

CLIENT ALERT

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GAMING & HOSPITALITY

NOW THAT PASPA HAS FALLEN, WHAT DOES THIS MEAN FOR THE STATES?

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Now that the Supreme Court has ruled that the Professional and Amateur Sports Protection Act ("PASPA") is unconstitutional commandeering, a number of states are rushing to pass laws to legalize and regulate sports betting within their borders. Some, such as New Jersey and Pennsylvania, are well down the path, with potential to have operational sports pools by football season.

With estimates of illegal sports wagering equating to between \$50 billion and \$450 billion of wagers placed annually, states, and the professional sports leagues, are eager to get a share. But many may be disappointed when they realize that sports pools generally run on a razor-thin margin and are offered by Nevada casinos primarily as an amenity for their guests. Data from Nevada shows that since 1984 and through 2017, Nevada books average a win of about 4.52% annually, and an unexpected sporting outcome – such as if the Vegas Golden Knights were to win the Stanley Cup – can send sports pools into the red.

What does this mean for states that are eyeing legalizing sports betting as a way to boost state coffers? Well, for one, it means that states should temper some of the rhetoric of large tax windfalls from sports wagering. It also means that states should carefully weigh foisting additional fees on sports wagering operations, if one of the policy goals of a state is to limit illegal wagering. A fee such as the integrity fee of 1% of handle proposed by some sports leagues would result in an average cost to sports betting operators of more than 20% of win (and that's in the optimistic event that new operators can operate as effectively and efficiently as experienced Nevada operators). Additionally, most states with regulated gaming require anyone receiving a percentage of gaming revenue to be licensed or found suitable – an issue that has largely been ignored in the "integrity fee" debate.

Along those lines, the states also need to temper their tax and licensing demands to attract experienced and reputable sports pool operators. For example, at least one state is proposing a \$10 million licensing fee and 36% tax on gross gaming revenue on sports wagering. Such proposals are likely to be counterproductive because they will put legal sports books at a significant competitive disadvantage to existing illegal operators. States should look at their policy goals and the real historical sports wagering data from Nevada when determining tax rates and fees that will likely meet policy goals.

Beyond the financial, the biggest benefit for states is the opportunity to regulate and provide consumer protections to bettors who are participating in the largely illegal sports-wagering market. This means not only limiting who can take sports wagers (in Nevada, only persons holding a non-restricted gaming license may operate or own any interest in a race book or sports pool), but controlling which events may be wagered upon.

For example, in Nevada, sports pools may accept wagers only on:

- Professional sports events;
- Collegiate sporting or athletic events;
- Olympic sporting or athletic events sanctioned by the International Olympic Committee;
- "Virtual events" which are set up so that an approved gaming device is used to determine the outcome(s) and display an accurate representation of the outcome(s) of the virtual event, a live display of the virtual event is offered to all approved sports pools; and the virtual event is pre-approved; and
- Any other event for which the sports pool requests and receives approval by the Nevada Gaming Commission and Gaming Control Board. To receive such approval, the pool must demonstrate that the event could be effectively supervised and that the outcome of the event would be verifiable, generated by a reliable and independent process, and would be unlikely to be affected by any wager placed.

Another major consideration for the states will be whether they will accept wagers that are placed over the telephone or via the Internet. This is allowed in Nevada, but such bets are restricted to those where the transmission of the wager is initiated from within the state of Nevada to a licensed destination within the state of Nevada. Note that race books in Nevada may take such wagers from patrons with established wagering accounts who are residents of Nevada or residents of any state or foreign jurisdiction in which pari-mutuel horse race wagering is legal. This doesn't necessarily mean that we will soon see cross-border sports wagers, however, because there are still federal laws, such as the Federal Wire Act, that prohibit the interstate transmission of sports bets.

Our team of experienced gaming attorneys is available for consultation for states looking to draft sensible and sustainable sports wagering regimes.

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