WILL RACING RECLAIM ITS SEAT ON THE THRONE? A NEW TAX REGULATION AND PARI-MUTUEL BETTING

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INTRODUCTION

Racetracks now have the ability to generate more pari-mutuel handle, horseplayers can keep more of their winnings, and the government can collect more tax revenue following years of lobbying by the National Thoroughbred Racing Association (NTRA) and the recent passage of new legislation.[1] On September 25, 2017, the Internal Revenue Service (IRS) and United States Department of the Treasury announced its formal adoption of a new regulation addressing the reporting and withholding of pari-mutuel proceeds for tax purposes.[2]

As host of the world's most horse racing dates, American thoroughbred racing is a lucrative industry that brings in more than $116 billion annually.[3] Despite this, the thoroughbred horseracing industry has faced decline over the last few decades. Nationally, thoroughbred racing declined in handle by 7.3 percent in 2008 and 9.8 percent in 2009.[4] One can speculate a few possible reasons for this decline, including the preference shift of the player to other forms of gambling;[5] the public's development over time of

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[1] *Horseracing Wins As Treasury/IRS Issue Updated Tax Rules*, NAT'L THOROUGHBRED RACING ASS'N (Sept. 25, 2017), https://www.ntra.com/wedidit/ [perma.cc/C6SV-83EP].

[2] *Id.*

[3] *American Horse Racing vs. the World: What's the Same, What's Different*, AMERICA'S BEST RACING: THE SPORT (Dec. 14, 2107), https://www.americasbestracing.net/the-sport/2017-american-horse-racing-vs-the-world-whats-the-same-whats-different [perma.cc/6NES-FDJ3]; *See also Annual Report 2015*, INT'L FED'N OF HORSERACING AUTHS., http://www.ifhaonline.org/resources/Annual_Report_2015.pdf [perma.cc/B9NV-5RXR].

[4] Bennett Lieban, *Reasons for the Decline of Horseracing*, THE NEW YORK TIMES: THE RAIL (June 16, 2010), https://therail.blogs.nytimes.com/2010/06/06/reasons-for-the-decline-of-horse-racing/ [perma.cc/C37N-3CFM].

[5] *Id.*

a negative perception of the sport due to issues like drug use and corruption; the use of a whip by jockeys, and concerns for the welfare of the horses related to potential overworking and medication;[3] a lack of knowledge about the sport (there is a significant learning curve an interested player must overcome before being able to make a knowledgeable bet); and government involvement. These are some of the most discussed speculations that may indicate why public interest has waned.[4] In 2009—a year American casinos generated more handle than racetracks—tribal and commercial casinos brought in $29.4 billion and $30.74 billion, respectively.[5] These figures represent a marked change for a sport, which approximately forty years ago, dominated the gambling industry.[6]

As of 2016, only one percent of Americans listed thoroughbred racing as their favorite sport.[7] There is much debate over whether the age of racing patrons is linked to a decrease in revenue.[8] In efforts to expand the pool of patrons at the tracks, The Jockey Club, a breed registry for thoroughbred horses, hired three men and women between ages twenty-one and twenty-seven to become "ambassadors" or "racing representatives" of sorts for the sport.[9] By taking a social-media and "lifestyle-driven" approach to marketing the sport to Generation X and Y, these representatives were one of the Jockey Club's proposed solutions to the revenue problem by combatting the age disparity at the track.[10] Some believe these efforts are futile, as horse racing patrons have historically always been older.[11] In 2011, the average

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[3] *Id.*

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] Jamie Rhodes, *Horse Racing Fading in Revenue, Popularity*, NEWSWEEK: REUTERS (May 8, 2016), http://www.newsweek.com/horse-racing-fading-revenue-popularity-457123 [perma.cc/DP3C-5HVX].

[8] Lieban, *supra* note 4; *Contra* Teresa Genaro, *In Search of Millennials, Thoroughbred Racing Hits SXSW*, FORBES: SPORTSMONEY (Mar. 6, 20013), https://www.forbes.com/sites/teresagenaro/2013/03/06/thoroughbred-racing-hits-sxsw/#4e5e16f31803 [perma.cc/9YSL-QHBP].

[9] Teresa Genaro, *In Search of Millennials, Thoroughbred Racing Hits SXSW*, FORBES: SPORTSMONEY (Mar. 6, 20013), https://www.forbes.com/sites/teresagenaro/2013/03/06/thoroughbred-racing-hits-sxsw/#4e5e16f31803 [perma.cc/9YSL-QHBP].

[10] *Id.*

[11] Lieban, *supra* note 4.

age of fans was fifty-one years old.[12] Those who believe patrons of the sport have always been older think the solution is not to get younger people to the track, but to get Baby Boomers back to the track, since their attention has been taken away from thoroughbred racing by other forms of gambling.[13]

In 2015, American Pharoah was the first thoroughbred to win the Triple Crown in 37 years.[14] This win was heralded not only as a win for American Pharaoh and his owners, but a win for "racing as a whole."[15] Before his win, profits were still down in the industry and many speculated that his win brought a level of vitality and interest back into the sport, demonstrated by an increase of U.S. races by 4 percent two years later, bringing in a total of $3.4 billion in handle.[16] The 2016 Derby alone brought in $196.2 million.[17] When Pharaoh's foals begin racing, people may once again migrate back to the tracks.[18] Despite the anticipation for his foals, a year after Pharaoh took the Crown the struggle continued.[19] As the "high" of Pharaoh's victory began to fade, new hypotheses of decline in the industry emerged. This time it was not only fading interest in the sport, but a lack of uniformity as well.[20] Currently, there is no central governing body that regulates the sport's 38 racing jurisdictions.[21] Instead, it is regulated on a state-by-state basis.[22] Some believe that not having a commissioner of some kind holds the sport back.[23]

This Note posits that a new regulation adopted by the IRS and Department of the Treasury will have a positive, multi-level impact on the horseracing industry. In addition, it will analyze future implications of this regulation, explore the NTRA's claims,

[12] Lexi Pandell, *The Quest to Make Horse Racing Cool Again*, WIRED (May 21, 2016), https://www.wired.com/2016/05/nyquist-must-win-preakness-make-horse-racing-cool/ [perma.cc/X6VB-BH8Z].

[13] Lieban, *supra* note 4.

[14] Pandell, *supra* note 14.

[15] *Id.*

[16] *See id.*

[17] *Id.*

[18] *See generally, id.* (American Pharoah's revival of the racing industry could reasonably lead to more individuals going to watch his offspring at the tracks to see if the foals will maintain Pharoah's sparkling reputation).

[19] *See* Reuters, *supra* note 10.

[20] *See id.*

[21] *Id.*

[22] *Id.*

[23] *Id.*

and the ways in which the regulation could breathe life back into the thoroughbred racing industry. Part II of this note will offer a definition and brief history of pari-mutuel betting. Part III will examine how the current tax regime affects the equine industry on all levels. Part IV will feature an in-depth analysis of the language in the provision, as well as its intended and unintended effects. All parts culminate in support of the conclusion that this new legislation, 26 C.F.R. § 31.3402(q)-1, will have a positive overall effect on the thoroughbred horseracing industry, potentially returning the industry to its former glory as the Sport of Kings.[24]

I. A BRIEF HISTORY OF PARI-MUTUELS

Originated by the French, "pari-mutuel" means "to wager among ourselves."[25] Black's Law Dictionary defines pari-mutuel betting as "a system of gambling in which bets placed on a race are pooled and then paid (less a management fee and taxes) to those holding the winning tickets."[26] The Oxford English Dictionary provides a similar definition: "A form of betting in which those backing the first three places divide the losers' stakes (less the operator's commission)."[27] In this form of wagering, players are pitted against each other instead of the odds being fixed by a bookie or house.[28] There are two kinds of pari-mutuel bets: straight and exotic.[29] Straight bets are simpler and cheaper than exotic bets.[30] In a straight bet, the player picks which horses they think will place in the top three (at most tracks today the minimum amount required to place a straight bet is $2).[31] Exotic bets, on the other

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[24] Michael Kilian, *The Evolution of the Sport of Kings*, CHICAGO TRIB. (May 4, 1988), HTTP://WWW.CHICAGOTRIBUNE.COM/NEWS/CT-XPM-1988-05-04-8803140377-STORY.HTML# [https://perma.cc/JBS2-J6WV].

[25] Joe Drape, *As Family Helped Build Betting System, It Witnessed Horse Racing History*, N.Y. TIMES (Jan. 31, 2016), https://www.nytimes.com/2016/02/01/sports/horse-racing/in-building-a-modern-betting-system-a-family-was-an-eyewitness-to-horse-racing-history.html [perma.cc/P3QS-A35Z].

[26] *Pari-mutuel betting*, BLACK'S LAW DICTIONARY (10th ed. 2014).

[27] *Pari-mutuel betting*, OXFORD ENGLISH DICTIONARY (2nd ed. 2018).

[28] Drape, *supra* note 28.

[29] Outside the Ring, *About Straight Bets in Horserace Betting*, THE PLAID HORSE (Aug. 2, 2017), https://theplaidhorse.com/2017/08/02/about-straight-bets-in-horserace-betting/ [perma.cc/R544-323C].

[30] *Id.*

[31] *Id.*

hand, are more complicated.[32] They allow for the player to put multiple types of wagers on different horses on the same ticket, allowing the player to wager on a variety of outcomes.[33]

Pari-mutuel wagering was invented by Frenchman Joseph Oller in Paris in the early 1860s.[34] Oller, an inventor, was also the owner of Moulin Rouge—one of the most famous nightclubs in the world.[35] Oller created a system based on total chance,[36] with a goal to create equity in the bets placed.[37] In his new system, after paying, the better would be assigned a horse at random on a race."The bettor paid for a chance and was randomly assigned a horse on a given race."[38] Betting and wagering in France was not illegal, but French authorities found Oller's system to be a form of an illegal lottery.[39] As a result Oller removed chance from the equation to create what we know to be pari-mutuels[40]—the bettors chose a horse for themselves.[41] In 1870, the Franco-Prussian War interrupted Oller's business, but after the war, it continued to thrive.[42]

In the 1870s Leonard Jerome, a racing and Wall Street executive,[43] was the first to bring Oller's pari-mutuel system to the American tracks.[44] After visiting Paris, Jerome admired the pari-mutuel wagering machines he saw there and wanted them at his own track in New York.[45] After Jerome's introduction, John Morrissey, a United States Congressman, a State Senator of New York, and former heavyweight boxing champion, continued the pari-mutuel system at his newly established Saratoga Race

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[32] *See id.*

[33] Withholding on Payments of Certain Gambling Winnings, 81 FR 96406 (proposed Dec. 30, 2016).

[34] Bennett Liebman, *Pari-Mutuels: What Do They Mean and What Is at Stake in the 21st Century?*, 27 Marq. Sports L. Rev. 45, 62 (2016).

[35] *Id.*

[36] *Id.* at 63.

[37] Alex Bochannek, *Racetrack Betting Mechanized*, COMPUTER HISTORY MUSEUM (July 31, 2013), http://www.computerhistory.org/atchm/racetrack-betting-mechanized/ [perma.cc/S9HV-3EGT].

[38] Liebman, *supra* note 37.

[39] *Id.* at 63.

[40] *Id.*

[41] *Id.* at 64.

[42] *Id.*

[43] Drape, *supra* note 28.

[44] Liebman, *supra* note 38, at 70-71.

[45] Drape, *supra* note 28.

Course.[46] However, following his involvement in a corrupt presidential election in 1876, pari-mutuel betting fell out of favor and became illegal when the New York legislature passed a law banning it in the late 1870s.[47] This state legislation metastasized and affected the prevalence of pari-mutuel wagering in the entire nation.[48] At the horse tracks, bookmaking replaced pari-mutuels to become the basis of wagering.[49]

After bookmaking fell to the Progressive Movement in the late nineteenth and early twentieth centuries, pari-mutuel betting returned with a bang at the 1908 Kentucky Derby.[50] "Progressives saw bookmakers as both immoral and dishonest and threatened the basic fairness of racing."[51] After bookmaking was outlawed in 1906, the only way for states like Kentucky to continue its success at horse racing was to adopt pari-mutuel wagering systems.[52] After successfully applying for and obtaining a racing license, Churchill Downs "brought in eleven pari-mutuel machines."[53] The machines were a huge success, bringing in approximately $80,000 of handle on Derby day.[54] The machines became a continuing success at the tracks. The 1911 Kentucky Derby alone brought in approximately $250,000 of handle.[55] Considering the inflation of the U.S. dollar over time, that would be the equivalent of more than $6 million dollars in 2017.[56]

Following World War I, pari-mutuel betting as a form of wagering grew.[57] Propelled by a combination of advances in the industry (to include the advancement of the technology of the wagering machines as well as professional horse racing increasing in popularity) and an economic boost during the Depression, pari-

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[46] Liebman, *supra* note 37, at 71.
[47] *Id.* at 72.
[48] *Id.*
[49] *Id.*
[50] *Id.* at 74.
[51] *Id.* at 73.
[52] *Thoughts on Pari-Mutuel Wagering, 1908*, COLIN'S GHOST (DEC. 14, 2009 10:04 pm), http://colinsghost.org/2009/12/thoughts-on-pari-mutuel-wagering-1908.html [perma.cc/US3T-2C9S].
[53] Liebman, *supra* note 37, at 74.
[54] *Id.*
[55] *Id.*
[56] *U.S. Inflation Rate, 1911-2017 ($250,000),*1911 dollars in 2017, http://www.in2013dollars.com/1911-dollars-in-2017?amount=250000, (Last accessed Mar. 8 2018) [perma.cc/3QK4-2B2K].
[57] Liebman, *supra* note 37, at 76.

mutuel wagering served as a tax-free source of revenue to states.[58] Automated betting machines began popping up at United States racetracks in the 1930s.[59] Harry Strauss, an engineer from Baltimore,[60] brought major improvements to pari-mutuel wagering,[61] building his American Totalisator betting machines from telephone relays.[62] He sought to perfect the original system created by Oller.[63] "To Strauss the problem was that the tickets were dispensed by hand, and the bets totaled manually. This made for a system that was slow, and often inaccurate in updating odds, which permitted cheating by clerks who might be able to place wagers on horses after the race had been run."[64] Strauss' method of managing pari-mutuel wagering remains the principle system in the American racing industry today.[65] This form of betting has been the main legal form utilized in the United States for the last 80 years,[66] as well as the main form of wagering used in thoroughbred horse racing.[67]

II. THE EFFECT OF TAX ON THE EQUINE INDUSTRY

A. The Effect of the Equine Industry on the Economy

Before discussing how taxation affects the industry, examining how the industry itself impacts the national economy, as well as Kentucky's, is the essential first step. In 2017, the American Horse Council conducted a nationwide study analyzing the impact of the horse industry on the U.S. economy.[68] The study reported that overall, the horse industry contributes $102 billion

[58] *Id.* at 77.
[59] Bochannek, *supra* note 40.
[60] *Id.*
[61] Liebman, *supra* note 37, at 77.
[62] Bochannek, *supra* note 40.
[63] Liebman, *supra* note 37, at 77.
[64] *Id.*
[65] *Id.* at 78.
[66] *Supra* note 55.
[67] *American Horse Racing vs. the World: What's the Same, What's Different*, THE SPORT (Dec. 14, 2017), https://www.americasbestracing.net/the-sport/2017-american-horse-racing-vs-the-world-whats-the-same-whats-different [perma.cc/7JLY-GUXS].
[68] *See generally Economic Impact of the United States Horse Industry*, AMERICAN HORSE COUNCIL, http://www.horsecouncil.org/economics/ [perma.cc/KEB2-H29W] (conducting another study of the same kind. Data should be made available at the beginning of February 2018).

to the country's Gross Domestic Product (GDP) via direct, indirect and induced spending, [69] and provides 1.4 million jobs nationwide.[70]

A similar study was conducted in 2012 by researchers at the Maxwell H. Gluck Equine Research Center at the University of Kentucky, focusing on the impact of the industry on the state's economy. Researchers conducted a two-phase study, including a statewide survey of equine operations across all horse breeds (Phase 1), as well as an economic impact study (Phase 2).[71] Phase 1 yielded important statistics on several facets of the industry within the state; Kentucky's total equine value and related assets are approximately $23.4 billion.[72] More than one million acres of land in Kentucky are dedicated for equine use.[73] Breeding is the most common use for horses in Kentucky, second to recreational use.[74] The estimated value of all thoroughbred horses in the state accounted for in the study was $5.5 billion.[75]

Examining three common measures of economic impact—the output effect, employment effect, and value-added effect—Phase 2 of the study examined the industry's influence on Kentucky's economy.[76] The output effect measures "the increase in sales of total goods and services due to the presence of the equine industry" and was approximately $3 billion at the time of the study.[77] More than half of that $3 billion was generated by horse racing alone.[80] The employment effect, which measures jobs created by the equine industry, totaled to approximately 40,665.[78] The value-added effect, which measures the "amount earned by an

[69] *Id.*
[70] *Id.*
[71] UNIV. OF KY. COLLEGE OF AGRICULTURE, FOOD, AND ENVIRONMENT, 2012 KENTUCKY EQUINE SURVEY 17 (2013), http://equine.ca.uky.edu/files/2012_equine_survey_report_final_4.pdf [perma.cc/JLH9-ZRVX].
[72] *Id.* at 5.
[73] *Id.*
[74] *Id.* at 12.
[75] *Id.*
[76] *Id.* at 5.
[77] *Id.* at 16 (among other fields like tourism and banking, this figure does not include amounts for pari-mutuel wagering when measuring for the output effect).
[80] *Id.*
[78] *Id.*

individual or business through the sale of goods and services," had an estimated impact of $1.4 billion.[79]

With this sizeable impact on the economy in mind, it is easy to see that this industry could not get by without being affected by tax.

B. Tax and the Equine Industry

In 2004, President George W. Bush signed the Foreign Sales Corporation bill into law.[80] At the time, the bill was the first major rewrite of a corporate tax law since 1986.[81] It was primarily designed to assist the manufacturing industry, which at the time was suffering a bout of major job loss.[82] The bill provided $136 billion in tax breaks in multiple industries spanning from Alaskan Whalers and NASCAR racetrack owners to farmers and large corporations.[83] Beyond corporate tax breaks, the bill proffered to make American wagering pools more attractive to foreign bettors by eliminating a thirty percent withholding tax imposed on foreigners playing in American pools.[84] The bill's proponents noted it would boost the entrainment and agribusiness side of the industry, as well as increase foreign wagering in U.S. races.[85] Wagering was becoming an international affair due to the technological advances of simulcasting and the tax was stifling the industry's growth.[86] The NTRA estimated that the bill could result in a $4.25 billion dollar increase in handle and an estimated $135 million boost in commissions for the U.S. racing industry.[87]

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[79] *Id.*

[80] *Bush Signs Foreign Sales Corp. Bill*, THOROUGHBRED DAILY NEWS, Oct. 23, 2004, at 4, http://www.thoroughbreddailynews.com/pdf/tdn/2004/tdn041023.pdf [perma.cc/G4W9-MYW4].

[81] *Bush quietly signs corporate tax-cut bill*, NBC News: Stocks & Economy (Oct. 22, 2004), http://www.nbcnews.com/id/6307293/ns/business-stocks_and_economy/t/bush-quietly-signs-corporate-tax-cut-bill/#.WqcM_GrwbIV [perma.cc/DH49-YJ3G].

[82] *Id.*

[83] *Id.*

[84] *Tax Break for Foreign Bettors?*, THOROUGHBRED DAILY NEWS, Mar. 6, 2003, at 3, http://www.thoroughbreddailynews.com/pdf/tdn/2003/tdn030306.pdf [perma.cc/YV3B-ZTYK].

[85] *Id.*

[86] Andrew Beyer, *International Wagers Open Brave New World*, LEXINGTON HERALD-LEADER, Dec. 13, 2003, at C13.

[87] *Supra* note 87.

Fast-forward more than a decade, when the equine industry has an annual $134 million-dollar tax impact on the national economy.[88] This number accounts for revenue from state income and sales tax.[89] Beyond state and sales tax, persons involved in the industry such as trainers, breeders, and buyers[90] must consider other tax implications, such as use tax and business expense versus hobby loss deductions on their gross income. State sales taxes are imposed on items of tangible personal property sold in retail in the state.[91] Sales tax also accounts for exemptions for certain activities, which of course vary from state to state. Kentucky, like other states, exempts equine sales if the horses are used for specific purposes like breeding or racing.[92]

Use tax, on the other hand, imposes a tax on state citizens when the tangible property was used and upon which no sales tax was collected.[93] This tax is paid by the property owner to the state where the tangible property was used.[94] Some states allow credits—dollar-for-dollar reductions on total income tax liability—for sales and use taxes vis-a-vis one another.[95] For example, in some states, if a taxpayer pays a use tax, he or she will receive a credit for sales tax paid on the property used.

In Kentucky, mare and stallion sales are typically subject to sales tax and owners are credited against the use tax.[96] Kentucky provides an exception to the use tax for mares and stallions used for breeding purposes.[97] Lifetime breeding rights, in contrast, are subject to both state sales and use taxes.[98] Mares sold and stallion shares sold for breeding purposes are exempt from

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[88] *Supra* note 73 at 17.

[89] *Id.*

[90] *Tax Help for Your Horse Business*, http://www.bluehorizonfarm.com/horse/tax_help.html (last visited March 13, 2018) [perma.cc/XJS7-GJ8Q].

[91] DINSMORE & SHOHL, LLP, EQUINE SALES AND USE TAX REVIEW 3 (2017), http://www.dinsmore.com/content/uploads/2017/07/2017-Dinsmore-Equine-Sales-and-Tax-Guide.pdf [perma.cc/PPY8-T4LC].

[92] *Id.*

[93] *Id.*

[94] *Id.*

[95] *Id.*

[96] *Id.* at 18-19.

[97] KY. REV. STAT. ANN. § 139.531(2)(a).

[98] Calumet Farm, Inc. v. Revenue Cabinet, 793 S.W.2d 830, 831 (Ky. Ct. App. 1990).

Kentucky's six-percent sales tax.[99] Although stallion shares sold for breeding purposes are exempt from the state sales tax, state sales taxes are imposed on stud fees.[100] At first glance, there may appear to be a lack of equity in the taxation of stud fees versus stallion shares. When comparing the initial amount paid by the investing taxpayer, however, one can see the equity in the transaction. Stud fees—fees paid for breeding a stallion to a mare[101]—vary depending on the stallion. These fees can reach staggering amounts. For example, the stud fee for Tapit, a retired American Thoroughbred racing stallion, was $300,000 in 2017.[102] Commanding that fee, Tapit became known as "America's most valuable stallion," bringing his owners over $35 million.[103] To own one share in Tapit with a breeding right in 2014 would cost a potential syndicate member $2.8 million, making Tapit's total value an estimated $140 million.[104] With these figures in mind, a taxpaying investor in a stud fee and the exemption made available to the investing stallion share owner is an equitable one. The potential earnings from the foal counterbalances the amount an investor would pay in taxes on the stud fee.[105] Stallion fee investors, on the other hand, invest in a share of the horse doing the breeding, and because the number of times a stallion can breed varies from year to year, the exemption seem like a fair one.

The state sales tax in Kentucky affects the industry beyond the realm of breeding. It affects farmers as well, particularly when they are taxed for purchasing feed. In *Stoner Creek Stud, Inc. v. Revenue Cabinet Commonwealth*, the taxpayer, an owner of a horse farm, was not able to deem the feed and machinery used in his business as exempt, affirming the Board of Tax Appeals' decision.[106] In its rationale, the court relied on the definition of

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[99] *Supra* note 101.
[100] KY. REV. STAT. ANN. § 139.531(1)(a).
[101] *Id.*
[102] Zack Guzman, *How 'America's most valuable stallion' makes over $35 million a year without setting hoof on the track*, CNBC, June 8, 2017, https://www.cnbc.com/2017/06/07/how-americas-most-valuable-stallion-makes-35-million-a-year.html [perma.cc/2EKD-65YM].
[103] *Id.*
[104] *Id.*
[105] *Supra* note 104.
[106] Stoner Creek Stud, Inc. v. Revenue Cabinet Commonwealth, 746 S.W.2d 73 (Ky. Ct. App. 1987); *see also* Laura A. D'Angelo, Kerry O. Irwin, *2017 Equine Sales & Use Tax Review*, DINSMORE, April 7, 2017, at 20,

livestock set forth in the state statute.[107] The statute did not include horses as livestock. The Court of Appeals interpreted the statute to say that because horses are not manufactured or processed for human consumption, the taxpayer's argument failed, thus requiring him to continue paying taxes on feed and machinery used in his business.[108]

Three decades after the 1987 *Stoner Creek* ruling, farmers are experiencing a stark difference in the legal landscape as a result of the legislation passed in March 2017 that championed equity across all designations of animals within agriculture by allowing them to be designated as livestock,[109] which allows horse farmers to be exempt from paying a sales tax on feed.[110] Prior to this new law, horse owners were required to pay a six-percent sales tax on feed, while other farmers that had animals that fell under the designation of livestock, like cattle, were exempt from the sales tax.[111] This legislation can collectively saves horse farmers millions of dollars, as the "sales taxes on horse feed and supplies generates about $18 million annually."[112] Critics of the bill argued that the new livestock designation opens the door for the slaughter of horses for human consumption.[113] Supporters of the legislation deny these claims; they note that a livestock designation does not create a presumption that equine are now food, but instead allows oversight by the United States Department of Agriculture.[114] Moreover the designation affords more protection to horse owners by allowing redress for fence destruction, which prior to this

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http://www.dinsmore.com/content/uploads/2017/06/2017-Dinsmore-Equine-Sales-and-Tax-Guide.pdf [perma.cc/Z8JP-RPMX] (further explains the holding of the case).

[107] *Supra* note 95 at 20; *see also* KY. REV. STAT. ANN. § 139.480 (effective 1988 see notes to decision, section 11 and 12).

[108] *Stoner Creek Stud, Inc.*, 746 S.W.2d at 75.

[109] *Kentucky House Unanimously Passes Bill to Define Horses as Livestock in Kentucky Law,* HORSES WORK FOR KENTUCKY, March 15, 2017, https://horseswork.com/2017/03/15/kentucky-house-unanimously-passes-bill-to-define-horses-as-livestock-in-kentucky-law/ [perma.cc/2HYG-ZBTA].

[110] Danielle Lerner, *Ky. House passes bill defining horses as livestock,* COURIER JOURNAL, March 16, 2017, https://www.courier-journal.com/story/news/local/2017/03/16/ky-house-passes-bill-defining-horses-livestock/99252722/ [perma.cc/ELL6-QN2R].

[111] *Id.*

[112] *Supporters of Kentucky SB 139 respond to their critics in Blood-Horse article*, TUESDAY'S HORSE, March 18, 2017, https://tuesdayshorse.wordpress.com/2017/03/18/supporters-of-sb-139-try-to-answer-their-critics-in-blood-horse-release/ [perma.cc/26HP-8AFD].

[113] *Id.*; *see also*

[114] Lerner, *supra* note 106.

legislation, was not illegal because horses were not defined as livestock by statute.[115]

Trainers, breeders and owners are also concerned with the business expense versus hobby loss distinction, which the IRS subjects to greater scrutiny.[116] Depending on which side of the fence you fall according to IRS standards, these distinctions determine the amount of, if any, of deductions that are attributable to total income tax liability imposed on someone engaged in the equine business.[117] The distinction is vital to the taxpayer because business losses are typically deductible in full, while hobby losses are not.[118] Known as the "hobby loss rule,"[119] the IRS places a limitation on deductions that may be excluded from total taxable income.[120] This limitation disallows deductions stemming from hobbies and other "activities not engaged in for profit."[121] According to the regulations, any activity where the incurred loss does not stem from a "trade or business" or investment constitutes a not-for-profit activity.[125] "To be engaged in a trade or business, the taxpayer must [(1)] be involved in the activity with continuity and regularity;" and (2) be engaged in it primarily for profit.[126] However, for equine businesses whose makeup is mostly breeding, training, racing, or showing horses, the IRS presumes the business is for-profit when during two out of seven years in operation, gross income exceeded deductions (profits exceeded losses); equine businesses that fail to meet this presumption will otherwise be

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[115] *Kentucky House Unanimously Passes Bill to Define Horses as Livestock in Kentucky Law,* HORSES WORK FOR KENTUCKY*,* March 15, 2017, https://horseswork.com/2017/03/15/kentucky-house-unanimously-passes-bill-to-define-horses-as-livestock-in-kentucky-law/ [perma.cc/ZMG5-8QSS]

[116] Valerie Bolden-Barrett, *IRS Rules & Regulations for Horse Related Businesses*, CHRON, http://smallbusiness.chron.com/irs-rules-regulations-horse-related-businesses-68158.html [perma.cc/E7KA-Q6ZL].

[117] *Id.*

[118] Tony Nitti, *How Not To Run A Side Business: Navigating The Hobby Loss Rules*, Forbes, July 22, 2013, https://www.forbes.com/sites/anthonynitti/2013/07/22/how-not-to-run-a-side-business-navigating-the-hobby-loss-rules/#2a50a9ce4991 [perma.cc/6VWA-HT7G].

[119] *Id.*

[120] *Id.; see also* 26 U.S.C. § 183 (2016).

[121] *Id.*

[125] Treas. Reg. § 1.183–2 (b)(7).

[126] Commissioner v. Groetzinger, 480 U.S. 23, 35 (1987).

considered a hobby loss.[127] Therefore, horse breeding is an activity that faces a high risk of a hobby categorization.[128]

The IRS examines nine factors when determining whether an activity is engaged in for profit. These factors are not exhaustive or disjunctive, nor do they hold equal weight in considerations.[129] First, it looks to the "manner in which the taxpayer carries on the activity."[130] It considers whether the taxpayer upkeeps the activity in a "businesslike manner," asking if the taxpayer keeps accurate accounting books and records, and if the business abandons activities that are not making a profit.[131] The taxpayer must be able to demonstrate that engagement in the activity is predominately for the purpose of generating profit.[132]

Second, it considers the "expertise of the taxpayer or his advisors."[133] If the taxpayer prepares and performs extensive research into the endeavor prior to engaging in the activity, or hires experts to do so, in turn swings favorably to qualify as for-profit activity.[134] Conversely, if the taxpayer fails to follow the advice or the plan set forth, is considered to indicate a lack of intent for the activity to be for-profit.[122] Third, the IRS looks at "the time and effort expended by the taxpayer in carrying on the activity."[136]If a taxpayer devotes a considerable amount of his personal time to the activity or leaves his present occupation to devote more time to the activity, it increases the likelihood of the activity being one engaged in for-profit.[137] Fourth, it considers the taxpayer's "expectation that assets used in activity may appreciate in value."[138] For example, if a taxpayer uses land to carry on the activity, the taxpayer would have the expectation—despite lack of profit from the activity itself—the value of the land would

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[127] 26 U.S.C. § 183 (2016).
[128] Nitti, *supra* note 122.
[129] Treas. Reg. § 1.183–2(b).
[130] Treas. Reg. § 1.183–2(b)(1)
[131] *Id.*
[132] Prieto v. Commissioner, T.C. Memo. 2001-266.
[133] Treas. Reg. § 1.183–2(b)(2).
[134] *Id.*
[122] *Id.*
[136] Treas. Reg. § 1.183–2(b)(3).
[137] *Id.*
[138] Treas. Reg. § 1.183–2(b)(4).

appreciate and that appreciation, coupled with whatever income gained, would exceed expenses.[139]

Fifth, it looks at "the success of the taxpayer in carrying on other similar or dissimilar activities."[140] Such that, for-profit activity is indicated to the IRS when the taxpayer previously converted an unprofitable activity to a profitable activity that is similar to the present activity in question.[141] Sixth, it considers "the taxpayer's history of income or losses with respect to the activity."[142] This evaluates whether the taxpayer's activity has become profitable and whether it has experienced continued and systematic loss beyond losses expected during the start-up phase.[123] Seventh, the IRS considers "the amount of occasional profits" earned, if any.[124] If an activity occasionally earns substantial profits that exceed losses, even if for a year,[125] this weighs toward the taxpayer's intent to conduct the activity in a business-like manner.[126] Eighth, the IRS considers "the financial status of the taxpayer" meaning, if the activity furnishes a main stream of income that is not offset by other sources, then it will weigh in favor of a for-profit activity.[127] Finally, it asks if the activity lacks "elements of personal pleasure or recreation," which serves as an indicator that the activity is engaged in for business purposes.[128]

This statute[129] is applicable to any number of things; however, the IRS has challenged cases where the taxpayer(s) attempted to deduct their equine business expenses as losses, at a seemingly disproportional rate when compared with those other

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139 *Id.*

140 Treas. Reg. § 1.183-2(b)(5).

141 *Id.*

142 Treas. Reg. § 1.183-2(b)(6).

123 *Id.*; Tony Nitti, How Not To Run A Side Business: Navigating The Hobby Loss Rules, FORBES (Jul. 22, 2013), https://www.forbes.com/sites/anthonynitti/2013/07/22/how-not-to-run-a-side-business-navigating-the-hobby-loss-rules/#2a50a9ce4991 [perma.cc/V69X-ZCWW].

124 Treas. Reg. § 1.183-2(b)(7).

125 Nitti, *supra* note 122.

126 *Supra* note 126.

127 Treas. Reg. § 1.183-2(b)(8).

128 Treas. Reg. § 1.183-2(b)(9).

129 *Supra* note 128.

activities.[130] A recent ruling from the United States Tax Court serves as an illustration of the hobby loss rule at work.[131] In *Welch v. Commissioner of Internal Revenue*, petitioners came out victorious in their case against the IRS.[132] Doctors Welch and White were a recently divorced couple and owners of an 8,800 acre Texas ranch with an appraised value of more than $30 million.[133] The ranch consists of an equine veterinary center, hay operation, cattle business, and training facility.[134] On the couple's joint tax return, "[t]he IRS asserted tax deficiencies totaling over $3.6 million for the years 2007, 2008 and 2009" and $1.3 million for Dr. Welch's 2010 return, the year in which the couple divorced.[135] In its ruling, the Tax Court employed the nine-factor hobby loss test to determine that the ranch was a for-profit entity.[136] The petitioners prevailed on the majority of the nine factors that were not considered "neutral" based on the factual background of the case.[137] He managed his company in a business-like fashion; had expertise in agriculture in order to manage his business; he was working at least three full days per week at the ranch, showing he expended time and effort in the activity; and because he was wheelchair bound from a devastating accident in high school, the court reasoned that his confinement to a wheelchair prevented him from riding the horses and doing manual labor which, according to the court, are recreational activities in the context of a ranch.[138]

The business expense versus hobby loss distinction is of major concern to the equine business owner. This case illustrates that fighting the distinction and meeting the standard set forth in the nine factors the IRS weighs in its consideration can be an uphill battle that can be interpreted narrowly by the courts. Additionally, it has been shown that state use and sales taxes are not only relevant to the equine business owner, but impacts breeders and buyers alike.

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[130] Peter Reilly, *Stunning Tax Court Victory Against IRS In Horse Case*, FORBES (Nov. 27, 2017), https://www.forbes.com/sites/peterjreilly/2017/11/27/stunning-tax-court-victory-against-irs-in-horse-case/#579a67f2547b [perma.cc/DTT9-92G4].

[131] Welch v. Comm'r of Internal Revenue, 114 T.C.M. (CCH) 578 (T.C. 2017).

[132] Reilly*, supra* note 151.

[133] *Id.*

[134] *Id.*

[135] *Id.*

[136] Welch, 114 T.C.M. (CCH) at *24-25.

[137] *Id.* at *42.

[138] *Id.* at 41-*42.

II. 26 C.F.R. § 31.3402(Q) EXPLAINED

A. Pari-Mutuel Betting Under the Old Regulation

Before it underwent amendments, 26 C.F.R. § 31.3402(q), entitled "Withholding on Payments of Certain Gambling Winnings," was markedly different. This section "require[d] every person, including the United States government, a state, a political subdivision thereof, or any instrumentality of the foregoing, that makes any payment of gambling winnings to deduct and withhold tax on certain payments at the third-lowest tax rate applicable."[139] It also provided an exemption from withholding on nonresident alien and foreign corporations subject to taxation under sections 1441(a) and 1442(a), respectively, [140] and described winnings subject to withholding.[141] Winnings subject to withholding were dependent on the amount of proceeds from a wager, the type of wager, and sometimes the odds involved.[142] If the player's wager proceeds exceeded $5,000 and were "at least 300 times as large as the amount wagered"[143] in a wagering pool, they were withheld.[144]

In 2015, the Treasury Department and IRS commissioned comments from the public, seeking their response to the treatment of wagers in pari-mutuel betting. [145] Commentators requested changes that would reflect the evolution of pari-mutuel wagering. [146] These changes included "a request for a rule that would take into account all money wagered in a particular pari-mutuel pool when determining proceeds from a wager for purposes of determining whether withholding under section 3402(q) was required." [147] The comments also asked the IRS and Treasury Department to provide a definition of the statutory phrase "amount of the wager" when several bets are placed into the same pool so the bettor can more accurately report his or her earnings and to clarify how much of those earnings are subject to

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[139] Treas. Reg. § 31.3402 (q)-1(a).
[140] *Id.* at (2).
[141] Treas. Reg. § 31.3402 (q)-1(b).
[142] Withholding on Payments of Certain Gambling Winnings, 81 FR 96406-01.
[143] 26 U.S.C.A. § 3402(q)(3)(C)(ii) (West); *see also* Treas. Reg. § 31.3402 (q)-1(b)(iii).
[144] 26 U.S.C.A. § 3402(q)(3)(C)(i) (West); *see also* Treas. Reg. § 31.3402 (q)-1(b)(iii).
[145] Withholding on Payments of Certain Gambling Winnings, 81 FR 96406-01, 64907 (Dec. 30, 2016) (to be codified at 26 C.F.R. pt. 31).
[146] *Id.*
[147] *Id.*

withholding.[148] Following an increase in exotic bets placed on horse races since the early 1980s, critics of the previous regulation noted the trend could cause more of the gambler's earnings to be withheld where that amount exceeded overall income tax liability.[149] Commentators further stated, "the deduction for losing wagers results in reporting of higher adjusted gross income."[150] A bettor could lose tax benefits as a result of a higher adjusted gross income. Additionally, many states place limits on itemized deductions like gambling losses. Commentators provided this example to illustrate how the proposed changes would work:[151]

> A bettor makes a seven-horse trifecta box wager, which involves selecting a group of seven horses to place first, second, and third, in any order. This bet has 210 unique possible results. Assuming the bettor bets $20 on each combination, the total amount wagered is $4,200. At race time the winning combination carries 304 to 1 odds. After the race, the bettor holds a winning ticket that pays $6,100 ($304 x $20 wagered + $20 return of bet). Under the current rules, the racetrack would withhold $1,520 (($6,100-20) x 25%) and report $6,080 in winnings ($6,100-$20) because the rules treat only the $20 paid for the single winning combination as the amount wagered. However, the commentators stated that the individual has netted only $1,900 ($6,100 winnings less $4,200 wagered), and is left with $380 ($1,900-$1,520) once withholding taxes are taken out, which makes the withholding rate 80% of net winnings.

The new regulation acknowledges these issues and others highlighted by its critics and aimed to rectify them.

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[148] *Id.*
[149] *Id.*
[150] *Id.*
[151] Withholding on Payments of Certain Gambling Winnings, 81 FR 96406-01, 64907 (Dec. 30, 2016) (to be codified at 26 C.F.R pt. 31).

B. Pari-Mutuel Betting Under the New Regulation

The IRS and Treasury department adopted the proposed legislation as submitted, which was enacted on September 27, 2017.[152] Before the new legislation was enacted, this regulation had not been substantively amended since 1983.[153] As of 2016, "approximately 67 [percent] of all pari-mutuel wagering occur[ed] on exotic wagers" rather than straight wagers.[154] The new regulation has an updated rule for determining the amount of the wager in horse races.[155] It allows players to aggregate all wagers placed in one pari-mutuel pool and placed on a single ticket as one wager in order to calculate the total wager.[156] According to commentators, this new method is a better reflection of the cost of exotic bets.[157] The single ticket provides ease when the bettor is trying to determine his total wagers for reporting and withholding purposes.[158] The new rules address several issues in the prior legislation, such as excessive withholding to cover bettors' income tax liability.[159] Additionally, the prior legislation could withhold up to 80 percent of a wager placed in the same pool for exotic bets.[160]

Under the new rule, in horse races, the amount of the wager is limited to a single ticket.[161] Limiting the amount to one ticket reduces the chance of fraud and makes the system easier to administer.[162] The process is easier for paper and electronic tickets[163] "because it does not require payers to collect information regarding winning wagers where additional wagers placed in the same pool are reflected on multiple tickets"[164] and payers do not

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[152] Treas. Reg. § 31.3402 (q)-1.

[153] Withholding on Payments of Certain Gambling Winnings, 81 FR 96406-01, 64907 (Dec. 30, 2016) (to be codified at 26 C.F.R pt. 31).

[154] *Id.*

[155] Withholding on Payments of Certain Gambling Winnings, 82 FR 44925-01 (Sept. 27, 2017) (to be codified at 26 C.F.R pt. 31).

[156] Withholding on Payments of Certain Gambling Winnings, 82 FR 44,925, 44,926 (Sept. 27, 2017) (to be codified at 26 C.F.R. pt. 31).

[157] *Id.*

[158] *Id.*

[159] *Id.*

[160] *Id.*

[161] Withholding on Payments of Certain Gambling Winnings, 81 FR 96406-01, 64907 (Dec. 30, 2016) (to be codified at 26 C.F.R pt. 31).

[162] *Id.*

[163] *Id.*

[164] Withholding on Payments of Certain Gambling Winnings, 81 FR at 96,409.

have to collect information from more than one ticket. In the case of electronic wagering, the rule allows bettors to place multiple bets in a pari-mutuel pool reflected on one electronic record.[165]

The NTRA worked hard for ten years to get these changes approved.[166] The organization conducted roundtables with players and pushed their lobbyists in Washington, D.C. to focus their efforts on regulatory rather than statutory changes.[167] They partnered with HorsePAC, a self-claimed bipartisan political action committee, which held two public commenting periods and met with officials from the Department of the Treasury.[168] Although the rule simply modifies the term "amount of the wager," the NTRA pushed for these changes because it believed the previous regulations were outdated and failed to reflect the age of modern wagering.[169] Moreover, the NTRA felt previous regulations could not support the current system of exotic bets.[170] In modifying this term, the NTRA projected an annual increase of ten percent, at an estimated amount of more than $1 billion.[171] It also projected that the revised regulation could have an impact of hundreds of millions—even possibly billions—of dollars.[172]

The NTRA anticipates that these regulatory changes will have a positive impact on all segments of the industry: bettors, owners, racetracks, and the federal government.[173] Bettors will be able to keep more of their winnings, racetracks will generate more handle, and the U.S. government will collect more tax revenue with a wave of administrative ease due to the reduction in reporting paperwork sent to them for review.[174]

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[165] *Id.*

[166] NHC News, *NTRA Press Conference – Treasury/IRS Issue Updated Tax Rules*, NTRA (Sept. 26, 2017), https://www.ntra.com/ntra-press-conference-treasuryirs-issue-updated-tax-rules/ [perma.cc/5J6C-3UGM].

[167] *Id.*

[168] *Id.*

[169] *Id.*

[170] *Id.*

[171] *Id.*

[172] NHC News, *NTRA Press Conference – Treasury/IRS Issue Updated Tax Rules*, NTRA (Sept. 26, 2017), https://www.ntra.com/ntra-press-conference-treasuryirs-issue-updated-tax-rules/ [perma.cc/5J6C-3UGM].

[173] *Id.*

[174] *Id.*

III. EFFECTS OF 26 C.F.R. § 31.3402(Q) ON THE INDUSTRY: A FORWARD LOOK

When the new regulation went into effect in September 2017, the industry automatically experienced a boost.[175] Players at Keeneland Racetrack in Lexington, Kentucky were able to take home more of their winnings during the track's fall meet.[176] Officials at Keeneland reported that the track only processed fourteen IRS tickets in the first nine days of the meet[177]—a drastic reduction from the 522 IRS tickets they processed the previous year.[178] In New York, Belmont Park and Aqueduct Racetrack experienced a $23,000 increase handle for players and simulcast players, respectively.[179] Under the new regulation, both New York locations only withheld two tickets and reported just 17 winning tickets.[180]

In November 2017, U.S. wagering grew by 6.39 percent[181]—an increase of more than $890.8 million.[182] Average daily wagering increased 9.7 percent to a staggering $2,766,534 for the month of November alone.[183] Two months after the new regulation went into effect, the NTRA's projection of a 10 percent increase in wagering was nearly a reality.[184] At the Breeders' Cup World Championships that same year at the Del Mar Thoroughbred Club, there was a ninety-seven percent reduction in winning tickets requiring reporting or withholding to the IRS.[185]

The drafting of this new regulation was no easy feat.[186] The NTRA's decade of lobbying efforts resulted in legislation that is

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[175] *See November U.S. Handle Up 6.39% Due to New Tax Rules*, BLOODHORSE (Dec. 7, 2017), https://www.bloodhorse.com/horse-racing/articles/225077/november-u-s-handle-up-6-39-due-to-new-tax-rules#disqus_thread [perma.cc/42X3-DRLT] [hereinafter *Handle*].

[176] *Id.*

[177] Frank Angst, *New Tax Rules a Hit with Horseplayers*, BLOODHORSE (Oct. 23, 2017), https://www.bloodhorse.com/horse-racing/articles/224264/new-tax-rules-a-hit-with-horseplayers [perma.cc/2E8T-JPXH].

[178] *Id.*

[179] *Id.*

[180] *Id.*

[181] Handle, *supra* note 175.

[182] *Id.*

[183] *Id.*

[184] *Id.*

[185] *Id.*

[186] Handle, *supra* note 175.

doing just what it proposed: allowing players to take home more of their wins, racetracks to generate more handle and less paperwork, and the government to get more tax revenue.[187] The IRS's model for reporting and withholding these wagers was nearly 50 years old.[188] This means the old model only considered "the base amount of a wager, rather than the overall cost of a mutuel ticket."[189] Exotic bet players especially took a big hit on their winnings.[190] The new regulation changed how the 300-1 odds threshold is determined.[191] Now, "because it immediately takes money out of people's pockets, players who spend $100 on 100 combinations in a Pick 4 that pays $7,500 will not face withholding. While the payout exceeds $5,000, it no longer is a 300-1 proposition because the wager amount will now be considered to be $100 instead of $1. To reach 300-1 odds, the payout would have to reach $30,000."[192] Compared to the undesirable results under the previous regulation in which players who lost money on tickets would potentially be required to, both, pay and report those tickets.[193] This is not the case under the new reporting threshold requirements.[194]

The new provision has great potential to breathe life back into the thoroughbred horseracing industry and combat its alarming decline. Now that players can bring home more money,[195] the tracks might win back some attendees from competing forms of gambling. Increasing popularity could rebrand the sport and attract a younger crowd interested in experiencing the nostalgia of the pastimes before them. Some may come for the hats or prudent members of the younger generation may attend in hopes to partake in the tax break on their wins. When newcomers and stalwarts join forces at the ticket counter, the industry will likely see a big push in a positive direction.

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[187] *Id.*

[188] Joe Bianca, *What the Tax Change Means to a Horseplayer*, THOROUGHBRED DAILY NEWS (Oct. 4, 2017), http://www.thoroughbreddailynews.com/what-the-tax-change-means-to-a-horseplayer/ [perma.cc/Q7E3-CAPP].

[189] *Id.*

[190] *Id.*

[191] Angst, *supra* note 198.

[192] *Id.*

[193] Bianca, *supra* note 188.

[194] *Id.*

[195] Handle, *supra* note 175.

It is often difficult to measure what success means for a new regulation. That is not the case here. Mere months after it went into effect the NTRA's projections were nearly met.[196] This is evidence that the regulation has reached the positive goals it was promulgated for. Looking forward, long-term success will look like an increase in handle generated by tracks, revenue gained by the government, and a decrease in the amount of players' tickets requiring reporting or withholding.

CONCLUSION

The equine industry has a huge impact on both the United States and Kentucky economies. In the United States, the equine industry accounts for $122 billion of the country's GDP via direct, indirect and induced spending, and provides 1.4 million jobs nationwide.[197] Kentucky's racing industry has an estimated value of $23.4 billion.[198] Considering the significance of the economic effects, one cannot plausibly posit the decline in the industry will continue. Additionally, tax continues to influence the industry many ways.[199] Beyond the tracks, business owners are at odds with the courts trying to disprove hobby loss categorizations and characterize their losses as business losses.[200] This important distinction affects the bottom line of equine businesses.[201]

Pari-mutuel betting has maintained its popularity for 80 years[202] and continues to be the main form of wagering used in thoroughbred horse racing.[203] With a long and storied history, 26 C.F.R. § 31.3402(q)'s modernization of the reporting and withholding standards adds another chapter to the book.[204] Now, players can avoid reporting on wagers they lost money on[205] and

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[196] *Supra* note 186.

[197] *Economic Impact of the United States Horse Industry*, AMERICAN HORSE COUNCIL (2017), http://www.horsecouncil.org/economics/ [perma.cc/KB3W-TKHU].

[198] UNIV. OF KY., *supra* note 73 at 5.

[199] *Supra* note 193.

[200] *Id.*

[201] *Id.*

[202] Kevin Martin, *Thoughts on Pari-Mutuel Wagering, 1908*, COLIN'S GHOST (Dec. 14, 2009, 10:04 PM), http://colinsghost.org/2009/12/thoughts-on-pari-mutuel-wagering-1908.html [perma.cc/7XNN-NREB].

[203] Withholding on Payments of Certain Gambling Winnings, 81 FR 96406-01, 64907 (Dec. 30, 2016) (to be codified at 26 C.F.R pt. 31).

[204] *Id.*

[205] Bianca, *supra* note 188.

the amount of the wager in horse races is limited to a single ticket,[206] limiting fraud and easing the administration of the system by decreasing required submissions to the IRS.[207] The NTRA went to great lengths to make the new regulation a reality. After lobbying for a decade, the association can see the fruits of its labor.[208] The regulation was immediately popular with the players and there is no doubt that tracks were eager to comply.[209]

Although the problems facing the thoroughbred horseracing industry are far from resolved, the advent of the new reporting and withholding provision moves it one step closer to reclaiming its throne as the "Sport of Kings."[210]

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[206] Withholding on Payments of Certain Gambling Winnings, 81 FR 96406 (Dec. 30, 2016) (to be codified at 26 C.F.R. pt. 31).

[207] *See id.*

[208] *Supra* note 193.

[209] *Id.*

[210] Kilian, *supra* note 27.