

TAVERN GAMING 2020



March 2020

TO: Members of the Legislative Budget and Finance Committee

FROM: Patricia A. Berger, Executive Director

SUBJECT: Annual Report Required by Act 2013-90: The Impact of Tavern Gaming on the Pennsylvania State Lottery

Why we conducted this study...

Act 2013-90 authorized small games of chance in Pennsylvania's taverns. It also directed the Legislative Budget and Finance Committee (LBFC) to complete an annual study of tavern gaming's impact on Pennsylvania Lottery revenues.

Act 2013-90, an amendment to the Local Option Small Games of Chance Act, requires the Legislative Budget and Finance Committee to conduct an annual study on the impact of tavern gaming on the State Lottery. Under the act, the Governor may request the General Assembly to appropriate money from the General Fund to the State Lottery Fund up to the amount identified in the study. This is the fifth report under this mandate.

The Impact of Tavern Gaming on the State Lottery¹

When Act 2013-90 was debated, the Governor's Office of the Budget estimated 2,000 establishments would be licensed under the act, generating an average weekly payout of \$10,000 per license. Using this assumption, the legislation was estimated to generate total annual net revenue of \$156 million, which in turn would generate (at a 60 percent tax rate) \$93.6 million in additional revenues for the General Fund annually.

Actual tavern gaming tax revenues, however, have been far lower than originally projected. In CY 2014, tavern games generated approximately

¹ In August 2018, seven casino organizations filed suit against the Department of Revenue, claiming that iLottery offers interactive games and games that simulate slot machines and casino-style games in violation of both the State Lottery law and Act 2017-42. The case is ongoing. Additionally, following inquiries from two state lotteries, the DOJ issued an opinion in 2011 stating that the Wire Act did not apply to interstate transmissions of wire communications that do not relate to a "sporting event or contest," allowing for online lottery games. The 2011 DOJ Opinion was relied upon by many states, including Pennsylvania, for the implementation of their iLottery programs. However, in 2018, the DOJ reversed its position and issued an opinion stating the same. The DOJ's 2018 Opinion is under appeal.

\$153,000 in tax revenue. The amount has increased in successive years, with \$1.64 million in tavern games and host municipality tax revenue in CY 2018. In CY 2019, however, there was a 20 percent decrease from 2018, with total tax revenue of \$1.37 million. Exhibit 1 shows these tax revenues, for CYs 2015-2019, and Lottery revenues for the same period.^{2,3} For CY 2019, tavern game revenues were 0.09 percent of Lottery revenues. Over the five years of this study, tavern game revenues were 0.10 percent of Lottery revenues.

Exhibit 1

Tavern Games Tax and Lottery Revenue*
CY 2015-2019

<u>Calendar Year</u>	<u>Tavern Games Tax Revenue</u>	<u>Lottery Revenue</u>	<u>Tavern Tax Revenue to Lottery</u>
2015	\$1,415,633	\$1,420,959,525	0.10
2016	1,566,229	1,481,843,213	0.11
2017	1,443,622	1,464,025,910	0.10
2018	1,638,406	1,564,421,796	0.10
2019	1,374,100	1,534,456,638	0.09
TOTAL	7,437,990	7,465,707,082	

Note: *Includes both state and municipal shares of tavern gaming tax revenues.

Source: Developed by LBFC staff with data provided by the Department of Revenue.

The \$1.64 million in tavern game and host municipality tax revenue collected in CY 2018 represents about \$2.52 million in patron losses, as compared to about \$1.56 billion in patron losses for persons participating in Lottery games that year, as shown in Exhibit 2. Tavern gaming patron losses were less than two-tenths of one percent (0.16 percent) of the losses incurred by those playing Lottery games. For CY 2019, this number decreased slightly to 0.14 percent, with lottery patron losses at \$1.53 billion and tavern games patron losses at \$2.11 million. This ratio has remained very steady for the five years of this study, ranging from 0.14 to 0.16 percent.

² Lottery revenue figures are total sales minus prize liability for all lottery games, including iLottery games. Tavern revenues are total sales minus prize liability, minus the 35 percent that tavern licensees may keep as revenue.

³ In 2017, Act 2017-42 authorized iLottery. iLottery is defined as "a system that provides for the distribution of lottery products through numerous channels that include, but are not limited to, web applications, mobile applications, mobile web, tablets and social media platforms that allow players to interface through a portal for the purpose of account management, game purchase, game play and prize redemption."

Exhibit 2

Ratio of Lottery Patron Losses to Tavern Game Patron Losses
CY 2015-2019

<u>Calendar Year</u>	<u>Lottery Patron Losses</u>	<u>Tavern Game Patron Losses</u>	<u>Tavern Games to Lottery</u>
2015	\$1,420,959,525	\$2,177,897	0.15%
2016	1,481,843,213	2,409,583	0.16
2017	1,464,025,910	2,220,956	0.15
2018	1,564,421,796	2,520,624	0.16
2019	1,534,456,638	2,114,001	0.14

Source: Developed by LBFC staff with data provided by the Department of Revenue.

Because tavern gaming losses were so low compared to lottery losses, and have remained consistently low since we started issuing this report, we concluded that patron losses due to tavern gaming did not have a material impact on State Lottery sales. Further supporting this conclusion, tavern revenues have remained from 0.09 to 0.11 percent of lottery revenues for the past five years.

Role of the Pennsylvania Gaming Control Board, the Liquor Control Board, and the Pennsylvania Department of Revenue

Applications for tavern gaming licenses are filed with the Pennsylvania Liquor Control Board (PLCB). The Pennsylvania Gaming Control Board (PGCB) then conducts a background investigation on the applicant through its Bureau of Investigations and Enforcement (BIE).

Upon completion of background investigations, the BIE transmits the report to the PLCB for its consideration in determining whether to award a license. Items included in the report contain information to determine if the applicant is financially stable and responsible, has sufficient business experience, has the ability to effectively operate tavern games, and is of good character. The PLCB has six months upon receipt of the investigation report to approve or disapprove the application. As of January 2020, the PLCB has approved 67 tavern gaming licenses, of which 47 are active and one is pending.⁴

The Department of Revenue (DOR) licenses small games of chance distributors. It also receives quarterly and annual reports from tavern licensees on the net revenue of the games and the taxes due. DOR is also responsible for administering the provisions of the act relating to enforcement and tax collections.

⁴ As of our last report, three licenses became inactive. Tavern gaming licenses may be inactive because they were not renewed, or because they were transferred with a liquor license.

Cost to Applicants

To apply for a license, individuals must submit \$2,000 to the PLCB (a \$1,000 application fee to the PLCB and a \$1,000 investigation fee to the PGCB), with a completed application packet. If an application is approved, the licensee must pay an additional \$500 license fee.⁵ There is also an annual renewal fee of \$1,000 per license. The application fee and background check fees are non-refundable.

The PGCB receives the \$1,000 investigation fee to cover the cost of its background investigation. If the cost of conducting the background investigation exceeds the fee, the applicant must pay all additional costs. The PLCB retains the \$1,000 licensing fee to cover its administrative costs.

Allowable Tavern Games

Under Act 90, tavern owners may sell a variety of games, including pull-tab games, daily drawings, and raffles at licensed establishments. Pull tabs are defined in the act as “a single folded or banded ticket or a strip ticket or card with a face covered to conceal one or more numbers or symbols, where one or more of each set of tickets or cards has been designated in advance as a winner.” Tavern daily drawings are games in which a person selects or is given a number for a chance at a prize. The winner is chosen by a random drawing. Chances may not be sold for more than one dollar, and no more than one chance per person may be sold per drawing.

The proceeds from pull tabs and daily drawings are subject to a 60/35/5 split, where 60 percent of the net revenues obtained in a year are paid to the Commonwealth, 35 percent may be retained by the licensee, and 5 percent goes to the municipalities where taverns are located (Host Municipality Tavern Games Tax). Net revenue is defined in the statute as the difference between the face value collectible by a licensee from a tavern game and the maximum amount of prizes payable by a licensee from a tavern game.

Raffles, which may only be held for a charitable or public interest purpose,⁶ may be held no more than one time in a calendar month. At least 50 percent of the net revenues from the tavern raffle must be given to the designated charity within seven days of the raffle. Any net revenues not given to the designated charity are to be distributed according to the same 60/35/5 split as defined above.

⁵ The license fee was originally \$2,000. This was lowered by the PLCB to \$500 in July 2014.

⁶ A public interest purpose is one or more of the following:

- (1) The activities and operations of a nonprofit benevolent, religious, educational, philanthropic, humane, scientific, patriotic, social welfare, social advocacy, public health, public safety, emergency response, environmental, or civic objective.
- (2) Initiating, performing, or fostering worthy public works or enabling or furthering the erection or maintenance of public structures.
- (3) Lessening the burdens borne by government or voluntarily supporting, augmenting, or supplementing services which government would normally render to the people.
- (4) Improving, expanding, maintaining, or repairing real property owned or leased by an eligible organization and relating operational expenses used for purposes specified in paragraphs (1), (2), and (3).