

**Internal Revenue Service**

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**Section 3402 – Income Tax Collected at Source**

**Section 3402.15-00 – Withholding on Gambling Winnings**

**LEGEND:**

State Lottery =

\$X =

Dear :

This is in response to State Lottery’s request dated June 28, 2006, in which it requested a ruling under I.R.C. § 3402(q). Specifically, State Lottery requests a ruling that if a player purchases one lottery ticket for an online game, and that ticket has more than one panel for the same lottery drawing, then all winning panels for the same lottery draw from the single lottery ticket are treated as “Identical Wagers.”

FACTS

A player of an online State Lottery Game may purchase one ticket with up to ten different panels for the same draw date. The player selects six numbers on a panel. Each panel on the single ticket represents a separate “play” for that lottery draw date. Each play costs \$X. A player may play the same numbers for more than one draw. A player may have multiple winning panels from the same lottery draw on a single lottery ticket.

LAW AND ANALYSIS

Section 3402(q)(1) of the Internal Revenue Code provides the general rule that every person, including the Government of the United States, a State, or a political subdivision thereof, or any instrumentalities of the foregoing, making any payment of winnings which are subject to withholding shall deduct and withhold from such payment a tax in an amount equal to 25 percent of such payment.

Section 3402(q)(3)(B) of the Code provides that for purposes of section 3402(q), the term "winnings which are subject to withholding" means proceeds of more than \$5,000 from a wager placed in a lottery conducted by an agency of a State acting under authority of State law, but only if such wager is placed with the State agency conducting such lottery, or with its authorized employees or agents.

Section 31.3402(q)-1(c)(1) of the Employment Tax Regulations provides definitions and special rules for determining the amount of proceeds from a wager. Section 31.3402(q)-1(c)(1)(ii) provides, in part, that for

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 parimutuel 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 parimutuel 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. . . .

The identical wager provisions in Section 31.3402(q)-1(c)(1)(ii) were adopted pursuant to Treasury Decision 7919, 48 F.R. 46296, 1983-2 C.B. 213. The preamble to T.D. 7919 explains the rule, in part, as follows:

Under § 31.3402(q)-1.... 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 generally are identical. ... [But] ... wagers containing different elements, e.g., and "exacta" and a "trifecta," are not identical.

Although multiple winning panels are based on the occurrence of a single lottery draw, just as trifecta and exacta winning tickets are based on a single horse race, the wagers on each panel of a single ticket are not identical unless the player selects the same six numbers on the multiple panels. That is, assuming the numbers are not the same, the panels contain different elements and thus constitute multiple wagers. Because the wagers are not identical, the winning amounts do not need to be aggregated under the identical wagers provisions of I.R.C. § 3402(q) and Treas. Reg. § 31.3402(q)-1(c)(1)(ii).

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

Carol Nachman  
Acting Senior Technician Reviewer  
Administrative Provisions and Judicial Practice  
(Procedure & Administration)

cc: Federal, State & Local Governments Group Manager