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## **Internet Gambling Regulation and Tax Enforcement Act of 2010 (H.R. 4976), by Rep. McDermott**

HR 4976 IH

**111th CONGRESS**

**2d Session**

**H. R. 4976**

To amend the Internal Revenue Code of 1986 to regulate and tax Internet gambling.

**IN THE HOUSE OF REPRESENTATIVES**

**March 25, 2010**

Mr. MCDERMOTT (for himself, Mr. LARSON of Connecticut, Mr. FRANK of Massachusetts, and Mr. BLUMENAUER) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

**A BILL**

To amend the Internal Revenue Code of 1986 to regulate and tax Internet gambling.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.**

(a) Short Title- This Act may be cited as the 'Internet Gambling Regulation and Tax Enforcement Act of 2010'.

(b) Amendment of 1986 Code- Except as otherwise expressly provided, whenever in this Act an amendment is expressed in terms of an amendment of a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

**SEC. 2. TAX ON INTERNET GAMBLING.**

(a) In General- Chapter 36 (relating to certain other excise taxes) is amended by adding at the end the following new subchapter:

**'Subchapter E—Internet Gambling**

'Sec. 4491. Imposition of Internet gambling license fee.

'Sec. 4492. Record requirements.

'Sec. 4493. Elective State and Indian tribal government online gambling fee.

**'SEC. 4491. IMPOSITION OF INTERNET GAMBLING LICENSE FEE.**

'(a) Federal Fee- Each licensee within the meaning of section 5382 of title 31, United States Code, (hereafter in this subchapter referred to as 'licensee') shall be required to pay an Internet gambling

license fee by the end of each calendar month in an amount equal to two percent of all funds deposited by customers during the preceding month into an account maintained by that licensee or any agent of that licensee that can be used for the purpose of placing a bet or wager as defined in section 5362(1) of title 31, United States Code.

`(b) Deposits- Deposits made by or on behalf of a licensee of Internet gambling winnings or returns of funds by or on behalf of a licensee to the account of a customer shall not be treated as a deposit for purposes of this section.

`(c) Persons Liable for Fee- The Internet gambling license fee shall be the direct and exclusive obligation of the Internet gambling operator and may not be deducted from the amounts available as deposits to the person placing a bet. Notwithstanding the foregoing, any person making a deposit for the purpose of placing a bet or wager with a person who is required but has failed to obtain a license pursuant to subchapter V of chapter 53 of title 31, United States Code, shall be liable for and pay the fee under this subchapter on all such deposits, but such liability shall not excuse any failure to pay the fee on the part of the person who is required but has failed to obtain such license.

`(d) Unauthorized Bets or Wagers- There is hereby imposed a fee in an amount equal to 50 percent of all funds deposited into an account that can be used for placing a bet or wager within the meaning of Section 5362(1) of title 31, United States Code, with any person that is not authorized pursuant to section 5382 of that title. Such tax is due by the end of each calendar month with respect to deposits during the preceding month.

`(e) Disposition- Amounts paid as Internet gambling license fees or on unauthorized bets or wagers under this section shall be deposited in the general fund of the Treasury and treated as revenue.

`(f) Administrative Provisions- Except to the extent the Secretary shall by regulations prescribe, the fees imposed by this section shall be subject to the administrative provisions of this title applicable to excise taxes imposed by chapter 35.

#### **`SEC. 4492. RECORD REQUIREMENTS.**

`Each person liable for fees under this subchapter, except for a person making a deposit who is liable for fees pursuant to section 4491(e), shall keep a daily record showing deposits as defined in this subchapter, in addition to all other records required pursuant to section 6001(a).

#### **`SEC. 4493. ELECTIVE STATE AND INDIAN TRIBAL GOVERNMENT ONLINE GAMBLING FEE.**

`(a) In General-

`(1) PAYMENT OF STATE AND INDIAN TRIBAL GOVERNMENT FEE- On a monthly basis, each licensee shall pay to each qualified State and each qualified Indian tribal government an amount equal to the monthly pro rata State and Indian tribal government online gambling fee amount.

`(2) MONTHLY PRO RATA ONLINE GAMBLING FEE AMOUNT- For purposes of this section, with respect to a qualified State and a qualified Indian tribal government for any calendar month, the monthly pro rata online gambling fee amount is the amount of the fees described in subsection (b) received with respect to such calendar month that are attributable to deposits for online wagers made by persons residing within the jurisdiction of such State or Indian tribal government.

`(3) QUALIFIED STATE; QUALIFIED INDIAN TRIBAL GOVERNMENT-

`(A) IN GENERAL- For purposes of this section, the terms 'qualified State' and 'qualified Indian tribal government' mean a State or an Indian tribal government, respectively, that has not elected (by notice provided by the Governor, principal chief, or other chief executive officer and in such form and manner as the Secretary may prescribe) to be excluded from the receipt of funds under this section.

`(B) STATE ELECTION NOT TO AFFECT TRIBAL ELECTION- An election by a State under subparagraph (A) to be excluded from the receipt of funds under this section shall not constitute an election to be so excluded on behalf of any Indian tribe located within or partially within the geographic boundaries of such State.

`(C) APPLICABILITY OF ELECTION- An election made under subparagraph (A) shall be effective—

`(i) upon receipt by the Secretary, if such election is received within 90 days of the date of the enactment of the section; and

(ii) in any other case, on the first January 1 that occurs at least 60 days after the later of—

(I) the receipt of such election by the Secretary; or

(II) the effective date specified in such election.

(D) STATE- The term 'State' means any State, the District of Columbia, or any commonwealth, territory or other possession of the United States.

(E) INDIAN TRIBAL GOVERNMENT- The term 'Indian tribal government' means the government of an Indian tribe (within the meaning of section 4 of the Indian Gaming Regulatory Act).

(4) TIME OF PAYMENTS- The payment made under this subsection with respect to any calendar month shall be made not later than the 11th day of the succeeding calendar month.

(b) State and Indian Tribal Government Online Gambling Fee- The State and Indian tribal government online gambling fee shall be an amount equal to 6 percent of all deposited funds deposited by customers residing in each State or area subject to the jurisdiction of an Indian tribal government.

(c) Effect of Acceptance of Fee- Acceptance by a State or Indian tribal government of the State and Indian tribal government online gambling fee shall relieve licensees from the obligation to pay any other fee or tax to the State or Indian tribal government relating to its online gambling services, except for—

(1) applicable State individual and corporate income taxes, which shall be unaffected by the election, and

(2) any fees associated with a licensee's choice to rely on a State or Indian tribal regulatory body certification of suitability in connection with a Federal online gambling licensing application.'

(b) Clerical Amendment- The table of subchapters for chapter 36 is amended by adding at the end the following new item:

**'subchapter e—internet gambling**

'Sec. 4491. Imposition of Internet gambling license fee.

'Sec. 4492. Record requirements.

'Sec. 4493. Elective State and Indian tribal government online gambling fee.'

(c) Effective Date- The amendments made by this section shall apply to bets or wagers placed after the date of the enactment of this Act.

**SEC. 3. LICENSEE INFORMATION REPORTING.**

(a) In General- Subpart A of part III of subchapter A of chapter 61 (relating to information concerning persons subject to special provisions) is amended by adding at the end the following new section:

**'SEC. 6050X. RETURNS RELATING TO INTERNET GAMBLING.**

(a) Requirement- Every person who is a licensee (within the meaning of section 5382(3) of title 31, United States Code) or who otherwise is engaged in the business of accepting any bet or wager within the meaning of section 5362(1) of title 31, United States Code, during a taxable year shall furnish, at such time and in such manner as the Secretary shall by regulations prescribe, the information described in subsection (b), and such person shall maintain (in the location, in the manner, and to the extent prescribed in regulations) such records as may be appropriate to the information described in subsection (b).

(b) Required Information- For purposes of subsection (a), the information described is set forth below, which information may be modified as appropriate by the Secretary through regulation—

(1) the name, address, and TIN of the licensee or other person engaged in the business of accepting any bet or wager,

(2) the name, address, and TIN of each person placing a bet or wager with the licensee or other person engaged in the business of accepting any bet or wager during the calendar year,

(3) the gross winnings, gross wagers, and gross losses for the calendar year of each person placing a

bet or wager with the licensee or other person engaged in the business of accepting any bet or wager during the year,

`(4) the net Internet gambling winnings for each such person for the calendar year,

`(5) the amount of tax withheld with respect to each such person for the calendar year,

`(6) beginning and end-of-year account balances for each such person for the calendar year, and

`(7) amounts deposited and withdrawn by each such person during the calendar year.

`(c) Statement To Be Furnished to Persons With Respect to Whom Information Is Required- Every person required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return by reason of placing a bet or wager a written statement showing—

`(1) the name, address, and phone number of the information contact of the person required to make such return, and

`(2) the information required to be shown on such return with respect to each person whose name is required to be set forth in such return.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

`(d) Definitions-

`(1) NET INTERNET GAMBLING WINNINGS- The term 'net Internet gambling winnings' means gross winnings from wagers placed over the Internet with a person required to be licensed under section 5382 of chapter 53 of title 31, United States Code, less the amounts wagered.

`(2) INTERNET; WAGER- The terms 'Internet' and 'wager' shall have the respective meanings given such terms by section 5362 of chapter 53 of title 31, United States Code.'

(b) The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by inserting after the item relating to section 6050W the following new item:

'Sec. 6050X. Returns relating to internet gambling.'

#### **SEC. 4. WITHHOLDING FROM CERTAIN GAMBLING WINNINGS.**

(a) Net Internet Gambling Winnings- Paragraph (3) of section 3406(b) (relating to other reportable payments for purposes of backup withholding) is amended—

(1) by striking 'or' in subparagraph (E);

(2) by striking '.' and inserting ', or' at the end of subparagraph (F); and

(3) by adding at the end thereof the following new subparagraph:

`(G) section 6050X(b)(4) (relating to net Internet gambling winnings).'

(b) Effective Date- The amendment made by this section shall apply to bets or wagers placed after the date of the enactment of this Act.

#### **SEC. 5. WITHHOLDING OF TAX ON NONRESIDENT ALIENS.**

(a) Tax on Nonresident Alien Individuals- Paragraph (1) of section 871(a) (relating to income not connected with United States business) is amended—

(1) by striking 'and' at the end of subparagraph (C),

(2) by inserting 'and' at the end of subparagraph (D), and

(3) by inserting after subparagraph (D) the following new subparagraph:

`(E) the gross amount of winnings from each wager placed over the Internet with a person required to be licensed under section 5382 of chapter 53 of title 31, United States Code (as such terms are defined in section 6050X(d)(2)),'

(b) Exemption for Certain Gambling Winnings- Section 871(j) (relating to exemption for certain gambling winnings) is amended by inserting before the period at the end the following: 'or to any bets or wagers placed over the Internet (as such terms are defined in section 6050X(d)(2))'.

(c) Withholding of Tax on Nonresident Alien Individuals- The first sentence of subsection (b) of section 1441 (relating to withholding of tax on nonresident aliens) is amended by inserting after 'gains subject to tax under section 871(a)(1)(D),' the following: 'the gross amount of winnings from wagers placed over the Internet described in section 871(a)(1)(E),'.

(d) Source of Internet Gambling Winnings- Subsection (a) of section 861 is amended by inserting at the end thereof the following new paragraph:

'(9) INTERNET GAMBLING WINNINGS- Any Internet gambling winnings received from a licensee within the meaning of section 5382(3) of title 31, United States Code.'

(e) Effective Date- The amendments made by this section shall apply to bets or wagers placed after the date of the enactment of this Act.

#### **SEC. 6. WAGER TAX APPLICABLE TO FEDERAL ONLINE GAMBLING ACTIVITIES.**

(a) In General- Subsection (a) of section 4401 is amended to read as follows:

'(a) Wagers-

'(1) AUTHORIZED WAGERS- There shall be imposed on any wager authorized under Federal law or the law of the State in which accepted an excise tax equal to 0.25 percent of the amount of such wager.

'(2) UNAUTHORIZED WAGERS- There shall be imposed on any wager not described in paragraph (1) an excise tax equal to 2 percent of the amount of such wager.'

(b) Effective Date- The amendment made by subsection (a) shall apply to wagers made after December 31, 2010.

#### **SEC. 7. NO EXCLUSIONS UNDER FEDERAL WAGER TAX FOR ONLINE GAMBLING ACTIVITIES.**

(a) In General- Section 4402 is amended to read as follows:

##### **'SEC. 4402. EXEMPTIONS.**

'(a) In General- No tax shall be imposed by this subchapter—

'(1) on any wager placed with, or on any wager placed in a wagering pool conducted by, a parimutuel wagering enterprise licensed under State law and that is not carried out online;

'(2) on any wager placed in a coin-operated device (as defined in section 4462 as in effect for years beginning before July 1, 1980), or on any amount paid, in lieu of inserting a coin, token, or similar object, to operate a device described in section 4462 (a)(2) (as so in effect), and that is not carried out online; and

'(3) on any wager placed in a sweepstakes, wagering pool, or lottery which is conducted by an agency of a State acting under authority of State law, but only if such wager is placed with the State agency conducting such sweepstakes, wagering pool, or lottery, or with its authorized employees or agents, and is not carried out online.

'(b) Online Gambling Activities- All online gambling activities conducted pursuant to a Federal license shall be subject to the wagering tax set forth in section 4401.'

(b) Effective Date- The amendment made by subsection (a) shall apply to wagers made after December 31, 2010.

#### **SEC. 8. TERRITORIAL EXTENT.**

(a) In General- Paragraph (2) of section 4404 is amended to read as follows:

'(2) placed within the United States, or any Commonwealth, territory, or possession thereof, by a person who is a United States citizen or resident.'

(b) Effective Date- The amendment made by subsection (a) shall apply to wagers made after December 31, 2010.

**SEC. 9. AMERICAN HERITAGE PROGRAM.**

(a) Implementation of Program- From funds appropriated to the American Heritage Block Grant Fund for a fiscal year, the Secretary of the Treasury shall make grants to eligible States to carry out an American Heritage Program through State arts agencies.

(b) Allotment of Funds- Funds allotted for a fiscal year shall be allotted among eligible States in the same proportion as funds are allotted among the States under section 5(g)(3) of the National Foundation on the Arts and the Humanities Act of 1965 (20 U.S.C. 954(g)(3)).

(c) Eligibility To Receive Grants- To be eligible to receive a grant under subsection (a) for a fiscal year, a State shall submit to the Secretary an application in such form, and containing such information and assurances, as the Secretary may require by rule, including assurances that—

(1) not more than 80 percent of the cost of any qualified activity carried out under this section shall be paid with such grant, and

(2) not more than 20 percent of such grant may be expended for administrative costs.

(d) Definitions- For purposes of this section—

(1) the term 'American Heritage Program' means a program carried out by a State that provides qualified activities directly, or by contract with nonprofit organizations (including community-based organizations) or units of local government, for all the people and communities in the State,

(2) the term 'Secretary' means the Secretary of the Treasury,

(3) the term 'State' has the meaning given such term in section 4 of the National Foundation on the Arts and the Humanities Act of 1965 (20 U.S.C. 953),

(4) the term 'State arts agency' has the same meaning given such term as used in the National Foundation on the Arts and the Humanities Act of 1965 (20 U.S.C. 951 et seq.), and

(5) the term 'qualified activities' means activities that develop projects, productions, workshops, or programs that will encourage public knowledge, education, understanding, and appreciation of American heritage and the arts.

(e) American Heritage Block Grant Fund-

(1) ESTABLISHMENT- There is established in the Treasury of the United States a trust fund to be known as the 'American Heritage Block Grant Fund', consisting of such amounts as may be appropriated or credited to the American Heritage Block Grant Fund as provided in this subsection.

(2) TRANSFER TO FUND- There are appropriated to the American Heritage Block Grant Fund amounts equal to .5 percent of the taxes received by the Treasury after December 31, 2010, that the Secretary determines are attributable to Internet gambling.

(3) METHOD OF TRANSFER- The amounts appropriated by paragraph (1) shall be transferred from time to time from the general fund of the Treasury. Such amounts shall be determined on the basis of estimates by the Secretary of the taxes, specified in paragraph (1), paid to or deposited into the Treasury. Proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates are in excess of or are less than the taxes specified in paragraph (1).

(4) EXPENDITURES FROM AMERICAN HERITAGE BLOCK GRANT FUND- Amounts in the American Heritage Block Grant Fund shall be available, as provided by appropriation Acts, for making expenditures to carry out subsection (a).

**SEC. 10. BLOCK GRANTS TO STATES FOR TRANSITIONAL ASSISTANCE.**

The Social Security Act is amended by adding at the end the following new title:

**'TITLE XXII—BLOCK GRANTS TO STATES FOR TRANSITIONAL ASSISTANCE****'SEC. 2201. TRANSITIONAL ASSISTANCE TRUST FUND.**

(a) Creation of Trust Fund- There is established in the Treasury of the United States a trust fund to be known as the 'Transitional Assistance Trust Fund', consisting of such amounts as may be appropriated or credited to the Transitional Assistance Trust Fund as provided in this section.

`(b) Transfer to Transitional Assistance Trust Fund of Amounts Equivalent to Certain Taxes-

`(1) IN GENERAL- There are hereby appropriated to the Transitional Assistance Trust Fund, out of any money in the Treasury not otherwise appropriated, amounts equivalent to 25 percent of the taxes received in the Treasury after December 31, 2010, that the Secretary of the Treasury determines are attributable to Internet gambling.

`(2) METHOD OF TRANSFER- The amounts appropriated by paragraph (1) shall be transferred from time to time from the general fund in the Treasury to the Transitional Assistance Trust Fund. Such amounts shall be determined on the basis of estimates by the Secretary of the Treasury of the taxes, specified in paragraph (1) of this subsection, paid to or deposited into the Treasury. Proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or were less than the taxes specified in paragraph (1) of this subsection.

`(c) Expenditures From Transitional Assistance Trust Fund- Amounts in the Transitional Assistance Trust Fund shall be available, as provided by appropriation Acts, for making expenditures to carry out section 2202.

**`SEC. 2202. TRANSITIONAL ASSISTANCE GRANT PROGRAM.**

`(a) In General- Each State shall be entitled to a payment under this section for each fiscal year in an amount equal to its allotment for such fiscal year, to be used by such State to carry out the State's plan for transitional assistance described in subsection (c), subject to the requirements of this section.

`(b) Plan Approval Required- No State may receive a payment under this section unless the State submits the State's plan for transitional assistance described in subsection (c) to the Secretary and the Secretary approves such plan.

`(c) State Plan for Transitional Assistance- A State plan for transitional assistance is described by this subsection if the plan—

`(1) provides for expanded education opportunities for individuals who are, or were formerly, in foster care, including streamlining and coordinating education financing opportunities and providing counseling and assistance to such individuals for the purpose of ensuring completion of their academic goals;

`(2) provides for job training opportunities for individuals who are, or were formerly, in foster care;

`(3) provides, primarily through expanding access to and investment in community colleges, for expanded post-secondary education and job training opportunities that lead to a certificate, for individuals who are working in, or had worked in, declining sectors of the economy, as defined by the Secretary, and who want to pursue a new career in a sector of the economy with the potential for high wages and high growth, as defined by the Secretary; and

`(4) provides a subsidy for the use of public transportation by—

`(A) individuals qualifying for benefits or services under title XX, including the Federal-State Unemployment Insurance Program; and

`(B) individuals participating in programs under the Workforce Investment Act.

`(d) Allotment- The allotment for a fiscal year for a State receiving an allotment for such fiscal year shall be an amount equal to—

`(1) the amount appropriated for such fiscal year under subsection (f), multiplied by

`(2) the ratio by which the population of the State bears to the population of all the States receiving an allotment for such fiscal year as determined by the Secretary (on the basis of the most recent data available from the Department of Commerce).

`(e) Definitions- For purposes of this section:

`(1) IN FOSTER CARE- The term 'in foster care' means, with respect to an individual, an individual who is under the care and placement responsibility of the State agency responsible for administering a plan, in connection with such individual, under part B or part E of title IV.

`(2) SECRETARY- The term 'Secretary' means the Secretary of Health and Human Services.

`(3) STATE- The term 'State' means the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

`(f) Authorization of Appropriations- There are authorized to be appropriated for each fiscal year to the Secretary the amount deposited into the Transitional Assistance Trust Fund pursuant to section 2201 to carry out this section.'

*END*

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