

Gambling losses under the One Big Beautiful Bill Act Part 2—What is a “Gambling Session” anyway?

Attempting to provide clarity on
an unresolved question





Introduction

As discussed in Part 1—An Unwelcome Surprise—Gambling Losses under OBBB,¹ the “One Big Beautiful Bill” (“OBBB”) enacted on July 4, 2025 included a provision limiting the deduction of gambling losses to 90 percent of such losses. As many undoubtedly have already seen, this has sent ripples across the gaming industry, generating enough attention that legislators are already proposing a change to the bill.² Here, we examine a topic that has been known to industry stakeholders, professional gamblers, and high-dollar/high-value players for many years and is again drawing significant attention from even the casual bettor in the aftermath of OBBB, the concept of “Gambling Sessions” and how that may impact the calculation of gambling losses subject to the limitation.

If you read Part 1 and thought it was complex, hold onto your hats. I have a platform and no word count limit so it’s time to get nerdy!

¹ <https://kpmg.com/us/en/articles/2025/an-unwelcome-surprise.html>

² <https://www.congress.gov/bill/119th-congress/house-bill/4304/text>



1.

Refresh on gambling losses under OBBB

Those who have already read Part 1 will be familiar with the summary of the new limitation rule under OBBB below,³ which has been included here as well for reference.

1.1. Deduction of gambling; losses, in general

Historically, the deductibility of gambling losses by individual players has been governed by Section 165(d) of the Internal Revenue Code (IRC), which established that:

- Gambling losses are deductible, but only to the extent of reported gambling winnings.⁴
- The deduction is available only if the taxpayer itemizes deductions on Schedule A (Form 1040).⁵

Said another way, a taxpayer cannot use gambling losses to offset other forms of income, nor can they deduct more in losses than they report in winnings. For example, if a player reports \$10,000 in gambling winnings and \$12,000 in losses, then only \$10,000 of those losses may be deducted, resulting in a net gambling income of zero (not a net loss).

Taxpayers seeking to deduct gambling losses must maintain adequate records, including receipts, tickets, statements, or other documentation to substantiate both their winnings and losses. The Internal Revenue Service (IRS) has historically required a diary or log of gambling activity, with details such as dates, locations, amounts won or lost, and the types of wagering activities engaged in.⁶

³ Id

⁴ IRC §165(d)

⁵ Topic no. 419, Gambling income and losses (<https://www.irs.gov/taxtopics/tc419>)

⁶ Rev. Proc. 77-29

A further nuance in the historical treatment is the distinction between professional and casual gamblers:

- Professional gamblers (those for whom gambling is a trade or business) could deduct ordinary and necessary business expenses in addition to losses, though losses were still limited to the amount of gambling winnings under Section 165(d), although some Court cases permitted related business expenses to be deducted, allowing a professional gambler to generate a personal net operating loss carry forward, a position later adopted by the IRS and affirmed in a Tax Court case.⁷⁸ The ability to generate a personal net operating loss carryforward was later restricted under the TCJA.
- Casual gamblers (e.g. everyone else) could only deduct losses in the manner described above.

1.2. New limitation on deducting gambling losses

Included in the more than 900-page OBBB legislation is an amendment to Section 165(d) to limit deductions for wagering losses to 90 percent of such losses, effective for tax years beginning after December 31, 2025.⁹

1.3. Extension of TCJA definition of gambling losses

The 90 percent cap also applies to “any deduction otherwise allowable under this chapter incurred in carrying on any wagering transaction.” This appears to be in reference to non-gambling loss expenses that may be incurred by professional gamblers, including but not necessarily limited to travel expenses, entry fees/admissions costs, data subscriptions, and other business expenses, seemingly extending the expanded 2017 Tax Cuts and Jobs Act (TCJA) definition that included such costs as part of gambling losses.

1.4. Illustrative examples

Let's leverage three examples here:

- Assume a player realize \$10,000 in gambling winnings and has \$8,000 in gambling losses. Under the new 90 percent limitation only \$7,200 of those losses may be deducted, resulting in net gambling income subject to tax of \$2,800

even though the player has only realized net winnings of \$2,000. Using a 25 percent illustrative tax rate, the player would pay \$700 starting in 2026 ($\$2,800 \times 25\%$), resulting in an effective rate on such amount of **35 percent** ($\$700 / \$2,000$ net winnings). Contrast this result with a tax liability of \$500 in 2025 under the prior limitation rules ($\$2,000 \times 25\%$).

- Assume a player realizes \$101,000 in gambling winnings and has \$100,000 in gambling losses. Under the new limitation only \$90,000 of those losses may be deducted, resulting in net gambling income subject to tax of \$11,000 even though the player has only realized net winnings of \$1,000. Using the same 25 percent tax rate, the player would pay \$2,750 starting in 2026 ($\$11,000 \times 25\%$), resulting in an effective rate on such amount of **275 percent** ($\$2,750$ tax / \$1,000 net winnings). Contrast this result with a tax liability of \$250 in 2025 under the prior limitation rules ($\$1,000 \times 25\%$) and you have a far more distorted result than the example above, particularly with larger gambling winnings and losses, coupled with no ability to carry forward the portion of the losses that are limited.
- Lastly, consider a fully “phantom income” example. Here, we assume a player realizes \$100,000 in gambling winnings and has \$110,000 in gambling losses. Under the new limitation only \$99,000 of those losses may be deducted, resulting in gambling income subject to tax of \$1,000 even though the player has realized a net loss of \$10,000 from wagering activities.

In the scenarios above, the player might pay (1) a higher effective tax rate on their winnings because of the loss limitation rule, without any ability to benefit from carrying the excess loss forward, (2) more in federal income tax than their entire net winnings, or (3) depending upon the numbers involved, potentially still be taxed when gambling losses equal or at least narrowly exceed gambling winnings, all of which are very unfavorable to differing degrees.

⁷ CCA Memo AM 2008-013 (<https://www.irs.gov/pub/irs-counsel/am2008013.pdf>)

⁸ Mayo v. Commissioner, 136 T.C. 81 (2011)

⁹ <https://www.congress.gov/bill/119th-congress/house-bill/1/text> (See Sec. 70114. Extension and modification of limitation on wagering losses)

2.

Introduction to Session Accounting

2.1 Overview

As noted above, the concept of a Gambling Session or Session Accounting is nothing new to the industry, with many stakeholders likely familiar with the concept. At its most basic, it effectively seeks to treat gambling activities as a block rather than as individual wagers, which may correspondingly reduce the gross amounts of reportable winnings and losses. This is a position that the IRS and courts have acknowledged previously as well,^{10,11} largely because it would be incredibly impractical to record each slot pull, dice roll, spin, or card draw.¹²

2.2. Key benefits

In general, the benefits of utilizing Session Accounting to obtain some relief from otherwise very burdensome recordkeeping requirements could include the following:

- Session losses—One can argue that, during a Gambling Session, wagers resulting in a loss are offset 100 percent against winning wagers to first arrive at “losses from wagering transactions” (e.g., net wagering losses exceeding wagering gains for a Gambling Session) and “gains from such transactions” (net wagering gains exceeding the losses for a Gambling Session). The critical point here,

which the IRS seems to have acknowledged previously in both CCA Memo AM 2008-011¹³ and Notice 2015-21,¹⁴ is that a Gambling Session can result in a net loss.

- Under the premise that accession to wealth only occurs once a Gambling Session terminates, there appears to be a reasonable argument that “losses from wagering transactions” occurring during the Gambling Session themselves are not subject to the 90 percent limitation (e.g. individual loss wagers within a Gambling Session are not subject to the 90 percent limitation on a per wager basis). It is only when the Gambling Session terminates with a net loss realized for the session that such net loss becomes subject to the 90 percent annual limitation for deducting gambling losses.
- Adjusted Gross Income (AGI) Benefit—When a gambler tracks Gambling Sessions and realizes a net Gambling Session gain (e.g., after fully offsetting Session loss wagers against Gambling Session win wagers), only that net amount is included in AGI. In other words, without Gambling Session netting, AGI is potentially grossed up. This reduced AGI base can also result in allowing more itemized deductions, whereas a higher AGI may result in phase-outs of certain itemized deductions and credits.

¹⁰ CCA Memo AM 2008-011 (<https://www.irs.gov/pub/irs-counsel/am2008011.pdf>)

¹¹ Shollenberger v. Commissioner, T.C. Memo 2009-306

¹² Green v. Commissioner, 66 T.C. 538 (1976)

¹³ Id

¹⁴ Notice 2015-21 (<https://www.irs.gov/pub/irs-drop/n-15-21.pdf>)



2.3. Practical Application & Potential Examples

The IRS rationale for permitting Session Accounting

Accounting is effectively that fluctuating wins and losses left in play are not considered an accession to wealth until you cash out, redeem your tokens, etc. Only at that time can you definitively calculate the amount of your win or loss from your gambling activities.

Leveraging our first example above, assume a bettor places 1,000 individual wagers in a day with 500 wins totaling \$10,000 and 500 losses totaling \$8,000. If each bet is treated separately, it results in reportable winnings of \$10,000 and losses of \$8,000. Under the new 90 percent rule, only \$7,200 of the losses could be deducted, leaving the bettor taxed on \$2,800 instead of the actual \$2,000 net gain.

However, using Session Accounting, the only number that matters for tax reporting is the net Gambling Session gain, or \$2,000 in this case. If the better had no other Gambling Sessions during the year, then there is effectively no 90 percent loss limitation applicable to them because all of their individual winning bets and losing bets occurred within the same Gambling Session and were appropriately netted against each other in determining their net Gambling Session gain. To illustrate further consider the following **potential** illustrative examples or interpretations

of what makes up a Gambling Session (not an all-inclusive list):

- Sportsbooks (online or land-based):
 - Net results from all wagering on a single game, contest, or event
 - Net results on a per sportsbook, per day basis;
 - Net total from all sportsbooks in aggregate for each day
- Poker tournaments—Net result for that individual tournament, regardless of whether it takes play on one day or over multiple days
- Table games:
 - Net result per table game, per day (or per casino trip)
 - Net result for all table games on a per casino, per day basis (or per trip)
- Slot play—Net result considering all wins and losses across all machines played in the same casino during a 24-hour period¹⁵

In each of the examples above, your net result realized is what is potentially treated as your win or loss for the Gambling Session. Seems fairly straight forward, right?

Not so fast...

¹⁵ Id

3.

Lack of definitive guidance and tracking challenges

Now we need to discuss the uncertainties around defining a Gambling Session, why it remains a tricky issue for operators and players alike, and some practical challenges arising because of technology limitations and due to the explosion of online gambling apps where the Gambling Session lines can be murky at best.

3.1. Existing guidance

- *Slot machine play*—Gains from wagering transactions are included in gross income.¹⁶ Neither the statute nor the regulations define the term “transactions.” However, under *Shollenberger v. Commissioner*, gross income from slot machine wagering transactions is determined on a session basis:¹⁷
 - To reduce the burden on taxpayers, Notice 2015-21 provided a safe harbor methodology to determine what constitutes a “session of play” for purposes of calculating wagering gains or losses from slot machine play under §61 for purposes of furnishing Form W-2Gs to satisfy information reporting requirements.¹⁸ The Notice included reference to a planned future Revenue Procedure meant to describe the circumstances under which the safe harbor method can be used and provides examples of its application. Critically, it does not permit gains or losses from separate

Gambling Sessions to be netted against each other to determine the overall realized gain or loss for a taxable year. Winnings are first reported as taxable income with a deduction then potentially available for losses (limited to the extent of winnings). However, such Revenue Procedure was never issued.

- Language was included contemplating that a session of play begins when a player places their initial wager on a particular type of game and ends when the player places their final wager on the same type of game, on or before the end of the same calendar day (e.g., 12:00 a.m. to 11:59 p.m.). That said, it is also worth noting that the preamble to the Notice requested comments regarding the definition of Session Play, implying that the IRS was potentially open to considering whether a Session could extend beyond one day.

Unfortunately, slot machine play is the only type of casino gambling activity for which the IRS or courts have articulated guidance. However, such guidance has generally been limited to indicating that not every spin or bet is necessarily considered a separate wagering transaction. In addition, because the final Rev. Proc. originally contemplated under Notice 2015-21 was never issued and the Notice was intended to address Form W-2G reporting requirements in conjunction

¹⁶ IRC §61 / Rev. Rul. 54-339

¹⁷ Id

¹⁸ Notice 2015-21

with proposed regulations under §1.6041-10 (which were later withdrawn), ambiguity remains with respect to how a gambler should define a Gambling Session for slot machine play, not to mention other types of wagering activities.

- *Horse racing, dog racing, and jai alai*—New Treasury regulations adopted during 2017 with respect to player information reporting requirements indicate that “*In the case of a wagering transaction with respect to horse races, dog races, or jai alai, all wagers placed in a single parimutuel pool and represented on a single ticket are aggregated and treated as a single wager for purposes of determining the amount of the wager.*”¹⁹ While these regulations were focused on Form W-2G reporting requirements, it also appears to illustrate a potential viewpoint that the definition of a Gambling Session for purposes of tracking reportable wins from wagering on horse and dog races or jai alai should be a single race or match (e.g., wins and losses from all wagers on a single race or match are aggregated for Gambling Session purposes), although this is not specifically articulated in the underlying regulations. That said, the preamble to Notice 2015-21 requesting comments on defining a Gambling Session also mentioned “...whether a safe harbor method to determine a wagering gain or loss should be developed for other forms of gambling, including, but not limited to, keno, table games, and **pari-mutuel wagers.**”²⁰ Similar to slot play above, this also seemingly indicated a willingness to consider other ways to define a Gambling Session.

Overall, it would appear reasonable to say that a gambler playing slot machines at two separate casinos in the same day would likely be considered to have two Gambling Sessions. Similarly, it also would seem logical that a gambler would be deemed to have three Gambling Sessions if they play slot machines, blackjack, and in a poker tournament all in one day (or one trip) at the same casino (e.g., same day or trip, same site but three distinct types of games). In addition, while the 2017 regulations referenced above specifically apply to horse racing, dog racing, and jai alai, many industry stakeholders seem to have taken a consistent view on both Form W-2G

reporting and defining Gambling Sessions with respect to sports betting (e.g. aggregating all wagers on a single game or contest).

All that said, it must be reiterated that there is a noticeable lack of authoritative guidance with respect to tracking of Gambling Sessions for table games, multi-day poker tournaments, electronic table games, and sports betting (retail and online), and therefore, defining Gambling Session play for those types of wagering transactions may inherently be less clear.

3.3. Recordkeeping requirements

CCA Memo AM 2008-011 suggests that casual gamblers keep a log of gambling by session, which was reinforced by *Shollenberger v. Commissioner*. The IRS has indicated documenting the time, place, and activity are critical, making the following items essential inclusions in the recordkeeping process:

- Date of the wagering;
- Name and address of the gambling establishment;
- Names of others present;
- Amounts won or lost.

3.4. Tracking challenges

Putting aside the definitional challenges on Gambling Sessions, the concept of tracking seems relatively straight forward and Notice 2015-21 clearly puts the responsibility squarely upon the player to track their Gambling Session play and properly report wins and losses from gambling activity. However, given the absence of guidance outside of slot machine play and horse racing, coupled with the rapid growth of online gambling platforms, there are both evolving fact patterns and practical considerations for operators to consider with respect to managing player communications and providing them with relevant data to assist with tracking and reporting their gambling activities. Some hypothetical examples that both operators and gamblers may have to consider include, but are not limited to, the following:

¹⁹ <https://www.federalregister.gov/documents/2017/09/27/2017-20720/withholding-on-payments-of-certain-gambling-winnings>

²⁰ Id

- Parlay Betting
 - Are multi-leg parlays covering more than one game on the same day part of one Gambling Session?
 - Can parlay bets all placed during the same sportsbook visit or same login session be treated as part of one Gambling Session, regardless of the number of games or days covered by the parlay bet?
- iCasino and Online Sports Book (OSB)
 - Effectively segregating Gambling Sessions on a product basis (e.g. same App, same day, multiple gambling activities)
 - Virtual table games versus live dealer (same app, same day play)—Could they be treated as one Gambling Session?
- Land-based Gaming
 - Calendar day versus gaming day—Casinos often utilize a Gaming Day concept to comply with anti-money-laundering regulations, financial accounting, and other requirements imposed by regulators. This may not be the same concept as the calendar day Gambling Session from a player perspective, putting additional pressure on sufficiency of the win/loss data that players have access to.
 - Leveraging players club/loyalty card data to assist with tracking Gambling Session wins and losses. Many operators already furnish annual win/loss statements to players upon request. Are the respective systems capable of producing a Session report for a specific trip or play period? However, one must keep in mind that the gamblers themselves are ultimately responsible for tracking their Gambling Session play.
 - Practical limitations on tracking table game Gambling Session play. Could experience rates or use of estimates be a possible solution?
 - Is there diversity in practice around treatment of electronic table games as slots or as table games and what does that mean for Gambling Session play (e.g. live dealer craps combined with electronic table game craps)?
 - What about visits to multiple casinos on the same day when all sites are run by the same operator?
- Online and casino visit (same day/same operator):
 - iCasino slot play (including virtual table games) and in-person slot play during 24-hour period (same operator)
 - iCasino table games (live-dealer) and in person table game

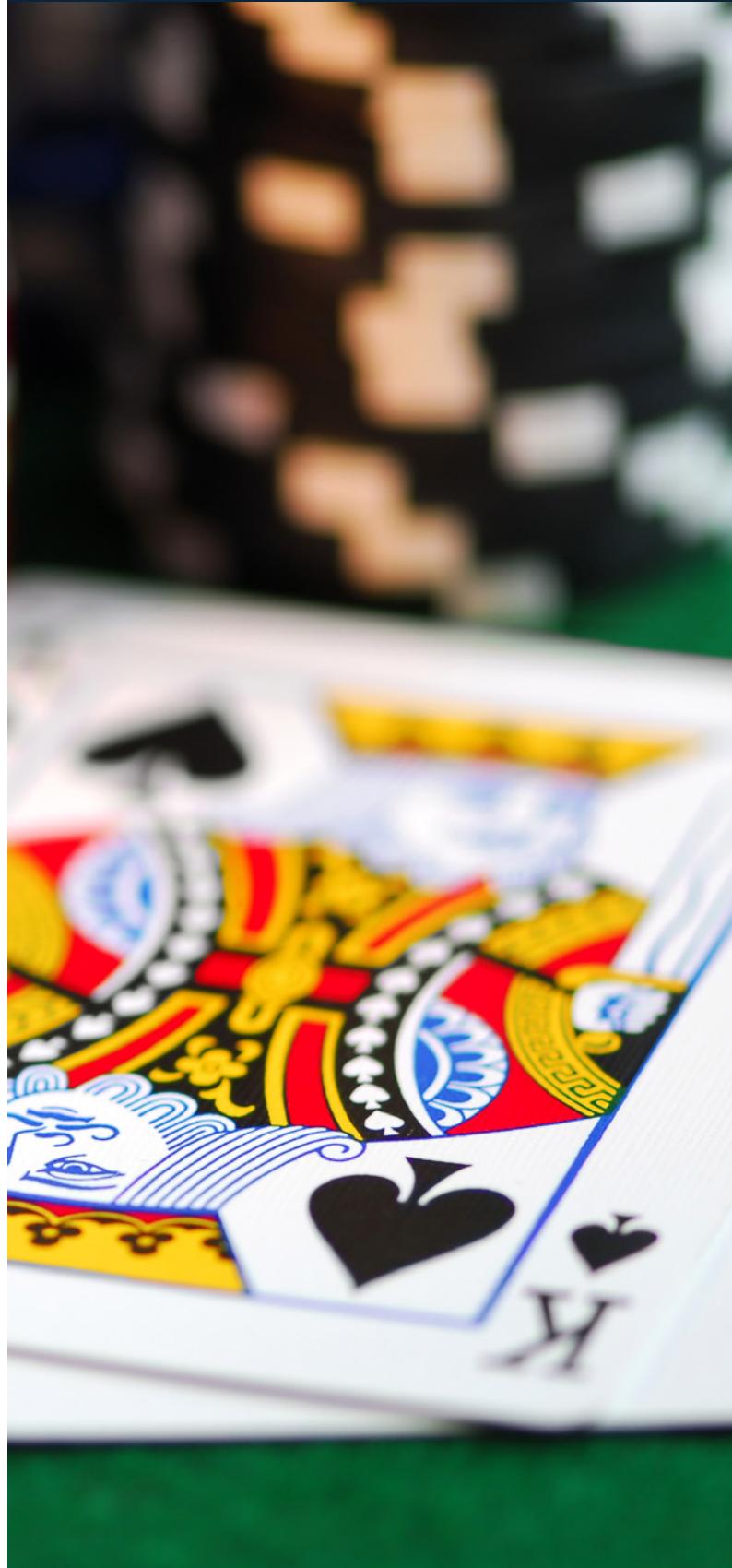


4.

Other considerations

Intersection with daily fantasy sports (DFS)—As many are no doubt aware, the IRS has previously taken the position that DFS entry fees are also considered a wagering activity for federal excise tax purposes. It is currently unclear whether they would take a similar view on treating such entry fees as a gambling loss under §165. However, should they be treated as such, it would raise similar loss limitation and Gambling Session play considerations as those noted above.

Intersection with predictions markets—The federal government, Commodity Futures Trading Commission, and Treasury have not definitively stated a view as to whether sports events futures contracts are considered a wagering transaction. Many state attorney generals, legislators, and gaming regulators have articulated a view that predictions markets are wagering. However, this question will likely remain unresolved for some time as various legal challenges and court cases play out. If such contracts were to be considered a wagering transaction, then it would also raise loss limitation and Gambling Session play considerations similar to those noted above.



Conclusion

As we stated in Part 1,²¹ the new gambling loss limitation potentially gives rise to a significant personal tax leakage issue for players who may wind up paying a higher federal effective tax rate on their overall net gambling winnings; owe taxes even when they otherwise just break even or in some scenarios where they have realized modest net gambling losses or, in more extreme examples, owe more in taxes than their entire net winnings.

Despite bipartisan support for a legislative fix, the Fair Accounting for Income Realized from Betting Earnings Taxation (FAIR BET) Act failed to pass in the Senate on July 10, 2025, marking a significant setback for industry stakeholders. This likely puts additional pressure on the Gambling Session concept as a potential way to mitigate some of the impact. While the concept is clearly logical, it is not without its own risks. There is limited guidance and definitional uncertainty remains, which may lead to impacted gamblers taking more aggressive interpretations as to what reasonably constitutes a Gambling Session. In addition, the tracking of Gambling Session play can be challenging even with operators providing players with detailed schedules of wagering activities and the onus remains fully on players to accurately track their gambling winnings and losses properly.

How KPMG can help

As always, taxpayers are advised to keep thorough records and consult with tax professionals regarding their individual situations.

KPMG has a dedicated industry team of tax professionals that is deeply experienced in assisting clients navigate complex and constantly shifting tax regulations applicable to the industry. Our team can assist with understanding these changes so operators can more effectively communicate with their player and customer base regarding relevant tax updates, information reporting requirements, Session Accounting, and how the recent changes potentially impact professional gamblers and casual bettors alike.

²¹ Id

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