

MEMORANDUM OF DECISION: 01-20200376
Individual Income Tax
For the Year 2019

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 Memorandum of Decision.

HOLDING

Subject to the Department's review of his supplemental documentation, Out-of-State Individual was able to establish that, as a professional gambler, he was entitled to offset his Indiana gambling winnings against his gambling losses as ordinary and necessary business expenses.

ISSUE

I. Adjusted Gross Income Tax - Professional Gambler and Offsetting Gambling Losses.

Authority: IC § 6-3-1-3.5(a); IC § 6-3-1-8; 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); *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64 (Ind. 2009); *Lafayette Square Amoco, Inc. v. Indiana Dep't of Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); I.R.C. § 61(a); I.R.C. § 62; I.R.C. § 165(d); Treas. Reg. § 1.165-10; 2019 U.S. Master Tax Guide (CCH 2019); 2018 U.S. Master Tax Guide (CCH 2018).

Taxpayer protests an assessment of additional adjusted gross income tax on the ground that the additional taxes are based upon gambling earnings and that Taxpayer, as a professional gambler, he should be permitted to offset the gambling losses against these earnings.

STATEMENT OF FACTS

Taxpayer is an out-of-state individual who is categorized as a "professional gambler." Taxpayer filed an electronic 2019 Indiana IT-40 PNR income tax return. On that return, Taxpayer reported "0" adjusted gross income. The Indiana Department of Revenue reviewed the return and issued Taxpayer an "Important Taxpayer Notification" reflecting an adjustment to that return. Instead of "0" income, the Department determined that Taxpayer received approximately \$260,000 in 2019 Indiana gambling winnings. As a result, the Department assessed Taxpayer additional Indiana income tax. Instead of receiving the \$8,400 refund amount originally expected, the Taxpayer received a \$40 refund.

Taxpayer did not agree with the Department's assessment of additional income tax and the partial denial of Taxpayer's originally requested refund amount. Taxpayer submitted a protest to that effect. An administrative hearing was conducted by telephone during which Taxpayer explained the basis for his protest. This Memorandum of Decision results.

I. Adjusted Gross Income Tax - Professional Gambler and Offsetting Gambling Losses.

DISCUSSION

The issue - as set out by Taxpayer - is whether he is entitled to offset his Indiana gambling winnings with the losses incurred during those gambling activities.

Because the Department's adjustment resulted in assessment of additional tax, it is Taxpayer's obligation to establish that the assessment was "wrong." All tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). "[E]ach assessment and each tax year stands alone." *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64, 69 (Ind. 2009). Thus, the taxpayer is required to provide documentation explaining and supporting their challenge that the Department's assessment is wrong.

The Indiana Adjusted Gross Income Tax Act defines "adjusted gross income," in the case of individuals, as the term is defined in I.R.C. § 62 with certain limitations specific to Indiana. IC § 6-3-1-3.5(a). Thus "adjusted gross income" is, "in the case of an individual, gross income minus . . . [certain] deductions." I.R.C. § 62(a). Similarly, the Indiana Act incorporates the definition of "gross income" as found in I.R.C. § 61(a). IC § 6-3-1-8. Therefore, "gross income" consists of "all income from whatever source derived . . ." I.R.C. § 61(a).

I.R.C. § 62 states that, "For purposes of this subtitle, the term 'adjusted gross income' means, in the case of an individual, gross income minus the following deductions . . ." The deductions specified under I.R.C. § 62 contain no provision permitting an individual to deduct gambling losses from his gross income. However, the federal law does permit the deduction of gambling losses to the extent of the taxpayer's gains from similar transactions. I.R.C. § 165(d); see *also* Treas. Reg. § 1.165-10.

Specifically, I.R.C. § 165(d) states:

Losses from wagering transactions shall be allowed only to the extent of the gains from such transactions. For purposes of the preceding sentence, in the case of taxable years beginning after December 31, 2017, and before January 1, 2026, the term "losses from wagering transactions" includes any deduction otherwise allowable under this chapter incurred in carrying on any wagering transaction.

2019 U.S. Master Tax Guide para. 1113, at 432 (CCH eds. 102th ed. 2019) explains:

An individual can deduct gambling losses only to the extent his or her gambling winnings included in gross income. For tax years beginning after 2017 and before 2026, gambling losses for this purpose include any deduction otherwise allowed to the taxpayer in carrying on a wagering transaction (*e.g.*, travel expenses).

....

A professional gambler reports gambling income and losses on Schedule C (Form 1040).

(Internal citations omitted).

The previous version of the guide was more straightforward. "A professional gambler . . . can deduct gambling losses as an adjustment to gross income." 2018 U.S. Master Tax Guide para. 1113, at 436 (CCH 2018).

Therefore, a professional gambler is not required to report losses as an itemized deduction. Instead, losses and gains are reported on Schedule C. The net gain or loss is then reported on Form 1040 prior to arriving at adjusted gross income. This typically causes the professional gambler's adjusted gross income to be lower than that of the recreational gambler. In effect, the professional gambler is able to deduct necessary and ordinary business expenses from gambling gains.

On Taxpayer's 2019 return, he reported "0" adjusted gross income. Instead of that amount, the Department determined that Taxpayer received approximately \$260,000 in 2019 Indiana gambling winning and that this amount was entirely subject to Indiana's individual income tax.

On Taxpayer's corresponding federal return, Taxpayer reported approximately \$665,000 in gambling winnings and approximately \$622,000 in gambling losses.

As mentioned, Taxpayer provided a copy of his federal return, statements from the Indiana casinos, and detailed spreadsheets containing information on his poker winnings and losses.

There seems to be no dispute that Taxpayer is classified as a "professional gambler." The Department itself noted that "[h]e is considered a professional poker player with federal."

Taxpayer has met his burden of establishing that he was entitled to deduct the losses the Department's decision categorizing his Indiana gambling winnings as taxable Indiana income, with no offset for Indiana gambling losses, was wrong.

The Department is requested to review the documentation provided and - as documented - allow the offsetting gambling losses in the amount verified by that documentation.

FINDING

Subject to the Department's review of Taxpayer's additional documentation, Taxpayer's protest is sustained.

November 2, 2020

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