

Tax Implications of Gaming in Ohio

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Department of
Taxation

Agenda for Today's Presentation

- Intro
- Taxes the Department Administers
 - Casino and Horse Racing
- Withholding Requirements
- Other Tax Implications
- New and Noteworthy
- Questions?



Introduction

- The goal today is to provide you with an overview
- The way we will go about this is to breakdown each game individually.
- Additionally, we will briefly cover any pending legislation regarding gaming at the time of the presentation



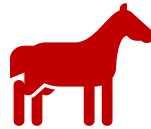
Games in Ohio



Casino

Ohio has authorized casino gaming since 2009

Four Las Vegas style casino gaming facilities in Ohio



Horse Racing

Ohio's horse racing tax applies to both pari-mutuel wagering and "exotic" wagering



Lottery

The Ohio lottery came to fruition in 1974

Instant and online games that customers can play across the state

Games in Ohio



Racino

Is a licensed video lottery retailer found at the racetrack



Keno

A lottery-like gambling game played in bars and businesses

Tickets are sold every day, and drawings occur every 4 minutes from 6:04 a.m. to 2:28 a.m.



Skill Games

Reward the player only with merchandise or vouchers redeemable for merchandise prizes

Casino Tax- Overview

Brief History

- Constitutional amendment in 2009
- First casino gaming statutes
- In 2012, the first three casino gaming facilities opened



Casino Tax Overview

The Agencies Involved:

- **The Ohio Department of Taxation** - administers the casino gross revenue tax
- **The Ohio Casino Control Commission** - licenses and regulates casino operators, their employees, and gaming-related vendors.



Casino - The Taxpayer

- The tax is paid by operators of the casinos (R.C. 5753.02)
- **Important Note:** Casinos are required to file any taxes that are imposed and/or levied on other Ohio businesses



Casino-Tax Base and Rate

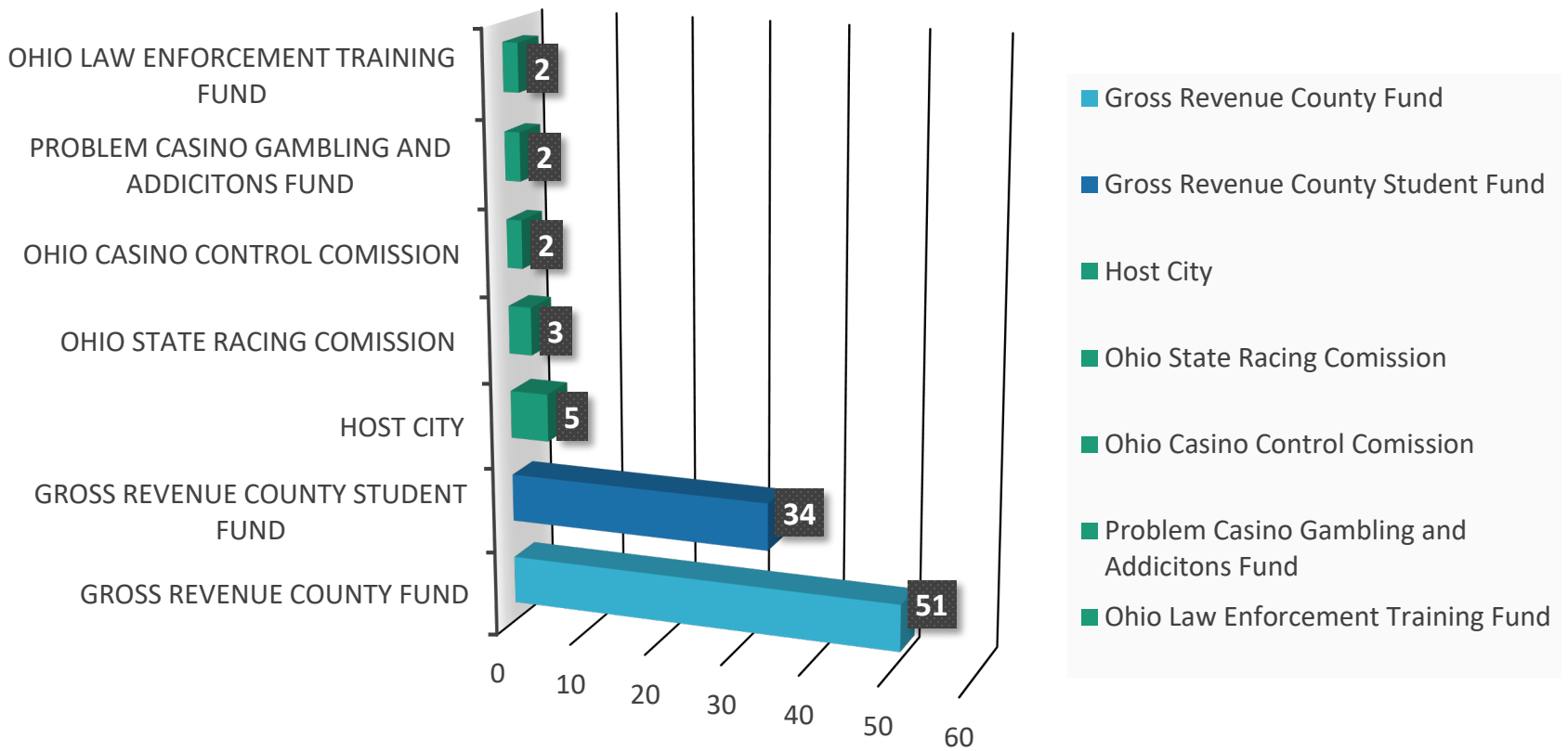
- **Tax Base (R.C. 5753.01-.02)**
The tax applies to all gross casino revenue received by each casino operator
- **“Gross Casino Revenue” =**
Total amount of money exchanged for the purchase of chips, tokens, tickets, electronic cards, or similar objects **LESS** winnings paid to wagerers.
- **Tax Rate (R.C. 5753.02) = 33%**



Casino-Distribution of Revenue

Gross Casino Tax Revenues (FY 2016) - \$270,376,946.00

Distribution of Revenue



Authority: Ohio Const. Art. XV, Sec. 6(C); R.C. 5753.03 and 5753.11

Casino- Distribution of Revenue

51%- Gross Casino Revenue County Fund

- Distributed among all 88 counties
- City has a population greater than 80,000
 - 50% of that county's distribution goes to the most populous city



Casino- Distribution of Revenue

34% - Gross Casino Revenue County Student Fund

- This is distributed among all 88 counties in proportion to a county's respective public school populations at the time of distribution.

5% - Host City where Casino is Located



Casino-Distribution of Revenue

3% - Ohio State Racing Commission

- 5% of which may be retained by the commission for operating expenses related to the fund

3% - Ohio Casino Control Commission

- One cent of every dollar is then transferred the Department for tax administration costs

2% - Problem Casino Gambling and Addictions Fund

2% - Ohio Law Enforcement Training Fund

- 85% directed to the Ohio Peace Officer Training Fund



Casino- Distribution of Revenue

Current Distribution Information:

Table 2. Gross Casino Tax Revenue (FY 2012-2016 in millions, rounded)

Fiscal Year	Tax Revenue
2012	\$19.8
2013	225.4
2014	273.4
2015	266.0
2016	270.4

Source: Office of Budget and Management financial reports.

Table 3. Gross Casino Revenue Tax Distributions (FY 2016)

Fund	Total distributions
Host City Fund	\$13,463,380
Student Fund	\$91,550,986
County Fund	\$137,326,480
Casino Control Commission Fund	\$8,078,028
Ohio State Racing Commission Fund	\$8,078,028
Law Enforcement Training Fund	\$5,385,352
Problem Gambling & Addictions Fund	\$5,385,352
Total Distributions	\$269,267,607

Source: Ohio Department of Taxation financial reports.

Casino-Tax Filing and Payment

Daily Returns

- Each return reflects casino gaming activity over a 24-hour period
- Must electronically file return and remit payment, by noon each day businesses are open



Casino Tax- Promotional Items

- Most often come from reward programs where the casino patrons receive rewards for their gambling activities
- Two Types of Promotions
 - Gaming Credit
 - Items
 - Cars, mugs, televisions
 - Free slot play, gaming credits
- These promotions can be automatic or involve drawings of some kind



Casino Tax- Promotional Items

- The issue is whether these promotional prizes are winnings
- The reason casinos would want these to be considered winnings is that they would then be deducted from gross casino revenue before computing gross casino revenue.
- Promotional gaming credits issued to casino patrons **are excluded** from the definition of “gross casino revenue”





Test Your Knowledge

Q: What is the calculation for “gross casino revenue?”



Test Your Knowledge

A: “**Gross Casino Revenue**” = Total amount of money exchanged for the purchase of chips, tokens, tickets, electronic cards, or similar objects **LESS** winnings paid to wagerers.



Horse Racing- Overview

- Permitted in accordance with Ohio Revised Code Chapter 3769
- Agencies Involved: Tax and the Ohio State Racing Commission
- There are three types of racing facilities in Ohio:
 - Thoroughbred Race Tracks
 - Standard Race Tracks
 - Off-Track Betting Parlor



Horse Racing- Overview

- Applies to both pari-mutuel and “exotic” wagering.
- “Pari-mutuel” wagering- all bettors of a race are competing against each other for the same pool of money
- “Exotic” wagering –all bets made on horse placements other than win, place, or show
- An additional tax on pari-mutuel wagering



Horse Racing-Taxpayer/ Tax Base/ Rate

Taxpayer (R.C. 3769.08). The tax is paid by holders of racing permits issued by the State Racing Commission.

Tax Base (R.C. 3769.08, 3769.28, 3769.087). The base of the tax includes the amount wagered each day on all pari-mutuel racing, the amount wagered each day on exotic bets, and the total amount wagered at each horse race meeting of a permit holder.



Horse Racing-Tax Rate

Pari-mutuel wagering tax (R.C. 3769.08):

Amount wagered daily	Rates
First \$200,000	1.00%
Next \$100,000	2.00%
Next \$100,000	3.00%
Over \$400,000	4.00%

Exotic wagering tax (R.C. 3769.087). = 3.5% on daily wagering other than win, place, or show.

Additional pari-mutuel wagering tax (R.C. 3769.28 and 3769.102).

Total wagering per meet	Rates
Less than \$5 million	0.10%
\$5 million or more	0.15%



Horse Racing- Simulcasts

Special provisions (R.C. 3769.089 and 3769.26).

- Facilities may conduct televised simulcasts of horse races at other facilities in or outside of Ohio and conduct taxable pari-mutuel wagering on such races.
- Off-track betting on races simulcast at a satellite facility operated by a racing permit holder is also permitted in Ohio. Such wagers are taxable.



Horse Racing- Simultcasts

Filing and payment dates (R.C. 3769.08 and 3769.28).

- **Day After-** In most cases, daily electronically filed report and remission of payment of the pari-mutuel and exotic wagering
- **10 Days After-** Within 10 days of the close of a horse racing meeting, the additional pari-mutuel wagering tax is remitted to the Tax Commissioner along with a final report showing the total amount wagered during the racing meeting.



Horse Racing- Distribution

Disposition of revenue (R.C. 3769.08, 3769.087, 3769.26).

- Complex must look to source of the receipts and share of the receipts

The Nursing Home Franchise Permit Fee Fund - receives 25 percent of gross tax revenue from taxpayers other than county and independent fairs and agricultural societies plus all tax revenue from off-track betting parlors.

The Ohio State Racing Commission's Operating Fund - receives the final 0.5 percent point of the 3.5 percent tax on exotic wagering and 16.7 percent of the base 3 percent point tax on exotic wagering.



**OHIO THOROUGHBRED
RACE FUND**

Horse Racing- Distribution

Recipient	Source of Receipts	Share of Receipts
County Agricultural Societies	Permit holders for racing at an agricultural exposition or fair	25% of pari-mutuel wagering
Ohio Fairs Fund	All permit holders	0.5% of total pari-mutuel wagering and 8.3% from the base 3% tax on exotic wagering
Ohio Thoroughbred Race Fund	Quarter horse racing permit holders	0.625% of pari-mutuel wagering
Ohio Standardbred Development Fund	Harness racing permit holders	0.625% of pari-mutuel wagering and 8.3% from the base 3% tax on exotic wagering
Ohio Standardbred Development Fund	Harness racing permit holders (except county and independent fairs and agricultural societies)	0.5% of total pari-mutuel wagering
Ohio Thoroughbred Race Fund	Harness racing permit holders (except county and independent fairs and agricultural societies)	0.27% of pari-mutuel wagering ¹
Ohio Thoroughbred Race Fund	Thoroughbred racing permit holders	1.125% of total pari-mutuel wagering and 16.7% from the base 3% tax on exotic wagering
State Racing Commission Operating Fund	All permit holders (except county and independent fairs and agricultural societies)	0.25% of total pari-mutuel wagering

CAT Overview

- The CAT is a broad-based, low rate tax on the privilege of doing business in Ohio that is measured by a taxpayer's taxable gross receipts.
- Gross receipts are the total amount realized by a person without deduction for the cost of goods sold or other expenses incurred, from activities that contribute to the production of gross income.



CAT Overview - Continued

- The CAT applies to all entities regardless of form, (e.g., sole proprietorships, partnerships, LLCs, and all types of corporations).
- An entity with taxable gross receipts of more than \$150,000 per calendar year is subject to this tax

<u>Taxable Gross Receipts</u>	<u>Annual Minimum Tax</u>	<u>CAT</u>
\$1 Million or less	\$150	No Additional Tax
More than \$1 Million but less than or equal to \$2 Million	\$800	0.26% x (Taxable Gross Receipts - \$1 Million)
More than \$2 Million but less than or equal to \$4 Million	\$2,100	0.26% x (Taxable Gross Receipts - \$1 Million)
More than \$4 Million	\$2,600	0.26% x (Taxable Gross Receipts - \$1 Million) <i>Exclusion</i>)).

CAT& Illegal Gambling Operations

- The CAT statute defines “doing business” as “engaging in any activity, whether legal or illegal, that is conducted for, or results in, gain, profit, or income.”
 - Illegal gambling operation would be subject to CAT



CAT Nexus Standards

- A person has “bright-line presence” in this state if any of the following apply:
 - The person has at least \$50,000 of either property or payroll in this state during the calendar year; OR
 - The person has at least \$500,000 of taxable gross receipts during the calendar year; OR
 - The person has at least 25% of the person’s total property, total payroll or total gross receipts within this state at any time during the calendar year; OR
 - The person is domiciled in this state as an individual or for corporate, commercial, or other business purposes

CAT & Casino Exclusion

- Exclusions from gross receipts include amounts in excess of a “licensed casino operator’s” gross casino revenue. (R.C. 5751.01(F)(2)(hh))
 - Exclude winnings paid to wagers



CAT & Lottery Agent Exclusion

- Agent as defined in R.C. 5701.01 (P)(4) – “A lottery sales agent holding a valid license under R.C. 3770.05.”
- Lottery sales agents only include in gross receipts portion of the fee it retains



Situsing of Gross Receipts - Services

- Gross receipts from services are generally sitused to Ohio in the proportion that the purchaser's benefit in Ohio with respect to what was purchased bears to the purchaser's benefit everywhere with respect to what was purchased.
- Gambling service providers – situs based on the location where the gambling service is being used



CAT Filing & Payment Requirements

- Quarterly – Taxpayers with \$1 million or more in taxable (Ohio) gross receipts in the calendar year
- Annual – Taxpayers with less than \$1 million in taxable (Ohio) gross receipts
- All CAT filers must file and pay electronically through the Ohio Business Gateway (OBG).
Alternatively, annual filers may file and pay via the Ohio TeleFile system.





Test Your Knowledge

Q: An online gaming site accepts wagers for a contest that is held outside Ohio. A total of \$160,000 in wagers are received from players using the online gaming site from a location in Ohio. Where should the online gaming provider situs the \$160,000 from Ohio wagers?



Test Your Knowledge

A: Ohio, because the benefit of the gambling service is being received by the Ohio players in Ohio



Withholding Requirements

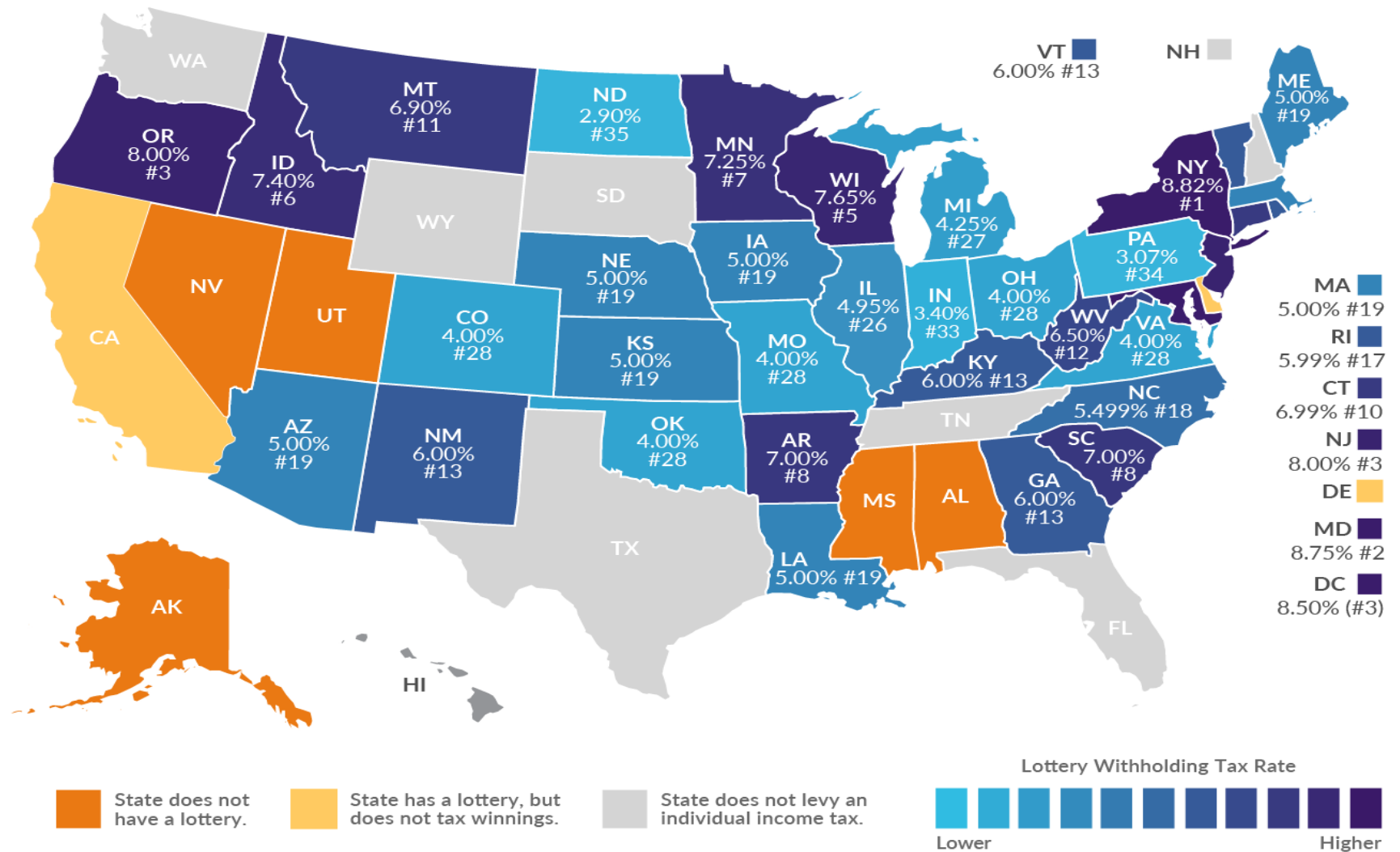
Overview

- Cash winnings and tangible prizes (cars, vacations, etc.) from lotteries, bingo, raffles, horse races, and casinos **are taxable**
- Cash or fair market value is included in FAGI
- Ohio's income tax **specifically applies to:**
 - “Lottery winnings, prizes, or awards from the Ohio Lottery Commission”;
AND
 - “Winnings on casino gaming.”



How High Is Lottery Tax Withholding in Your State?

Lottery Withholding Tax Rates by State, 2018



Source: USA Mega

Lottery Winnings

- The State Lottery Commission is required to withhold 4% of a payment over \$5,000 to cover the recipient's Ohio income tax
 - The withholding is reported on a W-2G
 - Individual receives a credit on his/her IT 1040
- The withholding is due by the 10th day of the month



Casino Winnings

- All winnings from Ohio casinos are allocated as income to Ohio (R.C. 5747.20(B)(7))
- Casinos are required to withhold Ohio income tax from winnings for which reporting to the IRS is required (R.C. 5747.063)



Casino & Racino Winnings

- Casino and racino operators must withhold Ohio income tax from winnings at 4% if over the applicable threshold
 - Threshold is \$600 to \$5,000 depending on the income source
- Individual will receive a W-2G reflecting the amount deducted and withheld
 - Foreign individuals receive a 1042-S instead of a W-2G



Video Lottery Terminal Winnings

- Withhold 4% on any payments required to have federal taxes withheld per I.R.C. 6041



Income Tax Implications

- Lottery or gambling winnings are generally taxable in the state where the individual won or purchased ticket
- Every Ohio resident is subject to Ohio income tax on all of their income, regardless of where they **received income during the taxable year**
 - Ohio residents must report all winnings, regardless of where they were received
 - Then take the **resident credit** if another state taxes the winnings



Resident Credit

- Residents can claim a credit for the lesser of:
 - Income tax paid to other states
 - The amount of tax otherwise due on income taxed by another state

Resident Credit

28. Enter the portion of Ohio adjusted gross income (Ohio IT 1040, line 3) subjected to tax by other states or the District of Columbia while you were an Ohio resident 28. 0 0

29. Enter the Ohio adjusted gross income (Ohio IT 1040, line 3) 29. 0 0

30. Divide line 28 by line 29 and enter the result here (four digits; do not round). Multiply this factor by the amount on line 24 and enter the result here 30. 0 0

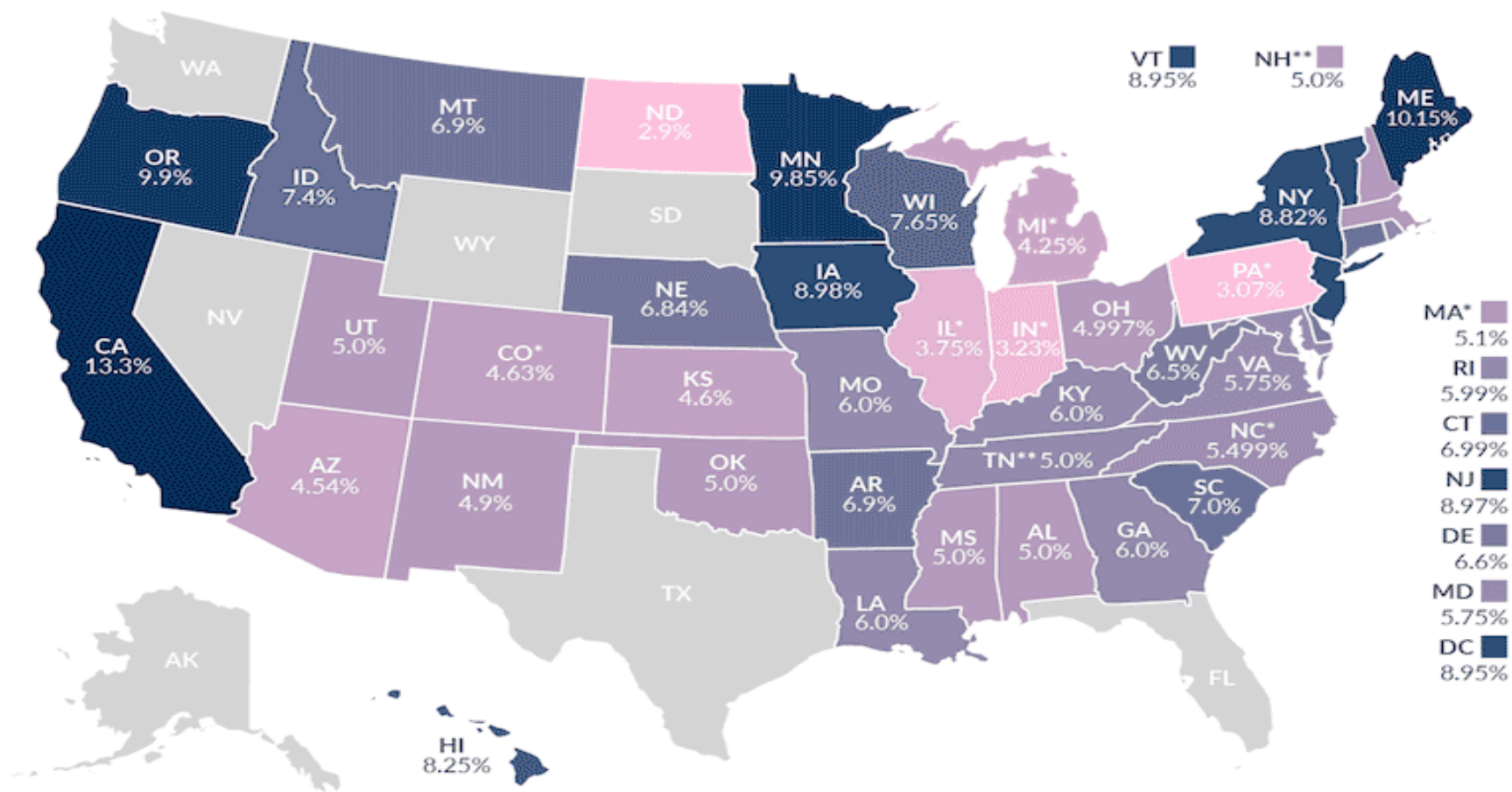
31. Enter the 2018 income tax, less all credits other than withholding and estimated tax payments and overpayment carryforwards from previous years, paid to other states or the District of Columbia 31. 0 0

32. Enter the lesser of line 30 or line 31. This is your Ohio resident tax credit. Enter the two-letter state abbreviation in the boxes below for each state in which income was subject to tax 32. 0 0

33. **Total nonrefundable credits** (add lines 10, 23, 27 and 32; enter here and on Ohio IT 1040, line 9) .. 33. 0 0

How High Are Income Tax Rates in Your State?

Top State Marginal Individual Income Tax Rates as of January 1, 2017



Note: (*) State has a flat income tax. (**) State only taxes interest and dividends income. Map shows top marginal rates: the maximum statutory rate in each state. This map does not show effective marginal tax rates, which would include the effects of phase-outs of various tax preferences. Local income taxes are not included.

Source: Tax Foundation; state tax statutes, forms, and instructions; Bloomberg BNA.



Income Tax Implications

Gambling Losses

- Generally, gambling losses cannot be deducted in the computation of federal adjusted gross income (FAGI)
 - Only “professional gamblers” can deduct gambling losses on Federal Schedule C
 - Amateur gamblers can only deduct gambling losses on Federal 1040, Schedule A
- Ohio law **does not** provide a deduction for gambling losses



Local Taxes

- Municipalities can tax lottery and gambling winnings
 - A taxpayer should use [The Finder](#) to determine the municipality's tax district and rate
- Casinos are not required to withhold school district income tax from prize money





Test Your Knowledge

Q: Do Ohio lottery or gambling winners who are residents of another state pay Ohio income taxes on their winnings?



Test Your Knowledge

A: Yes, gambling and lottery winnings are taxable in Ohio if the individual won or purchased a ticket in Ohio



New and Noteworthy-Sports Betting

- **The Case** - *Murphy v. NCAA*
- **Outcome** - The United States Supreme Court rules in favor of New Jersey to strike down PASPA.
- **What Was PASPA** - PASPA stopped new states from offering sports betting



New and Noteworthy-Sports Betting

- **Take Away -**
 - *Each state can determine and establish its own regulated sports betting laws.*
- **What is to come?**
 - Will Congress act?
 - Will the Ohio legislature take steps to legalize it in the state?
 - Online or just in casinos



New and Noteworthy- The Wire Act

- The **Department of Justice Office** reversed its 2011 opinion which said that the **Wire Act** only applies to sports betting.
- The wire act sets out that betting businesses may not (1) accept or transmit an interstate wagers via phone or internet or (2) transmit winnings on a wager via wire or electronic payment across state lines.



New and Noteworthy- The Wire Act

•Potential Impact-

- Simulcast and advance-deposit wagering on horse racing is not impacted because the Wire Act includes a carve-out to allow interstate wagering on horse racing
- If we do end up with sports betting, could impact online betting



Questions?



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