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Memorandum

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subject: Question Regarding Multiple Buy-Ins to Poker Tournament
UIL: 7701.20-00, 3402.17-00

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ISSUE

Whether multiple buy-ins should be deducted as individual wagers or in the aggregate from winnings in a poker tournament for the purposes of reporting the winnings on a Form W-2G?

SUMMARY CONCLUSION

Multiple buy-ins are not identical wagers and therefore should not be aggregated for the purposes of determining withholding and reporting obligations under I.R.C. § 3402(q).

FACTS

The taxpayer hosts a poker tournament consisting of several events. Each event has a set grand prize amount for the winner, for example a one million dollar first place prize. Each event has a set "buy-in" amount which a patron must purchase to participate in the event. In exchange for the buy-in, the patron receives a set amount of tournament chips. Tournaments begin at a set time, for example 12:00 pm. For each event, seating is limited, and alternates are taken through the first six levels of the tournament. Once a player bets all their tournament chips, they are eliminated from game play. However, once eliminated, a player can re-enter during the alternate period by purchasing an additional buy-in at the same price. Each additional buy-in increases the wagering pool and potential prize amounts. In order to win first place, a player must be the last one remaining in the event with tournament chips. Players in the top 10% of each tournament field are also awarded cash prizes.

LAW AND ANALYSIS

Revenue Procedure 2007-57, 2007-36 I.R.B. 547, holds that poker tournaments fall within the term "wagering pool" in section 3402(q). Rev. Proc. 2007-57 holds that a poker tournament sponsor is required to withhold and report on payments of more than $5,000 (after reducing the payment by the amount of the wager) made to a winning payee in a taxable year by filing an information return to the IRS as prescribed by section 3402(q).

Section 3402(q)(1) requires any person making any payment of winnings which are subject to withholding to deduct and withhold tax from such payment. For purposes of section 3402(q), the term "winnings which are subject to withholding" includes proceeds of more than $5,000 from a wager placed in a sweepstakes, wagering pool, or lottery. I.R.C. § 3402(q)(3). For determining proceeds from a wager under section 3402(q), the amount received is to be reduced by the amount of the wager. I.R.C. 3402(q)(4).

The regulations under section 3402(q) provide special rules for determining the amount of proceeds from a wager:

> Amounts paid after December 31, 1983, with respect to identical wagers are treated as paid with respect to a single wager for purposes of calculating the amount of proceeds from a wager. For example, amounts paid on two bets placed in a pari-mutuel pool on a particular horse to win a particular race are treated as paid with respect to the same wager. However, those two bets would not be identical were one "to win" and the other "to place", or if the bets were placed in different pari-mutuel pools, e.g., a pool conducted

> by the racetrack and a separate pool conducted by an off-track betting establishment in which the wagers are not pooled with those placed at the track. Tickets purchased in a lottery generally are not identical wagers, because the designation of each ticket as a winner generally would not be based on the occurrence of the same event, e.g., the drawing of a particular number. If the recipient makes the statement which may be required pursuant to § 1.6011–3, indicating whether or not the recipient (and any other persons entitled to a portion of the winnings) is entitled to winnings from identical wagers and indicating the amount of such winnings, if any, then the payer may rely upon such statement in determining the total amount of proceeds from the wager under paragraph (c)(1) of this section attributable to identical wagers.

Treas. Reg. § 31.3402(q)-1(c)(ii). Therefore, if multiple wagers are “identical” wagers, they are to be aggregated into a single wager for the purposes of calculating the proceeds from a wager that is subject to the withholding and reporting requirements. The identical wager provisions were adopted pursuant to Treasury Decision 7919, 48 F.R. 46296. The preamble to T.D. 7919 explains the rule, in part, as follows:

> …winning on identical bets must be aggregated to determine if the $1,000 floor has been exceeded. This ensures that bettors are treated the same, whether or not a wager is divided into several small components. Identical bets are those in which winning depends on the occurrence (or non-occurrence) of the same event or events. For example, two wagers on a horse to win a particular race general are identical. ... [But] … wagers containing different elements, *e.g.*, and “exacta” and a “trifecta” are not identical.

T.D. 7919, 48 FR 46296-01.

In the present case, players are permitted to re-buy-in to the tournament as many times as they wish after they lose their initial buy-in, as long as the tournament has not advanced past the alternate period. Each time they purchase an additional buy-in, the game has advanced and the circumstances that must occur in order for them to win the pool have changed. When the tournament started, for example, there may have been 500 players participating and 50 different tables. When the player buys-in a second time, there might only be 200 players remaining to be eliminated, thus making the odds of winning different. Further, each additional buy-in increases the wagering pool and potential prize amounts.

Unlike two identical bets placed on a single horse race which would depend on the identical event occurring and do not actually change the odds of winning, a second buy-in at a later time will increase a player’s odds of winning by giving them an additional chance, increases the wagering pool, and increases the potential prize amounts. An additional buy-in is more like a wager on a different horse or an exacta or trifecta bet at the race track. Therefore, additional buy-ins are not identical wagers and should not be aggregated for the purpose of determining whether the reporting and withholding thresholds have been met. Instead, each buy-in should be treated as a separate wager and only the amount of the winning buy-in should be deducted from the amount of winnings when preparing the Form W-2G and determining withholding requirements.

CONCLUSION

Multiple buy-ins into a single poker tournament event are not identical wagers and therefore should not be aggregated for purposes of withholding and reporting requirements under section 3402(q) and the regulations thereunder. If a player wins a prize at the close of a tournament, only the buy-in that resulted in the win should be deducted from the winnings to determine the “proceeds from a wager.”

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