

**Supplemental Memorandum of Decision: 01-20181996
Individual Income Tax
For the Year 2016**

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Supplemental Memorandum of Decision.

HOLDING

Out-of-State Individuals provided sufficient documentation permitting them to "net" their "per session" gambling losses and gambling winnings on a "per session" basis in determining the amount of "other income" reported on their Indiana income tax return.

ISSUE

I. Individual Income Tax - Gambling Income.

Authority: IC § 6-3-1-3.5(a); IC § 6-3-2-2(a); I.R.C. § 165(d); Rev. Rul. 54-339, 1954-2 C.B. 89; I.R.S. Adv. Mem. 2008-011; Final Order Denying Refund 01-20180755R (June 29, 2018); Letter of Findings 01-20160459P (December 2, 2016).

Taxpayers argues that the Department erred in denying them a refund of individual income tax on the ground that Taxpayers had presented sufficiently reliable documentation justifying an offset of their gambling "losses" against their gambling "winnings."

STATEMENT OF FACTS

Taxpayers are individuals living in Illinois but who file Indiana income tax returns. Taxpayers filed a 2016 Indiana tax return seeking a refund of income tax withheld on Indiana gambling winnings. On their return, Taxpayers reported winning approximately \$590,000 from an Indiana casino. On the same return, Taxpayers reported "same day losses" of approximately \$460,000. Taxpayers "offset" their Indiana gambling losses against their gambling winnings resulting in "Indiana taxable winnings of [approximately \$130,000]."

The Indiana Department of Revenue ("Department") reviewed the return, rejected Taxpayer's gambling calculations, and denied the originally claimed refund. In a letter addressed to Taxpayers, the Department explained "We have received your tax return and wish to inform you of inconsistencies discovered during processing."

Taxpayers disagreed with the Department's conclusion and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayers' representative explained the basis for the protest. Final Order Denying Refund 01-20180755R (June 29, 2018), 20180829 Ind. Reg. 045180335NRA, was issued denying Taxpayers' protest. As explained in that order, Taxpayers failed to provide the required documentation necessary for the Department's review and verification.

Taxpayers disagreed with the Department's decision and requested a rehearing. Taxpayers' request was granted and a rehearing conducted during which Taxpayers' representative again explained the basis for the Taxpayers' argument. This Supplemental Memorandum of Decision results.

I. Individual Income Tax - Gambling Income.

DISCUSSION

The issue is whether Taxpayers have presented sufficient information justifying their assertion that they are entitled to offset their daily gambling losses against their dialing gambling winnings.

In general, IC § 6-3-1-3.5(a) provides that federal adjusted gross income is the starting 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 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 because such losses do not come within the provisions of section 22(n) [now I.R.C. § 62] of the Internal Revenue Code. Nor are the 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.

However, the Department's more detailed position on the particular issue here is addressed in Letter of Findings 01-20160459P (December 2, 2016), 20170222 Ind. Reg. 045170101NR, and need not be repeated here in exhaustive detail. It is sufficient to quote the December 2016 Letter of Findings which concludes:

[T]he reasoning stated in the 2008 IRS memorandum—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

The 2008 IRS memorandum cited above is I.R.S. Adv. Mem. 2008-011 (December 12, 2008). The December 2016 Letter of Findings explains:

In the [IRS] memorandum, an example was proposed with a taxpayer who played slot machines; the taxpayer was not a professional gambler. In the fact scenario presented, the taxpayer had some winning days (e.g., she entered with \$100 and left with \$500) and some losing days (e.g., she entered with \$100 and left with nothing). The issue was whether the taxpayer had to count each winning machine pull (less wager on the pull) as income or whether the taxpayer could net winnings and losses each day in determining the taxpayer's income. The 2008 memorandum concluded that netting upon redemption of tokens or money was appropriate in the scenario presented.

The December 2016 Letter of Findings found the Memorandum's approach "persuasive" and the Department here finds no reason to depart from that reasoning.

In this case, Taxpayers have provided the Indiana casino's daily gambling activity report, a spreadsheet prepared by Taxpayers' representatives "summarizing [T]axpayers' own contemporaneous journal, the Taxpayers' own handwritten journal summarizing net winnings and losses by date and location, and Taxpayers' federal 1040 "calculation of Indiana [adjusted gross income].

The Department concludes that the documentation provided is sufficient for the Department to substantiate Taxpayers' calculation of the net winnings attributable to Indiana gambling activities and - after verifying the calculation - to issue Taxpayers any consequent refund.

On the issue of whether Taxpayers have provided sufficiently reliable information on which to base their calculation of net gambling winnings and net losses, Taxpayers' protest is sustained. However, this Supplemental Memorandum of Decision does not address the actual calculation of those winnings and losses and takes no position on any other issue which may be contained in the 2016 return.

FINDING

On the sole issue addressing the sufficiency of Taxpayers' documentation, Taxpayers' protest is sustained.

January 8, 2019

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