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January 21, 2011

Re: Substantiating Gambling Losses

Dear Clients, Colleagues, and Friends:

Introduction - Gambling Tax Laws

Tax laws require income derived from wagering transactions to be included in gross income. Losses from wagering transactions are allowable only to the extent of gains from such transactions and may only be claimed as an itemized deduction. In other words, you cannot claim a net loss on your taxes from betting. Gambling losses also cannot be carried back or forward to a different year. Even a professional gambler cannot claim a net loss from his or her bets. The professional, however, might be able to deduct expenses incurred while engaging in their business of professional gambling. On the other hand, the IRS's position is the casual gambler is not entitled to deduct expenses incurred while betting. Thus, if you win in Las Vegas you cannot deduct any costs of the trip.

For most people, however, gambling is a form of entertainment without the intent to secure a tax benefit. A problem arises when a W-2G[1] is issued reflecting gambling income while the taxpayer has plenty of losing bets to offset the winnings. Most people do not maintain the detailed records for their wagering activities like they would a business or their investments. Accordingly, there is often an issue as to whether or not the taxpayer can adequately substantiate his deductible gambling losses. The losses are typically more than gambling winnings. So what should a taxpayer do?

IRS Substantiation Rules

The IRS has issued a revenue procedure providing guidelines for taxpayers to follow to substantiate their wagering gains and losses. Essentially, the IRS wants a diary that contains the following:

1. Date and type of specific wager or wagering activity;
2. Name of the gambling establishment;
3. Address or location of the gambling establishment;
4. Names of other person(s) (if any) present with taxpayer at gambling establishment; and,
5. Amounts won or lost.

[1] A gambling establishment will issue a W-2G when you have: (1) $1,200 or more in winnings from bingo or slot machines; (2) $1,500 or more keno winnings reduced by the bet; (3) more than $5,000 is won from a poker tournament, reduced by the buy-in or wager; and (4) $600 or more in gambling winnings (except bingo, keno, slots. and poker tournaments) and the payout is at least 300 times the amount of the wager.

Keeping detailed gambling records to substantiate gambling losses claimed to off-set gambling winnings is best. Of course the more gambling winnings you have, the better your loss records should be.

Some *Tax Tips!* to Comply with IRS

1. Determine if the casino or gambling establishment can provide you a win/loss record and use it. Request the win/loss record regularly and especially right after year end.
2. Withdraw your gambling cash from an ATM machine at the casino to help establish wagering money. Use your credit card for other expenses at the casino to corroborate the ATM withdrawals were for gambling only.
3. Think, what is your documentary trail reflecting you walked in the gambling establishment with X dollars and it was used for betting? Use your documentary trail to refresh your memory to explain your story. You would prefer not to have to rely on verbal testimony.
4. Use a calendar to record the information the IRS wants on the dated squares while you are at the casino, horse track, etc. Perhaps attach your documentary evidence to your calendar.
5. Your documentary evidence can include your wagering tickets. Sequentially numbered tickets certainly are better than those with heel marks on them!
6. After the fact documentation is better than none, but contemporaneous (the day or evening the wagering loss was incurred) documentation is best.
7. On a joint return, spouses are allowed to combine their gambling losses.
8. Remember, it is the taxpayer's burden to prove the gambling losses and that burden will be more difficult if evidence points to the existence of gambling gains that do not show up on W-2Gs.

Conclusion

The tax laws are biased against gambling. For example, dissipation of assets with the only logical conclusion being they were gambled away is not a persuasive case. The case is much better with documentary evidence detailing gambling activities.

Even if you are able to prove your gambling losses equal your gambling winnings, your taxes still have a tendency to increase. Gambling winnings increase your adjusted gross income ("AGI"). Increases in AGI can increase your taxable social security and your alternative minimum tax. Many deductions and losses are limited based on AGI. These include certain passive losses, medical deductions, miscellaneous itemized deductions, personal casualty losses, and sometimes overall itemized deductions. States also want a share of your gambling winnings. The Oklahoma Tax Commission's position is out-of-state gambling winnings by an Oklahoma resident are taxable in Oklahoma.

In conclusion, start in January using the above ***Tax Tips!*** to assist with documenting your current year gambling losses. Be aware there are other ways to document your gambling activities based on your specific circumstances. Feel free to contact us with any tax questions. Our telephone number is 918.599.7755. Our website, ***Paulhburgess.com***, has even more information regarding taxes, business, legal, and accounting matters.