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State Legislative Update on U.S. Sports Betting & Online Gaming – September 2020

In partnership with Truist Securities, Global Market Advisors publishes a monthly legislative update on sports betting and online gaming throughout the United States. This provides insights and commentary on several key aspects of the market and the surrounding political narrative effecting the legalization of sports betting, gaming, and other issues. A link to the full Truist Securities report can found [here](#).

The Politics of Sports

As the sporting industry continues to reemerge from the Great Shutdown, it now faces its next challenge as it relates to local politics within the United States, including factors such as racial tensions, views of the use of police force, and the upcoming presidential election. Sports has always been viewed as a unifier – one where sports fans can escape the nonsense of the political world to enjoy a game. It appears that in the near term, those days are over.

In the middle of August, the NBA initiated a boycott following the shooting in Kenosha, Wisconsin. The Milwaukee Bucks began what turned into a short silencing of sports. This followed with the rest of the NBA and the WNBA taking a pause before their eventual return to the court after several internal and external discussions between the athletes, teams, and league on whether the season would even continue. The spillover then went into the MLB, NHL, and MLS in response to the initial action by the NBA. While sports betting operators have been banking on the return of sports based on the health and safety measures related to SARS-CoV-2, it was not foreseen that politics would become a deciding factor into another potential shutdown of sports.

In terms of the pandemic and the politics surrounding it, the latest setback in the potential restart of sports has come with the stoppage of college football. College football in totality accounts for roughly 15 percent of the total amount wagered in U.S. sports betting across a normalized year. The dominoes began to fall in early August when two Group of Five conferences (Mid-America

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Conference and the Mountain West) postponed their seasons until the spring. The Big Ten took a knee with its fall sports season with the hopes of a potential restart in the spring. Just a few days earlier, the Big Ten had released a modified schedule of ten games with only in-conference play. The Pac-12, as a true follower among the Power 5 Conferences only hours after the Big 10 cancellation, announced that its season would be pushed to the spring as well. As of today, there are still six conferences, referred to as the ‘stubborn six’, that plan to kick off their season and continue to play with modified schedules, as some have had to develop schedules on the fly with cancellations by certain teams and programs.

The Big Ten’s actions have brought into question the politics of sports, as these institutions failed to articulate a clear and concise message on the cancellation and subsequent spin of how and when their seasons may restart. There has been accusation of political influence by the Governor of Michigan over the Big 10’s process, who had been a potential Vice-Presidential pick for Democratic Party. The Biden-Harris campaign has also run ads that talk about how President Donald J. Trump “sidelined” the season, showing images of Michigan, Wisconsin, and Michigan State stadiums, among others. President Trump has advocated for the Big Ten to restart its fall season and has phoned Big Ten Commissioner Kevin Warren to offer the full support of the Federal Government in terms of testing and other pandemic related aid to get teams back on the field. In an article this past June, Peter Thamel of Yahoo Sports noted how the Big Ten could swing a presidential race, and Commissioner Warren was quoted as saying, “From a social change standpoint, I think our biggest asset is our right to vote and to be an educated voter. It’s important, not only from national politics, but from local politics.”

Needless to say, with a wave of political movements in sports, they cannot be treated broadly as a unifier in the U.S. today. This is another key factor that can contribute to the future success of sports betting across the United States. While it is known that the legislative and political battles can occur in the statehouses and regulatory agencies across the country, it has now transferred over to the courts, fields, and airwaves as athletes, administrators, teams, and leagues take the battle from athletic competition to political sport.



U.S. Sports Betting Comparable Summary								
State	Timeframe	Sports Betting			Taxes Collected (\$MM)	Total Gaming Revenue (\$MM)	Sports Betting	
		Handle (\$MM)	Revenue (\$MM)	Hold %			% of Total Gaming	Sports Betting Win per Adult
Nevada (1)	TTM July'20	\$ 3,996.5	\$ 254.2	6.4%	\$ 17.2	\$ 9,060.1	2.7%	\$109.45
Delaware	TTM July'20	\$ 66.7	\$ 10.8	16.1%	\$ 6.1	\$ 323.0	3.2%	\$14.63
New Jersey	TTM July'20	\$ 4,216.9	\$ 310.6	7.4%	\$ 38.6	\$ 1,788.7	14.8%	\$45.81
Mississippi	TTM July'20	\$ 311.3	\$ 36.8	11.8%	\$ 4.4	\$ 1,748.8	2.1%	\$17.08
West Virginia	TTM July'20	\$ 178.0	\$ 14.7	8.2%	\$ 1.5	\$ 454.7	3.1%	\$10.72
Pennsylvania	TTM July'20	\$ 2,390.5	\$ 119.0	5.0%	\$ 42.8	\$ 2,705.4	4.2%	\$12.29
Rhode Island	TTM July'20	\$ 198.6	\$ 18.2	9.2%	\$ 9.3	\$ 419.6	4.2%	\$22.54
Iowa	TTM July'20	\$ 390.9	\$ 27.9	7.1%	\$ 1.9	\$ 1,158.7	2.4%	\$12.11
Indiana (2)	Since Launch (Sept'19)	\$ 1,033.1	\$ 85.2	8.2%	\$ 8.1	\$ 1,443.2	5.6%	\$19.04
Michigan (3)	Since Launch (Mar'20)	\$ 0.6	\$ 0.1	17.8%	\$ 0.01	\$ 57.4	0.2%	\$0.03
Colorado	Since Launch (May'20)	\$ 122.9	\$ 11.2	9.1%	\$ 0.6	\$ 44.8	20.1%	\$10.32
Average Without Nevada				7.1%			6.3%	\$16.68

Source: Global Market Advisors
(1) April 2020 revenue data redacted by the State; (2) Indiana revenues are exclusive of tribal gaming; (3) Detroit casinos only - excludes tribal gaming

With all of these headwinds, sports betting is starting to rebound, or even explode in some new jurisdictions like Colorado, which launched back in May and is showing strong numbers. Part of this is due to the Avalanche and the Nuggets doing well in their postseason play, but it also shows that open competition and convenient mobile wagering options will help drive new markets. With the NFL on the horizon, the Masters, the Kentucky Derby, the World Series, and limited college football, fall sports still look promising. The question will be whether a tailwind can drive sports through the fall and into the spring as it faces the challenges of SARS-CoV-2, along with a new challenge in the politics of sports.

ONLINE GAMING CONTINUES TO LOOK STRONG

Online gaming continues to be a strong revenue source to fill the gap in brick-and-mortar gaming revenue. West Virginia is the latest state to join the small fraternity of states that have gone down the path to implement online gaming. West Virginia's numbers are strong out of the gate after only about one month with a limited offering that currently exists in the state. Another new market entrant is Wind Creek Bethlehem that is now live with online gaming in the Pennsylvania market. New Jersey continues to report record-high numbers with several operators doubling their revenues on a year-over-year basis, if not more so.

Many groups are looking toward 2021 and which states may move on the iGaming front. This offers a heavier lift that sports betting on its own. Both the general public and legislators have a different view of slots and tables online that they do placing a sports wager via a mobile device. While some believe that the chips just fall into place in those states, there is greater likelihood of tandem bills, like what was passed in Michigan, than there is for stand-alone bills across the country.



With that said, operators and suppliers remain confident in the long-term viability of iGaming. This was shown when IAC took a nearly billion-dollar stake in MGM Resorts, which remains active in sports betting but is staking its future on the online space. It will take time before there are more states and the rapidness of legislative expansion into iGaming progresses.

New Jersey Online Gaming Revenues			
	TTM July'20	TTM July'19	% Change
Borgata	\$ 134,769,680	\$ 61,889,412	117.8%
Caesars	\$ 74,230,117	\$ 53,015,069	40.0%
Golden Nugget	\$ 265,098,588	\$ 140,054,625	89.3%
Tropicana	\$ 57,224,485	\$ 43,068,945	32.9%
Resorts	\$ 156,549,737	\$ 69,353,977	125.7%
Hard Rock	\$ 40,112,400	\$ 17,104,667	134.5%
Ocean Resort	\$ 8,137,383	\$ 5,551,587	46.6%
TOTAL	\$ 736,122,390	\$ 390,038,282	88.7%

Source: NJDGE, GMA

Pennsylvania Interactive Gaming Revenues	
	TTM July'20
Penn National	\$ 49,068,725
Parx	\$ 37,325,374
Rivers Philadelphia	\$ 88,194,851
Mount Airy	\$ 57,025,650
Mohegan	\$ 12,471,119
Presque Isle	\$ 1,679,857
Valley Forge	\$ 45,260,498
Caesars	\$ 2,755,196
Wind Creek	\$ 34,414
TOTAL	\$ 293,781,269

Source: PGBC, GMA

West Virginia Online Gaming	
	Since Launch (Jul'18)
Handle	\$ 55,393,735
Revenue (Net)	\$ 998,923
Privilege Tax (15%)	\$ 149,838

Source: West Virginia Lottery, GMA



IS DFS SPORTS BETTING? THAT'S THE IRS QUESTION

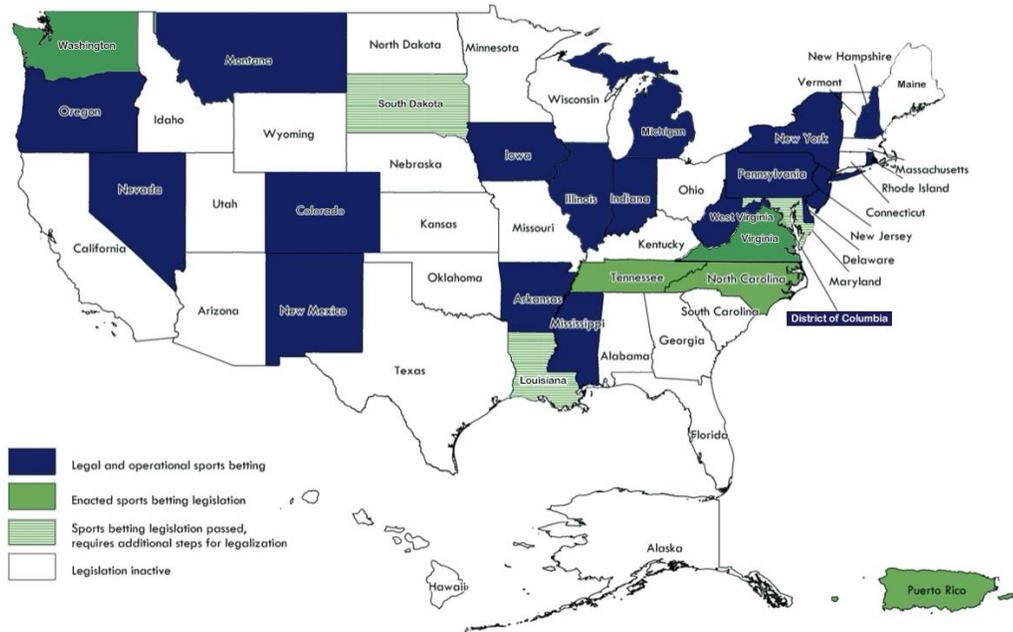
In August, the IRS issued a memo detailing that daily fantasy sports (DFS) was a form of wagering and, because of this, should fall under the federal excise tax that applies to sports betting. This is the same tax that last month had a bill introduced to repeal it by Representatives Dina Titus (NV-01) and Guy Reschenthaler (PA-14), both of whom are co-chairs of the Congressional Gaming Caucus. While the motives of what triggered the IRS to issue the memo are still being evaluated, it could have a significant impact on sports betting companies whose origins are in daily fantasy as well as those that are still looking to move on to sports betting markets as they emerge. The IRS defined the entry fee as a form of a wager, one that does not have an exemption based the Unlawful Internet Gambling Enforcement Act of 2003 (UIGEA) which prohibits gaming companies from knowingly accepting payments in connection with the wagers over the internet.

It appears as though the IRS has finally caught up with the State of Nevada after five years. As some may recall, the Attorney General of Nevada ruled that DFS was a form of gambling, and those companies operating those types of activities would need to be licensed by the Nevada Gaming Control Board. Those companies at that time chose not to be licensed and left the state. They have since had operations questioned in other states under the same disguise. While it is yet to be determined how the IRS memo will be enforced, this could have a material impact on those DFS companies, especially those that transitioned over to sports betting.

It also brings into question a potential Wire Act violation. As individuals participated in various fantasy sports games, the participants were pooled across state lines, which would have violated the act. While sports betting remains geofenced within a given state and, in many cases, is even required to keep servers physically located within the state, DFS is not currently required to to play by the same rules. A final decision is yet to come in the New Hampshire case on the current grammatical interpretation of the Wire Act, based on Department of Justice memos issued in 2011 and 2018; GMA has issued Research Briefs discussing the [2018 memo](#), as well as a subsequent [U.S. district court ruling](#) on the matter.



Legal Status of Sports Betting in the United States



Source: Global Market Advisors

ILLINOIS TABLE TENNIS, ROUND 2

As sports have returned, more operators within the Land of Lincoln have started their sports betting operations. As noted last month, Governor Pritzker let expire the temporary provisions for mobile registration in the state, which were implemented using the pandemic as a disguise under executive order. In a volley return, Pritzker later put back into the place the allowance of mobile registration, throwing another change in direction at operators in the market. The ruling came late in the afternoon on a Friday, which is typically the time to try to bury controversial items in the political world. DraftKings, however, put things back into place for mobile registration over that weekend. The following Monday, Jason Robins, CEO of DraftKings, decided to spike the football by tweeting, “Feels so good to be taking mobile registrations in Illinois. Especially after the corrupt idiots at Rush Street Gaming tried to block us in the state. Over the long run good policy always wins. I commend Governor Pritzker for doing what’s right for the citizens of Illinois!”

While Robins may be correct that the policy was bad, the actions to modify the policy were just as bad in circumventing legislative process and intent. GMA continues to believe that mobile registration and account funding should be implemented as sports betting expands across the country, including modernizing the current rules in states like Nevada. This allows the market to compete against the existing black market, provides convenience to the customer, and allows a



dynamic and competitive market. What is known is that Illinois continues to be an example of bad policy and how not to legislate, regulate, or oversee gaming policy. Creating a non-competitive market should never be the goal of any stakeholder, especially with the dynamics of sports betting. What works in one state may come back to haunt an operator in another. Playing pandemic political football that circumvents legislative intent through executive overreach in this case was just as bad. States can learn from the fumbles for which Illinois has become notorious as a gaming jurisdiction.

TENNESSEE TWO STEP

Tennessee was set to move forward with sports betting this fall but is facing hurdles in its effort to license up to 12 operators in the state. After passing sports betting in the spring of 2019, Tennessee held its first public meeting on the initial draft of rules for sports betting in January 2020. They have continued to work through the challenges of having the lottery regulate an open, mobile-only market. Part of this has been because of the lottery's inexperience in sports betting, as well as the nature of state lotteries to be risk adverse institutions, which was evident in the initial version of Tennessee's regulations. The licensing process was also delayed for some of the same reasons.

With new leadership in its sports betting division, there is little doubt that Tennessee will have licensed sports books by November. Currently, four operators have applied for a license, including BetMGM, FanDuel, DraftKings, and a local company, Action 24/7. While the suitability process finalizes, sports betting will likely be live within the next 60 days.

ARE TEAMS SUITABLE?

In a series of recent announcements, sports betting operators have made announcements with sports celebrities and team owners such as Michael Jordan, as well as having physical locations within stadiums in partnership with teams. Currently, only two jurisdictions, Illinois and the District of Columbia, have allowed for in-stadium venues, while others have attempted to include venues as part of the legislation, as seen with Massachusetts this past July.

One question that continues to arise is whether the teams will have to pass suitability if they are getting a significant share of the sports betting proceeds, or is it just a straight lease agreement that is not based on revenue generation. These are issues that regulators, and arguably legislators, will need to start to explore as the mandate for data feeds has taken hold in a couple of states and these stadium licensees have entered the legislative field. GMA continues to believe that the threshold has been set in multiple jurisdictions for suitability of parties, and those thresholds should remain, no matter what form of gaming.



WILL NEW YORK EVER BE A PART OF IT? (REDUX)

Another month passes, and New York continues to be on the sidelines. Rumors run rampant on mobile sports betting with the potential for online gaming and a move up on the moratorium of casino gaming in the southern portion of the state starting in 2023. New York will finally open up its existing casinos next week that have now been shuttered for nearly six months. The silence on “non-essential workers,” as Governor Cuomo put it, continues to raise questions on his ability to move forward and recapture the dollars that are being lost to New York’s neighbors. The gaming study originally commissioned by the New York State Gaming Commission last fall is yet to be released and is now 90 days past due from its original June 1st deadline. It is hard to imagine that a state that has examples of good gaming models throughout the region would continue to find consensus to keep these dollars in the Empire State, but the silence speaks volumes as to Cuomo’s views on gaming. Until the Governor moves, everything else is just rumors in this state, and neighbors like New Jersey, Pennsylvania, and Connecticut will continue to flourish.

WHO’S GOT NEXT

Two jurisdictions are in the process of closing out their public comment phase for their regulatory structure. As previously discussed, the Virginia Lottery must approve their sports betting regulations by September 15th and will do so at their meeting on the same day. Public comments over the first set of regulations were released in July with the second set released on August 10th. All comments must be received by September 9th. While sports betting regulations will be approved in September, they will not be official until October. Once approved, the Virginia Lottery will move forward with licenses in late October with the goal of having them issued by January 2021. Let it also be noted that Virginia will have five local votes for casino gaming in the Commonwealth on November 3rd that will also create the potential for five additional participants in the sports betting race.

Puerto Rico also issued its draft sports betting regulations at the beginning of August. The regulations cover not only sports betting, but also esports and DFS. The regulations clearly appear to protect certain political interests that may bring questions on suitability. In some of the more interesting rules released to date, it would allow licensure for the ‘rooster industry’.

In order to encourage the rooster industry, those companies that were operating legally as of December 31, 2018, will not pay, for the first ten (10) years of operation, the rights identified for the licenses that are required by the Commission for the new forms of betting authorized by this Law.

The ‘rooster industry’ faced a setback when cockfighting was banned by the Farm Bill passed in December 2018. While this regulation, should it stand, allows for a ten-year free license, these operators should be held to the same suitability of those that have passed background and



operate casinos. Sports betting, like any other form of gaming, should be about finding solid partners and suitable operators that are held to a high standard. It should never be about political favors or protecting a segment of an industry.

Next month's update will provide an election preview, as well as a review of states that may move before the end of 2020.



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