

## To Help Gambling Addicts, Ditch the 90 Percent Cap

To the Editor:

A recent news article<sup>1</sup> describes how Advancing American Freedom, a nonprofit started by Mike Pence, supports the One Big Beautiful Bill Act's (OBBBA, P.L. 119-21) 90 percent cap for gambling loss deductions. A memo by the organization explains that gambling leads to "financial, health, and family problems" and asserts that the deduction cap could encourage many Americans to stop gambling.

If the purpose of the 90 percent cap is to deter problem gambling, then it is terrible policy.

What Advancing American Freedom is forgetting is that, in the world of tax accounting, money paid for losing bets shows up in two different ways: as the cost of the bets and as a deduction against income. Within a session of gambling, we add up all the outflows and inflows to determine whether a session is a losing session or a winning session (and by how much). At this stage, the payouts are costs of acquiring the bets, so they escape section 165(d)'s deduction limit. (The same principle is how cannabis lawyers avoid section 280E and was behind efforts to avoid section 163(j) until the OBBBA shut these down.)

Next, nonitemizers add up only the winning sessions and report the amount. Itemizers and professionals add up all the sessions (winning and losing). If the result is a net negative, they don't report it as a deduction, thanks to old section 165(d). If it's a net positive, they report it as income. The significance of the OBBBA is that before adding up all the sessions, itemizers and professionals first weight the losing sessions by 90 percent.

Now view this from the perspective of a gambling addict, who is in the middle of a session. Suppose he's currently down \$10,000. But because of his addiction, he really does (irrationally)

expect to make back \$10,000 over his subsequent bets. The choice before him is to go home and demonstrate his good luck some other day or to stay at the table or computer and do so now.

From this gambler's perspective, the effect of the new 90 percent limit is to make it more expensive to go home. That is, if he keeps the current session open, the \$10,000 winnings will be offset by the \$10,000 loss and will be tax free. But if he nets \$10,000 in a later session, then (assuming he's an itemizer or professional) only \$9,000 of loss will apply, and he'll have \$1,000 of taxable income. Thus, the OBBBA incentivizes doubling down when you're behind.

(For nonitemizers, the dilemma is even starker and has been since before the OBBBA — going home means forgoing the losses entirely.)

This is not the first time Mike Pence has tried to fight addiction by hitting the addict. As governor of Indiana, he was accused of dragging his feet on needle exchanges to fight an HIV epidemic. Critics raised concerns about what they saw as his "failure to direct enough funding to public health and for allowing his personal religious beliefs to keep him from acting quickly to implement an evidence-based needle exchange program to slow the outbreak."<sup>2</sup> This is shortsighted. To help addicts recover, we should try to understand the incentives they face and meet them where they are.

Sincerely,

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<sup>1</sup> See Cady Stanton, "GOP Group Argues Gambling Loss Provision Should Stay As Is," *Tax Notes Federal*, Aug. 11, 2025, p. 977.

<sup>2</sup> Gretchen Frazee, "What Pence's Handling of an HIV Outbreak Means for His Coronavirus Role," *PBS News*, Feb. 28, 2020.