

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

House Bill 3458

**FISCAL
NOTE**

By Delegates Flanigan, McGeehan, Stephens, Willis,

Sheedy, Hornby, and Akers

[Introduced March 17, 2025; referred to the

Committee on Finance]

1 A BILL to amend and reenact §29-22C-25 of the Code of West Virginia, 1931, as amended,
2 relating to the annual privilege tax levied on the privilege of holding a license to operate
3 West Virginia Lottery table games; exempting the first \$7,142,857.14 of annual adjusted
4 gross receipts from taxation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22C. WEST VIRGINIA LOTTERY RACETRACK TABLE GAMES ACT.

§29-22C-26. Tax on the privilege of holding a license to operate West Virginia Lottery table games.

1 (a) *Imposition and rate of tax.* -- For the privilege of holding a license under this article to
2 operate table games, there is levied and shall be collected from the racetrack table games
3 licensee the annual privilege tax imposed by this section. The tax shall be thirty-five percent of the
4 licensee's adjusted gross receipts that exceed \$7,142,857.14 from the operation of West Virginia
5 Lottery table games. For purposes of calculating the amount of tax due under this section, the
6 licensee shall use the accrual method of accounting.

7 (b) *Tax returns and payment of tax.* --

8 (1) The annual tax levied by subsection (a) of this section is due and payable to the
9 commission in weekly installments on or before the Wednesday of the calendar week following the
10 week in which the adjusted gross receipts exceeding \$7,142,857.14 were first received in a
11 license year and the tax accrued.

12 (2) The racetrack table games licensee shall, on or before Wednesday of each week, make
13 out and submit by electronic communication to the commission, a return for the preceding week, in
14 the form prescribed by the commission, showing:

15 (A) The total gross receipts and adjusted gross receipts from operation of West Virginia
16 Lottery table games during that week;

17 (B) The amount of tax for which the racetrack table games licensee is liable; and

18 (C) Any additional information necessary in the computation and collection of the tax

required by the commission.

(3) The amount of tax shown to be due on the return shall be remitted by electronic funds transfer simultaneously with the filing of the return. All payments received pursuant to this section shall be deposited in the Racetrack Table Games Fund in accordance with the provisions of section twenty-seven of this article.

(4) When adjusted gross receipts for a week is a negative number because the winnings paid to patrons wagering on the racetrack's West Virginia Lottery table games exceeds the racetrack'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 games 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.

(c) Tax imposed by this section is in lieu of other taxes. —

(1) With the exception of the ad valorem property tax collected under Chapter 11A 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 Services Tax imposed pursuant to §11-15-1 *et seq* of this code, shall not apply to the licensee's gross receipts from any wagering on West Virginia Lottery table games authorized pursuant to this article or to the licensee's purchase of gaming equipment, supplies or services directly used in operation of the table games authorized by this article. These

45 purchases are also exempt from the Use Tax imposed by §11-15a-1 *et seq* of this code.

46 (2) With the exception of the ad valorem property tax collected under Chapter 11A of this
47 code, the tax imposed by this section is in lieu of all local taxes and fees levied on or imposed with
48 respect to the privilege of offering West Virginia Lottery table games to the public, including, but
49 not limited to, the municipal business and occupation taxes and amusement taxes authorized by
50 §8A-13-1 *et seq.* of this code, and the municipal sales and service tax and use taxes authorized by
51 §8-13C-1 *et seq.* of this code.

52 (d) *Prohibition on credits.* -- Notwithstanding any other provision of this code to the
53 contrary, no credit may be allowed against the tax imposed by this section or against any other tax
54 imposed by any other provision of this code for any investment in gaming equipment, or for any
55 investment in real property, or in improvements to the real property, that is used in the operation of
56 West Virginia Lottery table games.

NOTE: The purpose of this bill is to exempt the first \$7,142,857.14 of annual adjusted gross receipts from the annual privilege tax levied on the privilege of holding a license to operate West Virginia Lottery table games.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.