

PARI-MUTUEL WAGERING TAXATION TASK FORCE

Minutes of the 1st Meeting of the 2021 Interim

July 16, 2021

Call to Order and Roll Call

The 1st meeting of the Pari-Mutuel Wagering Taxation Task Force was held on Friday, July 16, 2021, at 10:00 AM, in Room 169 of the Capitol Annex. Representative Adam Koenig, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Damon Thayer, Co-Chair; Representative Adam Koenig, Co-Chair; Senators Julie Raque Adams, and Christian McDaniel; Representatives Jonathan Dixon, Al Gentry, Matthew Koch, and Jason Petrie.

Guests: Waqas Ahmed, Director, Pari-Mutuel Wagering and Compliance, Kentucky Horse Racing Commission; Jon Roenker, Chief Economist, Legislative Economic Analysis, Legislative Research Commission; and Jennifer Hays, Committee Staff Administrator, Appropriations and Revenue Committee, Legislative Research Commission.

LRC Staff: Tom Hewlett, Jennifer Hays, Kevin Branscum, and Chase O'Dell.

Senator Thayer remembered the late Senator Tom Buford.

Senator Thayer gave opening remarks on the pari-mutuel wagering structure. He stated that he was pleased with the current structure and that it appears to be working. Senator Thayer continued to say that the legislature should be careful not to make any tax changes that may hurt the horse industry.

Representative Koenig gave his remembering remarks for Senator Buford.

Overview of the Pari-Mutuel Tax

Waqas Ahmed, Director, Pari-Mutuel Wagering and Compliance, Kentucky Horse Racing Commission; Jon Roenker, Chief Economist, Legislative Economic Analysis, Legislative Research Commission; and Jennifer Hays, Committee Staff Administrator, Appropriations and Revenue Committee, Legislative Research Commission, presented an overview of the pari-mutuel tax.

Ms. Hays testified that the horse racing industry pays three additional taxes or fees in addition to paying income tax on net earned income, property tax on real or tangible property, and sales tax on the consumption of tangible personal property.

One fee paid by the horse racing industry is the license fee, which is paid to the general fund by any person engaged in the business of conducting a race meeting which has live horses run for stakes, purses, or prizes. The fee is based on the track's average daily mutuel handle for each day of racing. Receipts from this fee total roughly \$250,000 annually.

The second tax paid by the horse racing industry is the admissions tax. Each person entering a racetrack grounds where there is a live race meeting is required to pay a 15 cent tax for each day they attend. This tax is collected by the racetrack and remitted on the attendee's behalf. Receipts average \$200,000 annually. Kentucky statute makes clear that the tax is due on each admission whether admission is charged or free.

The third tax paid by the horse racing industry is the pari-mutuel tax. All tracks conducting pari-mutuel wagering are required to pay this tax. That wagering can be on live racing, historical horse races, intertrack and simulcast racing, or advance deposit account wagering. The rate of taxation varies between the types of wagering. The tax on live racing wagers can range from 3.5 to 1.5 percent. Historical horse race wagers are taxed at 1.5 percent. Intertrack and simulcast wagers are taxed at three percent. Advance deposit wagering is taxed at 0.5 percent. Pari-mutuel tax receipts for fiscal year 2021 through May totaled \$27.7 million.

In response to a question from Representative Koenig, Ms. Hays stated that there may be errors or interest in penalty in license fee receipts numbers. In response to another question, Ms. Hays testified that these receipts go to the general fund, not the horse racing commission.

In response to a question from Senator McDaniel, Ms. Hays testified that the daily mutuel handle is an average of the mutuel handle across race days for races that occur at a track.

Senator Thayer stated that statute should be changed so that if a track charges free admission, they will not have to pay the 15 cents admissions tax. The historical horse racing tax rate of 1.5 percent was set in the 2014 revenue bill. Senator Thayer continued to say that the 3.5 percent tax rate on pari-mutuel wagering for live racing should be removed from statute altogether, as no track actually reaches the threshold to pay that top rate.

There are five thoroughbred racetracks and three standardbred racetracks in Kentucky. Live racing, simulcast, and historic horse racing wagers can all be made at any of the tracks. These wagers can only be made at the licensed tracks.

Under Kentucky statute, the tax rate on live wagers is 3.5 percent if the racetrack's daily average live handle totals \$1.2 million or more. A track has not reached this level since fiscal year 2008. A live wager is taxed at a rate of 1.5 percent of money wagered if the track falls below the \$1.2 million threshold.

For a thoroughbred track, 0.75 percent of the 1.5 percent tax paid on live wagers is distributed to the thoroughbred development fund. Of the 1.5 percent tax, 0.35 percent of the tax on money wagered is distributed to the general fund.

For standardbred tracks, one percent of the 1.5 percent rate is distributed to the standardbred development fund. The rest of receipts are distributed to the same funds at the same percentages as thoroughbred tracks. The net tax from standardbred tracks to the general fund is 0.10 percent.

For historic horse racing, the tax rate on wagers is 1.5 percent for thoroughbred and standardbred racetracks. The distribution from a thoroughbred track to the thoroughbred development fund is 0.75 percent. The distribution from a standardbred track to the standardbred development fund is one percent. Of the money wagered through historical horse racing, the percent which goes to the general fund ranges from 0.57 to 0.67 percent.

The money wagered in fiscal year 2021 through May totaled \$46.1 million for live racing and \$4.1 billion for historical horse racing.

In response to a question from Senator McDaniel, Ms. Hays testified that there is no statutory provisions regarding payouts. Mr. Ahmed stated that commissions are capped for the different types of wager. For historical horse racing, the commission rate has typically been nine percent. The excise tax is taken out of that nine percent.

In response to Representative Koenig, Mr. Ahmed testified that the cap for an exotic wager is the same as the cap on live or historical races. Payouts cannot exceed the cap in statute, but an operator can choose to have different caps. The cap for each wager is described in statute.

In response to a question from Senator Adams, Ms. Hays stated that there is no statutory language requiring revenue to go to problem gambling.

Senator Thayer stated that 80 to 90 percent of every dollar wagered goes back to pay winning bettors. He continued to say that the dollars wagered are not revenue. The money left after paying winning bettors goes towards taxes, purses, track operating costs, and profit.

Intertrack and simulcast wagers are taxed at a rate of three percent. There are statutory distributions from these receipts to the development fund, equine industry fund, higher education equine fund, and the equine drug testing fund. Simulcast wagers are accepted at all racetracks, but they are only taxed if the wager is placed at a thoroughbred track.

Advanced deposit account wagering is taxed at a rate of one half of one percent. Of the tax revenue on a wager, 85 percent is retained by the racetrack hosting the race, with the remaining 15 percent being deposited into the general fund.

In response to a question from Representative Koenig, Ms. Hays testified that wagers placed on a phone or on a computer are taxed the same as long as they are both placed through an advanced deposit account.

Ms. Hays testified that as of fiscal year 2019, historical horse racing made up 81.6 percent of pari-mutuel tax revenue. Simulcast was the second largest driver of pari-mutuel tax revenue with 9.5 percent of total receipts. A few years ago, the largest share of pari-mutuel tax revenue was live racing.

As of fiscal year 2019, the thoroughbred development fund received the largest allocation of pari-mutuel tax revenues, receiving 46.3 percent of all revenue. The general fund received 40.6 percent of all revenue.

On a two dollar wager made on a live race, \$1.61 would be returned to the public through winnings. Net commission would total 34 cents.

In response to a question from Senator McDaniel, Mr. Ahmed testified that the percent of a wager to be returned to the public through winnings is implied because Kentucky statute establishes a limit for net commission on wagers. In response to another question, Mr. Ahmed stated that in some instances, tracks may reduce the percentage of a wager which goes to net commission for the purpose of drawing more wagers.

Representative Koenig stated that on average, people will get more of their money back placing a pari-mutuel wager than playing the lottery. He continued to say that addressing breakage will be a way to take care of bettors.

Ms. Hays testified that of a two dollar wager placed on a historical horse race, \$1.83 will be returned to the public through winnings. Net commission on a two dollar wager would total 14 cents.

Ms. Hays stated that of a two dollar wager placed via simulcast at a thoroughbred track, \$1.58 is returned to the public through winnings. Net commission would total 34 cents.

Of a two dollar advance deposit account wager, \$1.56 is returned to the public through winnings. Net commission would total 39 cents.

Senator Thayer stated that tracks who do not charge admission still pay the 15 cents admissions tax based on an estimate of daily attendance. He continued to say that the Kentucky Thoroughbred Development Fund was developed as a way to encourage people to buy Kentucky-bred horses and race them at Kentucky racetracks. Base association purse money, which is negotiated between racetracks and the horsemen associations, comes out of the net commission on wagers. The 1.5 percent tax on live racing and historical horse racing wagers is a tax on the gross amount of a wager.

Representative Koch stated that the Kentucky Thoroughbred Development Fund is vital because other states and Canada have similar programs and promote them heavily.

Senator Thayer stated that the Kentucky Breeders Incentive Fund program rewards successful breeders of Kentucky-bred horses and incentivizes breeders to leave their mares in Kentucky year-round. Representative Koch stated that every five mares will create a job.

With no further business before the committee, the meeting was adjourned at 11:12 a.m.