A Bit More On OBBBA's Impact on Gambling

Take-Away: Gamblers now face an income tax on unrealized income.

Background: As was reported in an earlier missive, the One Big Beautiful Bill Act (OBBBA) changed the rules on how gambling winnings, and losses, are reported by a gambler. Section 70114(a)(b) provides that starting in 2026 the definition of ‘losses from wagering transactions will include any allowable deduction tied to a wagering activity **but limits deductions to 90% of the loss amount, capped by gambling winnings.** Congress estimates that with this change in allowable deductions from gambling, $1.1 billion will be generated over the next 8 years.

OBBBA: The Act makes permanent the expanded definition of deductible losses to include expenses incurred in connection with wagering, e.g., travel, supplies, tournament entrance fees, not just the wagers themselves. The 2017 Tax Act allowed for 100% deductibility of losses against winnings. [IRC165(d).] However, under the OBBBA only 90% of allowable losses, up to the amount of the gambler’s gains, may be deducted by the gambler. This limit on the amount of deductible gambling losses creates the probability of taxable income even when a gambler only ‘breaks even’ economically.

Example: In 2026, Gary a casual better, has $100,000 in gambling winnings, and he also has $100,000 in gambling losses. With the OBBBA change in deductions, Gary will report $10,000 in taxable income, even though he does not have $10,000 with which to pay the income tax liability.

Example: In 2025, Gary was successful in his gambling activities, and he earned $1.0 million in winnings. Gary also had $1.0 million in gambling expenses, e.g., travel, rooms, admission fees to gambling tournaments, etc. As such, Gary’s gambling expenses were fully offset by his deductible gambling expenses and Gary reports $0.00 as income in 2025. If Gary experienced the same results from his gambling activities in 2026, Gary would have taxable income of $37,000, and he will have to liquidate other assets to generate the $37,000 needed to pay the income tax liability on his unrealized or *phantom* income.

This change that limits gambling losses to 90% of gambling winnings creates a heavy penalty for both professional and casual players. The upshot is that a gambler, like Gary, who ‘breaks even’ now takes a net loss after paying income taxes on the money that he never made.

Observation: Many of the limits that the Tax Code places on business expense deductions, e.g., meals and entertainment, are largely designed to discourage abusive behaviors by large corporations. The OBBBA’s new wagering loss limitation will only affect individuals who are engaged in a legal, heavily regulated activity. It is estimated that state tax revenues from online gaming were nearly $3 billion in 2024. How will states be affected if gamblers, in response to this new limitation on gambling losses, change their behavior?

Conclusion: While Congress projects to generate over a billion dollars in tax revenues from this change, you have to wonder if this change will simply prompt gamblers to either pursue their gambling activities abroad, e.g., Macau, to simply participate in illicit gambling markets, which may make those tax revenue projections wildly unrealistic. Or, we have to acknowledge the fact that this change to lower the deduction amount to 90% of gambling earnings was made solely to accommodate the Senate’s ‘Byrd Rule’ in order to meet the OBBBA’s artificial deadline imposed by President Trump. Which also explains why bills were filed in Congress just days after OBBBA became law, bills filed by many in Congress who voted in favor of the OBBBA, to restore the full deductibility of gambling losses. This is what we get from a ‘knee-jerk’ Congress that is unwilling to exercise its own judgment.

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