WEST VIRGINIA CODE: §29-25-21

§29-25-21. Taxes on games other than video lottery games.

(a) Imposition and rate of limited gaming profits tax. -- There is hereby levied and shall be collected a privilege tax against a gaming license in an amount to be determined by the application of the rate against adjusted gross receipts of the licensed gaming facility. The rate of tax is thirty-five percent. Of that thirty-five percent, thirty percent shall be directly deposited by the commission into the Historic Resort Hotel Fund created in section twenty-two of this article and the remaining five percent shall be directly deposited by the commission into the Human Resource Benefit Fund created in section twenty-two-a of this article. For purposes of calculating the amount of tax due under this section, the licensee shall use the accrual method of accounting. This tax is in addition to all other taxes and fees imposed: Provided, That the consumers sales and service tax imposed pursuant to article fifteen, chapter eleven of this code may not apply to the proceeds from any wagering with respect to a West Virginia Lottery table game pursuant to this article.

(b) Computation and payment of tax. -- The taxes levied under the provisions of this section are due and payable to the commission in weekly installments on or before the Wednesday of each week. The taxpayer shall, on or before the Wednesday of each week, make out and submit by electronic communication to the commission a return for the preceding week, in the form prescribed by the commission, showing: (1) The total gross receipts from the gaming facility for that month and the adjusted gross receipts; (2) the amount of tax for which the taxpayer is liable; and (3) any further information necessary in the computation and collection of the tax which the Tax Commissioner or the commission may require. Payment of the amount of tax due shall accompany the return. All payments made pursuant to this section shall be deposited in accordance with sections twenty-two and twenty-two-a of this article. Payments due to the commission under this section and payments due to the commission under section twenty of this article shall be sent simultaneously.

(c) Negative adjusted gross receipts. -- When adjusted gross receipts for a week is a negative number because the winnings paid to patrons wagering on the gaming facility's West Virginia Lottery table games exceeds the gaming facility's gross receipts from the purchase of table game tokens, chips or electronic media by patrons, the commission shall allow the licensee to, pursuant to rules of the commission, carry over the negative amount of adjusted gross receipts to returns filed for subsequent weeks. The negative amount of adjusted gross receipts may not be carried back to an earlier week and the commission is not required to refund any tax received by the commission, except when the licensee surrenders its license to act as agent of the commission in operating West Virginia Lottery table game under this article and the licensee's last return filed under this section shows negative adjusted gross receipts. In that case, the commission shall multiply the amount of negative adjusted gross receipts by the applicable rate of tax and pay the amount to the licensee, in accordance with rules of the commission.

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(d) Prohibition on credits. -- Notwithstanding any other provision of this code to the contrary, no credits may be allowed against any tax imposed on any taxpayer by this code for an investment in gaming devices and supplies, for an investment in real property which would be directly utilized for the operation of a gaming facility or for any jobs created at a gaming facility. Notwithstanding any other provision of this code to the contrary, the tax imposed by this section may not be added to federal taxable income in determining West Virginia taxable income of a taxpayer for purposes of article twenty-four, chapter eleven of this code.

(e) Tax imposed by this section is in lieu of other taxes. --

(1) With the exception of the ad valorem property tax collected under chapter eleven-a of this code, the tax imposed by this section is in lieu of all other state taxes and fees imposed on the operation of, or the proceeds from operation of West Virginia Lottery table games, except as otherwise provided in this section. The consumers sales and service tax imposed pursuant to article fifteen, chapter eleven of this code shall not apply to the licensee's gross receipts from any wagering on a West Virginia Lottery table game pursuant to this article or to the licensee's purchasing of gaming equipment, supplies or services directly used in operation of a West Virginia Lottery table games authorized by this article. These purchases are also exempt from the use tax imposed by article fifteen-a, chapter eleven of this code.

(2) With the exception of the ad valorem property tax collected under chapter eleven-a of this code, the tax imposed by this section is in lieu of all local taxes and fees levied on or imposed with respect to the privilege of offering a West Virginia Lottery table game to the public, including, but not limited to, the municipal business and occupation taxes and amusement taxes authorized by article thirteen, chapter eight of this code and the municipal sales and service tax and use tax authorized by article thirteen-c of said chapter.

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