November 21, 2022

Via Email (Wendy.Knight@vermont.gov)
Wendy Knight
Commissioner
Vermont Department of Liquor and Lottery
1311 Route 302, Suite 200
Barre, VT 05641

Dear Commissioner Knight,

The iDevelopment and Economic Association ("iDEA Growth") is grateful for the efforts of the Sports Betting Study Committee (the "Committee") to consider legalization and regulation of sports betting in the State of Vermont.

By way of background, iDEA Growth was founded to advocate for responsible internet gaming policies that spur economic growth and protect consumers. Our membership – 33 companies and growing – represents every segment of this industry and has vast experience in regulated jurisdictions across the United States. Thus, our association is uniquely positioned to provide a 360-degree perspective on the many online sports betting policy issues the Committee may be considering.

iDEA Growth believes it will be beneficial for you to consider the best practices that have been adopted in the 35 jurisdictions that have come before Vermont, as well as the collective experience and insight of the online gaming businesses currently licensed and operating in those jurisdictions. iDEA Growth provides the recommendations herein, drawing from the successes of other laws that have built a strong foundation for an online sports betting market that is competitive, and that will have positive benefits for Vermont consumers and taxpayers.

<u>Competition is Critical</u>

Today, sports betting is actively occurring in Vermont through illegal and unregulated channels and on websites that already have a firm grip on consumers. These illegal operators provide little in the way of consumer protections and deprive Vermont of substantial tax revenues.

Vermont's legislation should be considered in the context of competing with the illegal offshore market. Successful regulation will help migrate customers away from the illegal market and provide them with an industry that is accountable to Vermont regulators and to consumers.

The most successful regulatory programs are those that cultivate a market that is as open and competitive as possible, subject to appropriate gaming regulations. iDEA Growth members' experience in the U.S. and around the world has shown that competition, including products, wager offerings, and promotions to draw consumers into the legal market, is vital to developing a thriving industry that maximizes customer engagement and tax revenue while stamping out the pervasive illegal market in the state. Increasing the number of potential mobile operators isn't just good for Vermont consumers and businesses; it will mean more money to the State in the way of up-front licensing fees and long-term tax revenues to address critical programs in Vermont.

Recommendation: *We encourage Vermont to promote competition and an open, consumer-driven market through its adoption of legalized sports wagering.*

Tax Rates Matter

Tax rates are key to success or failure in any gaming jurisdiction. Land-based gaming operations have not faced the same level of competition that exists today for online sports betting. For instance, land-based competition spans across borders from neighboring states because of proximity to facilities. Mobile sports wagering markets can face similar cross-border challenges; however, they must also compete with the many illegal websites operating outside of the country but serving residents of Vermont. Off-shore, illegal websites operate in the shadows of legal markets while enjoying the benefit of not paying taxes to any jurisdiction.

To successfully attract consumers away from illegal gambling operators, legal online sports betting operators should be able to provide odds that are competitive with illegal markets and be accessible and appealing to bettors. Operators in new and emerging jurisdictions must compete with illegal operations while paying taxes to the jurisdiction in which they operate, along with taking on the increased costs required for player acquisition and staying compliant.

Taxes represent a significant operating cost for legal operators. If tax rates are too high, the business becomes unsustainable. In the short-term, some operators may choose not to even attempt entering a state's market because the taxes are too high when weighed against the potential economic opportunity. In the long-term, the illegal market will continue to prevail while licensed operators will have to reduce spending in all areas of their business. This will hinder successful legal online sports betting in Vermont, as additional expenses in the form of taxes will cut into an operator's ability to reinvest in the market and grow business in the state.

In addition, if operators are not able to effectively offer compelling bonuses and promotions, it can hinder efforts to eradicate the illegal market. Promotional offerings, such as free bets, help licensed operators migrate customers into the regulated online gaming space. Customers that would otherwise continue to wager in the illegal market are given the opportunity to use these promotional wagers as an introduction to the regulated market and legal products offered. Strong product offerings put operators in the best position to ensure customers remain in the regulated market. These are critical conversion tools are expenses to online operators. Requiring payment of taxes on promotional offerings runs counter to business growth in any industry, but it creates an even more difficult environment for regulated operators trying to unseat the illegal ones that face no regulatory compliance, no tax obligation, and offer no consumer protections. Legislation should include taxing operators on real revenue and not on bets placed using promotional credits or free bets which produce no revenue, especially when considering the competition with the illegal market.

Several factors affect how reasonable a tax rate is for a particular state. The most important one is the size of a state's market. Simply put, operators are able to absorb higher tax rates in large markets but are unlikely to do so in smaller markets where fixed expenses of operations have a larger impact. To this point, the State of New York imposes a 51% tax rate on sports betting. However, since New York is the 4th largest state in the U.S., with a population of 20 million people, operators are willing to pay a higher tax rate because the size of the market offers significant economic opportunity. Nevertheless, major operators have expressed skepticism of the high tax rate, and lawmakers have introduced legislation to reduce the rate.[1] In contrast, with a population of just over 645,000, it would be difficult for Vermont to justify a significant tax rate.

In addition to market size in a state, the timing of when a state legalizes sports betting also impacts how reasonable tax rates are. If a state is the first among its neighbors to legalize sports betting, then the state is effectively drawing from a larger regional market. On the other hand, if a state is the last of its neighboring states to legalize sports betting – which would be the case if Vermont were to join the legal market – then the state may be limited to its own residents. Further, residents will travel to neighboring states with competitive sports betting markets if the offerings in their own state are not attractive. To develop a competitive sports betting market,

[1] https://www.legalsportsreport.com/70129/betmgm-pulls-back-ny-sports-betting-tax-rate/

Vermont will need tax rates that ensure a robust competitive market of top operators in the state; simply matching the tax rates of its neighbors will not assist the state in developing a strong market.

Lastly, the number of operators a state seeks to invite also impacts the reasonableness of its tax rates. A state that seeks to license only one operator may be able to set a high tax rate for that single operator. For example, New Hampshire has licensed only one operator that is subject to a 51% tax rate. However, had New Hampshire decided to award two licenses, the highest bid tax rate was 21%. A competitive market with two or more operators requires a tax rate that is not only significantly lower than 51% but also lower than 20%. Allowing multiple operators to enter the market, with a tax rate in line with comparable states, would allow Vermont to grow the tax base, effectively creating the opportunity to collect taxes from more of the population.

If a state does not thoughtfully consider all of the factors above in setting tax rates, the success of sports betting in that state could be significantly jeopardized. By way of example, Arkansas imposes a 51% revenue sharing requirement in addition to tax rates as high as 20% on mobile sports betting operators. Since the inception of its program, only two of the possible six mobile licenses in Arkansas have been pursued by operators, and the state is falling well short of revenue expectations. Nationally and internationally established operators have largely avoided entering the Arkansas market, while illegal online sports wagering operators continue to thrive in the state.

iDEA Growth encourages the State of Vermont to adopt a tax rate and structure comparable to those adopted by the states of New Jersey (13%), Connecticut (13.75%), and Virginia (15%).

Recommendation: *To attract nationally and internationally established operators, we encourage Vermont to adopt a mobile tax rate in the range of 10-15%, and to structure its tax provisions along the lines of what New Jersey, Connecticut, and Virginia have done. We also recommend that Vermont create an environment that encourages licensed operators to offer promotional credits and free bets that are necessary to migrate players from the illegal market to Vermont's regulated industry. This includes not treating those promotions or free bets the same as money wagered by players in terms of taxation.*

Tax Rates Should be Determined Before the State Opens Competitive Bidding

Having certainty on tax rates is a key factor in legal operators' decision to apply to enter a sports betting market. Not knowing in advance what rates are, or the potential for rates to change (i.e., as a result of competitive bidding), will dissuade nationally and internationally established operators from considering participation in a market. If a state does not attract enough operators to participate in the competitive bidding process, it is likely that the state's sports betting program will be unsuccessful. Instead of choosing among a large group of bidders, the state may be forced to choose among a limited number of applicants or among operators having little market experience or presence. If a state's program fails to generate enough market interest (from both operators and customers), then the state may be unable to achieve estimated and/or anticipated tax revenue targets. Operators should be competitively bidding based on the quality of their product offering and ability to migrate bettors away from the illegal market.

Recommendation: *Before opening competitive bidding, Vermont should clarify in statute the tax rates that will apply to mobile operators with reasonable ceilings as to how high those rates may rise.*

Appropriate Supplier Licensing

A critical component to the operation of sportsbooks is the integration of live odds and data-feeds. Therefore, our organization strongly supports the licensure of data suppliers, and all such entities which are involved in the creation of betting markets and determination of bet outcomes so that those businesses are accountable to the state for the use of their products and services. To be clear, the licensing of suppliers and vendors should be commensurate with how closely their services interact with the business of sports betting. The further away a service is from the actual wagering activity lessens the licensing standards that should be imposed on these companies.

Recommendation*: We urge Vermont to include language that defines a sports betting supplier license. Establishing a supplier licensing framework provides unambiguous direction to regulators, including clear guidelines and expectations on which entities involved in the business of sports betting will need regulatory approval prior to offering B2B services in the State.*

Conclusion

iDEA Growth is excited to see Vermont moving in a direction toward legal, regulated mobile sports betting. We are available as a resource to the Committee and happy to provide additional information, data, and/or research that may help you and your colleagues find common ground, and ultimately, legislation that generates new revenues for Vermont and creates a safe alternative to the thriving illegal market for consumers. Thank you for your continued efforts.

Sincerely,

Jeff Ifrah
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cc: Mike Ferrant, Committee Assistant (via email to mferrant@leg.state.vt.us)