

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 95 (Chair, Budget and Taxation Committee)(By Request -
Departmental - Comptroller)

Budget and Taxation

Gaming Machines - Tamperproof Counters

This departmental bill requires that specified gaming machines have functioning tamperproof counters.

The bill takes effect July 1, 2009.

Fiscal Summary

State Effect: None. Most gaming machines subject to the State admissions and amusement tax are to be phased out on the same date that the bill takes effect. The Comptroller's Office can implement the bill with existing resources.

Local Effect: Some local governments may realize increased admissions and amusement tax revenues, to the extent that the requirement for tamperproof counters enhances the ability of the Comptroller's Office to verify receipts from specified gaming machines that are subject to local admissions and amusement taxes.

Small Business Effect: The Comptroller's Office has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Bill Summary: A functioning tamperproof counter is required for a gaming machine that:

- operates after insertion of coins, tokens, currency, credit cards, or any other form of payment;
- utilizes mechanical parts and/or electronic computer circuitry for operation; and
- rewards the player with coupons, merchandise, tokens, or any other type of winnings including free games, without inserting additional payment.

Current Law: At the 2007 special session, the General Assembly approved legislation (Chapter 6) that imposed a 20% State admissions and amusement tax on the net receipts generated from the operation of electronic bingo and electronic tip jars operated for commercial purposes. The revenues accrue to the general fund. This provision took effect January 3, 2008.

Chapter 474 (SB 959) of 2008 prohibited certain gaming machines licensed by local jurisdictions, primarily electronic bingo and tip jar machines, from operating after July 1, 2009. The law altered the definition of “slot machine” to include a machine that reads a game of chance and a machine that delivers a game of chance. The law also provides for exceptions for certain machines that are not considered slot machines:

- machines that award the user additional free games;
- machines that are arcade-type games that provide noncash prizes of minimal value; and
- paper pull tab tip jars and paper pull tab instant bingo tickets that must be opened manually as long as the machine does not electronically read the ticket, does not alert the user to winnings, or does not tabulate the winnings.

Personal electronic bingo machines are also excluded as long as the machine does not allow a person to play more than 54 cards at one time. State Lottery Commission machines that dispense lottery tickets and video lottery terminals (VLTs) are also excluded.

To remain in operation until July 1, 2009, the electronic instant bingo machines must have been in operation for a one-year period ending December 31, 2007. In addition, no more than the number of electronic machines operated as of February 28, 2008 may be in operation by the qualified organization or commercial bingo licensee.

A county may not issue a commercial bingo license to an entity that was not licensed to conduct commercial bingo on or before June 30, 2008.

Background:

Local Gaming

Each county is responsible for regulating gaming activities conducted by civic and charitable organizations. There is no statewide reporting of gaming activities by civic and charitable organizations. Gaming licensees may use the proceeds of gaming activities for the benefit of their own organizations, but do not need to share them with other organizations. However, slot machine operators must use half of the proceeds from slot machines to benefit a charity. State gaming law requirements currently apply to 15 counties.

Facilities operating electronic bingo are located primarily in Allegany, Anne Arundel, and Calvert counties. Tip jar gaming, predominantly paper based, is conducted in several Western Maryland counties including Allegany, Garrett, and Washington. There are approximately 987 electronic bingo, tip jar, and other machines in Allegany, Anne Arundel, Calvert, St. Mary's, and Washington counties.

A 2006 Abell Foundation report on underground video gambling found between \$6.4 million to \$15.3 million in lost local admissions and amusement tax revenue for fiscal 2005, due to underreporting of income from nearly 3,500 amusement devices in bars and other business in Baltimore City and Baltimore County, many of which had not been licensed by the jurisdiction. A subsequent report by the foundation notes that the Comptroller's Office, in coordination with Baltimore City has located over 100 machine owners who had not been paying the tax. An unknown number of these "gray" machines are in operation throughout the State, primarily in Baltimore City and Baltimore County.

Legislation was enacted in 1987 and 2007 authorizing certain nonprofit organizations to operate slot machines in the following eight Eastern Shore counties: Caroline, Cecil, Dorchester, Kent, Queen Anne's, Somerset, Talbot, and Wicomico. The 1987 legislation required a nonprofit organization to be located in the county for at least 5 years prior to the application for a license and to be a fraternal, religious, or war veterans' organization. Legislation enacted in 2007 expanded the list of eligible organizations that may be licensed to operate slot machines to include those that have been affiliated with a national fraternal organization for less than 5 years but have been located within an eligible county for at least 50 years before applying for a license.

In order to operate a slot machine, an organization must obtain a license from the sheriff's office and pay a fee of \$50 per machine annually to the applicable county. An organization may not own more than five slot machines and must own each slot machine in operation. The slot machines must be located at the principal meeting hall of the organization and cannot be operated at a private commercial facility. The slot machine must be equipped with a tamperproof meter or counter that accurately records gross receipts.

At least one-half of the proceeds generated from slot machines must go to charity. The remainder of the proceeds must go to the organization. An individual cannot benefit financially from the proceeds. The organization must keep accurate records of gross receipts and payouts from slot machines and must report annually under affidavit to the Comptroller's Office the disposition of these proceeds. The Comptroller's Office, however, does not have authority to audit these reports.

Admissions and Amusement Tax

All counties (with the exception of Caroline County), Baltimore City, and most municipalities impose a local admissions and amusement tax. Each unit of local government sets its own single tax rate or range of rates. This rate is expressed as a percentage of gross receipts, up to a maximum rate of 10%.

Each unit of local government is authorized to classify different types of activities, and the rate of tax need not be the same for each type. An admissions and amusement tax may not be imposed in a municipality by a county if the municipality already imposes a similar tax or specifically exempts any gross receipts from the admissions and amusement tax. However, if a municipality does not levy a tax, the county tax, if any, applies within the municipality. The local admissions and amusement tax is further limited by the State sales and use tax.

The maximum tax rate on the gross receipts subject to admissions and amusement tax may not exceed 10%, except if the 6% State sales and use tax also applies to these receipts. In these cases, the total tax rate may not exceed 11%, thus the local admissions and amusement tax may not exceed 5%. This limitation on the local tax arises primarily on performances accompanied by some type of food service (dinner theaters, etc.).

The Comptroller collects the local (*i.e.*, county or municipal) admissions and amusement tax and remits payment back to the local jurisdictions on a quarterly basis. The Comptroller also collects the 20% State admissions and amusement tax, which is levied on net proceeds (*i.e.*, after cash and prizes are paid out). In general, the admissions and amusement tax applied by the local jurisdictions is a gross receipts tax. The notable exception is Anne Arundel County, which allows for the prizes and cash awards from the electronic bingo parlors to be subtracted out.

On January 18, 2008, the Comptroller promulgated updated regulations to address concerns regarding the terms "electronic bingo" and "electronic tip jars." Pursuant to State regulations, an electronic bingo or electronic tip jar is a game played in an electronic or electro-mechanical device that contains predetermined winning and losing games and signals the issuance of a winning play. Examples include (but are not limited to):

- electronic devices utilizing paper bingo or tip jar tickets; and
- electronic devices utilizing computer chips that simulate paper bingo or tip jar tickets that, when played by a customer, determine the outcome of winning or losing that is not random or subject to change, but is based on a predetermined set of winning or losing numbers.

State Fiscal Effect: The Comptroller's Office can perform compliance and enforcement activities with existing resources. The Comptroller's Office advises that the bill will provide the means to verify gross receipts of gaming machines to ensure that the proper amount of the admissions and amusement tax is reported and remitted. Auditors will be able to periodically examine the counters to determine whether gross receipts are properly reported. The Comptroller's Office advises that this is not currently possible given the cash nature of the specified machines.

Beyond the definition provided in the bill, the bill does not specify what type(s) of machines are affected. The Comptroller's Office advises that video poker machines and arcade-type games are included, and that other machines subject to admissions and amusement taxes are required to have the functioning counters under the bill.

The Department of Legislative Services (DLS) assumes that only those gaming machines to which State and/or local admissions and amusement taxes apply are required to install the tamperproof counters under the bill and that the bill applies to amusement devices, although they are not called "gaming machines." DLS further assumes that the tamperproof counters track receipts from the gaming machines although this is not specified in the bill.

Assuming that the tamperproof counters help to determine gross receipts from specified gaming machines, and to the extent that such counters are installed and operate in a greater number of specified machines, the ability of the Comptroller's Office to verify gross receipts, and collect admissions and amusement tax revenues, will be enhanced. However, nearly all of the gaming machines subject to the State tax are scheduled to phase out on July 1, 2009. Therefore, there would be no revenue impact.

Local Fiscal Effect: Assuming that the tamperproof counters help to determine receipts from specified gaming machines, local admissions and amusement tax revenues may increase. The increase in revenue could be significant in some jurisdictions and depends in part upon the number of affected machines in each county, and the extent to which these machines already contain functioning tamperproof counters.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Comptroller's Office, State Lottery Agency, Abell Foundation,
Department of Legislative Services

Fiscal Note History: First Reader - January 27, 2009
ncs/rhh

Analysis by: Scott P. Gates

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Gaming Machines – Tamperproof Counters

BILL NUMBER: SB 95

PREPARED BY: Office of the Comptroller of Maryland

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.