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FISCAL IMPACT REPORT

ORIGINAL DATE 02/02/09
 LAST UPDATED 02/18/09 HB 258/aHTRC

SPONSOR Sandoval

SHORT TITLE Graduate Gaming Tax Rate on Certain Tracks SB _____

ANALYST Gutierrez

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
		*(\$439.4)	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

*This amount could be substantially higher if any additional racetrack's annual net win falls below \$14 million.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of HTRC Amendment

The House Taxation and Revenue Committee amendment to House Bill 258 allows for the lower tax rate to the smaller racetracks to be phased in over three years (20% in FY11, 15% in FY12 and 10% in FY13 and beyond), changes the calculation periods to fiscal years instead of calendar years, defines fiscal year, determines calculation periods for net take based on fiscal years and changes the effective date.

The effective date of this bill's provisions is July 1, 2010.

Synopsis of Original Bill

House Bill 258 would allow a lower gaming excise tax rate of 10 percent to be imposed on a racetrack with a net take in the preceding calendar year of less than \$14 million until the cumulative net take in the current calendar year exceeds \$10 million; thereafter, for the remainder of the calendar year, the gaming tax would be 26 percent of the net take.

The effective date of the provisions of the bill is July 1, 2009.

FISCAL IMPLICATIONS

The only racetrack with an annual net take consistently below \$14 million is the Ruidoso Downs Race Track and Casino. Because Ruidoso Downs' net take is not expected to exceed \$10 million in the near future, the casino's entire net win would be taxed at 20 percent in FY11, 15 percent in FY12 and 10 percent in FY13 and subsequent fiscal years once the provisions of this bill become effective in July 2010. Assuming Ruidoso Downs re-invests the savings from this bill back into the racino, the bill will reduce general fund revenue by \$439 thousand in FY11 and \$814 thousand in FY12. This estimate assumes Ruidoso Downs' experiences growth of zero percent in FY 2011, one percent in FY 2012, and two percent in following years.

If in FY10 any additional racetrack's annual net take is below \$14 million, then the cost to the general fund could be an additional \$600,000 in FY11. If their net take is below \$14 million in FY11, then the cost could be an additional \$1.1 million in FY12. If any additional racetrack's net take is below \$14 million in FY12 or beyond, then the cost could increase by \$1.6 million in FY13 or the following fiscal year. Even though Albuquerque Downs' net take is forecasted to stay above \$14 million in FY 2010 and beyond, it was below \$14 million as recently as FY 2005 and has fallen in both of the last two fiscal years. Albuquerque Downs' planned move to Moriarty late this year complicates any forecast of their net take.

SIGNIFICANT ISSUES

TRD:

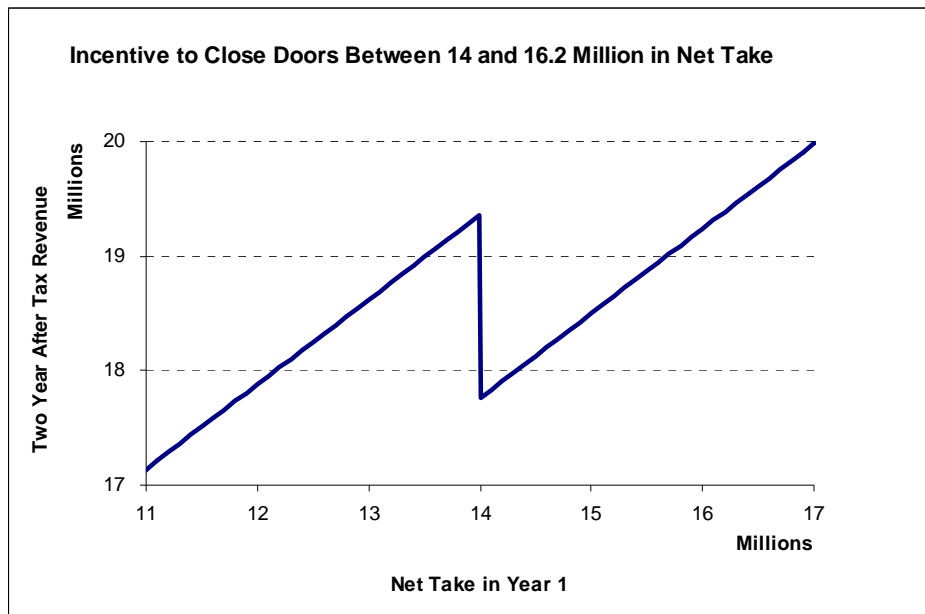
The structure of this proposal creates a tax cliff: After the proposal is fully phased in a racetrack with a \$13,999,999 net take could pay as much as \$1.6 million less in the following year than a racetrack with a \$14,000,000 net take.

After the proposal is fully phased in racetracks expecting a net take of less than \$16.2 million in any fiscal year have an incentive to shut down operations just before they reach the \$14 million net take trigger. The tax structure should not create an incentive to cease productive economic activity. In FY11 and FY12 the proposal also creates a tax cliff but it will be smaller.

The difference between a 26% tax rate and a 10% tax rate on the first \$10 million in net take is worth \$1.6 million to a taxpayer. To equal this benefit, a taxpayer would need an additional net take (taxed at the 26% rate) of \$2.162 million; therefore, under this proposal the following two hypothetical taxpayers (with a net take above \$10 million in the second year) would receive exactly the same two-year after tax revenue: 1) a taxpayer with net take of \$16.162 in the first year and 2) a taxpayer with a net take one dollar below \$14 million.

The graph below illustrates a hypothetical taxpayer's incentive to shut down the remainder of a calendar year if they expect their net take to be between \$14 and 16.2 million. It graphs their first year net take on the horizontal axis and their two year after tax revenue on the vertical axis. It assumes their net take in the second year is \$10 million.

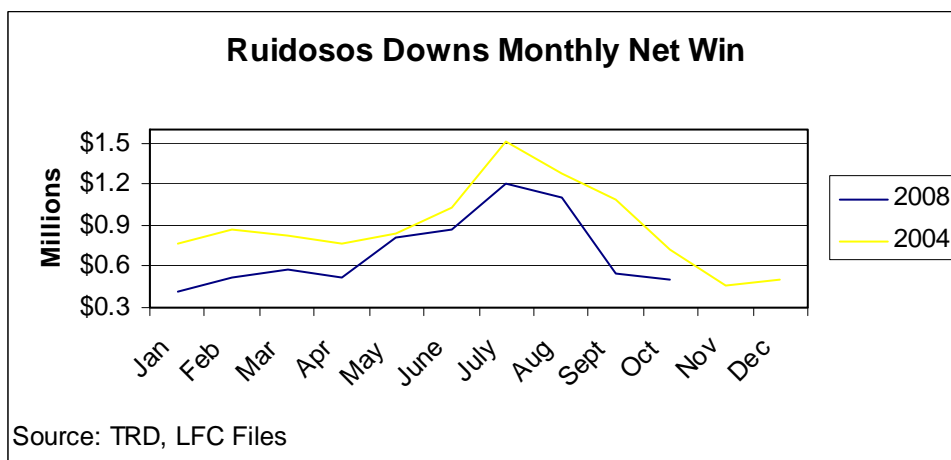
The tax cliff and incentive to shut down within a specific range of net take will also exist in FY2010 and FY2011 but it will not be as extreme as that shown below.



Source: Taxation and Revenue Department

This bill presents a tax problem of applying two very different rates to similar taxpayers for the same activity. It also allows for racetracks with less than \$14 million in net take for the last fiscal year to receive the same gaming rate as nonprofit organizations on their first \$10 million of net take (FY13 and beyond).

As shown in the figure below, net take, the amount of revenue taken in less payouts, has fallen at Ruidoso Downs in recent years. Net take is most likely suffering at Ruidoso Downs due to increased competition. Zia Park in Hobbs opened around the beginning of 2005, and tribal casinos in the area also draw large crowds. There are two more casinos trying to open which are located close to Ruidoso (Akela and Anthony) which could cause more competition if they are allowed to open. In addition, some gaming establishments have found a loophole around the prohibition of gaming in Texas, leading to a small number of gaming establishments in El Paso drawing business away from nearby casinos in New Mexico.



Source: TRD, LFC Files

ADMINISTRATIVE IMPLICATIONS

This bill will have a small impact on the Taxation and Revenue Department. TRD will need to modify existing forms and instructions and educate taxpayers. Gentax will need to be modified to accept the new gaming tax rate.

BLG/mt

The Legislative Finance Committee has adopted the following principles to guide responsible and effective tax policy decisions:

- 1. Adequacy:*** revenue should be adequate to fund government services.
- 2. Efficiency:*** tax base should be as broad as possible to minimize rates and the structure should minimize economic distortion and avoid excessive reliance on any single tax.
- 3. Equity:*** taxes should be fairly applied across similarly situated taxpayers and across taxpayers with different income levels.
- 4. Simplicity:*** taxes should be as simple as possible to encourage compliance and minimize administrative and audit costs.
- 5. Accountability/Transparency:*** Deductions, credits and exemptions should be easy to monitor and evaluate and be subject to periodic review.

More information about the LFC tax policy principles will soon be available on the LFC website at www.nmlegis.gov/lcs/lfc