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Section 61.-- Gross Income Defined

26 CFR 1.61-1: Gross Income. (Also § 165; 1.165-10)

Safe Harbor Method for Determining a Wagering Gain or Loss from Slot Machine Play

Notice 2015-21

This notice provides a proposed revenue procedure that, if finalized, will provide an optional safe harbor method for individual taxpayers to determine a wagering gain or loss from certain slot machine play.

Section 61 of the Internal Revenue Code provides that gross income means all income from whatever source derived. See also § 1.61-1 of the Income Tax Regulations. Gains from wagering transactions are included in gross income. See Rev. Rul. 54-339, 1954-2 C.B. 89. Neither the statute nor the regulations define the term "transactions." Gross income from a slot machine wagering transaction is determined on a session basis. See Shollenberger v. Commissioner, T.C. Memo. 2009-306 (2009); LaPlante v. Commissioner, T.C. Memo. 2009-226 (2009). Section 165(d) provides that losses from wagering transactions are allowed only to the extent of the gains from such transactions. See also § 1.165-10 of the Income Tax Regulations. But see § 873(a) (for a nonresident alien individual, deductions are allowed only to the extent that they are connected with income that is effectively connected with the conduct of a trade or business within the United States). The Internal Revenue Service (Service) and the Treasury Department are aware that determining the amount of a wagering gain or loss

from slot machine play is burdensome for taxpayers and sometimes creates controversy between taxpayers and the Service. See, e.g., Shollenberger, *supra*; LaPlante, *supra*; Kochevar v. Commissioner, T.C. Memo. 1995-607 (1995). This controversy is complicated by changes in gambling technology. The increased use of electronic gambling, with the development of player's cards and tickets, has curtailed the redemption of tokens by slot machine players.

To reduce the burden on taxpayers, this proposed revenue procedure, if finalized, will provide an optional safe harbor method for determining what constitutes a session of play for purposes of calculating wagering gains or losses from electronically tracked slot machine play under § 61. The proposed revenue procedure describes the circumstances in which the safe harbor method can be used and provides examples of its application. Use of the safe harbor method will not relieve taxpayers of the requirement to maintain records that substantiate any items reported on their income tax returns. See § 6001; Rev. Proc. 77-29, 1977-2 C.B. 538.

This proposed revenue procedure does not address how the separate transactions determined under the safe harbor are taken into account in determining total gain or loss for a taxable year. See Shollenberger, *supra* (gambling losses are allowable, if at all, as itemized deductions in calculating taxable income). In particular, this revenue procedure does not permit gains or losses from separate sessions to be netted against each other to determine gain or loss for a taxable year. In addition, this safe harbor method applies only to wagering gains and losses; it does not apply to non-wagering expenses related to gambling. See Mayo v. Commissioner, 136 T.C. 81 (2011), acq., 2012-3 I.R.B. 285, action on dec., 2011-06 (Dec. 21, 2011) (section 165(d)

does not limit deductions for expenses incurred to engage in the trade or business of gambling).

The Service and the Treasury Department request comments from the public regarding the optional safe harbor method under this proposed revenue procedure. In particular, we request comments regarding: (1) alternative definitions for the term "slot machine;" (2) whether an interruption in play, such as leaving the gaming area for over 15 minutes, should affect the determination of what constitutes a single session of play; (3) whether a session of play should be based on a period other than a calendar day (making adjustments when necessary to accommodate the end of a taxpayer's year on December 31st); (4) whether the definition of a single session of play should be determined by other factors, such as the duration of a trip or by each slot machine played (comments should include an explanation of the benefits and drawbacks of the proposed method); (5) whether the safe harbor should include payouts in the form of merchandise and bonus rewards; (6) whether the topic is appropriate for the Industry Issue Resolution (IIR) program described in Rev. Proc. 2003-36, 2003-1 C.B. 859; (7) whether a safe harbor method to determine a wagering gain or loss should be developed for other forms of gambling, including, but not limited to, keno, table games, and pari-mutuel wagers (comments should include the form of gambling, a description of the proposed safe harbor method, and an explanation of the benefits and drawbacks of the proposed method); and (8) whether any aspects of the optional safe harbor pose problems of administrability for stakeholders (including whether the issues and possible modifications on which comments are requested would pose problems for sound tax administration).

Comments must be submitted by June 1st, 2015. Comments, identified by Notice 2015-21, may be sent by one of the following methods:

- By Mail:

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2015-21)
Room 5203
P.O. Box 7602
Ben Franklin Station
Washington, D.C. 20044

- By Hand or Courier Delivery: Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to:

Courier's Desk
Internal Revenue Service
Attn: CC:PA:LPD:PR
(Notice 2015-21)
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

- Electronic: Alternatively, persons may submit comments electronically to Notice.Comments@irs counsel.treas.gov. Please include "Notice 2015-21" in the subject line of any electronic communications.

All submissions will be available for public inspection and copying in Room 1621, 1111 Constitution Avenue, N.W., Washington, D.C., from 9 a.m. to 4 p.m.

PROPOSED REVENUE PROCEDURE

SECTION 1. PURPOSE

This revenue procedure provides an optional safe harbor method for taxpayers to determine a wagering gain or loss from certain slot machine play.

SECTION 2. BACKGROUND

.01 Section 61 of the Internal Revenue Code provides that gross income means all income from whatever source derived. See also § 1.61-1 of the Income Tax Regulations. Wagering gains are included in gross income. See Rev. Rul. 54-339, 1954-2 C.B. 89.

.02 Section 165(a) allows a deduction for any loss sustained during the taxable year and not compensated for by insurance or otherwise.

.03 Section 165(d) provides that losses from wagering transactions are allowed only to the extent of the gains from such transactions.

.04 Section 1.165-10 of the Income Tax Regulations provides that losses sustained during the taxable year on wagering transactions are allowed as a deduction but only to the extent of the gains during the taxable year from the transactions.

.05 Gross income from a wagering transaction is calculated by subtracting wagers placed to produce the payouts from the payouts as a preliminary step in determining gross income. See Rev. Rul. 83-130, 1983-2 C.B. 148.

.06 Gross income from a slot machine wagering transaction is determined on a session basis. See Shollenberger v. Commissioner, T.C. Memo 2009-306 (2009); LaPlante v. Commissioner, T.C. Memo. 2009-226 (2009). Determining whether a series of wagers is a “session” requires analyzing the relevant facts and circumstances and can present practical difficulties. Shollenberger, supra.

SECTION 3. DEFINITIONS

The following definitions apply solely for purposes of this proposed revenue procedure.

.01 *Slot Machine*. “Slot machine” means a device that, by application of the element of chance, may deliver, or entitle the person playing or operating the device to receive

cash, premiums, merchandise, or tokens whether or not the device is operated by insertion of a coin, token, or similar object.

.02 *Payout*. “Payout” means the amount, if any, payable to the taxpayer as a result of a wager placed by the taxpayer.

.03 *Electronically Tracked Slot Machine Play*. The term “electronically tracked slot machine play” means slot machine play using an electronic player system that is controlled by the gaming establishment (such as through the use of a player’s card or similar system) and that records the amount a specific individual won and wagered on slot machine play.

.04 *Session of Play*. A session of play begins when a patron places the first wager on a particular type of game and ends when the same patron completes his or her last wager on the same type of game before the end of the same calendar day. For purposes of this section, the time is determined by the time zone of the location where the patron places the wager. A session of play is always determined with reference to a calendar day (24-hour period from 12:00 a.m. through 11:59 p.m.) and ends no later than the end of that calendar day.

SECTION 4. SCOPE

This revenue procedure applies to individual taxpayers who engage in electronically tracked slot machine play.

SECTION 5. APPLICATION

The Service will not challenge a taxpayer’s use of the definition of a session of play set forth in section 3.04 of this revenue procedure in calculating a wagering gain or wagering loss from electronically tracked slot machine play provided that the taxpayer

complies with the provisions of section 6.01 through section 6.04 of this revenue procedure.

SECTION 6. DETERMINING GAIN OR LOSS IN A SESSION OF PLAY

.01 A taxpayer determines a wagering gain or loss from electronically tracked slot machine play at the end of a single session of play (as defined in section 3.04) as follows:

- (1) A taxpayer recognizes a wagering gain if, at the end of a single session of play, the total dollar amount of payouts from electronically tracked slot machine play during that session exceeds the total dollar amount of wagers placed by the taxpayer on electronically tracked slot machine play during that session;
- (2) A taxpayer recognizes a wagering loss if, at the end of a single session of play, the total dollar amount of wagers placed by the taxpayer on electronically tracked slot machine play exceeds the total dollar amount of payouts from electronically tracked slot machine play during that session.

.02 A taxpayer must use the same session of play if the taxpayer stops and then resumes electronically tracked slot machine play within a single gaming establishment during the same calendar day.

.03 If a taxpayer uses the definition of a session of play set forth in section 3.04 for any day in a calendar year at a particular gaming establishment, the taxpayer must use that definition for all electronically tracked slot machine play during the taxable year at that same gaming establishment.

.04 If, after engaging in slot machine play at one gaming establishment, a taxpayer leaves that establishment and begins electronically tracked slot machine play at another

gaming establishment, a separate session of play begins at the second establishment, even if played within the same calendar day as the first.

.05 Examples. In each example below, the taxpayer uses the safe harbor method provided by this revenue procedure for all electronically tracked slot machine play for the calendar year and can properly substantiate all wagering gains and losses pursuant to § 6001. In addition, in each example below, the taxpayer complies with the requirements of sections 6.02 and 6.03 to use the session of play definition set forth in section 3.04 consistently for electronic play over the course of a day and over the course of separate sessions during the taxable year.

Example 1. A taxpayer engages in electronically tracked slot machine play at X, a casino, by using a player's card. On January 1, the taxpayer plays slot machines at X, for the first time that day, from 3:00 p.m. to 5:00 p.m. At 6:00 p.m., the taxpayer leaves X for dinner. Later that day, the taxpayer returns to X and plays slot machines from 10:00 p.m. to 11:59 p.m. The play at X from 3:00 p.m. to 5:00 p.m. and from 10:00 p.m. to 11:59 p.m. is a single session of play on January 1.

Example 2. Assume the same facts as in Example 1, except that the taxpayer plays from 10 p.m. to 2 a.m. The play from 3 p.m. to 5 p.m. and the play from 10 p.m. through 11:59 p.m. constitute a single session of play. The play from 12:00 midnight to 2 a.m. is another session of play on January 2nd.

Example 3. Assume the same facts as in Example 1, except that the taxpayer goes to another casino, Y, to engage in electronically tracked slot machine play from 7:00 p.m. to 8:00 p.m. The taxpayer has 2 separate sessions of play on January 1: (1) one session of play from 3:00 p.m. to 5:00 p.m. and 10:00 p.m. to 11:59 p.m. at X, and (2)

another session of play from 7:00 p.m. to 8:00 p.m. at Y.

Example 4. On January 1, at 3:00 p.m., the taxpayer starts electronically tracked slot machine play at X for the first time that day. At 5:00 p.m., the taxpayer finishes slot machine play for that day and has payouts in excess of wagers of \$300. For the single session of play on January 1, the taxpayer has gambling winnings of \$300.

Example 5. Assume the same facts as in Example 4, except that at 5:00 p.m., the taxpayer leaves the premises of X to eat dinner at a nearby restaurant. At 8:00 p.m., the taxpayer returns to the premises of X for more slot machine play. The taxpayer places wagers until 11:00 p.m. During the period from 8:00 p.m. until 11:00 p.m., the taxpayer's wagers placed on electronically tracked slot machine play exceeded the total dollar amount of payouts from electronically tracked slot machine play earned by the taxpayer by \$75. The taxpayer's wagering gain for the single session of play at X is \$225, the extent to which his payouts from electronically tracked slot machine play during that session exceeds the dollar amount of wagers from electronically tracked slot machine play.

Example 6. Assume the same facts as in Example 4, except the taxpayer goes to another area of X and from 5:15 p.m. to 7:00 p.m., engages in additional slot machine play that is not electronically tracked. This revenue procedure applies only to electronically tracked slot machine play (the session from 3:00 p.m. to 5:00 p.m.). Therefore, the taxpayer cannot include the slot machine play from 5:15 p.m. to 7:00 p.m. in the session of play for January 1.

Example 7. Assume the same facts as in Example 4, except that, three months later on April 1, the taxpayer returns to X for slot machine play, and begins electronically tracked

slot machine play at 6:00 p.m. For the slot machine play on April 1, section 6.03 of this revenue procedure requires the taxpayer to use a session of play that runs from 6:00 p.m. up through 11:59 p.m. (or earlier in that calendar day, if his play ends earlier).

SECTION 7. PROCEDURE

To use this revenue procedure, a taxpayer must write “Revenue Procedure 2015-X” on Line 21 of the Form 1040, U.S. Individual Tax Return. A nonresident alien who is a non-professional gambler must write “Revenue Procedure 2015-X” on line 10, if a resident of Canada, or on line 11, if not a resident of Canada, on Schedule NEC of the Form 1040NR. A nonresident alien who is a professional gambler and uses this Revenue Procedure must write “Revenue Procedure 2015-X” on line 21 of the Form 1040NR.

SECTION 8. EFFECTIVE DATE

This revenue procedure is effective for taxable years ending on or after [insert date of publication of final revenue procedure], except for section 7, which will be effective no earlier than taxable years beginning on or after January 1, 2016.

DRAFTING INFORMATION

The principal authors of this notice are Amy S. Wei and Renay France of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice contact Renay France at (202) 317-7003 (not a toll-free call).