

Hearing on Keno Bingo & Slots
IRS Auditorium, Internal Revenue Building,
1111 Constitution Avenue NW.,
Washington, DC.

June 17, 2015
10:00 a.m.

My name is Alex Waldrop. I am the President and Chief Executive Officer of the National Thoroughbred Racing Association. The NTRA appreciates this opportunity to respond in person to your proposed amendments to the “Treasury Regulations” relating to the reporting and withholding of winning pari-mutuel wagers.

The NTRA is a broad-based coalition representing all segments of the Thoroughbred horse racing industry, including more than 100 racetracks and other horse racing organizations and thousands of individual stakeholders such as horseplayers, owners, breeders and trainers.

It is the position of the entire horse breeding and racing industry that these Treasury Regulations need to be modernized to ensure that both the withholding and reporting of winning pari-mutuel wagers accurately and fairly reflect the realities of wagering in the 21st century. Specifically, we respectfully request that The Treasury Department and the Internal Revenue Service amend the Treasury Regulations and related forms to include a definition of the “amount of the wager” that encompasses the total amount wagered by a bettor into a specific pari-mutuel pool for purposes of determining whether any wagering proceeds paid to the bettor from that pari-mutuel pool are subject to withholding and reporting.

Modernization of the reporting and withholding of winning pari-mutuel wagers has received unprecedented support from within the horse breeding and racing industry, a \$26 billion industry that nationwide accounts for nearly 400,000 jobs and produces almost \$2 billion in tax revenue.

In response to your request for comment, nearly 12,000 comments were submitted directly to the Treasury by individual bettors, fans and stakeholders. This represents 83 percent of the total number of comments submitted during the 90-day comment period. Comments came from residents in all 50 states and the District of Columbia. In addition to a nine-page submission by the NTRA, dozens of organizations, representing every sector of the Thoroughbred, Quarter Horse and Standardbred racing, submitted letters to Treasury in support of the NTRA's proposed change. The effort also received strong backing from a number of members of Congress who realize the economic benefits derived from a healthy and vibrant horse industry in their home states. And editorials and columns supporting the measure have also appeared in numerous media, including *The Washington Post* and ESPN.com. The diversity, scope and volume of the responses reflect the fact that the modernization we are pursuing is widely supported by every facet of the horse racing and breeding industry.

First, a very brief explanation of pari-mutuel wagering is in order. In essence, pari-mutuel wagering is a betting system in which bets of a specific type are placed together in a single pool, and after deducting taxes and commissions, the balance of the pool is paid out on a pro rata basis among all winning bets. Thus, in pari-mutuel wagering, the bettors themselves establish the odds and payouts.

The poster to my [right] is the official chart for wagering on this year's Kentucky Derby. It sets forth the pools and payouts for each of the 23 pari-mutuel pools created for the various wagers

offered on that race. For example, note that there is only one pool for all superfecta betting on the Derby race.

A superfecta wager is one in which the bettor attempts to pick the first four finishers in a given race in order.

Every superfecta wager on this year's Kentucky Derby went into the superfecta pari-mutuel pool. The total amount wagered into that pool by each individual bettor determined the odds and the amount of the winning superfecta payoff. Yet, where tax withholding and reporting are concerned, guidance published by Treasury and the Service states that the "amount of the wager" is limited to the cost of a single winning combination. This needs to change because it is outdated, unfair and overly burdensome.

The current withholding and reporting rules were developed nearly forty years ago when ninety percent of all bets were straight win, place and show wagers. As demonstrated by the chart of the 1978 Kentucky Derby, in 1978, there was only straight win, place and show wagering offered on the Derby. This was typical of wagering during that time period. And few, if any of these straight bet types resulted in a winning payoff 300 times as large as the amount wagered – a key threshold for tax withholding and reporting purposes. But increased competition led to the development of multi-race and multi-horse wagers also known as "exotic" wagers. Today, nearly seventy percent of all wagers are exotic wagers like the superfecta because they offer the ability to wager on combinations of multiple horses and the prospect of bigger pay-offs.

It is important to remember, however, that each exotic bet type – like the superfecta – still is one, separate pari-mutuel pool just like the win, place, and show wagers.

Currently, pari-mutuel winnings are subject to withholding if, one, the proceeds from a wager are more than \$5,000 and, two, such proceeds at least 300 times as large as the “amount of the wager.”

Similarly, pari-mutuel winnings are subject to reporting by filing a Form W-2G if, one, the proceeds from a wager are \$600 or more and, two, such proceeds are at least 300 times as large as the “amount of the wager.”

Thus, the determination of the “amount of the wager” is pivotal to a determination of both the proceeds from a wager and whether such proceeds meet the 300:1 ratio yet the Treasury Regulations are silent on how to calculate this all-important phrase, the “amount of the wager.”

Historically, the interpretation of Treasury and the Service that the “amount of the wager” is the cost of a single winning combination didn’t really matter when almost all our wagers were straight wagers. That is because, as stated above, straight wagers rarely, if ever, exceed the 300:1 ratio test. But everything has changed with the growth of exotic wagers with big payoffs. These have triggered a rapid rise in frequency of both reporting and withholding.

In fact, the Treasury Regulations imply that all wagers made by a bettor into a single pari-mutuel pool should be considered identical wagers and thus combined as a single wager. It is actually the Instructions for Forms W-2G and 5754 that treat exotic wagers in the same pari-mutuel pool as separate wagers.

The Instructions state that in the case of a \$12 trifecta bet, the wager is considered as 6 two dollar bets when the cost of the base bet is two dollars, and not one \$12 bet for purposes of computing the amount to be reported or withheld. These Instructions ignore the fact that even though the winner's share of the pari-mutuel pool is calculated using only the \$2 base bet amount, the actual cost of the winning ticket to the bettor is \$12, not \$2.

Since all six two dollars wagers were combined in the same trifecta pool, they should be considered identical wagers and combined into one wager for withholding and reporting purposes.

Back to our Derby superfecta example, it is very likely that many of the individuals holding winning Derby superfecta tickets won little or no money when considering the full cost of their superfecta wager, only to find themselves standing in line at an IRS window due to the fact that the wager paid \$634.10 on a single winning combination of one dollar.

I refer you to the NTRA's nine-page submission for other striking examples that demonstrate how following the current instructions results in exaggerated pari-mutuel winnings and unfair tax results.

And this antiquated policy is costing the horse racing industry a lot. One commentator estimated that the current policy of considering only the cost of the single winning ticket is costing the racing industry hundreds of millions of dollars every year by taking money out of circulation that otherwise would have been repeatedly re-bet, and by driving high-end players away from the game entirely. Think of this as lost revenue not just for the industry but for the federal government as well.

The current rules are also burdensome, not only to our industry, but also to the Service. Every one of horse racing's 1,200+ wagering service sites must calculate, track, report and sometime withhold from winning tickets and then forward to the Service that information and related withholdings.

This process requires the onerous expenditure of thousands of man-hours processing withholding obligations and producing Forms W-2G.

In light of the foregoing, and to reflect the modern realities of wagering, we respectfully request that Treasury revise and update the Regulations and related instructions to include a definition of the "amount of the wager" that encompasses the total amount wagered by a bettor into a specific pari-mutuel pool for purposes of determining whether wagering proceeds paid to the bettor from that specific pari-mutuel pool are subject to withholding and reporting.

We appreciate this opportunity to comment on the Regulations in connection with the proposed regulation project and I would be pleased to answer any questions.