



February 27, 2012

**ENGROSSED
SENATE BILL No. 140**

DIGEST OF SB 140 (Updated February 23, 2012 4:37 pm - DI 92)

Citations Affected: IC 4-33; IC 4-35; IC 6-8.1.

Synopsis: Slot machine wagering tax. Specifies when gambling game receipts are considered received by a racetrack casino. Specifies that the general assembly does not acquiesce in any interpretation to the contrary. Provides that a licensee may elect to pay the slot machine wagering tax using taxable receipts rather than adjusted gross receipts. Defines taxable receipts as adjusted gross receipts minus amounts paid to support the horse racing industry. Provides that a licensee's election is considered revoked if the licensee claims a refund on the grounds that various taxes, fees, and other obligations should not have been included in the licensee adjusted gross receipts. Applies the current tax structure to a licensee revoking the election as of the business day following the date of the revocation. Provides that the attorney general, with the assistance of the department of state revenue, shall represent the state and the department of state revenue in all civil actions concerning: (1) the determination or collection of the slot machine wagering tax; or (2) a claim for the refund of slot machine wagering tax. Repeals an unused definition.

Effective: Upon passage; January 1, 2012 (retroactive).

**Kenley, Charbonneau, Broden,
Lanane**

(HOUSE SPONSORS — ESPICH, CRAWFORD)

January 4, 2012, read first time and referred to Committee on Appropriations.
January 10, 2012, pursuant to Senate Rule 68(b); reassigned to Committee on Tax and Fiscal Policy.
January 25, 2012, reported favorably — Do Pass.
January 30, 2012, read second time, amended, ordered engrossed.
January 31, 2012, engrossed. Read third time, passed. Yeas 49, nays 0.
HOUSE ACTION
February 9, 2012, read first time and referred to Committee on Ways and Means.
February 27, 2012, reported — Do Pass.

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February 27, 2012

Second Regular Session 117th General Assembly (2012)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2011 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 140

A BILL FOR AN ACT to amend the Indiana Code concerning gaming.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 4-33-2-17.5 IS REPEALED [EFFECTIVE
2 JANUARY 1, 2012 (RETROACTIVE)]. ~~Sec. 47.5. "Slot machine~~
3 ~~taxes" means the taxes imposed under IC 4-35-8-1 on the adjusted~~
4 ~~gross receipts of gambling games conducted under IC 4-35.~~
5 SECTION 2. IC 4-35-2-10.5 IS ADDED TO THE INDIANA CODE
6 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
7 JANUARY 1, 2012 (RETROACTIVE)]: **Sec. 10.5. "Taxable**
8 **receipts" means:**
9 (1) **the total of a licensee's adjusted gross receipts; minus**
10 (2) **the total of the amount of money paid by the licensee**
11 **under IC 4-35-7-12.**
12 SECTION 3. IC 4-35-3-5 IS ADDED TO THE INDIANA CODE
13 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
14 JANUARY 1, 2012 (RETROACTIVE)]: **Sec. 5. (a) This section**
15 **applies to a licensee, notwithstanding any judicial interpretation to**
16 **the contrary.**
17 (b) **Cash, checks, and other property are considered received by**

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1 a licensee when a patron relinquishes control of the cash, check, or
2 other property to the licensee for the purpose of making a wager
3 on a gambling game.

4 (c) The general assembly does not acquiesce in any
5 interpretation of IC 4-35-2-2 that is inconsistent with subsection
6 (b).

7 SECTION 4. IC 4-35-8-0.5 IS ADDED TO THE INDIANA CODE
8 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
9 JANUARY 1, 2012 (RETROACTIVE)]: Sec. 0.5. (a) This section
10 applies to a licensee that has:

- 11 (1) made an election under section 1.5(b) of this chapter; and
- 12 (2) not revoked the election under section 1.5(c) of this
13 chapter.

14 (b) Beginning January 1, 2012, the applicable tax base for
15 purposes of calculating a licensee's slot machine wagering tax
16 liability under section 1.5 of this chapter is the amount of taxable
17 receipts received by the licensee.

18 (c) This subsection applies only to the state fiscal year beginning
19 July 1, 2011. For purposes of determining the applicable tax rate
20 under section 1.5 of this chapter after December 31, 2011, the
21 amount of adjusted gross receipts received by the licensee after
22 June 30, 2011, and before January 1, 2012, is considered a part of
23 the licensee's taxable receipts for the state fiscal year.

24 SECTION 5. IC 4-35-8-1, AS AMENDED BY P.L.172-2011,
25 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
26 JANUARY 1, 2012 (RETROACTIVE)]: Sec. 1. (a) This section does
27 not apply to a licensee that has:

- 28 (1) made an election under section 1.5(b) of this chapter; and
- 29 (2) not revoked the election under section 1.5(c) of this
30 chapter.

31 (b) A graduated slot machine wagering tax is imposed as follows on
32 one hundred percent (100%) of the adjusted gross receipts received
33 before July 1, 2012, and on ninety-nine percent (99%) of the adjusted
34 gross receipts received after June 30, 2012, from wagering on gambling
35 games authorized by this article:

- 36 (1) Twenty-five percent (25%) of the first one hundred million
37 dollars (\$100,000,000) of adjusted gross receipts received during
38 the period beginning July 1 of each year and ending June 30 of
39 the following year.
- 40 (2) Thirty percent (30%) of the adjusted gross receipts in excess
41 of one hundred million dollars (\$100,000,000) but not exceeding
42 two hundred million dollars (\$200,000,000) received during the

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1 period beginning July 1 of each year and ending June 30 of the
2 following year.

3 (3) Thirty-five percent (35%) of the adjusted gross receipts in
4 excess of two hundred million dollars (\$200,000,000) received
5 during the period beginning July 1 of each year and ending June
6 30 of the following year.

7 ~~(b)~~ (c) A licensee shall remit the tax imposed by this section to the
8 department before the close of the business day following the day the
9 wagers are made.

10 ~~(e)~~ (d) The department may require payment under this section to
11 be made by electronic funds transfer (as defined in IC 4-8.1-2-7(f)).

12 ~~(d)~~ (e) If the department requires taxes to be remitted under this
13 chapter through electronic funds transfer, the department may allow the
14 licensee to file a monthly report to reconcile the amounts remitted to
15 the department.

16 ~~(e)~~ (f) The payment of the tax under this section must be on a form
17 prescribed by the department.

18 SECTION 6. IC 4-35-8-1.5 IS ADDED TO THE INDIANA CODE
19 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
20 JANUARY 1, 2012 (RETROACTIVE)]: **Sec. 1.5. (a) This section
21 applies only to a licensee that makes an election under subsection
22 (b).**

23 **(b) A licensee may elect on a form prescribed by the department
24 to pay the slot machine wagering tax under this section instead of
25 section 1 of this chapter. A licensee making an election under this
26 subsection must agree to the following conditions:**

27 **(1) That the licensee will not claim a refund of taxes paid
28 under this chapter before January 1, 2012, on the grounds
29 that an amount paid under IC 4-35-7-12 before January 1,
30 2012, should not have been included in the licensee's adjusted
31 gross receipts.**

32 **(2) That the licensee will not claim a refund of taxes paid
33 under this chapter on the grounds that an amount paid under
34 IC 4-35-7-12, IC 4-35-8.5, IC 4-35-8.7, IC 4-35-8.8, or
35 IC 4-35-8.9 should not have been included in the licensee's
36 adjusted gross receipts.**

37 **(3) That the licensee will not claim a refund of any fee or other
38 amount paid under IC 4-35-7-12, IC 4-35-8.5, or IC 4-35-8.9
39 on the grounds that:**

40 **(A) taxes paid under this chapter; or**

41 **(B) a fee or other amount paid under IC 4-35-7-12,
42 IC 4-35-8.5, IC 4-35-8.7, IC 4-35-8.8, or IC 4-35-8.9;**

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1 should not have been included in the licensee's adjusted gross
2 receipts.

3 (c) If a licensee claims a tax refund in violation of an agreement
4 entered into under subsection (b), the licensee is considered to have
5 revoked the election made under subsection (b). The licensee
6 becomes subject to taxation under section 1 of this chapter on the
7 business day following the date of the licensee's revocation of the
8 election made under subsection (b).

9 (d) A graduated slot machine wagering tax is imposed as follows
10 on the licensee's taxable receipts from wagering on gambling
11 games authorized by this article:

12 (1) Twenty-five percent (25%) of the first one hundred million
13 dollars (\$100,000,000) of taxable receipts received during the
14 period beginning July 1 of each year and ending June 30 of
15 the following year.

16 (2) Thirty percent (30%) of the taxable receipts exceeding one
17 hundred million dollars (\$100,000,000) but not exceeding two
18 hundred million dollars (\$200,000,000) received during the
19 period beginning July 1 of each year and ending June 30 of
20 the following year.

21 (3) Thirty-five percent (35%) of the taxable receipts exceeding
22 two hundred million dollars (\$200,000,000) received during
23 the period beginning July 1 of each year and ending June 30
24 of the following year.

25 (e) The licensee shall remit the tax imposed by this section to the
26 department before the close of the business day following the day
27 the wagers are made. The licensee shall calculate the amount of
28 taxable receipts received for a particular day by determining the
29 product of:

30 (1) the adjusted gross receipts received during the day;
31 multiplied by

32 (2) eighty-five hundredths (0.85).

33 (f) The department may require payment under this section to
34 be made by electronic funds transfer (as defined in IC 4-8.1-2-7(f)).

35 (g) If the department requires taxes to be remitted under this
36 chapter through electronic funds transfer, the department may
37 allow the licensee to file a monthly report to reconcile the amounts
38 remitted to the department.

39 (h) The payment of the tax under this section must be on a form
40 prescribed by the department.

41 SECTION 7. IC 4-35-8-3, AS AMENDED BY P.L.146-2008,
42 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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1 JANUARY 1, 2012 (RETROACTIVE)]: Sec. 3. The department shall
 2 deposit tax revenue collected under ~~section 4~~ of this chapter in the state
 3 general fund.
 4 SECTION 8. IC 6-8.1-3-13 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. (a) The attorney
 6 general and the respective county prosecuting attorneys have
 7 concurrent jurisdiction in conducting criminal prosecutions of tax
 8 matters. Either the attorney general or the respective prosecuting
 9 attorney may initiate criminal tax proceedings, and appear before grand
 10 juries to report violations, give legal advice, or interrogate witnesses.
 11 (b) **Except as provided in subsection (c)**, upon request by the
 12 department, the attorney general shall prosecute a civil action to collect
 13 unpaid taxes, penalties, and interest and to enforce the department's
 14 powers.
 15 (c) **The attorney general, with the assistance of the department**
 16 **of state revenue, shall represent the state and the department of**
 17 **state revenue in all civil actions (including proceedings in a United**
 18 **States bankruptcy court) concerning:**
 19 (1) **the determination or collection of slot machine wagering**
 20 **tax due under IC 4-35; or**
 21 (2) **a claim for the refund of slot machine wagering tax due**
 22 **under IC 4-35.**
 23 SECTION 9. **An emergency is declared for this act.**

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Report of the President
Pro Tempore

Madam President: Pursuant to Senate Rule 68(b), I hereby report that Senate Bill 140, currently assigned to the Committee on Appropriations, be reassigned to the Committee on Tax and Fiscal Policy.

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COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 140, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 140 as introduced.)

HERSHMAN, Chairperson

SENATE MOTION

Madam President: I move that Senate Bill 140 be amended to read as follows:

Page 5, between lines 3 and 4, begin a new paragraph and insert:

"SECTION 8. IC 6-8.1-3-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. (a) The attorney general and the respective county prosecuting attorneys have concurrent jurisdiction in conducting criminal prosecutions of tax matters. Either the attorney general or the respective prosecuting attorney may initiate criminal tax proceedings, and appear before grand juries to report violations, give legal advice, or interrogate witnesses.

(b) **Except as provided in subsection (c)**, upon request by the department, the attorney general shall prosecute a civil action to collect unpaid taxes, penalties, and interest and to enforce the department's powers.

(c) **The attorney general, with the assistance of the department of state revenue, shall represent the state and the department of state revenue in all civil actions (including proceedings in a United**



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States bankruptcy court) concerning:

- (1) the determination or collection of slot machine wagering tax due under IC 4-35; or**
- (2) a claim for the refund of slot machine wagering tax due under IC 4-35."**

Renumber all SECTIONS consecutively.

(Reference is to SB 140 as printed January 26, 2012.)

KENLEY

COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred Senate Bill 140, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

ESPICH, Chair

Committee Vote: yeas 22, nays 0.

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