

## MEMORANDUM

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**TO:** Andrew Cuomo, Governor of New York State  
**CC:** Eric Schneiderman, Attorney General, John Flanagan, Senate Majority Leader, & Carl Heastie, Assembly Speaker  
**FROM:** Ben Eddy & Cal Whiting, Committee to Legalize Sports Gambling in New York  
**RE:** Recommendation for the Legalization of Sports Gambling in New York State  
**DATE:** May 5, 2016

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### Summary

This committee proposes that all sports gambling should be legalized in the State of New York. This includes both sportsbooks at casinos and Daily Fantasy Sports. New York is currently missing out on an opportunity to garner revenues through the taxation of sports gambling profits. Since other states are already in this business, it will allow us to replicate many of their policies while tweaking others to fit our needs. New York already has extensive gaming infrastructure in place such as the New York Lottery and New York State Gaming Commission. New York has millions of residents who actively participate in sports gambling illegally. The State could raise millions through the legalization of sports gambling and also be able to regulate a market that currently operates entirely in the dark. This committee recommends that the tax revenue generated from sports betting be used by the New York Gaming Commission for additional counseling services for addicted or problem gamblers.

### Legal Status of Sports Gambling

The Professional and Amateur Sports Protection Act (PASPA) enacted by Congress in 1992 outlaws sports gambling in all states, except those that had previously legalized it, which includes Delaware, Montana, Oregon, and Nevada.<sup>1</sup> Consequently, sports betting is illegal in New York State. According to the American Bar Association, New Jersey passed two laws and one amendment involving the legalization of sports betting. In 2011, the legislature passed an amendment to enable sports betting by law.<sup>2</sup> The Sports Wagering Act was passed in 2012, “which established an elaborate licensing system for sports gambling at casinos and racetracks.”<sup>3</sup> Five sports leagues challenged the Sports Wagering Act as a violation of PASPA, and the Third

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<sup>1</sup> Kay Bell, “Taxes on gambling winnings in sports,” *Bankrate*, <http://www.bankrate.com/finance/taxes/taxes-on->

<sup>2</sup> Susan DeJarnatt, “

<sup>3</sup> DeJarnatt, “New Jersey Sports Gambling Not Allowed Under Federal Law.”

Circuit Court of New Jersey agreed and overturned the law in its decision in *National Collegiate Athletic Association, et al. v. Governor of the State of New Jersey, et al (Christie I)*.<sup>4</sup> The Court held that “PASPA did not require New Jersey to keep its ban on sports gambling in place, but rather prevented it from passing new laws authorizing gambling.”<sup>4</sup> In essence, if New Jersey repealed all of its existing laws on sports gambling prior to passing the Sports Wagering Act, then the law would have been permissible. New Jersey responded in 2014 with the passage of SB 2460.<sup>4</sup> SB 2460 “repealed all state laws and regulations that authorized, licensed or prohibited sports gambling at casinos and racetracks in New Jersey.”<sup>4</sup> New Jersey argued SB 2460 was in accordance with *Christie I*, but the Court overturned it claiming that the law’s prohibitions on gambling outside of casinos and racetracks, on New Jersey collegiate sports, and requiring people to be 21 to gamble meant that the state was in effect authorizing gambling.<sup>4</sup> In effect, PASPA was upheld and sports gambling remains illegal in all but four states.

### **Black Market Sports Gambling**

Current legislation that bans sports betting in New York does not prevent citizens from betting on sports as it was intended. Rather, it encourages people to gamble on sports illegally. There is a high public demand for sports betting, and this can be seen in both the high numbers of people who gamble on sports and the amount of money wagered. The research firm Markitecture found in a 2012 study that approximately 118 million people gamble on sports each year.<sup>5</sup>

Additionally, a National Gambling Impact Study Commission report found that approximately \$380 billion is bet annually with bookies or offshore betting operations.<sup>6</sup> Comparatively, only about \$2-3 billion is bet legally in Nevada.<sup>7</sup> Sports betting is highly popular and lucrative, but a vast majority of people engage in it illegally. This enables organized crime to control much of the widespread sports gambling that occurs and prevents New York State from regulating this activity. For example, in 2012 twenty-five individuals were indicted in New York for operating an illegal sports betting enterprise that profited more than \$50 million over an eighteen month

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<sup>4</sup> DeJarnatt, “New Jersey Sports Gambling Not Allowed Under Federal Law.”

<sup>5</sup> Peter Keating, “How Much Sports Gambling is Going on out There?” *ESPN*, July 2012, <http://espn.go.com/espn/magazine/archives/news/story?page=magazine-20030804-article23>.

<sup>6</sup> Joe Drape, “Cash-Hungry States Eye Sports Betting, to Leagues’ Dismay,” *New York Times*, March 2013, [http://www.nytimes.com/2013/03/28/sports/more-states-look-to-get-in-the-sports-betting-game.html?\\_r=0](http://www.nytimes.com/2013/03/28/sports/more-states-look-to-get-in-the-sports-betting-game.html?_r=0).

<sup>7</sup> Jeffrey Roeske, “Doubling Down on Sports Gambling: Why PASPA Would Fail a Constitutional Challenge,” *Marquette Sports Law Review*, Vol. 24, Issue 2 *Spring*, Article 6, 2014, 463, <http://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=1624&context=sportslaw>.

period by accepting wagers on various sporting events including horse racing and professional and college football, basketball, hockey, and baseball.<sup>8</sup> In response, Queens District Attorney Richard Brown stated: “Illegal gambling is not a victimless crime. Those who participate in these criminal enterprises often use threats, intimidation, and even physical force to collect debts and oftentimes charge usurious interest rates on outstanding debts.”<sup>9</sup> Rather than having legitimate mechanisms to gamble on sports, individuals often rely on criminal elements such as these to place bets. There is an obvious appetite for legitimate mechanisms to place sports wagers. New York could set a positive example by providing its citizens with these mechanisms. Legalization of sports betting is a more realistic and viable option to regulate the sports gambling market and gain millions in tax revenue than hiding from the fact that sports gambling is going to occur regardless of its legal status.

### **Nevada’s Sports Gambling Finance and Regulations**

Nevada has a very lucrative sports betting industry that attracts many tourists across the country. Sports betting is legal in Nevada because it is protected by PASPA. Nevada’s model provides people with a highly demanded industry and enables the State of Nevada to regulate the market and profit from it. Sports wagers are taxed at the same rate as other forms of gambling through the use of the Gross Gaming Revenue (GGR) Tax. This tax collects 3.5% of GGR up to \$50,000 per month, 4.5% of GGR between \$50,000 and \$134,000 per month, and 6.75% of GGR exceeding \$134,000 per month.<sup>10</sup> In 2012, Nevada took in more than \$3.4 billion in sports bets, generating \$15 to \$20 million in tax revenue.<sup>11</sup> In addition to generating revenue, Nevada is able to regulate the sports betting industry more effectively. Regulation 22 of the Nevada Gaming Control Board titled “Race Books and Sports Pools” provides regulations on sports betting including definitions, licensing requirements, wagering rules, and other procedures that ensure sports betting is properly and effectively regulated.<sup>12</sup> The Nevada Gaming Control Board

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<sup>8</sup> FBI New York Field Office, “Twenty-Five Individuals Indicted in Multi-Million Dollar Illegal Nationwide Sports Betting Ring,” *Federal Bureau of Investigation*, October 2012, <https://www.fbi.gov/newyork/press-releases/2012/twenty-five-individuals-indicted-in-multi-million-dollar-illegal-nationwide-sports-betting-ring>.

<sup>9</sup> FBI New York Field Office, “Twenty-Five Individuals Indicted in Multi-Million Dollar Illegal Nationwide Sports Betting Ring.”

<sup>10</sup> “Nevada Gaming Regulatory and Statutory Requirements,” *American Gaming Association*, December 2015, [http://www.gettoknowgaming.org/sites/default/files/AGA\\_Nevada%20December%202015.pdf#taxation](http://www.gettoknowgaming.org/sites/default/files/AGA_Nevada%20December%202015.pdf#taxation).

<sup>11</sup> Drape, “Cash-Hungry States Eye Sports Betting, to Leagues’ Dismay.”

<sup>12</sup> Nevada Gaming Control Board, “Regulation 22: Race Books and Sports Pools,” revised November 2015, <http://gaming.nv.gov/modules/showdocument.aspx?documentid=2900>.

maintains effective partnerships with casinos in the state to heighten transparency on gambling issues and ensure appropriate practices are used and that winners provide their share of taxes. For example, the IRS form W2-G is issued to players and sent to the IRS by the casino when players win \$600 or more and the winnings are at least 300 times the wager.<sup>13</sup> This is not to say that the Nevada case is directly applicable to New York State. However, it does show that sports betting is highly profitable for state governments and can be regulated more efficiently than illegal gambling.

### **New York Gaming Infrastructure, Finance, and Regulations**

New York has an extensive gaming infrastructure in place currently which makes any transition to legal sports gambling more efficient than starting from scratch. According to the American Gaming Association, New York has nine commercial casinos that contribute \$3.6 billion in economic activity, support 14,395 jobs which pay more than \$827.7 million in wages, and generate over \$1.3 billion in tax revenue for the State (Figure 1).<sup>14</sup> The New York Gaming Commission is required by law to withhold Federal and State income taxes from taxable prizes over \$5,000, even if won in Nevada, and all overdue taxes owed to New York State, past-due support, and prior public assistance from any Lottery prize of more than \$600 at a rate of 8.82% for the State (New York City and Yonkers have additional withholding rates).<sup>15</sup> The New York Lottery itself generates more profit than any other state.<sup>16</sup> In the 2015-2016 Fiscal Year, the Lottery generated \$9.69 billion in sales, contributing \$3.3 billion in school aid (Figure 2).<sup>17</sup> According to the U.S. Census Bureau, the implicit tax rate from the New York Lottery stood at 67.1% in 2013 (Figure 3).<sup>18</sup> Despite these impressive fiscal gains, many scholars have found that the revenue generated from Lotteries are highly regressive with much of the revenue coming

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<sup>13</sup> Yolanda Smulik Roche and Roger Roche, "Know the tax laws," *Las Vegas Review-Journal*, 2016, <http://www.reviewjournal.com/business/casinos-gaming/features/taxlaws.html>.

<sup>14</sup> "Get to Know Gaming New York," *American Gaming Association* (data from 2014 *Oxford Economics*), [http://www.gettoknowgaming.org/sites/default/files/AGA\\_FactSheet\\_NewYork14.pdf](http://www.gettoknowgaming.org/sites/default/files/AGA_FactSheet_NewYork14.pdf).

<sup>15</sup> New York Lottery, "Legal Information," 2016, <http://nylottery.ny.gov/wps/portal/Home/Lottery/quick+help/legal/general+rules>.

<sup>16</sup> New York Lottery, "Fiscal Year 2015-2016 Year-End Review," *New York State Gaming Commission*, 2016, [http://nylottery.ny.gov/wps/wcm/connect/e4ce705f-d71d-4c2d-b47f-5ae1368f61e8/annual\\_report\\_2016\\_finalv2.pdf?MOD=AJPERES&Annual%20Report](http://nylottery.ny.gov/wps/wcm/connect/e4ce705f-d71d-4c2d-b47f-5ae1368f61e8/annual_report_2016_finalv2.pdf?MOD=AJPERES&Annual%20Report).

<sup>17</sup> New York Lottery, "Fiscal Year 2015-2016 Year-End Review."

<sup>18</sup> John Yinger, "Lecture 10: Revenue from Government Monopoly," *Syracuse University*, March 2016, slide 22.

from low-income households as opposed to high-income households.<sup>19</sup> Figures on sports gambling tax incidence and the characteristics of sports gamblers are more difficult to obtain since it is illegal in most of the U.S. However, there are figures on the characteristics of Daily Fantasy Sports players that show average players tend to be well-educated and have a higher income, lending support to the idea that sports gambling is less regressive than lotteries. This will be discussed in more detail in the next section.

### **Daily Fantasy Sports in New York**

In Daily Fantasy Sports, Players compete against each other by building a team of professional athletes from a particular league and earn points based on the actual statistical performance of those players in real-world competitions. In these paid competitions, winners receive a share of a pre-determined pot funded by their entry fees. A portion of entry fee payments go to the provider as revenue. This is different from Vegas-style gambling where a person is betting on a team's performance. Daily Fantasy Sports (DFS) are currently banned in New York State. Attorney General Eric Schneiderman declared the industry illegal by lumping it into the same category as sports gambling. The State and DFS industry recently decided to suspend all court proceedings hoping to resolve the issue through the legislative process.<sup>20</sup> The DFS industry is dominated by two major players: DraftKings and FanDuel. Similar to the overall sports gambling situation, DFS are very popular, especially among New York residents. In 2014, New York was DraftKing's second largest revenue source.<sup>21</sup> Also, there were over 1.2 million DSF customers in New York alone.<sup>22</sup> Daily Fantasy Sports are in high demand in New York and are constantly growing in popularity across the nation.

### **Daily Fantasy Sports Nationwide**

As of March 8, 2016, Daily Fantasy Sports were illegal in 11 states, 'under review' by legislators and regulators in 20 states, and legal in 19 states (Figure 4).<sup>23</sup> The industry currently has 75

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<sup>19</sup> Ronald Fisher, "State and Local Public Finance, 4<sup>th</sup> Edition," *Routledge*, 2015, 467.

<sup>20</sup> Michael Erman and Karen Freifeld, "FanDuel, DraftKings shut down daily fantasy sports games in New York," *Reuters*, March 2016, <http://www.reuters.com/article/us-fantasysports-new-york-idUSKCN0WN1S1>.

<sup>21</sup> Erman and Freifeld, "FanDuel, DraftKings shut down daily fantasy sports games in New York."

<sup>22</sup> Jason Breslow, Ly Chheng, and Dan Nolan, "Is It Gambling? How States View Daily Fantasy Sports," *PBS*, February 2016, <http://www.pbs.org/wgbh/frontline/article/is-it-gambling-how-states-view-daily-fantasy-sports/>.

<sup>23</sup> Breslow, Chheng, and Nolan, "Is It Gambling? How States View Daily Fantasy Sports."

lobbyists in at least 30 states (up from 2 lobbyists in 2 states in 2015).<sup>24</sup> The industry is also receiving support from the Fantasy Sports Trade Association. The President of the Association stated on the record that he hopes to have around 10 legislatures return favorable rulings by this time next year.<sup>25</sup> The NFL, NBA, NHL, and MLB are also all actively encouraging the legalization of DFS. Professional sports organizations historically have not supported gambling on sports in any form. In 2014, the MLB hired an independent math expert to study the skill element of DFS. The findings show that a person with skill wins more often than one with luck.<sup>26</sup> This is significant because many of the arguments against DFS and sports gambling rely on the premise that it is based on sheer luck; this helps dispel those assumptions. In 2014, FanDuel and DraftKings reported huge gains in revenue, collecting \$57 and \$30 million in revenue, respectively.<sup>27</sup> The two companies also brought in around \$926 million in player entry fees in 2014.<sup>28</sup> The fantasy sports industry is expected to grow 41% by 2020 bringing the possible annual entry fees to approximately \$7 billion.<sup>29</sup> According to the Fantasy Sports Trade Association (FSTA), the average age of participants is 37, 57% of which have college degrees.<sup>30</sup> Comparatively, the national average of adults with a college degree is just over 30%.<sup>31</sup> Also, 47% of players have a household income greater than \$75,000. The U.S. median household income is \$51,000. Based on this data, DFS betting is less regressive than other forms of gambling sponsored by New York State such as the Lottery.

### **Policy Recommendations: Sports Gambling**

This committee recommends that New York State aspire for the legalization of sports gambling. However, legal constraints such as PASPA and the New Jersey lawsuits limit the amount of discretion New York has for legalization in the State. A more realistic long-term approach is to

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<sup>24</sup> Brent Schrotenboer, "Daily fantasy sports industry takes fight to states," *USA Today*, January 2016, <http://www.usatoday.com/story/sports/2016/01/21/daily-fantasy-sports-industry-takes-fight-states/79137700/>.

<sup>25</sup> Schrotenboer, "Daily fantasy sports industry takes fight to states."

<sup>26</sup> David Purdum, "How daily fantasy players are winning," *ESPN*, April 2015, [http://espn.go.com/chalk/story/\\_/id/12380815/the-skills-required-succeed-daily-fantasy-sports-espn-chalk](http://espn.go.com/chalk/story/_/id/12380815/the-skills-required-succeed-daily-fantasy-sports-espn-chalk).

<sup>27</sup> Purdum, "How daily fantasy players are winning."

<sup>28</sup> Kristin Wong, "The Fantasy Sports Industry, by the Numbers," *NBC News*, October 2015, <http://www.nbcnews.com/business/business-news/fantasy-sports-industry-numbers-n439536>.

<sup>29</sup> Wong, "The Fantasy Sports Industry, by the Numbers."

<sup>30</sup> "Industry Demographics: Actionable Insights & Insightful Data," *Fantasy Sports Trade Association (FSTA)*, <http://fsta.org/research/industry-demographics/>.

<sup>31</sup> "Bachelor's Degree Attainment Tops 30 Percent for the First Time, Census Bureau Reports," *United States Census Bureau*, February 2012, <https://www.census.gov/newsroom/releases/archives/education/cb12-33.html>.

build a coalition with other states to lobby Congress to overturn PASPA. A referendum for New York residents is an effective means to gauge the public interest and initiate the legalization process. A Seton Hall University poll found that 55% of people believe that sports gambling should be legal, 33% disagreed, and 12% were unsure.<sup>32</sup> We believe that a referendum in New York would produce similar results providing political legitimacy to our recommendation. New York State should support the legalization of sports betting in order to bring people out of the shadow of illegal gambling and provide a legitimate form of entertainment that is in high demand. Sports betting should be limited to those who are 21 and older by requiring proper identification to enter casinos that provide complimentary alcoholic beverages. This committee recommends that the State tax earned winnings over \$600 when the winnings are over 300 times the wager, as in Nevada. Also, we recommend that there be greater coordination between the New York Gaming Commission and casinos to detect suspicious behaviors and warning signs of addiction. Any effective regulation requires cooperation from the businesses operating sports books. New York must closely scrutinize casinos to ensure they are behaving appropriately and not exploiting problem gamblers. As mentioned previously, the revenue made from legal sports gambling should be used for additional counseling services for problem or addicted gamblers. If New York legalizes sports gambling, then it assumes the responsibility to assist its residents should they develop problems from it. Lastly, the legalization of sports gambling and the Upstate New York Gaming Economic Development Act passed in 2013 will mutually benefit each other. Four new gaming resorts across Upstate New York are being built to boost tourism and economic development (Figure 5).<sup>33</sup> The success of this act requires consumers from out of state to come to New York and gamble in these new casinos; legal sports gambling will encourage this.

### **Policy Recommendations: Daily Fantasy Sports**

This committee recommends that DFS be legalized in New York State. There is currently a bill proposed in the New York State Senate that calls for a \$500,000 one-time registration fee to be

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<sup>32</sup> The Sharkey Institute, "Public Disagrees with NBA Commissioner Silver's Advocacy of Sports Betting, but Agrees with His Position," *Stillman School of Business, Seton Hall University*, November 2014, <https://www13.shu.edu/academics/business/sports-polling/upload/11-14-NBA-gambling.pdf>.

<sup>33</sup> "Casinos in New York State," *New York State Gaming Commission*, <https://www.gaming.ny.gov/gaming/casinos.php>.

able to operate in the State.<sup>34</sup> States where the activity is legal or under consideration have laid out the following notable policies in their laws/bills:<sup>35</sup>

- New Jersey - bill would ban DFS employees from participating in games.
- Connecticut - ban those under 21 from playing, also regulate advertising practices.
- Florida - \$500,000 initial registration fee plus \$100,000 yearly registration fee with the money going to the Compulsive Gambling Organization.
- California - Companies would pay an initial and annual fee. They would also pay taxes on gross income and report player winnings to the state.
- Virginia - Companies pay an annual fee of \$50,000 to register. The law bans those under 18, all employees and their immediate relatives from playing.

The current bill proposed by the Senator is on par with the other states. Finding a way to incorporate some of the proposed ideas from other states will only increase public support. The ban on employees and relatives from playing proposed by Virginia, which is similar to current New York Lottery regulations, are examples of this. This will dampen any fears of insider trading and cases like the DraftKings employee who won \$350,000 in a FanDuel tournament last fall.<sup>36</sup> Treating DSF like the Lottery, and taxing it as such, would make the implementation of the policy change smoother. Requiring the companies to submit earnings like the plan proposed in California would make compliance efficient. This style of gaming operated in New York State for a couple years with very little public backlash. Mandating companies to pay an initial and annual operation fee is a similar to other gaming licenses within the State. Proper legislation would create a successful revenue source in a time of increasing economic constraints for the State. The money from the fees should be allocated towards the NYS Gaming Commission's budget. The Gaming Commission will need more resources to handle increased responsibility regarding the proposed policy shift. It is critical that New York regulate advertising practices of DFS companies since many of their advertisements are misleading. We must make it clear that this will not be tolerated in New York State.

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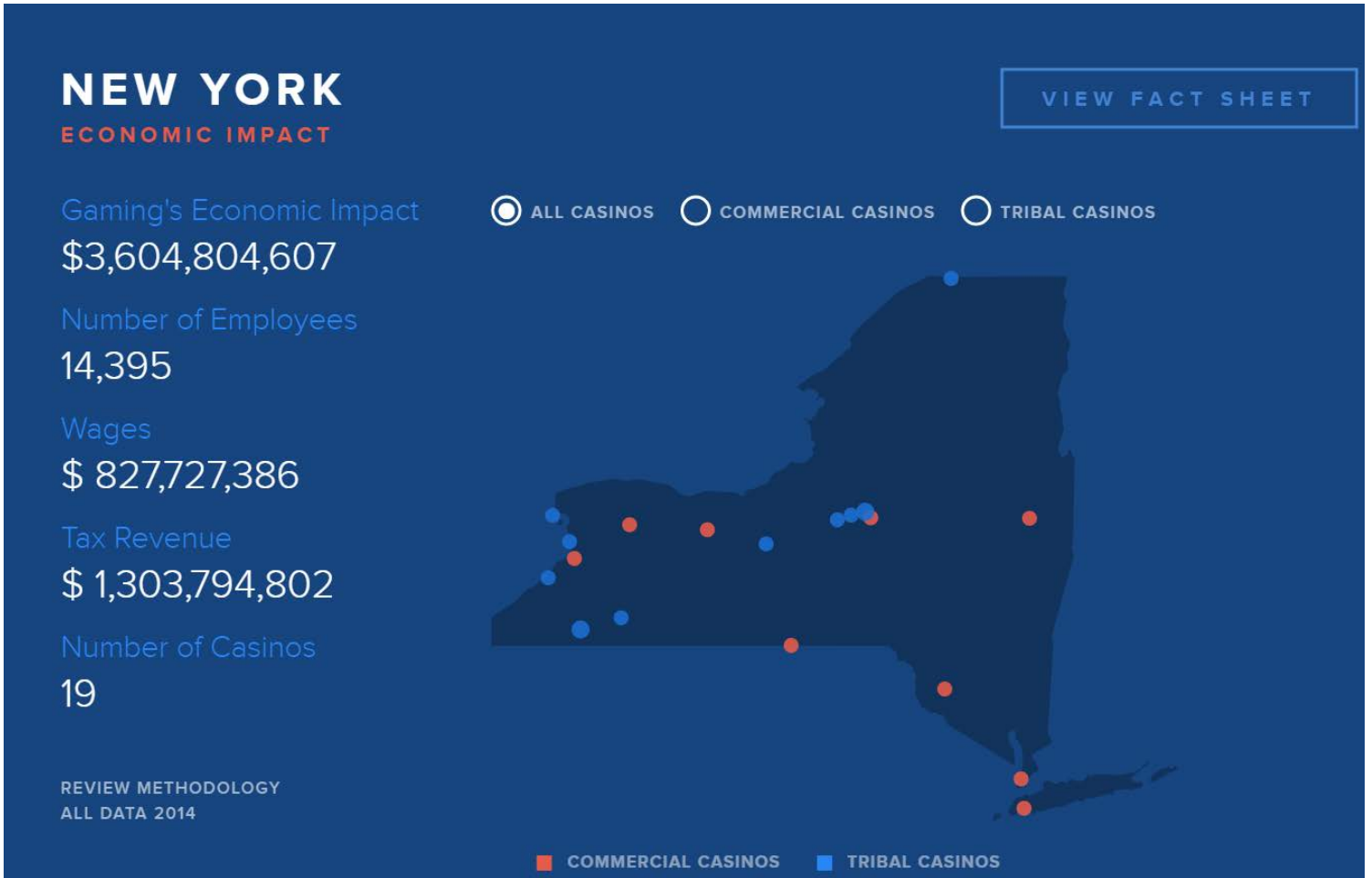
<sup>34</sup> Erman and Freifeld, "FanDuel, DraftKings shut down daily fantasy sports games in New York."

<sup>35</sup> Breslow, Chheng, and Nolan, "Is It Gambling? How States View Daily Fantasy Sports."

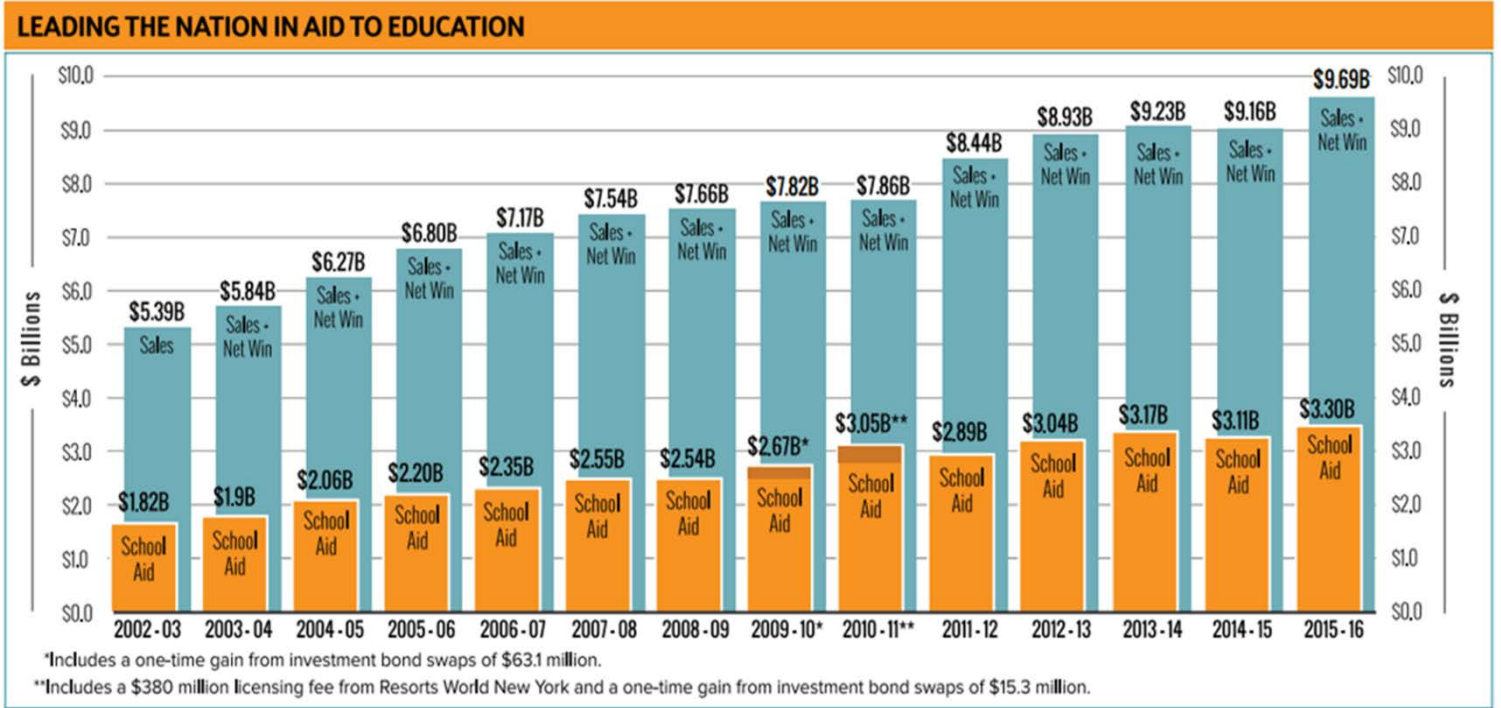
<sup>36</sup> Wong, "The Fantasy Sports Industry, by the Numbers."



Figure 1: Current New York Gaming Infrastructure



**Figure 2: New York State Lottery FY 2015-2016 Revenue and School Aid**

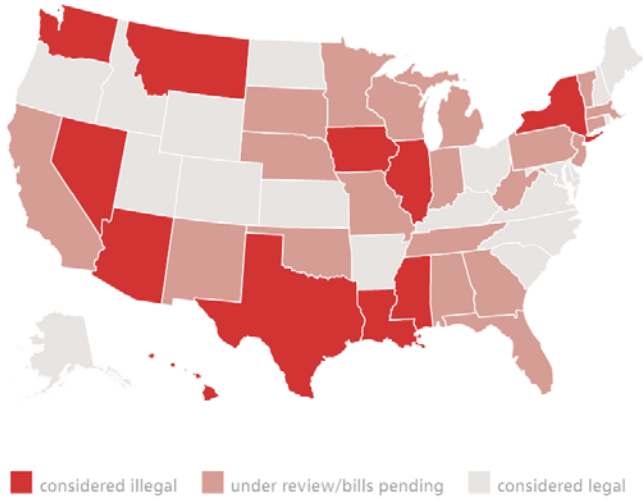


**Figure 3: Implicit Lottery Tax Rates, 2013**

United States	48.5%	Montana	49.8%
Arizona	37.7%	Nebraska	55.1%
Arkansas	26.8%	New Hampshire	39.3%
California	54.6%	New Jersey	51.9%
Colorado	36.0%	New Mexico	42.3%
Connecticut	42.8%	New York	67.1%
Delaware	215.1%	North Carolina	43.3%
Florida	43.2%	North Dakota	45.2%
Georgia	37.5%	Ohio	43.2%
Idaho	35.9%	Oklahoma	56.3%
Illinois	37.4%	Oregon	212.0%
Indiana	35.0%	Pennsylvania	45.1%
Iowa	33.9%	Rhode Island	238.1%
Kansas	45.6%	South Carolina	37.1%
Kentucky	42.4%	South Dakota	264.7%
Louisiana	61.2%	Tennessee	64.5%
Maine	34.0%	Texas	40.4%
Maryland	46.5%	Vermont	31.3%
Massachusetts	<u>26.2%</u>	Virginia	44.2%
Michigan	44.5%	Washington	37.2%
Minnesota	34.7%	West Virginia	<u>378.7%</u>
Missouri	39.1%	Wisconsin	54.1%

**Figure 4: Legal Status of Daily Fantasy Sports Nationwide**

## How States Are Acting On Daily Fantasy Sports



Updated on March 8, 2015

**11 states**

consider daily fantasy sports illegal or gambling

**20 states**

have laws under review or bills being considered

**19 states**

allow daily fantasy sports

Select a state to read more about each law

Figure 5: Upstate New York Gaming Economic Development Act

