GAMING REGULATIONS AND STATUTORY REQUIREMENTS

Delaware

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Regulatory Oversight

COMMERCIAL GAMING

Governing Body: The Delaware State Constitution Art. II §17 generally prohibits gambling but allows for lotteries "under state control for the purpose of raising funds." The term "lottery" is not defined in the constitution but has been interpreted by state statute to include VLTs, Internet gaming, table games and sports betting. Consequently, the operation of VLTs, Internet gaming, table games and sports betting in Delaware is supervised by the lottery, a division of the Department of Finance, and governed by the Video Lottery Regulation and Title 29 of the Delaware Code, Chapter 48. The lottery is operated by a director who is appointed by the secretary of finance with written approval from the governor.

Licensing

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Operator: Racetracks in the state may operate a video lottery, table games and sports betting on their premises. Racetracks used to be charged a $13.25m licensing fee to operate table games, however, a law enacted in 2018 eliminated the annual licensing fee. Racetracks are not subject to a licensing fee for the operation of video lotteries.

Each racetrack is restricted to no more than 2,500 VLTs, but with the lottery director's approval, a racetrack may operate up to 1,500 additional VLTs.

Supplier License: Delaware uses a vendor procurement procedure for selecting technology providers for the state's gaming equipment. Vendors in the state must pay a $4,000 initial license that runs for two years and can be renewed at $4,000 for three-year periods. Non-gaming vendors in the state must pay a $2,000 initial license fee that runs for three years and can be renewed at $2,000 for four-year periods.

Taxation & Tribal Revenue Sharing

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Gaming Tax Rate: The Delaware State Lottery Office owns or leases all VLTs at all three of the state's racetracks and generally leases the VLTs to racetrack operators. The state collects and distributes VLT revenues in the following order:

- Approximately 42 percent of the revenue is paid to the three tracks as commissions for operating the games.
- Approximately 40 percent is contributed to the State General Fund to help pay for state services.
- Approximately 10 percent goes toward increasing the size of the horse race purses.
- Approximately 7 percent goes toward leasing, servicing and upgrading the games, and for monitoring the games with the lottery's central computer system.

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Table games are subject to a 15.5 percent tax on licensees and a 4.5 percent purse supplement. 29 Del. C. §4815(c) states revenues generated from sports-betting operations are required to be allocated in accordance with the following parameters

- 50 percent is contributed to the state's general fund, where funds must be allocated to state services.
- 40 percent should be directed back to the operating racetracks in the form of commissions for operating the games.
- 10 percent of the revenues should be allocated to increasing the size of racing purses.

Taxation and revenue distribution for Internet table games and video lottery games is roughly the same as land-based table games and video lottery games. Table games are subject to a 15.5 percent tax on licensees and a 4.5 percent purse supplement. 29 Del. C. §4815(d). Internet video lottery games are subject to a 42.5 percent state tax and a 10 percent purse supplement. 29 Del. C. §4815(b). Not less than 30 percent of the total revenues accrued from the sales of lottery ticket games shall be deposited in the state general fund. 29 Del. C. §4815(a).

However, this revenue structure will be applied to gross revenues only after the first $3.75m in proceeds has been transferred to the state lottery fund.

Tax Allocation: Revenue from video lottery games is distributed as follows:

- 39 percent to the State General Fund;
- 43 percent to the racetracks as commission;
- 10 percent for horse racing purses; and
- 8 percent in vendor fees.

For table games, 15.5 percent goes to the State General Fund and 4.5 percent goes to horse racing purses.

For the state's Internet lottery, the operation and administration of Internet gaming is taken off the top. Then, the next $3.75m goes to the State Lottery Fund. Finally, the revenue distribution is the same for the land-based version of video lottery and table games.

For sports betting, 50 percent goes to the State General Fund, 10 percent goes to racing purses and 40 percent goes to the racetrack casinos as commission.

Promotional Credits: The amount of free promotional play permitted shall be recommended by the lottery director and approved by the secretary of finance. The amount of money given away as free promotional play and used by players shall not be included in the amounts remaining after all payments to players.

Withholding Tax on Gambling Winnings: Delaware does not withhold winnings for state purposes.

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Responsible Gaming

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Statutory Funding: By mandate, $1m or 1 percent of electronic gaming machine proceeds, whichever is greater, goes to Delaware's Department of Health and Social Services, Division of Substance Abuse and Mental Health, for funding programs for the treatment, education and assistance of problem gamblers and their families.

Additionally, $250,000 or 1 percent of table game revenue retained by the state, whichever is greater, goes to aid responsible gaming.

Self-exclusion: Delaware has a state-mandated self-exclusion program for the state's racetrack casinos. 29 Del. C. §§ 4832 to 4836. There is also a self-exclusion program for the sports lottery. Rule 13.

The minimum length of self-exclusion is one year; however, a person may also request a five-year ban or a lifetime ban. Family members cannot place a relative on the self-exclusion list in Delaware; it must be done by the person wishing to be excluded.

Self-exclusion also covers sports betting and Internet gaming.

Alcohol use: Operators do not offer complimentary alcoholic beverages to those gaming at racetrack casinos.

Advertising Restrictions: All advertising must be approved by the Delaware State Lottery.

Further, an operator of an internet website, online or cloud computing service, online application, or mobile application directed to children may not market or advertise "Lottery, internet lottery, internet table games, internet ticket games, internet video lottery, sports lottery, table game, video lottery, or video lottery facility" on that internet website, online or cloud computing service, online application or mobile application.

In addition, advertising and promotional materials for sports lottery must not result in an appearance which reflects adversely on the agency, would offend a substantial number of people, contain inaccurate or misleading information, or otherwise be inappropriate.

On-Premise Display Requirement: The lottery director is responsible for determining the regulations and procedures for the display and presentation of messages concerning responsible gaming and the regulations, procedures and training for identification of, and assistance to, compulsive gamblers.

Restrictions on Minors on the Gambling Premises: A person must be 21 years old to enter the gaming floor.

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Other Regulations

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Testing Requirements: The lottery director shall contract with an independent laboratory, which the state shall license to test gaming machines, table games and related equipment. The manufacturer, vendor or lessor of such machines and equipment shall pay all costs associated with such testing.

AML Requirements: Under federal U.S. law, commercial casino operators, tribal gaming operators and card clubs are required to comply with various statutes to prevent money laundering activities and other financial crimes, including terrorism financing.

Shipping Requirements: Before shipment into or out of Delaware, written authorization must be obtained from the Director of the Delaware State Lottery Office.

Credit Offered to Patrons: Delaware may extend credit to racetrack casino patrons in a commercially reasonable manner.

Political Contributions: There are no restrictions on political contributions from parties with gaming interests.

Smoking Bans: Under Delaware's Clean Indoor Air Act, smoking is prohibited in any indoor facility.

Cashless Gaming & Alternative Payments: Cashless gaming is permitted within Delaware. However, cryptocurrency is not currently accepted as a form of payment for gambling transactions.

Sports Betting

Authorized Operators: The Delaware Lottery is charged with regulation and oversight of the industry and sports betting is limited to the state's three casinos

The lottery also has 100 retail locations, but these are limited to dealing strictly with college and pro football parlay cards.

Mobile/Online: According to lottery officials, mobile sports betting is legal as Delaware allows online gambling, such as poker, but it is not currently offered.

Taxes and Fees: The State of Delaware receives 50 percent of sports betting revenue.

Amateur Restrictions: It is prohibited to bet on games that involve Delaware college teams but wagering on college games generally is allowed.

Tax on Promotional Credits: No.

Age Restrictions: Patrons must be 21 years of age for participation in sports lottery products.

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Internet Gaming

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Authorized Operators: Internet gaming may be offered via a website or websites branded and promoted by the state's three racetrack casino licensees.

Licensing: The state's three racetrack casino licensees are not required to obtain additional licensing.

However, technology service providers must be selected through a request for proposals (RFP) from the director of the Lottery.

Taxes and Fees: Technology service providers must pay an initial application fee of $4,000, which may be renewed annually for a fee of $4,000. If a vendor is already licensed as a gaming vendor under the Video Lottery and Table Games Regulation, a second license is not required.

Table games are subject to a 15.5 percent tax on licensees and a 4.5 percent purse supplement.

Internet video lottery games are subject to a 57 percent effective tax rate with revenues distributed in the following manner:

- Approximately 42 percent of the revenue is paid to the three tracks as commissions for operating the games.
- Approximately 40 percent is contributed to the State General Fund to help pay for state services.
- Approximately 10 percent goes towards increasing the size of the horse race purses.
- Approximately 7 percent goes towards leasing, servicing and upgrading the games, and for monitoring the games with the lottery's central computer system.

However, this revenue structure will be applied to gross revenues only after the first $3.75m in proceeds has been transferred to the State Lottery Fund.

Games Available: Slot machines (video lottery) and table games (baccarat, blackjack, twenty-one, poker, craps, and roulette or any variation of these games).

In addition, pursuant to the multi-state internet gaming agreement (MSIGA) in-state internet poker patrons in Delaware may compete with players in Nevada, New Jersey, and Michigan.