

Tax Considerations for U.S Internet Gambling Interstate Compacts

By: Brad J. Polizzano, Esq.[†]

One of the most not only fascinating but also critical issues for state-by-state internet gambling ("iGaming") legalization in the United States is whether states will let their virtual fences down and enter into iGaming compacts with other states. The compacts are almost certainly going to focus on online poker games, which are player-banked, as opposed to house-banked casino games such as blackjack or roulette.

This working paper examines various tax considerations for iGaming compacts, including the incentives of entering into such compacts, possible methods for sharing iGaming tax revenue among states, and parallels with the efforts to establish a unified online sales tax in the U.S.

I. Introduction: Why Enter into Interstate iGaming Compacts?

Before evaluating possible methods to share iGaming tax revenue, we must grasp some of the key dynamics for states' varying incentives to enter into interstate compacts. The incentives are intimately tied to the states' populations and gaming regulatory frameworks, or lack thereof.

A. Smaller States

i. Nevada

The State of Nevada officially opened its virtual doors to real-money intrastate online poker in April 2013 with the launch of UltimatePoker.com. With a population of approximately 2.76 million, Nevada presents profitability concerns for online poker operators offering its product only to customers physically present in the state. This viability issue will be compounded many times over as more than a dozen other companies have already received preliminary approval to operate online poker websites in the state.

Sure enough, Nevada Governor Brian Sandoval signed into law a "fast-tracked" bill in February 2013 that authorizes him to enter into interstate iGaming compacts without first requiring federal legislation authorizing it.¹ At this time, the only casino game authorized for internet wagering in Nevada is poker.

[†] Brad Polizzano is a tax and gaming attorney in New York. He advises clients on tax compliance, with an emphasis on gaming industry issues. He also represents taxpayers in disputes with the Internal Revenue Service and the New York State Department of Taxation and Finance. He blogs about tax and gaming law issues at <http://taxdood.com>. Follow him on Twitter [@taxdood](https://twitter.com/taxdood).

Brad Polizzano retains full copyright to this article and has authorized Clarion Events Limited to distribute this work on a non-exclusive basis.

© Copyright 2013 by Brad Polizzano.

¹ A.B. 114, 77th Sess., § 9 (Nev. 2013), available at http://www.leg.state.nv.us/Session/77th2013/Bills/Amendments/A_AB114_1.pdf.

ii. Delaware

Delaware, targeting an iGaming launch date of September 30, 2013, is far less populous than Nevada at slightly above 900,000. Delaware has authorized both player-banked and house-banked games for online play. Citing liquidity concerns, the State may wait to launch player-banked online casino games until liquidity agreements with other jurisdictions are in place.

Edward Sutor, President and CEO of Dover Downs Hotel & Casino, recently posited at a June 2013 conference that all three Delaware casinos will have to pool together online poker liquidity, and even that would be insufficient for a profitable iGaming market in the state.² In other words, interstate compacts are essential to host a profitable online poker product in Delaware.

B. Medium-Sized States

i. New Jersey

New Jersey, targeting an iGaming launch date of November 30, 2013, has a population of approximately 8.865 million. Like Delaware, New Jersey has authorized both player-banked and house-banked games for online play. As the early annual revenue projections for iGaming in the state vary considerably, so do the opinions regarding whether New Jersey on its own can host several profitable intrastate internet gaming operators.

New Jersey's iGaming legislation does authorize the State to enter into "reciprocal agreements" that are not inconsistent with federal law in order to accept wagers from persons who are not physically present in the state.³

C. Larger States

i. California

Larger states, however, may not have as strong an incentive to negotiate compacts with smaller states. California, with a population exceeding 38 million, is larger than every country in Europe but eight. California has not yet legalized online gaming, but the push to do so, at least for online poker, has accelerated considerably in 2013. The question remains whether the state will "ring-fence" its online poker regime, blocking other states and countries from possibly accessing its large player base.

The Internet Gambling Consumer Protection and Public-Private Partnership Act of 2012⁴ did provide California legislators the alternatives to opt into a federal iGaming system or enter into compacts with other states. The major hurdle with either alternative coming to fruition is that special interest groups, in particular Native American tribes, are mightily struggling to get on the same page

² See *Nat'l Council of Legislators from Gaming States: Summer 2013 Conference Wrap-Up*, QUADJACKS.COM, June 22, 2013, at <http://quadjacks.com/national-council-of-legislators-from-gaming-states-spring-2013-conference-wrap-p/>.

³ N.J.S.A. 5:12-95.31.

⁴ S.B. 1463, 2011-2012 Sess. (Cal. 2012), available at http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_1451-1500/sb_1463_bill_20120224_introduced.pdf.

for iGaming. As a result, the bill failed to reach committee vote last year.

At least some Native American tribes may hold the belief that if the State reaches compacts for interstate online play, other smaller states would extract some the benefits of the pooled liquidity to the detriment of Californian interests. In May 2013, a group eight Indian tribes in California released a draft bill to license and regulate online poker in California.⁵ The bill does not contain language authorizing the State to enter into interstate or international compacts. Furthermore, the bill requires a forced opt-out of any federal iGaming system, unless federal iGaming legislation requires otherwise. It is unclear how much traction this bill would have if introduced in the state legislature.

D. Non-Commercial Gaming States

Twenty-seven states currently do not have regulated commercial casino gaming. How would these states consider approaching the possibility of opening its doors to online gaming without an established gaming regulatory system in place?

One theory is for a non-commercial gaming state to offer a slice of its online gaming revenue to a state with an online gaming regulatory framework in place. In exchange, the iGaming state could bring its regulatory oversight to the state without it. Put another way, a non-gaming state could pay to outsource iGaming regulation to an experienced gaming state.

With all of the above considerations in mind, the ultimate challenge is figuring out how to distribute the increase in overall benefit so interstate compacting is agreeable to lawmakers and their supporters on all sides of the negotiating table. To this end, there are two primary tax components: (1) choosing a gaming tax model to apply to the interstate iGaming activity; and (2) sourcing the iGaming revenue based on either location of the player or the operator. These components are discussed in turn.

II. The U.S. iGaming Tax Models

Any interstate iGaming compact should dictate the tax model(s) applied to each state's iGaming revenue. A reasonable prediction is that each state will at least initially seek to apply its intrastate iGaming tax model to any interstate iGaming activity. This approach could help streamline the transition from taxing intrastate iGaming to interstate iGaming.

All three states currently with legalized online poker have adopted to iGaming the gross gaming revenue ("GGR") tax model that has been implemented in their respective states to generate tax revenues from licensed brick-and-mortar casinos. On a federal level, however, the bills introduced to tax iGaming activity called for a deposit tax.⁶ We will briefly review the mechanics of

⁵ See *EXPLAINED: Here's the Gist of the New California Online Poker Bill*, QUADJACKS.COM, May 16, 2013, at <http://quadjacks.com/wp-content/uploads/141648853-Proposed-I-Poker-Legislation-by-CA-Tribal-Governments.pdf>.

⁶ H.R. 4976, 111th Cong. (2009), available at <http://www.gpo.gov/fdsys/pkg/BILLS-111hr4976ih/pdf/BILLS-111hr4976ih.pdf>; S. 1597, 111th Cong. (2009), available at <http://www.gpo.gov/fdsys/pkg/BILLS-111s1597is/pdf/BILLS-111s1597is.pdf>; S. 3018, 111th Cong. (2009), available at

these models as applied to iGaming.

A. Gross Gaming Revenue

Most states tax commercial casino gaming activity by gross gaming revenue. GGR is characterized as a profit-based model. In general, GGR consists of total wagers made by customers less the winnings paid back to its customers, and a tax rate is applied on the base.

Applied to iGaming, the GGR model is not necessarily a perfect fit. Payouts to customers in the iGaming space could be deemed made when a winning wager is credited to a customer's account or when the customer withdraws the funds from the account. The answer impacts the timing of the deduction from the GGR base. Another issue, although not poker-specific, is worth noting: Some GGR models have different tax rates depending on the game played. This structure adds complexity to the accounting measures operators must have in place to properly remit the GGR tax to the State.

i. Delaware

Delaware's iGaming framework is under the control and operation of the Delaware Lottery. Under the Delaware Gaming Competitiveness Act of 2012,⁷ gross revenue from iGaming, less winnings paid to players, are required to be placed in a special account called the "State Internet Lottery Fund." In general, funds from internet lottery and table games are to be distributed pursuant to the provisions under section 4815 of the Delaware Code. Operators retain approximately forty-four percent of generated gaming revenue.

ii. Nevada

In Nevada, gross revenue from gaming is generally subject to a 6.75 percent tax.⁸ Revenue from both online poker cash games and tournaments are included in the tax base. In June 2013, Governor Sandoval signed into law an amendment removing the poker tournament exclusion from GGR.⁹

iii. New Jersey

Operators pay an annual fifteen percent tax on "Internet gaming gross revenue." IGGR is defined as "the total of all sums actually received by a casino licensee from Internet gaming operations, less only the total of all sums actually paid out as winnings to patrons."¹⁰ Operators must also "reinvest" two-and-a-half percent of annual IGGR through the Casino Reinvestment Development Authority. These funds are used in community and economic development projects in Atlantic City and around the State. If an operator fails to make the reinvestment, then the operator

<http://www.gpo.gov/fdsys/pkg/BILLS-111s3018is/pdf/BILLS-111s3018is.pdf>.

⁷ H.B. No. 333, 146th Sess. (Del. 2012), available at [http://legis.delaware.gov/LIS/lis146.nsf/vwLegislation/HB+333/\\$file/legis.html?open](http://legis.delaware.gov/LIS/lis146.nsf/vwLegislation/HB+333/$file/legis.html?open).

⁸ Nev. Gaming Comm'n Reg. 5A.170(1).

⁹ S.B. 9, 77th Sess., § 3 (Nev. 2013), available at http://www.leg.state.nv.us/Session/77th2013/Bills/SB/SB9_EN.pdf.

¹⁰ N.J.S.A. 5:12-95.19.

must pay an investment alternative tax at five percent of annual IGGR.

B. Deposit Tax

Another iGaming taxation model is the deposit tax. Instead of taxing gross gaming revenues, the deposit tax is imposed on the funds a player deposits with an operator. A volume-based model, deposit tax rates around the world on iGaming are generally much lower than GGR rates.

Licensing jurisdictions should seem to favor a deposit tax for iGaming because the tax is collected up front, when the customer deposits funds on the iGaming site. Unlike GGR, the deposit tax does not depend on the type of game played, so it is game-neutral. An across the board tax would seem to make implementation far easier for iGaming operators.

One issue with the deposit tax is that it may apply regardless of whether an iGaming customer actually uses the deposited funds to engage in wagering activity. Theoretically, customers could deposit funds and then immediately request withdrawal without placing any wagers. Such activity presents no benefit to the operator, who would have to pay a tax without the opportunity to earn revenue.

It is notable that of three federal bills containing tax schemes for regulated iGaming in the United States, all of them called for a deposit tax. The Internet Gambling Regulation and Tax Enforcement Act of 2010, for example, sought to impose a two percent tax on deposits made by customers on licensed iGaming sites.¹¹

C. Finding a Happy Model Medium

At least initially, states are keen on carrying their gaming taxation models from brick and mortar to iGaming. This is not a surprise considering regulators and operators are already accustomed to GGR. Jurisdictions should bear in mind the deposit tax offers potentially much simpler implementation, although with some issues of its own.

To address the deposit and immediate withdrawal situation, states could permit operators to charge early withdrawal fees. Another suggestion is allowing operators to take a tax credit for withdrawn funds that are not returned to players, thereby imposing the deposit tax only on wagered funds. Such a credit makes the deposit tax more akin to a profit-model like GGR while maintaining game-neutrality.

The gaming taxation model is crucial for determining how a state will generate revenue from both intrastate and interstate iGaming activity. Each state must carefully consider the implications of each proposed model for operators and customers and ultimately determine which is in the best interests of the State in order for the iGaming industry to thrive in the United States.

¹¹ H.R. 4976, 111th Cong. (2009), § 2, available at <http://www.gpo.gov/fdsys/pkg/BILLS-111hr4976ih/pdf/BILLS-111hr4976ih.pdf>.

III. Interstate iGaming Revenue Sourcing: Based on Location of Player or Operator?

After determining a tax model for interstate iGaming activity, we must examine the possibilities for how to "source" the gaming activity. States would need to establish source rules pursuant to a compact or agreement that dictate which state reserves the primary right to tax the gaming activity. The two most natural possible source rules would be based on the location of (1) the player or (2) the operator.

A. Location of Player

On the surface, sourcing gaming activity pursuant to an interstate compact based on location of the player seems straightforward: Gaming activity generated by players located in State "A" are sourced in State "A," and activity generated by players located in State "B" are sourced in State "B." Then each state would apply its iGaming tax model to the gaming activity sourced in its state.

The issue is there are various possible definitions for gaming activity generated by a player. In general, the activity in this context is play on an online poker table, which generates a "rake" collected by the operator for each hand played. With multiple states' iGaming tax regimes potentially being applied to activity taking place on the same online poker table, the states must establish a unified approach on how to attribute the activity among the states; otherwise, an operator could be subject to paying tax to more than one state for the same activity—or to no states at all.

Assuming for the moment each state pursuant to an iGaming compact has a GGR model, we can evaluate the tax consequences of rake collected from an online poker hand by applying each of the proposed sourcing rules:

1. Source the entire rake collected in *all* states that are part of the compact;
2. Source the entire rake collected in the state *where the winning player of the hand is located*; or
3. Source the rake collected in a state based on *a proportion of total wagers made for the hand by players located in the state to total wagers made by all players for the hand*.

We consider the varying tax consequences of one online poker hand by applying each proposed sourcing rule under a theoretical iGaming "reciprocal agreement" entered into between Nevada and New Jersey. Suppose there are three NJ players and three NV players at the same online poker table with a collected rake of \$5 for each hand played. At the conclusion of one hand of Texas Hold'em, player 1 (NJ) wagered \$5, player 2 (NJ) wagered \$0, player 3 (NJ) wagered \$10, player 4 (NV) wagered \$25, player 5 (NV) wagered \$25, and player 6 (NV) wagered \$10. Player 4 won the hand.

Approach #1: Source the Entire Rake Collected in All States

The operator would be subject to paying GGR tax on the \$5 of revenue to both states. This would be an unsustainable double tax. Operators would almost certainly be better off keeping the player pools segregated by state and paying just one state's iGaming tax on the rake collected. The added benefit of combining player pools would unlikely outweigh the additional tax.

In the example, the operator would be required to pay to Nevada 6.75 percent of \$5, or \$0.3375, and to New Jersey fifteen percent of \$5, or \$0.75, resulting in total tax paid of \$1.0875, for an effective tax rate of 21.75 percent.

To mitigate the double tax, operators could be entitled to claim a tax credit for GGR paid to another jurisdiction. The states would need to negotiate the mechanics of the tax credits as applied to each state. Clearly, more populous states with established iGaming regulatory frameworks (e.g. New Jersey) are in a favorable bargaining position in this regard.

Approach #2: Source the Entire Rake Collected in the State of the Winning Player's Location

Operators would find this approach easy to implement, as operators are already required to know the location of all its players. The added step of attributing a location to rake collected for each hand played would not seem to add a significant burden. Notably, split pots present more complex situations, but are nevertheless far from insurmountable. In the example, the operator would be required to pay to Nevada 6.75 percent of \$5, or \$0.3375.

An interesting issue arises with Approach #2, however. A state would be inherently biased with respect to the outcome of each hand in favor of players located in its state. The more the local players win over non-local players on the pooled tables, the more overall gaming revenue to the state. The bias would be even more pronounced with poker tournaments, as the winning distributions are far more skewed. Clearly, states themselves should not have preferred winners for quantifiable reasons in games they are regulating.

Approach #3: Source the Rake Collected in a State Based on Proportion of Wagers Made by Players in the State to Total Wagers Made

This approach removes the winning player bias issue presented in Approach #2. In the example, NJ players wagered a total of \$15, and NV players wagered a total of \$60. The percentage of rake attributable to NJ would be $15/(15+60)$, or twenty percent, and percentage of rake attributable to NV would be eighty percent. For this hand, \$1 of rake would be subject to the fifteen percent GGR tax in NJ, or \$0.15 of tax, and \$4 of rake would be subject to the 6.75 percent GGR tax in NV, or \$0.27, totaling the tax to \$0.42 for an effective rate of 8.4%. Of course, the effective tax rate for each hand would depend on the proportion of wagers placed from players in each state for the hand.

Alternatively, if Nevada and New Jersey both imposed a deposit tax instead of their GGR models, then the three proposed sourcing rules are irrelevant. Nevada and New Jersey could apply their tax to deposits made into an online poker account by players physically located in their state, regardless of how the funds are used to play online poker. Put another way, the deposit tax is not based on outcomes of any particular online poker hand.

B. Location of Operator

A source rule based on location of the operator would likely mean all gaming activity on the operator's site would be subject to tax in the state where the operator is located. The application of this source rule could have significantly different tax consequences for states depending on whether the operator is located in only one state or more than state pursuant to an interstate compact.

i. Operator Located in More Than One State

If an operator is physically located in more than one state pursuant to an iGaming compact, then sourcing the gaming activity among states effectively should become based on the location of the player. Suppose that New Jersey and Nevada enter into an interstate online poker compact that permits operators only licensed in both states to combine player pools between states. Nevada's GGR model would apply to revenues generated by players in Nevada, and New Jersey's GGR model would apply to revenues generated by players in New Jersey. A deposit tax would work similarly on deposits made instead of revenues.

As an aside, an interesting legal issue could arise for any "reciprocal agreement" that New Jersey enters into. New Jersey's internet gaming legislation requires all iGaming servers to be located in Atlantic City in order to comply with the New Jersey State Constitution.¹² If an iGaming operator is licensed in both Nevada and New Jersey and pools its liquidity, then it seems the operator would have to ensure all of its servers running virtual tables with New Jersey players are located in Atlantic City. Otherwise, if Nevada players were on these tables as well, would such conduct run afoul of the Nevada interactive gaming laws? This type of issue should have to be addressed either in state legislation or an interstate compact.

ii. Operator Located in Only One State

Sourcing gaming activity when an operator is located in only one state yet pools liquidity among more than one state leaves open many negotiable terms. As discussed above, this situation could arise if a "non-gaming" state outsources its gaming regulatory oversight to a state with an established iGaming regime in place.

One possibility is for the operators to pay license fees to accept wagers from players located in the non-gaming state, and the states agree to source the gaming activity where the operator is

¹² N.J. Const. Art. IV, § VII, cl. 2(D).

located, the gaming state. The non-gaming state would derive revenue from the license fees and the gaming state would tax the gaming activity generated in the non-gaming state. Determining a license fee agreeable to the states and affordable for operators, if at all possible, will require extensive negotiations and economic research of the iGaming markets involved.

IV. Lessons Learned from Efforts to Impose Sales Tax on Online Transactions

For over ten years, states imposing sales and use taxes have made considerable efforts to require out-of-state retailers with no physical presence in their states to collect sales and use taxes on purchases made in their states. According to U.S. Supreme Court rulings,¹³ retailers such as catalog and online sellers need to collect and remit sales tax only in states that such retailers have a physical presence.

The efforts taken are worth examining for considering how states may work together to tax cross-border transactions for internet gaming. Cross-border sales tax issues are more complicated in some regards and more simplified in others. Each state, for example, has different definitions for what is or is not taxable in their states. This is not an issue in the iGaming compact context as the states likely would tax revenue generated from one activity: poker play. Each state has or will have its own method to determine what poker play is subject to gaming tax and the rate imposed, similar to sales tax. Unlike taxing sales in states, however, not every state that may authorize iGaming already has an established gaming regulatory framework in place to oversee and enforce the activity. To these ends, we will look at how the efforts to streamline sales tax methodologies could apply to state iGaming compact efforts.

A. Streamlined Sales and Use Tax Agreement

One significant product of states' efforts addressing cross-border sales tax transactions is the Streamlined Sales and Use Tax Agreement (the "Agreement").¹⁴ This Agreement became effective in 2005, as a result of a multistate cooperative effort that "encourages 'remote sellers' selling over the Internet and by mail order to collect tax on sales to customers living in the Streamlined states."¹⁵ Since 2005, twenty-four of the forty-four states that impose a sales tax have passed legislation conforming to the Agreement.¹⁶

How does the Agreement attempt to tax interstate online sales? The Streamlined Sales and Use Tax Project, the original drafter of the Agreement, sought to create a simplified sales tax system

¹³ See *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992); *Nat'l Bellas Hess v. Illinois*, 386 U.S. 753 (1967).

¹⁴ Streamlined Sales and Use Tax Agreement (May 2002) (last amended May 24, 2012), available at <http://www.streamlinedsalestax.org/uploads/downloads/Archive/SSUTA/SSUTA%20As%20Amended%205-24-12.pdf>.

¹⁵ FAQs, What is the Streamlined Sales and Use Tax Agreement?, Streamlined Sales Tax Governing Board, Inc., at http://www.streamlinedsalestax.org/index.php?page=gen_1 (last visited July 28, 2013).

¹⁶ See FAQs, How Many States Have Passed Legislation Conforming To the Agreement?, Streamlined Sales Tax Governing Board, Inc., at http://www.streamlinedsalestax.org/index.php?page=gen_3 (last visited July 28, 2013).

so all types of vendors could collect sales taxes. The idea was that a simplified, uniform tax code across states would make it easier for remote vendors to collect sales taxes on the goods sold to out-of-state customers.

The Agreement identifies ten points of focus that have been condensed into four general requirements: (1) state level administration, (2) uniform tax base, (3) simplified tax rates, and (4) uniform sales sourcing rules.¹⁷ We consider how each of these requirements could apply to interstate iGaming compacts for poker.

1. State Level Administration

Under the Agreement, sales taxes would be remitted to a single state agency. As a result, businesses would not have to file tax returns with each and every state where they conduct business. Operators pooling liquidity among several states for online poker could seek to adopt a similar approach for remitting gaming taxes generated by online poker play.

Pooling together the taxes with one agency, instead of requiring operators to remit the appropriate tax to each particular state's agency, would reduce the burden on operators and make allocation of revenue pursuant to the agreed terms of the compact smoother to implement.

2. Uniform Tax Base

Each state has rules for what is included in the sales tax base, and the definitions of these terms are not uniform across all states. The Agreement requires all jurisdictions within each state to use the same tax base. This is aimed at removing the distinctions between a state's approach to a taxable sale and a local jurisdiction's approach. The idea is to create uniform definitions of each type of activity in each state, and then each state retains the choice of whether the item is taxable (in the base) and the rate to apply.

For iGaming compacts, it could be helpful to establish a uniform definition for "poker." An operator need be clear what "poker" games are authorized in each state. Of course, operators should be able to pool liquidity for only those games authorized by all states.

3. Simplified Tax Rates

Under the Agreement, each state would be permitted only to one state tax rate. Each state could add one additional local jurisdiction rate, based on ZIP code.

For iGaming, a local jurisdiction, in addition to the state, could seek to tax internet gaming activity occurring in that local jurisdiction. The reach of a local rate would depend on whether iGaming revenue is sourced based on the location of the player or the operator.

4. Uniform Sales and Sourcing Rules

The general sourcing rule under the Agreement is "destination" sourcing. When there is a sale

¹⁷ Maguire, Steven, *State Taxation of Internet Transactions*, Congressional Research Service, May 2013, at 10, available at <http://www.fas.org/sgp/crs/misc/R41853.pdf>.

into a state from an out-of-state vendor, the vendor applies the tax at the agreed upon statewide rate applicable in the destination state. For sales within a state between local jurisdictions, then the vendor collects the tax at the rate applicable for the vendor location.

Applied to iGaming, "destination" sourcing between states is consistent with applying the tax based upon where the player is located, as opposed to where the operator is located.

B. Proposed Federal Legislation: The Marketplace Fairness Act of 2013

Several federal bills have been introduced addressing remote seller sales tax collection. Some have required adoption of the Agreement, while others have not been conditioned on approval of the Agreement.

The Marketplace Fairness Act of 2013¹⁸ is proposed legislation on Capitol Hill that seeks to require certain out-of-state retailers to collect and remit sales and use taxes for transactions taking place in a particular state. The bill grants states the authority to require remote vendors to collect sales taxes if the states were members of the Agreement or if they adopted minimum simplification requirements.

Federal legislation for internet poker could require states seeking to operate internet poker to be a member of a multistate iGaming agreement or to adopt minimum requirements in the legislation.

C. iGaming Presents Issues Distinct from Sales Tax

One must keep in mind that a similar Agreement would not cover all necessary aspects for interstate internet poker activity. The Agreement establishes guidelines for states to adopt by passing state legislation. Suppose a state without any gaming regime seeks to outsource licensing and regulatory oversight to another jurisdiction in exchange for giving up a percentage of tax revenue. This arrangement would have to be accomplished pursuant to an agreement specifically between the two states, instead of an agreement that establishes general guidelines for states to adopt.

Although adopting some of the relevant principles from the Agreement is unlikely to serve as a perfect model for interstate iGaming, it could be helpful in providing jurisdictions awareness of how some of the issues may be addressed.

D. Facilitating a Multistate Agreement

The Agreement has been endorsed by the National Governors Association (NGA). The NGA has sought for the Agreement to address the U.S. Supreme Court's concerns with the burden on interstate commerce of collecting remote taxes. The NGA's support is shared by other state and local governmental organizations, including the National Conference of State Legislatures (NCSL), the Federation of Tax Administrators (FTA), and the Multistate Tax Commission (MTC).

¹⁸ H.R. 684, 113th Cong. (2013), available at <http://www.gpo.gov/fdsys/pkg/BILLS-113hr684ih/pdf/BILLS-113hr684ih.pdf>.

These organizations, as well as others, could similarly work together to address interstate commerce concerns with internet gaming activity.

V. Conclusion

The U.S. iGaming industry is still in its infancy, and stakeholders are carefully maneuvering through the seemingly constantly changing landscape. Although some states are eager to facilitate the evolution of state-by-state regulated iGaming to an interstate market, various tax considerations, among others, must reach a consensus among states seeking to enter into iGaming compacts.

As more states open its doors to iGaming and demonstrate adequate regulation, other states are likely to follow suit by either establishing their own regimes or outsourcing the regulation to experienced states. All the while, federal efforts to establish a uniform iGaming baseline for states to adopt, similar to a federal online sales tax, could significantly mitigate some of the complicated issues that states would otherwise need to address.