 Gaming License
10. June 12, 2013 Suffolk Downs Memorandum Regarding Approval of a Racing Official
11. Department of Revenue Excerpt Regarding Withholding on Wagering Winnings
12. June 13, 2013 Memorandum Regarding Delegation of Authority to the Director of Racing
13. June 13, 2013 Memorandum Regarding Delegation of Authority to the Executive Director

/s/ Catherine Blue
Catherine Blue
Assistant Secretary

Jill Lacey Griffin

Professional Experience

Senior Director of Programs, The Boston Foundation, 2/08-Present

Lead the development of foundation grantmaking strategy, impact, and the distribution of \$20 million in annual discretionary grantmaking across all major sectors with a specific concentration on housing, economic and workforce development. Provide strong leadership to 5 Sr. managers and a program team of 17. Lead the development and implementation of highly impactful Foundation initiatives and assured that all grants and initiatives aligned with TBF's goals and anticipated impact. Co-chair SkillWorks a \$20 million multiyear initiative to improve workforce development in Boston and in the Commonwealth bringing together philanthropy, government, community organizations and employers to address the twin goals of helping low income individuals attain family supporting jobs and businesses find skilled workers with an emphasis on better connecting Massachusetts's community colleges and other post-secondary institutions to and the workforce development system. Leadership team of English for New Bostonians, a public-private-community collaboration addressing the urgent need for increased English language learning opportunities for adult immigrants in Boston. Co-chair of Workforce Development/Education committee of The Youth Violence Prevention Collaborative, a network of businesses, foundations, government agency funders, and experts formed to share knowledge, identify funding gaps and promote dialogue to help funders and businesses coordinate and strategically align their efforts to increase their impact on youth violence focusing efforts on five communities along Blue Hill Avenue corridor (2011)

Assistant Director, Economic Initiatives, Boston Redevelopment Authority, 8/04 - 2/08

Oversee development and execution of key economic programs for City of Boston focused on industrial & commercial, life sciences, retail and creative businesses. Lead a department of 15 staff with 6 direct reports. Participate in activities and strategic planning to support business attraction, development and retention. Developed strategic planning and metrics for department. Market City at national and regional conferences and trade shows.

Senior Program Manager, Economic Development, Boston Redevelopment Authority 6/01-8/04

Direct Back Streets, an economic development and business retention program for industrial & commercial companies; Develop strategic planning for program, initiate specialized economic programming such as business to business directory, collegiate trade fair and informational breakfasts. Develop policy regarding land use and zoning, Manage two staff, initiate database reporting system, developed and implemented comprehensive divisional training, Plan Mayoral Advisory Board meetings

Special Assistant to Mayor, the Office of Mayor, City of Boston, Boston, MA, 2/98-6/01

Managed Fast Paced Department Including Four Full-Time Staff Developed and implemented Mayoral communication strategy to support administration priorities. Managed the communications and logistics for the Mayor's daily events. Planned Mayor's daily calendar and advised regarding issues and concerns. Coordinated cabinet and department managers around public announcements and community issues. Coordinated with community constituents, federal, state and local officials. Developed data-driven reporting system to measure Mayoral response to critical issues.

Program Manager, Department of Neighborhood Development, Boston, MA, 9/96-2/98

Part of Core City Boston Main Streets Team Administering Technical and Financial Resources For 15 Neighborhood Commercial District Revitalization Efforts. Implemented visioning, work planning and training sessions for four neighborhood Main Street districts. Administrate contracts in excess of \$1million to help four neighborhood volunteer boards implement physical improvements, image change, and economic growth in their community center. Coordinated the City's holiday shopping campaign including business directories for 15 neighborhood shopping districts. Initiated the Boston Business Heritage Project, celebrating and promoting the City's historic businesses.

Jill Griffin, Resume page 2

Faculty Coordinator, Cooperative Education Department, Northeastern University, Boston, 11/88-6/94, 12/95-9/96

Managed Co-op Program, Matching 200 Business Students with Employers for Practical Experience. Coordinated recruitment efforts for Marketing and Entrepreneurship students. Interacted with employers to develop private sector jobs, including interview feedback, job performance and site visits Planned and conducted freshman and transfer orientations, resume and interviewing workshops, quarterly campus interviews, and annual job fair. Taught core curriculum classes: Career Planning and Introduction to College. Delivered diversity training to promote multicultural education through out the division. Elected as Committee Chairperson to Black Faculty & Staff Association, and served as student marketing club advisor.

Director of Communications & Events, City Year, Boston, MA, 6/95-11/95

Managed Public Relations and External Communications for Urban Service Organization Publicizing High Impact Community Service Performed In the Greater Boston Community

Headed leadership team and managed two departments for fast-paced non-profit organization. Planned, coordinated and publicized premier organizational events, such as annual Serve-a-thon including site and resource coordination of 1700 volunteers. Managed City Year's fiscal and communication relationships with four major sponsors including Central Artery Tunnel Project, and US Environmental Protection Agency

Corps Member and Staff Development Manager, City Year, Boston, MA, 6/94-6/95

Coordinated College, Career and Crisis Counseling For 350 Young Adults and Staff Members

Managed a 14-person department including admissions, recruitment, counseling and education. Planned implementation of monthly career development curriculum, externship program, and career fair. Delivered training programs to employees and youth on diversity, communication, and career development topics

Education

Masters of Science - State University of New York College at Oswego, Oswego, N.Y. 1988

Awarded Full Scholarship

Counselor, SUNY Oswego Counseling Center, 8/87-12/87

Assistant to Coordinator, Summer Intensive English Program, International Office, 5/87-8/87

Graduate Assistant, Dean of Students Office, 5/87-12/87

Bachelor of Arts - State University of New York College at Oswego, Oswego, N.Y. 1986

Major in Communications, *Minor in Spanish*

Professional Affiliations/Awards

Advisory Committee Member, Clean Tech: An Agenda for a Healthy Economy, University of Massachusetts Lowell, 2007

Boston Center for Community & Justice, LEAD Boston Participant, 2006-2007

International Conference of Shopping Centers, MA Alliance Co-Chair 2007, Member 2005-2008

City to City Leadership Exchange, Nov. 2003

The Partnership, Boston Fellows Program, 2002-2003

Boston Redevelopment Authority, Director's Award for Excellence 2002

Community Involvement

Massachusetts Service Alliance, Board Member 2011-present

Board Member, MYTOWN, 2005-2009

National Coalition of 100 Black Women, Community Action Committee, 1995-2000

National Brotherhood of Skiers, Boston Chapter, Co-Chair of Fund Raising Committee, 1995-1996

Mellon Bank Saturday Academy for Girls, Morgan Memorial Goodwill, Volunteer, 1999

Northeastern University -Black Faculty and Staff Association, 1998-1994

JFK Library/Foley Hoag & Elliot Voting Rights Seminar for Young Community Leaders, 1995

Interests

skiing, biking, cultural events, reading, travel, family

3.a.i

Massachusetts Gaming Commission
Cash Flow Projection with Draft FY14 Budget
Version Dates: June 27, 2013

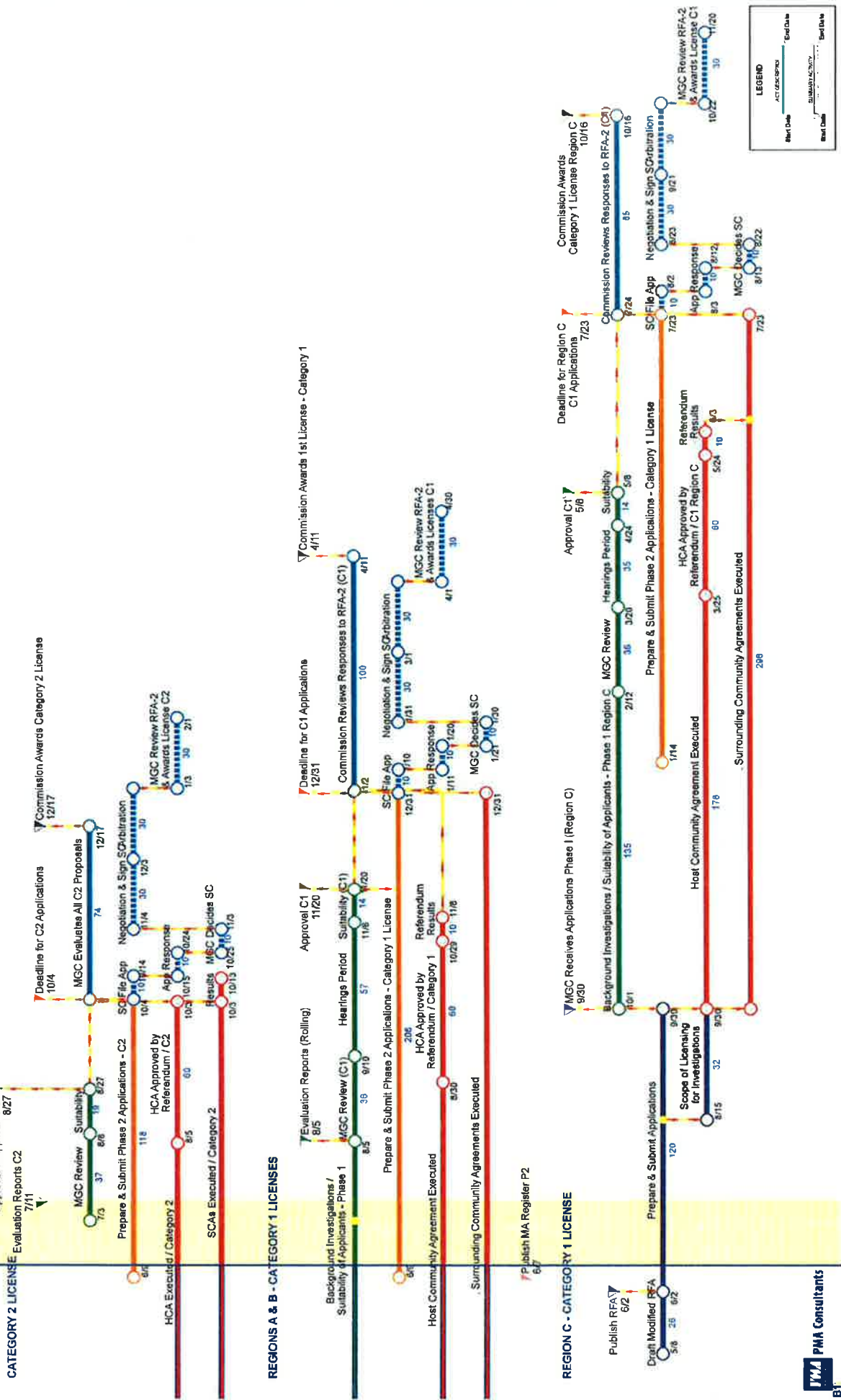
Item	Description	FY2012 / Beginning Bal	FY2013 Amount	FY2014 Amount Notes	Jul-13	Aug-13	Sep-13	Oct-13	Nov-13	Dec-13	Jan-14	Feb-14	Mar-14	Apr-14	May-14	Jun-14
L. Racing Operations																
REVENUES																
1. Projected Program Revenue																
		\$ 2,199,004	\$ 2,911,650	\$ 2,579,950	\$ 243,700	\$ 257,950	\$ 243,500	\$ 230,950	\$ 228,000	\$ 221,750	\$ 225,550	\$ 229,400	\$ 241,800	\$ 235,400	\$ 276,550	\$ 266,700
COSTS																
1. Local Aid Host Communities																
		\$ (1,650,941)	\$ (1,091,000)	\$ (1,091,000)	\$ (189,550)	\$ (189,550)	\$ (227,000)	\$ (189,550)	\$ (170,616)	\$ (318,000)	\$ (82,066)	\$ (82,066)	\$ (311,000)	\$ (116,086)	\$ (124,502)	\$ (235,000)
2. Racing Division Operations																
		\$ (444,531)	\$ (1,594,468)	\$ (1,594,468)	\$ (12,044)	\$ (12,044)	\$ (12,044)	\$ (12,044)	\$ (12,044)	\$ (86,216)	\$ (12,044)	\$ (12,044)	\$ (12,044)	\$ (12,044)	\$ (12,044)	\$ (185,650)
3. Fringe on Salaries Racing Division																
		\$ (400,000)	\$ (400,000)	\$ (400,000)	\$ (80,000)	\$ (80,000)	\$ (80,000)	\$ (80,000)	\$ (80,000)	\$ (80,000)	\$ (80,000)	\$ (80,000)	\$ (80,000)	\$ (80,000)	\$ (80,000)	\$ (12,044)
4. Audits (RPMIG)																
		\$ (120,218)	\$ (120,218)	\$ (120,218)	\$ (9,922)	\$ (9,922)	\$ (9,922)	\$ (9,922)	\$ (9,922)	\$ (9,922)	\$ (9,922)	\$ (9,922)	\$ (9,922)	\$ (9,922)	\$ (9,922)	\$ (9,922)
5. Commission Overhead (Chargebacks based on FTE and IT)																
		\$ (1,771,159)	\$ (3,349,058)	\$ (3,349,058)	\$ (211,516)	\$ (291,516)	\$ (438,516)	\$ (211,516)	\$ (142,587)	\$ (428,182)	\$ (188,032)	\$ (264,032)	\$ (495,032)	\$ (138,052)	\$ (146,468)	\$ (442,616)
	Subtotal Racing Operations Costs	\$ 427,845	\$ (437,408)	\$ (437,408)	\$ 42,184	\$ (33,566)	\$ (195,016)	\$ 19,434	\$ 85,418	\$ (206,432)	\$ 41,518	\$ (34,632)	\$ (253,232)	\$ 97,348	\$ 130,482	\$ (175,916)
	Racing Development & Oversight Trust Fund Cumulative Balance	\$ 732,712	\$ 1,160,557	\$ 723,149	\$ 1,202,741	\$ 1,169,775	\$ 974,159	\$ 993,593	\$ 1,079,011	\$ 872,580	\$ 914,098	\$ 879,466	\$ 626,234	\$ 723,582	\$ 854,065	\$ 678,149
	PROJECTED BALANCE END OF FY14 OVERSIGHT TRUST FUND			\$ 723,149												

Notes
1. Previous budget projection shortfall \$1318,349 now includes an assessment of overhead costs for central office \$(117,059)
2. FY14 projected shortfall is absorbed by possible balance in Racing Development & Oversight Trust fund (not by Gaming Control Fund)

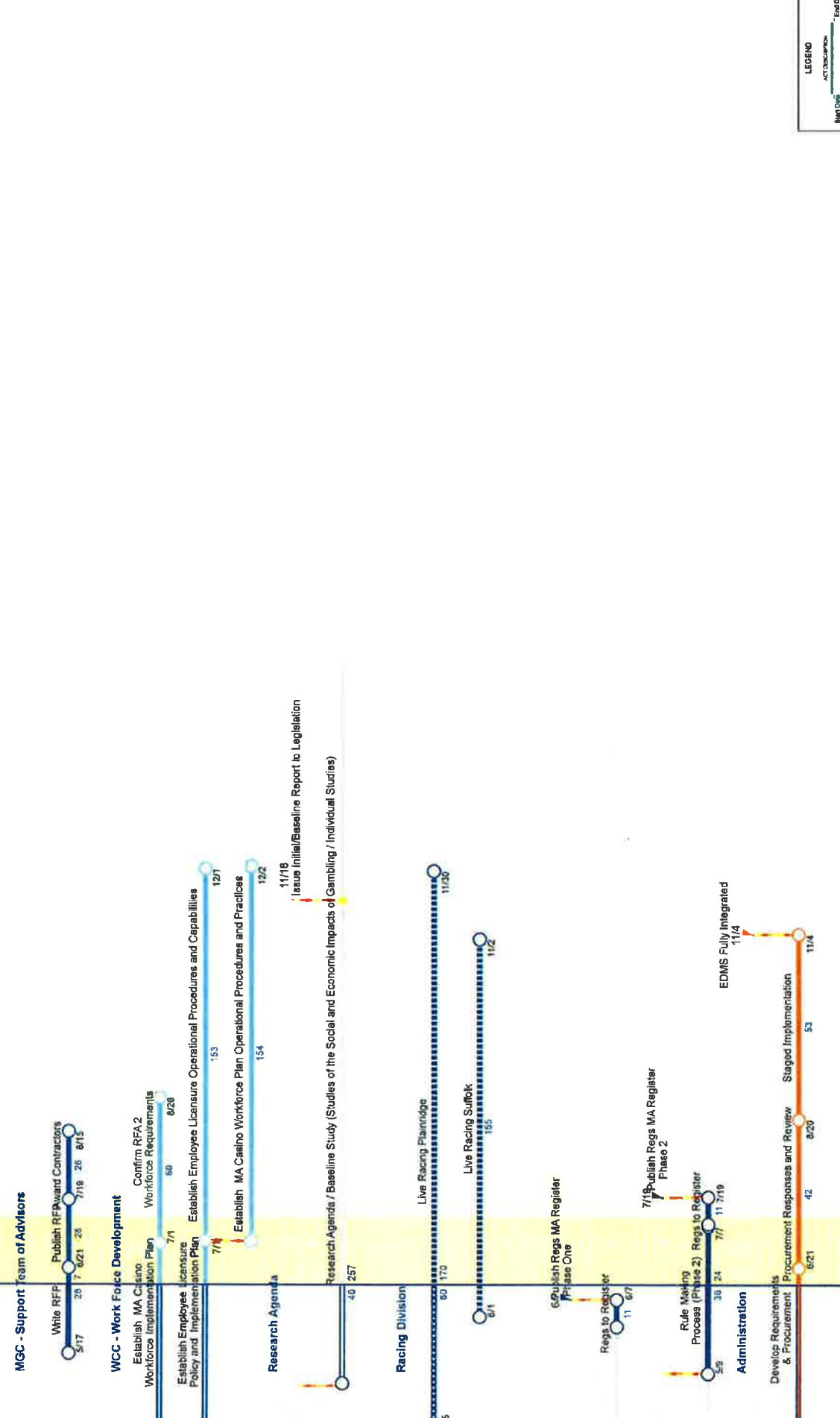
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2014
 Jun Jul Aug Sep Oct Nov
 2013
 May Jun Jul Aug Sep Oct Nov Dec Jan Feb Mar Apr May Jun Jul Aug Sep Oct Nov

Massachusetts Gaming Commission / 2013-06-18 Summary Schedule Update



2014
 May Jun Jul Aug Sep Oct Nov
 2013
 May Jun Jul Aug Sep Oct Nov Dec Jan Feb Mar Apr May Jun Jul Aug Sep Oct Nov



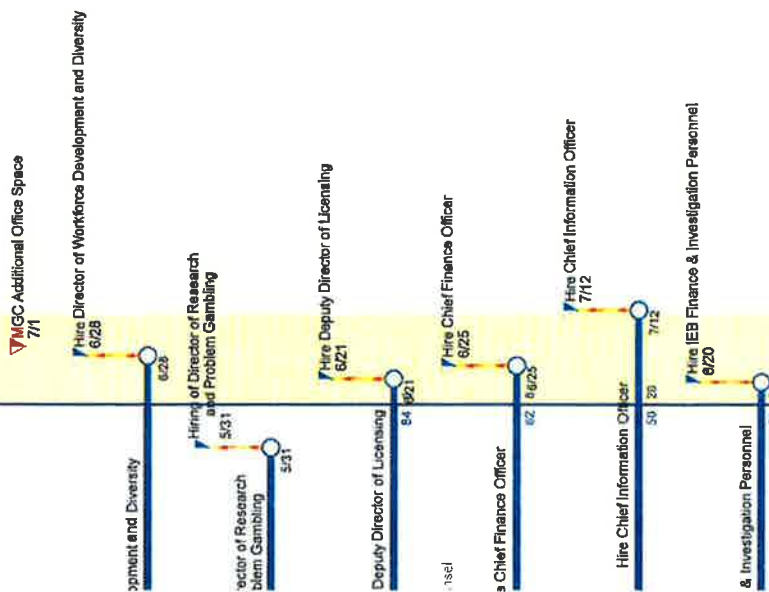
LEGEND

Start Date — End Date

ACT. BEGINNING — ACT. END

2014
 Jun Jul Aug Sep Oct Nov
 2013
 May Jun Jul Aug Sep Oct Nov Dec Jan Feb Mar Apr May

MGC - Staff Hires



LEGEND

- Blue Triangle: ACT Description
- Blue Circle: End Date
- Blue Square: Start Date
- Blue Line: Continuation of Staff
- Blue Arrow: Hire Date

Massachusetts Gaming Commission

MEMORANDUM

Date: June 24, 2013
To: Commissioners
From: Enrique Zuniga
Re: Contract Extension with Gaming Consultants

Recommendation: That the Gaming Commission approve extension of the current contracts with its gaming consultants the firms of Michael & Carroll and Spectrum. The contract term (duration) is recommended to extend to June 30, 2014, and the scope of work and compensation be approved on a "project basis" in subsequent and discreet task orders.

Background

The current contracts with each of the gaming consultants, the firms of Michael & Carroll ("M&C") and Spectrum Gaming Group ("Spectrum") are currently set to expire at the end of this fiscal year: June 30, 2013.

The scope of work under those contracts anticipated a number of different activities including regulation writing, general consulting and gaming advice, Phase 2 planning and implementation, assistance for the recruiting and transitioning to executive staff, assistance during the scope of licensing process, as well as general assistance and advice with other topics like Indian Gaming and the Racing division. Back in October of 2012, when this contract was executed, and in consideration for the wide nature of the necessary scope of work, the Commission and the consultants agreed to a monthly retainer of \$73,500 with an expiration of June 30, 2013.

The Commission has made important additions to its staff in the recent months, and no longer anticipates as heavy involvement of its consultants as in the previous contract. Furthermore, the Commission is conducting four separate solicitations to select and contract with advisors in anticipation of the evaluation of Phase 2 (site-specific proposals from gaming applicants). As a result, the Commission anticipates that the general gaming consulting advice will decrease.

Summary of the Proposed Contract Extension

The recommendation is to extend the current contract duration, but in lieu of the monthly retainer, specify a project-based approach for compensation for future work.

The anticipated scope of work may include:

1. Support the Commission in the process of writing regulations for Phase 3 (anticipated to include topics like internal controls, research, etc.)
2. Advising the Commission on general implementation, regulatory and oversight tasks based on experiences and best practices from other jurisdictions
3. Respond to miscellaneous ad-hoc requests from the Commission

Term and Compensation

The proposed effective term would begin on July 1, 2013 and end on June 30, 2014. This extension would have an effective duration of twelve additional months.

The compensation fee is proposed to be determined on a project basis (i.e., "task order" basis). The current recommendation is that each of those task orders (if any) be subsequently submitted for approval by the Commission or the Executive Director.



AMENDED SMALL BUSINESS IMPACT STATEMENT

The Massachusetts Gaming Commission (“Commission”) hereby files this amended small business impact statement in accordance with G.L. c.30A, §5 relative to the proposed horse racing regulation changes (205 CMR 3.00, 4.00 and 6.00) for which public hearings were conducted on February 25, 2013 (for 205 CMR 3.00 and 4.00) and April 22, 2013 (for additional changes to 205 CMR 4.00 and 6.00).

The regulation changes largely address veterinary practices, medication, and testing issues for the racing industry including, but not limited to, repealing the current regulation which permits the use of non-steroidal anti-inflammatory medication on race days, providing a split sample provision to afford owners and trainers additional due process protection in the event of an alleged medication violation, preventing the transfer of horses in a suspended trainer’s care to his or her spouse during the period of suspension, and providing clear withdrawal times for accepted therapeutic medications to veterinary practitioners and trainers in the form of treatment restriction windows.

Changes also focused on health and safety standards of racing’s participants. These changes included, but were not limited to, amending the language regarding specifications and the use of the riding crop, adopting model rule standards for safety helmets and vests, amending the scale of weights for jockeys, eliminating heel traction devices on front horseshoes, and developing guidance for consideration of occupational license applications.

No additional reporting or recordkeeping costs are required for compliance with the proposed regulations by any small business other than those already required under other statutes and acts. The changes in the reporting requirements are consistent with those already required of licensed Veterinarians in the Commonwealth under G.L. c. 112, §54-60 and 256 CMR 1.00-10.00. The regulation changes merely require the submission of otherwise required forms to the Commission.

Based on the principal subject matter of the regulations, there are no less stringent compliance or reporting requirements for small businesses, less stringent schedules or deadlines for compliance or reporting requirements for small businesses, consolidated or simplified compliance or reporting requirements for small businesses, performance standards for small businesses to replace design or operational standards required in the proposed regulations, or alternative regulatory methods to minimize adverse impacts on small businesses.



Massachusetts Gaming Commission

The regulation changes will increase uniformity with other jurisdictions and will encourage greater industry participation in Massachusetts racing. Additionally, the regulation changes will ensure a better racing product, increasing public confidence and participation within the industry.

Massachusetts Gaming Commission

By:



Jennifer Durenberger
Director of Racing

DATED: June 24, 2013



Massachusetts Gaming Commission

84 State Street, 10th Floor, Boston, Massachusetts 02109 | TEL 617.979.8400 | FAX 617.725.0258 | www.massgaming.com



Division of Racing

Massachusetts Gaming Commission

MEMORANDUM

Date: June 27, 2013

To: Commissioners

From: Jennifer Durenberger, Director of Racing *J*

Re: Changes in withholding requirements on winning pari-mutuel wagers

Racetrack licensees are required to issue W2-G forms and to withhold federal income tax from certain pari-mutuel winnings per 26 USC §3402(q). The federal reporting requirement is triggered when winnings are \$600 or more *and* the payout is at least 300 times the amount of the wager. The federal withholding requirement is triggered when the proceeds from such a wager are greater than \$5,000.

Until the passage of the Expanded Gaming Act, "winnings from horse and dog racing" were expressly excepted from a separate Massachusetts withholding found in M.G.L. c.62B §2. Chapter 194, section 28 of the Acts of 2011 amended the 62B §2 language, affecting the pari-mutuel industry in two important ways:

- It removed the state withholding tax exception for pari-mutuel winnings; and
- It lowered the reporting and withholding trigger from proceeds > \$5,000 at 300:1 odds or greater to proceeds of \$600 or more, regardless of odds.



Massachusetts Gaming Commission

[As an interesting and relevant aside, the federal code also contains a withholding exception for bingo, keno, and slot machines (26 USC 3402(q)(5)) and limits the withholding requirement for lottery winnings to proceeds of greater than \$5,000 (26 USC 3402(q)(3)(b)). Both of these federal limitations, which were previously encompassed by the language in M.G.L. c.62B §2 were expressly decoupled from state withholding requirements by the Expanded Gaming Act. In its current iteration, c.62B §2 applies the state withholding requirement to ALL winnings of \$600 or greater, regardless of whether they are pari-mutuel proceeds or winnings from lottery, slot machines, keno, or bingo.]

As our racetrack licensees began withholding, feedback from racing industry stakeholders and pari-mutuel customers has been negative. Using the federal W2-G reporting guidelines (\$600 or more *and* payoff odds of at least 300:1), our three licensees issued approximately 6,000 individual federal W2-Gs in calendar year 2012. These transactions occur at a special IRS window, with specially trained mutuel clerks, and require the winning wagerer to produce photo ID and proof of social security number at the time of redemption. With the much lower trigger for the state reporting requirement (\$600 proceeds *regardless* of amount wagered/payoff odds), we would expect the number of point-of-redemption tax window transactions to be significantly higher. This burden is placed squarely on our licensees.

From the pari-mutuel customer's perspective, this state tax makes the racing product less attractive. It is applied to anyone from out-of-state betting on races in Massachusetts, and it is applied to anyone within Massachusetts betting on any simulcast import from anywhere else. And, while no one is arguing that proceeds are not reportable income at the end of the year, one other key difference exists between the federal tax treatment of pari-mutuel winnings and Massachusetts tax treatment of wagering winnings: the ability to take itemized deductions. Under federal tax treatment, losses up to winnings are available as itemized deductions on Form 1040 Schedule A. In Massachusetts, only the cost of the winning wager is deductible (unless the taxpayer meets "gambling as a trade or business" criteria).



Massachusetts Gaming Commission

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An example may help illustrate:

You buy a ticket which reads “\$200 WP \$100 S.” This means you wagered \$200 to win on the horse you like, \$200 to place (come in second) because things happen in horse racing, and then covered yourself with a \$100 show bet so that if something really bad happened out there, you’d at least get your money back if the horse finishes third.

Well, the horse doesn’t win. The horse doesn’t come in second. But thank goodness you covered yourself because he got up for third. His shows odds were 6-1, so you go to the window and get \$700. You paid \$500 for the ticket, so you’re satisfied but not overjoyed with what you think are your \$200 proceeds. Now, under the federal tax treatment, your proceeds don’t exceed \$5,000, so there’s no withholding requirement. The 300:1 payout odds trigger wasn’t tripped, so there’s no W2-G reporting requirement. And you can go home and at the end of the year deduct the \$500 the ticket cost you against the \$700 payout.

But under the existing language in M.G.L. c.62B, your \$500 ticket “buy-in” is ignored. That ticket actually has three wagers on it, and the winning wager cost you \$100 to place. So you’ve tripped the state reporting and withholding requirement because you’re netting \$600 on that individual show wager. You feel like you’re netting \$200 - after all, you paid \$500 for the ticket - but after providing proof of your social security number and filling out a tax form, you collect \$170. And when you go home at the end of the year, you can’t deduct the other \$400 on the two losing wagers.

And if you are a non-resident wagering on a Massachusetts race through an account, you may face a situation where you have federal tax liability, Massachusetts state tax liability, and your own state tax liability.



Massachusetts Gaming Commission

84 State Street, 10th Floor, Boston, Massachusetts 02109 | TEL 617.979.8400 | FAX 617.725.0258 | www.massgaming.com

New Hampshire enacted a 10% state withholding tax on gambling winnings in 2009. The following quote appears in the 2010 Annual Report of the New Hampshire Racing and Charitable Gaming Commission:

In the last legislative session the legislature placed a ten percent (10%) tax on all gambling winnings. The Department of Revenue has written rules to clarify the implementation of this tax. The net effect was a marked decrease in simulcast handle, especially in our account wagering area. Many of the account holders are not New Hampshire residents. It is more practical for these 'high roller' accounts to move their accounts to other states which do not have the additional tax. This tax has left our pari-mutuel industry at a large disadvantage to other states.

The tax was repealed in 2011. From FY10 to FY11, New Hampshire saw an approximately 20% decrease in simulcast handle. Like most things, the reasons for this decline were likely multi-factorial. But note that the national decline in simulcast handle during the same time period was 8.6% and that the decline in Massachusetts was only 4.8%. Whatever percentage decline may have been attributable to the withholding tax, consider the following: in Massachusetts, we have no fewer than seven stakeholder groups (including the Commission) who receive statutorily allocated monies which are directly percentage-driven. All are directly negatively affected by decreases in handle. Our statute also allocates monies to local aid, various benevolency programs, and compulsive gambling programs – but payments are dependent on sufficient racing revenue. And racing revenue is primarily handle-driven.

I have attached a spreadsheet with a more in-depth look at the New Hampshire numbers and a list of stakeholder groups in Massachusetts potentially affected by a decline in handle. I have also listened to each of the public hearings on the repeal of the New Hampshire tax and am happy to share my findings.



Massachusetts Gaming Commission

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Approximately two weeks ago, an amendment to the House supplemental budget entitled "An Act Relative to Wagering Taxation" was introduced by Rep. Reinstein. This would amend the M.G.L. c.62B § 2 language to mirror that of the federal tax Code. A comparison of pre-Expanded Gaming Act c.62B § 2 language, current language, and proposed language is included for your review. The amendment was adopted by House Ways and Means on June 18th and now appears as section 72 of H.B. 3522. H.B. 3522 was referred to Senate Ways and Means on June 20.

This section would restore the pre-Expanded Gaming Act exemption for winnings from slot machine, keno, and bingo games, and elevate the trigger for state reporting and withholding requirements for lottery and pari-mutuel winnings to equal that of the existing federal requirement.

Conclusion: This is likely an area of continued legislative activity. The Racing Division will be following any developments and report back on such to the Commission. At some point, staff may make the recommendation that the Commissioners consider supporting proposed legislation as it relates to pari-mutuel wagering winnings. We believe doing so would fall squarely under our duty to reduce potentially negative or unintended consequences of the gaming legislation on the horse racing industry in Massachusetts. The health of the industry we regulate, as well as the efficacy of our regulation, will be directly impacted by any significant decrease in handle.



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New Hampshire - Simulcast Handle*

	FY10 (pre-tax)	FY11 (post-tax)	Change	Variance	Track revenue	Track variance
Rockingham Park	58,041,951	51,109,824	-6,932,127	-11.94%	-1,341,888	-11.77%
The Lodge at Belmont†	35,238,951	22,089,657	-13,149,294	-37.31%	-2,629,094	-36.07%
Seabrook Park	34,439,446	29,425,861	-5,013,585	-14.56%	-993,199	-14.29%
Total		-25,095,006	-19.65%		-4,964,181	-34.86%

Variance in simulcast handle in MA for the same period:
National variance in simulcast handle for the same period:

-4.8%
-8.6%

*Numbers from New Hampshire Racing and Charitable Gaming Commission Fiscal Year 2010 vs. 2009 Report, live racing numbers removed, available at: <http://www.racing.nh.gov/licensing/racing/documents/fiscal-2010-vs-2009.pdf>

†The Lodge at Belmont ceased simulcasting activities and laid off 26 employees in November, 2010

The following programs are percentage-driven and thus directly tied to handle in Massachusetts:

- Daily revenue to the commonwealth
- Purses for horse owners
- Monies to Massachusetts Thoroughbred Breeders program
- Monies to Massachusetts Standardbred Breeders program
- Monies to capital improvements and promotional funds
- Monies to Tufts Veterinary school
- Monies to the Racing Stabilization Fund

The following programs rely on sufficient racing revenue before payments can be made:

- Operational budget of the Racing Division
- Local aid payments
- Money for benevolence programs
- Compulsive gambling program monies to DPH

M.G.L. c.62B §2 prior to the Expanded Gaming Act:

Every person, including the United States, the commonwealth or any other state, or any political subdivision or instrumentality of the foregoing, making any payment of winnings, **except winnings from horse and dog racing**, which are subject to tax under chapter sixty-two and which are subject to withholding under section thirty-four hundred and two (q) of the Internal Revenue Code shall deduct and withhold from such payment an amount equal to five per cent of such payment, except that such withholding for purposes of this chapter shall apply to payments of winnings of \$600 or greater notwithstanding any contrary provisions of the Internal Revenue Code, as amended from time to time. For purposes of this chapter and chapter sixty-two C, such payment of winnings shall be treated as if it were wages paid by an employer to an employee.

M.G.L. c.62B §2 after the Expanded Gaming Act:

Every person, including the United States, the commonwealth or any other state, or any political subdivision or instrumentality of the foregoing, making any payment of **lottery or wagering winnings** which are subject to tax under chapter 62 and which are subject to withholding under section 3402 of the Internal Revenue Code, **without the exception for slot machines, keno and bingo played at licensed casinos** in subsections (q)(5) and (r) of said section 3402 of the Internal Revenue Code, shall deduct and withhold from such payment an amount equal to 5 per cent of such payment, except that such withholding for purposes of this chapter shall apply to payments of winnings of \$600 or greater notwithstanding any contrary provision of the Internal Revenue Code. For the purposes of this chapter and chapter 62C, such payment of winnings shall be treated as if it were wages paid by an employer to an employee.

M.G.L. c.62B §2 as proposed in section 72 of H.B. 3522:

Every person, including the United States, the commonwealth or any other state, or any political subdivision or instrumentality of the foregoing, making any payment of lottery or wagering winnings, which are subject to tax under chapter 62 and which are subject to withholding under section 3402(q) of the Internal Revenue Code shall deduct and withhold from such payment an amount equal to 5 per cent of such payment. For the purposes of this chapter and chapter 62C, such payment of winnings shall be treated as if it were wages paid by an employer to an employee.

New England Horsemen's Benevolent and Protective Association, Inc.

President
Anthony Spadea

A National Organization

Acting Executive Director
Bruce P. Patten

Directors: Owners
Susan Clark
Shirley Dullea
James Greene
Lee Loebelenz
Manfred Roos



Directors: Trainers
John Assimakopoulos
Bernard Bramante
Kevin Clark
Shirley Edwards
Archie Ricciardi

P.O. Box 388
Revere, MA 02151
617-568-3333 or 800-225-3460 Ext. 7258
WWW.NewEnglandHBPA.com

June 25, 2013

Stephen P. Crosby, Chairman
Massachusetts Gaming Commission
84 State Street Suite 720
Boston, MA 02109

Re: Impact of Massachusetts' new withholding tax on horse racing wagering

Dear Chairman Crosby:

On behalf of the New England HBPA, the Massachusetts Thoroughbred Breeders Association and our membership of 1,100 small businesses, we are writing to inform you about the detrimental impact of a recently imposed change to state withholding tax requirements affecting patrons who wager on horse racing in Massachusetts.

As you are aware, recent changes in Massachusetts Law require new criteria for income tax withholding on winning wagers. The new law obligates authorized racing and gaming licensees to immediately collect tax withholding on winning wager payouts of \$600 or more, regardless of the original wager amount. This is a radical change from the 300 to 1 ratio level that initiated the withholding requirement under prior state law and existing federal law.

Upscale bettors, who may wager large sums for relatively small gains, are now subject to withholding of as much as 55% of their profit (on a minimum payout under current law) and will likely have to sign a tax form when cashing most of their winning wagers. Since this made no sense to such bettors, they have already taken their business to neighboring states that withhold taxes consistent with federal law.

The consequence of upscale bettor migration away from Massachusetts is decreased wagering handle in Massachusetts, which results in financial losses for racing licensees and reduced purse money for racing and its agricultural network.

We have communicated our thoughts to the Massachusetts Legislature and we understand that a legislative fix is already underway. We are hopeful that this absurd situation will be quickly rectified.

As always, thoroughbred horsemen look forward to working with the Massachusetts Gaming Commission toward the advancement of thoroughbred racing and the expansion and success of our agricultural network.

Sincerely,

Anthony Spadea, President
New England HBPA

George Brown, Chairman
MA Thoroughbred Breeders Association

Cc: Gayle Cameron, Commissioner, Massachusetts Gaming Commission
Dr. Jennifer Durenberger, Director of Racing, Massachusetts Gaming Commission



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TIR 13-4: Withholding on Wagering Winnings

TIR 13-4: Withholding on Wagering Winnings

On November 22, 2011, An Act Establishing Expanded Gaming in the Commonwealth ("the Act") was approved and became law [1] The Act added new chapter 23K to the General Laws, which provides for expanded gaming in Massachusetts under the jurisdiction of the Massachusetts Gaming Commission The Act authorizes the Massachusetts Gaming Commission to license certain gaming establishments: one casino in each of three regions in the state, and a single slots parlor that can be in any region. This TIR explains the changes made by the Act to chapter 62, the personal income tax, chapter 62B, the withholding tax, and chapter 62C, tax administration.

A. Background; Personal Income Tax, G.L. c. 62, and Changes under the Act

For purposes of the personal income tax, Massachusetts gross income is federal gross income as defined under the Internal Revenue Code ("Code" or "IRC") of January 1, 2005, with certain modifications not relevant here [2] Federal gross income is all income from whatever source derived, except from those sources specifically excluded by the Code Federal gross income includes winnings from all types of wagering including, without limitation, the Massachusetts lottery and other lotteries, casino and slots parlor gaming, charitable gaming (e.g., bingo or beano, raffles, and "casino" or "Las Vegas" nights), dog and horse track betting (live and simulcast), and any other type of gambling.[3]

A resident of Massachusetts must include in Massachusetts gross income any lottery and wagering winnings includible in federal gross income, whether the winnings are from wagering in Massachusetts or in another state or jurisdiction. A resident may take a credit against the Massachusetts personal income tax for income taxes properly due to other states, any territory or possession of the United States, or Canada or any of its provinces, on any item of Massachusetts gross income [4]

A nonresident is subject to the personal income tax on certain types of Massachusetts gross income that arise from Massachusetts sources.[5] Under the Act, the scope of Massachusetts source income is expanded to include the following wagering winnings:

... items of gross income derived from or effectively connected with: ... (2) the participation in any lottery or wagering transaction within the commonwealth, including gaming winnings acquired at or through a gaming establishment licensed under chapter 23K; ... [6]

Accordingly, a nonresident's lottery or wagering winnings from Massachusetts sources are subject to the Massachusetts personal income tax For a nonresident, wagering income is Massachusetts source income if the winnings are derived from any of the following: (1) A casino or slots parlor located in Massachusetts, (2) the Massachusetts lottery, (3) a multijurisdictional lottery if the ticket was purchased within Massachusetts, (4) pari-mutuel wagering paid by a Massachusetts racetrack or simulcast center, or (5) any other wagering transaction within Massachusetts.

A nonresident whose Massachusetts source income exceeds either \$8,000 or the prorated personal exemption, whichever is less, is required to file a Massachusetts income tax return [7] If a nonresident's state of residence has an income tax, the nonresident may be able to claim a credit for tax paid to Massachusetts on the income tax return for the home state.

B. Withholding of Personal Income Tax, G.L. c. 62B

Chapter 62B requires withholding on certain wagering winnings, including, but not limited to, certain wagering winnings that are subject to federal withholding under the Code. For purposes of the withholding rules, references to the Code mean the current Code as amended and in effect for the applicable year

The Act, effective November 22, 2011, provides that wagering winnings are subject to Massachusetts withholding as follows:

Every person, including the United States, the commonwealth or any other state, or any political subdivision or instrumentally of the foregoing, making any payment of lottery or wagering winnings which are subject to tax under chapter 62 and which are subject to withholding under section 3402 of the Internal Revenue Code, without the exception for slot machines, keno and bingo played at licensed casinos in subsections (q)(5) and (r) of said section 3402 of the Internal Revenue Code, shall deduct and withhold from such payment an amount equal to 5 percent of such payment, except that such withholding for purposes of this chapter shall apply to payments of winnings of \$600 or greater notwithstanding any contrary provision of the Internal Revenue Code. For the purposes of this chapter and chapter 62C, such payment of winnings shall be treated as if it were wages paid by an employer to an employee [8]

Accordingly, a payor of Massachusetts lottery or wagering winnings of \$600 or greater is required to deduct and withhold Massachusetts personal income tax in an amount equal to five percent of a payment made to a Massachusetts resident or a nonresident, in the following situations:

1. The winnings are subject to tax under chapter 62, and
2. The payment is subject to withholding under rules described in § 3402 of the Code[9], but modified for Massachusetts withholding purposes as follows:
 - Payments of winnings of \$600 or greater are subject to Massachusetts withholding notwithstanding that higher dollar thresholds for federal withholding are provided in § 3402 of the Code.
 - Payments of winnings of \$600 or greater from slot machines, keno, and bingo played at licensed casinos are subject to Massachusetts withholding notwithstanding the exemption that would apply from federal withholding in § 3402 of the Code.[10]

Horse and Dog Racing. Under prior law,^[1] there was an exemption from Massachusetts withholding for winnings from horse and dog racing. The Act removed the exemption from Massachusetts withholding for winnings from horse and dog racing. Under the Act, a payment of winnings of \$600 or greater from horse or dog racing (including winnings from simulcast horse or dog racing) is subject to Massachusetts withholding.^[2]

Massachusetts Withholding Required on Certain Winnings from Slot Machines, Keno and Bingo Notwithstanding Federal Exemption. Under prior law, there was an exemption from Massachusetts withholding for winnings from slot machines, keno and bingo that was tied to the federal exemption from withholding in Code § 3402(q)(5).^[3] However, under the Act and as noted above, Massachusetts has decoupled from this federal exemption to the extent the winnings are from "slot machines, keno and bingo played at licensed casinos." Thus, under the Act, Massachusetts withholding is required from a payment of winnings of \$600 or greater from slot machines, keno or bingo played at licensed casinos, including at a licensed slots parlor.^[4]

Winnings Treated As Wages. For the purposes of General Laws chapter 52B (Withholding of Taxes on Wages and Declaration of Estimated Income Tax), and chapter 62C (Tax Administration), a payment of winnings is treated as if it were wages paid by an employer to an employee.^[5]

Identification. Before or at the time a person receives a payment of winnings that is subject to Massachusetts withholding, the payee must furnish to the person making such payment a statement, made under the penalties of perjury, containing the name, address and taxpayer identification number of the person receiving the payment and of each person entitled to any portion of such payment.^[6] Proof of identity includes a Driver's License or other State-issued photo identification.

Amounts Subject to Massachusetts Withholding. Payors must withhold Massachusetts personal income tax each time a payor makes a single payment of lottery or wagering winnings of \$600 or greater. It does not matter that several individuals may jointly hold the winning ticket and each person's "share" is less than \$600.^[7] If the proceeds from the wager qualify as winnings subject to Massachusetts withholding, then the total proceeds from the wager, and not merely amounts in excess of \$600, are subject to withholding. In determining the amount paid with respect to a wager, proceeds which are not money, e.g. where the winnings consist of a car or boat, shall be taken into account at the fair market value.

Form W2-G. The payor must provide a withholding statement, Form W2-G, Certain Gambling Winnings, on all winnings of \$600 or greater. Some winners will receive the Form W2-G at the time of the payment of wagering or gaming winnings. If not, the payor must furnish a Form W2-G to the payee before January 31 of the following year.^[8]

Liability for Failure to Withhold or Pay Over Withheld Taxes. A payor or other person required to withhold who fails to withhold or pay to the Commissioner any sum required by the withholding statutes to be withheld or paid shall be personally and individually liable for such sum to the Commonwealth, together with related interest and penalties under G.L. c. 62B and G.L. c. 62C.^[9]

C. Annual Reports by Entities Doing Business in Massachusetts, G.L. c. 62C, § 8

Information Return. Every person or entity doing business in the Commonwealth who makes payments which are taxable to the recipient under G.L. c. 62, the personal income tax, must file an annual report with the Commissioner: (1) giving the names and addresses of all residents of Massachusetts and other persons deriving income in Massachusetts to whom it has paid any income subject to the personal income tax during the preceding calendar year on the same basis as is required by the federal government under the Code, and (2) state in such report the amount of such income so paid by it.^[10]

Under the Act, this same basis of reporting must be utilized for income that is subject to taxation or withholding under chapter 62 or 62B even where it is not subject to federal taxation or withholding under the Code.^[11] Thus, a person making payments of winnings subject to the Massachusetts personal income tax or withholding is required to file an information return in Massachusetts even if the winnings are not subject to federal income tax or withholding.^[12]

/s/ Amy Pitter
Amy Pitter
Commissioner of Revenue

AP:MTF:adh

February 28, 2013

TIR 13-4

[1] St. 2011, c. 194

[2] G.L. c. 62, §§ 1, 2

[3] IRC § 61(a).

[4] G.L. c. 62, § 6(a).

[5] G.L. c. 62, § 5A.

[6] G.L. c. 62, § 5A as amended by St. 2011, c. 194, § 27.

[7] G.L. c. 62, §§ 5 and 5A; A nonresident taxpayer's personal exemption must be prorated based on the ratio of Massachusetts source income to the gross income that would have been taxed to the taxpayer had he or she been a Massachusetts resident for the taxable year.

[8] G.L. c. 62B, § 2 (seventh paragraph, first and second sentences), as amended by St. 2011, c. 194, § 28.

[9] In general, wagering winnings that are subject to federal withholding are those in excess of \$5,000. The federal regulations provide that winnings subject to withholding means any payment from:

1. A wager placed in a State-conducted lottery resulting in winnings greater than \$5,000;

- 2 A wager placed in any other sweepstakes, wagering pool, or lottery, including a pari-mutuel pool with respect to horse races, dog races, or jai alai, resulting in winnings greater than \$5,000; and
- 3 Any other wagering transaction where the winnings exceed \$5,000 and are at least 300 times as large as the amount of the wager.

[10] Federal law requires casinos to report to the Internal Revenue Service certain winnings from bingo, keno and slot machines where no federal withholding is required. See footnote 13, below.

[11] Prior to the Act, pursuant to G.L. c. 62B, § 2 (seventh paragraph), wagering winnings subject to Massachusetts withholding were described as follows:

Every person, including the United States, the commonwealth or any other state, or any political subdivision or instrumentality of the foregoing, making any payment of winnings, except winnings from horse and dog racing, which are subject to tax under chapter sixty-two and which are subject to withholding under section thirty-four hundred and two (q) of the Internal Revenue Code shall deduct and withhold from such payment an amount equal to five per cent of such payment, except that such withholding for purposes of this chapter shall apply to payments of winnings of \$600 or greater notwithstanding any contrary provisions of the Internal Revenue Code, as amended from time to time. For purposes of this chapter and chapter sixty-two C, such payment of winnings shall be treated as if it were wages paid by an employer to an employee.

[12] The Massachusetts Gaming Commission regulates simulcasting for horse racing, harness racing, and dog racing. Effective January 1, 2010, dog racing in Massachusetts is prohibited. See G.L. c. 128A, § 14E. However, under the regulation of the Massachusetts Gaming Commission, simulcasting in Massachusetts of dog racing taking place outside of Massachusetts is permitted.

[13] Although not subject to federal withholding, the following winnings must be reported to the Internal Revenue Service on Form W2-G: (1) Winnings (not reduced by the wager) of \$1,200 or more from a bingo game or slot machine, and (2) Winnings (not reduced by the wager) of \$1,500 or more from a keno game. If a winner fails to provide his or her TIN, the winnings are subject to federal withholding.

[14] In contrast to Massachusetts law, Code § 3402(q)(5) provides an exemption from federal withholding on winnings from a slot machine, keno or bingo in a case where the winner provides his or her taxpayer identification number (TIN).

[15] G.L. c. 62B, § 2 (seventh paragraph, third sentence).

[16] G.L. c. 62B, § 2 (seventh paragraph, fourth sentence).

[17] If winnings are to be split among several winners, winners are reported on Form 5754, Statement by Person(s) Receiving Gambling Winnings.

[18] G.L. c. 62B, § 5 (first paragraph).

[19] G.L. c. 62C, § 5.

[20] G.L. c. 62C, § 8. See also Department of Revenue Directives 93-5, 94-10, and 97-3 which set out the reporting requirements for filing annual information reports.

[21] G.L. c. 62C, § 8 (first paragraph), as amended by St. 2011, c. 194, § 30.

[22] G.L. c. 10, § 38 provides for the licensing of certain organization to conduct beano games, raffles or bazaars. The Act does not change the longstanding requirement under G.L. c. 62C, § 18 that every organization operating or conducting a game under G.L. c. 10, § 38 must, within ten days after such game is held, file an information return with the Commissioner containing the names and addresses of all persons receiving prizes over \$500 in such game and the amount of every such prize.



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Gambling and Lottery

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Gambling Winnings

Cash winnings are included in federal gross income and therefore must be included in Massachusetts gross income. In addition to cash winnings, gambling winnings also include the fair market value of non-cash prizes such as cars, houses, and trips.

Reporting of gambling winnings

Cash winnings include:

- dog and horse track betting, jai alai, and other wagering transactions;
- sweepstakes, wagering pools, and lotteries;
- bingo or beano, keno and slot machines;
- poker tournaments, including casinos
- raffles or any other events of chance

Using an Efile Application and the Reporting of Gambling Winnings:

When using an Efile application, taxpayers will be notified if they did not report their gambling winnings, or if the amount they reported does not match DOR records. If taxpayers indicate that they did not have any winnings, the system will allow them to proceed. However, their refund will be held up and a letter will go out requesting taxpayers to submit documentation to verify the correct amount.

Lottery Winnings

Winnings from the Massachusetts State Lottery and non-Massachusetts lotteries are included in federal gross income and therefore must be included in Massachusetts gross income.

Reporting of lottery winnings

Lottery Intercepts:

Current law requires that the State Lottery Commission check information furnished to it by the Child Support Enforcement (CSE) Division of the Department of Revenue before paying out any lottery prize in excess of \$600, and to pay the winnings to CSE to the extent that the winner has outstanding child support obligations.

The new law extends this treatment to tax obligations, but gives priority in the distribution of claims to the satisfaction of child support obligations. If the winner owes past-due child support or a past-due tax liability, the Lottery Commission must notify the Commissioner of the winner's name, address and social security number.

State and Federal Thresholds for Withholding of Lottery and Wagering Winnings:

The state threshold for withholding of tax on lottery and wagering winnings is \$600. The federal threshold for withholding on these winnings remains at \$5,000.

Under An Act Establishing Expanded Gaming in the Commonwealth, effective November 22, 2011, payors of Massachusetts lottery or wagering winnings of \$600 or greater are required to deduct and withhold Massachusetts personal income tax in an amount equal to five percent of payments made to Massachusetts residents or nonresidents if the winnings are subject to tax under chapter 62, and the payments are subject to withholding under rules described in § 3402 of the Code, but modified for Massachusetts withholding purposes as follows:

- Payments of winnings of \$600 or greater are subject to Massachusetts withholding notwithstanding that higher dollar thresholds for federal withholding are provided in § 3402 of the Code.
- Payments of winnings of \$600 or greater from slot machines, keno, and bingo played at licensed casinos are subject to Massachusetts withholding notwithstanding the exemption that would apply from federal withholding in § 3402 of the Code.

Payors must withhold Massachusetts personal income tax each time they make a single payment of lottery or wagering winnings of \$600 or greater. The total proceeds from the wager, not merely amounts in excess of \$600, are subject to withholding. In determining the amount paid with respect to a wager, proceeds which are not money, e.g. where the winnings consist of a car or boat, shall be taken into account at the fair market value.

Form W-2G: Certain Gambling Winnings:

Payors must provide withholding statements, Forms W-2G, on all winnings of \$600 or greater. Some winners will receive Forms W-2-G at the time of the payment of such winnings. If not, payors must furnish the form to the payees before January 31 of the following year.

Order of Disbursements, the Lottery Commission must disburse:

1. statutory state and federal tax withholding;
2. after statutory withholding, the Commission must disburse to the Commissioner the full amount of the prize or portion of the prize that satisfies any past-due child support obligation;
3. if funds remain available, the Commission must disburse to the Commissioner the full amount of the prize or portion of the prize that satisfies any past-due tax liability;
4. the Commission must disburse to the winner only that portion of the prize, if any, remaining after these liabilities have been satisfied.

Using an Efile Application and the Reporting of Lottery Winnings:

When using an Efile application, taxpayers will be notified that they did not report their lottery winnings, or that the amount they reported does not match DOR records. If taxpayers indicate that they did not have any winnings, the system will allow them to proceed. However, their refund will be held up and a letter will go out requesting taxpayers to submit documentation to verify the correct amount.

DOR and Lottery Commission Match:

DOR routinely matches the amounts in Mass Form 1, Line 8a or 1-NR/PY, Line 10a with files from the Lottery Commission.

Also see: [Correction of Return Assessment Based on Third Party Information](#)

Gambling and Lottery Losses

Losses would occur when:

- the aggregate amount paid to gamble exceeds total gambling winnings; or
- the aggregate cost of lottery tickets exceeds total winnings from such tickets.

Federally, losses up to winnings may be claimed as an itemized deduction on U.S. Form 1040, Schedule A.

For Massachusetts purposes, losses up to winnings are not deductible even if they may be claimed as an itemized deduction on U.S. Form 1040, Schedule A. (Exception -see [Gambling Activities that Constitute a Trade or Business](#))

Massachusetts Adjustment for Cost of Winning Tickets:

Massachusetts does allow the cost of any winning ticket or chance to be deducted from the winnings received from such ticket or chance.

Example #1 to illustrate Mass vs. Federal Reporting of Gambling Winnings and Deductions:

If a taxpayer purchases one ticket for the 3rd race at the Wonderland Dog Track in the amount of \$5 and wins \$500, the taxable amount to be reported on the Massachusetts tax return is \$495 (winnings of \$500 less the cost of the winning ticket).

of \$5.00.) Even if the taxpayer purchases other tickets during the year totaling \$75, the amount reported to Massachusetts is still \$495. For federal purposes, the winnings of \$500 are reported on the 1040, Line 21, and the cost of all tickets, \$80 may be claimed as losses on Schedule A under Other Miscellaneous Deductions.

Tickets:	Cost:	Winnings:
Winning ticket	\$5	\$500
Other tickets:	\$75	\$0
Totals:	\$80	\$500

Federal 1040:

- Line 21 = \$500
- Schedule A, Miscellaneous Deductions = \$80

Mass Form 1:

- Schedule X, Line 3 = \$495 (\$500 - \$5, cost of winning ticket)
- Cannot deduct the other costs of \$75 since there were no winnings from these tickets

Form W-2G:

- Line 1. Gross winnings = \$500
- Line 2. Federal income tax withheld? No since threshold is \$5,000 of winnings
- Line 14. State income tax withheld? No since threshold is \$600 of winnings

Example #2 to Illustrate Mass Withholding Requirements on Massachusetts State Lottery Winnings:

If a taxpayer purchased one ticket in the amount of \$10 for the Massachusetts state lottery and won \$900, the taxable amount to be reported on the Massachusetts tax return is \$890. Even if the taxpayer purchases other lottery tickets during the year totaling \$930, the amount reported to Massachusetts is still \$890.

For federal purposes, the winnings of \$900 are reported on the 1040, Line 21, and the losses up to the amount of winnings, \$900, may be claimed on Schedule A under Other Miscellaneous Deductions; the remaining \$40 may not be claimed.

Tickets:	Cost:	Winnings:
Winning ticket	\$10	\$900
Other tickets:	\$930	\$0
Totals:	\$940	\$900

Federal 1040:

- Line 21 = \$900
- Schedule A, Miscellaneous Deductions = \$900

Mass Form 1:

- Line 8b = \$890 (\$900 - \$10, cost of winning ticket)
- Cannot deduct the other costs of \$930 since there were no winnings from these tickets

Form W-2G:

- Line 1. Gross winnings = \$900
- Line 2. Federal income tax withheld? No since threshold is \$5,000 of winnings
- Line 14. State income tax withheld? Yes since threshold is \$600 of winnings

Example #3 to Illustrate Federal and Mass Withholding Requirements on Massachusetts State Lottery Winnings:

If a taxpayer purchased multiple Massachusetts lottery tickets and won \$6,500, the only amount that may be deducted is the total of the cost of tickets that generated the \$6,500 in winnings. The taxable amount to be reported on the Massachusetts tax return is \$6,475 (\$6,500 less the cost of the 3 winning ticket amounts of \$25.)

For federal purposes, the winnings of \$6,500 are reported on the 1040, Line 21, and the losses of \$955 may be claimed on

Schedule A under Other Miscellaneous Deductions.

Tickets:	Cost:	Winnings:
Winning ticket	\$5	\$300
Winning ticket	\$10	\$700
Winning ticket	\$10	\$5,500
Other tickets:	\$650	\$0
Totals:	\$675	\$6,500

Federal 1040:

- Line 21 = \$6,500
- Schedule A, Miscellaneous Deductions = \$675

Mass Form 1:

- Line 8b = \$6,475 (\$6,500 - \$25, cost of winning tickets)
- Cannot deduct the other costs of \$650 since there were no winnings from these tickets

Form W-2G:

- Gross winnings = \$6,500
- Federal income tax withheld? Yes since threshold is \$5,000 of winnings
- State income tax withheld? Yes since threshold is \$600 of winnings

Gambling Activities that Constitute a Trade or Business

Massachusetts adopts the deductions permitted under section 62 of the Internal Revenue Code ("Code"), with certain modifications. The deductions allowed under the Code include those deductions that are attributable to a trade or business. In particular, the Code allows a deduction for losses from wagering transactions to the extent of wagering gains. Thus, a Massachusetts taxpayer may deduct wagering losses to the extent of winnings, but only if the wagering activities of the taxpayer constitute a trade or business.

Professional Gambling:

In the context of professional gambling, determining whether a taxpayer is engaged in a trade or business requires an examination of the facts in each case. If one's gambling activity is pursued full time, in good faith, and with regularity, to the production of income for a livelihood, and is not a mere hobby, it is a trade or business within the meaning of the statute.

The determination of whether a taxpayer is engaged in a trade or business remains one of facts and circumstances. However, in determining when the gambling activities of a taxpayer constitute a trade or business, the Commissioner will consider a set of factors. These factors are not exclusive, and are meant to provide illustrative guidance to taxpayers. The burden of proof rests with the taxpayer claiming to be a professional gambler.

The following factors will be considered:

- gambling activities are entered into and carried on in good faith for the purpose of making a profit;
- gambling activities are carried on with regularity;
- gambling activities are pursued on a full-time basis, or to the fullest extent possible if taxpayer is engaged in another trade or business or has employment elsewhere;
- gambling activities are solely for the taxpayer's own account and taxpayer does not function as a bookmaker;
- taxpayer maintains adequate records, including accounting of daily wagers, winnings and losses; the extent and nature of taxpayer's activities which further the development of a gambling enterprise; and
- taxpayer claims deductions associated with the conduct of a trade or business for gambling-related expenses.

Where to Report on Original Tax Return; What to Enclose:

- For gambling activities that constitute a trade or business, enter net amount on Form 1, Line 6 or Form 1-NR/PY, Line 8. Amount is from Mass Schedule C, Line 31 or 33; enclose Mass and U.S. Schedule C, or C-EZ, or U.S. Schedule F. If information to be reported on Mass Schedule C is no different than that reported on the Federal schedule, submit Federal schedule and write on the top "No Massachusetts Differences."

- For **gambling winnings, Massachusetts and out-of-state** - the amount included on U.S. Form 1040, Line 21 must be entered on either Mass Form 1 or 1-NR/PY, Schedule X, Line 3. Do not enter less than "0." The price of the winning ticket may be deducted. Losses claimed as itemized deductions on U.S. Form 1040, Schedule A are not deductible under Mass law.
- For **Massachusetts state lottery winnings** - the amount included on U.S. Form 1040, Line 21 must be entered on either Mass Form 1, Line 8b, or Form 1-NR/PY, Line 10b. The price of the winning ticket may be deducted. Losses claimed as itemized deductions on U.S. Form 1040, Schedule A are not deductible under Mass law.
- For **out-of-state lottery winnings** - the amount included on U.S. Form 1040, Line 21 must be entered on either Mass Form 1 or 1-NR/PY, Schedule X, Line 3. Do not enter less than "0." The price of the winning ticket may be deducted. Losses claimed as itemized deductions on U.S. Form 1040, Schedule A are not deductible under Mass law.

Part-year residents are taxed on gambling and lottery winnings received as a Massachusetts resident. Nonresidents are taxed on gambling and lottery winnings from Massachusetts sources. This includes:

- casinos and slots parlors located in Massachusetts;
- the Massachusetts lottery
- multi-jurisdictional lottery if the ticket was purchased within Massachusetts
- pari-mutuel wagering paid by Massachusetts racetrack or simulcast center, or
- any other wagering transaction within Massachusetts.

Documentation to Submit with Abatement/Amended Tax Return:

- Corrected Form W-2G, Certain Gambling Winnings;
- Documentation to substantiate the correct winnings.

Massachusetts References:

- M.G.L. Chapter 62, Sections 2(a); 2(d)
- M.G.L. Chapter 62B, Section 2 as amended by 2004, c. 262, s. 22
- [TIR 13-4: Withholding on Wagering Winnings](#)
- [TIR 04-27: Certain Administrative, Wage Reporting and Insurance Payment Changes Contained in Chapter 252 of the Acts of 2004](#)
- [TIR 04-25: Effect of Recent Legislation on the Personal Income Tax, Withholding of Tax, and the Declaration of Estimated Tax by Individuals](#)
- [DD 03-3: Factors for Determining When Gambling is a Trade or Business \(Modifies DD 86-24 to the extent that the position taken therein is inconsistent with the decision in Groetzinger and the decisions made by the Appellate Tax Board in reliance thereon\)](#)
- [DD 86-24: Lottery Winnings; Lottery Tickets](#)

Federal References:

- I.R.C. §§ 61; 62(a)(1); 165(d)
- Commissioner v. Groetzinger, 480 U.S. 23 (1987)
- I.R.S. Rev. Proc. 77-29

Return to Personal Income Tax Issues

26 U.S.C. §3402 Income tax collected at source

(q) Extension of withholding to certain gambling winnings

(1) General rule

Every person, including the Government of the United States, a State, or a political subdivision thereof, or any instrumentalities of the foregoing, making any payment of winnings which are subject to withholding shall deduct and withhold from such payment a tax in an amount equal to the product of the third lowest rate of tax applicable under section 1(c) and such payment.

(2) Exemption where tax otherwise withheld

In the case of any payment of winnings which are subject to withholding made to a nonresident alien individual or a foreign corporation, the tax imposed under paragraph (1) shall not apply to any such payment subject to tax under section 1441(a) (relating to withholding on nonresident aliens) or tax under section 1442(a) (relating to withholding on foreign corporations).

(3) Winnings which are subject to withholding

For purposes of this subsection, the term "winnings which are subject to withholding" means proceeds from a wager determined in accordance with the following:

(A) In general

Except as provided in subparagraphs (B) and (C), proceeds of more than \$5,000 from a wagering transaction, if the amount of such proceeds is at least 300 times as large as the amount wagered.

(B) State-conducted lotteries

Proceeds of more than \$5,000 from a wager placed in a lottery conducted by an agency of a State acting under authority of State law, but only if such wager is placed with the State agency conducting such lottery, or with its authorized employees or agents.

(C) Sweepstakes, wagering pools, certain parimutuel pools, jai alai, and lotteries

Proceeds of more than \$5,000 from-

(i) a wager placed in a sweepstakes, wagering pool, or lottery (other than a wager described in subparagraph (B)), or

(ii) a wagering transaction in a parimutuel pool with respect to horse races, dog races, or jai alai if the amount of such proceeds is at least 300 times as large as the amount wagered.

(4) Rules for determining proceeds from a wager

For purposes of this subsection-

(A) proceeds from a wager shall be determined by reducing the amount received by the amount of the wager, and

(B) proceeds which are not money shall be taken into account at their fair market value.

(5) Exception for bingo, keno, and slot machines

The tax imposed under paragraph (1) shall not apply to winnings from a slot machine, keno, and bingo.

(6) Statement by recipient

Every person who is to receive a payment of winnings which are subject to withholding shall furnish the person making such payment a statement, made under the penalties of perjury, containing the name, address, and taxpayer identification number of the person receiving the payment and of each person entitled to any portion of such payment.

(7) Coordination with other sections

For purposes of sections 3403 and 3404 and for purposes of so much of subtitle F (except section 7205) as relates to this chapter, payments to any person of winnings which are subject to withholding shall be treated as if they were wages paid by an employer to an employee.

2013

Instructions for Forms W-2G and 5754



Section references are to the Internal Revenue Code unless otherwise noted.

Future Developments

Information about any future developments affecting Form W-2G or Form 5754 (such as legislation enacted after we release them) will be posted at www.irs.gov/w2g and www.irs.gov/form5754, respectively. Information about developments affecting these instructions will be posted on both pages.

Reminder

In addition to these specific instructions, you should also use the 2013 General Instructions for Certain Information Returns. Those general instructions include information about the following topics.

- Backup withholding.
- Electronic reporting requirements.
- Penalties.
- When and where to file.
- Taxpayer identification numbers.
- Statements to recipients.
- Corrected and void returns.
- Other general topics.

You can get the general instructions at IRS.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

Specific Instructions for Form W-2G

File Form W-2G, Certain Gambling Winnings, to report gambling winnings and any federal income tax withheld on those winnings. The requirements for reporting and withholding depend on the type of gambling, the amount of the gambling winnings, and generally the ratio of the winnings to the wager. File W-2G with the IRS. You must provide a statement to the winner (Copies B and C of Form W-2G).

The types of gambling are discussed in these instructions under the following four headings.

1. *Horse Racing, Dog Racing, Jai Alai, and Other Wagering Transactions Not Discussed Later.*
2. *Sweepstakes, Wagering Pools, and Lotteries.*
3. *Bingo, Keno, and Slot Machines.*
4. *Poker Tournaments.*

Reportable Gambling Winnings

Report gambling winnings on Form W-2G if:

1. The winnings (not reduced by the wager) are \$1,200 or more from a bingo game or slot machine,
2. The winnings (reduced by the wager) are \$1,500 or more from a keno game,
3. The winnings (reduced by the wager or buy-in) are more than \$5,000 from a poker tournament,
4. The winnings (except winnings from bingo, slot machines, keno, and poker tournaments) reduced, at the option of the payer, by the wager are:
 - a. \$600 or more, and
 - b. At least 300 times the amount of the wager, or

5. The winnings are subject to federal income tax withholding (either regular gambling withholding or backup withholding).

Tax-Exempt Organizations

A tax-exempt organization conducting gaming activities may be required to withhold income tax and report on Form W-2G. See Pub. 3079, Tax-Exempt Organizations And Gaming:

Withholding

There are two types of withholding on gambling winnings: (a) regular gambling withholding at 25% (33.33% for certain noncash payments) and (b) backup withholding at 28%. If a payment is already subject to regular gambling withholding, it is not subject to backup withholding.

Regular Gambling Withholding

You may be required to withhold 25% of gambling winnings for federal income tax. This is referred to as regular gambling withholding. Withhold at the 25% rate if the winnings minus the wager are more than \$5,000 and are from:

- Sweepstakes,
- Wagering pools,
- Lotteries, or
- Other wagering transactions if the winnings are at least 300 times the amount wagered.

Do not withhold at the 25% rate on winnings from bingo, keno, slot machines, or any other wagering transaction if the winnings are \$5,000 or less. However, see *Backup Withholding* later.

Regular gambling withholding is figured on the total amount of gross proceeds (the amount of winnings minus the amount wagered), not merely on the amount in excess of \$5,000.

Report the amount you withheld in box 4 of Form W-2G. Also file Form 945, Annual Return of Withheld Federal Income Tax, to report all your gambling withholding.

Noncash payments. A noncash payment, such as a car, must be taken into account at its fair market value (FMV) for purposes of reporting and withholding. If the FMV exceeds \$5,000, after deducting the price of the wager, the winnings are subject to 25% regular gambling withholding. The tax you must withhold is computed and paid under either of the following two methods.

1. The winner pays the withholding tax to the payer. In this case, the withholding is 25% of the FMV of the noncash payment minus the amount of the wager.
2. The payer pays the withholding tax. In this case, the withholding is 33.33% of the FMV of the noncash payment minus the amount of the wager.

If you use method 2, enter the sum of the noncash payment and the withholding tax in box 1 of Form W-2G and the withholding tax paid by the payer in box 4.

Backup Withholding

You may be required to withhold 28% of gambling winnings (including winnings from bingo, keno, slot machines, and poker tournaments) for federal income tax. This is referred to as backup withholding. You should backup withhold if:

- The winner does not furnish a correct taxpayer identification number (TIN),
- 25% has not been withheld, and
- The winnings are at least \$600 and at least 300 times the wager (or the winnings are at least \$1,200 from bingo or slot machines or \$1,500 from keno or more than \$5,000 from a poker tournament).

Figure any backup withholding on the total amount of the winnings reduced, at the option of the payer, by the amount wagered. This means the total amount, not just the payments in excess of \$600, \$1,200, \$1,500, or \$5,000, is subject to backup withholding.

Report the amount you withheld in box 4 of Form W-2G. Also file Form 945 to report all backup withholding. You may use Form W-9, Request for Taxpayer Identification Number and Certification, to request the TIN of the recipient.

See the following instructions for each type of gambling for detailed rules on backup withholding.

Foreign Persons

Payments of gambling winnings to a nonresident alien individual or a foreign entity are not subject to reporting or withholding on Form W-2G. Generally, gambling winnings paid to a foreign person are subject to 30% withholding under sections 1441(a) and 1442(a) and are reportable on Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, and Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding. Winnings of a nonresident alien from blackjack, baccarat, craps, roulette, big-6 wheel, or a live dog or horse race in the United States from legal wagers initiated outside the United States in a parimutuel pool are not subject to withholding or reporting. See Pub. 515, Withholding of Tax on Nonresident Aliens and Foreign Entities.

State Tax Information

If state income tax withholding is required on gambling winnings in your state, complete boxes 13, 14, and 15 on Form W-2G. Copy 1 of the form can be used to provide information to the state, and Copy 2 can be used as the winner's copy for use in filing a state income tax return. A state identification number is assigned by each individual state.

Local Tax Information

If local income tax withholding is required on gambling winnings in your locality, complete boxes 16, 17, and 18.

Form 5754

If the person receiving the winnings is not the actual winner, or is a member of a group of winners, see [Specific Instructions for Form 5754](#) later.

Statements to Winners

If you are required to file Form W-2G, you must also provide a statement to the winner. For information about the requirement to furnish a statement to the winner, see part M in the 2013 General Instructions for Certain Information Returns. You may furnish Copies B and C of Form W-2G to the winner.

1. Horse Racing, Dog Racing, Jai Alai, and Other Wagering Transactions Not Discussed Later

File Form W-2G for every person to whom you pay \$600 or more in gambling winnings if the winnings are at least 300 times the amount of the wager. If the person presenting the ticket for payment is the sole owner of the ticket, complete Form W-2G showing the name, address, and TIN of the winner. If regular gambling withholding is required, the winner must sign Form W-2G, under penalties of perjury, stating that he or she is the sole owner and that the information listed on the form is correct. If there are multiple winners, see [Withholding and Forms W-2G for Multiple Winners](#), later.

Withholding

You must withhold federal income tax from the winnings if the winnings minus the wager exceed \$5,000 and the winnings are at least 300 times the wager. Withhold 25% of the proceeds (the winnings minus the wager). This is regular gambling withholding.

If the winner of reportable gambling winnings does not provide a TIN, you must backup withhold at the rate of 28% on any such winnings that are not subject to 25% regular gambling withholding. That is, backup withholding applies if the winnings are at least \$600 but not more than \$5,000 and are at least 300 times the wager. Figure backup withholding on the amount of the winnings reduced, at the option of the payer, by the amount wagered.

Multiple Wagers

For multiple wagers sold on one ticket, such as the \$12 box bet on a Big Triple or Trifecta, the wager is considered as six \$2 bets and not one \$12 bet for purposes of computing the amount to be reported or withheld. Winnings on a \$12 box bet must be reported if they are \$600 or more, and federal income tax must be withheld if the proceeds total more than \$5,000 or, if the proceeds do not exceed \$5,000, if the recipient fails to provide a TIN.

Identical Wagers

Winnings from identical wagers (for example, two \$2 bets on a particular horse to win the same race) are added together for purposes of the reporting and withholding requirements. Also, winnings from identical wagers that are not part of the payment for which the Form W-2G is being prepared are added together for purposes of withholding to determine if the total amount of proceeds from identical wagers is more than \$5,000.

Box 1

Enter payments of \$600 or more if the payment is at least 300 times the wager.

Box 2

Enter the date of the winning event. This is not the date the money was paid if it was paid after the date of the race (or game).

Box 3

Enter the type of wager if other than a regular race bet, for example, Daily Double or Big Triple.

Box 4

Enter any federal income tax withheld, whether regular gambling withholding or backup withholding.

Box 5

Not applicable.

Box 6

Enter the race (or game) applicable to the winning ticket.

Box 7

Enter the amount of additional winnings from identical wagers.

Box 8 or 10

Enter the cashier and/or window number making the winning payment.

Box 9

This is required information. Enter the TIN of the person receiving the winnings. For an individual this will be the social security number (SSN) or individual taxpayer identification number (ITIN). If the winner fails to give you a TIN, backup withholding applies. See *Withholding* earlier.

Boxes 11 and 12

As verification of the name, address, and TIN of the person receiving the winnings, enter the identification numbers from two forms of identification. Acceptable forms of identification include a driver's license, social security card, or voter registration. Enter the number and the state or jurisdiction. In some instances, the number may be the same number as in box 9.

Boxes 13 Through 18

Complete these boxes if they apply.

Box 13. Enter the abbreviated name of the state and your state identification number.

Box 14. Enter the amount of state winnings.

Box 15. Enter the amount of state income tax withheld.

Box 16. Enter the amount of local winnings.

Box 17. Enter the amount of local income tax withheld.

Box 18. Enter the name of your locality.

2. Sweepstakes, Wagering Pools, and Lotteries

File Form W-2G for each person to whom you pay \$600 or more in gambling winnings from a sweepstakes, wagering pool, or lottery (including a state-conducted lottery) if the winnings are at least 300 times the amount of the wager. The wager must be subtracted from the total winnings to determine whether withholding is required and, at the option of the payer, to determine whether reporting is required. The wager must be subtracted at the time of the first payment.

The requirements in this section apply to church raffles, charity drawings, etc. In the case of one wager for multiple raffle tickets, such as five for \$1, the wager is considered as \$.20 for each ticket.

Withholding

You must withhold federal income tax from the winnings if the winnings minus the wager exceed \$5,000. Withhold 25% of the proceeds (the winnings minus the wager). This is regular gambling withholding. If the winner of reportable gambling winnings does not provide a TIN, you must backup withhold at the rate of 28% on any such winnings that are not subject to 25% regular gambling withholding. That is, backup withholding

applies if the winnings are at least \$600 but not more than \$5,000 and are at least 300 times the wager. Figure backup withholding on the amount of the winnings reduced, at the option of the payer, by the amount wagered.

Installment payments of \$5,000 or less are subject to regular gambling withholding if the total proceeds from the wager will exceed \$5,000.

If payments are to be made for the life of a person (or for the lives of more than one person), and it is actuarially determined that the total proceeds from the wager are expected to exceed \$5,000, such payments are subject to 25% regular gambling withholding. When a third party makes the payments, for example, an insurance company handling the winnings as an annuity, that third party must withhold.

When Paid

A payment of winnings is considered made when it is paid, either actually or constructively, to the winner. Winnings are constructively paid when they are credited to, or set apart for, that person without any substantial limitation or restriction on the time, manner, or condition of payment. However, if not later than 60 days after the winner becomes entitled to the prize, the winner chooses the option of a lump sum or an annuity payable over at least 10 years, the payment of winnings is considered made when actually paid. If the winner chooses an annuity, file Form W-2G each year to report the annuity paid during that year.

Box 1

Enter payments of \$600 or more if the payment is at least 300 times the wager.

Box 2

Enter the date of the winning transaction, such as the date of the drawing of the winning number. This might not be the date the winnings are paid.

Box 3

Enter the type of wager (such as raffle or 50-50 drawing) or the name of the lottery (such as Instant, Big 50, Baker's Dozen, or Powerball) and the price of the wager (\$.50, \$1, etc.).

Box 4

Enter any federal income tax withheld, whether regular gambling withholding or backup withholding.

Box 5

For a state lottery, enter the ticket number or other identifying number.

Boxes 6 Through 8 and 10

Not applicable.

Box 9

This is required information. Enter the TIN of the person receiving the winnings. For an individual this will be the social security number (SSN) or individual taxpayer identification number (ITIN). If the winner fails to give you a TIN, backup withholding applies. See *Withholding* under *Sweepstakes, Wagering Pools, and Lotteries*, earlier.

Boxes 11 and 12

Except for winnings from state lotteries, enter the identification numbers from two forms of identification as verification of the name, address, and TIN of the person receiving the winnings. Acceptable forms of identification include a driver's license, social security card, or voter registration. Enter the number and the state or jurisdiction. In some instances, the number may be the same number as in box 9.

Boxes 13 Through 18

Complete these boxes if they apply.

Box 13. Enter the abbreviated name of the state and your state identification number.

Box 14. Enter the amount of state winnings.

Box 15. Enter the amount of state income tax withheld.

Box 16. Enter the amount of local winnings.

Box 17. Enter the amount of local income tax withheld.

Box 18. Enter the name of your locality.

3. Bingo, Keno, and Slot Machines

File Form W-2G for every person to whom you pay \$1,200 or more in gambling winnings from bingo or slot machines, or \$1,500 or more from keno after the price of the wager for the winning keno game is deducted. If the winnings are not paid in cash, the FMV of the item won is considered the amount of the winnings. Total all winnings from each bingo or keno game. Winnings and losses from other wagering transactions are not to be taken into account in arriving at the \$1,200 or \$1,500 figure.

Withholding

Regular gambling withholding does not apply to winnings from bingo, keno, or slot machines. However, if the recipient of reportable gambling winnings from bingo, keno, or slot machines does not provide a TIN, you must backup withhold. That is, if the winnings are at least \$1,200 from bingo or slot machines or \$1,500 from keno, backup withholding applies to the amount of the winnings reduced, at the option of the payer, by the amount wagered.

Box 1

Enter payments of \$1,200 or more from bingo or slot machines or payments of \$1,500 or more from keno.

Box 2

Enter the date of the winning transaction.

Box 3

Enter the type of wager (that is, bingo, keno, or slot machines) and the amount of the wager.

Box 4

Enter any backup withholding.

Box 5

Enter the ticket number, card number (and color, if applicable), machine serial number, or any other information that will help identify the winning transaction.

Boxes 6 and 7

Not applicable.

Box 8

Enter the initials of the person paying the winnings.

Box 9

This is required information. Enter the TIN of the person receiving the winnings. For an individual this will be the social security number (SSN) or individual taxpayer identification number (ITIN). If the winner fails to give you a TIN, backup withholding applies. See *Withholding* under *Bingo, Keno, and Slot Machines* earlier.

Box 10

Enter the location of the person paying the winnings, if applicable.

Boxes 11 and 12

As verification of the name, address, and TIN of the person receiving the winnings, enter the identification numbers from two forms of identification. Acceptable forms of identification include a driver's license, social security card, or voter registration. Enter the number and the state or jurisdiction. In some instances, the number may be the same number as in box 9.

Boxes 13 Through 18

Complete these boxes if they apply.

Box 13. Enter the abbreviated name of the state and your state identification number.

Box 14. Enter the amount of state winnings.

Box 15. Enter the amount of state income tax withheld.

Box 16. Enter the amount of local winnings.

Box 17. Enter the amount of local income tax withheld.

Box 18. Enter the name of your locality.

4. Poker Tournaments

File Form W-2G for each person to whom you pay more than \$5,000 in winnings, reduced by the amount of the wager or buy-in, from each poker tournament you have sponsored. Winnings and losses of the participant from other poker tournaments you have sponsored during the year are not taken into account in arriving at the \$5,000 amount.

Withholding and backup withholding. If you file Form W-2G for the person to whom you pay more than \$5,000 in net winnings from a poker tournament, and provide a copy of Form W-2G to such person, regular gambling withholding does not apply to the winnings. However, if the person who wins more than \$5,000 does not provide a TIN, you must apply backup withholding to the full amount of the winnings from the tournament. Net winnings of \$5,000 or less are not subject to reporting, withholding, or backup withholding.

Box 1

Enter payments of more than \$5,000 in net gambling winnings from a poker tournament.

Box 2

Enter the date of the poker tournament.

Box 3

Enter "poker tournament" in the entry space.

Box 4

Enter zero as the amount, unless the winning person has not provided a TIN. If the winning person has not provided a TIN, enter the backup withholding amount.

Box 5

Enter the name of the tournament and its sponsor.

Boxes 6 Through 8 and Box 10

Not applicable.

Box 9

This is required information. Enter the TIN of the person receiving the winnings. For an individual this will be the social security number (SSN) or individual taxpayer identification number (ITIN). If the winner fails to give you a TIN, backup withholding applies. See *Withholding and backup withholding* earlier.

Boxes 11 and 12

As verification of the name, address, and TIN of the person receiving the winnings, enter the identification numbers from two forms of identification. Acceptable forms of identification include a driver's license, social security card, or voter registration. Enter the number and the state or jurisdiction. In some instances, the number may be the same number as in box 9.

Boxes 13 Through 18

Complete these boxes if they apply.

Box 13. Enter the abbreviated name of the state and your state identification number.

Box 14. Enter the amount of state winnings.

Box 15. Enter the amount of state income tax withheld.

Box 16. Enter the amount of local winnings.

Box 17. Enter the amount of local income tax withheld.

Box 18. Enter the name of your locality.

Specific Instructions for Form 5754

Use Form 5754, Statement by Person(s) Receiving Gambling Winnings, to prepare Form W-2G only when the person

receiving gambling winnings subject to reporting or withholding is not the actual winner or is a member of a group of two or more people sharing the winnings, such as by sharing the proceeds of the same winning ticket. The payer is required to file Forms W-2G based on Form 5754.

The person receiving the winnings must furnish all the information required by Form 5754. However, a recipient of winnings from a state-conducted lottery need not provide identification other than his or her taxpayer identification number (TIN).

Part I lists the identification of the person to whom the winnings are paid, and Part II lists the actual winners, their respective shares of the winnings, and any additional winnings from **identical wagers**. Identical wagers are defined earlier in the Specific Instructions for Form W-2G.

In Part II, the person receiving the winnings must provide the name, address, TIN, respective share of the winnings, and additional winnings from identical wagers for each of the winners. In addition, if regular gambling withholding is required, the form must be signed, under penalties of perjury, and dated by the person receiving the winnings.

The form must be returned to the payer for preparation of Form W-2G for each of the persons listed as winners. Forms W-2G may be issued immediately or by January 31 following the year of the payment.

Do not send Form 5754 to the IRS. Keep it for your records.

Withholding and Forms W-2G for Multiple Winners

If more than one person shares in the winnings from a single wager, the total amount of the winnings (minus the amount wagered) will determine the amount of the proceeds for purposes of reporting and withholding. Do not allocate winnings to each winner before determining whether the withholding or reporting thresholds were reached.

For example, E purchases a sweepstakes ticket for \$1 on behalf of himself and S, who contributes an equal amount of the ticket price and who will share equally in any winnings. The ticket wins \$5,002. Because the winnings (\$5,002 - \$1 = \$5,001) are more than \$5,000, you must withhold 25% of \$5,001. You must prepare Form W-2G for E and a separate Form W-2G for S using the information furnished to you on Form 5754.

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 VOID CORRECTED

OMB No. 1545-0238

2013**Form W-2G****Certain
Gambling
Winnings**

PAYER'S name, street address, city or town, province or state, country, ZIP or foreign postal code	1 Gross winnings \$	2 Date won	For Privacy Act and Paperwork Reduction Act Notice, see the 2013 General Instructions for Certain Information Returns.
	3 Type of wager	4 Federal income tax withheld \$	
	5 Transaction	6 Race	
	7 Winnings from identical wagers \$	8 Cashier	
Federal identification number Telephone number	9 Winner's taxpayer identification no	10 Window	File with Form 1096
WINNER'S name	11 First I.D.	12 Second I.D.	
	13 State/Payer's state identification no.	14 State winnings \$	
Street address (including apt. no.)	15 State income tax withheld \$	16 Local winnings \$	Copy A For Internal Revenue Service Center
City or town, province or state, country, and ZIP or foreign postal code	17 Local income tax withheld \$	18 Name of locality	

Under penalties of perjury, I declare that, to the best of my knowledge and belief, the name, address, and taxpayer identification number that I have furnished correctly identify me as the recipient of this payment and any payments from identical wagers, and that no other person is entitled to any part of these payments.

Signature ► Date ►

Form W-2G

Cat. No. 10138V

www.irs.gov/w2g

Department of the Treasury - Internal Revenue Service

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M.G.L. c.62B §2 prior to the Expanded Gaming Act:

Every person, including the United States, the commonwealth or any other state, or any political subdivision or instrumentality of the foregoing, making any payment of winnings, **except winnings from horse and dog racing**, which are subject to tax under chapter sixty-two and which are subject to withholding under section thirty-four hundred and two (q) of the Internal Revenue Code shall deduct and withhold from such payment an amount equal to five per cent of such payment, except that such withholding for purposes of this chapter shall apply to payments of winnings of \$600 or greater notwithstanding any contrary provisions of the Internal Revenue Code, as amended from time to time. For purposes of this chapter and chapter sixty-two C, such payment of winnings shall be treated as if it were wages paid by an employer to an employee.

M.G.L. c.62B §2 after the Expanded Gaming Act:

Every person, including the United States, the commonwealth or any other state, or any political subdivision or instrumentality of the foregoing, making any payment of **lottery or wagering winnings** which are subject to tax under chapter 62 and which are subject to withholding under section 3402 of the Internal Revenue Code, **without the exception for slot machines, keno and bingo played at licensed casinos** in subsections (q)(5) and (r) of said section 3402 of the Internal Revenue Code, shall deduct and withhold from such payment an amount equal to 5 per cent of such payment, except that such withholding for purposes of this chapter shall apply to payments of winnings of \$600 or greater notwithstanding any contrary provision of the Internal Revenue Code. For the purposes of this chapter and chapter 62C, such payment of winnings shall be treated as if it were wages paid by an employer to an employee.

M.G.L. c.62B §2 as proposed in section 72 of H.B. 3522:

Every person, including the United States, the commonwealth or any other state, or any political subdivision or instrumentality of the foregoing, making any payment of lottery or wagering winnings, which are subject to tax under chapter 62 and which are subject to withholding under section 3402(q) of the Internal Revenue Code shall deduct and withhold from such payment an amount equal to 5 per cent of such payment. For the purposes of this chapter and chapter 62C, such payment of winnings shall be treated as if it were wages paid by an employer to an employee.