Prepared by the Court

LIBERTY & PROSPERITY 1776, INC, et al., Plaintiffs, v. THE STATE OF NEW JERSEY and PHILIP D. MURPHY in his capacity as Governor of the State of New Jersey, Defendants.	SUPERIOR COURT OF NEW JERSEY ATLANTIC COUNTY LAW DIVISION DOCKET NO: ATL-L-170-22 Civil Action FINAL JUDGMENT

THIS MATTER, having been brought before the Court by Chiesa Shahinian & Giantomasi PC, counsel for Defendants the State of New Jersey and Governor Philip D. Murphy in his capacity as Governor of the State of New Jersey (the "State"), by way of a motion to dismiss the Complaint of Plaintiffs Liberty & Prosperity 1776, Inc., James McLean, Karen Borek and Janis Hetrick (collectively, "Plaintiffs") with prejudice for failure to state a claim upon which relief can be granted pursuant to Rule 4:6-2(e); and by way of Plaintiffs' cross motion for Summary Judgment on all Counts of Plaintiffs' Complaint in Lieu of Prerogative Writs and for Declaratory Judgment; and the Court having considered the submissions of the parties, and oral argument; and for the reasons set forth in the accompanying thirty-nine (39) page Memorandum of Decision issued on this same date; and for good cause shown;

IT IS on this 29th day of AUGUST 2022; ORDERED and ADJUDGED that:

1. Defendants' Motion to Dismiss Plaintiffs' Complaint for failure to state a claim upon which relief can be granted is hereby GRANTED in part and DENIED in part.
2. Plaintiffs' Motion for Summary Judgment is GRANTED in part and DENIED in part.
3. Count A of Plaintiffs' Verified Complaint, seeking declaratory judgment to nullify the Original Casino Property Tax Stabilization Act (as enacted in 2016) is hereby

DISMISSED with prejudice for failure to state a claim upon which relief can be granted.

4. The 2021 Amendment to the Casino Property Tax Stabilization Act is hereby DECLARED NULL, VOID AND OF NO EFFECT.

MICHAEL J. BLEE, A.J.S.C.

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

The Honorable Michael J. Blee, A.J.S.C.

1201 Bacharach Boulevard
Atlantic City, NJ 08401-4527
(609) 594-3386

MEMORANDUM OF DECISION ON MOTION
Pursuant to Rule 1:6-2(f)

TO Seth Grossman, Esquire
453 Shore Road
Somers Point, New Jersey 08224
On Behalf of the Plaintiffs

John Lloyd, Esquire
Ronald L. Israel, Esquire
Brian P. O'Neill, Esquire
Chiesa Shahinian & Giantomasi PC
One Boland Drive
West Orange New Jersey 07052
On Behalf of Defendants, the State of New Jersey and Governor Philip D. Murphy

RE LIBERTY & PROSPERITY, 1776, INC., et al., Plaintiffs, v. THE STATE OF NEW JERSEY and PHILIP D. MURPHY in his capacity as Governor of the State of New Jersey, Defendants.	**DOCKET NO.** ATL-L-170-22

NATURE OF MOTION(S):

Defendants seek an Order dismissing Plaintiffs' Complaint in Lieu of Prerogative Writs and for Declaratory Judgment. Plaintiffs seek an Order granting summary judgment in favor of Plaintiff on all counts of the Complaint.

SUBMISSIONS BY PLAINTIFFS AND DEFENDANTS:

1. **ON JANUARY 24, 2022, PLAINTIFFS FILED A COMPLAINT IN LIEU OF PREROGATIVE WRITS AND FOR DECLARATORY JUDGMENT.**
2. **ON JUNE 3, 2022, DEFENDANTS FILED A MOTION TO DISMISS.**
3. **ON JUNE 18, 2022, PLAINTIFFS FILED OPPOSITION TO DEFENDANTS' MOTION TO DISMISS.**
4. **ON JUNE 20, 2022, PLAINTIFFS FILED A MOTION FOR SUMMARY JUDGMENT.**
5. **ON JULY 15, 2022, DEFENDANTS FILED A BRIEF IN FURTHER SUPPORT OF THEIR MOTION TO DISMISS, AND IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT.**
6. **ON JULY 27, 2022, PLAINTIFFS FILED A REPLY.**
7. **ON AUGUST 5, 2022, ORAL ARGUMENT WAS CONDUCTED.**

HAVING CAREFULLY REVIEWED THE MOVING PAPERS, AND HAVING CONSIDERED ORAL ARGUMENT I HAVE RULED ON THE ABOVE CAPTIONED MOTION(S) AS FOLLOWS:

Requested Relief

Defendants, the State of New Jersey and Governor Philip D. Murphy in his capacity as Governor of the State of New Jersey, seek an Order dismissing Plaintiffs' Complaint for failure to state a claim upon which relief can be granted. Plaintiffs, Liberty & Prosperity 1776, Inc. et al., seek an Order granting summary judgment on Counts A and/or B of Plaintiffs' Complaint in Lieu of Prerogative Writs and for a Declaratory Judgment.

Material Facts and Procedural History

The issue in this in this case is whether the Casino Property Tax Stabilization Act as enacted on May 27, 2016 (also referred to throughout as the "Original CPTSA" and the "Original Act") and/or an Amendment to same enacted on December 21, 2021 (hereinafter the "Amendment") violates Article VIII § 1 of the New Jersey State Constitution.

I. The Original CPSTA, Enacted on May 27, 2016.

In response to a precipitous decline in the city of Atlantic City's financial stability, the New Jersey Legislature passed two related pieces of legislation on May 27, 2016.

The first statute, the "Municipal Stabilization and Recovery Act" (hereinafter "MSRA"), sets forth a comprehensive procedure to aid in the stabilization and recovery of a qualifying municipality, including provisions for management, oversight, tax and financial tools otherwise unavailable to municipal and state actors.[1] N.J. Stat. § 52:27BBBB-1 et seq. The second statute, the Original CPTSA, authorized a payment-in-lieu-of-tax ("PILOT") provision which incentivized casino gaming properties to make fixed PILOT payments over a ten-year period for the purpose of stabilizing Atlantic City's finances. N.J. Stat. § 52:27BBBB-18 *et seq.* (2016).

A brief history of New Jersey casino properties is helpful to understand the Legislature's purpose in enacting the MRSA and CPTSA.

II. History of NJ Casinos.

In 1976, the voters of the State of New Jersey approved an amendment to the New Jersey Constitution which authorized casino gaming in Atlantic City:

> **solely for the purpose of providing funding for** reductions in property taxes, rental, telephone, gas, electric and municipal utilities charges or **eligible senior citizens and disabled residents of the State**, and for additional or expanded health services or benefits or transportation services or benefits to eligible senior citizens and disabled residents…"
> [N.J. Const. Art. IV § 7 ¶ 2D, emphasis added]

In 1977, the Legislature enacted the Casino Control Act ("CCA"), which sets forth the State's public policy to rehabilitate and redevelop Atlantic City for the benefit of "the general welfare, health and prosperity of the State and its inhabitants." N.J. Stat. § 5:12-1(b)(12). The CCA declares that "the economic stability of the casino operations is in the public interest." Id. Under the CCA, casino gaming properties are obligated to pay revenue taxes which in turn fulfill the constitutional mandate to reduce costs for "eligible senior citizens and disabled residents of

[1] The MRSA became operative in June 2017 at which time the City of Atlantic City was deemed a municipality in need of stabilization and recovery.

the state." See N.J. Stat. § 5:12-139 ("Fees and Taxes"). The CCA also prescribes an "investment alternative tax" ("IAT") consisting of a payment equal to 1.25% of brick-and-mortar gross revenue, and 2.5% of internet gaming gross revenue for the purpose of funding projects in Atlantic City and other cities in need of revitalization within the State through the Casino Reinvestment Development Authority ("CRDA"). N.J. Stat. § 5:12-144.1; N.J. Stat. § 5:12-95.19.

III. The "Great Recession," Atlantic City's Economic Downturn, and the Introduction of the Casino Property Stabilization Act of 2016.

2008 marked a pinnacle of success for Atlantic City casinos. Def.'s Robinson Certification ¶ 3. At that time, twelve casinos comprised the core of the City's tax base which had eclipsed $20 billion. Id. However, the legalization of casino gambling in neighboring states in the mid-2000s coupled with the "Great Recession" of 2008 resulted in a steep decline in New Jersey casino gross gaming revenue. In 2010, due to increasing economic hardship, the City consented to State supervision pursuant to the Local Government Supervision Act. N.J. Stat. §§ 52:27BB-68; 40A:40-10. Under the Supervision Act, the Local Finance Board, its Director, and the Division of Local Government Services have broad authority to manage the financial affairs of a supervised municipality, and to certify and approve all municipal budgets under the Local Budget Law. Id.

The City's fiscal challenges continued to increase due, in part, to successful casino property tax appeals. See, e.g. Marina Dist. Dev. Co., LLC v. City of Atl. City ,27 N.J. Tax 469, 477 (2013) (hereinafter "the "Borgata Tax Appeal"), *aff'd* 28 N.J. Tax 568 (App. Div. 2015) (holding that the Borgata was entitled to a significant reduction in property tax assessments based on an "income approach to valuation," under which the court found that the property's true market value had significantly declined in the mid-2000s). Following the Borgata Tax Appeal,

the City faced costly tax appeals from the other casino gaming properties. From 2008 to 2016, the City's tax base decreased from approximately $22.2 billion to $6.4 billion. Def.'s Robinson Certification at ¶ 3. In turn, municipal tax revenue decreased by $63 million. Id.

IV. The Original CPTSA Enacted in 2016.

By 2016, four of the City's twelve casinos had closed. Despite being under the State's supervision since 2010, the City continued to operate without a balanced budget, and incurred new debt in order to pay for municipal operating expenses. Pl.'s Statement of Material Facts at ¶¶ 15-17. As a result of the City's precipitous financial decline, the Legislature proposed two pieces of legislation designed to drastically cut municipal spending and increase municipal revenue. S1711 (2016); S1715 (2016). On May 27, 2016, Governor Chris Christie signed the Municipal Stabilization and Recovery Act ("MSRA") and the Casino Property Tax Stabilization Act ("CPTSA") into law. N.J. Stat. § 52:27BBBB-1 *et seq*. The stated purpose of Original CPTSA was to "[devise] a program that avoids costly assessment appeals for both the casino operators and Atlantic City, and that provides a certain mandatory minimum property-tax related payment by casino properties that Atlantic City can rely upon each year." NJ Stat § 52:27BBBB-19 (2016).

The Legislature also found that:

> "…[i]t is a primary public purpose to grant casino gaming properties an exemption from normal property taxation for a limited period of time, in exchange for a guaranteed mandatory minimum payment in lieu of property taxes, because Atlantic City will be able to depend on a certain level of revenue from casino gaming properties each year, making the local property tax rate and need for State aid less volatile; casino revenue supports many social programs, such as property tax relief for seniors, medical assistance, housing for disabled residents, transportation assistance, and other social services programs for elderly and disabled New Jerseyans; …; and because, with a long-term predictable payment in lieu of property tax liability, casino gaming properties will know how much of their

> income will be required to pay their obligation to Atlantic City, Atlantic County, and the Atlantic City School District. This ability to depend on a stable payment in lieu of property tax obligation will in turn help to stabilize the casino business models and the workforce required to run those business models, and the casino gaming properties will be better able to compete with out-of-State casino gaming properties in the region to preserve, and perhaps grow, the many benefits that casino gaming has brought to the State, and more particularly, to the Atlantic City region.
>
> [NJ Stat 52:27BBBB-19 (2016)]

To achieve the dual goals of avoiding casino property tax appeals while maintaining payments that approximated property taxes, the Original CPTSA provided a formula for determining base payment-in-lieu-of-taxes ("PILOT") for calendar years 2017 through 2026. The Original Act provided:

> "for calendar year 2018 and for each calendar year after, the amount of payment in lieu of property taxes owed to Atlantic City shall increase by two percent per year in every year in which there is no upward adjustment to the base amount of the payment in lieu of taxes from the previous year…"
>
> [N.J. Stat. § 52:27BBBB-20c(3)(b) (2016)]

Under the Original Act, "upward adjustments" of PILOT was contingent upon each casino's Gross Gaming Revenue ("GGR") for the preceding year. The Original CPTSA defined GGR as "the total amount of revenue raised through casino gaming from all of the casino gaming properties located in Atlantic City as determined by [the Division of Gaming Enforcement]." N.J. Stat. 52:27BBBB-20a (2016). From the time the Act became operative until June 2021, the Division of Gaming Enforcement ("DGE") calculated GGR to include brick-and-mortar revenue and internet gaming revenue. In 2018, New Jersey authorized sports betting. See Murphy v. National Collegiate Athletic Association, 137 S. Ct. 1461 (2018); N.J. Stat. § 5:12A-10 *et seq.* Thereafter, GGR was calculated to include revenue from online sports wagering.

Formula For Determining the Base Amount Of PILOT Owed Under the Original 2016 Act			
Calendar Years	**If the GGR* in preceding calendar year is between:**	**Then the base amount shall be:**	**Or, in the case of an <u>upward</u> adjustment**:**
2017	$120,000,000 (statutorily prescribed, no if/then formula utilized)		
2018-2026	$3.4 billion and $3.8 billion	$165 million	$15 million more than the PILOT in the previous year, whichever is greater.
	$3.0 billion and $3.4 billion	$150 million	$20 million more than the PILOT in the previous year, whichever is greater.
	$2.6 billion and $3.0 billion	$130 million	$10 million more than the PILOT in the previous year, whichever is greater.
	$2.2 billion and $2.6 billion	$120 million	$10 million more than the PILOT in the previous year, whichever is greater.
	$1.8 billion and $2.2 billion	$110 million	$20 million more than the PILOT in the previous year, whichever is greater.
	$1.8 billion or less	$90 million	
** Prior to the 2021 Amendment, the DGE calculated GGR by totaling each casino's brick-and-mortar revenue, internet gaming revenue, and internet sports wagering revenue.* ***However, if no upward adjustment to the PILOT base amount from the previous year, then PILOT increases by 2%.*			

The Original Act also provided that, if in any year, a casino's PILOT exceeded its 2015 property tax payment, it would receive a "credit against a separate tax paid by casinos known as the Investment Alternative Tax." N.J. Stat. § 52:27BBBB-19. The crediting mechanism was provided for only the first five years of the program, through the year 2021. <u>Id.</u>

The Casino Control Act ("CCA") prescribes an "Investment Alternative Tax" ("IAT") to be paid on casino gross revenues in order to fund the CRDA. The Original CPTSA "allocated [the IAT] to Atlantic City for the purposes of paying debt service" for the ten-year duration of the PILOT program. N.J. Stat. § 52:27BBBB-25 (2016).

Under the Original Act Each casino was also required to make a separate "additional payment" of $5,000,000 each year from 2019 to 2023 to be applied to the Atlantic City budget. N.J. Stat. § 52:27BBBB-21.

The Legislature found in 2016 that the stabilization of the casino industry was a "primary public purpose" because it would "allow them to remain open for business and to pay their employees good wages and benefits including health care and pension benefits." Id.

V. Challenges to the Original CPTSA Resulting in 2018 Settlement Agreement.

In 2016 and 2017, two groups of plaintiffs filed separate actions against the State of New Jersey challenging the legality and constitutionality of the Original CPTSA. Under docket ATL-L-777-16, Liberty and Prosperity 1776, Inc. et al., (Plaintiffs in the present matter) sought to obtain the City of Atlantic City's compliance with the Local Budget Law and challenged the constitutionality of a version of the Act then pending in the Legislature. Under docket ATL-L-1254-17, Atlantic County and local municipalities sought protections related to the Act's provision allowing Atlantic City casinos to make PILOT payments, and also challenged the constitutionality of the CPTSA. Both parties challenged the Original CPTSA on grounds that the Act violated Article VIII § 1 of the New Jersey Constitution (the "Uniformity Clause") by giving preferential tax treatment to the casino industry. The Constitutional issues raised in 2016 and 2017 were never fully litigated. The two cases were consolidated and ultimately amicably resolved on April 20, 2018 at which time all terms of a settlement agreement between the parties were placed on the record by counsel. A formal written Consent Order was executed and filed by the Honorable Julio L. Mendez, A.J.S.C., on June 18, 2018. Under the Consent Order, Atlantic County Plaintiffs reached a compromise regarding casino PILOT payments to be allocated to the County to fund County services. Under paragraph 9 of the Consent Order, Liberty & Prosperity

Plaintiffs, who represented on the record that they were satisfied that the terms of the Consent Order addressed their concerns regarding the City's violation of the Local Budget Law, and that the PILOT payments adequately approximated real property tax, voluntarily dismissed their Complaint without prejudice. Under the terms placed on the record on April 20, 2018, and the terms of the June 18, 2018 Consent Order, Liberty Plaintiffs reserved the right "to come to court and enforce [the] agreement down the line… to protect the local taxpayers in the event there is no appropriate funding…" ATL-L-1254-17, April 20, 2018 Transcript at pp. 20-24.

VI. PILOT Payments from 2017 through 2021.

From its first year of operation through 2021, casinos made the following approximate PILOT payments pursuant to the terms of the Original Act: $120 million (2017), $130 million (2018), $132.6 million (2019), $152.6 million (2020), and $130 million (2021). Def.'s Glaum Certification at ¶ 4. In addition to the PILOT payments, casinos paid the following approximate amounts in IATs to cover the City's debt service: $21 million (2017), $10 million (2018), $16 million (2019), $5 million (2020), and $30 million (2021), as well as separate additional payments of $15 million for year 2017, $10 million for 2018, and $5 million for years 2019, 2020 and 2021. Id. at ¶¶ 6-7.

As a direct result of the implementation of the Original CPTSA, the City was able to access the municipal bond market three times during 2017 and 2018. Def.'s Suarez Certification at ¶ 12. In turn, the bond issuances enabled Atlantic City to negotiate, resolve and fund all outstanding historic property tax appeals filed by casinos and pending prior the Act's implementation, and fund repayment of certain pension and health payments the City had deferred during its fiscal crisis. Id. at ¶ 13.

VII. The COVID-19 Pandemic and Exponential Growth in Internet Gaming.

Despite losses due to brick-and-mortar closures at the early stages of the pandemic, Atlantic City casinos experienced unprecedented growth in internet casino gaming and internet sports wagering in 2020 and 2021. See chart below, and also Def.'s Br. in Support of Motion Dismiss at p. 15; Pl.'s Br. in Opp. To Motion Dismiss, Ex. EE ("DGE Summary of Gaming and Atlantic City Taxes and Fees").

Year	Brick-and-Mortar Gross Revenue	Internet Casino Games Gross Revenue	Brick-and-Mortar Sports Wagering Gross Revenue	Internet Sports Wagering Revenue	Total Gross Revenue
2019	Approximately $2.7 Billion	Approximately $483 Million	Approximately $17 Million	Approximately $106 Million	Approximately $3.3 Billion
2020	Approximately $1.4 Billion	Approximately $972 Million	Approximately $11 Million	Approximately $154 Million	Approximately $2.6 Billion
2021	Approximately $2.6 Billion	Approximately $1.4 Billion	Approximately $18 Million	Approximately $288 Million	Approximately $4.2 Billion

Derived from Pl.'s Ex. EE ("DGE Summary of Gaming and Atlantic City Taxes and Fees from Inception of Casino Gaming in 1978 through 2021"), and from the following DGE reports from December 2019, 2020, and 2021: DGE-101, DGE-105 and DGE-107, available online at https://www.njoag.gov/about/divisions-and-offices/division-of-gaming-enforcement-home/financial-and-statistical-information/. The DGE Summary of Gaming Taxes and Fees reports the annual taxes paid by casino properties from 2000 to 2021, differentiating between brick-and-mortar revenue taxes paid, and internet wagering taxes paid due to differences in tax rates. The taxes paid closely correspond to the gross gaming revenue reported by each casino. DGE reports 101, 105 and 107 report actual gross revenue from each casino property. DGE-101 reports detail brick-and-mortar casino gaming (table games, poker, slot machines, etc.) gross revenue to-date. DGE-105 reports detail internet casino gaming gross revenue. DGE-107 reports detail, in separate sections, brick-and-mortar and internet sports wagering gross revenue. See Addendum A for a summary gross revenue as reported by each casino in DGE reports.

VIII. The 2021 CPTSA Amendment.

In June of 2021, approximately five years into the ten-year PILOT program under the Original Act, the Senate introduced a bill to amend the Act to reduce casino PILOT obligations for years 2022-2026. On December 21, 2021, Governor Philip D. Murphy signed the Amendment into law.

In the Amendment's "[f]indings, declarations relative to casino gaming properties," "[t]he Legislature notes, with "interest and approval, the stabilizing effect that the [Original Act] has had on the finances of the Atlantic City and the casino gaming industry during the first five years of the law." N.J. Stat. §52:27BBBB-19.1c. The Legislature also made the following findings in support of the Amendment:

> "…two additional casino gaming properties have opened in Atlantic City since the enactment of the "Casino Property Tax Stabilization Act," P.L.2016, c.5 (C.52:27BBBB-18 et seq.), and that Atlantic City's overall financial condition is more stable since the casino gaming properties began making PILOT payments. This financial stability benefits the casinos, their employees, property taxpayers in Atlantic City, and all New Jersey residents."
>
> [Id.]

Despite casino gross revenue totaling approximately $4.2 billion in 2021, the Legislature expressed concerns that the "financial stability achieved may be adversely impacted by certain provisions of the current version of the [Act]."[2] Specifically, the Legislature cited concerns that casinos would not be able to fulfill their obligations under the Original Act due to (1) the expiration of an investment alternative tax ("IAT") crediting mechanism set to expire at the end of 2021, and (2) losses due to pandemic-related brick-and-mortar closures. N.J. Stat. § 52:27BBBB-19.1d-e.

In light of these concerns, the Legislature declared that there was "a compelling public purpose" to reduce the casinos' PILOT obligations for the remaining five years of the program for the purpose of "[ensuring] that Atlantic City continues to receive sufficient PILOT payments and IAT payments to fund its municipal budget." Id. at 19.1f.

[2] At oral argument on the cross-motions, the Court asked both parties whether there were genuine issues of material fact with regard to the Legislature's purpose in enacting the Original Act and/or Amendment. Counsel for the State acknowledged that the legislative history for the Amendment was sparse, and that the Legislature's "analysis [for same] is concededly not in the record." Perhaps for this reason, both parties represented that there was no need for further discovery.

Under the 2021 Amendment, the Legislature made a number of changes to the calculation and distribution of PILOT owed by casino properties for the remaining five years of the PILOT program (2021 through 2025). First, the Amendment redefined GGR to exclude "revenue derived from Internet casino gaming and Internet sports wagering during calendar years 2021 through 2026…" N.J. Stat. § 52:27BBBB-20a (2021). Second, the Amendment reset the if/then formula to determine "upward adjustments," effectively capping the amount of PILOT at $120 million. Id. at c(3) (2021). Third, the Amendment reset the base PILOT amount owed in 2022 to $110 million. Id. Fourth, the Amendment provides an alternative credit mechanism for years 2022 to 2026, apparently designed to lessen the impact of the expiration of the IAT credit. N.J. Stat. § 52:27BBBB-20 (2021).

Fifth, the Amendment extends the separate "additional payment" of $5 million per year (set to expire under the Original Act in 2023) through 2026. N.J. Stat. § 52:27BBBB-21 (2021). Lastly, the Amendment redirects the IAT (originally allocated solely to "Atlantic City for the purposes of paying debt service") to: (1) Atlantic City for the purpose of paying debt service, but if the IAT amounts exceed the debt service in any year, then to (2) the Casino Reinvestment Development Authority, (3) to the "Clean and Safe Fund" established by the Amendment for the benefit of Atlantic City, to the "Infrastructure Fund" established by the Amendment for the benefit of Atlantic City and to (4) Atlantic City "for general municipal purposes." N.J. Stat. § 52:27BBBB-25 (2021). The Amendment caps the amounts to be paid into the designated funds and prescribes reimbursement of excess funds to casino gaming properties in the event that the IAT exceeds a certain amount per year through 2026. Id.

The Court summarizes the Amendment's tiered formula for determining the Aggregate Pilot Payment in the following table:

<table>
<tr><th colspan="4">2021 Amendment</th></tr>
<tr><th>Calendar Years</th><th>If the GGR in preceding calendar year is between:</th><th>Then the base amount shall be:</th><th>Or, in the case of an <u>upward</u> adjustment:</th></tr>
<tr><td>2022</td><td colspan="3">No if/then formula employed to determine the base amount for 2022. The Amendment simply provides that “the amount of PILOT owed to Atlantic City for calendar year 2022 shall be $110 million.”</td></tr>
<tr><td rowspan="4">2023-2026</td><td>If the GGR in preceding calendar year is:</td><td>Then the base amount shall be:</td><td>Or, in the case of…</td></tr>
<tr><td>Less than $2.3 billion</td><td>$100 million</td><td>a downward adjustment, $10 million less than the PILOT in the previous year, whichever is greater.</td></tr>
<tr><td>Between $2.3 billion and $2.9 billion</td><td>$110 million</td><td>an upward adjustment, $10 million more than the PILOT in the previous year and in the case of downward adjustment, $10 million less than the PILOT in the previous year, whichever is greater.</td></tr>
<tr><td>Greater than $2.9 billion</td><td>$120 million</td><td>an upward adjustment, $10 million more than the PILOT in the previous year, whichever amount is greater.</td></tr>
<tr><td colspan="4"><u>See</u> N.J. Stat. § 52:27BBBB-20c.(3) (2021).</td></tr>
</table>

Prior to passing the Amendment, the Senate Budget and Appropriations Committee considered the following “Fiscal Impact” statement from the Office of Legislative Services (“OLS”) detailing findings on the effect of the Amendment on the city of Atlantic City, the County, and the County school district:

> “The bill will result in a loss of local payment in-lieu of tax (PILOT) revenues in the calendar years 2022 through 2026 likely falling in a range from $30 million to $65 million each year. Removing gross revenues generated by Internet casino gaming and Internet sports wagering will result in lower annual totals of gross gaming revenue (GGR) and reduce the PILOT due (i.e. payable) to the City of Atlantic City, Atlantic County, and the Atlantic County School District.
>
> A portion of the municipal revenue loss will be offset by: 1) Other casino-non-tax payments of $5 million per year in calendar years 2024 through 2026, and 2) the reallocation of a portion of

> investment alternative tax (IAT) revenues not required to the Casino Reinvestment Development Authority (CRDA) and municipal debt service.
>
> The State may also receive additional revenues because the bill requires a portion of the excess IAT revenues to be distributed to the CRDA. IAT revenue collections change annually and the OLS cannot project the amount of unreserved IAT funds that may be available to the State and the City of Atlantic City."
>
> [OLS, "Legislative Fiscal Estimate" Report on SB 4007, December 21, 2021]

As counsel for the State represented at oral argument, a record of the Legislature's analysis of the Amendment's impact is "concededly not in the record." The legislative history includes three brief reports: the OLS Fiscal Estimate Report (quoted above), a three (3) page statement from the Senate Community and Urban Affairs Committee, and a three (3) page report from the Senate Budget and Appropriations Committee.[3] The Court takes judicial notice of published DGE reports that were available online at the time the Amendment was passed, reporting year-to-date gross revenue from brick-and-mortar and internet casino gaming and sports wagering revenue as well as quarterly statistical reports.[4] November 2021 DGE reports (published prior to the Amendment's enactment) demonstrate that, at the end of November 2021, casino gross gaming revenue was

[3] Senate Community and Urban Affairs Committee Statement (Nov. 15, 2021); Senate Budget and Appropriations Committee Statement (Dec. 6, 2021). On December 6, 2021, the Senate Budget and Appropriations Committee proposed an amendment to *lower* the amount of "additional payments" paid by casinos from 2022 through 2026 under the Amendment from $5 million per casino per year to a $5 million aggregate payment per year. The Legislative record for S 4007 (and identical bill number A 5587) is available at http://www.njleg.state.nj.us/bill-search/2020/S4007.

[4] Monthly casino revenue reports, which report year-to-date gross revenue for brick-and-mortar gaming as well as internet casino gaming and internet sports wagering are published monthly by the DGE under "Financial and Statistical Information" at https://www.njoag.gov/about/divisions-and-offices/division-of-gaming-enforcement-home/financial-and-statistical-information/ (accessed Aug. 18, 2022). Although the monthly DGE reports do not appear of record, they are judicially noticeable pursuant to R. 1:6-6 and N.J.R.E. 201(b)(3) ("specific facts and propositions of generalized knowledge which are capable of immediate determination by resort to sources whose accuracy cannot reasonably be questioned."). Additionally, the Court finds that the taxes reported on brick-and-mortar and online gaming in Pl.'s Exhibit EE ("DGE Summary of Gaming and Atlantic City Taxes and Fees from Inception of Casino Gaming in 1978 through 2021") correspond to the total gaming revenue reported in the DGE-101, DGE-105, and DGE-107 monthly reports.

approaching **$3.9 billion** (approximately $2.3 billion in brick-and-mortar gaming revenue, approximately $1.2 billion in internet casino game revenue, approximately $16 million in brick-and-mortar sports wagering revenue, and approximately $264 million in internet sports wagering revenue).

Ultimately, the Legislature declared that the Amendment was "in the best interest of the casino gaming industry…, the best interests of Atlantic City, and in the best interests of the State's senior and disabled residents who rely on casino revenue… to reduce property taxes as well as rentals, telephone, gas, electric and utility charges…" N.J. Stat. § 52:27BBBB-19.1f.

IX. The Present Action.

In both the Original Act and the Amendment, the Legislature relies on Article VIII, § I, paragraph 2 of the New Jersey Constitution for the power to enact the payment-in-lieu of tax scheme. See N.J. Stat. § 52:27BBBB-19.1g (2021); 19 (2016). Plaintiffs challenge the Original Act and the Amendment as an unconstitutional exercise of legislative power on the basis that Atlantic City casino properties do not fall within any of the enumerated exemptions enumerated within Article VIII, § I, paragraph 2.

Parties' Contentions

The State's Motion to Dismiss

The State argues that Plaintiffs' Complaint should be dismissed because both the Original Act and Amendment fall within a permissible public purpose exemption under Article VIII § 1 of the State Constitution. The State argues that the Court must recognize the sound public purpose of the Act: (1) to remedy the City's insolvency, (2) for the benefit of the citizens of the City, the County, the region and the State. The State contends that, under the applicable legal

standards, both the Original Act and the Amendment must be afforded a high degree of deference and a strong presumption of constitutionality.

Plaintiff's Opposition to the Motion to Dismiss, and Cross Motion for Summary Judgment

In opposition to the State's Motion to Dismiss and support of Plaintiff's Cross Motion for Summary Judgment, Plaintiff argues that Atlantic City casino properties do not fall within any of the exemptions enumerated in Article VIII § 1. Plaintiffs contend that there is no "public purpose" exemption for casinos under Article VIII, § 1, and that the Uniformity Clause denies the Legislature the power to create such an exemption without amending the State Constitution.

The State's Opposition to Plaintiff's Cross-Motion and in Further Support of the Motion to Dismiss

In further support of their Motion to Dismiss and in opposition to Plaintiff's Motion for Summary Judgment, the State argues that Plaintiffs' argument fails to acknowledge the unique circumstances of the City and the casino industry from a constitutional perspective. The State contends that the CPTSA is a considered, rational law designed to effectuate compelling public purposes and is, therefore, a valid exemption from the requirements of the Uniformity Clause. The State also argues that Atlantic City's casino gaming properties were authorized by a constitutional amendment for the exclusive purpose of providing funding for public purposes. The State contends that the CPTSA does not favor the casino industry. Rather, the State contends that it is a statutory scheme narrowly tailored to achieve the maximum benefit from casino PILOT and other tax payments during the City's designation as a municipality in need of stabilization and recovery.

Plaintiff's Reply

In reply, Plaintiffs argue that, even if the Original CPTSA was enacted with the purpose of financial rehabilitation, the 2021 Amendment lacks such a purpose. Plaintiffs contend that the

Amendment is similar to the special tax laws for railroad property that provoked the adoption of the Uniformity Clause and was enacted to benefit the casino industry. Plaintiffs argue that, if the Court accepts the State's argument that Atlantic City casinos service a public purpose, then every commercial for-profit entity would also qualify for special treatment.

Discussion

I. Legal Standard on Motion to Dismiss.

A motion to dismiss for failure to state a claim upon which relief can be granted is governed by Rule 4:6-2(e) of the New Jersey Court Rules. The rule "permits litigants, prior to the filing of a responsive pleading, to file a motion to dismiss an opponent's complaint, counterclaim, cross-claim, or third-party complaint" Malik v. Ruttenberg, 398 N.J. Super. 489, 493 (App. Div. 2008). The proper analytical approach to such motions requires the motion judge to 1) accept as true all factual assertions in the complaint, 2) accord to the nonmoving party every reasonable inference from those facts, and 3) examine the complaint "in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim." Id. at 494 (*quoting* Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 746 (1989)).

The motion to dismiss should be approached with great caution and should only be granted in the rarest of instances. Sickles v. Cabot Corp., 379 N.J. Super. 100, 106 (App. Div. 2005). The allegations are to be viewed "with great liberality and without concern for the plaintiff's ability to prove the facts alleged in the complaint." Id. The plaintiff's obligation on a motion to dismiss is "not to prove the case but only to make allegations, which, if proven, would constitute a valid cause of action." Id. (*quoting* Leon v. Rite Aid Corp., 340 N.J. Super. 462, 472, (App.Div.2001)).

II. Legal Standard on Cross-Motion for Summary Judgment.

Similarly, summary judgment must be granted if "the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). The trial court's "function is not . . . to weigh the evidence and determine the truth . . . but to determine whether there is a genuine issue for trial." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. at 520 (1995) (*quoting* Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986)). The trial judge must consider "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party." Id. When the facts present "a single, unavoidable resolution" and the evidence "is so one-sided that one party must prevail as a matter of law," then a trial court should grant summary judgment. Id.

III. Legal Standard on Complaint in Lieu of Prerogative Writs.

Due process ensures that "a law shall not be unreasonable, arbitrary or capricious, and that the means selected shall bear a rational relation to the legislative objective sought to be obtained." Robson v. Rodriguez, 26 N.J. 517, 523 (1958) (internal citations omitted). In Reingold v. Harper, the New Jersey Supreme Court explained that:

> Factual support for the legislative judgment is to be presumed. Barring a showing *contra*, the assumption is that the measure rests upon some rational basis within the knowledge and experience of the Legislature. *Metropolitan Casualty Insurance Co. v. Brownell*, 294 *U.S.* 580, 55 *S. Ct.* 538, 79 *L. Ed.* 1070 (1935). While the existence of a rational basis for the legislation may be assailed by proof of facts beyond the sphere of judicial notice, "by their very nature such inquiries, where the legislative

> judgment is drawn in question, must be restricted to the issue whether any state of facts either known or which could reasonably be assumed affords support for it;" and where there was a fairly arguable question as to the extent of the need, the decision was for the legislative body and "neither the finding of a court arrived at by weighing the evidence, nor the verdict of a jury can be substituted for it." *United States v. Carolene Products Co.*, 304 *U.S.* 145, 58 *S. Ct.* 778, 82 *L. Ed.* 1234 (1939). As said in that case, such administrative difficulty as there may be is a factor to be considered in determining the need. To the same effect: *South Carolina State Highway Department v. Barnwell*, 303 *U.S.* 177, 58 *S. Ct.* 510, 82 *L.Ed.* 734(1939).
>
> Reingold v. Harper, 6 N.J. 182, 196-87 (1951).

IV. Standard for Declaratory Judgment.

The Declaratory Judgment Act ("DJA") N.J. Stat. § 2A:16-52 empowers all New Jersey courts to "declare rights, status or other legal relations, whether or not further relief is or could be claimed…" N.J. Stat. § 2A:16-52. Pursuant to the DJA, a court may determine rights where an interested party is affected by a statute, or challenges the validity of same. N.J. Stat. § 2A:16-53.

V. The Court Finds that the Original Act Falls Within a Permissible "Public Purpose" Exemption Under Article VIII § 1 ¶ 2 of the State Constitution, and was Rationally Related to the Objective the Legislature Sought to Obtain.

Under the terms placed on the record on April 20, 2018, and the terms of the June 18, 2018 Consent Order, Liberty Plaintiffs reserved the right "to come to court and **enforce [the] agreement** down the line… to protect the local taxpayers in the event there is no appropriate funding…" ATL-L-1254-17, April 20, 2018 Transcript at pp. 20-24 (emphasis added). However, it is unclear whether Liberty Plaintiffs reserved the right to reassert their constitutional challenge to the Original Act. Nevertheless, for the reasons set forth below, the Court finds that the Original CPTSA constitutes a valid exemption for a permissible public purpose.

A. The History of Article VIII § I Uniformity Clause and Exemption Clause.

Article VIII § I of the New Jersey State Constitution was passed by voter referendum in 1947 for the purpose of preventing preferential tax treatment of one industry over another. New Jersey State League of Municipalities v. Kimmelman, 105 N.J. 422 (1987).

Article VIII § I paragraph 1(a), (hereinafter the "Uniformity Clause") states:

> Property shall be assessed for taxation under general laws and by uniform rules. All real property assessed and taxed locally or by the State for allotment and payment to taxing districts shall be assessed according to the same standard of value, except as otherwise permitted herein, and such real property shall be taxed at the general tax rate of the taxing district in which the property is situated, for the use of such taxing district.
>
> [N.J. Const. art. VIII, § 1, ¶ 1(a).]

Article VIII § I paragraph 2 (hereinafter the "Exemption Clause") preserves the Legislature's right to grant certain historic exemptions from taxation "by general laws":

> Exemption from taxation may be granted only by general laws. Until otherwise provided by law all exemptions from taxation validly granted and now in existence shall be continued. Exemptions from taxation may be altered or repealed, except those exempting real and personal property used exclusively for religious, educational, charitable or cemetery purposes, as defined by law, and owned by any corporation or association organized and conducted exclusively for one or more of such purposes and not operating for profit.
> [N.J. Const. art. VIII, § 1, ¶ 2.]

At the time of their ratification, "[t]he evil that the amendments sought to cure was the still-favorable treatment given to one industry, then the railroad industry." Kimmelman, 105 N.J. at 436. The New Jersey Supreme Court briefly recaps the history and purpose of the uniformity clause in 2nd Roc-Jersey as follows:

> "The history of the Constitution's tax clause underscores New Jersey's strong and firm policy that strictly mandates uniformity in the imposition of real property taxes.
>
> During the first hundred years of the post-revolutionary period, from 1776 to 1875, the New Jersey Constitution contained no clause

> relating to taxation… In 1875, the New Jersey Constitution of 1844 was amended to include a tax provision.
>
> > Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value."
> >
> > [1844 New Jersey Constitution, art. IV, sec. 7 , para. 12.]
>
> "That clause was interpreted to empower the Legislature to tax classes of property differently. As a result, real property taxation abuses occurred under the 1875 tax clause. Particularly, railroads were continuously granted preferential treatment… The inequalities of real property taxation increased with the passing of the Railroad Tax Law of 1941, which fixed a tax rate for railroad property that was well below the rate of taxation for real property. In Jersey City v. Kelly, 134 N.J.L. 239, 47 A.2d 354 (1946), the court of Errors and Appeals upheld that statute… The *Kelly* case, and the underlying railroad legislation, was a catalyst that precipitated the reworking of the constitutional tax clause."
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> [2nd Roc-Jersey, 158 N.J. at 590 (internal citations omitted *citing* Kimmelman, 105 N.J. 422).]

The tax clause of the State Constitution was first amended in 1875 to address "preferential taxation" in favor of the railroads. Id. at 428. From 1875 to 1947, the tax clause required only that "[p]roperty [] be assessed for taxes under general laws, and by uniform rules, according to its true value." Id. Unfortunately, the 1875 amendment continued to allow for preferential treatment of railroad (and conceivably, other industries) because, under the former tax clause, "exemption by classification [was] upheld for purposes of industrial encouragement." Id. at 429-30 (internal citations omitted).

In Kimmelman, the Court held that the requirement of uniformity superseded the Legislature's power of exemption, and precluded exemption from the general burden of taxation for the purpose of "aid[ing] an ailing industry." 105 N.J. at 424, 436. The Kimmelman Court thoroughly treats the historical purpose of the modern Exemption Clause, which the Court

explains was intended to preserve the Legislature's power to grant exemptions "in the historical mold of the public purpose." Id. at 435.

In the early 1940s, a campaign arose for a new State Constitution. Id. At that time, an amendment was proposed to give special tax status to veterans. Id. at 430-31. The proposed credit for veterans sparked much debate over whether certain historic exemptions, including exemptions for charity, religious purposes and education, should be enumerated under the new Constitution.[5] Id. Ultimately, a political compromise was reached whereby historic exemptions were preserved while tax exemptions for the purpose of "aid[ing] an ailing industry" "[were] forever barred." Id. at 435-36. The summary of the tax clause presented to voters in 1947 read as follows:

> *EXISTING TAX EXEMPTIONS ARE GIVEN CONSTITUTIONAL RECOGNITION*
>
> The present statutory exemptions of property used for religious, educational, charitable and cemetery purposes are guaranteed by the new Constitution. A property tax exemption of $500 for veterans also becomes part of the Constitution.
>
> Id. at 436 (internal citations omitted).

The Kimmelman Court notes that "when the delegates dealt with the exemption power, they considered it as being exercised in the historical mold of the public purpose – then seen primarily as education, charitable, and religious purposes." Id. at 437.

[5] "[D]uring the 1944 campaign on the constitutional revision, a controversy arose over whether the 'designation of one (the veterans) * * * would exclude all others (religion, education, charity): *expressio unius est exclusio alterius.*'" Kimmelman, 105 N.J. at 430 (quoting *Proceedings of the State of New Jersey Constitutional Convention* of 1947 (S. Goldmann & H. Crystal ed. 1951, vol. 2 at 1695).

B. Four Seminal New Jersey Supreme Court Cases Addressing Uniformity and Exemption.

A number of New Jersey Supreme Court cases have challenged statutes addressing local property taxation as unconstitutional violations of Article VIII § I ¶¶ 1-2 (the "Uniformity Clause" and "Exemption Clause"). The resulting jurisprudence has established a number of clearly articulated standards.

In Kimmelman, the New Jersey Supreme Court struck down a statute designed to address "a severe crisis in the housing industry occasioned by the effect of double-digit inflation and recession in the early 1980s." Id. at 431. The statute at issue consisted of two short paragraphs exempting unoccupied newly constructed residential dwellings from property taxation for up to two years. See L. 1982 c. 220. Although the statute did not include purpose or findings statements, the Assembly Committee report for the Act at issue in Kimmelman stated findings that taxes on unoccupied newly constructed structures "created financial hardship for builders and developers who cannot consummate sales of properties upon which they have constructed new dwellings," and that "to alleviate much of this financial hardship to an already depressed building industry, this bill would provide… [an exemption] until a certificate of occupancy has been issued…" Kimmelman, 105 N.J. at 436-37, *quoting* Assembly Municipal Government Committee Statement, Assembly No. 855, L. 1982, c. 220. The court held that the Committee Statement made it "clear that the purpose of the challenged provision [was] to aid an ailing industry." Id. at 436.

Exemptions not explicitly enumerated within Article VIII § I have been granted by constitutional amendment for: farmland, senior citizens, disabled persons, homestead rebates, and areas in need of rehabilitation. However, at the time Kimmelman was decided, the Attorney General argued that the exemption power extended beyond enumerated exemptions in Article

VIII to certain "public purpose" exemptions including "exemptions for property improvements, such as fallout shelters, pollution control devices, automatic fire systems, and solar heating devices…" Id. at 438. The Kimmelman majority did not reach the "public purpose" exemption issue. However, the Court opined that "improvements… to advance purposes generally beneficial to society as a whole unrelated to a particular industry or the status of the taxpayer… would appear to be much more in accord with the history and tradition that surround this power of exemption." Id. at 439.

Justice Clifford, concurring, expressed concerns that the majority opinion "might leave one with the impression that discriminatory classification and exemption of real property is unconstitutional only when the purpose of the offending legislation is to benefit a particular industry." Id. at 440. Justice Clifford recognized that the majority opinion appeared to leave "for another day the possibility that a 'public purpose' classification for partial exemption from real property taxation can be achieved without a constitutional amendment" Id.

While no case has relied exclusively on a "public purpose" exemption to-date, the Supreme Court has continued to signal that such an exemption is permissible under Article VIII § I.

Several years after Kimmelman, the Supreme Court upheld a statute granting exemption based on non-profit use of a historic building, relying on Kimmelman for the premise that "public-oriented improvements 'plainly appear to advance purposes generally beneficial to society as a whole unrelated to a particular status of the taxpayer.'" Town of Morristown v. Woman's Club of Morristown, 124 N.J. 605, 614-15 (1991). The Woman's Club Court, when assessing the constitutionality of the statute before it, asked "whether the exemption is based on a

permissible classification and if so, whether the classification serves a public purpose." Id. at 614.

In Town of Secaucus v. Hudson County Bd. Of Taxation, the Court noted that:

> [New Jersey courts have] declined to take the listing of the exemption clause literally (i.e. confined to property used exclusively for religious, educational, charitable, or cemetery purposes, by non-profit organizations), and instead [have] looked to 'whether the exemption is based on a permissible classification and if so, whether the classification serves a public purpose.
>
> 133 N.J. 482, 503 (1993) (internal citations omitted).

The Hudson Court prescribed a two-step inquiry to determine whether a statute violates Article VIII § I. Id. at 503-04. First, Hudson requires a court to "look to whether real property is being taxed at nonuniform rates within a taxing district." Id. "[I]f so," the court must then ask "whether the property exempted from taxation falls within the constitutionally recognized-exemptions of the exemption clause." Id.

Finally, in 2nd Roc-Jersey Associations v. Town of Morristown, the Court recognized that:

> while real property tax "exemption[s]" must be based on the use or some other characteristic of the property, rather than the status of the owner… [t]he drafters [of the Exemption Clause] did not intend to prohibit more general tax benefits or burdens to business or industry as a whole, such as the tax benefits provided by empowerment zones, reduced sales taxes in inner cities, or the tax burdens imposed by special improvement districts."
>
> [2nd Roc-Jersey Associations v. Town of Morristown, 158 N.J. 581, 599-600 (1999), *quoting* Fanelli v. City of Trenton, 135 N.J. 582 (1994).]

Based on the Supreme Court's explanation of the exemption power in the above cases, preferential tax treatment for the purpose of aiding an ailing industry is patently unconstitutional. Kimmelman, 105 N.J. at 436. However, this Court finds that, under Article VIII § I, the Legislature retains the power to grant an exemption from conventional taxation so long as the

exemption is: (1) based on the use of a property (and not the status of the owner), and (2) "to advance purposes generally beneficial to society as a whole unrelated to a particular industry." 2nd Roc-Jersey, 158 N.J. at 599; Kimmelman, 105 N.J. at 438.

C. Presumption of Constitutionality.

When reviewing the constitutionality of State statutes, New Jersey courts must afford every possible presumption in favor of an act of the Legislature. Holster v. Bd. Of Trustees of Passaic College, 59 N.J. 60, 66 (1971); State v. Muhammed, 145 N.J. 23, 41 (1996); David v. Vesta Co., 45 N.J. 301, 314 (1965); In re Loch Arbor, 25 N.J. 258, 264 (1957). Where alternative interpretations of a statute are equally plausible, the view sustaining the statute's constitutionality is favored. Vesta, 45 N.J. at 314; Loch Arbor, 25 N.J. at 264. Only a statute "clearly repugnant to the constitution" will be declared void on its face. Newark Superior Officers Ass'n v. City of Newark, 98 N.J. 212, 222-23 (1985). The burden of rebutting the presumption of constitutionality rests on the party raising the challenge. Velmohos v. Maren Eng. Corp., 83 N.J. 282 (1980). To succeed on a facial challenge, a party "must establish that no set of circumstances exists under which the Act would be valid." United States v. Salerno, 481 U.S. 739, 745 (1987).

D. The Public Purpose of Original CPTSA.

Affording Original CPTSA every possible presumption of Constitutionality, this Court finds that the Original Act falls within the narrow corridor of a "public purpose" exemption under Article VIII § 1 of the New Jersey State Constitution. It is undisputed that the Original CPTSA was based upon sound public purposes.

In 1976, the people of New Jersey, by way of voter referendum, authorized a constitutional amendment to permit casino gaming in Atlantic City. N.J. Const. Art. IV, § VII, ¶ 2d. This amendment was intended to promote urban revitalization, and to generate revenue to

establish new or expanded programs to benefit senior citizens and disabled residents. Id. At the height of the casinos' economic success in 2008, Atlantic City's tax base exceeded $20 billion. Def.'s Robinson Certification at ¶ 3. However, by the time of the enactment of the Original CPTSA, the effects of out-of-state competition, a national recession, and debilitating tax appeals reduced the City's tax base to under $6 billion. Id. The financial repercussions of this reversal in fortune were grave.

The 2016 CPTSA was enacted to prevent the insolvency of Atlantic City, to facilitate the municipality's rehabilitation and recovery, and to protect the citizens not only of the City, but of Atlantic County, the region and the State from the ramifications of what would have otherwise been the imminent financial collapse of a tax base which uniquely funds State programs for senior citizens and disabled adults:

> [I]t is reasonable that the Legislature, in seeking to revitalize the city, should choose to experiment with a payment in lieu of property tax mechanism to address the issues of persistent property tax appeals and the damage that those appeals, together with declining casino property values, have wrought on the tax bases of both Atlantic City and Atlantic County. It is a primary public purpose to grant casino gaming properties an exemption from normal property taxation for a limited period of time…
>
> It is a primary public purpose to grant casino gaming properties an exemption from normal property taxation for a limited period of time, in exchange for a guaranteed mandatory minimum payment in lieu of property taxes, because Atlantic City will be able to depend on a certain level of revenue from casino gaming properties each year, making the local property tax rate and need for State aid less volatile; casino revenue supports many social programs, such as property tax relief for seniors, medical assistance, housing for disabled residents, transportation assistance, and other social services programs for elderly and disabled New Jersyans…"
>
> [N.J. Stat. § 52:27BBBB-19l-m (2016)]

Unlike Kimmelman, where the Legislature attempted to exempt the housing industry from property taxation to aid the industry, the Original CPTSA establishes an annual payment-in-lieu of tax designed to approximate conventional property taxation for the sake of preserving municipal revenue. 105 N.J. at 436; N.J. Stat. § 52:27BBBB-19c (2016) (citing the "strain on Atlantic City's municipal budget due to property tax refunds required by successful assessment appeal of casino gaming properties" and additional tax losses from recent casino closures).

Although the casino industry is private, the purpose of the Original CPTSA was not enacted to subsidize a floundering industry. N.J. Stat. § 52:27BBBB-19. While the Original Act does acknowledge an "incidental benefit" to casino properties, the primary purpose of the Act was undisputedly to further the public purposes discussed above. N.J. Stat. § 52:27BBBB-19p. (2016). From their inception in the State, casinos have occupied a unique class among New Jersey's private and public entities. Casinos were authorized by constitutional referendum "solely for the purpose of providing funding" for services to benefit the State's seniors and disabled adults. N.J. Const. Art. IV § 7 ¶ 2D. Thus, when casino revenue diminished from 2008 to 2016, the effects of a private industry's misfortunate extended beyond the municipal tax base to the State's most vulnerable populations.

At that time, the casinos were highly likely to succeed on cost-saving tax appeals. The Act's prevailing purpose was to "avoid[] costly assessment appeals for both the casino operators and Atlantic City" in order to "provide[] a certain mandatory minimum property-tax related payment by casino properties that Atlantic City [could] rely upon each year." Id. at 19h. The in lieu of tax payments secured by the 2016 Act were designed to address essential public needs. See Kimmelman, 105 N.J. at 433.

In establishing the Original CPTSA, the Legislature determined it to be in the best interest of the public to address the unstable tax revenues from casino gaming properties by establishing: (1) a ten-year PILOT program to ensure a stable in-lieu-of-tax payment to be paid by the casinos, (2) redirecting the existing IAT paid by casinos to the municipal debt service, and (3) requiring a separate additional payment from the casinos to the City to ensure stable revenue during the City's recovery period. N.J. Stat. § 52:27BBBB-19 *et seq.* (2016). As anticipated, the Legislature's enactment of a limited tax exemption actually ensured steady and predictable PILOT payments from the casinos and facilitated economic recovery. See N.J. Stat. § 52:27BBBB-19.1(c) (2021) (in which "[t]he Legislature notes, with interest and approval, the stabilizing effect" of the Original Act on the City, taxpayers, and New Jersey residents). Further, under the Original Act, the redirection of the IAT serves an essential public purpose. During the City's designation as a municipality in need of stabilization and recovery, the Original Act redirects IATs to pay municipal debt service. N.J.S.A. 52:27BBBB-25 (2016). This bolstered the municipality's credit worthiness, and provided a new, direct funding mechanism by which the Director of the Division or her designee may begin to address a distressed municipality's budget imbalances. Def.'s Suarez Cert at ¶ 14. Because these funds are effectively a new revenue stream for the municipality, they offered a unique opportunity to reduce municipal debt using targeted revenues rather than through deep cuts in other budget line-items. Id. Considering the City's dire financial situation in 2016, this re-allocated revenue stream served an obvious and essential public good. The fixed payments permitted the City to reduce its debt during the recovery period and avoid the need for deeper operational reductions, thereby addressing the City's tourism district's persistent and expanding blight. Id.

Under the CPTSA from 2017 through 2021, casinos made total aggregate payments of approximately $155 million (2017), $149 million (2018), $154 million (2019), $163 million (2020) and $165 million (2021). Def.'s Glaum Certification at ¶ 3. As a direct result of the implementation of the Original CPTSA, the City was able to access the municipal bond market three times during 2017 and 2018. Def.'s Suarez Certification at ¶ 12. In turn, the bond issuances enabled Atlantic City to negotiate, resolve and fund all outstanding historic property tax appeals filed by casinos and pending prior the Act's implementation, and fund repayment of certain pension and health payments the City had deferred during its fiscal crisis. Id. at ¶ 13.

In other words, not only was the Original Act enacted for a public purpose, but it also indisputably fulfilled that public purpose for the benefit of residents of the City, the County, and the State. See N.J. Stat. 52:27BBBB-19.1c

VI. The 2021 Amendment is Not Rationally Related to a Legitimate Purpose.

The stated purpose and anticipated effects of the 2021 Amendment cannot support a finding that the statute was enacted for a "permissible public purpose." Although the record reflects casino revenue loss in 2020 due to brick-and-mortar closures at the early stages of the pandemic, the record also demonstrates that Atlantic City casinos experienced exponential growth in internet casino gaming and internet sports wagering in 2020 and 2021 which decreased the economic impact of the brick and mortar losses.

At the time the Amendment was passed on December 21, 2021, casino revenue was nearing its year-end total of $4.2 billion, with brick-and-mortar casino gaming revenue alone totaling approximately $2.6 billion, and internet gaming and sports wagering totaling around $1.6 billion. Pl.'s Ex. EE ("DGE Summary of Gaming and Atlantic City Taxes and Fees"). By comparison, the 2021 revenue rivaled the gross revenue of the casino industry at its peak in the

early 2000s.[6] In fact, the Original Act did not contemplate a scenario in which casino gross gaming revenue exceeds $3.8 billion. See N.J. Stat. § 52:27BBBB-20 (2016) (in which the highest tier of GGR contemplated is $3.4 to $3.8 billion, with a corresponding PILOT payment of $165 million).

In spite of near record-breaking gross gaming revenue, the Legislature expressed concern in December 2021 that:

> [D]ue to the State's public health emergency declared in response to the Covid-19 pandemic, which negatively impacted tourism in Atlantic City by restricting the public's right to travel; closing casino gaming properties for months on end and then allowing them to open only partially for another extended period of time; and closing other businesses that would have been visited by tourists to the city for months as well; requiring each casino gaming property to make an annual PILOT payment, as calculated under the current version of the [Act], and also satisfy its full IAT obligations for calendar years 2022 through 2026 may create financial difficulties for those gaming properties.
>
> Similarly, the Legislature is also concerned with the impact on the casino gaming properties in Atlantic City of the total amount of PILOT payments, as calculated under the current version of the [Act], owed by those casino properties, as well as the current manner of determining each individual casino gaming property's PILOT payment responsibility, due to all of the issues experienced in Atlantic City resulting from the public health emergency limitations on Atlantic City's casino gaming properties will affect the finances of those casinos for the foreseeable future, and thereby impact their ability to pay the required PILOT payment to the City and impact their ability to contribute to the quality of life of the State's senior and disabled residents who rely on casino revenue deposited into the Casino Revenue Fund to fund programs that reduce property taxes as well as utility assistance programs benefiting those residents.

[6] Based on gross revenue taxes paid, casino gross revenue was approximately $4.2 billion in 2000. In 2006, gross revenue peaked at approximately $5.2 billion. Pl.'s Ex. EE (DGE Summary of Gaming and Atlantic City Taxes and Fees") (reporting that, in 2006, casinos paid 8% tax on $417,528,000). Thereafter, revenue steadily declined to a low of $2.5 billion in 2016. Id. Even with pandemic-related losses, gross revenue in 2020 was approximately $2.6 billion. In the words of the state, there was an "explosion of internet gaming and sports betting" during the pandemic. Def.'s Br. In Support of Motion to Dismiss at p. 17.

[N.J. Stat. § 52:27BBBB-19.1e.]

To ameliorate the purported effects of the pandemic, the State amended the Act "to compensate for the impacts that the public health emergency… has had and will continue to have on in-person and internet gaming," and "lessen the financial impact of the end of the IAT crediting mechanism at the end of 2021 on the casino gaming properties." N.J. Stat. § 52:27BBBB-19.1f. The Legislature also stated that the Amendment would "ensure that Atlantic City continues to receive sufficient PILOT payments and IAT payments to fund its municipal budget." Id.

The Legislature further declared that the Amendment was "in the best interest of the casino gaming industry…, the best interests of Atlantic City, and in the best interests of the State's senior and disabled residents who rely on casino revenue… to reduce property taxes as well as rentals, telephone, gas, electric and utility charges…" N.J. Stat. § 52:27BBBB-19.1f.

Prior to passing the Amendment, the Senate Budget and Appropriations Committee considered a "Fiscal Impact" statement from the OLS which reported that the proposed legislation would "result in a loss of local payment-in-lieu of tax (PILOT) revenues in the calendar years 2022 through 2026 likely falling in a range from $30 million to $65 million each year." OLS "Legislative Fiscal Estimate" Report on SB 4007, December 21, 2021. The fiscal report notes that "a portion" of the loss would be offset by the continuation of the $5 million per year "additional payments" through 2026, and the "reallocation of investment alternative tax (IAT) revenues not required to the [CRDA] and municipal debt service." Id. The report also finds that, under the Amendment, "[t]he State may also receive additional revenues because the bill requires a portion of the excess IAT revenues to be distributed to the CRDA." Id. However, the OLS noted that "IAT revenue collections change annually" and for this reason OLS could not "project the amount of unreserved funds that may be available to the State and the City of Atlantic City." Id.

At oral argument, the Court asked counsel for the State whether Atlantic City residents would benefit more under the Amendment than the Original Act. The State submitted that, even if the Amendment is not in "the best interest" of the City, it is a permissible policy because the City's municipal debt is completely funded by IATs. Counsel for the State argued that the Legislature ensured that, under the Amendment, the City and County budgets received "at least what they had to date."

Under the appropriate standard of review, the Court must presume that the Legislature's judgment was based on factual support where there is no evidence to the contrary. Reingold, 6 N.J. at 196. However, "the existence of a rational basis for the legislation may be assailed by proof of facts beyond the sphere of judicial notice" where "[no] state of facts either known or which could reasonably be assumed" could support the Legislature's judgment." Id. In other words, if there are any facts on the record to support the Legislature's stated "concerns" that the casinos would not be able to fulfill their PILOT and IAT obligations from 2022 through 2026, the Court is required to defer to the judgment of the Legislature under a rational basis review. In that case, an Amendment to preserve payments for the City, County, and State (albeit lower than those prescribed by the Original Act) would not only be rationally related to a legitimate State objective, but also conceivably in the best interest of the public, and thus constitutionally permissible.

However, the facts on the record contradict the Legislature's stated concerns that the casinos would not be able to fulfill their obligations under the Original Act due to (1) the expiration of the IAT crediting mechanism at the end of 2021, and (2) losses due to pandemic-related brick-and-mortar closures. N.J. Stat. § 52:27BBBB-19.1d-e.

The sparse legislative history before the Court demonstrates that, at the very least, the Legislature knew that the Amendment was likely to result in PILOT losses between $150 million and $345 million over the remaining five years of the program (from 2022 through 2026). OLS "Legislative Fiscal Estimate" Report on SB 4007, December 21, 2021.

Additionally, the actual gross revenue reported at the time the Amendment was enacted demonstrates a remarkable rebound in brick-and-mortar casino revenue and exponential growth in internet casino gaming and sports wagering revenue. At the time Amendment was passed, November 2021 revenue reports for the year 2021 had been submitted to the DGE. Those reports demonstrate year-to-date gross revenue from brick-and-mortar and internet casino gaming and sports wagering revenue approaching $3.9 billion (approximately $2.3 billion in brick-and-mortar gaming revenue, approximately $1.2 billion in internet casino game revenue, approximately $16 million in brick-and-mortar sports wagering revenue, and approximately $264 million in internet sports wagering revenue).

In sum, there is no basis on the record for the Legislature's "concerns" of pandemic-related casino losses, nor any evidence that the newly prescribed PILOT formula would preserve payments for the City, County and State. For this reason, the Court finds that the enactment of the 2021 Amendment was arbitrary, capricious and unreasonable.

VI. The Amendment Constitutes an Unlawful Exemption for the Benefit of an Ailing Industry.

Even if the Court were to find that the Legislature acted rationally in enacting the Amendment, the Amendment would not pass constitutional muster on the basis of its stated public purpose and repeated declarations that the Amendment is "in the best interest of the casino industry." The stated purpose of the Amendment is to:

> "(1) adjust policies to… **compensate for the impacts that the public health emergency**… **has had** and will continue to have **on** in-person and internet **gaming**, (2) **lessen the financial impact** of the end of the IAT crediting mechanism at the end of 2021 **on casino gaming properties**, and (3) ensure that Atlantic City continues to receive sufficient PILOT payments and IAT payments to fund its municipal budget."
>
> [N.J. Stat. § 52:27:BBBB-19.1f (2021) (emphasis added)]

Additionally, the 2021 Amendment declares that revisions made to PILOT calculations are:

> … **in the best interest of the casino gaming industry** which serves a vital part of the economy of the state, in the best interests of Atlantic City, and in the best interests of the State's senior and disabled residents who rely on casino revenue…The Legislature further declares that it is **in the best interests of the casino gaming industry** to revise the calculation of the PILOT payment each casino is required to pay under the [CPTSA] in order **to lessen the impact of these payments on the casino's finances** during and after the public health emergency.
> ***
> …[T]he Legislature also has the authority, by law, to revise the PILOT program to thereby address the impact of the expiration of the IAT credit mechanism and its **effects on the casino gaming industry** in the state…
>
> [N.J. Stat. § 52:27BBBB-19.1f-g (2021) (emphasis added)]

While the Court appreciates the unique role of the casino industry and the flow of its tax revenue in our State, as was discussed previously, the Constitution "explicitly forbids preferential [tax] treatment" to aid an industry. Kimmelman, 105 N.J. at 436. The Court notes that while many industries within the State suffered incredible pandemic-related revenue losses, those industries were not provided any legislative property tax relief. When the statute at issue in Kimmelman was enacted, the legislative history demonstrated that the Legislature was attempting to alleviate the "the effect of double digit inflation and a recession" to aid the then-

suffering housing industry. Id. at 431. The Kimmelman court noted that the legislation at issue "came about as a result of recommendations by the Housing Emergency Action Team (HEAT), a committee of the New Jersey State Assembly… formed in March 981 to seek solutions to a severe housing shortage in the State." Id. at 425. In Kimmelman, the record contained a statement from the Governor "recogniz[ing] the purposes of the legislation and concur[ring] in the conclusion [of the Legislature] that no unfairness [would] result[] to municipalities and other taxpayers" from the tax exemption. Id. at 426. Despite the Legislature's good intentions, the Court struck the exemption as unconstitutional because the clear purpose of the statute, as demonstrated by the extensive legislative history, was "to aid an ailing industry." Id. at 436.

Here, it is unclear whether the Legislature acted with such noble intentions in passing the Amendment. The record preceding the Amendment's enactment is remarkably thin. In Kimmelman, the statute at issue was borne after a legislative committee's extensive findings and recommendations. Here, the record is devoid of any such findings or recommendations. At oral argument, the Court asked counsel for the State whether further discovery was needed regarding the impetus for the 2021 Amendment. Counsel for the State acknowledged that the Legislature's "analysis is concededly not in the record," but represented that there was no need for further discovery. The only inference that can be drawn from this representation is that the legislation at issue was passed by the Legislature on the sparse record now before the Court.

The Legislature declares that the Amendment is "in the best interest of the casino industry." N.J. Stat. § 52:27BBBB-19.1f-g (2021). As discussed above, if the record contained any evidence that the Amendment was designed to achieve public purpose with an incidental benefit to the casino industry (as the Original Act was), it would be constitutionally permissible. However, the record belies the Legislature's findings that the casinos were suffering pandemic-

related losses at the time the Amendment was passed. There is no evidence to suggest that casinos could not meet their PILOT obligations under the Original Act. Additionally, the record demonstrates that the Amendment is detrimental to the interests of the taxpayers of City, County and State. From this, the Court must conclude that the Amendment was enacted not to further a public purpose, but to aid what was actually a *resurging* industry. Such an exemption is "forever barred" under Article VIII, § 1 of our State's Constitution. Kimmelman, 105 N.J. at 435.

The decision of this court shall not be interpreted to suggest that the Legislature is prohibited from taking legislative action in the future concerning the Atlantic City casino industry that is solely enacted for a public purpose. The 1976 Amendment to the New Jersey Constitution authorized casino gaming in Atlantic City solely for the purpose of providing funding for reduction in property taxes, rental, telephone, gas, electric and municipal utility charges or eligible senior citizens and disabled residents of the State and for additional or expanded health services or benefits or transport services or benefits to eligible senior citizens and disabled residents. N.J. Const., Art. IV, §7, 2D.

At the time MRSA was enacted in June 2017, the City of Atlantic City was deemed a municipality in need of stabilization and recovery. The original CPTSA enacted in May of 2016 specifically states that is a primary public purpose to grant casino gaming properties an exemption from normal property taxation for a limited period of time in exchange for a guaranteed mandatory minimum payment in lieu of property taxes because Atlantic City would be able to depend on a certain level of revenue from casino gaming properties each year, making the local property tax rate and need for State aid less volatile.

The expectations of Atlantic City and Atlantic County taxpayers of a certain level of revenue from gaming properties over a ten-year period were breached by the 2021 Amendment

just five years into the ten-year plan. The OLS "Legislative and Fiscal Estimate" projects a loss of PILOT revenue from 2022 through 2026 at $30 million to $65 million per year. See OLS "Legislative and Fiscal Estimate." This, in turn, will have a direct detrimental economic impact to the City of Atlantic City, Atlantic County and the Atlantic County School District. Such a decrease in payments is not justified by the mere "perception" that the casino industry was devastated by the pandemic.

Moreover, the purported offsets under the Amendment ($5 million per year "additional payments" in calendar years 2024 through 2026, and the reallocation of a portion of the IAT not required to the CRDA and municipal service) does not counterbalance the significant reduction in the yearly payments under the Amendment. The facts before the Court demonstrate that the casino industry stands to gain a windfall under the Amendment that was not present in the original legislation. Further, the amount of any unreserved IAT revenue allegedly for the benefit of the State and City of Atlantic City is unpredictable, and, therefore not stabilizing. See OLS "Legislative and Fiscal Estimate" ("IAT revenue collections change annually and the OLS cannot project the amount of unreserved IAT funds that may be available to the State and the City of Atlantic City").

This Court finds that the Amendment was enacted to aid the casino industry and not for a public purpose. The raw economic data does not support a finding that the Amendment advances purposes generally beneficial to society by reducing the PILOT payments so drastically from the Original Act.

Conclusion

For the aforementioned reasons, Defendants' Motion to Dismiss Plaintiffs' Complaint is GRANTED IN PART and Plaintiffs' Motion for Summary Judgment is GRANTED IN PART.

Count A of Plaintiffs' Verified Complaint (seeking declaratory judgment nullifying the Original Act) is hereby dismissed with prejudice for failure to state a claim upon which relief can be granted. The 2016 Act constitutes a valid exercise of the legislature's power to grant certain tax exemptions for a public purpose. However, the 2021 Amendment constitutes an unconstitutional exemption for the purpose of aiding an industry. Accordingly, the 2021 Amendment is declared null, void and of no effect.

Date of Decision: August 29, 2022

Michael J. Blee, A.J.S.C.

Addendum A

Retail Gross Revenue

Casino	2019	2020	2021
Ballys	$ 176,010,260	$ 9,323,597	$ 140,705,153
Borgata	$ 709,561,819	$ 337,583,672	$ 605,770,752
Caesars	$ 270,988,246	$ 151,184,605	$ 237,006,279
Golden Nugget	$ 199,020,547	$ 95,057,977	$ 147,197,315
Hard Rock	$ 324,000,867	$ 224,903,807	$ 432,569,002
Harrahs	$ 312,035,995	$ 165,943,922	$ 266,319,892
Ocean	$ 215,707,411	$ 183,567,221	$ 306,836,779
Resorts	$ 176,379,065	$ 99,542,628	$ 166,035,876
Tropicana	$ 302,859,158	$ 159,570,977	$ 253,269,076
Total	**$ 2,686,563,368**	**$ 1,426,678,406**	**$ 2,555,710,124**

**Year-To-Date Gross Revenue, Line 9 of the DGE-101 Report for the Month of December.*

Internet Gross Revenue

Casino	2019	2020	2021
Ballys	$ -	$ -	$ 1,668,734.00
Borgata	$ 78,064,193	$ 209,247,637	$ 414,865,110
Caesars	$ 55,428,574	$ 94,972,599	$ 112,240,321
Golden Nugget	$ 177,104,081	$ 318,923,171	$ 378,770,710
Hard Rock	$ 22,533,132	$ 59,644,690	$ 67,039,580
Harrahs	$ -	$ -	$ -
Ocean	$ 5,124,546	$ 10,327,818	$ 16,250,468
Resorts	$ 100,095,983	$ 208,433,906	$ 290,072,806
Tropicana	$ 44,797,620	$ 70,090,968	$ 87,345,887
Total	**$ 483,148,129**	**$ 971,640,789**	**$ 1,368,253,616**

**Year-To-Date Internet Gaming Gross Revenue, Line 8 of the DGE-105 Report for the Month of December.*

Sports Wagering Revenue (Retail)

Casino	2019	2020	2021
Ballys	$ 2,038,707	$ 15,482	$ 1,839,383
Borgata	$ 5,461,771	$ 5,623,326	$ 4,857,843
Caesars	$ -	$ 443,612	$ 1,721,946
Golden Nugget	$ 968,682	$ 471,213	$ 1,187,877
Hard Rock	$ 1,013,399	$ 359,515	$ 934,516
Harrahs	$ 600,599	$ 369,003	$ 1,194,031
Ocean	$ 3,589,073	$ 1,332,505	$ 2,396,634
Resorts	$ 2,060,756	$ 741,494	$ 2,616,943
Tropicana	$ 1,651,074	$ 1,192,155	$ 759,969
Total	**$ 17,384,061**	**$ 10,548,305**	**$ 17,509,142**

**Year-To-Date Retail Sports Wagering Gross Revenue, Line 1 of the DGE-107 Report for the Month of December.*

Sports Wagering Revenue (Internet)

Casino	2019	2020	2021
Ballys	$ 3,477,011	$ -	$ -
Borgata	$ 5,036,294	$ 25,924,078	$ 79,426,640
Caesars	$ -	$ -	$ 3,482,486
Golden Nugget	$ 1,463,207	$ 1,110,430	$ 1,080,627
Hard Rock	$ 2,520,751	$ 5,719,017	$ 12,317,974
Harrahs	$ -	$ -	$ -
Ocean	$ 13,804,770	$ 18,910,732	$ 17,473,541
Resorts	$ 79,605,961	$ 100,947,837	$ 159,668,433
Tropicana	$ 259,683	$ 721,891	$ 14,058,466
Boardwalk Regency	$ -	$ 736,756	$ -
Total	**$ 106,167,677**	**$ 154,070,741**	**$ 287,508,167**

**Year-To-Date Internet Sports Wagering Gross Revenue, Line 13 of the DGE-107 Report for the Month of December.*

Total Gross Revenue	**$ 3,293,263,235**	**$ 2,562,938,241**	**$ 4,228,981,049**

Addendum B

Year-to-Date Gross Revenue for the Month of November 2021

Casino	Gross (Retail)[1]	Gross (Internet)[2]	Sports (Retail)[3]	Sports (Internet)[4]
Ballys	$ 129,537,708	$ 1,322,516	$ 1,795,323	$ -
Borgata	$ 551,465,080	$ 377,076,016	$ 4,472,336	$ 72,886,988
Caesars	$ 217,965,411	$ 101,981,078	$ 1,463,813	$ -
Golden Nugget	$ 136,570,697	$ 342,754,818	$ 1,143,747	$ 771,916
Hard Rock	$ 396,344,429	$ 62,178,404	$ 962,994	$ 11,460,365
Harrahs	$ 242,509,177	$ -	$ 1,055,733	$ -
Ocean	$ 280,337,602	$ 14,425,011	$ 2,230,852	$ 17,358,732
Resorts	$ 154,521,793	$ 257,338,779	$ 2,479,504	$ 147,276,284
Tropicana	$ 233,947,701	$ 77,286,660	$ 827,951	$ 11,060,789
Boardwalk Regency	$ -	$ -	$ -	$ 3,295,938
Total	**$ 2,343,199,598**	**$ 1,234,363,282**	**$ 16,432,253**	**$ 264,111,012**

Total Gross Revenue as of November 2021: $3,858,106,145

[1] *Year-To-Date Gross Revenue, Line 9 of the DGE-101 Report.*
[2] *Year-To-Date Internet Gaming Gross Revenue, Line 8 of the DGE-105 Report.*
[3] *Year-To-Date Retail Sports Wagering Gross Revenue, Line 1 of the DGE-107 Report.*
[4] *Year-To-Date Internet Sports Wagering Gross Revenue, Line 13 of the DGE-107 Report.*