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The _____ MICHIGAN GAMING _____ Newsletter



MICHIGAN GAMING CONTROL BOARD RELEASES DETROIT CASINO REVENUES & WAGERING TAXES FOR FEBRUARY 2019

In a [press release](#) dated March 12, 2019, the Michigan Gaming Control Board (“MGCB” or “Board”) released the February 2019 revenue figures for the three Detroit casinos – MGM Grand Detroit Casino, MotorCity Casino and Greektown Casino.

The three Detroit casinos reported \$114.6 million in aggregate revenue for February 2019, a 4.1% increase from the same month last year. The results were 2.2% above the monthly revenue in January 2019. Through February, the three casinos recorded a 2.3% aggregate revenue increase compared with results for the first two months of last year.

Please see the linked [State of Michigan official financial report](#).

Revenue increased at MGM by 7.9% to \$49.5 million. MotorCity recorded a revenue increase of 1% to \$38.7 million. Greektown revenue increased by 1.9% to \$26.4 million, all compared with February 2018 results.

The February 2019 market shares for MGM Grand Detroit, MotorCity Casino and Greektown Casino were 43%, 34% and 23% respectively.

During February 2019, the three Detroit casinos paid \$9.3 million in gaming taxes to the State of Michigan, compared with \$8.9 million for the same month last year. The three casinos reported submitting \$13.6 million in wagering taxes and development agreement payments to the City of Detroit in February.

All three casinos are subject to a wagering tax of 19%, with 10.9% of this levy payable to the City of Detroit and 8.1% payable to the State of Michigan. The figures released by the Board are the gross receipts less winnings paid to

wagerers. The figures do not include: 1) any fees or other relevant city, state or federal taxes; 2) wages and benefits paid to casino employees; 3) payments to suppliers, services providers or vendors; nor 4) other normal business expenses.

MICHIGAN HOUSE COMMITTEE TAKES UP GAMING BILLS PACKAGE

On Tuesday, March 12, the Michigan House Regulatory Reform Committee took up a package of gaming bills and heard testimony from a number of interested parties. The bills reviewed included HB 4307 (a modernization effort of the Michigan Gaming Control Act), HB 4308 and 4309 (bills legalizing fantasy sports and providing for its regulation and criminalization of unlicensed operators), HB 4310 (authorizing advanced deposit wagering for Michigan's horse tracks), and HB 4311 and 4312 (providing for the authorization and regulation of iGaming).

Modernization of Gaming Control Act

The committee took up the amendments to the Michigan Gaming Control Act first. Representatives of the three commercial Detroit casinos testified in support of the bill.

Michael Neubecker, President and CEO of MGM Detroit took the lead noting that the three Detroit casinos look at the bill as a modernization of the Gaming Control Act for an industry that is coming up on its 20th anniversary. They think that the modernization of the Act will set the casinos up for success. He noted "we're important to the state, we're important to the City, we employ a lot of people between the three casinos, approximately 8,000 individuals, we're a substantial source of revenue to the City of Detroit, we spend hundreds of millions of dollars on goods and services from suppliers in the City of Detroit." He noted that a lot of the bill changes will create opportunities for more people to work for the casinos and make it easier for local businesses to do business with the casinos.

Marvin Beatty, from Greektown Casino, said: "I think what is important to remember, from a

supplier standpoint, we have a very aggressive development agreement in the City of Detroit that insists upon us providing Detroit based local businesses with the opportunity to do business with the casinos. A lot of times contracts are very small, and when you talk about the fees and things that are necessary from the Gaming Control Act, it precludes a lot of companies from participating on the supplier side of the business." He said "it is important for the industry, it is important for the casinos being able to do business with minority owned or women owned businesses that have been excluded from the process because of cost, legal fees, and other things." He noted that the bill would make the industry more accessible to these types of businesses.

Bruce Dall, CEO of MotorCity Casino said: "Last year the three properties purchased almost \$235 million worth of goods and services, and of that 50% went to the targeted businesses. . . . We have worked with the Gaming Control Board and they agree that this bill gives them the flexibility. They can stop anyone from doing business at any time, so it doesn't stop their ability to do what they need to do, it just makes it easier for people to do business with us and for us to hire employees.

Fantasy Sports Bill

Following testimony of HB 4307, the committee next heard testimony regarding the fantasy sports bill. Ms. Erica Sechrist, a representative for FanDuel and DraftKings, testified providing historical information, including the fact that 19 states have already passed legislation authorizing fantasy sports. Rep. Frank Liberati (D) asked why fantasy sports are considered more of a game of skill whereas poker is not. Ms. Sechrist responded that the level of skill in fantasy sports is higher and players have to take into consideration a number of factors in order to be successful. Rep. Liberati asked if there was a certain percentage of skill that would result in a game not being gambling, with Ms. Sechrist responding that the determination is whether it is predominately skill or chance. After Ms. Sechrist

testified, Rep. Brandt Iden, the bill sponsor, testified. He responded to a question by Rep. Cambensy asking whether tribal casinos have to give up their sovereign immunity rights to participate by indicating that they tribes do not have to do so. While not testifying, all three Detroit casinos submitted cards indicating they supported the bill.

Advanced Deposit Wagering for Horse Racing Bill

The committee then received testimony regarding the advanced deposit wagering at horse tracks, HB 4310. The sponsor of the bill Rep. Vaupel said that internet gaming is a tool Michigan horse tracks need to survive. He testified that it would not be an “expansion of gaming” but simply legalization of the prevailing practices and subsequent regulation and taxation of those practices.

Representatives of the Michigan Harness Horsemen’s Association (Crystal Terrell) and Northville Downs (Mike Carlo) testified, opposing the bill as written. They both agreed that the modernization was necessary but objected to restrictive language in the bill that prevents offering historical races, pull-tabs, and slots. In response to a question about whether Third Party Facilitators are necessary, Mr. Carlo responded that you need to do business with them because they control the content and have been in business for several years and almost have a monopoly. Mr. Carlo said that the bill, in theory is good for the state and good for horse racing, but he asked for it to be tweaked to give them “every horse racing product that is on the market”. Brett Boyd, (former President of the Harness Horsemen’s Association) indicated that he was speaking on behalf of the economic engine of horse racing. He supported the bill. He indicated that he is a family farmer in Michigan, but a lot of farms are vacant now. He said that there are tons of opportunities to help the industry, including HB 4310. He suggested that revenue be sent from the iGaming bill to the Ag Equine Fund as well.

While not testifying, all three Detroit casinos submitted cards indicating they supported the bill.

iGaming Bills

The committee moved on to receive testimony on the iGaming bills (HB 4311 and HB 4312). Bill sponsor Rep. Iden testified first, noting that the bills are about updates, the future of the industry, staying competitive, having jobs in Detroit, and protecting consumers who are using illegal products, and to generate tax revenue. He noted that last session the identical legislation was passed by a supermajority of both houses only to be vetoed by the former Governor. Rep. Berden questioned why it was vetoed. Rep. Iden replied that the Governor was concerned with Lottery. Mr. Iden doesn’t believe it would impact Lottery revenue because it involve a different type of player. He believes that the online gaming will lead to an increase in revenue.

Representatives from all three Detroit casinos next testified in support of the bills. Michael Neubecker, President and CEO of MGM Detroit testified that the internet gambling is taking place now and this is an easy opportunity to draw a new source of revenue. He plans to use it to drive new business to the bricks and mortar casino. He said they have looked at the Lottery demographics, and believe there is a drastic difference between players.

Bruce Dall, President of Motor City Casino, said: “I know that there is some concern that we would move revenue from our bricks and mortar that has a higher tax rate to the Internet which has a lower rate. This ignores the business model of operating an Internet gaming site. Right now, typically, you pay 10-13% to the provider for the Internet gaming site, and we don’t do that for the bricks and mortar because we own the machines. So, immediately, that 10-13% make it on even ground with the 8%.” He said in addition there are also fees to Paypal and to Geolocation providers that drive up the cost of iGaming. “When you add it all up, it is actually more beneficial for us to drive revenue through our bricks and mortar casino, then to do it online. I actually look at this as a protection of

the bricks and mortar casino. It allows us to market to a whole brand new group of people.”

Marvin Beatty, representing Greektown Casino, testified that the important part is the revenue becomes part of the taxable benefit to the State and City.

Following the testimony from the Detroit Casinos, Mr. John Pappas, a representative of Geo Comply, testified in support of the bill. He indicated that his company provides the geolocation services for numerous states to ensure their online players are physically located in the state at the time the bets are placed. Finally, Mr. Nick Mennis and former attorney General Mike Cox representing the Stars Group testified in support of the bill. They noted that their company provides the back door operation to casinos that are allowed to participate in iGaming. Rep. Webber asked if the bill is comparable to other states, which Mr. Mennis and Mr. Cox confirmed. Rep. Liberati questioned how to stop the customers who are using illegal online gambling sites to use the legal ones. Mr. Mennis replied that the black market can't compete in a legal market, especially with harsh penalties for non-compliance. He pointed to the example of New Jersey where several black market sites have ceased to do business with the legalization of legitimate online sites. Rep. Hall asked about the varying tax rates across existing jurisdictions. Mr. Mennis replied that Pennsylvania's high tax rate is having a chilling effect and that Michigan's proposed rate is much better rate. Mr. Cox was asked about the new Wire Act opinion and its impact. He replied that iGaming can be kept intra-state and there are existing 1st and 5th Circuit Court of Appeals decisions directly on point. Furthermore, Mr. Cox noted that the Department of Justice does not make the law, legislatures do.

Charitable Gaming

Finally, the committee took up the charitable gaming bill sponsored by Rep. Chirkun. Rep. Chirkun noted that the bill was identical to the one that was passed with bipartisan support last session. He noted that he is willing to make changes to get support and that there is a revised

bill currently being drafted to address some concerns. Mr. Dane Nichols, a member of a Lions Club and representing six charitable organizations, testified in support of the bill. He testified that for many charities, charitable gaming is the best fund-raiser available, but he reported several problems in dealing with MGCB oversight. As the committee meeting had already gone over the allotted time, the chairman asked the committee clerk to enter several cards that had been submitted in support of the bill.

Timeline on Bills

While the exact timing is not apparent, the bill sponsors appear eager to move the legislation along quickly. The Regulatory Reform Committee has scheduled a hearing next Tuesday at 10:30. In a new procedure implemented this year, all House legislation must be also considered and approved by the newly formed House Ways and Means Committee that is chaired by Rep. Iden. Unlike the Regulatory Reform Committee, the Ways and Means Committee does not have a standing meeting. The legislature is also scheduled to take a two week break for spring break the weeks of March 25 and April 1.

MICHIGAN AG AND SEVERAL OTHER STATES FILE AMICUS BRIEFS IN FEDERAL LAWSUIT REGARDING RECENT WIRE ACT OPINION

Earlier this year, the Department of Justice (“DOJ”) released an opinion reversing its prior position on the Wire Act, now concluding that the Wire Act not only applies to sports wagering but all gambling that utilizes communications lines in interstate commerce. In response, the State of New Hampshire and New Hampshire's iLottery filed suit against the DOJ in federal court, arguing that the DOJ's recent switch was not supported by law and ignored the reliance that New Hampshire and other states placed upon the 2011 Wire Act opinion that ruled that the Wire Act did not apply to state-run lotteries that utilized the Internet for sales.

A Michigan company, NeoPollard Interactive, LLC, which is the provider for the New Hampshire iLottery's system as well as several other states, including Michigan, also filed a lawsuit in New Hampshire federal court. The New Hampshire court indicated in a filing that it is likely to consolidate the case with the New Hampshire Lottery case. Notably, former Lottery Commissioner Scott Bowen joined NeoPollard Interactive, LLC as a Senior Vice President upon his departure from the Bureau of State Lottery.

On Friday of last week, the state of Michigan filed an amicus curiae brief in the New Hampshire case supporting the positive of the state of New Hampshire and of NeoPollard. An amicus curiae is a brief that is filed in a lawsuit by interested parties that aren't actual plaintiffs or defendants in the lawsuit.

In the brief, the State of Michigan argues that the Wire Act interpretation puts the state in the untenable position of either suspending its iLottery program, continuing offering its iLottery products knowing that there is a chance that the DOJ might choose to prosecute the state, or to invest significant money and time in attempting to make modifications to comply with the new interpretation. Alaska, Colorado, Delaware, the District of Columbia, Idaho, Kentucky, Mississippi, North Carolina, Rhode Island, Tennessee, Vermont, and Virginia all joined in Michigan's brief. In addition, New Jersey filed a separate amicus curiae and the State of Pennsylvania attempted to intervene in the case. While the judge denied that attempt, the court did indicate that Pennsylvania could file an amicus curiae brief.

In conjunction with their complaints, both the State of New Hampshire and NeoPollard filed motions for summary judgment and requests for oral argument, arguing that the court needed to expedite the case as the DOJ has only delayed enforcement of its new policy on the Wire Act until June 14, 2019. The lawsuit was served on the DOJ on February 15, 2019 and, pursuant to Federal Rules of Civil Procedure, it has 60 days to respond unless the plaintiffs grant it additional time.

CAESARS WINDSOR COMPLETES FORUM TOWER RENOVATION

On Friday of last week Caesars Windsor announced that it completed its hotel room renovations in the Forum Tower according to the [Windsor Star](#). The room changes include a work station with USB ports, plus LED 55-inch flat-screen TVs.

"Our continued investment into our property demonstrates our ongoing commitment to our valued guests," Kevin Laforet, regional president for Caesars Entertainment, said to the [Windsor Star](#).

Renovations to the Augustus Hotel Tower will begin in late spring.

Photos of newly renovated rooms can be seen online at the [Caesars Windsor website](#) or in the referenced [Windsor Star article](#).