

# TAVERN GAMING: CALENDAR YEAR 2021



March 2022

**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, an amendment to the Local Option Small Games of Chance Act, authorized small games of chance in Pennsylvania's taverns. It also directs the Legislative Budget and Finance Committee 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 (LBFC) 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 seventh report under this mandate.

### **The Impact of Tavern Gaming on the State Lottery<sup>1</sup>**

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

<sup>1</sup> 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 of 1961 did not apply to interstate transmissions of wire communications that do not relate to a "sporting event or contest" (sports betting), allowing for online lottery games and casino gaming. The 2011 DOJ Opinion was relied upon by many states, including Pennsylvania, for the implementation of their iLottery programs and Pennsylvania online casino gaming. However, in 2018, the DOJ reversed its position and issued an opinion that reapplied the Wire Act beyond sports betting. A lawsuit was filed against the DOJ's 2018 opinion, and the US District Court of New Hampshire ruled that the 2018 DOJ Opinion was invalid. The DOJ appealed this decision and in January 2021, the First Circuit Court of Appeals upheld the lower court's decision; therefore the 2011 DOJ opinion remains valid.

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 \$153,000 in tax revenue. Revenues had increased in successive years, until CY 2019, when there was a 19 percent decrease in tax revenues from the prior calendar year. There was a further decrease of 38 percent from CY 2019 to CY 2020 with revenues of \$1.37 million in tavern games and host municipality tax revenue in CY 2019 and only \$856,538 in CY 2020.<sup>2</sup> Tavern tax revenues rebounded in CY 2021, increasing by 48 percent from CY 2020. Exhibit 1 shows these tax revenues, for CYs 2017-2021, and Lottery revenues for the same period.<sup>3, 4</sup> For CY 2021, tavern game tax revenues were 0.07 percent of Lottery revenues.

Exhibit 1

**Tavern Games Tax and Lottery Revenue\***  
CY 2017-2021

<u>Calendar Year</u>	<u>Tavern Games Revenue</u>	<u>Lottery Revenue</u>	<u>Tavern Tax Revenue to Lottery (%)</u>
2017	\$1,443,622	\$1,464,025,910	0.10
2018	1,638,406	1,564,421,796	0.10
2019	1,374,100	1,595,846,207	0.09
2020	856,538	1,717,515,454 <sup>a</sup>	0.05
2021	1,266,131	1,864,127,740	0.07
<b>TOTAL</b>	<b>\$6,578,797</b>	<b>\$8,205,937,107</b>	

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

<sup>a</sup> Due to corrections in reporting, this number has been updated from last year's report. The tavern tax to lottery revenue percentage remained the same.

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

<sup>2</sup> We speculate that tavern revenue was lower in CY 2020 because of COVID-19; taverns were shut down several times throughout CY 2020 and therefore did not operate normally.

<sup>3</sup> 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.

<sup>4</sup> In 2017, Act 2017-42 authorized iLottery, which 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."

The \$856,538 in tavern game and host municipality tax revenue collected in CY 2020 represents about \$1.32 million in patron losses, as compared to about \$1.72 billion in patron losses for persons participating in Lottery games that year, as shown in Exhibit 2. Tavern gaming patron losses were less than one tenth of one percent (0.08 percent) of the losses incurred by those playing Lottery games. For CY 2021, this number increased to 0.10 percent, with lottery patron losses at \$1.86 billion and tavern games patron losses at \$1.95 million. This ratio remained very steady from CY 2017 to CY 2019, ranging from 0.13 to 0.16 percent, however, this number fell to 0.08 percent in CY 2020 and rose slightly in CY 2021 to 0.10 percent.

## Exhibit 2

### Ratio of Lottery Patron Losses to Tavern Game Patron Losses CY 2017-2021

<u>Calendar Year</u>	<u>Lottery Patron Losses</u>	<u>Tavern Game Patron Losses</u>	<u>Tavern Games to Lottery (%)</u>
2017	\$1,464,025,910	\$2,220,956	0.15
2018	1,564,421,796	2,520,624	0.16
2019	1,595,846,207	2,114,001	0.13
2020	1,717,515,454	1,317,751	0.08
2021	1,864,127,740	1,947,894	0.10

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 began 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 0.05 to 0.10 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, could 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 February 2022, the PLCB has approved 71 tavern gaming licenses from the 80 applications it has received; 45 licenses are active, three fewer than noted in our last report, and 22 licenses have expired.

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.

## **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.<sup>5</sup> 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.

## **Pennsylvania Costs to Administer Tavern Games**

The costs to administer tavern gaming are minimal for the three Pennsylvania agencies tasked with tavern game administration, the PLCB, DOR, and the PGCB. PLCB estimates \$36 per application in personnel costs, resulting in a net gain from the \$1000 in application fees received by the agency. Although the DOR does not receive any part of applicants' fees, it estimates its costs to be \$1157 per year, based on 31 hours of work annually. Total costs in CY 2021 for the PLCB to process applications and for DOR to administer tavern gaming were about \$1300.

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

The PGCB indicated that the precise costs to perform individual background checks for tavern gaming licenses vary based upon a variety of factors including, but not limited to, the scope of the investigation, the size and number of persons and entities in the ownership of an applicant, and the history and nature of any tax, criminal, civil or other regulatory matters. The individualized nature of the investigations precludes a generalized determination of costs which would be applicable across the board to all applicants. However, the PGCB believes that its costs to perform these checks are, overall, appropriately offset by the \$1000 fee.

## **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 number of prizes payable by a licensee from a tavern game.

Raffles, which may only be held for a charitable or public interest purpose,<sup>6</sup> 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.

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<sup>6</sup> 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).

