DEPARTMENT OF STATE REVENUE

01-20231454.LOF

Letter of Findings: 01-20231454
Individual Income Tax
For The Year 2019

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 Indiana Department of Revenue'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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Individual provided documentation establishing that the Department's assessment was incorrect.

I. Individual Income Tax - Federal Discrepancy.

Authority: I.R.C. § 61; I.R.C. § 62; I.R.C. § 63; I.R.C. § 165; IC 6-3-2-1; IC 6-3-2-2; IC 6-8.1-5-1; *C.I.R v. Groetzinger*, 480 U.S. 23 (1987); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Popovich v. Indiana Dept. of State Revenue*, 90 N.E.3d 704 (Ind. Tax Ct. 2017); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Schollenberger v. Comm'r*, 98 T.C.M. (CCH) 667 (Tax Ct. 2009); *Szkircsak v. Comm'r*, 40 T.C.M. (CCH) 208 (Tax Ct. 1980); *Schooler v. Comm'r of Internal Revenue,* 68 T.C. 867 (1977); Treas. Reg. § 1.6001-1; I.R.S. Adv. Mem. 2008-011 (December 12, 2008).

Taxpayer protests the Department's assessment of additional individual income tax.

STATEMENT OF FACTS

Taxpayer is an Indiana resident. The Indiana Department of Revenue ("Department") issued to Taxpayer a notice of proposed assessment for additional Indiana state income tax for the tax year 2019. In a letter dated December 12, 2022, the Department stated that, "A review of your Indiana Individual Income tax for the tax period ending December 31, 2019, indicates you owe an additional $1,883.57." The Department's letter also stated, in pertinent part, that the Department had, "determined [Taxpayer's] federal adjusted gross income (FAGI) is understated based on information received from external third-party sources." Taxpayer paid the assessment, but disagreed with its merits and submitted a protest. An administrative hearing was held, and this Letter of Findings results. Additional facts will be provided as necessary.

I. Individual Income Tax - Federal Discrepancy.

DISCUSSION

Taxpayer protests the Department's assessment of additional individual income tax for tax year 2019. In support of his protest, Taxpayer provided a copy of his 2019 federal record of account, a 2019 summary of changes to his 1040 from the Internal Revenue Service ("IRS"), a copy of his amended 1040, his 2019 federal tax return transcript, and win/loss statements from various casinos where Taxpayer gambled during 2019.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. A proposed assessment is prima facie evidence that the Department's claim for unpaid tax is valid. IC 6-8.1-5-1(c). The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made. *Id*. Consequently, a taxpayer must provide documentation explaining and supporting that the Department's position is wrong. *See Indiana Dept. of State Revenue v. Rent-A-Center East, Inc*., 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Additionally, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . .[courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

Indiana imposes a tax "upon the adjusted gross income of every resident person." IC 6-3-2-1. IC 6-3-2-2(a) outlines what is income derived from Indiana sources and subject to Indiana income tax. Similarly, there is a

federal income tax imposed on an individual's federal adjusted gross income as defined in I.R.C. § 62. In general, the Internal Revenue Code requires a taxpayer to report and pay his or her federal income tax when gross income exceeds a certain amount. Gross income includes all income from whatever source derived. I.R.C. § 61(a). Thus, gambling winnings are included in a taxpayer's federal adjusted gross income.

For tax purposes, the law treats casual and professional gamblers differently. *Schollenberger v. Comm'r*, 98 T.C.M. (CCH) 667 (T.C. 2009) explained:

> The code mandates, however, that casual gamblers be treated differently from taxpayers who are in the trade or business of gambling. In particular, gambling losses incurred in a trade or business of gambling are allowable in computing adjusted gross income pursuant to section 62(a)(1). Gambling losses incurred other than in the trade or business of gambling are allowable, if at all, as itemized deductions in calculating taxable income.

Put plainly, federal law allows for a casual gambler to deduct his or her losses when claiming an itemized deduction on his or her federal individual income tax return. I.R.C. § 63(e). To determine if a Taxpayer is a professional gambler, Courts examine whether a taxpayer is "involved in the activity with continuity and regularity and that the taxpayer's primary purpose for engaging in the activity must be for income or profit." *C.I.R v. Groetzinger*, 480 U.S. 23 (1987). Furthermore, "[a] sporadic activity, a hobby, or an amusement diversion does not qualify." *Id*.; *see also Popovich v. Indiana Dept. of State Revenue*, 90 N.E.3d 704 (Ind. Tax. Ct. 2017).

I.R.C. § 165(d) provides:

> 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.

The IRS AM 2008-011, in relevant part explains:

> A key question in interpreting [I.R.C.] § 165(d) is the significance of the term "transactions." The statute refers to gains and losses in terms of wagering transactions. Some would contend that transaction means every single play in a game of chance or every wager made. Under that reading, a taxpayer would have to calculate the gain or loss on every transaction separately and treat every play or wager as a taxable event. The gambler would also have to trace and recompute the basis through all transactions to calculate the result of each play or wager. Courts considering that reading have found it unduly burdensome and unreasonable. Moreover, the statute uses the plural term "transactions" implying that gain or loss may be calculated over a series of separate plays or wagers.
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> The better view is that a casual gambler, such as the taxpayer who plays the slot machines, recognizes a wagering gain or loss at the time she redeems her tokens. We think that the fluctuating wins and losses left in play are not accessions to wealth until the taxpayer redeems her tokens and can definitively calculate the amount above or below basis (the wager) realized. For example, a casual gambler who enters a casino with $100 and redeems his or her tokens for $300 after playing the slot machines has a wagering gain of $200 ($300 - $100). This is true even though the taxpayer may have had $1,000 in winning spins and $700 in losing spins during the course of play. Likewise, a casual gambler who enters a casino with $100 and loses the entire amount after playing the slot machines has a wagering loss of $100, even though the casual gambler may have had winning spins of $1,000 and losing spins of $1,100 during the course of play.
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> Calculating the Taxpayer's Gains and Losses
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> Under the facts presented, the taxpayer purchased and subsequently lost $100 worth of tokens on five separate occasions. As a result, the taxpayer sustained $500 of wagering losses ($100 x 5). The taxpayer also sustained losses on two other occasions, when the taxpayer redeemed tokens in an amount less than the $100 (basis) of tokens originally purchased. The loss is the basis of the bet ($100 in tokens) minus the amount of the tokens eventually redeemed. Therefore, on the day the taxpayer redeemed $20 worth of tokens, the taxpayer incurred an $80 wagering loss ($100-$20). On the day the taxpayer redeemed $70 worth of tokens, the taxpayer incurred a $30 wagering loss ($100-$70).
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> On three occasions, the taxpayer redeemed tokens in an amount greater than the $100 of tokens originally purchased. The amount redeemed less the $100 basis of the wager constitutes a wagering gain. On the day

> the taxpayer redeemed $150 worth of tokens, the taxpayer had a $50 wagering gain ($150-$100). On the day the taxpayer redeemed $200 worth of tokens, the taxpayer had a $100 wagering gain ($200-$100). And on the day the taxpayer redeemed $300 worth of tokens, the taxpayer had a $200 wagering gain ($300-$100).
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> For the year, the taxpayer had total wagering gains of $350 ($50 + $100 + $200) and total wagering losses of $610, ($500 from losing the entire basis of $100 on five occasions + $80 and $30 from two other occasions). The taxpayer's wagering losses exceeded her wagering gains for the taxable year by $260 ($610 - $350). The taxpayer must report the $350 of wagering gains as gross income under § 61. However, under § 165(d), the taxpayer may deduct only $350 of the $610 wagering losses. The taxpayer may not carry over the excess wagering losses to offset wagering gains in another taxable year or offset non-wagering income.
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> A casual gambler who elects to itemize deductions may deduct wagering losses, up to wagering gains, on Form 1040, Schedule A. In this case, the taxpayer may deduct only $350 of her $610 of wagering losses as an itemized deduction. A casual gambler who takes the standard deduction rather than electing to itemize may not deduct any wagering losses.

(Internal citations omitted).

In this case, Taxpayer does not contend that he is a professional gambler, nor does he rely on income from gambling as his sole source of income. Therefore, taxpayer is a casual gambler who is permitted under I.R.C. § 165(d) to deduct his wagering losses. However, Sec. 1.6001-1(a) of the Treasury Regulations, requires taxpayers to keep contemporaneous records to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return.

Schooler v. Comm'r of Internal Revenue, 68 T.C. 867, 870-71 (1977) provides further:

> Yet, section 1.6001-1(a) . . . imposes on all taxpayers the duty of maintaining "permanent books of account or records as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information". . . . There is no indication that the petitioner or other taxpayers engaged in wagering transactions could not maintain comparable records, such as a daily diary setting forth all the wagering transactions. Deductions for other purposes are not allowable unless substantiated by adequate records. *Id* at 871.

Additionally, the court in *Szkircsak v. Comm'r* provided the following:

> While there is no ironclad rule to establish conclusively losses from gambling, we believe, absent mitigating circumstances, taxpayers should at least offer a fairly contemporaneous record of their wagering transactions. A mere summary of losses prepared at the end of the year, rather than during the normal course of a taxpayer's business and unsupported by records of original entry, is inadequate for tax purposes.

40 T.C.M. (CCH) 208, at *3 (Tax Ct. 1980)(internal citations omitted).

Here, the Department determines that Taxpayer, as a casual gambler, was permitted to report wagering gains and losses on a "per session" basis pursuant to IC 6-3-1-3.5(a), I.R.C. § 165(d), IRS AM 2008-2011, and the reasoning under *Schollenberger*. However, Taxpayer has failed to provide sufficient documentation to support his protest, such as a personal diary or log of his daily wagering transactions, as required by Treas. Reg 1.6001-1(a) and described in *Szkircsak*. The annual win/loss statements provided by the Taxpayer do not sufficiently document his wagering transactions. Without additional documentation, Taxpayer has not satisfied the requirements to use the per-session method for casual gamblers.

FINDING

Taxpayer's protest is denied.

December 12, 2023

Replaces Finding Document at: New

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An html version of this document.