DEPARTMENT OF STATE REVENUE

01-20160695R.LOF

Letter of Findings: 01-20160695R
Individual Income Tax
For the Year 2013

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Out-of-State Individuals were permitted to "net" their "per session" gambling losses and gambling winnings on a "per session" basis in determining the amount of "other income" on their Indiana income tax returns.

ISSUE

I. Individual Income Tax - Gambling Income.

Authority: IC § 6-3-1-3.5; IC § 6-3-2-2; IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); I.R.C. § 165; Rev. Rul. 54-339, 1954-2 C.B. 89; I.R.S. Adv. Mem. 2008-011 (December 12, 2008); I.R.S. Tech. Adv. Mem. 8123015 (February 27, 1981).

Taxpayers argue that they are entitled to calculate their gambling income by "netting" their session winnings and losses on a "per session" basis and that the Department failed to recognize the amounts withheld on their behalf by the Indiana casino.

STATEMENT OF FACTS

Taxpayers are out-of-state residents who visited Indiana and gambled at an Indiana casino. Taxpayers filed a 2013 "Indiana Part-Year or Full-Year Nonresident Individual Income tax Return" ("IT-40PNR"). The Indiana Department of Revenue ("Department") reviewed the return and reduced the credits claimed on schedule F from approximately $65,000 to $0. That adjustment resulted in an assessment of additional income tax. Taxpayers disagreed with the resulting assessment of approximately $16,000 in tax and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayers' representative explained the basis for the protest. This Letter of Findings results.

I. Individual Income Tax - Gambling Income.

DISCUSSION

Taxpayers object to the adjustment complaining that the Department "ignores the Indiana tax withheld as shown on Indiana W-2G forms and provides no details as to why the net session method of reporting casual gambling income . . . was ignored." Taxpayers point out that "all of [their] gambling activity is from slot machines in Indiana, Nevada, and Ohio. All calculations on their Indiana and Federal return are based upon the sites where the gambling activity occurred." Taxpayers further explain that they "have casual slot machine gambling income and losses which entitle them to utilize the 'net session method of reporting income to the IRS, State of Ohio, and State of Indiana."

As with any proposed assessment of Indiana tax, it is the Taxpayers' responsibility to establish that the tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

In general, IC § 6-3-1-3.5(a) provides that federal adjusted gross income is the starting point for determining

Indiana adjusted gross income for individuals. For nonresidents, IC § 6-3-2-2(a) provides that income derived from Indiana sources is subject to Indiana income tax.

For federal income tax purposes, "Losses from wagering transactions shall be allowed only to the extent of the gains from such transactions." I.R.C. § 165(d). "For Federal income tax purposes, all wagering gains must be included in gross income. Losses therefrom, by a taxpayer who is not in the trade or business of gambling, are not deductible in determining adjusted gross income as such losses do not come within the provisions of section 22(n) [now I.R.C. § 62] of the Internal Revenue Code. Nor are such losses deductible from adjusted gross income in determining net income where the taxpayer has elected to use the standard deduction." Rev. Rul. 54-339, 1954-2 C.B. 89. The effect of this federal tax treatment is that Indiana does not permit a deduction for wagering losses except for professional gamblers.

Within the definition of "wagering gains," the measure of the gains included in income has been disputed within both the Department and the Internal Revenue Service. For instance, a player enters a casino and wagers $10,000 on a slot machine in one day. The player has three wins, one for $10,000, one for $5,000, and one for $3,000. Each time the wager was $20. The question is then whether the player's income is the $18,000 gross winnings less the $60 wagers resulting in wins as an offset–in other words, $17,940–or whether the income is the $8,000 net "per session" profit.

In 1981, the Internal Revenue Service issued I.R.S. Tech. Adv. Mem. 8123015 (February 27, 1981), 1981 WL 170840. In that TAM, an individual wagered $2 on the results of jai-alai matches. His wagers were structured so that he entered up to 315 combinations of wagers each day. Under one approach, if he bought 200 tickets but only one ticket won for $500, he would report $498 ($500-$2) income and $398 (199 losing tickets times $2) losses. Based on this method, his income totaled $91,000, while his losing tickets cost $98,000.

A second method was suggested as well. Under the second method, his $500 winnings would be netted against the $400 total tickets purchased on that day for $100 income and no losses. Based on the alternative method, his income totaled $22,000, while his losses totaled $29,000.

The 1981 memorandum reasoned that each ticket constituted a separate wager for purposes of I.R.C. § 165(d) and I.R.C. § 3402(q) (relating to withholding on gambling winnings). Thus, the individual had income of $91,000 for federal income tax purposes.

Nevertheless, the reasoning stated in I.R.S. Adv. Mem. 2008-011 (December 12, 2008), 2008 WL 5703844, that aggregating winnings and losses occurring in a particular period, then including the net winnings (winnings minus losses whenever winnings exceed losses) as income–is the proper measure for determining wagering gains for federal income tax purposes–is persuasive for the reasons stated here. Further, as a matter of recordkeeping by taxpayers, a "per session" netting approach is a less cumbersome recordkeeping requirement–for instance, keeping a log reflecting one session entry as opposed to potentially hundreds of individual entries–and a recordkeeping requirement more consistent with the reality of actual wagering behavior. The treatment of wagering income is determinative regardless of the withholding and reporting requirements under state and federal law.

Taxpayers have produced a casino statement detailing daily wins and losses. Taxpayers have also provided their own 2013 "net session adjustment summary" detailing "total per session," "W-2G reported," and "per session adjustment" for each Indiana and out-of-state gambling location. Taxpayers have also produced a copy of the Indiana casino's "W-2G Report" summarizing and detailing the amount won on each day during 2013 and the amount of state tax withheld on those winnings. On that casino report, Taxpayers have also noted the daily aggregate winnings.

Taxpayers have provided all that is necessary to calculate their Indiana gambling income and recognize the amounts withheld on that income. Subject to a review of the calculations by the Department's audit review, Taxpayers' protest is sustained.

FINDING

Taxpayers' protest is sustained.

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