

## New York OTB's and Their Payments to Racetracks

The OTB's in New York State have since their inception, in the early 1970's, faced extensive derision. It has long been claimed that the six regional OTB corporations, operating as classic secondary pari-mutuel organizations (SPMO's - pari-mutuel operators which do not themselves conduct pari-mutuel wagering on their own events<sup>1</sup>) simply do not sufficiently support live horse racing. The knock on SPMO's and New York OTB has been that they are ciphers. They simply do not contribute sufficiently to the racing industry. They collect the commissions on their pari-mutuel wagers, pay the racetrack host, but do not return much to the industry to the tracks and to purses.<sup>2</sup>

This certainly was true of the New York State OTB system in its early days. In 1975, the OTB's returned 4.1% of their handle to the racetracks. Now, however, the situation has changed considerably. New York's OTB's in 2005 returned 8.1% of their handle to racetracks. If you add in the OTB payments to breeding funds, the State OTB's are now contributing 8.8% of their handle to the racing industry.<sup>3</sup>

Perhaps more significant is how the share of OTB revenue is distributed to the racetracks. There is a two tier system. The tracks outside New York State receive very little from the New York State OTB's, and the in-state tracks do far better. The OTB's have by their market power been able to pay minimal simulcasting rates to racetracks outside of New York. The OTB's, on average, pay a simulcasting fee of 2.1% to out-of-state host sites. Accordingly, even though 61% of the money bet at OTB is now placed on out-of-state racetracks, only 17.4% of the OTB payments to racetracks went to these out-of-state tracks.

Instead, the OTB's pay what amounts to a revenue sharing fee under which a decent part of the commission on bets placed at OTB's on out-of-state races is distributed to New York tracks.<sup>4</sup> The problem, here, is that this revenue sharing program has been

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<sup>1</sup> Apart from the New York OTB's, the casino operations in Nevada are probably the best known SPMO's in America. The account wagering operations such as Youbet.com, TVG, and Autotote in Connecticut as well as the pari-mutuel account wagering firms in the United States and the Caribbean that offer rebates to large bettors are also SPMO's.

<sup>2</sup> This is in contrast to the situation where the guest facility taking the wager is a pari-mutuel operator. Under these circumstances, the guest facility not only pays the host track, but its commission is normally shared (either pursuant to statute or by contract) with its own horsemen in the form of purses to benefit the racing industry. The OTB's only pay the host track and do not have any horsemen with whom to share their commissions.

<sup>3</sup> The OTB's might argue that their payments to support the budget of the New York State Racing and Wagering Board should also be factored in as part of the calculus. If included, this would mean that the OTB's paid 9.3% of their handle to the racing industry.

<sup>4</sup> It works in some ways similar to the source market fee utilized by the account wagering service, TVG. TVG through its source market fee "sends a share of account wagering revenues back to racetracks and horsemen in the market where each wager originates."

<http://www.tvg.com/textonly/about/faq.asp#WhatdistinguishesTVGfromotheraccountwageringproviders>

created through an odd pattern of statutes under which the benefits to individual New York racetracks appear to be distributed without any coherent theme or purpose.

Racetracks in New York State receive two types of payments from OTB's. One is through direct commissions paid by OTB's to host tracks based on wagers that the OTB actually takes on races held at that particular host New York State track. The direct commissions are determined in part by statute<sup>5</sup> and in part by contracts between the individual OTB's and the host tracks.

The other source of payments to racetracks is through regional commissions. Regional commissions are commissions paid to tracks in New York based on their location from wagers placed at OTB's on races other than the ones conducted at the "regional" track. The particular regions are established pursuant to Section 519.1 of the Racing Law. Thus, Saratoga Harness would receive a regional commission on a bet placed at an OTB in the city of Schenectady on a NYRA race.<sup>6</sup> Regional commissions can derive from a variety of sources in the Racing Law including Sections 527, 1016, 1017, 1017-a, and 1017-b. The regional commission system has been altered over the years based on the introduction in the last decade of largely unlimited wagering on out-of-state races.<sup>7</sup>

There is almost no rationality to the payments to the New York racetracks, but the payments to New York racetracks have become institutionalized, and it would be difficult to change the underlying benefits that this system provides to racetracks.

In 2005, the New York OTB's paid 17.8% of their total in-state handle to the State's racetracks. The fee – as a percentage of handle - differed markedly among racetracks. From the OTB's, NYRA received 15.1% of its OTB handle, Finger Lakes 21%, Batavia 26.8%, Monticello 32%, Saratoga 35.9%, Buffalo 43%, and Yonkers 51.7%.

Yonkers in 2005, racing for less than half the year received \$7.028 million from the OTB's. In 1990, when the OTB handle on Yonkers was 17 times what it was in 2005, Yonkers received \$13.6 million in commissions from the OTB's. In 2005, it received \$8.2 million. Yonkers in 1990 received \$878,000 in regional commissions. In 2005, the regional commissions to Yonkers were \$7 million. While Yonkers' 2005 handle at the OTB's was 6% of its 1990 handle, it still received 60.3% of the total commissions that it received in 1990.

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<sup>5</sup> See Section 527 of the Racing Law.

<sup>6</sup> See Section 527.1, Racing Law.

<sup>7</sup> A prime example of this is Section 1017-a.2.b. which states that "in the event, that aggregate statewide wagering handle after 7:30 P.M. on out-of-state and out-of-country thoroughbred races exceeds one hundred million dollars, each off track betting corporation conducting such simulcasting shall pay to its regional harness track or tracks, an amount equal to two percent of its proportionate share of such excess handle." See L. 2003, Ch. 62.

Monticello received \$13.8 million from the OTB's in 2005. In 1990 when its handle at the OTB's was 80% of what it was in 2005, it received \$2.5 million from the OTB's or approximately 18% of what it received in 2005.

### The Overall Increase in Fees Paid by OTB's to Racetracks

As stated previously, the fees paid to racetracks by OTB's have increased markedly over the years. In 1975, it was 4.1%. It increased to 5.4% in 1986, 5.6% in 1990, 6.8% in 1995, and 8.1% in 2005. The basic commission to out-of-state tracks has stayed fairly constant through the years at approximately 2.1%. As a percentage of total OTB handle, the amounts paid to New York racetracks have increased over the years as well. This percentage was 5.2% in 1986, 5.5% in 1990, 6.1% in 1995 and 6.7% in 2005. As a percentage of total OTB handle on New York racetracks, the amounts paid to New York tracks have increased significantly from 5.5% in 1986, 5.7% in 1990, 8.6% in 1995, to 17.8% in 2005.

### The Individual OTB's

The 2005 payments from OTB's to the individual tracks follow. The charts use the total handle on a track's races at an OTB as the denominator and show the percentage of handle that is returned by the OTB's to the tracks. New York City OTB returned the highest percentage of its handle to the racetracks at 8.5%. Capital OTB paid the lowest percentage at 7.4%. Nonetheless, Capital made the highest percentage payment to any racetrack. Capital returned 74.5% of its handle on Saratoga Harness to that racetrack.<sup>8</sup> Other high payers were New York City to Yonkers 66.2% of handle, Western to Buffalo 51.4%, and Nassau to Monticello 44.6%.

The system in place today makes even less sense than it did in the past. Western OTB owns Batavia Downs. Western OTB is no longer a SPMO. Shouldn't it be treated differently? Why does it need to pay regional commissions to itself?<sup>9</sup> All the upstate racetracks (except the flat track at Saratoga) all have video lottery terminals. Some, like Saratoga Harness and Finger Lakes, are very successful. Is there a reason for the OTB's to subsidize tracks and purses already being subsidized by VLT's? Moreover, the way that regional commissions have been calculated on out-of-state racing has made winners out of some tracks and losers out of others. As indicated previously, Yonkers and Monticello have been winners. Finger Lakes has been a winner.<sup>10</sup> Batavia and Buffalo

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<sup>8</sup> Vernon Downs, which is in the same OTB region as Saratoga Harness under Section 519 of the Racing Law, did not race in 2005. The provisions of the Racing Law, however, give better benefits to Saratoga in terms of regional track commissions than Vernon. Vernon is inside a "harness special betting district" under Section 523.4 of the Racing Law which operates to lower Vernon's regional commissions. Saratoga has normally received three times the regional commission that Vernon has received.

<sup>9</sup> There would still be reason to make purse payments from OTB handle to the horsemen at Batavia Downs but no reason to pay the track itself.

<sup>10</sup> Finger Lakes, total OTB commissions in 1990 were \$6.4 million. In 2005, they were \$12.8 million. Finger Lakes' handle at the OTB's decreased by 49.6% from 1990 – 2005.

have not won.<sup>11</sup> Saratoga Harness has seen its regional commission reduced from what was traditionally the \$4 million mark to \$3 million.<sup>12</sup> There seems to be no logic to the system of payments to the OTB's other than the possibility that certain tracks may have done a better job of understanding the legislative system and the simulcasting laws.

#### Capital

Payment to all tracks	7.4%
NYRA	5.2% direct total of 10.9%
Finger Lakes	5.1% direct total of 14.7%
Batavia	2.9%
Buffalo	2.6%
Monticello	2.6%
Saratoga	8.3% direct total of 74.5%
Yonkers	2.6%
Out-of-State	2.2%

#### Catskill

Payment to all tracks	7.8%
NYRA	7.8% direct total of 16.1%
Finger Lakes	4.25% direct total of 18.2%
Batavia	2.1%
Buffalo	2.4%
Monticello	5.6% direct total of 27%
Saratoga	2.2%
Yonkers	6.1% direct total of 36.6%
Out-of-State	2.1%

#### Nassau

Payment to all tracks	7.7%
NYRA	5.8 % direct total of 13.6%
Finger Lakes	4.1% direct total of 23.2%
Batavia	1.7%
Buffalo	1.7%
Monticello	5.5% direct total of 44.6%
Saratoga	1.7%
Yonkers	6.8% direct total of 40.4%
Out-of-State	2.1%

#### New York City

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<sup>11</sup> The combined regional commission for Buffalo and Batavia in 2005 was \$2.1 million. Monticello's regional commission was \$11.7 million. In 1990, Batavia and Buffalo combined received \$2.7 million in regional commissions. Monticello received \$825,000.

<sup>12</sup> In 1990, Saratoga's regional commission was \$4.1 million. In 2005, it was \$3.1 million.

Payment to all tracks	8.5%	
NYRA	9.1%	direct total of 16.9%
Finger Lakes	4.4%	direct total of 25.6%
Batavia	1.7%	
Buffalo	1.7%	
Monticello	5.4%	direct total of 40.1%
Saratoga	1.7%	
Yonkers	8.7%	direct total of 66.2%
Out-of-State	2.1%	

#### Suffolk

Payment to all tracks	7.7%	
NYRA	7.7%	direct total of 13.6%
Finger Lakes	4%	direct total of 21.7%
Batavia	1.7%	
Buffalo	1.7%	
Monticello	5.6%	direct total of 44.3%
Saratoga	1.7%	
Yonkers	7.9%	direct total of 37.3%
Out-of-State	2.2%	

#### Western

Payment to all tracks	7.7%	
NYRA	5.3%	direct total of 13.8%
Finger Lakes	9.7%	direct total of 16.8%
Batavia	6.7%	direct total of 35.9%
Buffalo	5.8%	direct total of 51.4%
Monticello	2.4%	
Saratoga	1.6%	
Yonkers	2.6%	
Out-of-State	2.2%	