

Taxation of Sports Betting

2019 SEATA Annual Conference

July 16, 2019

Jan Craig – Mississippi Department of Revenue
Jonathan Feldman – Eversheds Sutherland

Agenda

- History of Sports Betting
- 2018 Murphy Decision
- Race to Enact Sports Betting Legislation
- Policy Considerations of Legislation
- Comparison of Enacted Sports Betting Law
- Status of SEATA States
- Revenue Estimates vs. Actual Collections

History of Sports Betting

- Until the 1980's, only Nevada and New Jersey allowed casino gambling.
- The Indian Gaming Regulatory Act of 1988 allowed casinos to open on Indian land throughout the country.
- But only Nevada allowed sports traditional sports betting (since 1949).
 - Delaware, Montana, and Oregon allowed sports-related lottery or bingo games
- In the late 1980's and early 1990's, more states began to allow casino gambling and lotteries and signs pointed to expansion of sports betting
 - College and professional sports leagues and anti-gambling advocates opposed such legalization

History of Sports Betting - PASPA

- In 1992, Congress enacted the Professional and Amateur Sports Protection Act (PASPA).
- PASPA generally outlawed the ability for states to allow sports betting.
- However, PASPA did not make sports betting a federal crime. Rather, it allowed professional and amateur sports organizations to bring civil actions to enjoin violations.

History of Sports Betting - PASPA

- PASPA contained certain grandfather clauses
- Nevada could continue sports betting; as could Montana, Oregon, and Delaware (to the extent already offered).
- New Jersey was given the ability to legalize sports betting but had to do so within one year.
- But New Jersey didn't legalize sports betting until 2012 (after ballot initiative and enabling legislation)
 - NCAA, NFL, MLB, and NBA brought action to enjoin sports betting in New Jersey and federal court granted injunction.
- In 2014, New Jersey again passed enabling legislation repealing criminal prohibitions on sports betting
 - Sports leagues sued again.

Murphy v. NCAA

- In May 2018, SCOTUS struck down PASPA in full, holding that it violated the anti-commandeering doctrine by dictating what a state legislature may and may not do.
- Congress's authority is not unlimited and it cannot "commandeer" a state government to administer or enforce federal legislation.
- Congress can regulate sports betting directly, but if it chooses not to do so, each state is free to act on its own.

Race to Enact Sports Betting Laws

- Quickly after *Murphy* (and in some cases prior to Murphy), state legislatures raced to enable sports betting with a keen eye towards the potential revenue.
- Sports betting has since become legal in at least 17 states:
- Operational
 1. New Jersey – June 2018
 2. Delaware – June 2018
 3. Mississippi – August 2018
 4. West Virginia – September 2018
 5. Pennsylvania – November 2018
 6. Rhode Island – November 2018
- Upcoming
 1. New York
 2. Arkansas
 3. D.C.
 4. Montana
 5. Iowa
 6. Indiana
 7. Tennessee
 8. Illinois
 9. Colorado
 10. New Hampshire
 11. Maine

Relevant Terms

- “Handle” – total amount of \$ wagered on sports
- “Gaming Revenue” (and other similar terms) – handle less payouts for winning bets
 - Most states impose tax as a percentage of gaming revenue
 - However, the federal excise tax is imposed as a percentage (0.25%) of handle.
- “Hold” – gaming revenue divided by handle (similar to margin)

Policy Considerations

- Lottery or privately run
- Tax rates
 - State tax rates range between 6.75% (Nevada) and 51% (Rhode Island)
- Allocation of tax revenues
- Professional sports league support
 - Integrity fees – designed as percentage of handle, would go directly to professional sports leagues as compensation for the maintenance of data necessary for fair sports betting
 - Official data
- Online and mobile wagering
 - Wire Act
 - In-person registration
 - Geolocation

Comparison – States Where Legalized

	Nevada	New Jersey	Delaware	West Virginia
Tax Rate	6.75%	9.75% for land based; 13% for casino based online; 14.25% for racetrack based online	Revenue sharing: 12.5% to contractor; of remainder, 50% to state; 10% to horse racing; 40% to casino	10%
Sports Betting License Fee	N/A	\$100,000 initially	Integrated w/ revenue sharing model	\$100,000 very 5 years
Regulator	Gaming Commissions	Division of Gaming Enforcement	Lottery	Lottery
Tax Allocation		Casino Revenue Fund	General Fund	Lottery fund and Public Employees Insurance Stability Fund
General Gambling Tax Rate (Effective)	6.75%	9.25% - 10.5%	58% rate on machines; 33.9% on table games	53.5% rate on machines; 35% on table games

Comparison – States Where Legalized

	Mississippi	Pennsylvania	Rhode Island	DC
Tax Rate	Up to 12% (8% and 4% local max)	36% (34% state + 2% local) (paid weekly)	Revenue sharing: 51% to state; 32% to lottery contractor; 17% to sportsbook	10%
License Fee	None	\$10,000,000 + \$250k renewal	N/A	
Regulator	Gaming Commission	Gaming Control Board	Lottery	Lottery is regulator and operator
Tax Allocation	General Fund with portion of State share to highway fund	General fund	Lottery and general fund	Violence prevention, child care, gambling addition, general fund
General Gambling Tax Rate (Effective)	11.2%	11.2%	26%-28.85% on machines; 17%-19% on tables	

Comparison – States Where Legalized

	Indiana	Iowa	Montana	Tennessee
Tax Rate	9.5%	6.75%	Lottery collects revenue less expenses	20%
License Fee	\$100,000 + \$50,000 renewal	\$45,000 + \$10,000 renewal	No private operators	\$750,000 annually (online only)
Regulator	Gaming Commission	Racing & Gaming Commission	Lottery is operator and regulator	Lottery Sports Wagering Advisory Council
Tax Allocation	General Fund and Addition	General fund	General and scholarship fund	Education (80%), local government (15%); addiction (5%)
General Gambling Tax Rate (effective)	Graduated rates: 15% - 40% casino; 30% - 35% racino	Graduated rates: 5% - 22% casino; 22% - 24% racino	15%	N/A

Comparison – States Where Legalized

	New York	Illinois	Colorado
Tax Rate	8.5% (12% tax on mobile d/n/p)	12.50%	10.00%
Sports Betting License Fee	\$12,000,000	\$10,000 initially; \$5,000 renewal	
Regulator	Gaming Commissions	Gaming board	Gaming Control Commission
Tax Allocation		State gaming fund	Likely used to fund state water needs
General Gambling Tax Rate (Effective)	Casinos: 10% table games and 37% - 45% gaming machines; Racinos: 65% gaming machines	Graduated rates: 15% - 50%	Graduated rates: 0.25% - 20%

SEATA States

- Alabama
 - Alabama Sports Wagering Act (HB 315) would tax gross revenue at 10% and include an initial licensing fee of \$100k
- Arkansas
 - Passed authorizing ballot initiative in 2018
 - Awaiting enabling legislation and regulations
 - 13% tax rate on first \$150M and 20% on additional amounts
- Florida
 - Legislation may involve existing Seminole tribe establishments
- Georgia
 - HR 380 would allow voters to amend state constitution to sports betting and allocate revenues to educational programs and purposes
- Kentucky
 - Proposed legislation would tax 3% of handle and include an initial licensing fee of \$250k

SEATA States

- Louisiana
 - SB 153 (allowing casinos to offer sports betting) rejected
 - HB 587 would include 13% tax rate
 - 10% of which would fund early education programs
 - 2% would go to the parish where casino located
- North Carolina
 - S 154 would authorize sports betting at 2 casinos on Indian reservations
- South Carolina
 - S. 57 introduced for 2019-2020 legislative session would amend state constitution to allow betting on professional sports.
- Virginia
 - SB 1126 would grant one casino license per city and bring sports betting as regulated by the lottery.

Sports Betting Revenue – Estimates vs. Realty

State	Annual Revenue Projection*	Actual Betting Revenue* (Annualized)
Delaware	\$5M	\$7.2M
DC	\$26M	
Indiana	\$3.4M - \$20.4M	
Iowa	\$600k - \$1.9M	
Mississippi	\$5M - \$10M	\$4.65M
Montana	\$3.8M	
New Jersey	\$12M - \$17M	\$24M
Pennsylvania	\$75M**	\$10.8M
Rhode Island	\$23.5M	\$1.7M
Tennessee	\$52M	
West Virginia	\$5.5M	\$1.8M

Source – Report - Tax Policy Center, Urban Institute & Brookings Institution - May 14, 2019

** includes license fee

Contact Information

— Jan Craig

- Associate Commissioner, Income and Property Taxes
- Mississippi Department of Revenue
- (601) 923-7005
- Jan.craig@dor.ms.gov

— Jonathan Feldman

- Partner, Atlanta
- Eversheds Sutherland (US) LLP
- (404) 853-8189
- jonathanfeldman@Eversheds-Sutherland.com