



Tax Reduction Letter

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REG-132253-11

Internal Revenue Bulletin: 2015-12

March 23, 2015

REG-132253-11

Information Returns; Winnings from Bingo, Keno, and Slot Machines

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AGENCY:

Internal Revenue Service (IRS), Treasury.

ACTION:

Notice of proposed rulemaking and notice of public hearing.

SUMMARY:

This document contains proposed regulations under section 6041 regarding the filing of information returns to report winnings from bingo, keno, and slot machine play. The proposed regulations affect persons who pay winnings of \$1,200 or more from bingo and slot machine play, \$1,500 or more from keno, and recipients of such payments. This document also provides a notice of a public hearing on these proposed regulations.

DATES:

Written or electronic comments must be received by June 2, 2015. Outlines of topics to be discussed at the public hearing scheduled for June 17, 2015 at 10 a.m. must be received by June 2, 2015.

ADDRESSES:

Send submissions to: CC:PA:LPD:PR (REG-132253-11), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-132253-11), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-132253-11). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, David Bergman, (202) 317-6844; concerning submissions of comments, the hearing, or to be placed on the building access list to attend the hearing, Oluwafunmilayo P. Taylor (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations to Title 26 of the Code of Federal Regulations under section 6041 of the Internal Revenue Code. The proposed regulations would update and simplify the existing information reporting requirements under § 7.6041-1 of the Temporary Income Tax Regulations under the Tax Reform Act of 1976 for persons who make reportable payments of bingo, keno, or slot machine winnings. The updated requirements are proposed to be set forth in a new § 1.6041-10 of the regulations. Accordingly, when § 1.6041-10 of the proposed regulations becomes final, the regulations under § 7.6041-1 will be removed.

Section 6041 generally requires information reporting by every person engaged in a trade or business who, in the course of such trade or business, makes payments of gross income of \$600 or more in any taxable year. The current regulatory reporting thresholds for winnings from bingo, keno, and slot machines deviate from this general rule. Prior to the adoption of the current thresholds in 1977, reporting from bingo, keno, and slot machines was based a sliding scale threshold tied to the amount of the wager and required the wager odds to be at least 300 to 1. On January 7, 1977, temporary regulation § 7.6041-1 was published establishing reporting thresholds for payments of winnings from bingo, keno, and slot machine play in the amount of \$600. In Announcement 77-63, 1977-8 IRB 25, the IRS announced that it would not assert penalties for failure to file information returns before May 1, 1977, to allow the casino industry to submit, and the IRS to consider, information regarding the industry's problems in complying with the reporting requirements. After considering the evidence presented by the casino industry, the IRS announced in a press release that effective May 1, 1977, information reporting to the IRS

would be required on payments of winnings of \$1,200 or more from a bingo game or a slot machine play, and \$1,500 or more from a keno game net of the wager. On June 30, 1977, § 7.6041-1 was amended to raise the reporting thresholds for winnings from a bingo game and slot machine play to \$1,200, and the reporting threshold for winnings from a keno game to \$1,500.

Section 7.6041-1(c) provides that bingo, keno, and slot machine winnings are reported on the Form W-2G, "Certain Gambling Winnings." The payor must provide a copy of the Form W-2G to the payee by January 31 of the year following the year in which the reportable payment is made, and the payor must file the Form W-2G with the IRS by February 28 of the year following the year in which the reportable payment is made. The Form W-2G must include, among other things, the name, address, and taxpayer identification number of the payee and a general description of the two forms of identification used to verify this information.

Explanation of Provisions

The current regulations governing information reporting of winnings from bingo, keno, and slot machine play were published in 1977. There have been significant changes in gaming industry technology since that time. For instance, today many gaming establishments employ electronic slot machines and other mechanisms, such as player's cards, that permit electronic tracking of wagers and/or winnings. In addition, there have been many changes in the tax information reporting regime since the late 1970s, such as the enactment of backup withholding and requirements for electronic filing of information returns, including the Form W-2G. Current regulations under § 7.6041-1 of the Temporary Income Tax Regulations do not take these changes into account. Accordingly, the Treasury Department and the IRS think the regulations for reporting winnings from bingo, keno, and slot machine play need to be updated in light of these developments and that there are opportunities to reduce burden and simplify reporting. The changes proposed by this document are intended to accomplish these goals. In addition, the Treasury Department and the IRS specifically request comments on certain topics addressed by the regulations.

Filing Requirement

Proposed § 1.6041-10(a) retains the general rule from § 7.6041-1 of the Temporary Income Tax Regulations that every person engaged in a trade or business who, in the course of its trade or business, pays reportable gambling winnings must make an information return with respect to such payments. Proposed § 1.6041-10(a) clarifies that, consistent with current law and as provided in § 1.6041-1(b) of the regulations, the term "persons engaged in a trade or business" includes not only those engaged in a trade or business for profit or gain, but also organizations whose activities are not for profit or gain, such as tax-exempt organizations and governmental entities.

Proposed § 1.6041-10(b) sets thresholds for when winnings from bingo, keno, and slot machine play will be treated as reportable gambling winnings and subject to reporting. Existing § 7.6041-1(b) of the Temporary Income Tax Regulations sets one threshold for bingo and slots, and a different threshold for keno. In addition, under § 7.6041-1(b) of the Temporary Income Tax Regulations, winnings from a keno game are reduced by the amount wagered in that game in determining whether the reporting threshold is satisfied, whereas for bingo and slot machine play winnings are not reduced by the amount wagered in determining whether the reporting threshold is satisfied.

Under the proposed regulations, the reporting thresholds for winnings from bingo, keno and slot machine play (other than electronically tracked slot machine play) remain the same as under the

existing regulations. These thresholds are intended to reach a balance between reporting burden and compliance risk. Based on over 35 years of experience with the current thresholds, the IRS thinks they are sufficient at this time to verify correct reporting of wagering income.

Accordingly, § 1.6041–10(b) of the proposed regulations provides that reportable gambling winnings means (i) \$1,200 or more in the case of one bingo game or slot machine play, and (ii) \$1,500 or more in the case of one keno game. However, advances in technology in the nearly four decades since the existing rules were adopted may overcome the compliance concerns that prompted the higher reporting thresholds and may warrant reducing the thresholds for bingo, keno, and slots to \$600, consistent with other information reporting thresholds under § 6041(a). Accordingly, the IRS and Treasury will continue to monitor the effectiveness of the existing (and proposed) reporting thresholds, and may propose to reduce those thresholds at a future time. Comments are specifically requested regarding the proposed reporting thresholds, including the feasibility of reducing those thresholds to \$600 at a future time, whether electronically tracked slot machine play should have a separate reporting threshold, and whether the amounts should be uniform for bingo, keno, and slot machine play.

In addition, the proposed regulations retain the rule from § 7.6041–1(b) of the Temporary Income Regulations that, in determining whether the reporting threshold is satisfied, the amount of the winnings from bingo or slot machine play is not reduced by the amount wagered, but the amount of winnings from one keno game is reduced by the amount wagered in that one game. Allowing the winnings from one keno game to be reduced by the amount wagered in that one game has been permitted by the regulations for over 35 years. This rule has been relied upon by payors and is an established norm in the gaming industry. The proposed regulations do not permit the winnings from one bingo game or slot machine pull to be reduced by the amount wagered in that one game or pull because the IRS does not have data indicating that this is feasible. Comments are requested regarding whether reportable gambling winnings in the case of bingo and slot machine play (other than electronically tracked slot machine play) should be determined by netting the wager against the winnings as with keno.

The proposed regulations also include new rules for determining the reporting threshold for electronically tracked slot machine play. Under § 1.6041–10(b)(1) of the proposed regulations, electronically tracked slot machine play means slot machine play where an electronic player system that is controlled by the gaming establishment (such as through the use of a player's card or similar system) records the amount a specific individual won and wagered on slot machine play. The new reporting threshold rules for electronically tracked slot machine play rules are intended to simplify reporting by allowing payors to leverage their existing technology and processes to report winnings from electronically tracked slot machine play. In addition, these changes are intended to facilitate reporting that more closely reflects gross income that will be reported by payees on their individual income tax returns. See Notice 2015–21 for more information on computing gross income attributable to electronically tracked slot machine play. Comments are specifically requested with respect to the definitions of session and electronically tracked slot machine play.

Under these new rules, gambling winnings for electronically tracked slot machine play must be reported when two criteria are met: (i) the total amount of winnings earned from electronically tracked slot machine play during a single session netted against the total amount of wagers placed on electronically tracked slot machines during the same session is \$1,200 or more; and (ii) at least one single win during the session (without regard to the amount wagered) equals or exceeds \$1,200. The first criterion helps to implement the safe harbor for computing gross income attributable to electronically tracked slot machine play described in Notice 2015–21. The

second criterion is intended to be consistent with the casino industry's current practice of gathering payee information when a player wins a single jackpot that satisfies the reporting threshold. The \$1,200 threshold for each criterion is intended to balance reporting burden and compliance risk as discussed previously. Pursuant to § 1.6041-10(b)(3) of the proposed regulations, a session begins when a patron places the first wager on a particular type of game at the payor's gaming establishment and ends when the patron places his or her last wager on the same type of game before the end of the same calendar day at the same establishment. Under this rule, reporting with respect to electronically tracked slot machine play is not required if no single win (without reduction for the amount of the wager) meets the \$1,200 reporting threshold or if the net amount of winnings reduced by the amount of all wagers for the session is less than \$1,200. However, if the \$1,200 reporting threshold for a single win is satisfied and all winnings from electronically tracked slot machine play during a session netted against all wagers on electronically tracked slot machine play during that session are \$1,200 or more, gambling winnings for the session must be reported on a Form W-2G.

Proposed § 1.6041-10(b)(2) also includes several clarifications regarding the definition of reportable gambling winnings. First, the proposed regulations clarify that all winnings from all cards played during one bingo game are combined and that all winnings from all "ways" on a multi-way keno ticket are combined. Second, the proposed regulations clarify that winnings from different types of games are not combined to determine whether the reporting thresholds are satisfied, and that bingo, keno, electronically tracked slot machine play, and slot machine play that is not electronically tracked are all different types of games.

Proposed § 1.6041-10(b)(4) also adds a definition of the term "slot machine" to these information reporting regulations. Under this definition, a slot machine is 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 inserting a coin, token, or similar object. The definition of slot machine in the proposed regulations is intended to be consistent with § 44.4402-1(b)(1) of the Wagering Tax Regulations.

Filing and Form and Content of the Information Return

Proposed § 1.6041-10(d) retains the requirement in § 7.6041-1(c) of the Temporary Income Tax Regulations that a payor of reportable gambling winnings file a Form W-2G, "Certain Gambling Winnings," or successor form, on or before February 28 (or March 31, if filed electronically) of the year following the calendar year in which the reportable gambling winnings were paid. Outdated references to the place of filing have been replaced with a requirement that the return is filed with the appropriate Internal Revenue Service location designated in the instructions to the form.

Proposed § 1.6041-10(g) requires a payor of reportable gambling winnings to provide a statement of the reportable gambling winnings to each payee on or before January 31st of the calendar year after the calendar year in which the gambling winnings were paid. Although § 7.6041-1 of the Temporary Income Tax Regulations does not address when to provide statements to the payees, the proposed regulations are a restatement of the requirement to furnish statements to payees in section 6041(d). In addition, proposed § 1.6041-10(i) clarifies that the rules for reporting winnings from bingo, keno, and slot machine play under proposed § 1.6041-10 do not apply to payments made to foreign persons. Instead, gambling winnings paid to a foreign person are generally subject to 30 percent withholding under sections 1441(a) and 1442(a) and are reportable on Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, and Form 1042-S, Foreign Person's U.S. Source Income Subject to

Withholding. Proposed § 1.6041–10(e) retains the rules in § 7.6041–1(c) of the Temporary Regulations regarding the information that is required on the return, including the requirement that the payor describe on the return the two types of identification relied on to verify the payee’s identity. However, proposed § 1.6041–10(e) now requires that one of the forms of identification include the payee’s photograph to ensure that certain safeguards are in place to properly identify the payee. In addition, under proposed § 1.6041–10(f), the type of identification that is acceptable has been expanded.

Payee Identification

Section 7.6041–1(c)(3) of the Temporary Income Tax Regulations, which has been in place since 1977, provides that the identification verifying the payee’s identity must include the payee’s social security number. According to those regulations, examples of acceptable identification include a driver’s license, a social security card, or a voter registration card. However, today most forms of identification do not include a person’s social security number. Therefore, many payees do not have identification that contains the payee’s social security number and, even if they do, they may not have this identification with them at the time that they receive a payment of reportable gambling winnings. To address this issue, § 1.6041–10(f) of the proposed regulations provides that, in addition to government-issued identification, a properly completed Form W–9 signed by the payee is an acceptable form of identification to verify the payee’s identifying information. This rule is consistent with procedures currently used by many payors to address the fact that most forms of identification do not contain social security numbers. Accordingly, payors who verify payee information using identification set forth in proposed § 1.6041–10(f) before the date that final regulations implementing these provisions are published in the Federal Register will be treated as meeting the requirements of § 7.6041–1(c) of the Temporary Income Tax Regulations.

Aggregate Reporting Method

Proposed § 1.6041–10(h) provides an alternative method for reporting multiple winnings from bingo, keno, and slots. Under current regulations, each payment of gambling winnings from a single bingo or keno game, or slot machine play that meets the reporting threshold is required to be reported on a Form W–2G to the same payee. To simplify reporting, proposed § 1.6041–10(h) would allow a payor who makes more than one payment of reportable gambling winnings to the same payee from the same type of game during the same session to report the aggregate amount of such reportable gambling winnings on one Form W–2G. This aggregate reporting method may be used at the payor’s option. Proposed § 1.6041–10(h)(3) sets forth certain recordkeeping requirements for a payor using the aggregate reporting method.

Gambling Winnings Other Than Bingo, Keno, and Slot Machine Play

These proposed regulations apply to reporting of gambling winnings from bingo, keno, and slot machine play. The Treasury Department and the IRS are aware that taxpayers required to report winnings from pari-mutuel gambling may have concerns, similar to those addressed in these proposed regulations, relating to when wagers with respect to horse races, dog races, and jai alai may be treated as identical. Identical wagers are combined and offset against winnings to determine proceeds from the wager for purposes of determining whether the reporting thresholds are satisfied. The Treasury Department and the IRS intend to amend the regulations under § 31.3402(q)–1 in a manner consistent with these proposed regulations and request comments from the public on this topic. In addition, comments are requested regarding whether the aggregate reporting method should be available for gambling winnings other than winnings from bingo, keno, and slot machine play.

Proposed Effective/Applicability Date

These regulations are proposed to apply to payments made on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that this rule merely provides guidance as to the timing and filing of information reporting returns for payors who make reportable payments of bingo, keno, or slot machine winnings and who are required by section 6041 to make returns reporting those payments. The requirement for payors to make information returns is imposed by statute and not these regulations. In addition, this rule is reducing the existing burden on payors to comply with the statutory requirement by simplifying the process for payors to verify payees' identities using a broader range of documents that are more readily available and also by allowing payors to reduce the number of information returns they issue if they adopt the new aggregate reporting methodology in the regulations. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. Chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. In addition to the requests for comments noted in the Background Section, Treasury and the IRS request comments on any other aspects of the proposed rules, and any other issues relating to the payment of bingo, keno, and slot machine winnings that are not addressed in the proposed regulations. All comments will be available at www.regulations.gov for public inspection and copying.

A public hearing has been scheduled for June 17, 2015, beginning at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the “**FOR FURTHER INFORMATION CONTACT**” section of this preamble.

The rules of § 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) and an outline of the topics to be discussed and the time to be devoted to each topic by [*INSERT 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER*]. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Charles W. Gorham, formerly of the Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment Taxes and Collection of Income Tax at Source.

Proposed Amendment to the Regulations

Accordingly, 26 CFR parts 1 and 31 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805* * *

Par. 2. Section 1.6041–10 is added to read as follows:

§ 1.6041–10 Return of information as to payments of winnings from bingo, keno, and slot machine play.

(a) *In general.* Every person engaged in a trade or business (as defined in § 1.6041–1(b)) and who, in the course of such trade or business, makes a payment of reportable gambling winnings (defined in paragraph (b)(2) of this section) must make an information return with respect to such payment. Unless the provisions of paragraph (h) of this section (regarding aggregate reporting) apply, a separate information return is required with respect to each payment of reportable gambling winnings.

(b) *Definitions.* (1) *Electronically tracked slot machine play.* For purposes of this section, 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) that records the amount a specific individual won and wagered on slot machine play.

(2) *Reportable gambling winnings.* (i) For purposes of this section, the term “reportable gambling winnings” is defined as follows:

(A) For bingo, the term “reportable gambling winnings” means winnings of \$1,200 or more from one bingo game, without reduction for the amount wagered. All winnings received from all wagers made during one bingo game are combined (for example, all winnings from all cards played during one bingo game are combined).

(B) For keno, the term “reportable gambling winnings” means winnings of \$1,500 or more from one keno game reduced by the amount wagered on the same keno game. All winnings received from all wagers made during one keno game are combined (for example, all winnings from all “ways” on a multi-way keno ticket are combined).

(C) For slot machine play (other than electronically tracked slot machine play as defined in paragraph (b)(1) of this section), the term “reportable gambling winnings” means winnings of \$1,200 or more from one slot machine play, without reduction for the amount wagered.

(D) For electronically tracked slot machine play (as defined in (b)(1) of this section), the term “reportable gambling winnings” means net winnings of \$1,200 or more, but only if the winnings from at least one electronically tracked slot machine play during the session, without reduction for any amount wagered, is \$1,200 or more. For purposes of this paragraph (b)(2)(i)(D) of this section, net winnings is determined by combining the amount of all winnings from all electronically tracked slot machine play during the session reduced by the amount of all wagers from all electronically tracked slot machine play during the same session.

(ii) Winnings and wagers from different types of games are not combined to determine if the reporting threshold is satisfied. Bingo, keno, and slot machine play are different types of games. Electronically tracked slot machine play and slot machine play that is not electronically tracked are different types of games.

(iii) Winnings include the fair market value of a payment in any medium other than cash.

(iv) The amount wagered in the case of a free play is zero.

(v) For purposes of paragraph (b)(2)(i)(D) of this section, with respect to electronically tracked slot machine play, if the amount wagered during a session exceeds the amount won during the same session, the amount of winnings is zero.

(3) *Session*. For purposes of this section, a session of play begins when a patron places the first wager on a particular type of game at a gaming establishment and ends when the patron places his or her last wager on the same type of game before the end of the same calendar day at the same gaming establishment. 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 a.m. through 11:59 p.m.) and ends no later than the end of that calendar day. Nothing in this section prohibits a payor from terminating a session for any reason before the end of that calendar day.

(4) *Slot machine*. The term “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.

(c) *Examples*. The following examples illustrate the provisions of paragraphs (a) and (b) of this section:

Example 1. At 10 a.m., A wagers \$20 at casino R on one play on a slot machine that is not electronically tracked. A wins \$1,200 from this wager. At 2 p.m. on the same day, A wagers \$100 on one keno game at casino R. A wins \$1,550 from that wager. A makes no other wagers that day:

(i) Under paragraph (b)(2)(i)(C) of this section, A’s \$1,200 in winnings from slot machine play that is not electronically tracked are not reduced by the amount wagered. Therefore, the \$1,200 winnings from slot machine play that is not electronically tracked are reportable gambling winnings. R must report the \$1,200 in winnings from slot machine play that it pays to A.

(ii) Under paragraph (b)(2)(ii) of this section, because winnings from different types of games are not combined to determine whether the threshold for reportable gambling winnings is satisfied, A’s winnings from slot machine play that is not electronically tracked are not combined with A’s winnings from keno. A’s winnings from keno are below the \$1,500 reporting threshold for keno, because the gross amount of \$1,550 that A won is reduced by the \$100 amount that A wagered. R is therefore not required to report the winnings from keno that it pays to A under paragraph (b)(2)(i)(B) of this section.

Example 2. Between 11 a.m. and 11 p.m. on the same day, B places five wagers of \$20 each at casino Q on slot machine play that is not electronically tracked. B wins a total of \$1,600 during that period of time as follows: an \$800 win on the first play, no win on the second play, no win on the third play, a \$600 win on the fourth play, and a \$200 win on the fifth play. Under paragraph (b)(2)(i)(C) of this section, winnings from slot machine play that is not electronically tracked are not combined to determine whether the reporting threshold is satisfied. Therefore, none of B's winnings is a reportable gambling winning and Q is not required to report winnings from slot machine play that it pays to B.

Example 3. During one session at casino R, C places two \$20 wagers on one electronically tracked slot machine and three \$20 wagers on a different electronically tracked slot machine. The first four wagers result in no wins. The fifth wager results in a win of \$2,000. C makes no further wagers on any games at R during the same session. C's combined winnings for the session (\$2,000) reduced by C's combined wagers for the session (\$100) is \$1,900, which is over the \$1,200 threshold described in paragraph (b)(2)(i)(D) of this section. In addition, C had one win in the same session of \$1,200 or more (\$2,000 win). Therefore, under paragraph (b)(2)(i)(D) of this section, R paid reportable gambling winnings with respect to electronically tracked slot machine play of \$1,900. Accordingly, R must report the winnings of \$1,900 that it paid to C.

Example 4. Assume the same facts as in *Example 3*, except that the fourth wager results in an \$800 win and the fifth wager results in a \$1,000 win. C's combined winnings for the session of \$1,800 (\$800 + \$1,000) reduced by C's combined wagers placed during the session of \$100 is \$1,700. However, C did not have a single win during that session of \$1,200 or more, as required under paragraph (b)(2)(i)(D) of this section, for there to be reportable gambling winnings from electronically tracked slot machine play. Accordingly, R is not required to report the winnings from the session from electronically tracked slot machine play that it pays to C.

Example 5. During one session, D places ten \$200 wagers on electronically tracked slot machine play at casino S. The first nine wagers result in no wins. The last wager results in a \$1,500 win. D's combined winnings for the session (\$1,500) reduced by D's combined wagers placed during the session (\$2,000) did not result in any net winnings from electronically tracked slot machine play during the session. Under paragraph (b)(2)(i)(D) of this section, gambling winnings from a session of electronically tracked slot machine play are not reportable gambling winnings unless they include a single win of \$1,200 or more and the net amount of all winnings during the session reduced by all wagers placed during the session is \$1,200 or more. Here, there was a single win of \$1,500, which exceeds the threshold for a single win under paragraph (b)(2)(i)(D) of this section. However, because the net amount of the winnings reduced by all the wagers placed during the session is not \$1,200 or more, paragraph (b)(2)(i)(D) of this section is not satisfied. Therefore, during the session, D did not have reportable gambling winnings with respect to electronically tracked slot machine play during the session and S is not required to report the winnings it pays D with respect to electronically tracked slot machine play during this session.

Example 6. During one session, E places five \$20 wagers at casino T on slot machine play that is not electronically tracked. The first four wagers result in no wins. The fifth wager results in a win of \$1,200. During the same session, E also places five \$20 wagers at casino T on slot machine play that is electronically tracked. The first four wagers result in no wins. The fifth wager results in a win of \$1,400. E makes no wagers on any other games at T during that session. Under paragraph (b)(2)(ii) of this section, winnings from slot machine play that is not electronically tracked and winnings from electronically tracked slot machine play are not combined. However, even without combining the winnings from both types of slot machine play, T paid reportable gambling winnings with respect to both the slot machine play that is not electronically tracked, and electronically tracked slot machine play as follows:

(i) Under paragraph (b)(2)(i)(C) of this section, E's \$1,200 of winnings from slot machine play that is not electronically tracked is not reduced by the amount wagered, even though all of E's wagers were placed during the same session. Accordingly, the \$1,200 of winnings from slot machine play that is not electronically tracked meets the threshold in paragraph (b)(2)(i)(C) of this section and T must report the \$1,200 in winnings from slot machine play that is not electronically tracked that it pays to E.

(ii) Because E's combined winnings from electronically tracked slot machine play during the session (\$1,400) reduced by E's combined wagers on electronically tracked slot machine play placed during the session (\$100) is \$1,200 or more ($\$1,400 - \$100 = \$1,300$) and E had at least one win during the same session of \$1,200 or more (a win of \$1,400), under paragraph (b)(2)(i)(D) of this section, T paid E reportable gambling winnings with respect to electronically tracked slot machine play. Accordingly, T must also report winnings from the electronically tracked slot machine play during the session of \$1,300 that it pays to E.

Example 7. During the same session, F makes five \$20 wagers at casino V on slot machine play that is electronically tracked on the same slot machine. The first three wagers result in no wins. The fourth wager results in a win of \$900. The fifth wager results in a win of \$1,100. After the fifth wager, F uses free play to make a wager. The free play wager occurs during the same session as the five wagers and is also electronically tracked. As a result of the free play, F wins \$1,200. In this case, there are reportable gambling winnings from electronically tracked slot machine play. Under paragraph (b)(2)(i)(D) of this section, F's combined winnings from electronically tracked slot machine play during the session (\$3,200) reduced by F's combined wagers placed on electronically tracked slot machine play during the session ($(\$20 \times 5) + 0 = \100) is \$3,100, and F had at least one win in the same session of \$1,200 or more (a win of \$1,200 from the free play). Accordingly, V must report the \$3,100 of winnings from the electronically tracked slot machine play during the session that it pays to F.

Example 8. Between 11 p.m. and 11:59 p.m. on Day 1, G makes five \$20 wagers at casino W on slot machine play that is electronically tracked. The first four wagers placed on Day 1 result in no wins. The fifth wager placed on Day 1 results in an \$800 win. Between 12:00 a.m. and 12:15 a.m. on Day 2, G makes two \$20 wagers on the same slot machine at casino W that is electronically tracked. The first wager placed on Day 2 results in a win of \$600. The second wager placed on Day 2 results in a win of \$900.

(i) Under paragraphs (b)(2)(i)(D) and (b)(3) of this section, the winnings from one session of electronically tracked slot machine play are not combined with the winnings from another session of electronically tracked slot machine play for purposes of determining reportable gambling winnings. In this case, G engaged in electronically tracked slot machine play during two sessions, even though he played the same type of game on the same machine at the same gambling establishment. Therefore, each session must be analyzed to determine whether there were reportable gambling winnings from electronically tracked slot machine play.

(ii) During the session on Day 1, G won \$800. Because no single win was \$1,200 or more on Day 1, there were no reportable gambling winnings from electronically tracked slot machine play on Day 1 under paragraph (b)(2)(i)(D) of this section, and W does not have to report the winnings from electronically tracked slot machine play on Day 1 that it paid to G.

(iii) During the session on Day 2, G won \$600 and \$900. Because no single win was \$1,200 or more on Day 2, there were no reportable gambling winnings from electronically tracked slot machine play on Day 2 under paragraph (b)(2)(i)(D) of this section, and W does not have to report the winnings from electronically tracked slot machine play on Day 2 that it paid to G.

(d) *Prescribed form; time and place for filing the return.* The return described in paragraph (a) of this section is a Form W-2G, "Certain Gambling Winnings" or successor form. The Form W-2G must be filed with the appropriate Internal Revenue Service location designated in the instructions to the form on or before February 28 (March 31, if filed electronically) of the year following the calendar year in which the reportable gambling winnings were paid. See section 6011 and § 1.6011-2 for requirements to file electronically.

(e) *Information included on the return.* Each return required by paragraph (a) of this section must contain:

- (1) The name, address, and taxpayer identification number of the payor;
- (2) The name, address, and taxpayer identification number of the payee;
- (3) A general description of the two types of identification (as described in paragraph (f) of this section), one of which must have the payee's photograph on it, that the payor relied on to verify the payee's name, address, and taxpayer identification number;
- (4) The date and amount of payment;
- (5) The type of wagering transaction (bingo, keno, slot machine play, or electronically tracked slot machine play);
- (6) In the case of a bingo or keno game, any number, color, or other designation assigned to the game for which the payment is made;
- (7) In the case of slot machine play (including electronically tracked slot machine play), the identification number of the slot machine(s) (for example, location and asset number);
- (8) Any other information required by the form, instructions, revenue procedure, or other applicable guidance published in the Internal Revenue Bulletin.

In the case of aggregate reporting under paragraph (h) of this section, the amount of the payment in paragraphs (e)(4) is the aggregate amount of payments of reportable gambling winnings from the same type of game (bingo, keno, slot machine play, or electronically tracked slot machine play) made to the same payee during the same session (as defined in paragraph (b)(3) of this section). Unless otherwise provided in forms, instructions, or other guidance, in the case of aggregate reporting under paragraph (h) of this section the information required by paragraphs (e)(5), (6), (7) of this section, and this paragraph (e)(8) must be maintained by the payor as described in paragraph (h)(3) of this section.

(f) *Identification.* The following items are treated as identification for purposes of paragraph (e)(3) of this section—

- (1) Government-issued identification (for example, a driver's license, passport, social security card, military identification card, or voter registration card) in the name of the payee; and
- (2) A Form W-9, "Request for Taxpayer Identification Number and Certification," signed by the payee, that includes the payee's name, address, taxpayer identification number, and other information required by the form. A Form W-9 is not acceptable for this purpose if the payee has modified the form (other than pursuant to instructions to the form) or if the payee has deleted the jurat or other similar provisions by which the payee certifies or affirms the correctness of the statements contained on the form.

(g) *Furnishing a statement to the payee.* Every payor required to make a return under paragraph (a) of this section must also make and furnish to each payee, with respect to each payment of reportable gambling winnings, a written statement that contains the information that is required to be included on the return under paragraph (e) of this section. The payor must furnish the statement to the payee on or before January 31st of the year following the calendar year in which payment of the reportable gambling winnings is made. The statement will be considered furnished to the payee if it is provided to the payee at the time of payment or if it is mailed to the payee on or before January 31st of the year following the calendar year in which payment was made.

(h) *Aggregate reporting of bingo, keno, and slot machine winnings.* (1) *In general.* In lieu of filing a separate information return for each payment of reportable gambling winnings as required by paragraph (a) of this section, a payor may use the aggregate reporting method (defined in paragraph (h)(2) of this section) to report reportable gambling winnings from bingo, keno, or slot machine play (including electronically tracked slot machine play). A payor using the aggregate reporting method to file information returns under paragraph (a) of this section must also furnish statements to the payee under paragraph (g) of this section using the aggregate reporting method.

(2) *Aggregate reporting method defined.* (i) The aggregate reporting method is a method of reporting more than one payment of reportable gambling winnings from the same type of game (bingo, keno, slot machine play, or electronically tracked slot machine play) made to the same payee during the same session (as defined in this paragraph (b)(3) of this section) on one information return or statement.

(ii) A payor may use the aggregate reporting method for payments to some payees and not others, at its own discretion. In addition, with respect to a single payee, the payor may use the aggregate reporting method to report winnings from one type of game, but not for winnings from another type of game.

(iii) Failure to report some reportable gambling winnings from a particular type of game during one session to a particular payee under the aggregate reporting method (for whatever reason, including because the winnings are not permitted to be reported using the aggregate reporting method under paragraph (h)(4) of this section) will not disqualify the payor from using the aggregate reporting method to report other reportable gambling winnings from that type of game during that session to that payee.

(3) *Recordkeeping under the aggregate reporting method.* A payor using the aggregate reporting method must maintain a record of every payment of reportable gambling winnings from the same type of game made to the same payee during the session that will be reported using the aggregate reporting method. Every individual that the payor has determined is responsible for an entry in the record must confirm the information in the entry by signing the record in a manner that will enable the signature to be associated with the relevant entry. Each payment of a reportable gambling winning made to the same payee and reported under the aggregate reporting method must have its own entry in the record, however, the information required by paragraphs (e)(1), (e)(2), and (e)(3) of this section is not required to be recorded more than one time per session. A payor that uses the aggregate reporting method must retain a copy of the record in its files. The record (which may be electronic provided the requirements set forth in forms, instructions, or guidance published in the Internal Revenue Bulletin are met) must include the following information about each payment:

(i) The payee's signature confirming the information in the record;

- (ii) The information required under paragraph (e) of this section;
- (iii) The time of the win resulting in the reportable gambling winnings;
- (iv) Except in the case of electronically tracked slot machine play, the total amount of reportable gambling winnings;
- (v) In the case of electronically tracked slot machine play—
 - (A) The total amount of the winnings during the session from electronically tracked slot machine play; and
 - (B) The total amount of the wagers placed during the session on electronically tracked slot machine play;
- (vi) The amount of reportable gambling winnings;
- (vii) The method of payment to the payee (for example, cash, check, voucher, token, or chips); and
- (viii) The name and gaming license number of the individual that the payor has determined is responsible for ensuring that the entry with respect to the reportable gambling winnings (including the general description of two types of identification used to verify the payee's name, address, and taxpayer identification number) is complete and accurate. Such individual may or may not be the same individual who prepared the entry.

(4) *When the aggregate reporting method may not be used.* A payor cannot use the aggregate reporting method if—

- (i) The payee is a foreign person;
- (ii) The payor knows or has reason to know that the person making the wager is not the person entitled to the winnings or is not the only person entitled to the winnings (regardless of whether the person making the wager furnishes a Form 5754, "Statement by Person(s) Receiving Gambling Winnings," or successor form); or
- (iii) Backup withholding under section 3406(a) applies to the payment.

(5) *Examples.* The following examples illustrate the provisions of this paragraph (h):

Example 1. On Day 1, C places five wagers at casino R on five different slot machines that are not electronically tracked. The first two wagers result in no win. The third wager results in a \$1,500 win. The fourth wager results in a \$2,500 win. The fifth wager results in an \$800 win:

(i) Under paragraph (b)(2)(i)(C) of this section, there are reportable gambling winnings from the slot machine play that is not electronically tracked of \$4,000 (\$1,500 + \$2,500). The \$800 win is not a reportable gambling winning from slot machine play that is not electronically tracked because it does not equal or exceed the \$1,200 threshold.

(ii) Because all of the amounts were won on the same type of game (even though each of the winnings occurred on different machines) during the same session, R is permitted to use the aggregate reporting method under this paragraph (h). If R decides not to use the aggregate reporting method and meets the requirements of paragraph (h), a separate Form W-2G would have to be filed and furnished for the payment of reportable gambling winnings of \$1,500 and for the payment of reportable gambling winnings of \$2,500. However, if R decides to use the

aggregate reporting method, R may report total reportable gambling winnings from slot machine play that is not electronically tracked of \$4,000 (\$1,500 + \$2,500) on one Form W-2G.

Example 2. Assume the same facts as *Example 1*, except that in addition to the winnings described in *Example 1*, at 1 a.m. on Day 2, C wins \$3,250 from one slot machine play that is not electronically tracked at casino R. Even though C played the same type of game (slot machines that are not electronically tracked) on Day 1 and Day 2, because under paragraph (b)(3) of this section the win at 1 a.m. on Day 2 is a win during a new session, under paragraph (h)(2)(i) of this section the \$3,250 of reportable gambling winnings cannot be aggregated with the reportable gambling winnings of \$4,000 from Day 1 on a single Form W-2G. Accordingly, if R uses the aggregate reporting method, R must file two Forms W-2G with respect to C's reportable gambling winnings on Day 1 and Day 2. R must report \$4,000 of reportable gambling winnings from slot machine play paid to C on Day 1 on the first Form W-2G, and \$3,250 of reportable gambling winnings from slot machine play paid to C on Day 2 on the second Form W-2G.

Example 3. At 2 p.m. on Day 1, D won \$2,000 (after reducing the amount of the win by the amount wagered) playing one keno game at casino S. D provides S with his driver's license. The driver's license has D's photograph on it, as well as D's name and address. The driver's license does not include D's social security number. D cannot remember his social security number and has no other identification at the time with his social security number on it. D does not provide S with his social security number before S pays the winnings to D. Because D cannot remember his social security number, D cannot complete and sign a Form W-9. S deducts and withholds \$560 (28 percent of \$2,000) under the backup withholding provisions of section 3406(a) and pays the remaining \$1,440 in winnings to D. D returns to casino S and at 6 p.m. on Day 1 wins \$1,500 (after reducing the amount of the win by the amount wagered) in one keno game. D provides S with his driver's license as well as D's social security card. S generally uses the aggregate reporting method and in all cases where it is used, S complies with the requirements of this paragraph (h). At 8 p.m. and 10 p.m. on Day 1, D wins an additional \$1,800 and \$1,700 (after reducing the amount of the win by the amount wagered), respectively, from two different keno games. For each of these two wins, an employee of S obtains the information from D required by this paragraph (h):

(i) Under paragraph (b)(2)(i)(B) of this section, each of D's wins from the four games of keno on Day 1 (\$2,000, \$1,500, \$1,700, and \$1,800) are reportable gambling winnings. Because D's first win on Day 1 was at 2 p.m. and D's last win on Day 1 was at 10 p.m., all of D's reportable gambling winnings from keno are won during the same session. Because S satisfies the requirements of paragraph (h)(2)(i), S may use the aggregate reporting method to report D's reportable gambling winnings from keno. However, pursuant to paragraph (h)(4)(iii) of this section, the \$2,000 payment made to D at 2 p.m. cannot be reported under the aggregate reporting method because that payment was subject to backup withholding. Accordingly, if S uses the aggregate reporting method under this paragraph (h), S will have to file two Forms W-2G with respect to D's reportable gambling winnings from keno on Day 1. On the first Form W-2G, S will report \$2,000 of reportable gambling winnings and \$560 of backup withholding with respect to the 2 p.m. win from keno, and on the second Form W-2G S will report \$5,000 of reportable gambling winnings from keno (representing the three payments of \$1,500, \$1,700, and \$1,800 that D won between 6 p.m. and 10 p.m. on Day 1).

Example 4. In one session on Day 1, E won five reportable gambling winnings from five different bingo games at a casino T. T generally uses the aggregate reporting method and in all cases where it is used, T complies with the requirements of this paragraph (h). Although E signed the entry in the record T maintains for payment of the first four reportable gambling winnings, E

refuses to sign the entry in the record for the fifth payment of reportable gambling winnings. T may use the aggregate reporting method for the first four payments of reportable gambling winnings to E. However, because the entry in the record for the fifth payment of reportable gambling winnings does not include E's signature, that payment may not be reported under the aggregate reporting method. Accordingly, if T uses the aggregate reporting method under paragraph (h) of this section, T must prepare two Forms W-2G as follows: On the first Form W-2G, T must report the first four payments of reportable gambling winnings from bingo made to E on Day 1. On the second Form W-2G, T must report the fifth payment of reportable gambling winnings from bingo made to E on Day 1.

(i) *Payments to foreign persons.* See § 1.6041-4 regarding payments to foreign persons. See § 1.6049-5(d) for determining whether the payee is a foreign person.

(j) *Effective/applicability date.* This section applies to payments of reportable gambling winnings from bingo, keno, slot machine play, and electronically tracked slot machine play made on or after the date these regulations are published as final regulations in the **Federal Register**. For payments made before that date, other than payments from electronically tracked slot machine play, payors may rely on the provisions of these proposed regulations.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 3. The authority citation for part 31 continues to read in part as follows:

26 U.S.C. 7805* * *

Par. 4. In § 31.3406(g)-2, paragraph (d)(3) is amended by removing the text “§ 7.6041-1” and adding the text “§ 1.6041-10” in its place.

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John Dalrymple, *Deputy Commissioner for Services and Enforcement*