2005 Amendments Concerning the Pari-Mutuel Tax on the Breeder's Cup Meets and a Pari-Mutuel Tax Credit for Off-Track Betting Corporations

Chapter 354 of the Laws of 2005 amends Articles II and IX of the New York State Racing, Pari-Mutuel Wagering and Breeding Law. Article II is amended by adding a new subdivision 5 to section 229, exempting a nonprofit racing association hosting the Breeder's Cup at one of its facilities from the pari-mutuel tax on its pools for the three-day Breeder's Cup Meet. Article IX is amended by adding a new section 910 providing for a nonrefundable pari-mutuel tax credit on New York State races to each regional off-track betting corporation (OTB).

Breeder's Cup Meet exemption

When a nonprofit racing association hosts the Breeder's Cup at one of its facilities on or after July 29, 2005, the association is exempt from the pari-mutuel tax on its pools for the Breeder's Cup Meet. The Breeder's Cup Meet consists of three days, beginning on the day before the Breeder's Cup races and ending on the day after those races.

For example, the New York Racing Association, a nonprofit racing association, conducted a Breeder's Cup Meet at Belmont Park on October 28, 29 and 30, 2005. The wagers placed at Belmont Park on races run at Belmont Park during these three days were exempt from the pari-mutuel tax.

(Racing, Pari-Mutuel Wagering and Breeding Law, subdivision 5 of section 229)

Pari-mutuel tax credit for off-track betting corporations

An off-track betting corporation (OTB) is entitled to a nonrefundable tax credit against its pari-mutuel tax which is calculated by taking 54% of the increase in the pari-mutuel tax (tax) on the OTB's daily wagers for each New York track over the average daily tax on wagers for such track for the base year of 2004. As outlined below, the credit is determined on a daily basis. The credit is available when the actual wagers for a **specific track** on a given day exceed the average daily wagers for that track in 2004. If the actual wagers for an individual track on a given day do not exceed the average daily wagers for that track in 2004, no credit is available for that track for that day (but there could be a credit available for a different track for that day). In addition, an OTB may not claim the credit for any track that was not in operation for some part of 2004. The credit is effective July 29, 2005, and applies to the tax on wagers placed on or after that date.

(Racing, Pari-Mutuel Wagering and Breeding Law, section 910)

Who is eligible for the credit?

Each OTB which operated for all or part of 2004 is eligible for the credit. Therefore, the Capital District Regional, Catskill Regional, Nassau Regional, New York City, Suffolk Regional, and Western Regional OTBs are eligible for the credit. The credit is claimed against the tax payable on Form AU-212, *New York State Pari-Mutuel Betting Tax Return*.

Computation of the credit

A – Determining the averages for 2004

Step 1 – Compute the 2004 average daily wagers for each track in New York State.

> To compute the OTB's average daily wagers for a specific New York track during the base year 2004, divide the total of that OTB's wagers for that track during the year 2004 by the number of racing days for the track in 2004.

> **Example – A1**

> *The number of racing days for Aqueduct in 2004 was 123 days. Corporation A's total wagers for Aqueduct in 2004 was $15,000,000. The corporation's average daily wagers for Aqueduct in 2004 are: $15,000,000 / 123 days = $121,951.*

Step 2 – Compute the 2004 average daily tax on wagers for each track in New York State.

> To compute the OTB's average daily tax on wagers for a specific New York track during the base year 2004, divide the total of that OTB's tax on wagers for that track during the year 2004 by the number of racing days for the track in 2004.

> **Example – A2**

> *Corporation A's total tax on wagers for Aqueduct in 2004 was $123,477. The corporation's average daily tax on wagers for Aqueduct in 2004 is: $123,477 / 123 days = $1,004.*

B – Determining the credit

Step 1 – Compare the day's wagers for the New York track to the average for 2004.

> If the OTB's wagers for a specific New York track on a given day exceed that OTB's average daily wagers for that track in 2004, go to Step 2. If they do not exceed that amount, the OTB does not qualify for the tax credit for that track on that day.

Example – B1

Corporation A's total wagers for Aqueduct on Day 1 of 2005 is $150,000. Since this amount exceeds the corporation's average daily wagers of $121,951 for Aqueduct in 2004, go to the next step.

Step 2 – Compare the day's tax on wagers for the New York track to the average for 2004.

If the OTB's tax on wagers for the day for the New York track exceeds the OTB's average daily tax on wagers for that track in 2004, calculate the excess and go to Step 3. If it does not exceed that amount, the OTB does not qualify for the tax credit for that track on that day.

Example – B2

Corporation A's tax on wagers for Aqueduct on Day 1 of 2005 is $1,500. Since this amount exceeds the corporation's average daily tax on wagers for Aqueduct in 2004 of $1,004, the corporation qualifies for the credit. Go to step 3.

Step 3 – Calculate the corporation's credit for the New York track.

Multiply the excess tax by 54%. This is the amount of the eligible tax credit for that track.

Example – B3

Corporation A's credit for Aqueduct on Day 1 of 2005 is: $1,500 – 1,004 = $496 x 54% = $268.

How is the credit computed for an OTB that qualifies for the simulcast credit under section 1011 of the Racing, Pari-Mutuel Wagering and Breeding Law?

New York State is divided into two racing zones. The first racing zone comprises New York City and the counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester. The second racing zone comprises all other counties.

During the period that a nonprofit racing association is simulcasting from a facility it owns in the second racing zone to another facility it owns in the state, an OTB operating in a county in which the nonprofit racing association maintains a facility is entitled to a credit of 25% of the pari-mutuel taxes on wagers placed at that OTB on races conducted by the nonprofit racing association.

When an OTB is entitled to the simulcast credit, the calculation of the pari-mutuel tax credit must reflect the deduction of the simulcast credit. This is accounted for in the calculation by reducing the increase in the day's tax on wagers by 25% before multiplying the result by 54%, which is equivalent to reducing the pari-mutuel tax credit by 25%.

Example - C

Races were conducted during 2004 and 200X at the Saratoga Thoroughbred Track (Saratoga), located in the second racing zone. The races were simulcast to Belmont Park, a facility in both Nassau and Queens Counties. Both racing facilities are owned by the same nonprofit racing association. The New York City OTB operated in Queens County and therefore was eligible for a simulcast credit against the pari-mutuel tax on its wagers for the races at Saratoga. The New York City OTB must reflect the simulcast credit in its calculation of the pari-mutuel tax credit.

To illustrate, assume the New York City OTB's wagers on races at Saratoga for August 1, 200X exceed its average daily wagers for the track in 2004. In addition, assume that the New York City OTB's tax on wagers on races held at Saratoga for August 1, 200X, is $6,000 before the simulcast credit and its average daily tax on wagers for races held at Saratoga in 2004 is $5,000 before the simulcast credit. Its tax on wagers for Saratoga on that specific day exceeds its average daily tax on wagers for Saratoga in 2004 by $1,000 before consideration of the simulcast credit. The credit may be calculated as follows:

Actual tax on wagers on races held at Saratoga for	
August 1, 200X before simulcast credit	*$6,000*
Average daily tax on wagers on races held at Saratoga	
in 2004 before simulcast credit	*$5,000*
Increase in the day's tax on wagers on races held at Saratoga	
for August 1, 200X before simulcast credit	*$1,000*
Reduction for simulcast credit ($1,000 x .25)	*($ 250)*
Increase in tax on wagers after simulcast credit adjustment	*$750*
Pari-mutuel tax credit ($750 x 54%) for August 1, 200X	*$405*

_____

In an alternative calculation, the 25% simulcast credit could be applied directly to the pari-mutuel tax credit computed for that day's races at Saratoga. If the pari-mutuel tax credit is $540 ($1,000 x 54%), the simulcast credit on that amount is $135 ($540 x 25%), for a net pari-mutuel tax credit of $405 ($540 – 135).

Applying the credit

Total credit for the month – To determine the maximum credit for each month, add the daily credits for each track.

Limitation - Since the credit is nonrefundable, it may not reduce an OTB's tax liability for the month below zero. In addition, any unused credit may not be carried forward or backward to another month. The credit is computed after deducting the simulcast credit.

Credit for a prior return - If an OTB determines that it could have claimed the credit on a return due August 31, September 30, October 31, or November 30, 2005, it may claim the credit on the return due January 3, 2006, and covering the period November 16 through December 15, 2005. The OTB should recompute its tax liability for each of those periods to determine the amount of tax it has overpaid, if any, and attach the returns showing the recomputations to the return due January 3, 2006.

The following table provides information to assist each OTB in calculating its 2004 average daily wagers for each track and its 2004 average daily tax on wagers.

Racing days in 2004 for tracks in New York State

New York State track	Days raced in 2004*
Aqueduct	123
Batavia Downs	87
Belmont	93
Buffalo	87
Finger Lakes	157
Monticello	230
Saratoga	36
Saratoga Harness	165
Syracuse Mile	3
Vernon Downs	44
Yonkers	207

*From the *Annual Report and Simulcast Report Calendar Year 2004*, prepared by the New York State Racing and Wagering Board.