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FISCAL IMPACT REPORT

SPONSOR Rawson DATE TYPED 1/25/96 HB _____
SHORT TITLE Tax Gambling Winnings SB 37
ANALYST Taylor

REVENUE

<u>Estimated Revenue</u>	<u>Subsequent</u>	<u>Recurring</u>	<u>Fund</u>
<u>FY96</u>	<u>Years Impact</u>	<u>or Non-Rec</u>	<u>Affected</u>
<u>\$Uncertain</u>	<u>\$Uncertain</u>	<u>Recurring</u>	<u>GF</u>

(Parenthesis () Indicate Revenue Decreases)

Duplicates/Conflicts with/Companion to/Relates to _____

SOURCES OF INFORMATION

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

Senate Bill 37 requires that winnings from gambling over some threshold amount be withheld for state income tax purposes. The requirements on the withholder and the threshold amounts of winnings subject to withholding are the same as to those established by the U.S. Internal Revenue Code. These winnings thresholds, according to the TRD, are between \$1.5 and \$5.0, depending on the particular game. The proposal applies to all gambling winnings except those by tribal members gambling at their tribal facilities. Gambling winnings from individuals who are residents of other states is defined as income from New Mexico and thus subject to New Mexico income tax.

FISCAL IMPLICATIONS

The TRD fiscal analysis is that the revenue gains to the State are uncertain, but probably relatively small. They analyze the impacts for two different scenarios. The first is that only currently authorized forms of gambling (the lottery and racetracks) are allowed. The second is that Indian casino operations are legalized.

In the first case, the TRD estimates that the recurring revenue impact would be under \$500.0. The non-recurring revenue impact is estimated at less than \$1 million. The non-recurring revenue impact

results from income tax payments that are received earlier rather than later in the tax year.

In the second case, the fiscal impact is considerably larger. TRD estimates the recurring impact is about \$3 million in this case, and the non recurring impact is \$10 million.

ADMINISTRATIVE IMPLICATIONS

Administrative impacts are minimal according to the TRD. They suggest early coordination with the New Mexico Lottery to develop procedures that will minimize these costs.

TECHNICAL ISSUES

The TRD requests a technical language change to "perfect the insulation of the withholder from legal action" (page 9, lines 5 to 7). See attached TRD fiscal impact report, Technical Impacts Section.

POSSIBLE QUESTIONS

1. If the gaming compacts with the Indian tribes are renegotiated, do these provisions need to be explicitly acknowledged?

WT/jsp
Attachment

BILL ANALYSIS AND FISCAL IMPACT REPORT

DATE: January 22, 1996

Submitted by: TAXATION AND REVENUE DEPT.
JOHN J. CHAVEZ, SECRETARY

BILL NUMBER: SB-37

SPONSOR: Senator Rawson

BILL SHORT TITLE: Income Tax Withholding from Gambling Winnings

DESCRIPTION: Provides rules governing the withholding of income tax from gambling winnings.

Section 1: For purposes of allocating and apportioning income, net gambling winnings of New Mexico residents are 100% taxable by New Mexico. Winnings of a nonresident from New Mexico sources are also taxable by New Mexico.

Section 2: Nonbusiness gambling winnings of a corporation filing with New Mexico are allocated to New Mexico if the winnings are from New Mexico sources.

Section 3: Definitions of "wagerer" and "winnings that are subject to withholding" are added; the latter follows the definition used for federal income tax purposes. Federal withholding is required on winnings in excess of threshold amounts which vary among different types of games. For most games the minimum amount of winnings at which tax must be withheld ranges from \$1,200 to \$5,000. The attached addendum presents the threshold amounts for different games. Definitions of "withholdee" and "withholder" are amended to accommodate withholding from gambling winnings.

Section 4: Every person required to withhold tax from gambling winnings for federal purposes is hereby required to withhold at a rate of 6% for New Mexico. Indian nations, tribes and pueblos are not required to withhold with respect to winnings of tribal members or their spouses.

Section 5: Provides that wagerers have no course of action against a person who withholds tax under this act. This is the same treatment provided for withholding of income tax from wages.

Section 6: Withholders have to prepare and submit statements of withholding. The Taxation and Revenue Department may require withholders to submit copies of information returns (forms 1099, W2-G or 1042S) to the Department.

EFFECTIVE DATE: Emergency clause. Effective April 1, 1996.

FISCAL IMPACT (Thousands of dollars) Brackets indicate a revenue loss:

<u>Estimated Impact on Revenues</u>		<u>Recurring or Nonrecurring Impact</u>	<u>Funds Affected</u>
<u>FY 96</u> <u>(1995-96)</u>	<u>FY 97</u> <u>(1996-97)</u>		
*	*	Recurring	General Fund
**	**	Non-recurring	General Fund

*Recurring revenue impacts are uncertain but there should be modest increases attributable to improved compliance and to the allocation of winnings by out-of-state residents to New Mexico. The magnitude depends on the proportion of winnings by nonresidents, and on the degree of improved compliance. Altogether, total revenues would probably be less than \$500,000 per year.

**A non-recurring increase occurs in the first year of implementation due to the acceleration of income tax payments through withholding that would otherwise be paid through final payments. The non-recurring increase is probably less than \$1 million.

Revenue effects would be significantly higher if casino operations by Indian tribes are legalized or continue to operate. See the discussion under "Other Impacts and Issues."

ADMINISTRATIVE IMPACT

No major impacts. Proposal would require expanding TRD's current withholding program, and the Lottery Authority

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will have to develop procedures for withholding on Lottery winnings. To facilitate collections and minimize administrative costs, these procedures should be automated to the greatest extent feasible.

TECHNICAL IMPACTS:

To perfect the insulation of the withholder of gambling winnings from right of action by the withholdee, on Page 9, lines 5 thru 7 add the following language to the end of the sentence:

"for the amount deducted and withheld."

OTHER IMPACTS AND ISSUES:

Under present law, the definition of taxable income for federal income tax purposes includes gambling winnings net of losses. Withholding and reporting requirements are provided to insure compliance. Taxable income for New Mexico state income tax purposes is based on federal taxable income. Therefore, net gambling winnings are currently taxable under New Mexico law. However, due to the lack of withholding and reporting requirements for state income tax purposes, compliance with these provisions is poor. The proposed requirements will insure improved compliance, thereby increasing revenues to the state.

The magnitude of the revenue increase under the provision depends largely upon whether casino gambling is legalized in the state. The estimate assumes the only legal forms of gambling in the state are at race tracks and through the state-run lottery. If casino gambling is legalized the revenue gain could be significantly larger. The recurring gain could be \$3 million, and the non-recurring increase in fiscal year 1996 as much as \$10 million. In order to insure improved compliance with income tax laws, any renegotiations of the Indian gaming compacts should include provisions requiring the tribes to withhold income taxes on winnings for the state.

The Internal Revenue Service has recently ruled that Indian casinos must withhold for federal purposes for three categories of employees: non-Indians, Indians who are not members of the nation, tribe or pueblo operating the casino and members who live off the reservation or pueblo.

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Addendum:

Federal Income Tax Reporting and Withholding
Thresholds for Gaming Transactions¹

	Form 1099 (reporting only)	W2-G Proceeds Not Reduced by Wager	W2-G Proceeds Reduced by Wager	W2-G Withholding	1042-S Foreign Payouts (No Stated Thresholds)
Slot win Slot tournament with entry fee		\$1,200			² Verifiable payment
Bingo win Bingo tournament with entry fee		\$1,200			Verifiable payment
Keno win (1 to 20 games) Keno tournament with entry fee			\$1,500		Verifiable payment
Lottery (payouts exceeding 300 to 1)			\$600	\$5,000 ³	Verifiable payment
³ Tournament with entry fee determined to be wagering pools (not slot, bingo or keno)				\$5,000	Verifiable payment
Parimutuel including horse racing, dog racing and Jai Alai with odds greater than 300 to 1			\$600	\$5,000	Verifiable payment
Wagering transactions with payouts exceeding 300 to 1			\$600	\$5,000	Verifiable payment
Prizes received with no wager Tournaments with no entry fee	\$600				Verifiable payment

Notes:

1. Generally, federal withholding is at a 28% rate. Back-up withholding at 31% is required if no taxpayer identification number is provided to the payer.
2. There are no thresholds for withholding on foreign patrons. Other thresholds are frequently relied on because at this point the identity and origin of the player is unknown. Certain table games are exempt from withholding.
3. Subject to withholding if determined to be a wagering pool. The Las Vegas Examination Division has an agreement with the Nevada casinos to report all proceeds over \$600 on W2-G with no withholding.