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THE .5% SOLUTION

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The .5% Solution

Governor Pataki's New York State budget was released on Wednesday January 29, and in his budget proposal, the Governor recommended that .5% fee be placed on all wagers in New York State. The purpose of this fee was to provide full funding for the racing regulatory activities of the New York State Racing and Wagering Board.

This change would result in the Racing and Wagering Board's budget no longer being included as part of the State's overall general fund. Instead, the expenses of the Racing and Wagering Board would be paid for totally by the industries regulated by the Board. Already, the Indian tribes with compacts with New York State reimburse the Board for the Board's Indian gaming regulatory budget, and the charities and non-profits that sell bell jar tickets¹ help pay for the Board's regulation of charitable wagering. This proposal would place the racing industry in a similar position.

This .5% fee is part of a budget package of racing proposals which includes opening up New York State for unlimited out-of-state simulcasting, ending a minimum balance for telephone wagering accounts, and ending some of the regulatory approvals required of racetracks and OTB's in New York.

Whether it is a fee, a levy, a reimbursement, or a tax, the .5% imposition will significantly increase revenue from racing in New York State. Pari-mutuel taxes currently raise \$29.6 million.² Under the budget proposal, such levies will increase to \$47.725 million, which is an increase of 61.2%. Thus, the proposal amounts to a significant increase on the State's levy on horse racing.

The imposition also falls particularly heavily on the State's harness tracks. They have opposed increases in out-of-state simulcasting for years, based on their belief that bettors will wager on thoroughbred racing at night instead of harness racing if bettors are given that right. The unlimited simulcasting proposal will end the monopoly on evening simulcasting previously held by harness racing. It has the potential to further depress handle on harness racing in New York. The harness tracks also – with the exception of Vernon Downs – do not maintain telephone-wagering accounts. Therefore, they are not benefited significantly by the reduction of the minimum phone account balance. Finally, the harness tracks currently pay only a minimum tax on their wagers. The .5% levy more than doubles the fees/taxes that the harness tracks pay.³ The harness tracks in this bill see

¹ In most states, bell jar tickets are known as pull-tabs.

² This number does not include revenue received by the State from uncashed pari-mutuel tickets, fines placed on participants in racing, simulcast fees, and license fees. All told these fees might run close to \$9 million. This number would permit some in the racing industry to make the claim that they already pay for the Racing and Wagering Board.

³ The budget claims that harness tracks currently pay \$700 million in pari-mutuel taxes. The Budget proposal would increase this figure to approximately \$1.75 million.

their levies more than doubled, lose their monopoly on evening racing, and receive no benefit from the changes in the telephone wagering accounts.⁴

The harness tracks are being asked to pay the same levy as the other entities in racing which are likely to be helped by the bill. This makes little sense when the harness tracks - which have seen their attendance and handle evaporate over the past quarter-century - not only are clearly the most vulnerable group in New York racing but also represent the only private investors in New York tracks. If there is a group that shouldn't be taxed, it's the harness tracks.

Fortunately, there is a solution to the .5% levy. Look at the dollars. The Budget Division estimates that a .5% levy will raise \$16.06 million, based on its belief that the other changes in the law will result in New York State handle increasing to \$3.212 billion. The Racing and Wagering Board, again according to the Budget, needs only \$12.2 million. Thus, there is some room in the Budget figures to adjust the .5% figure based on the actual fiscal needs of the Racing and Wagering Board.

Currently, based on the 2001 report of the Racing and Wagering Board. 72% of the State's racing handle comes from the State's OTB's. The Budget Division estimates that this percentage will – even without any changes in the law – increase to 72.7% in the upcoming fiscal year. Unlimited simulcasting will be of particular benefit to the OTB's. They have lobbied for this legislation for years, and it is reasonable to believe that should unlimited simulcasting be authorized, OTB handle will increase to more than 75% of the State's wagering total.

75% of \$3.212 billion is \$2.409 billion. If you place a levy of .5% on this \$2.409 billion OTB handle, this would raise \$12.045 million. This almost by itself pays for the Racing and Wagering Board, and since the OTB's are the primary beneficiaries of this legislation, it makes even more sense that they pay a fee for the benefits they have been granted by the bill.⁵

To make up for the difference between the OTB share and the \$12.2 million required by the Board, a small fee of only .1% could be imposed on the New York Racing Association [NYRA]. Of the racetracks, NYRA is the least hurt by the remainder of the proposal. NYRA maintains a telephone wagering account system, but the current minimum balance is an onerous \$450. A reduction to zero for phone minimum balances could be of significant help to NYRA, especially if NYRA is able to link its phone account system to the one maintained by the Television Games Network, and/or is able to place its races on cable television. NYRA also does not have a monopoly on afternoon thoroughbred racing. There are already are two full out-of-state cards (and thee in the winter) of thoroughbred racing allowed during NYRA races. Authorizing evening

⁴ Much of this analysis also applies to Finger Lakes, which is New York's sole for-profit thoroughbred racetrack. It is the position of this paper that Finger Lakes should not have to pay any additional fees on wagers placed at that track.

⁵ All handle at Western Regional OTB, including handle at Batavia Downs, the harness track that it owns, should be subject to this .5% levy.

thoroughbred simulcasts is certain to have a greater impact on harness tracks than on NYRA. Finally, NYRA is a non-profit racing association. It's not as if a .5% levy will discourage NYRA investors. There are no NYRA investors.

NYRA handle is likely to be about \$500 million. A .1% levy will raise \$.5 million. Combined with the OTB levy, this raises \$12.7 million, which is more than enough to pay for the Racing and Wagering Board. Even if total racing handle falls short of the Budget estimate by \$100 million (and is only \$3.112 billion), the Racing and Wagering Board is covered. Assuming that OTB handle is 75% of \$3.112 billion, a .5% levy on that amount raises \$11.67 million. With half a million from a .1% levy on NYRA, the levy will raise \$12.167 million, which is essentially the cost of the Racing and Wagering Board.

The point of the Governor's budget is to avoid job-killing taxes that would discourage private investment in New York. It makes far more sense in the racing world to try to avoid these job-killing taxes by trying to limit their effect on private enterprises. This can be accomplished in the racing field by imposing a .5% levy on the OTB's (which are affirmatively benefited by the provisions of the legislation) and a smaller .1% levy on NYRA – which also receives certain benefits under the bill. This will fully fund the Racing and Wagering Board and actually be far more equitable to New York's for-profit racetracks.