



WHO WILL REGULATE I-GAMING IN THE U.S., STATE GAMING COMMISSIONS OR STATE LOTTERIES? THIS DECISION MAY DETERMINE WHO BENEFITS ECONOMICALLY AND HOW MUCH THEY BENEFIT, AND WILL AFFECT THE COMPETITIVE LANDSCAPE OF THE ONLINE GAMING INDUSTRY

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Two bills filed in the Massachusetts Senate at the start of this year would authorize and provide for the regulation of certain types of online gaming in that state. The first, Senate Bill No. 101, would authorize the Massachusetts State Lottery to conduct lotteries online, to determine the types of online lotteries to be so conducted, the manner of selecting winners, the manner of paying prizes and the frequency of drawings or winner selection. The Bill would require that regulations be promulgated pertaining to online lotteries, and that such regulations provide, at a minimum, (i) age verification measures reasonably designed to block access to and prevent the sale of lottery tickets online to persons under 18 years of age, and (ii) measures reasonably designed to prevent the sale of lottery tickets online to persons located outside the Commonwealth. The Bill would specifically authorize the Lottery Commission to enter into the agreements with one or more states or other jurisdictions for the purpose of conducting multi-jurisdictional lottery games to be conducted online provided that any such online lottery game was properly authorized by each participating state and jurisdiction.

The second Massachusetts bill introduced at the start of 2013 would amend the 2011 Massachusetts law providing for three brick and mortar casinos and one slot parlor in the Commonwealth. Senate Bill 197 would provide for additional gaming licenses for online gaming operations, “provided that such operations do not include or reflect gaming mechanisms operated by the State Lottery Program [or] simulating or resembling slot machines, so-called . . .” Thus, online gaming under this Bill would be conducted under the regula-

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1) NGC Reg. 5A.140. 2) NRS 463.750. 3) American Gaming Association, 2012 State of the States: The AGA Survey of Casino Entertainment 18 (2012). 4) Id. 5) P.L.2013, c.27, §17. 6) <http://www.nj.gov/casinos/home/faq/index.html#nbr16>, last accessed March 17, 2013. 7) P.L.2013, c.27, §17. 8) <http://www.state.nj.us/lottery/mobile/where.htm>, last accessed March 18, 2013. 9) Id. 10) Gov. signs internet gambling into law,” NJ.com at [http://www.nj.com/politics/index.ssf/2013/02/gov\\_christie\\_signs\\_internet\\_ga.html](http://www.nj.com/politics/index.ssf/2013/02/gov_christie_signs_internet_ga.html), last accessed March 16, 2013. 11) 29 Del. C. § 4801(b). 12) 29 Del. C. § 4815(a)

tory authority of the Massachusetts Gaming Commission.

These two Massachusetts Bills present clearly the question that will be faced by states that determine to implement online gaming within their boundaries. Specifically, such states will need to decide whether the online gaming should be conducted by the state lottery pursuant to its regulatory authority and under its regulatory structure (appropriately amended to address the myriad issues online gaming presents), or whether online gaming should be regulated by existing (or newly established) state gaming commissions, which commissions usually are separate from and do not oversee state lotteries. This article does not purport to answer that question, but rather discusses three of the issues that will need to be considered by states facing this issue – (1) the state authority (e.g., the lottery or a gaming commission) that shall oversee online gaming; (2) the effect the choice of regulator may have on the percentage of online gaming revenue to be taxed, and (3) the effect the choice of regulator may have on the state-designated good causes to benefit from online gaming revenue. States can be expected to take guidance on these issues by looking to states that have already enacted laws authorizing online gaming. We refer herein to the online gaming laws enacted recently in Nevada, New Jersey and Delaware.

**NEVADA:** Nevada has no state lottery, so the decision to put online gaming under the authority of the Nevada Gaming Commission was therefore perhaps obvious. The Nevada Gaming Commission has extensive experience in licensing brick and mortar gaming facilities and, in addition, has issued licenses for “mobile gaming” since 2006. (“Mobile gaming” involves the use of mobile communications devices for the transmission of wagers that operate within the general boundaries of a casino/hotel resort facility). In November, 2011, Nevada passed a law authorizing intrastate “interactive gaming,” including, but not limited to poker, but excluding pari-mutuel wagering on racing events or wagering on sporting events. However, regulations promulgated under the law currently limit interactive gaming in Nevada to poker and its derivatives.<sup>1</sup> Nevada has been issuing licenses with respect to interactive gaming since approximately June, 2012, and to date has issued approximately 19 interactive gaming licenses (including operators and manufacturers) with 888 and Treasure Island recommended by the Nevada Gaming Control Board to be granted the 20th and 21st licenses by the Nevada Gaming Commission at the Commission’s meeting on March 21, 2013. Licenses to operate interactive gaming (in contrast with licenses to manufacture interactive gaming systems or provide critical interactive gaming services) are available only to existing licensed Nevada brick and mortar gaming facilities.<sup>2</sup> An interactive gaming operator’s revenue from interactive gaming is included with its revenue from non-interactive gaming and thus taxed at the same graduated tax rate, with a maximum tax rate of 6.75%. Additional fees and levies may be imposed by counties, municipalities and the state adding approximately 1% to the operator’s tax burden.<sup>3</sup> Revenue generated from gaming in Nevada benefits education, local governments, problem gambling programs and the State General Fund.<sup>4</sup>

**NEW JERSEY:** On February 26, 2013, Governor Chris Christie signed into law a New Jersey bill, Assembly Bill No. 2578, authorizing licensed Atlantic City casinos to conduct online gaming under the supervision and control of their existing regulator, the New Jersey Casino Control Commission. Permitted are all wagering games determined by the New Jersey Division of Gaming Enforcement to be suitable for online wagering. Because the operators of online gaming will be casinos already regulated by the Casino Control Commission, the decision to have online gaming regulated and overseen by the Commission is logical and efficient, and placing such gaming under the authority of the New Jersey Lottery would have subjected the casino operators to duplicative, and likely inefficient, regulation.

After initial licensing fees, online gaming gross revenues in New Jersey will be subject to a 15% tax, which shall be paid into the New Jersey Casino Revenue Fund.<sup>5</sup> This money shall not be subject to further taxation as casino gross revenue (brick and mortar casino revenues are taxed at 8%). By law, “moneys in the Casino Revenue Fund are appropriated exclusively for reductions in property taxes, rentals, telephone, gas, electric, and municipal utilities charges of eligible senior citizens and disabled residents of the State, and for additional or expanded health services or benefits or transportation services or benefits to eligible senior citizens and disabled residents.”<sup>6</sup> Online gaming operators shall be subject to the additional requirement that they invest at least 5% of online gaming gross revenue in cash contributions or real property improvements that benefit the state tourism industry or the health and well-being of the people of the State. In the event such investments are not made within the applicable time periods, an investment alternative tax in an amount equal to 2.5% of internet gaming gross revenue is imposed.<sup>7</sup>

By contrast, the New Jersey Lottery remits approximately 34.5% of its revenues to the State.<sup>8</sup> Lottery revenues in New Jersey are used to assist state college and universities, construct schools, provide assistance to psychiatric hospitals, veterans’ homes and special education programs, and to provide scholarships and grants.<sup>9</sup> Thus, although placing online gaming under the regulatory authority of the New Jersey Gaming Division was logical and efficient, a side effect of this decision appears to be that the rate at which online gaming revenues are taxed to benefit the State is in line with the tax rate applicable to brick and mortar casino gaming and not State Lottery gaming, and the revenues flowing to the state from online gaming will benefit primarily the same entities that are benefitted by casino gambling generally.

Note also, that unlike the Massachusetts bill that would place online gaming within the Massachusetts Gaming Commission, the New Jersey Lottery is not protected at all under New Jersey’s online gaming law. This is not surprising, because the purpose of the new New Jersey law was to help the State’s gaming industry in Atlantic City; protection of the State Lottery was not foremost in the minds of the sponsors of the new law. “Sponsors [of the New Jersey law] hailed the measure as one of the last chances to revive the state’s gaming industry, which has been battered by the proliferation of casinos in neighboring states.”<sup>10</sup>

**DELAWARE:** Delaware, has taken a different approach than Nevada and New Jersey. In 2012, Delaware passed a law authorizing online gaming under the regulatory authority and oversight of the Delaware Lottery. In authorizing the use of the internet for lottery games, the purpose of the Delaware legislature was to:

- (1) Expand access to certain lottery games by offering them on the Internet in a well-regulated and secure system designed to create a positive customer experience that limits access to minors, those with gambling problems, and others who should not be gaming;
- (2) Improve the competitiveness of Delaware’s video lottery licenses by encouraging reinvestment in their facilities and promoting the utilization of lottery games on the Internet at websites branded and promoted by the video lottery licensees and Delaware Lottery Office;
- (3) Provide further support to Delaware’s harness and thoroughbred horse racing industries by expanding the gaming offerings benefitting video lottery licensees and the horsemen who race there; and
- (4) Enhance the offerings of the Delaware Lottery by allowing it to develop keno and the sports lottery in a manner that promotes additional convenience and choices for Delawareans.<sup>11</sup>

Under the new law, revenues from lottery tickets, keno and online games shall be paid into a State Lottery Fund. After payment of lottery operation and administrative expenses (not to exceed 20% of the gross sales of such games) and prizes (not to be less than 45% of the aver-

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In celebration of the Lottery's 25th anniversary, we participated in an assortment of events surrounding the BCS College Football National Championship game, which included a BCS Fan Zone event at South Beach in Miami. The Lottery provided on-site entertainment including a variety of fun games and giveaways. Live on the field at the National Championship game, we awarded \$2 million among the five finalists selected in the MILLIONAIRE Second Chance Promotion.

On Saturday, January 12, the Lottery's official 25th anniversary, we held a series of 20 statewide radio remotes. These events included drawings where players had the chance to win TVs, gas and movie gift cards, Scratch-Off tickets and more.

### 3. Asset Replacement

In the months leading up to the new logo unveiling, each unit within the Lottery was tasked with identifying all materials that would require logo updates. The Lottery's branding committee then prioritized these materials into four tiers based on visibility, impact, cost and benefit to sales. Examples of first priority items were: retailer playstation decals, billboards, business cards and promotional goods needed for the events during the 25th anniversary week. We then moved to second and third-tier items and will continue to replace the retired logo.

Similarly, our Sales division formulated a strategic plan for rolling out the new logo at each of our more than 13,000 Lottery retail locations. As the new logo was being revealed by Secretary O'Connell at Lottery headquarters, our sales force was redressing Lottery equipment and replacing signage at 757 Publix stores around the state. By focusing first on our largest corporate chain, we were able to maximize exposure to a large audience right away. Next, we focused on redressing our highest-traffic retailer locations and have continued to work systematically until all retailers are fully-displaying the new logo in their store.

### III. CONCLUSION

Over the past 25 years, the Florida Lottery has experienced great growth, but we felt it was imperative that we remain fresh and innovative moving forward. Introducing a vibrant and exciting brand that attracts new players was a key component for our future success, and we believe the new logo and brand puts us in the position to excel for the next 25 years and beyond.

Our new brand was developed with one goal in mind: to refresh the appeal and excitement of the Florida Lottery in order to increase sales and maximize profits. Our plan included extensive research on our current and potential players; a thorough review of how we communicate the Lottery's message to the public, players, retailers and stakeholders; an audit of all our materials; a redesign of our outdated website; a plan for increasing social media efforts; a complete restructuring of our visual and graphic systems; and the redesign of the logo, including testing and review of the new logo.

We began this project with cost efficiency in mind as we did not want the rebrand to interfere with our mission of generating as much money for education. Knowing the new logo would soon be in place, we did not purchase any additional promotional items featuring the original logo. We have already begun recouping the costs of rolling out the new brand and will continue to with additional sales and transfers to the Education Enhancement Trust Fund.

Our organization is now better positioned to reach new heights with this brand refresh. We've already seen renewed excitement from our employees, retail partners and players, and are looking forward to sharing the Florida Lottery's reimagined future. ♦

age of the total amount of games sold), the funds generated shall flow to the State General Fund.<sup>12</sup> The Lottery shall undertake to provide into the General Fund 30% of the total revenues accruing from the sales of such games. Thus, the decision to place online gaming within the regulatory structure of the Delaware Lottery has resulted in the tax rate on such gaming and the beneficiaries of such gaming to be the same as that applicable to the Lottery, generally. As was the situation in New Jersey, the choice of regulator appears to have dictated the tax rate applicable to online gaming, as well as beneficiaries of such gaming revenues.

Like each of the above-referenced states, every state that considers online gaming will have a different historic and different policy approach to gaming generally, including different philosophies with respect to the uses of gaming proceeds. For example, lottery proceeds go to different causes depending on the state. In Massachusetts, they benefit cities and towns. In Pennsylvania, they benefit Pennsylvania's seniors, and lottery proceeds in Georgia are used for education programs, including early childhood education and scholarships for students studying at Georgia colleges and universities. In Colorado, lottery proceeds benefit environmental protection efforts, and in Delaware and in many other states, lottery proceeds go to the state general fund. So far, although only a few states have enacted laws authorizing online gaming, the decision as to what state agency regulates online gaming appears to have dictated to a large extent the online gaming tax rate and the beneficiaries of online gaming proceeds. This need not be the case. These issues should be considered separately, along with consideration also of the impacts, if any, online gaming will have on existing gaming in the state. (The economic effects of online gaming include not only tax revenue to be generated, of course, but also declines in gaming taxes generated by existing gaming that may suffer due to competition from online gaming.)

In summary, states that choose to implement online gaming will do so in a manner intended to yield the greatest possible benefit to their residents. Across the United States, in general, a greater proportion of lottery sales proceeds is returned to states than the proportion of proceeds returned from (i.e., taxed on) casino gaming. While a higher return rate (or tax rate) does not necessarily translate into a greater absolute economic benefit to states, it is a good indicator, if all other factors are nearly constant (which is rarely the case). It therefore will be instructive to learn whether online gaming proceeds returned to state in Delaware – i.e., approximately 30% of online game sales – are more per capita than in New Jersey, where online gaming proceeds will be taxed at a 15% rate. (Admittedly, such a comparison between or among states can be one of apples to oranges, as there will be different games, different prize pay-outs and different propensities to play between and among states.) In addition, as more states authorize online gaming, it will be interesting to see if the choice of state regulator dictates the entities that benefit from such online gaming. Such appears to be the case thus far, but need not be going forward. No doubt Delaware, New Jersey and Nevada will be scrutinized closely by other states considering authorizing online gaming. While each state will implement online gaming differently, over time we expect that the implementation, applicable licensing and operating regulations and the online gaming tax rates will become more uniform. ♦