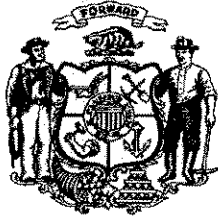


THE STATE OF WISCONSIN

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JOINT COMMITTEE ON FINANCE

MEMORANDUM

To: Members
Joint Committee on Finance

From: Senator Brian Burke
Representative John Gard

Re: 14-Day Passive Review Approval

Date: March 2, 1999

Attached is a copy of a report from the Department of Revenue, dated March 1, 1999, which contains information on lottery sales and prize payouts. The report, which recommends no changes to the prize payout ratio at this time, requires 14-day passive review and approval by the Joint Committee on Finance, pursuant to s. 565.02(7), Stats.

Please review the material and notify **Senator Burke** or **Representative Gard** no later than **March 18, 1999**, if you have any concerns about the report or if you would like the Committee to meet formally to discuss it.

Also, please contact us if you need further information.

Attachment

BB:JG:dh



State of Wisconsin • DEPARTMENT OF REVENUE

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Tommy G. Thompson
Governor

Cate Zeuske
Secretary of Revenue

March 1, 1999

The Honorable Brian Burke
Co-Chair, Joint Committee on Finance
Senator, 3rd Senate District
Room 319 South, State Capitol
Madison, WI 53708

The Honorable John Gard
Co-Chair, Joint Committee on Finance
Representative, 89th Assembly District
Room 315 North, State Capitol
Madison, WI 53708

Dear Senator Burke and Representative Gard:

Section 565.02(7), Wis. Stats., requires a report to the Joint Committee on Finance every March 1, containing the following information:

- A. An estimate, for the current and subsequent fiscal years, of gross revenues from the sale of lottery tickets;
- B. The total amount paid as prizes and the prize payout ratio for each type of lottery game offered, based on these sales estimates; and
- C. An evaluation of the effect of prize payout ratios of lottery games on lottery sales, lottery operating costs and on maximizing the revenue available for lottery property tax relief.

The 1999 report, which is attached, does not recommend any changes to the prize payout ratio at this time. The Department of Revenue is conducting additional research over the next few months and may request some specific changes by the committee. Please call me if I can answer any questions.

Sincerely,


Cate Zeuske
Secretary of Revenue

Enclosure

LOTTERY SALES AND PRIZE PAYOUT REPORT

REPORT TO THE JOINT COMMITTEE ON FINANCE

PREPARED BY:

DIVISION OF LOTTERY
WISCONSIN DEPARTMENT OF REVENUE

March 1, 1999

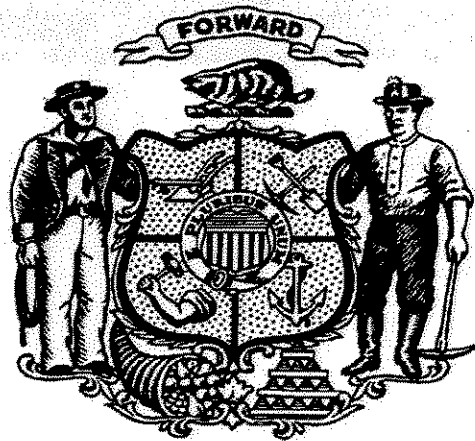


Table of Contents

A.	HISTORY AND RECOMMENDATIONS.....	1
B.	GROSS REVENUES FROM LOTTERY TICKET SALES (FY 1995-1996 through FY 1999-2000).....	2
C.	TOTAL PRIZE PAYOUT RATIOS AND PRIZES PAID OR EXPECTED TO BE PAID	3
D.	EVALUATION OF PRIZE PAYOUT RATIO	5
	On-line/Terminal Generated Games and the Prize Payout Ratio	5
	Frequency of Winners and the Prize Payout Ratio	6
	On-line/Terminal Generated Market Trends and Prize Payout Ratio.....	7
	Instant Games and the Prize Payout Ratio	10

CHART

Chart 1 - Main Reasons For Spending Less Money On Lottery Games

EXHIBITS

- Exhibit 1 - Total Instant Scratch Ticket Sales
- Exhibit 2 - Total Instant Pull-tab Ticket Sales
- Exhibit 3 - Total On-Line/Terminal Generated Ticket Sales
- Exhibit 4 - Total Lottery Ticket Sales
- Exhibit 5 - Wisconsin Powerball Average Sales Per Draw
- Exhibit 6 - Megabucks Average Sales Per Draw

A. HISTORY AND RECOMMENDATIONS

The maximum average payout percentage that the Lottery can offer is subject to approval by the Legislature's Joint Committee on Finance. Section 565.02(7), Wis. Stats., requires a report by the Lottery to the Joint Committee on Finance every March 1, containing the following information:

- A. An estimate, for fiscal years 1998-99 and 1999-2000, of gross revenues from the sales of lottery tickets;
- B. The total amount paid as prizes and the prize payout ratio for each type of lottery game offered, based on these sales estimates; and
- C. An evaluation of the effect of prize payout ratios of lottery games on lottery sales, lottery operating costs and on maximizing the revenue available for lottery property tax relief.

In the first year of Lottery operation, FY1988-89, instant scratch and pulltab ticket prize payouts averaged about 50%. In the second year of operation the Lottery Board introduced the first on-line/terminal generated game, Lotto America, with a payout of 45% and increased average instant scratch and pulltab payouts to 60%. Between FY1989-90 and FY1993-94, average instant scratch payouts increased by about 1%, while average instant pulltab payouts remained constant. Average on-line/terminal generated game payouts have remained between 45% and 50% since FY1991-92.

In May 1994 the Wisconsin Gaming Commission submitted the first Prize Payout Report to the co-chairs of the Joint Committee on Finance. Following a hearing on that report, the committee authorized an increase in the average instant scratch ticket prize payout from about 61% to 63% and an increase in the average instant pulltab ticket prize payout from about 60% to 62%. Average on-line/terminal generated ticket prize payouts went unchanged. Subsequent reports in March 1995 and 1996 did not seek to increase the instant or on-line/terminal generated prize payout rates. However, the 1997 report suggested that raising the payout on instant tickets would increase sales but the net effect on proceeds available is not certain.

Additional research in the area of instant prize payouts was conducted and it was found that many jurisdictions have higher prize payouts than actually stated by offering free tickets, or by recycling unclaimed prizes and TV Game show prizes. Offering these prizes without calculating those prizes as part of the stated prize payout provide greater play value and thus, may increase total sales and proceeds available for property tax relief. The Wisconsin Lottery does not offer free tickets nor does it use unclaimed prizes to provide additional prizes to winners. While the Wisconsin Lottery offers TV game show prizes, those prizes are included as part of the stated average prize payout of 63%. However, the current instant prize payout in Wisconsin is comparable to neighboring state lotteries with similar demographics and population.

There is not an explicit limit on the average prize payout for on-line/terminal generated games similar to what exists for instant games. Currently, the average prize payout across all on-line/terminal generated games averages 50.31%. The individual on-line/terminal generated games have ranged from 45.00% to 53.5%. An initial analysis by Lottery staff suggests that future on-line/terminal generated products will require prize payouts similar to that of the instant games. In addition, a market segmentation study conducted in 1997 highlighted Wisconsin residents' desire for more Lottery winners.

B. GROSS REVENUES FROM LOTTERY SALES (FY 1995-96 through FY 1999-2000)

Table 1 shows sales by game type for the past three years and projected sales for the next two years. Total lottery sales peaked in FY 1994-95, reaching almost \$519 million and representing a 4.7% increase from the previous year. The increase in sales in FY1994-95 was due entirely to a 13.4% increase in sales of instant scratch games. Both pulltab and on-line/terminal generated sales declined in that year.

Sales for both instant products declined in FY1997-98 while on-line/terminal generated sales increased 5.10% resulting in an overall 2.89% decrease in total ticket sales. Sales are expected to stabilize in FY 1999 as the Lottery continues to rebuild its infrastructure. In October 1998 the Lottery added 12 Field Marketing Representatives to work directly with our retailers. This is expected to strengthen our long-term relationship with the retailers, the benefits of which will be better realized in the next fiscal year.

Table 1
Ticket Sales by Fiscal Year and Game Type

Game Type	FY 1995-96 Sales Audited	FY 1996-97 Sales Audited	FY 1997-98 Sales Unaudited	FY 1998-99 Sales Projection	FY 1999-2000 Sales Projection
Instant Scratch	\$302,207,252	\$266,243,095	\$246,620,665	\$229,780,506	\$234,304,524
Instant Pulltab	\$8,194,440	\$7,170,540	\$6,294,780	\$5,352,284	\$5,457,662
On-line/ terminal generated	\$171,722,268	\$157,677,534	\$165,724,843	\$183,509,010	\$187,122,015
Total	\$482,123,960	\$431,091,168	\$418,640,287	\$418,641,800	\$426,884,200

Exhibits 1 through 4 are graphical representations of Lottery sales.

C. TOTAL PRIZE PAYOUT RATIOS AND PRIZES PAID OR EXPECTED TO BE PAID (FY 1995-96 through FY 1999-2000)

Table 2 shows the weighted actual average prize payout percentages by game type for the past three years and estimated prize payout percentages for the next two fiscal years. A weighted average is used to attribute more importance to games with higher sales, instead of giving all games equal consideration. The prize payout percentage is the average amount of the game's cost that is returned to players in the form of prizes. A game's prize structure is used to determine its prize payout percentage. Each individual game has a unique prize structure that represents the number, value and odds of winning each prize in that game.

Table 2
Weighted Average Prize Payout Percentages
by Fiscal Year and by Game Type
 (percentages are rounded)

Game Type	FY 1995-96 Prize Payout	FY 1996-97 Prize Payout	FY 1997-98 Prize Payout	FY 1998-99 Prize Payout Estimate	FY 1999-2000 Prize Payout Projection
Instant Scratch	62.75%	62.91%	62.43%	62.92%	63.00%
Instant Pulltab	61.06%	61.88%	61.79%	62.00%	62.00%
On-line/ terminal generated	47.94%	45.72%	48.60%	50.31%	50.31%
Total	57.45%	56.61%	56.94%	57.31%	57.31%

Table 3 shows actual prizes paid during the past three fiscal years and expected prizes to be paid in the next two fiscal years. Expected prizes to be paid in FY1998-99 are calculated by taking the sales projection for each game multiplied by the prize payout percentage for that *individual* game. FY1999-2000 expected prizes are calculated by the projected sales multiplied by the prize payout percentages for each *type* of game. Actual prizes paid, as a percentage of sales, may be less than the designed prize payout for several reasons, such as winners not claiming their prizes.

Table 3
Actual Prizes Paid or Expected to be Paid
by Fiscal Year and by Game Type*

Game Type	FY 1995-96 Prizes Paid (Audited)	FY 1996-97 Prizes Paid (Audited)	FY 1997-98 Prizes Paid (Unaudited)	FY 1998-99 Projected Prizes	FY 1999-2000 Projected Prizes (rounded)
Instant Scratch	\$189,631,734	\$167,498,013	\$153,964,466	\$144,577,894	\$147,611,850
Instant Pulltab	\$5,003,653	\$4,437,004	\$3,889,382	\$3,318,416	\$3,383,750
On-line/terminal generated	\$82,330,739	\$72,085,236	\$80,534,852	\$92,323,383	\$94,141,086
Total	\$276,966,126	\$244,020,253	\$238,388,699	\$240,219,693	\$250,136,686

*Prize amounts shown are based upon the accrual method. In certain situations (i.e. merchandise prizes) prizes are paid for up front (to the merchandise vendor). These up front costs may create a transitory situation where prize payout appears to be higher than it actually is. The accrual method reflects prizes as they are paid out to the **players**, and is consistent with WISMART accounting procedures.

D. EVALUATION OF PRIZE PAYOUT RATIOS

On-line/Terminal Generated Games and the Prize Payout Ratio

As mentioned, the maximum payout percentage that the Lottery can offer is subject to approval by the Legislature's Joint Committee on Finance. On-line/terminal generated prize payout ratios currently average 50.31% and range between 48.2% and 53.5% for each on-line/terminal generated game. Statutory provisions require that at least 50% of gross sales be returned to players as prize payments (s. 25.75(3)(a), Wis. Stats.). Table 4 lists the on-line/terminal generated games and associated prize payouts that have been offered to date in Wisconsin.

TABLE 4
On-line/terminal generated Games and Corresponding Start Dates and Prize Payout Rates

ON-LINE/TERMINAL GENERATED GAMES	START DATE	PAYOUT	END DATE
LOTTO AMERICA	8/10/89	45.00%	4/18/92
MONEY GAME 4	9/13/93	47.00%	8/3/96
DAILY MILLIONS	9/16/96	45.10%	3/29/98
POWERBALL	4/19/92	Approx. 50.00%	
WISCONSIN'S VERY OWN MEGABUCKS	6/18/92	53.50%	
SUPERCASH!	2/4/91	51.60%	
CASH 4 LIFE	3/30/98	Approx. 50.00%	
DAILY PICK 4	9/15/97	Approx. 48.40%	
DAILY PICK 3	9/21/92	48.20%	

Although there are many factors that impact sales in Wisconsin, a market segmentation study, including focus group testing, conducted by the Angus Reid Corporation for the Wisconsin Lottery quantified Wisconsin residents participation in lottery activities. A total of 1,245 Wisconsin residents were surveyed by telephone in June of 1997. The report sighted too few winners and insufficient winner awareness as the primary cause of decreased play. Since the time of that study, the Lottery has implemented plans to increase winner awareness. The Lottery is now sending weekly faxes and winner's posters to retailers, has created a "winner's wall", has increased the amount of press conferences and has developed a "Lottery Minute" segment for television broadcast. Daily Millions which had a prize payout percentage of only 45% was replaced in March 1998 with Cash 4 Life that has a prize payout percentage of approximately 50%.

Frequency of Winners and the Prize Payout

Some industry professionals argue that lottery customers are substituting alternative forms of gaming for lottery play. With the increase in number of casinos throughout the country, lotteries are facing substantial competition for the gaming dollar. Lottery products have low payouts and few winners relative to other gaming markets. These factors give casinos a competitive advantage for the discretionary gaming dollar.

As residents reallocate their disposable income in favor of other gaming activities, lottery sales decrease, Lottery winners become less frequent and ultimately, the Lottery becomes a less attractive activity to players. In both the initial focus groups and the final survey, the results indicate that Wisconsin residents are dissatisfied with their chances of winning a prize from the Lottery. The following is an excerpt from the Wisconsin Lottery Segmentation Study:

"In both the quantitative and the qualitative research, the most frequently mentioned reason for decreasing expenditures on lottery games has been the low incidence of winners. Not only do players feel that they themselves aren't winning, but also that they're not hearing of any one else winning either. This single explanation was mentioned four times as often as any other in response to this question for scratch-off games and almost twice as often as others for on-line/terminal generated games."

Chart 1 summarizes the results of the study regarding reasons for decreased lottery play. When asked about on-line/terminal generated products, 42% of the respondents cited one of these three reasons for decreasing the amount they spend on lottery;

- I'm not winning enough;
- Poor odds/less chance to win
- Don't hear of anybody winning

Evidence in chart 1 shows that the main reasons are not winning enough and the poor odds. More winners at optimal prize levels are needed for the on-line/terminal generated products. The Lottery has begun to address the issue of players not hearing about winners by the following methods:

Weekly faxes to media outlets which include information about recent winners, up-coming contestants for the Money Game TV Show, Powerball and Megabucks information (winners, jackpot amount) and local stations on the lottery television network including the times they show the Money Game TV Show.

The Lottery has increased the number of winner's posters being sent to retailers. A poster is now sent for all winners over \$599, each TV show ticket winner, bonus prize winners and Cash 4 Life winners.

The Lottery also produced a winner's wall for the state fair in 1998. A 10-foot backdrop filled with winner's pictures was employed. Visitors made a point of viewing the wall and then shared their own winning experiences. The Lottery will be using the winner's wall at more special events in the future.

The Lottery has also increased the number of press conferences for winners, and now has added a Lottery Minute that is shown twice per week on WISN-TV channel 12 in Milwaukee. The Lottery Minute is also available to stations throughout the state.

On-line/terminal generated Market Trends and Prize Payout

Early developers of on-line/terminal generated games assumed that high payouts were not necessary because large jackpot prizes would sustain consumer interest. However, many states have experienced a steady decline in jackpot game sales in recent years. Exhibit 5 shows the average Powerball sales per jackpot level for Wisconsin. Exhibit 6 shows the average Megabucks sales per jackpot level. Megabucks sales decreased, however Powerball sales set records twice in the last year. In May, with a record jackpot of \$195 million, a sales record of \$9.9 million was set. Two months later, in July, that sales record was broken when sales reached \$15 million for a jackpot of \$295 million.

The distribution of on-line/terminal generated sales has shifted since the Lottery's inception. For example, sales for jackpot games which typically offer large top prizes and low odds of winning smaller prizes have declined at comparable jackpot levels while sales initially grew and now have stabilized for games with smaller top prizes and higher odds of winning smaller prizes. The Lottery has seen a reverse of this trend with a rule change for Powerball that has led to higher jackpots and higher sales as referenced above although sales continue to decline for lower jackpot levels.

All else being equal, games with smaller top prizes have the flexibility to offer a greater number of prizes. Traditionally, instant scratch games offer prize structures of this nature. This strategy has had industry-wide success and as a result many lotteries are planning to apply the instant product marketing strategy to on-line/terminal generated games.

MUSL and other states plan to continue development of new on-line/terminal generated products which offer higher payouts and increased play value. These enhancements are intended to provide more winners per game and increase total lottery sales. One possibility is to offer on-line/terminal generated games on a limited term basis. However, this approach presents some complications. On-line/terminal generated games have historically been long-term investments averaging no more than one new game per fiscal year. In addition, the statutory requirement to print game odds on each ticket is a major obstacle to being able to offer limited time offers in Wisconsin, due to the costs incurred in changing the ticket stock.

Table 5 lists the current on-line/terminal generated estimated prize payout percentage in other lottery jurisdictions in FY1998-99 and whether they plan to raise their prize percentage. A "Yes" indicates a planned increase in on-line/terminal generated payout for that lottery. It was found that sixteen jurisdictions either presently have higher prize payout percentages than Wisconsin or plan to increase the prize payout percentage in the next year. In addition, one state currently has a prize payout percentage higher than Wisconsin and is planning to increase that percentage.

TABLE 5
On-line/Terminal Generated Prize Payout Across Lottery Jurisdictions

Lottery Jurisdiction	FY 99 Estimated Prize Payout	FY 2000 Planned Payout Increase
AZ	50%	No
CA	50%	No
CO	52%	No
CT	52%	No
DC	49%	No
DE	52%	No
FL	50%	No
GA	51%	No
IA	50%	No
ID	55%	No
IL	50%	No
IN	49.96%	No
KS	52%	No
LA	50%	Yes
MA	50%	No
MD	53%	No
ME	50%	No
MI	52%	No
MN	52.9%	No
MO	50%	No
MT	55%	No
NE	51%	No
NH	50%	No
NJ	50%	No
NM	50%	No
NY	49%	No
OH	57.42%	No
OR	54%	Yes
PA	50%	No
RI	56%	No
SD	50%	No
VT	50%	No
WA	57%	No
WI	50.31%	No
WV	53%	No

Source: Wisconsin Lottery Payout Survey, December 1998. LaFleur's 1998 World Lottery Almanac.

With the movement of launching more on-line/terminal generated games, more frequently, and with higher prize payouts lies the concern that it is cost prohibitive. Historically, lotteries had incurred large start-up costs to launch on-line/terminal generated games. The majority of start-up costs are attributable to computer software necessary to conduct an on-line/terminal generated game. In Wisconsin, these start-up costs have been significantly reduced since conversion to the new GTECH computer system. Wisconsin has subsequently launched two new on-line/terminal generated games, Daily Pick 4 and Cash 4 Life.

Instant Games and the Prize Payout Ratio

There are three common methods for generating additional payout:

- Recycling unclaimed prizes
- Offering free tickets
- Participation in a TV game show

The lottery issued a survey to all United States lotteries asking them if they offer free tickets and how they account for them. The Lottery also asked if they have a TV game show that players participate in through instant scratch games and if so, how they account for those prizes. Table 6 lists the results of that survey. It was found that eighteen states offer free tickets. Of those eighteen, twelve account for them in the prize structure. Fifteen states either offer a higher prize percentage or have plans to increase their prize percentage.

Table 6
Actual vs. Stated Payouts on Instant Scratch Games
Across Lottery Jurisdictions

Lottery Jurisdiction	Free Tickets Offered?	How Free Tickets are Accounted For	TV Show	How TV Show is Accounted For	Instant Prize Payout Percentage	Plans to Increase Prize Percentage?
AZ	No		No		58%	No
CA	Yes	A	Yes	A	60%	No
CO	No		No		64%	No
CT	Yes	A	No		67%	Yes
DC	Yes	A	No		65%	Yes
DE	No		No		58%	Yes
FL	Yes	A	Yes	A,B,D	58%	No
GA	Yes	A	No		50%	No
IA	Yes	C	No		61%	No
ID	Yes	A	No		65%	No
IL	Yes	C	Yes	B	59%	No
IN	Yes	C	Yes	E	59%	No
KS	Yes	C	No		57%	No
KY	No		No		63%	No
LA	Yes	C	No		56%	No
MA	Yes	A	No		71%	No
MD	Yes	A	No		63%	No
ME	No		No		62%	No
MI	No		Yes	F	61%	Yes
MN	No		No		65%	No
MO	Yes	C	Yes	B	58%	No
MT	Yes	A	No		60%	No
NE	Yes	A	No		58%	No
NH	No		No		63%	No
NJ	No		No		58%	No
NM	No		No		53%	Yes
NY	No		Yes		55%	Yes
OH	Yes	A	Yes	F	61%	No
OR	Yes	A	No		65%	No
PA	No		No		59%	Yes
RI	No		No		63%	No
SD	No		No		61%	No
VT	No		No		63%	Yes
WA	No		No		65%	No
WI	No		Yes	A	63%	No
WV	No		No		66%	No

Source: Wisconsin Lottery Payout Survey, December 1998. LaFleur's 1998 World Lottery Almanac.

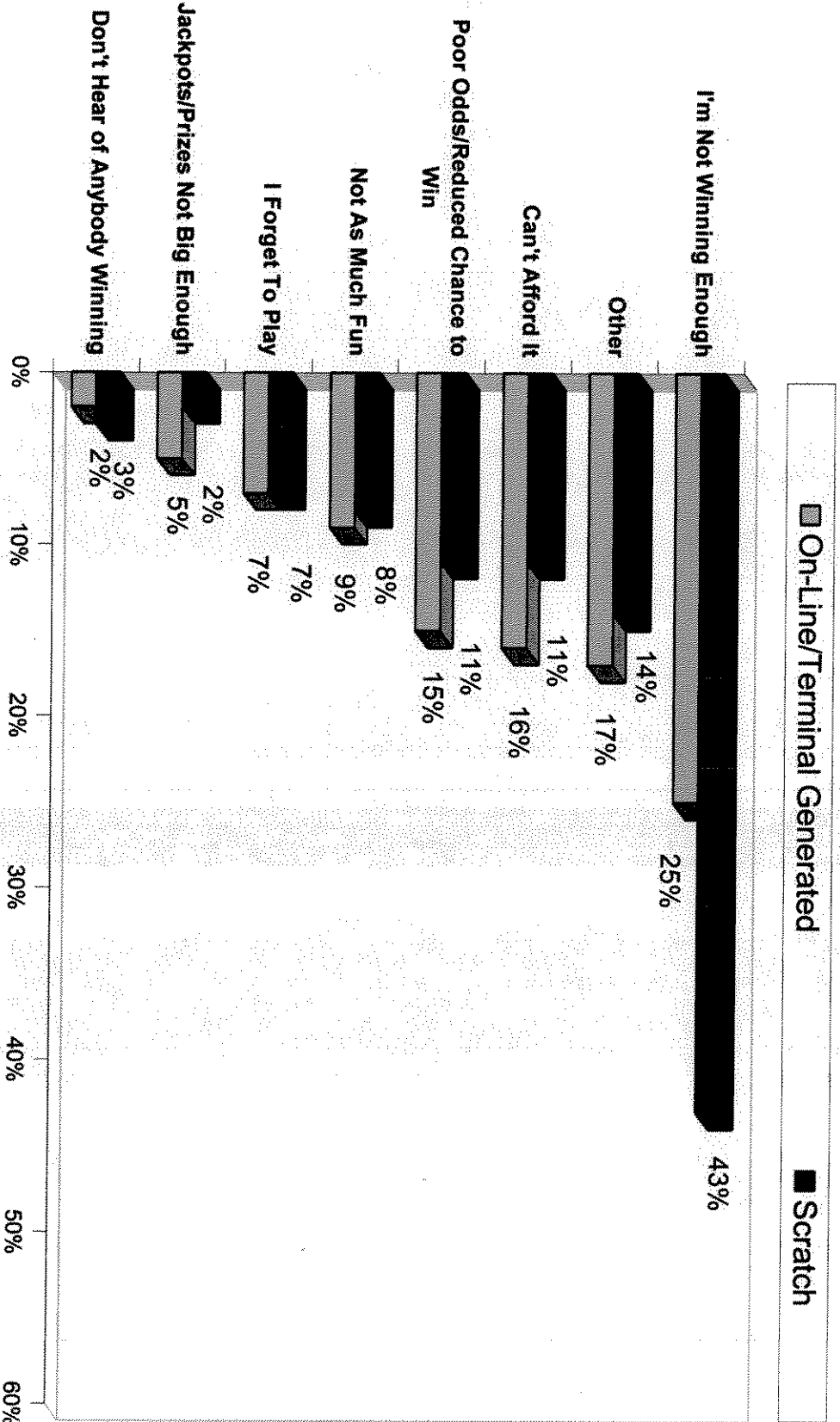
Accounting Field Key:

- A Recorded as part of the prize structure.
- B Funded by unclaimed prizes.
- C Recorded as a reduction to sales.
- D From On-line/terminal generated games.
- E Expensed in proportion to each game's sales to total sales.
- F Advertising Budget.

Based on the results of this survey, it appears that many jurisdictions use alternate methods, such as unclaimed prizes, to fund TV game shows. These states are returning more money to players in the form of "churn" prizes which are small prizes typically reinvested in the game by players at the point of sale.

Unlike these jurisdictions, the Wisconsin Lottery's unclaimed prizes are deposited in the Lottery Fund to go directly toward property tax relief in Wisconsin and are not used to recycle the money back to players as prizes. Similarly, prizes for Wisconsin's Money Game TV Show are fully accounted for as part of the overall 63% instant scratch payout percentage.

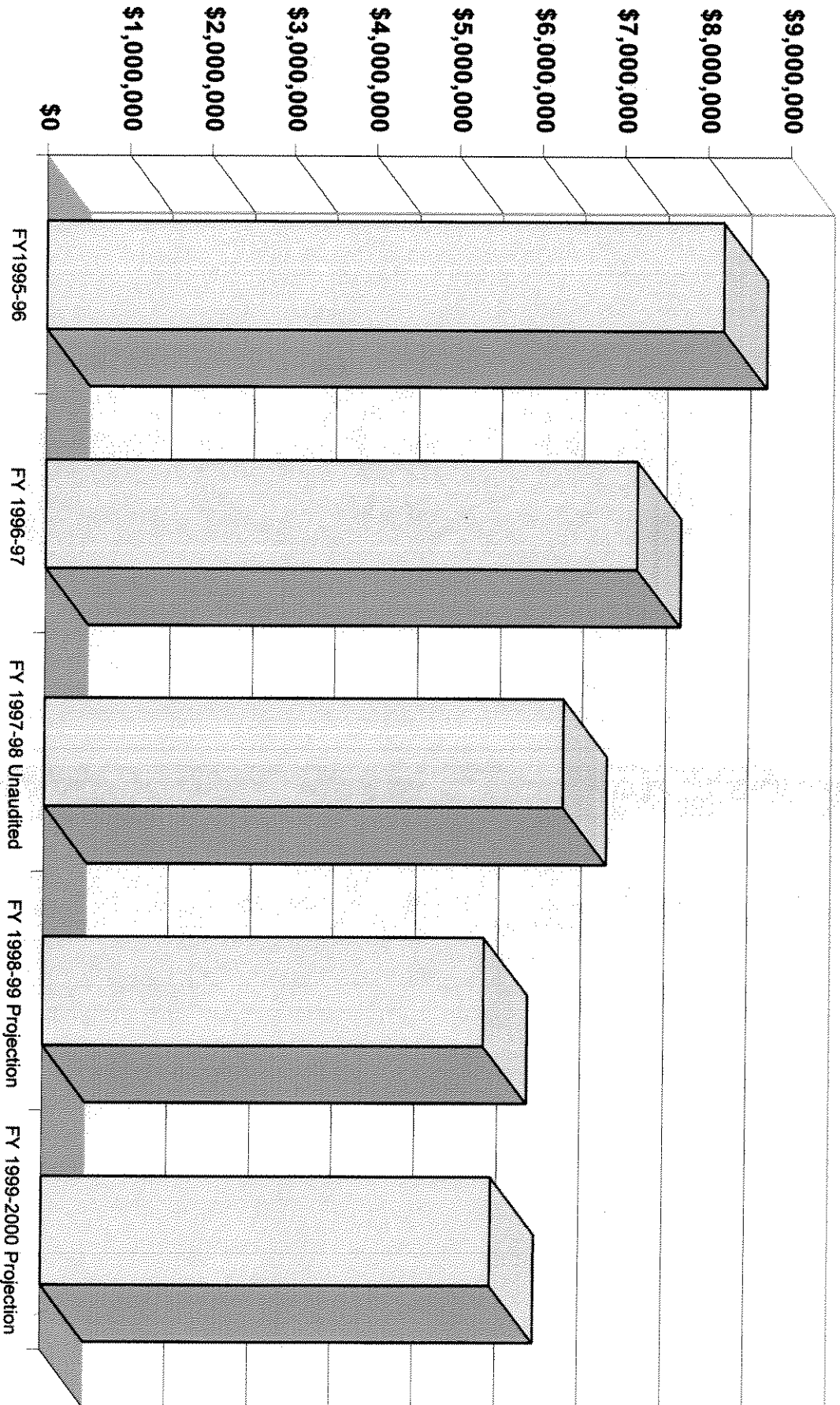
Main Reasons For Spending Less Money On Lottery Games



TOTAL INSTANT SCRATCH TICKET SALES



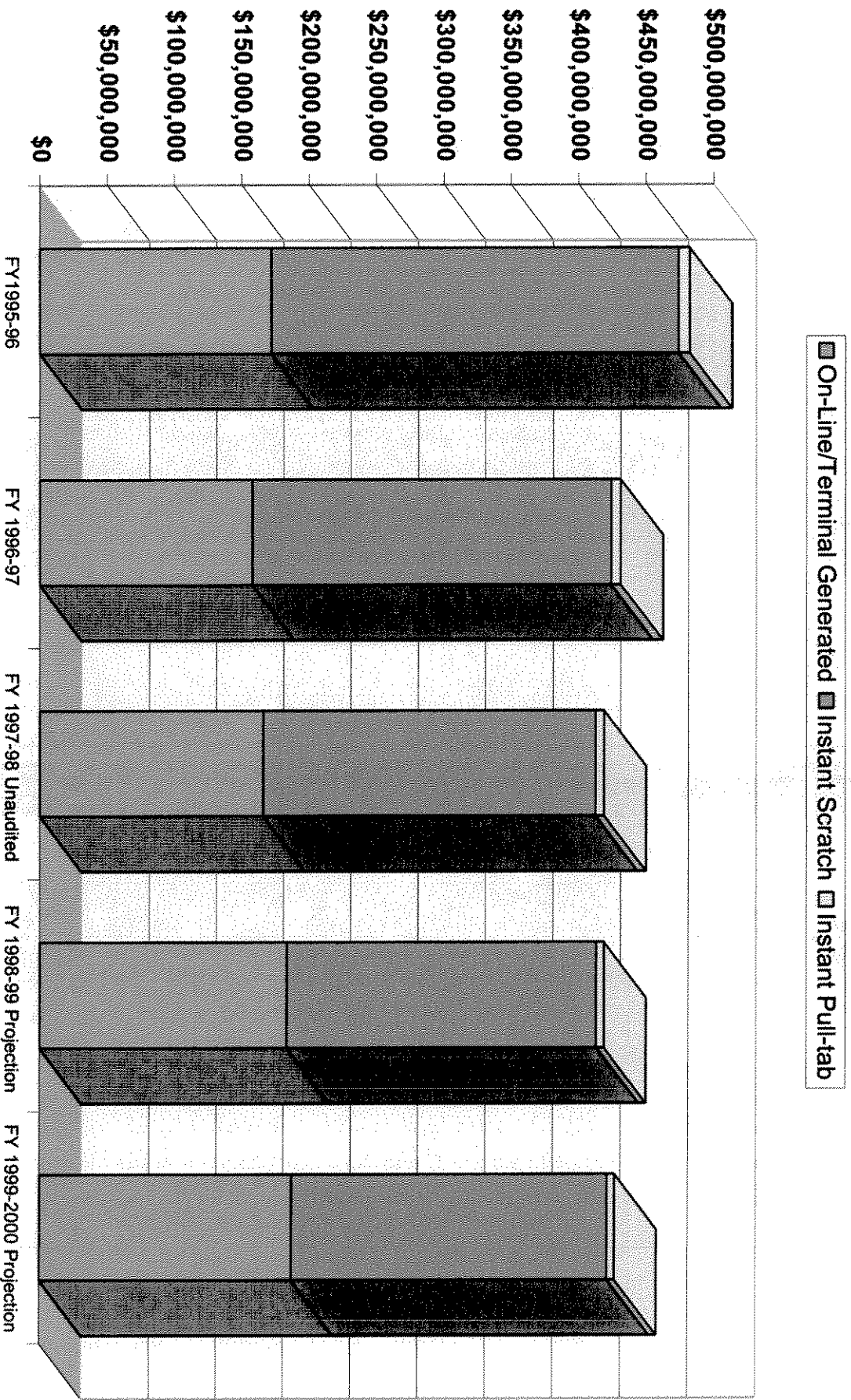
TOTAL INSTANT PULL-TAB TICKET SALES



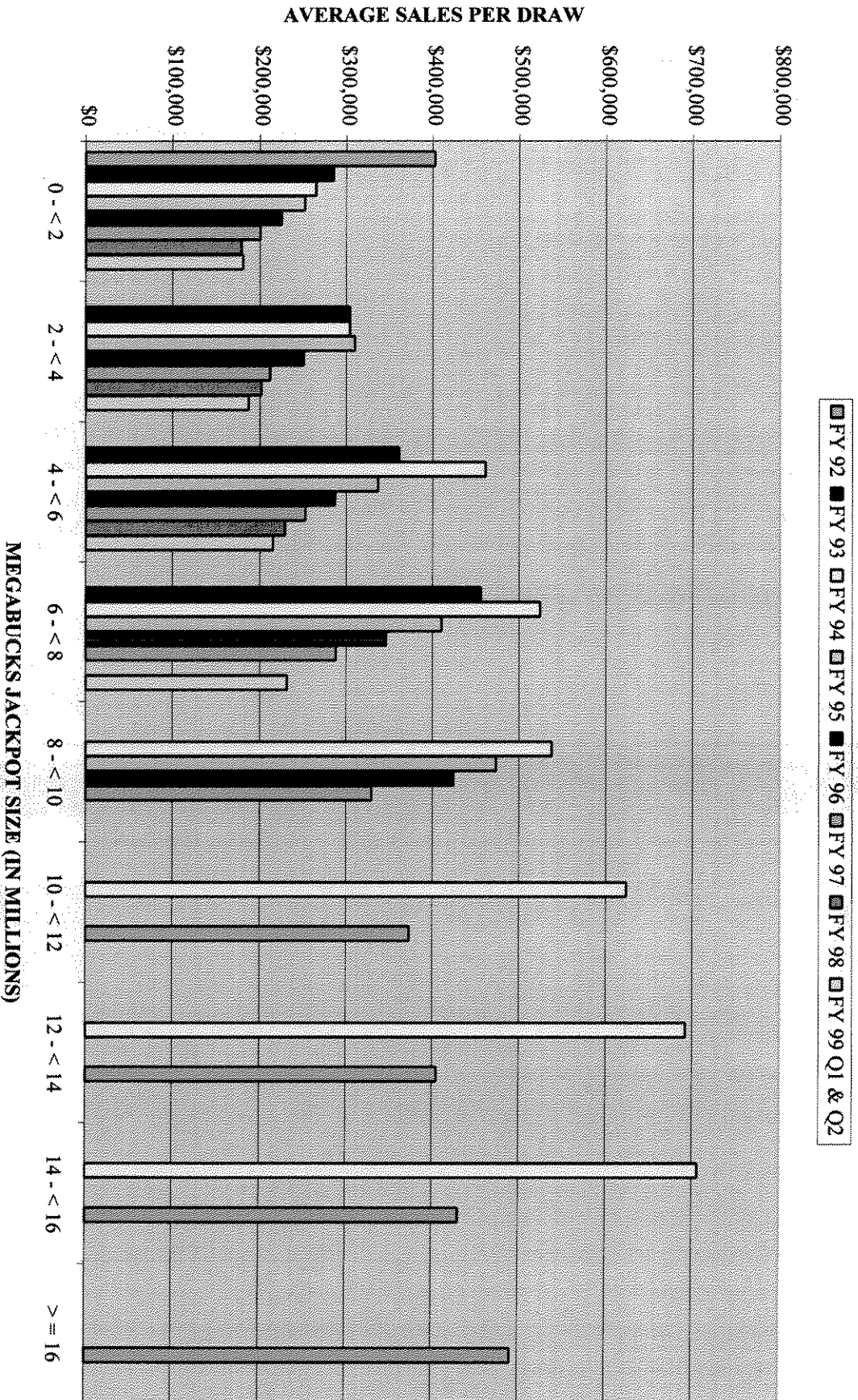
TOTAL ON-LINE/TERMINAL GENERATED TICKET SALES



TOTAL LOTTERY TICKET SALES



MEGABUCKS AVERAGE SALES PER DRAW BY JACKPOT SIZE BY FISCAL YEAR



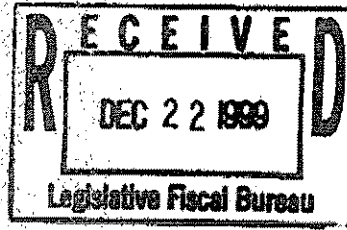


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Tommy G. Thompson
Governor

Cate Zeuske
Secretary of Revenue



December 21, 1999

Honorable Brian Burke
Co-Chair, Joint Committee on Finance
Room 316 South, State Capitol
Madison, WI 53702
(608) 266-8535

Honorable John Gard
Co-Chair, Joint Committee on Finance
Room 315 North, State Capitol
Madison, WI 53702
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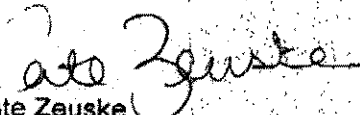
Dear Senator Burke and Representative Gard:

On December 7, 1999 I sent you the department's plan for implementation of the Lottery retailer performance program. *1999 Wisconsin Act 9* requires that the Joint Committee on Finance approve the plan before funding for this program is released from unallotted reserve.

While our December 7th report presents the basics of our plan for the retailer performance program, I would like to take the opportunity to submit a more detailed plan that will answer some of the questions raised in a December 20th memo from Legislative Fiscal Bureau. Please look for an amended DOR plan for this program in January of the coming year.

Thank you.

Sincerely,


Cate Zeuske
Secretary

cc: Bob Lang, Legislative Fiscal Bureau



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

December 20, 1999

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Proposed Plan for a Lottery Retailer Performance Program

Members of the Joint Committee on Finance recently received, for their review, a lottery retailer performance program plan from the Department of Revenue (DOR). Under 1999 Act 9, the 1999-01 biennial budget bill, \$2,075,600 GPR in 1999-00 and \$4,232,300 SEG in 2000-01 is provided for a retailer performance program funded from the lottery's retailer compensation appropriation. The additional compensation paid to retailers under the program may not exceed 1.0% of gross lottery sales revenue. Act 9 does not require DOR to implement a retailer performance program, but rather provides the Department the authority to establish a program, under administrative rules, for additional compensation paid to retailers who meet certain performance goals identified by the Department. This authority takes effect on January 1, 2000, and a program may be implemented at any time after that date.

DOR is also required to provide the Joint Committee on Finance with a retailer performance program plan, based on proposed administrative rules for the program, before any funds may be expended. Under Act 9, the funding for the program is placed in unallotted reserve for release by DOA following approval of the proposed plan by the Committee under a 14-day passive review process. The Department's plan and a draft of proposed emergency administrative rules for the program were submitted to the Committee on December 7, 1999.

The Department's plan will be approved on December 27th, unless the Committee's Co-chairs indicate that a meeting will be scheduled to review the proposed plan.

The purpose of this memorandum is to provide background information on the proposed program, summarize the plan and the draft emergency rules submitted by DOR and discuss the plan in terms of its responsiveness to the Committee's budget directive.

BACKGROUND

Under Act 9, the retailer performance program structure and its policies and procedures are not statutorily defined; rather, they are to be developed under administrative rules by the Department. In its budget request, DOR argued that this approach would provide the flexibility needed to adjust the program as business needs change.

At the time of the Committee's deliberations on the lottery retailer performance program, the Department had partially developed materials describing its intent for the program. The proposed program was discussed in LFB Issue Paper #840, dated April 22, 1999.

These materials described a program with two components: (a) a retail sales development component that would utilize approximately 0.5% of ticket sales for distribution to retailers who meet pre-defined sales goals; and (b) a retailer winning ticket component that would utilize approximately 0.5% of ticket sales for distribution to retailers selling winning tickets. Under the original DOR proposal, if the awards under the retailer winning ticket component totaled less than 0.5% of the available funds in a given year, the remaining funds would be expended under the sales performance component.

During budget deliberations, the Department indicated that under both program components, administrative measures would be implemented to assure that expenditure totals would be controlled. Any retailer that successfully earned bonus compensation under either component would be limited to certain maximum amounts: (a) for the sales development component, up to the amount of sales increases generated by the retailer; and (b) for the winning ticket component, up to \$100,000. Award payments would be made quarterly in order to sustain retailer interest in the program throughout the year.

The Department's original proposal also indicated that the sales development component would allocate bonus compensation based on "earned shares," with each share reflecting a \$500 increase in sales from the previous year. Shares would only be provided to retailers meeting a minimum percentage sales increase; for example, at least 3% more than the prior year. The total funding for the year would then be allocated to successful retailers in proportion to their shares. This mechanism would ensure that the available funding for the program each year would not be exceeded.

Under the proposed winning ticket component of the program, retailers would have been provided with an award of 1% of the value of the winning tickets they sell, excluding winning tickets of \$599 or less. This would have provided the seller of a winning \$8,000,000 Powerball ticket, for example, with bonus compensation of \$80,000 (as compared to basic compensation of \$0.055 under current law). More typically, prizes would fall in the \$600-\$2,000 range, providing bonuses of \$6 to \$20.

At the time of the Committee's budget deliberations, this proposed program structure was still evolving. While the Committee voted to support the funding for the program, it was felt that the proposed administrative rules for the performance program should be drafted before the funding was allocated. Thus, the proposed funding was placed in unallotted reserve until the Committee,

under a 14-day passive review process, reviewed the Department's plan, based on proposed administrative rules. This was intended to provide the Committee with the opportunity to review the program's structure in a more developed form and to meet, if necessary, to discuss the proposed plan.

SUMMARY OF THE PLAN AND PROPOSED EMERGENCY RULES

The Department submitted a retailer performance program (RPP) plan and a draft of proposed emergency rules for the program to the Committee on December 7, 1999.

The plan specifies that the program would be composed of a sales goal incentive component and a winning ticket incentive component. These components are similar to those discussed during the Committee's budget deliberations. A third component is also proposed: a short-term "mini-campaign" component that would focus on specific sales performance goals, with information on the mini-campaign published four weeks prior to the campaign's starting date and a campaign duration of no more than 13 weeks.

Eligibility for the retailer performance program would be retailers who sell an average of \$400 or more in scratch tickets each month of a sales quarter. Not-for-profit retailers would not be eligible for the program.

Under the plan, a retailer would qualify for the sales goal incentive component by increasing sales over the comparative quarter of the prior year. However, in another section of the plan's narrative, the Department indicates that a retailer's quarterly sales would be compared to the retailer's long-term sales history. According to the Department, each lottery product category would be treated separately. If the performance goal for a product category is achieved, the retailer would receive 10% of any sales increase in that category. Payments would be made to retailers following the end of each calendar quarter. Awards under the mini-campaign component would be made either weekly or quarterly, whichever is administratively prudent.

The winning ticket incentive component would provide a payment to the retailer selling a winning ticket equal to 2% (rather than the 1% discussed during budget deliberations) of the winning ticket value, if the winning ticket value is at least \$600. The maximum payment under the winning ticket incentive component would be \$100,000. Payments for the winning ticket component of the program would be paid weekly.

The plan refers to the funding amounts provided under Act 9 for the retailer performance program (1% of gross lottery sales), but does not project what the proposed program or its individual components might cost. The Department does estimate that sales increases of \$4 for every \$1 invested in the performance program may be expected (with sales increases totaling \$7.4 million in 1999-00 and \$15.1 million in 2000-01).

Finally, the plan identifies a number of activities that need to be completed in order to implement the program. These are grouped into three categories: program administration, retailer and employe training and software implementation.

The proposed emergency rules submitted as an attachment to the plan would amend current rules relating to the criteria for selecting retailers, retailer contracts and the termination of retailer contracts to reflect the \$400 minimum monthly sales required for a retailer to be eligible for the performance program. (Under current administrative rules relating to the criteria for selecting retailers, applicants are expected to sell a minimum 500 lottery tickets a month.) The proposed rules would also create a section relating to the retailer performance program. This section includes a statement of purpose (to provide for additional compensation of retailers who meet certain goals identified by DOR) and the eligibility criteria for the program.

The rules would also require the lottery administrator to annually develop an "RPP fiscal year plan" that describes the features and procedures for the program. This RPP fiscal year plan would include, but not be limited to the following:

- a. A clear explanation of the function of the program;
- b. All retailer eligibility requirements, including those specified in the rules;
- c. Performance expectations of retailers who participate in the program;
- d. The compensation payment schedule for additional compensation under the program;
- e. A detailed explanation of the payment process, which may include but is not limited to:
 1. the rate of incentive payment planned, based on a stated goal,
 2. the threshold level at which winning tickets will be considered eligible for payment,
 3. the maximum payment levels for sales goals or winning tickets or both,
 4. the rate of cashing bonus incentive payment planned, and
 5. any other details necessary to ensure proper administration of the program;
- f. A detailed explanation of the program funding calculation; and
- g. An estimation of the impact of the program, including operational costs and potential sales generated.

DISCUSSION

During its deliberations on the budget, the Finance Committee approved the concept of a lottery retailer performance program but withheld funding for the program until the Committee approved, through a passive review process, the specifics of a lottery retailer performance program plan based on proposed administrative rules.

The question before the Committee's members is whether or not the plan advanced by the Department provides sufficient detail to warrant approval and, thus, release of the funding.

The plan, as presented by DOR, broadly indicates the Department's intent but in a number of instances does not specifically address certain aspects of the program. For example, during budget deliberations the Department proposed the concept of earned shares, with each share reflecting a \$500 increase in sales from the previous year. These shares would be credited to retailers meeting a minimum percentage sales increase and each retailer's bonus would depend on its number of earned shares. The "earned share" concept, which helped to clarify how sales performance would be measured, is not included in the current plan. Neither the current plan, nor the proposed rules, specify the level of sales increases needed to qualify for a bonus or how an increase would be determined. Further, the original, "earned share" proposal made clear that available funding for the year would be allocated in proportion to the earned shares, thus ensuring that the 1% of total sales funding limit for the program would not be exceeded. Under the current plan, no procedures are specified regarding how the Department would assure that the payments do not exceed the 1% spending limit.

Additionally, while the plan identifies and briefly discusses the three program components (sales goal incentives, winning ticket incentives and mini-campaigns), definitions of these components and the policies and procedures that would govern them are not specified. The plan also states that each product category will be treated separately under the sales goal incentive component; however, product category definitions and the procedures for how they will be treated separately are not addressed in the plan or the proposed rules.

The "RPP fiscal year plan" that would be required under the proposed emergency rules would presumably address many of these questions. However, because that plan has not yet been developed, the Committee does not have that information available to it at this time.

There are three options that are available to the Committee's members. First, if it is determined that the Department should have flexibility in developing the plan and that sufficient information has been provided, the plan could be approved without additional questions or objection.

Second, the Committee could withhold its approval of the plan at this time and afford the Department the opportunity to provide more specific detail on its proposal. Once that information was submitted, the 14-day passive review process could then begin again.

Finally, the Co-chairs could schedule a meeting on the plan as submitted.

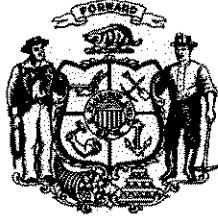
Prepared by: Art Zimmerman

cc: Cate Zeuske, Secretary, DOR
David Storey, Lottery Administrator
Richard Chandler, Budget Director, DOA

THE STATE OF WISCONSIN

SENATE CHAIR
BRIAN BURKE

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ASSEMBLY CHAIR
JOHN GARD

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JOINT COMMITTEE ON FINANCE

MEMORANDUM

To: Members, Joint Committee on Finance

From: Senator Brian Burke
Representative John Gard
Co-Chairs, Joint Committee on Finance

Date: December 7, 1999

Re: Lottery Retailer Performance Program Plan

Pursuant to 1999 Wis. Act 9, s. 9143, the Department of Revenue has provided the attached plan regarding the Lottery Retailer Performance Program. The department may not encumber or expend moneys appropriated to it for the purpose of providing additional compensation to lottery retailers under the program until the plan is approved by the Joint Committee on Finance.

Please review this item and notify Senator Burke or Representative Gard no later than Monday, December 27, 1999, if you have any concerns about the request or would like the Committee to meet formally to consider it.

Also, please contact us if you need further information.

BB:JG:js



State of Wisconsin • DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET • P.O. BOX 8933 • MADISON, WISCONSIN 53708-8933 • 608-266-6466 • FAX 608-266-5718 • <http://www.dor.state.wi.us>

Tommy G. Thompson
Governor

Cate Zeuske
Secretary of Revenue

December 7, 1999

Honorable John Gard,
Co-Chair, Joint Committee on Finance
Room 315 North, State Capitol
Madison, WI 53702
(608) 266-2343

Honorable Brian Burke,
Co-Chair, Joint Committee on Finance
Room 316 South, State Capitol
Madison, WI 53702
(608) 266-8535

Dear Representative Gard and Senator Burke:

In accordance with 1999 Wisconsin Act 9, Section 9143 (2t), the Department of Revenue is providing you the enclosed Lottery retailer performance program plan and proposed administrative rules. The program is scheduled to begin January 1, 2000.

Funding to support the program has been placed in unallotted reserve for release by the Department of Administration following the Joint Committee on Finance approval of the plan. Because of the short time frame between the date the budget was passed and the date the program is scheduled to begin, we have begun the related administrative rule-making process. Enclosed is an advance copy of proposed emergency rules we intend to submit to the Joint Committee for Review of Administrative Rules.

We are excited about our opportunity to build our retailer relations and increase lottery ticket sales through our retailer performance program. If you have any questions, please feel free to contact me.

Sincerely,

Cate Zeuske
Secretary of Revenue

enclosures



State of Wisconsin • DEPARTMENT OF REVENUE

LOTTERY DIVISION • 1802 W. BELTLINE HWY • PO BOX 8941 • MADISON, WISCONSIN 53708-8941
FAX (608) 264-6644 • <http://www.wilottery.com>

Retailer Performance Program Status Report

December 3, 1999

The Retailer Performance Program (RPP) was authorized in 1999 Wisconsin Act 9 (the biennial budget bill) at s.227.11(2)(a) and s. 565.10(14)(6)(3m). Section 9143(2t) requires the Department of Revenue to provide a report to the Joint Committee on Finance prior to release of funding for the program.

Function of the Program

The function of the RPP is to provide to Lottery retailers the opportunity to increase the rate of return they receive for selling Lottery products. This program is in addition to the regular commission for selling lottery tickets, and is based on the concept of pay for performance achievement of stated goals.

For FY00, the program will consist of two parts: Winning Ticket Incentives and Sales Goals Incentives. Additionally, the Lottery may also activate short-term "mini-campaigns" focused on specific sales performance goals. Information on mini-campaigns will be published 4 weeks prior to starting date, and no mini-campaign will last more than one sales quarter (13 weeks).

Eligibility

To be eligible, a retailer must abide by the Retailer Contract and, in accordance with the contract, must sell a minimum average of \$400 of scratch tickets each month of a sales quarter. Non-profit retailers may not participate in the RPP.

Performance Expectations

Each retailer is expected to increase Lottery product sales. For Winning Ticket Incentive, a retailer qualifies by selling a winning ticket with a stated prize value of \$600 or more. The retailer will receive 2% of the stated prize value, up to \$100,000. More tickets sold results in more winning tickets sold. For Sales Goals Incentive, a retailer qualifies by increasing sales over the comparative quarter of the prior year. For such performance, the retailer will receive 10% of any increase they generate.

Compensation Schedule

The following chart shows the Sales Goals Incentive compensation schedule for FY00, including dated quarter definitions and dates by which retailers will receive their payments.

RPP "Sales Goals" Payment Schedule*			
Sales Quarter	Starting Date	Ending Date	Payment Date
			on or before:
---	---	---	---
---	---	---	---
1999 Quarter 4	1/1/00	4/1/00	4/23/00
2000 Quarter 1	4/2/00	7/1/00	7/23/00

* FY00 is an abbreviated schedule. Following fiscal years will have 4 quarters.

For the Winning Ticket Incentive portion of the program, retailers will be paid weekly, in conjunction with EFT banking account processing. For any mini-campaigns, retailers will receive payment either weekly, or in conjunction with the above schedule, whichever is administratively prudent.

Payment Process

For Winning Ticket Incentive, winners will be identified weekly and retailers will receive a payment equal to 2% of their prize value. The retailer's Lottery bank account will be credited weekly for what they are due. Payment will be made on all winning tickets when the prize is \$600 or higher, with a cap of \$100,000 per winning ticket.

For the Sales Goals Incentive, quarterly sales will be compared to retailer's long-term sales history. Each product category will be treated separately. If the performance goal for a product category is achieved, the retailer will receive 10% of any sales increases they generated for that category. The account will be credited by the last Thursday of the month following the close of a sales quarter. For any mini-campaigns, the payment process will be similar to either of these two, above, whichever is administratively prudent.

Funding Authority

The Legislature, under ss. 565.02(4)(g) and 565.10(14) (b)3m., Stats., has authorized the Department of Revenue to utilize up to 1% of gross sales to provide for a Retailer Performance Program that is "...to be paid to retailers who meet certain performance goals identified by the department."

For FY00, the program funding value is based on estimated gross sales of \$421 million. Therefore, the program is authorized to spend \$2.1 million in FY00 (one half of a normal fiscal year). For FY 01, the program is authorized to spend \$429 million, or 1%, at \$4.29 million.

Impact of the Program on Sales

The program is estimated to return approximately four dollars for every one dollar invested, or \$7.4 million in FY00 (a partial fiscal year) and \$15.11 in FY01. Other than the payment to retailers, program costs will be absorbed by

the Lottery out of its base budget. Administrative costs are expected to be less than \$50,000 the first year (FY00) and less than \$20,000 yearly in following fiscal years.

Implementation

The Lottery has determined that implementation activity is necessary in three main areas: program administration, retailer and employee training, and software installation.

Program Administration

- Emergency Administrative Rules to be published for promulgation.
- Permanent Rule promulgation Scope statement to be completed by December 8th, 1999. Proposal to be drafted in January, 2000.
- RPP Fiscal Year Plan - FY00 is completed (reviewed above).

Retailer and Employee Training

- General information to the public (nearly completed).
- Lottery internal training (completion by December 15, 1999).
- Training for corporate retailer networks (completion by January 15th, 2000).
- Single owner training (completion by January 15th, 2000).

Software Implementation

- Specification Sheets completed, currently being Quality Assurance tested
- Winning Ticket Incentive software module to begin on January 1st, 2000
- Sales Goals Incentive software module to begin on March 1st, 2000 (this module does not run until April 23rd, so installation is by January 1st is not necessary).

**ORDER OF THE DEPARTMENT OF REVENUE
ADOPTING AN EMERGENCY RULE**

The Wisconsin Department of Revenue hereby adopts an emergency rule interpreting ss. 565.02(4)(g) and 565.10(14)(b)3m., Stats., relating to the implementation and maintenance of the retailer performance program of the Wisconsin lottery.

Analysis by the Department of Revenue

Statutory authority: ss. 227.11(2)(a) and 565.10(14)(b)3m., Stats.

Statutes interpreted: ss. 565.02(4)(g) and 565.10(14)(b)3m., Stats., as created by 1999 Wis. Act 9.

SECTION 1. WGC 61.02(5), (6) and (7) are renumbered WGC 61.02(6), (7) and (9), consistent with Legislative Council Rules Clearinghouse standards to insert, in alphabetical order, the definitions in Section 2.

SECTION 2. WGC 61.02(5) and (8) are created, to provide additional definitions relating to the Wisconsin lottery.

SECTIONS 3, 4 AND 5. WGC 61.04(1)(d) and 61.08(11)(c) and (21)(c) are amended and WGC 61.085 is created, to address the implementation and maintenance of the retailer performance program.

FINDING OF EMERGENCY

The Department of Revenue finds that an emergency exists and that the attached rule order is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

Sections 565.02(4)(g) and 565.10(14)(b)3m., Stats., as created by 1999 Wis. Act 9, provide for the implementation of a retailer performance program, effective January 1, 2000. The program may be implemented only by the promulgation of rules. A permanent rule cannot be in place by the January 1, 2000, effective date.

This rule is therefore promulgated as an emergency rule and shall take effect the later of January 1, 2000 or upon publication in the official state newspaper. Certified copies of this rule have been filed with the Secretary of State and the Revisor of Statutes, as provided in s. 227.24, Stats.

SECTION 1. WGC 61.02(5), (6) and (7) are renumbered WGC 61.02(6), (7) and (9).

SECTION 2. WGC 61.02(5) and (8) are created to read:

WGC 61.02(5) "Retailer performance program" or "RPP" means a program that is designed to provide for additional compensation, above the compensation provided under s. 565.10(14)(b)1. or 2., Stats., to be paid to retailers who meet certain goals identified by the Wisconsin lottery.

(8) "Winning lottery ticket" or "winning lottery share" means either of the following:

(a) For instant scratch tickets under s.565.01(6m)(a)1., Stats., the terms mean any ticket that has been validated by the Wisconsin lottery as a ticket that entitles a player to a prize.

(b) For on-line tickets under s.565.01(6m)(a)2., Stats., the terms mean any ticket that has been identified by a secure method by the Wisconsin lottery as a ticket that entitles a player to a prize.

SECTION 3. WGC 61.04(1)(d) is amended to read:

WGC 61.04(1)(d) The applicant is expected to sell a minimum of ~~500 tickets a~~ \$400 worth of tickets each month. The executive director may deny a contract to an applicant whose anticipated monthly sales will not meet a minimum of ~~500 tickets~~ \$400 worth of tickets each month or whose historical monthly sales are less than ~~500~~ \$400 worth of tickets each month.

SECTION 4. WGC 61.08(11)(c) and (21)(c) are amended to read:

WGC 61.08(11)(c) The retailer shall sell at least ~~500 tickets a~~ \$400 worth of tickets each month.

(21)(c) The retailer failed to sell a monthly minimum of ~~500 lottery tickets~~ \$400 worth of tickets each month;

SECTION 5. WGC 61.085 is created to read:

WGC 61.085 Retailer performance program. (1) PURPOSE. The retailer performance program or "RPP" is intended to provide for additional compensation, above the compensation provided under s. 565.10(14)(b)1. or 2., Stats., to be paid to retailers who meet certain goals identified by the department. This additional compensation is authorized under ss. 565.02(4)(g) and 565.10(14)(b)3m., Stats.

(2) DEFINITIONS. In this section:

(a) "Compensation payment schedule" means a schedule established by the lottery administrator under which this program generates payments to retailers for additional compensation. The schedule shall include, but is not limited to, payment dates and the definition of each quarter of performance of a given fiscal year, using calendar dates.

(b) "RPP fiscal year plan" means the documentation identifying the components of the RPP, as specified under sub. (4).

(3) ELIGIBILITY. Any retailer may participate in the RPP provided it meets all of the following eligibility requirements:

(a) The retailer shall honor the current retailer contract, including any applicable addenda.

(b) A retailer may not be a not-for-profit or non-profit organization as defined in s. 565.10(14)(a), Stats.

(c) No retailer may have average sales in a sales quarter of instant scratch tickets that are less than a dollar amount level established by the administrator.

(d) All eligibility requirements shall be clearly stated in the RPP fiscal year plan as defined in sub. (2)(b) and in the features and procedures of each component of the plan.

(4) DESIGN. The administrator shall develop and document the department the features and procedures of the RPP. The documentation shall be titled the "RPP fiscal year plan" and shall include, but is not limited to, the following:

(a) A clear explanation of the function of the RPP.

(b) All retailer eligibility requirements, including those listed in sub. (3).

(c) Performance expectations of retailers who participate in the RPP.

(d) The compensation payment schedule for additional compensation as defined in sub. (2)(a).

(e) A detailed explanation of the payment process. The explanation may include, but is not limited to, the following:

1. The rate of incentive payment planned based on a stated goal.

2. The threshold level at which winning tickets will be considered eligible for payment.

3. Maximum payment levels for sales goals or winning tickets or both.

4. The rate of cashing bonus incentive payment planned.

5. Any other details necessary to ensure proper administration of the RPP.

(f) A detailed explanation of the program funding calculation.

(g) An estimation of the impact of the program, including operational costs and potential sales generated.

(5) TERM OF ACTIVITY. The administrator shall annually review the RPP fiscal year plan. Modification of the plan for a given fiscal year shall be completed no less than 90 days prior to the beginning of that fiscal year.

(6) REPORT. The administrator shall document the total of payments made to retailers under this program. The report shall be available within 90 days of the completion of a fiscal year.

Note: Section 61.085 interprets ss. 565.02(4)(g) and 565.10(14)(b)3m., Stats.

The rules contained in this order shall take effect the later of January 1, 2000 or upon publication in the official state newspaper as provided in s. 227.22(2)(c), Stats.

DEPARTMENT OF REVENUE

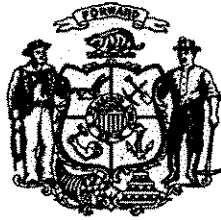
Dated: _____

By: _____
Cate Zeuske
Secretary of Revenue

THE STATE OF WISCONSIN

SENATE CHAIR
BRIAN BURKE

316-S Capitol
P.O. Box 7882
Madison, WI 53707-7882
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ASSEMBLY CHAIR
JOHN GARD

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JOINT COMMITTEE ON FINANCE

February 24, 2000

Secretary Cate Zeuske
Department of Revenue
125 S. Webster Street, 2nd Floor
Madison, Wisconsin

Dear Secretary Zeuske:

We are writing to inform you that the Joint Committee on Finance has reviewed the proposed Lottery Retailer Performance Program, received on February 7, 2000.

No objections to this request have been raised. Accordingly, the request is approved.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brian Burke'.

BRIAN BURKE
Senate Chair

A handwritten signature in black ink, appearing to read 'John G. Gard'.

JOHN G. GARD
Assembly Chair

BB:JG:dh

cc: Members, Joint Committee on Finance
Robert Lang, Legislative Fiscal Bureau
Vicky LaBelle, Department of Administration



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

February 14, 2000

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Revised Plan for a Lottery Retailer Performance Program

On February 7, 2000, the members of the Joint Committee on Finance received, for their review, a revised lottery retailer performance program plan and draft emergency administrative rules from the Department of Revenue (DOR). The original plan and related rules were submitted to the Committee on December 7, 1999. In a memorandum to the Committee dated December 20, 1999, this office provided a summary of that plan and the proposed rules, as well as a discussion of this material. On December 21, 1999, DOR withdrew the plan and indicated that a more detailed plan would be submitted at a later date. The purpose of this memorandum is to provide background information on the proposed program, summarize the revised plan and the draft emergency rules, and discuss the plan.

BACKGROUND

Under 1999 Act 9, the 1999-01 biennial budget bill, \$2,075,600 GPR in 1999-00 and \$4,232,300 SEG in 2000-01 is provided for a retailer performance program funded from the lottery's retailer compensation appropriation. The additional compensation paid to retailers under the program may not exceed 1.0% of gross lottery sales revenue. Act 9 does not require DOR to implement a retailer performance program, but rather provides the Department the authority to establish a program, under administrative rules, for additional compensation paid to retailers who meet certain performance goals identified by the Department. This authority takes effect on January 1, 2000, and a program may be implemented at any time on or after that date.

DOR is also required to provide the Joint Committee on Finance with a retailer performance program plan, based on proposed administrative rules for the program, before any funds may be expended. Under Act 9, the funding for the program is placed in unallotted reserve for release by the Department of Administration following approval of the proposed plan by the Committee under

a 14-day passive review process. This was intended to provide the Committee with the opportunity to review the program's structure in a more developed form and to meet, if necessary, to discuss the proposed plan.

SUMMARY OF THE PLAN AND DRAFT EMERGENCY RULES

This summary refers primarily to the retailer performance program plan submitted to the Committee on February 7, 2000, but also reflects the draft emergency rules. The proposed rules are specifically referred to only in instances where they provide additional detail or help to clarify what is stated in the plan.

The plan specifies that the retailer performance program would be composed of three components: (a) a winning ticket bonus component; (b) a sales goals incentive component; and (c) a short-term incentive component. The winning ticket and sales goals components are viewed by DOR as the major components of the program. The short-term incentives are characterized as a minor component of the program designed to support certain lottery products or strengthen sales during certain periods of the year.

Under the plan, eligibility requirements would be as follows: (a) a retailer must be a for-profit retailer; (b) the retailer must honor the existing contract and all addenda; and (c) the retailer must sell a monthly average of instant tickets in a sales quarter that is not less than the dollar amount established by the lottery administrator. Initially, this dollar amount would be \$400, which is consistent with current retailer contract provisions. Not-for-profit retailers would not be eligible for the program.

The proposed emergency rules would amend the administrative code relating to the criteria for selecting lottery retailers, the sales requirement for retailers and the grounds for contract suspension or termination, to specify minimum monthly sales of \$400. Under current rules, the monthly minimum is 500 tickets. The proposed rules would also provide that the lottery administrator is authorized to establish a different amount for all retailers and that any established amount shall be represented in any retailer contract or addenda. The plan explains that the 500-ticket standard requires modification to a specific dollar amount because ticket prices vary. Thus, retailers meeting the 500 ticket standard could be generating significantly different amounts of lottery revenue. Amending the requirements to a specific dollar amount treats retailers in a more consistent fashion and allows this dollar amount to provide one basis for eligibility in the performance program.

[Note: While the plan and draft rules provide that the administrator would have the authority to change the \$400 amount, lottery officials now indicate that this administrative discretion will be deleted in the emergency rules. Thus, an amendment to the rules would be required to modify the \$400 amount. In addition, the emergency rules will be modified to clarify that the \$400 requirement applies to instant ticket sales. This is consistent with retailer contract provisions and the program eligibility provision, as stated in the plan.]

The three components of the program, including qualification requirements, the method of determining bonus payments, how payments will be made and anticipated fiscal effects, are discussed in the following sections. Under the draft rules, these provisions would first apply to lottery sales on January 1, 2000.

Winning Ticket Component. The winning ticket component would provide a payment to the retailer selling a winning ticket equal to 2% of the winning ticket value, if the winning ticket value is at least \$600. The maximum payment under the winning ticket incentive component would be \$100,000 per winning ticket. A retailer selling an instant ticket qualifying a player for the lottery's TV game show would receive a \$30 bonus (calculated on the basis of 2% of the yearly average winnings of all players on the show). Any retailer meeting the program eligibility requirements, stated above, would qualify for the winning ticket component. Under the proposed rules, implementation of the retailer performance program would be retroactive to January 1, 2000. Therefore, the bonus would be paid on winning tickets sold on or after this date.

Payments to retailers for the winning ticket component of the program would be required to be made quarterly, but the plan indicates that payments are likely to be paid weekly after lottery computers are properly programmed. Lottery officials indicate in the plan that, if the winning ticket component had been in place in 1998-99, payments totaling \$1,015,500 would have been made.

Sales Goals Incentive Component. The sales goals incentive component would pay bonuses of up to 10% of sales increases in three categories of lottery products: (a) instant ticket games; (b) non-jackpot on-line games; and (c) jackpot on-line games. Each lottery product category would be treated separately.

Under the plan, a retailer would qualify for the sales incentive component by establishing a sales history for comparison purposes. In the case of instant and non-jackpot on-line games, sales increases would be based on quarterly comparisons; therefore a retailer's sales in the corresponding quarter of the previous fiscal year would qualify the retailer and provide a basis for comparison with quarterly sales in the current fiscal year. Alternatively, for new lottery retailers or retailers adding a new product category (other than jackpot on-line games), the full sales quarter immediately prior to the current sales quarter would be used for comparison until a corresponding quarter of the previous fiscal year is established.

For jackpot on-line games, sales increases would be based on fiscal year comparisons. For these games, a retailer would be required to have no less than 52 weeks of sales history in the previous fiscal year to qualify for sales incentive payments. Lottery officials indicate that an annual approach to jackpot games is more suitable than a quarterly approach because there is a need to smooth out the sales peaks that are an inherent part of jackpot games.

In the case of instant and non-jackpot on-line games, only retailers who increase quarterly sales, as compared to the appropriate quarterly sales history, could receive bonus compensation. Similarly, for jackpot on-line game sales, only retailers who increase annual sales, as compared to the previous fiscal year, could receive bonus compensation. Payments would be made to retailers in the month following the end of each quarter, in the case of instant and non-jackpot on-line

games, and in the month following the close of a fiscal year, in the case of jackpot games. Lottery officials indicate in the plan that, if the sales goals incentive component had been in place in 1998-99, payments totaling \$2,712,500 would have been made.

Short-Term Incentive Component. According to the plan, the short-term incentive component of the program would pay a bonus to retailers who satisfy a specific, short-term performance expectation. The intent of providing short-term incentives is to support certain lottery products or strengthen sales during certain periods of the year through a flexible incentive mechanism that has a limited life cycle. The plan indicates, for example, that this incentive could help to reduce the ticket inventory for certain games or support seasonal lottery products.

Under the plan, the lottery administrator may offer a maximum of four, short-term incentives in a fiscal year. A short-term incentive may not continue from one fiscal year to another fiscal year and may not run for more than 13 weeks. The administrator would be required to provide retailers with a features and procedures document for each short-term incentive no later than 21 days prior to the start date of the incentive. Under the draft emergency rules, the document must include the following: (a) the requirements for a retailer to qualify for the program that are as consistent as possible with other aspects of the retailer program; (b) the expected performance of a retailer who participates in the short-term incentive; (c) the start and end dates of the program and the expected time period that the plan will run, not to exceed 13 weeks; (d) a statement of how much funding may be made available for payment under the plan; (e) a detailed explanation of how the incentive is calculated, consistent with other aspects of the retailer program where appropriate; (f) a detailed explanation of how the incentive payment will be made, no later than the last Thursday of the month following the last day of the sales quarter in which the short-term incentive ends; and (g) any other features or procedures determined by the administrator to be appropriate.

Under the plan, each short-term incentive would be limited to a maximum of \$100,000 in incentive payments. Thus, the maximum fiscal effect in any fiscal year for this component would be \$400,000.

As indicated above, the plan provides fiscal estimates for two components of the program based on actual sales data from 1998-99. These estimates are \$1,015,500 for the winning ticket component and \$2,712,500 for the sales goals incentive component. In addition, a maximum of \$400,000 could be provided under the short-term incentive component. This results in a total annual fiscal estimate of \$4,128,000. Based on 1998-99 sales, the amount available for the program (1% of sales) would have been \$4,283,000.

The program plan also includes a payment mechanism to ensure that total payments in a fiscal year will not exceed the 1% of total sales funding limit. This is accomplished by specifying that the sales goals incentive payments would be up to 10% of sales increases. Under the draft rules, the lottery administrator is required to monitor program payments at least quarterly and is authorized to make a prepayment adjustment to reduce the compensation percentage for any product type to ensure that funding authority is not exceeded and that payments do not negatively impact the payment of earned incentives under other components of the program. Any adjustment would apply equally to all retailers receiving payment. Under the draft rules, if an adjustment is

necessary, the administrator would be required to consider historical sales and incentive information.

Under draft rules, a sales quarter would be defined as a quarter of the lottery fiscal year that is 13 weeks in length. The lottery administrator would be required to determine the start and end dates of all sales quarters of a fiscal year no later than one month prior to the beginning of that fiscal year and, upon request, would be required to provide the calendar dates that define each quarter of a fiscal year. A quarter would be required to start and end on dates that are consistent with the standard billing cycle that the lottery uses to collect revenue from retailer accounts. According to lottery officials, these 13-week quarters would generally correspond to standard calendar year quarters.

The plan would also require the lottery administrator to document and report, within 90 days of the completion of a fiscal year, the total payments made to retailers under the program. The report must include a breakdown of any incentives paid under the winning ticket incentive, the sales goals incentive and the short-term incentive.

Finally, the draft rules would provide that, in the event the administrator terminates the eligibility or qualification of a retailer under the program, the retailer is entitled to an appeal in accordance with current appeal procedures under lottery rules relating to a contract termination. [Note: Lottery officials now indicate that the emergency rule, as it relates to the right to appeal, will be modified to include disputes regarding payments under the program.]

DISCUSSION

During its deliberations on the budget, the Finance Committee approved the concept of a lottery retailer performance program but withheld funding for the program until the Committee approved, through a passive review process, the specifics of a lottery retailer performance program plan based on proposed administrative rules.

The question before the Committee's members is whether or not the revised plan advanced by the Department (February 7, 2000) provides sufficient detail to warrant approval and, thus, release of the funding.

The Department's original plan for the program (December 7, 1999) was summarized in a memorandum to the Committee from this office dated December 20, 1999. In that memorandum, several concerns were raised. The first of these was that the plan did not clearly specify the level of sales increases needed to qualify for a bonus or how an increase would be determined. The Department's revised plan appears to clearly define the sales history needed to qualify for bonus payments, as well as the basis for comparing sales results and determining sales increases.

A second concern relating to the initial plan was that no procedures were specified regarding how the Department would assure that the payments do not exceed the 1% spending limit. The revised plan accomplishes this by: (a) specifying that the sales goals incentive payments would be up to 10% of sales increases; and (b) authorizing the lottery administrator to make a

prepayment adjustment to reduce the compensation percentage for any product type to ensure that funding authority is not exceeded. In addition, the timing of payments for each component specified under the revised plan is consistent with the provision to make prepayment adjustments. First, winning ticket payments would be made weekly and all winning ticket bonuses would be paid each year; that is, these payments would not be subject to any reduction. Second, the short-term incentives, if offered, would be paid quarterly in their entirety, but are limited to a maximum of \$400,000 a year. Third, sales goals incentives for instant and non-jackpot on-line games would be paid quarterly at a rate of 10% of the sales increase, unless the administrator makes a prepayment adjustment to a lower percent. Any such adjustment would appear unlikely in the first three quarters of the fiscal year, but fourth-quarter adjustments could occur in some years. Finally, jackpot incentives would be paid following the close of a fiscal year when the amount of remaining available funding should be clear. Thus, any jackpot prepayment adjustment, if needed, would be a straightforward calculation.

Finally, a third concern with the original plan was that the definitions of the three program components and the policies and procedures that would govern them were not clearly specified. The revised plan appears to incorporate clear definitions for the program's components and the policies and procedures appear to be logical and workable.

There are two options that are available to the Committee's members. First, if it is determined that the Department's revised plan is adequate to proceed with the program, no action is required. The plan would be approved on February 25, 2000.

Second, the Co-chairs have indicated that they should be notified, by February 23, 2000, of any concerns Committee members may have concerning the revised plan. In this event, a meeting on the revised plan will be scheduled.

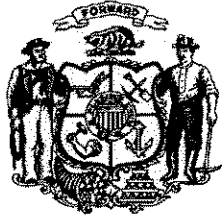
Prepared by: Art Zimmerman

cc: Cate Zeuske, Secretary, DOR
David Storey, Lottery Administrator
Richard Chandler, Budget Director, DOA

THE STATE OF WISCONSIN

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JOINT COMMITTEE ON FINANCE

MEMORANDUM

To: Members
Joint Committee on Finance

From: Senator Brian Burke
Representative John Gard

Re: Lottery Retailer Performance Program Plan

Date: February 8, 2000

Attached is a copy of the Department of Revenue's plan, pursuant to 1999 Wisconsin Act 9, Section 9143(2f), concerning the Lottery Retailer Performance Program. The department may not encumber or expend moneys appropriated to it for the purpose of providing additional compensation to lottery retailers under the program until the plan is approved by the Joint Committee on Finance.

Please review the material and notify **Senator Burke** or **Representative Gard** no later than **Wednesday, February 23, 2000**, if you have any concerns about the request or if you would like the Committee to meet formally to discuss it.

Also, please contact us if you need further information.

Attachment

BB:JG:dh



State of Wisconsin • DEPARTMENT OF REVENUE

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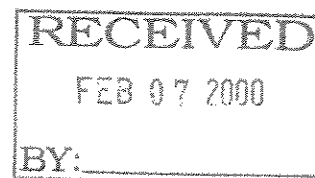
Tommy G. Thompson
Governor

Cate Zeuske
Secretary of Revenue

February 7, 2000

Honorable John Gard
Co-Chair, Joint Committee on Finance
Room 315 North, State Capitol
Madison, WI 53702

Honorable Brian Burke
Co-Chair, Joint Committee on Finance
Room 316 South, State Capitol
Madison, WI 53702



Dear Representative Gard and Senator Burke:

In accordance with 1999 Wisconsin Act 9, Section 9143(2t), the Department of Revenue is submitting the enclosed Lottery retailer performance program plan and proposed administrative rules for your review. Funding for the program was placed in unallotted reserve for release by the Department of Administration following the Joint Committee on Finance approval of the plan. With the committee's support, implementation of this program will be retroactive to January 1, 2000, pursuant to Section 9443(1) of 1999 Wisconsin Act 9.

We are excited about this opportunity to build our retailer relations and increase lottery ticket sales through the retailer performance program. If you have any questions, please feel free to contact me.

Sincerely,

Cate Zeuske
Cate Zeuske
Secretary of Revenue

Enclosures



State of Wisconsin • DEPARTMENT OF REVENUE

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Retailer Performance Program Plan

The Retailer Performance Program (RPP) was authorized in s. 565.02(4)(g) and s. 565.10(14)(b)3m., Stats., by 1999 Wisconsin Act 9 (the biennial budget bill). Section 9143(2t) of the Act requires the Department of Revenue to submit to the Joint Committee on Finance a program plan for the Retailer Performance Program based on proposed administrative rules.

Funding Authority and Purpose

The Legislature, under ss. 565.02(4)(g) and 565.10(14)(b)3m., Stats., has authorized the Department of Revenue to utilize up to 1% of gross lottery sales revenue to provide for a Retailer Performance Program that is "...to be paid to retailers who meet certain performance goals identified by the department."

1999 Wisconsin Act 9 estimated gross lottery sales of \$421.8 million in FY00 and \$427.3 million in FY01. These gross sales estimates result in estimated funding for the program of \$2.1 million in FY00 (based on an implementation date of 1/1/2000) and \$4.27 million in FY01. The actual amount of total RPP payments to retailers will be a maximum of up to 1% of actual fiscal year gross lottery sales. The Lottery plans to implement the RPP immediately upon approval of this plan by the Joint Committee on Finance and will award incentive payments to retailers based on their ticket sales as of January 1st, 2000.

Impact of the Program on Sales

The department estimated that the program would generate approximately four dollars in increased ticket sales for every one dollar invested, or \$8.4 million in FY00 (a partial fiscal year) and \$17.1 million in FY01. Other than the payment to retailers, program costs will be absorbed by the Lottery out of its base budget. Administrative costs are expected to be less than \$50,000 the first year (FY00) and less than \$20,000 annually thereafter.

Function of the Program

The function of the RPP is twofold: first, to provide additional compensation to only those retailers who increase ticket sales, and second, to increase overall ticket sales of lottery products. This program is in addition to the regular commission retailers receive for selling lottery tickets, and is based on the concept of pay for performance relating to the achievement of stated goals.

Additionally, the program will have the effect of building a stronger relationship between retailers and the Lottery in terms of product placement and recruitment.

For both FY00 and FY01, the program will consist of two major components, Winning Ticket Incentives and Sales Goals Incentives, and an optional minor component, Short-Term Incentives. This report details the methodology of each of these three components of the RPP, the concepts of eligibility and qualification, and the funding control mechanisms that will be used to control spending to ensure that funding authority is not exceeded. Attached are draft proposed Emergency Rules, will be adopted upon approval of the RPP by the Joint Committee on Finance.

Components of the Retailer Performance Program, Payments and Appropriation Control

Winning Ticket Incentive

The winning ticket incentive, as explained under proposed WGC61.085(4)(a), may pay a retailer an incentive on the selling of any winning lottery ticket where the stated prize value is \$600 or greater. The incentive will be paid at 2% of the stated prize value on each prize, up to a maximum of \$100,000 per winning lottery ticket. In the case of tickets that are for players to win a chance to participate as contestants on the Lottery television program (The Money Game Show), the incentive to the retailer will be \$30 per TV game winning lottery ticket. This amount was determined by calculating 2% of the yearly average winnings of all players on the show.

The percentage and the maximum are both meant to ensure that the winning ticket incentive does not permit overspending the funding level. To qualify for the winning ticket incentive part of the RPP, a retailer needs to satisfy the basic eligibility requirements as stated on page 6 of this document, and as proposed in WGC61.085(3) of the code.

Sales Goals Incentive

Under the sales goals incentive, the program will be broken into three sections: instant ticket games, non-jackpot terminal generated games, and jackpot terminal generated games. Each product the Lottery offers will fall into one of these categories, and a retailer's performance will be measured in each product type to determine the incentive earned.

To qualify for incentives under either the instant ticket games or non-jackpot terminal generated game product types, the retail location must have sales history, as under proposed WGC61.085(2)(a) which is the historical sales data that is used to calculate performance of a retailer for each of the product types. The data for the comparison may be from either: (1) the comparable history quarter (same quarter last year) or (2) the immediately previous quarter (the

quarter that most recently ended). The Lottery will pay qualified retailers up to 10% of the sales increases under these two product types.

If the retailer has carried the product for less than a year, there will be no previous full year's sales history data for a location. Therefore, the Administrator has the ability as indicated under proposed WGC61.085(5)(b)2., to substitute the full data of the immediate previous quarter [under proposed WGC61.085(2)(d)] as a sales goal for the instant ticket and non-jackpot game product types. This substitution is allowed only until the location qualifies via the prior year's comparable history quarter concept, as under WGC61.085(5)(b)2. These two ways of qualifying ensure that veteran retailers who add a product type are able to participate in the program as soon as fair and reasonable.

For jackpot terminal generated games, a retailer must have 52 weeks of sales history in the last fiscal year to qualify for jackpot games. If qualified to participate, the lottery will compare an entire fiscal year of a retailer's sales to the previous fiscal year's sales. This comparison is fair to retailers and does not allow the RPP to overspend by smoothing out the sales peaks inherent in jackpot games. The Lottery will annually pay up to 10% of the sales increase under this product type, dependent upon the funding authority control mechanism, which is covered in detail under "Payment of Incentives".

Short-Term Incentives

As indicated in the proposed rules under WGC61.085(4)(c), the short-term incentive program is the part of the retailer performance program that pays an incentive to retailers who satisfy a specific, short-term performance expectation. An example of a short-term incentive program would be offering a per-pack incentive for selling specific scratch ticket games to either reduce inventory or support seasonal specific products. These short-term programs will have features and procedures documentation, and will be designed to support a certain product or to strengthen sales during certain times of the fiscal year.

These programs are meant to allow for limited flexibility while maintaining fiscal control. They will have a limited life cycle and are often found in the lottery industry and other industries in support of specific short-term goals. Short-term incentives will be created quickly and focus on a product or line of products.

Short-term incentives are intended to be a minor part of the RPP. The administrator may not offer more than four short-term incentives in one fiscal year; a short-term incentive may not continue from one fiscal year into another fiscal year; and each short-term incentive may not offer more than \$100,000 in incentives, annually (for a total of \$400,000). A document will be published for retailers no later than 21 calendar days prior to the start date of the incentive and will include information that explains the program in detail and highlight the qualifications that are specific to that short-term incentive.

Payment of Incentives and Funding Authority Control

The three main components of the RPP will be paid at different times, to aid in the fiscal control of the program. Incentive payments are covered under proposed WGC61.085(6). Specifically, the payment of incentives will happen at least quarterly throughout the various parts of the program (with the exception of jackpot terminal generated games, which are paid at the end of a fiscal year). Payments more often under other parts of the program are allowed, only when a public benefit such as reduced administrative costs can be served by such an action. An example of a more frequent payment is the winning ticket incentive, which, as noted below, will be shifted to a weekly payment schedule as soon as the proper computer adjustments can be completed. This is a significant savings to taxpayers in processing costs.

The Lottery plans to implement the following frequency of payment schedule:

- 1) Winning Ticket Incentive - paid weekly (not allowed to be paid less frequently than quarterly), via electronic bank deposit.

Next,

- 2) Short-Term Incentives (if offered) - paid quarterly (not allowed to be paid less frequently than quarterly), via electronic bank deposit.

Then,

- 3) Sales Goals "Instant Ticket" and "Non-Jackpot" product types - paid quarterly (not allowed to be paid less frequently than quarterly), if necessary the percentage is adjusted downward to reflect available funding, also paid via electronic bank deposit.

And last,

- 4) Sales Goals "Jackpot" product type - paid at end of a fiscal year, if necessary the percentage is adjusted downward to reflect available funding, also paid via electronic bank deposit.

Example of Program using FY99 Sales Data	Maximum Payment: 1% of gross ticket sales	Winning Ticket Incentives: retailers receive 2% of winning tickets valued at over \$600	Short-Term Incentives: maximum \$400,000 annual expenditure for 4 programs	Sales Goals Incentive: up to 10% of increase in sales; % reduced as necessary to stay within 1% cap
FY99 Actual sales: \$428,322,926	Estimated Available Funding: \$4,283,000	Estimated paid: \$1,015,500	Estimated paid: none conducted; \$400,000 max would apply	Estimated paid: \$2,712,500

1) Winning Ticket Incentive

For the winning ticket incentive payment, the retailer will receive 2% of any winning lottery ticket sold that has a prize value of \$600 or more, up to a maximum of \$100,000 per winning lottery ticket. Television show tickets will generate \$30 per ticket in incentive payments to retailers. In FY99, as an example, the Lottery would have paid \$1,015,500 in incentives on 2412 winning tickets.

2) Short-Term Incentives

Short-term incentives will be earned based on the performance expectation stated in the features & procedures of each specific incentive campaign. Each incentive can spend up to \$100,000, and no more than 4 can occur in any given fiscal year. These will be paid no less than quarterly.

3 - 4) Sales Goals Incentive

For the sales goals incentive payment, each product type (instant, non-jackpot terminal and jackpot terminal) will be tracked and then measured separately by taking the current sales quarter of a location and comparing it to the same quarter of the previous year. The administrative rules allow for the substitution of another form of goal (the most recent quarter) under WGC61.085(5)(b)2. In either case, if an increase exists, then up to 10% of the increases in either instant ticket or non-jackpot product types will be paid to the retailer as incentive payment. Up to 10% of the sales increase will be paid to qualified retailers for the jackpot terminal generated product type. If no increase exists, then no payment occurs.

For example, in FY99, the Lottery would have paid to retailers up to 10% of the following sales increases:

	<u>Retailer Sales Increases</u>	<u>RPP Bonus Paid</u>
Instant Tickets	\$ 10,034,000	\$ 1,003,400
Non-Jackpot Tickets	\$ 5,424,000	\$ 542,400
Jackpot Tickets	\$ 11,661,000	\$ 1,166,100
TOTAL		\$ 2,712,500

There is an exception to the requirement for quarterly incentive payment as stated above for the jackpot terminal generated product type. The program will be implemented with the jackpot game incentives being paid at the end of the fiscal year, as indicated in proposed WGC61.085(6)(b). This additional control exists to ensure appropriate funding authority is maintained.

The proposed administrative rules permit a temporary reduction, if necessary, in the 10% sales incentive payment to ensure that the sales goals incentive does not overspend the authority of the program. Specifically, this authority is indicated

under proposed WGC61.085(4)(b)3., and WGC61.085(7). If a reduction in the payment of any product type is necessary, all retailers will experience the same reduction in percentage.

In summary, RPP spending controls exist at several key points in the program. First, winning tickets are capped at \$100,000 per winning lottery ticket, and are limited to 2% of the stated prize value. Second, short-term incentives can never use more than, in total, \$400,000 (or an estimated 1% of the 1% of gross sales available). Lastly, the sales goals portion can never pay a retailer that does not produce an increase, and will limit payment to up to 10% of retailer sales increases for both instant scratch and terminal generated products. The jackpot games will also be paid at year's end, and the percentage paid on any of the product types can be adjusted down (if necessary) to keep the RPP under its approved level of 1% of gross sales. These control mechanisms will ensure the RPP does not overspend its funding.

Yearly Report of the RPP

The Lottery Administrator will produce an annual report that outlines the incentives paid under the Retailer Performance Program. The report will include a breakdown of any incentives paid under the winning ticket incentive, the sales goals incentive, and the short-term incentives.

Retailer Eligibility and Qualification

Definitions

The Retailer Performance Program, as defined under proposed WGC61.02(5), has several definitions that are necessary for the internal administration of the program. These additional definitions are under proposed WGC61.085(2). The definitions are focused on the following concepts of eligibility and qualification.

Eligibility and Qualification

To be considered eligible for the overall RPP, a retailer must be a for-profit retailer, must honor the existing contract and all addenda, and must sell a monthly average of instant tickets in a sales quarter that is not less than a dollar amount established by the Administrator. The program will be installed with this amount at \$400, consistent with proposed WGC61.04(1)(d). Therefore, eligibility for the program is consistent with the lottery retailer contract.

[Note: Under current administrative rules [WGC61.04(1)(d)], lottery retailers are expected to sell 500 tickets per month to be eligible for a contract to be a lottery retailer. Under the rules proposed for the RPP, the Lottery recommends changing this provision from selling 500 tickets per month to selling \$400 worth of tickets per month. This recommendation is based on the fact that the current required number of tickets (500) can be satisfied in ways that do not support the retailer performance program. For example, a retailer could buy 1,000 of the "\$.50" pull tab tickets and become eligible for the program while another retailer

could purchase 400 of the "\$10" tickets and not be eligible. However, the ineligible retailer's sales potential is actually worth considerably more (\$4,000) when compared to the retailer who is eligible but who's sales potential is much less (\$500). Therefore, the current provision that retailers sell 500 tickets per month does not support the intent of the RPP program. The Lottery has proposed raising the requirement to a dollar amount of \$400 worth of tickets. This change will ensure that all retailers are selling a dollar-specific amount of lottery products per month, thus justifying both their general contract to sell lottery tickets and their participation in the RPP.]

Next, to be considered qualified for a specific part of the RPP, the retailer must meet certain requirements stated within the administrative rules proposal which pertain to that product type. Each part of the RPP will have a separate qualification, which is stated in proposed WGC61.085(5). It is possible (and acceptable) that a retailer may qualify for only certain parts of the RPP and not for others, such as a retailer who only sells instant tickets and does not have a generated game terminal.

For example, under winning ticket incentive in the proposed rules, the qualification is nothing more than simple eligibility as stated above. In other words, there is no additional qualifier for the winning ticket incentive – just being eligible qualifies a retailer to participate.

Further, under sales goals incentive, the qualification is that a retail location must have sales history [defined under proposed WGC61.085(2)(a)] to measure against for each product type. If a retail location does not have a sales history for a product type, then there can be no increase measured for that product type, so the location does not qualify for that product type until appropriate comparison can be made.

The definition of sales quarters is important to qualification. The Lottery Administrator will define a sales quarter by identifying the starting and ending date of all four sales quarters in a fiscal year, no later than one month prior to the beginning of that fiscal year. Each quarter will be 13 weeks in length, and will start and end on dates consistent with the standard billing cycle that the Lottery uses to collect revenue from retailer accounts. For instant ticket and non-jackpot product types, a retailer would need a full sales quarter of information before they would qualify for either product type. For the jackpot product type, a retailer would need a full fiscal year (52 weeks) of sales history in the previous fiscal year before they qualified for jackpot product type incentives.

The concept of qualification is important to the tracking of new terminal placement, new retailer locations that join the program part way through the year, and for locations that come under new ownership where Lottery product will continue to be sold at that location. These are all circumstances that occur frequently throughout a fiscal year, and are inherent in the administration of the

program. The proposed administrative rules cover qualification in detail in several areas. [See proposed WGC61.085(5)].

In support of the concept of qualification, the definition of "appropriate quarterly sales history" (which in turn includes the definitions of "comparable history quarter" and "immediately previous quarter") is an integral part of how qualification and eligibility are administered. These definitions are key to allowing existing location retailers and new retailers the ability to participate in a manner that is both fair and consistent with the current incentives offered to all retailers.

Summary

The Lottery appreciates the review and discussion of the Retailer Performance Program by the Joint Committee on Finance. With the committee's support and the release of funding, the Lottery plans to begin the program immediately. The RPP provides the opportunity to build relationships with our retailer partners and to improve ticket sales. We look forward to a cooperative effort that will result in greater success for retailers and for the Wisconsin Lottery.

ORDER OF THE DEPARTMENT OF REVENUE ADOPTING AN EMERGENCY RULE

The Wisconsin Department of Revenue hereby adopts an emergency rule interpreting ss.565.02(4)(g) and 565.10(14)(b)3m., Stats., relating to the implementation and maintenance of the retailer performance program of the Wisconsin lottery.

Analysis by the Department of Revenue

Statutory authority: ss.227.11(2)(a) and 565.10(14)(b)3m., Stats.

Statutes interpreted: ss. 565.02(4)(g) and 565.10(14)(b)3m., Stats., as created by 1999 Wis. Act 9.

SECTION 1. WGC 61.02(5), (6) and (7) are renumbered WGC 61.02(6), (7) and (9), consistent with Legislative Council Rules Clearinghouse standards to insert, in alphabetical order, the definitions in Section 2.

SECTION 2. WGC 61.02(5) and (8) are created, to provide additional definitions relating to the Wisconsin lottery.

SECTIONS 3, 4 AND 5. WGC 61.04(1)(d) and 61.08(11)(c) and (21)(c) are amended and WGC 61.085 is created, to address the implementation and maintenance of the retailer performance program.

FINDING OF EMERGENCY

The Department of Revenue finds that an emergency exists and that the attached rule order is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

Sections 565.02(4)(g) and 565.10(14)(b)3m., Stats., as created by 1999 Wis. Act 9, provide for the implementation of a retailer performance program, effective January 1, 2000. The program may be implemented only by the promulgation of rules.

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state newspaper. The retailer performance program is being implemented retroactively to January 1, 2000, pursuant to Section 9443(1) of 1999 Wisconsin Act 9. Certified copies of this rule have been filed with the Secretary of State and the Revisor of Statutes, as provided in s. 227.24, Stats.

SECTION 1. WGC 61.02(5), (6) and (7) are renumbered WGC 61.02(6), (7) and (9).

SECTION 2. WGC 61.02(5) and (8) are created to read:

WGC 61.02(5) "Retailer performance program" or "RPP" means a program that is designed to provide additional compensation, above the compensation provided under s. 565.10(14)(b)1. or 2., Stats., to retailers who meet certain performance goals identified by the Wisconsin lottery.

(8) "Winning lottery ticket" or "winning lottery share" means either of the following:

(a) For instant scratch tickets under s.565.01(6m)(a)1., Stats., the terms mean any ticket that has been validated by the Wisconsin lottery as a ticket that entitles a player to a prize.

(b) For on-line tickets under s.565.01(6m)(a)2., Stats., the terms mean any ticket that has been identified by a secure method by the Wisconsin lottery as a ticket that entitles a player to a prize.

SECTION 3. WGC 61.04(1)(d) is amended to read:

WGC 61.04(1)(d) The applicant is expected to sell a minimum of ~~500 tickets a month~~ \$400 worth of tickets each month, which shall be represented in any retailer contract or addenda. The ~~executive director~~ administrator may deny a contract to an applicant whose anticipated monthly sales will not meet a minimum of ~~500 tickets~~ \$400 worth of tickets each month or whose historical monthly sales are less than ~~500 tickets~~ \$400 worth of tickets each month. The administrator may establish a different amount that shall be set for all retailers, and any established amount shall be represented in any retailer contract or addenda.

SECTION 4. WGC 61.08(11)(c) and (21)(c) are amended to read:

WGC 61.08(11)(c) The retailer shall sell at least ~~500 tickets a month~~ \$400 worth of tickets each month, or an amount established by the administrator under WGC61.04(1)(d).

(21)(c) The retailer failed to sell a monthly minimum of ~~500 lottery tickets~~ \$400 worth of tickets each month, or an amount established by the administrator under WGC61.04(1)(d);

SECTION 5. WGC 61.085 is created to read:

WGC 61.085 Retailer performance program. (1) **PURPOSE.** The retailer performance program or "RPP" is intended to provide additional compensation, above the compensation provided under s. 565.10(14)(b)1. or 2., Stats., to retailers who meet certain performance goals identified by the department. This additional compensation is authorized under ss. 565.02(4)(g) and 565.10(14)(b)3m., Stats.

Note: This program is applicable to lottery retailers beginning on January 1st, 2000.

(2) **DEFINITIONS.** In this section:

(a) "Appropriate quarterly sales history" means the historical sales data that is used to calculate performance of a retail location within the RPP. The appropriate quarterly sales history data may be from either the comparable history quarter as defined under par. (b) or the immediately previous quarter as defined under par. (d).

(b) "Comparable history quarter" means the full sales quarter that is one year prior to the current sales quarter in which the RPP is being administered.

(c) "Gross sales" means the sales data as indicated by Wisconsin lottery accounts receivable documentation of weekly invoicing of the purchase of Wisconsin lottery products by retailers.

(d) "Immediately previous quarter" means the full sales quarter immediately prior to the current sales quarter in which the RPP is being administered.

(e) "Retail location" means the place of business at which lottery products such as instant tickets or terminal generated tickets are sold.

(f) "Sales goals incentive" means the component of the RPP that pays incentive to retailers who increase sales in a specified sales quarter or specified fiscal year, or both, when the sales quarter or fiscal year is compared to an appropriate quarterly sales history as defined under par. (a).

(g) "Sales quarter" means a quarter of the Wisconsin lottery fiscal year that is 13 weeks in length. The administrator shall determine the start and end dates of all sales quarters of a fiscal year no later than one month prior to the beginning of that fiscal year, and upon request shall provide the calendar dates that define each quarter of a fiscal year. A quarter shall start and end on dates that are consistent with the standard billing cycle that the lottery uses to collect revenue from retailer accounts.

(h) "Short-term incentive" means the component of the RPP that pays incentive to retailers who satisfy a performance expectation as established in short-term incentive features and procedures documentation. Short-term incentives shall have features and procedures documentation as indicated under sub. (4)(c). Short-term incentives shall be designed to support a certain product or product type or to strengthen sales during certain times of the fiscal year.

(i) "Winning ticket incentive" means the component of the RPP that pays an incentive to retailers who sell winning lottery tickets.

(3) ELIGIBILITY. Any retailer may participate in the RPP provided it meets all of the following eligibility requirements:

(a) The retailer shall honor the current retailer contract, including any applicable addenda.

(b) The retailer may not be a not-for-profit or nonprofit organization as defined in s. 565.10(14)(a), Stats.

(c) The retailer shall satisfy any qualifying requirements specific to each component of the RPP. If a retailer fails to satisfy the requirements specific to a component of the RPP, the retailer may not be considered qualified for that component of the RPP. A retailer shall qualify for each component separately, and qualifying for one component of the RPP may not affect qualifying for another component unless the administrator determines otherwise.

(4) DESIGN. The retailer performance program shall consist of 3 components, the winning ticket incentive, the sales goals incentive, and the short-term incentive described as follows:

(a) *Winning ticket incentive.* The expected performance of the winning ticket incentive component of the RPP is the selling of winning lottery tickets. To qualify for the winning ticket incentive, a retailer shall satisfy the eligibility requirements as stated in sub. (3). An incentive shall be paid to a retailer for selling any winning lottery ticket where the stated prize value of the winning lottery ticket is \$600 or greater. The incentive shall be paid as follows:

1. For winning lottery tickets, 2% of the stated prize value shall be paid on each prize, up to a maximum of \$100,000 per winning lottery ticket.

2. For lottery television program tickets, \$30 shall be paid on each winning lottery ticket.

(b) *Sales goals incentive.* The sales goals incentive component of the RPP shall pay a retailer an incentive based on an increase in the amount of sales over the appropriate quarterly sales history as defined under sub. (2)(a) or the appropriate fiscal year in the case of jackpot terminal-generated games under subd. 3. The incentive shall

be tracked, measured and paid based on one of 3 product types. For each product type, a retailer shall satisfy eligibility requirements as stated in sub. (3) and qualify for the product type under sub. (5). For the three product types, instant ticket sales, non-jackpot terminal-generated sales and jackpot terminal-generated sales, the retailer shall receive incentives calculated as follows:

1. For the instant ticket sales product type, the retailer shall receive an incentive calculated by comparing a sales quarter against the appropriate quarterly sales history as defined under sub. (2)(a) to determine if a sales increase has occurred. If a sales increase has not occurred, no incentive may be paid. If a sales increase has occurred, the retailer shall receive up to 10% of the sales increase. The administrator may adjust the payment percentage to a lower percentage under sub. (7) to ensure that appropriate funding authority is maintained within the current fiscal year. Any adjustment made shall consider historical sales and incentive information and shall be applied equally to all retailers. Information regarding the details of any adjustment shall be made available upon request.

2. For the non-jackpot terminal-generated sales product type, the retailer shall receive an incentive calculated by comparing a sales quarter against the appropriate quarterly sales history as defined under sub. (2)(a) to determine if a sales increase has occurred. If a sales increase has not occurred, no incentive may be paid. If a sales increase has occurred, the retailer shall receive up to 10% of the sales increase. The administrator may adjust the payment percentage to a lower percentage under sub. (7) to ensure that appropriate funding authority is maintained within the current fiscal year. Any adjustment made shall consider historical sales and incentive information and shall be applied equally to all retailers. Information regarding the details of any adjustment shall be made available upon request.

3. For the jackpot terminal-generated sales product type, the retailer shall receive an incentive calculated by comparing a fiscal year against the previous fiscal year to determine if a sales increase has occurred. If a sales increase has not occurred, no incentive may be paid. If a sales increase has occurred, the retailer shall receive up to 10% of the sales increase. The administrator may adjust the payment percentage to a lower percentage under sub. (7) to ensure that appropriate funding authority is maintained within the current fiscal year. Any adjustment made shall consider historical sales and incentive information and shall be applied equally to all retailers. Information regarding the details of any adjustment shall be made available upon request.

Note: For the fiscal year which ends on June 30th, 2000, "fiscal year 2000," the Wisconsin lottery shall use the appropriate historical data from the fiscal year which ended on June 30th, 1999, "fiscal year 1999," to determine a one-half fiscal year goal for the jackpot terminal-generated game product type under subd. 3.

(c) *Short term incentive.* The short-term incentive is defined under sub. (2)(h) and shall pay a retailer an incentive based on the achievement of expected performance. Performance expectations shall be related to the increasing of sales of lottery products and may be different for each short-term incentive offered to retailers. The administrator may not offer more than 4 short-term incentives in one fiscal year. A short-term incentive may not continue from one fiscal year into another fiscal year. The administrator shall determine whether short-term incentives are offered. The expected performance, and all other information important to the development of a specific short-term incentive, shall be indicated in a document that shall represent the features and procedures of the short-term campaign. The features and procedures document shall be published to the retailers no later than 21 calendar days prior to the start date of the incentive and shall include the following:

1. A statement of the requirements for a retailer to qualify for the program. The requirements for qualification for short-term incentives shall be as consistent as possible with other aspects of the RPP.

2. A statement of the expected performance of a retailer who participates in the short-term incentive.

3. A statement of the start and end dates of the program and the expected time period that the plan will run, not to exceed 13 weeks.

4. A statement of how much funding may be made available for payment under the plan, not to exceed \$100,000 per short-term incentive.

5. A detailed explanation of how the incentive is calculated, to be consistent with other aspects of the RPP where appropriate.

6. A detailed explanation of how incentive payment will be made, where payment shall be made no later than the last Thursday of the month following the last day of the sales quarter in which the short-term incentive ends.

7. Any other features or procedures determined by the administrator to be appropriate.

(5) QUALIFICATION FOR PRODUCT TYPES. (a) To qualify for the jackpot terminal-generated sales product type, a retail location shall have no less than 52 weeks of sales history in the previous fiscal year.

(b) To qualify for instant ticket sales or non-jackpot terminal-generated sales product type, a retail location shall meet the qualification criteria for that product type. Each product type shall be reviewed separately to determine if an appropriate quarterly sales history as defined under sub. (2)(a) is available to satisfy the criteria. The criteria are as follows:

1. For a retail location, if there is appropriate quarterly sales history as defined under sub. (2)(a), which is based on comparable history quarter sales data as defined under sub. (2)(b), the retailer shall be considered qualified for that product type.

2. If no comparable history quarter as defined under sub. (2)(b) exists for a retail location, the administrator shall substitute sales history from the immediately previous quarter as defined under sub. (2)(d).

3. If no appropriate quarterly sales history as defined under sub. (2)(a) can be determined, either by using data from a comparable history quarter or from an immediately previous quarter, the retail location may not be considered qualified for the program. The administrator shall review qualification under each product type no less often than quarterly so that retail locations that become qualified may be included for incentive payments as soon as possible.

(6) PAYMENT OF INCENTIVES. The RPP incentives shall be paid in the following manner:

(a) The winning ticket incentive shall be paid no later than the last Thursday of the month following the last day of the quarter in which the incentive is earned. This incentive may be paid more frequently if the administrator determines that a more frequent schedule is not prohibitive to the effective operation of Wisconsin lottery activities and does not have a negative impact upon the appropriate funding authority of the program.

(b) The sales goals incentive shall be paid no later than the last Thursday of the month following the last day of the quarter in which the incentive is earned, except for the jackpot terminal-generated games which shall be paid no later than the last Thursday of the month following the last day of the fiscal year in which the incentive is earned. The sales goals incentive may be paid more frequently if the administrator

determines that a more frequent schedule is not prohibitive to the effective operation of Wisconsin lottery activities and does not have a negative impact upon the appropriate funding authority of the program.

(c) The short-term incentive shall be paid no later than the last Thursday of the month following the last day of the quarter in which the incentive is earned. This incentive may be paid more frequently if the administrator determines that a more frequent schedule is not prohibitive to the effective operation of Wisconsin lottery activities and does not have a negative impact upon the appropriate funding authority of the program.

(7) FUNDING AUTHORITY. The administrator shall monitor the expenditures of the RPP no less often than quarterly, to ensure that the funding authority is not exceeded. Prior to the payment of incentives under sub. (4)(b), the administrator may implement a pre-payment adjustment to ensure that funding authority for the RPP is not exceeded, by reducing the payment of incentives earned from an unexpectedly large jackpot or from an unexpectedly large increase in instant ticket or non-jackpot ticket sales. Any pre-payment adjustment in any product type shall be implemented as indicated under sub. (4)(b), to limit the incentive paid so that the payments do not exceed the funding available or negatively impact the payment of earned incentives in the other components of the RPP.

(8) RIGHT TO APPEAL. In the event the administrator terminates the eligibility or qualification of a retailer under RPP, the retailer is entitled to an appeal in accordance with the provisions set forth under WGC61.10.

(9) REPORT. The administrator shall document the total payments made to retailers under the RPP as defined under WGC61.02(5). The report shall include a breakdown of any incentives paid under the winning ticket incentive, the sales goals

incentive and the short-term incentive. The report shall be available within 90 days of the completion of a fiscal year.

Note: Implementation of the retailer performance program is effective retroactively to January 1, 2000, pursuant to s. 9443(1) of 1999 Wis. Act 9.

Note: Section WGC61.085 interprets ss. 565.02(4)(g) and 565.10(14)(b)3m., Stats.

The rules contained in this order shall take effect upon publication in the official state newspaper, as provided in s. 227.22(2)(c), Stats.

DEPARTMENT OF REVENUE

Dated: _____

By: _____
Cate Zeuske
Secretary of Revenue