



Authorization of Sports Betting

By Meredith Moon

In May 2018, the U.S. Supreme Court found in *Murphy v. National Collegiate Athletic Association* that the federal Professional and Amateur Sports Protection Act (1992) violated the Tenth Amendment to the U.S. Constitution because it illegally empowered the federal government to order states to prohibit certain sports betting activities. By rendering this statute unenforceable, the Supreme Court's decision enables states to make decisions about whether to allow sports betting. Since the ruling, several states authorized sports gambling, and many others have introduced, but not yet passed, legislation concerning sports betting. This *issue brief* places this issue in context for Colorado by reviewing Colorado gaming laws, types of sports betting, sports betting tax revenue and tax structures in other states, and the implications for Colorado.

Colorado Gaming Overview

In Colorado, gambling is prohibited except in certain circumstances. Gambling is defined in statute as "risking any money, credit, deposit, or other thing of value for gain contingent in whole or in part upon lot, chance, the operation of a gambling device, or the happening or outcome of an event, including a sporting event, over which the person taking a risk has no control."¹ The following forms of gambling have been legalized in Colorado either through changes to state law or tribal-state compact:

- the Colorado Lottery;

- limited gaming at casinos;
- pari-mutuel betting;
- charity gambling;
- social gambling;
- fantasy sports betting; and
- gambling at tribal casinos (Ute Mountain Ute and Southern Ute Tribes).

In August 2018, the Colorado Attorney General's Office issued an opinion that sports betting is permissible under the Colorado Constitution because it does not conflict with existing provisions related to limited gaming. However, sports betting does qualify as gambling and therefore is illegal under current law because, according to the Attorney General's opinion, "the bettor has no control over the outcome of the [sporting] event."² Sports betting does not fit into any of the exemptions to the legal definition of gambling. Therefore, new legislation would be required to allow it in Colorado.

Types of Sports Betting

The types of bets placed on sporting events varies by sport. According to the University of Nevada Las Vegas's Center for Gaming Research,³ there are three primary types of sports wagering systems:

- **Pari-mutuel wagering.** This is primarily used in horse and dog racing. Bets are pooled so that bettors are betting against each other, as opposed to betting against the operator. The winners share the pool after deductions for taxes and the operator's revenue.

¹ Section 18-10-102 (2), C.R.S.

² <https://coag.gov/sites/default/files/contentuploads/ago/agopinions/cynthia-h-coffman/2018/no-18-02.pdf>

³ UNLV Center for Gaming Research, Types of Sports Betting, <https://infograph.venngage.com/ps/CS8M31lhjhs/types-of-sports-betting>

- **Fixed-odds wagering.** This is the most common type of sports betting in the U.S. and typical for betting on team sports. Bettors agree on the odds and payouts are set by the operator.
- **Exchange wagering.** Betting is facilitated by an operator; however, bets are placed against other bettors on opposing sides. Operators charge a commission on the bets. This is more common in horse racing.

Online sports betting, which typically involves fixed-odds wagers, was first legalized in Nevada in 2010. Sportsbook app and website users are not required to be residents of the state; however, they must be present in the state to place bets electronically. Approximately 30 percent of wagers are placed online in Nevada, according to the University of Nevada Las Vegas’s Center for Gaming Research.

Sports Betting Revenue and Taxation

The total size of the sports betting market is difficult to determine, since the majority of bets are placed illegally. Based on a 2015 survey of consumers performed by Ernst & Young, approximately \$107 billion is wagered on sports in the illegal market annually. The American Gaming Association estimates that at least \$150 billion will be wagered illegally this year. Therefore, with 2017 wagers placed legally in Nevada totaling almost \$5 billion (see Table 1), legal sports betting currently accounts for less than 3 percent of the market based on these estimates.

Typically, taxes on sports betting are calculated on the *win amount*, or how much revenue the casinos brought in after the winners are paid out, and not on the *handle*, which is the total amount bet. The *hold percentage* is the win amount divided by the handle, indicating the percentage of the total amount bet the casino sees as revenue. The hold percentages for sports betting are typically the lowest of all casino games. Over the last 12 months in Nevada, the sports betting hold percentage was 5.37 percent, while the average for all games was

13.7 percent, according to statistics from the Nevada Gaming Control Board. Table 1 summarizes 2017 Nevada sports betting statistics.

**Table 1
Nevada Sports Betting Statistics, 2017**

Total Handle	\$4.9 billion
Win Amount	\$248.8 million
Hold Percentage	5.11%
Tax Rate	6.5%
Total Tax Revenue	\$16 million

Source: Center for Gaming Research, University of Nevada Las Vegas.

Implications for Colorado

The amount of revenue that could be derived from legalizing sports betting in Colorado depends on various factors, including:

- where it is allowed, i.e. the three casino towns, other physical locations throughout the state, and/or online;
- the rate of tax levied on winnings; and
- the limits on bets placed.

Under current law in Colorado, limited gaming is taxed on the annual adjusted gross proceeds (AGP), which is equivalent to the win amount, of a gaming licensee based on a taxation schedule determined by the Colorado Gaming Commission. The tax rate varies from 0.25 percent up to 20 percent, based on AGP from under \$2 million to over \$13 million. If Colorado legalizes sports betting, any new tax levied requires voter approval under Article X, Section 20 (4) of the Colorado Constitution. Table 2 summarizes Colorado gaming revenue for FY 2016-17.

**Table 2
Colorado Gaming Revenue, FY 2016-17**

Limited Gaming Revenue	\$102 million
Amendment 50 Revenue	\$15.4 million
Total Gaming Revenue	\$117.4 million

Source: Colorado State Controller’s Office.

In FY 2016-17, state revenue totaled \$37.1 billion, so gaming revenue represents just 0.3 percent of total state revenue during that fiscal year.