November 9, 2026

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Internal Revenue Service
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Washington, DC 20224

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Re: AICPA requests guidance on the session method for substantiation of wagering gains and losses

Dear Ms. Hanlon-Bolton, and Ms. Pfalzgraf:

The American Institute of CPAs (AICPA) appreciates the efforts of the Department of the Treasury ("Treasury") and the Internal Revenue Service (IRS) in issuing proposed regulations (REG-113229-25) (the "Proposed Regulations") addressing both the information reporting changes and the amendments to the wagering loss limitation enacted by the One Big Beautiful Bill Act (OBBBA).[1]

While the Proposed Regulations amend both the regulations under section 165(d) and the regulations governing Form W-2G, *Certain Gambling Winnings*, reporting, they do not address other fundamental issues regarding the measurement, substantiation, and reporting of wagering gains and losses. The AICPA submits these comments to highlight these unresolved issues, recognizing that taxpayers who engage in wagering transactions need clear and administrable rules to accurately comply with their federal tax obligations.

Existing authorities provide limited direction on how taxpayers should determine wagering gains and losses in an environment where gambling increasingly occurs through online platforms, mobile applications, and account-based systems that facilitate continuous play and the retention of funds over extended periods. Although administrative guidance and case law have generally recognized a session-based approach for certain gambling activities, significant questions remain regarding how that methodology should be applied in modern wagering environments.

As wagering activity continues to evolve, taxpayers, preparers, gaming operators, and the IRS would benefit from a clearer framework for measuring and substantiating wagering gains and losses. Additional guidance would promote consistent reporting, reduce administrative burden, improve voluntary compliance, and provide greater certainty regarding the proper application of sections 61 and 165(d).

Accordingly, the AICPA recommends that Treasury and the IRS address these items in a separate guidance project, and requests that such guidance be issued concurrently with or promptly following the final regulations. Addressing these issues through separate guidance

[1] All references to "section" are to the Internal Revenue Code of 1986, as amended, and all references to "Treas. Reg. §," "Prop. Reg. §," and "regulations" are to U.S. Treasury regulations promulgated thereunder, unless otherwise specified; Pub. L. No. 119-21.

would improve administrability, reduce uncertainty, and better align tax reporting requirements with the realities of modern wagering activity.

The AICPA recommends that Treasury and the IRS issue guidance that addresses the following:

I. Definition of a gambling session

II. Substantiation of session gains and losses

III. Application of session method to multiple wager types

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We appreciate your consideration of these comments and welcome the opportunity to discuss these issues further or to answer any questions that you may have. If you have any questions, please contact Amie Kuntz, chair of the AICPA Individual and Self-Employed Technical Resource Panel, at (303) 952-1244 or Amie.Kuntz@rubinbrown.com; Scott Klein, AICPA Senior Manager – Tax Policy & Advocacy, at Scott.Klein@aicpa-cima.com; or me at (610) 217-4495 or CheriFreeh@gmail.com.

Sincerely,

Cheri H. Freeh

Cheri H. Freeh, CPA, CGMA
Chair, AICPA Tax Executive Committee

AMERICAN INSTITUTE OF CPAs

AICPA requests guidance on the session method for substantiation of wagering gains and losses

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Specific comments

I. Definition of a gambling session

Background

Section 70114 of the OBBBA modified both the wagering loss deduction rules under section 165(d) and the information reporting threshold under section 6041. For taxable years beginning after December 31, 2025, section 165(d) limits the deductibility of wagering losses to 90 percent of such losses, deductible only to the extent of wagering gains. The amendment also provides that the 90 percent limitation applies to both wagering losses and otherwise deductible expenses incurred in carrying on a wagering trade or business. In addition, OBBBA raised the general information reporting threshold under sections 6041(a) and 6041A(a)(2) from $600 to $2,000 for payments made after December 31, 2025, with an inflation adjustment for calendar years after 2026 under new section 6041(h).

Although the OBBBA increased the general information reporting threshold under section 6041 to $2,000, it did not directly amend the existing $1,200 and $1,500 wagering-specific thresholds for slot machines, bingo, and keno winnings.[2] The IRS subsequently confirmed in the 2026 instructions to Form W-2G and Form 5754, *Statement by Person(s) Receiving Gambling Winnings*, that the $2,000 threshold also applies to the reporting of winnings for these games. The Proposed Regulations, published on April 17, 2026, update Treas. Reg. § 1.6041-10 to reflect the new $2,000 Form W-2G reporting threshold and separately amend Treas. Reg. § 1.165-10 to reflect the OBBBA's changes to the wagering loss limitation under section 165(d).

The determination of wagering income begins with section 61 which provides that gross income includes all income from whatever source derived. Revenue Rul. 54-339 further confirms that "all wagering gains must be included in gross income."[3] Section 165(d) and Treas. Reg. § 1.165-10 do not define a wagering transaction or establish how gains and losses should be measured. IRS Chief Counsel Advice Memorandum AM 2008-011 addressed this question for slot machine play by measuring gain or loss over a continuous period of play ending when the taxpayer cashed out, rather than wager by wager. Although the memorandum does not define a "session," it establishes the basic session-measurement principle.[4]

The method used to measure wagering gains and losses has direct tax consequences. On Form 1040, *U.S. Individual Income Tax Return,* wagering gains are included in gross income and therefore in adjusted gross income (AGI). For a casual gambler, however, the offsetting wagering-loss deduction is not allowed in computing AGI under section 62, although it is allowable as an itemized deduction. Accordingly, a casual gambler who claims the standard deduction receives no tax benefit from wagering losses, even when losses equal or exceed

[2] Treas. Reg. § 1.6041-10.
[3] Rev. Rul. 54-339.
[4] IRS Assoc. Chief Counsel Memo AM 2008-011 (Dec. 5, 2008).

gains. A taxpayer whose wagering activity rises to the level of a trade or business reports that activity on Form 1040, Schedule C, *Profit or Loss From Business,* and deducts wagering losses in computing AGI, subject to the same section 165(d) limitation. Regardless of whether the taxpayer is a casual gambler or engaged in the trade or business of gambling, session measurement determines the wagering gains and losses to which sections 61 and 165(d) apply, even though those amounts are reported differently for purposes of computing AGI.

The IRS proposed a more explicit framework in Notice 2015-21 ("the Notice"), which would have established an optional safe harbor for electronically tracked slot machine play under which a session generally would begin with the first wager on a particular type of game and end with the last wager on that same type of game before the close of the calendar day. It also acknowledged that changes in gambling technology, including player cards and electronically tracked play, warranted administrable rules for measuring wagering gains and losses. Although the proposed revenue procedure was never finalized, it remains the only published IRS document that expressly describes how to determine the beginning and end of a gambling session and demonstrates recognition of both the need for, and feasibility of, a practical session-based approach.

Judicial authorities have generally been consistent with the IRS's session-based approach. In *Shollenberger v. Commissioner*, the Tax Court accepted the IRS's methodology and measured gambling gain by reference to the amount retained when play ended rather than by the gross jackpot amount alone.[5] Likewise, *LaPlante v. Commissioner,* recognized the importance of substantiating gambling activity and maintaining records sufficient to determine gains and losses.[6] The concept of measuring gambling activity over a complete period of play was also endorsed at the appellate level in *Park v. Commissioner*, where the D.C. Circuit held that a nonresident alien's slot machine gains should be computed on a per-session rather than per-wager basis. *Park* confirms that session measurement is not merely an administrative accommodation the IRS has extended by concession, but a reading of the statute a court of appeals has adopted.[7]

Issue

Current guidance recognizes the concept of a gambling session but does not define the term or provide a practical method for determining when a session begins and ends. The lack of clarity is particularly acute for online and account-based wagering. Read literally, the cash-out analysis in AM 2008-011 provides no closing event for a taxpayer who never withdraws an account balance, while also rejecting the alternative of simply netting of a casual gambler's gains and losses. Section 441(a) however requires the taxpayer to fix a result at the close of the taxable year. Taxpayers are therefore left without a clear measurement period for continuously maintained wagering accounts.

Without a consistent framework, taxpayers with economically identical wagering activity may report different reported results depending on the measurement period selected. Because only 90 percent of gambling losses are deductible, how a session is defined can directly affect a taxpayer's tax liability and may result in tax on amounts the taxpayer never actually gained.

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[5] *Shollenberger v. Commissioner*, T.C. Memo. 2009-306.
[6] *LaPlante v. Commissioner*, T.C. Memo. 2009-226.
[7] *Park v. Commissioner*, 722 F.3d 384 (D.C. Cir. 2013), rev'g 136 T.C. 569 (2011).

Recommendation

The AICPA recommends that Treasury and the IRS issue guidance defining a gambling session for purposes of measuring wagering gains and losses and provide a corresponding safe harbor.

Rationale

Existing information reporting rules focus on gross winnings and do not provide a methodology for determining a taxpayer's net wagering gain or loss for purposes of sections 61 and 165(d). A session safe harbor would fill that gap by establishing a consistent framework for measuring wagering activity while leaving existing income reporting and deduction limitations unchanged.

The following examples illustrate the potential taxpayer impact between using the assumed gross-reporting method, versus adopting a session method for aggregating gains and losses.

Example 1

Taxpayers A&B are married filing jointly for tax year 2026. Taxpayers A&B have wages of $95,000, and $32,200 of itemized deductions before considering gambling losses.

Taxpayers A&B have $120,000 in payouts from winning wagers and $118,000 in total wagers, resulting in $2,000 of economic gain. Assume every payout cleared the reporting threshold for Forms W-2G, and each calendar day constitutes a single session under the proposed safe harbor.

The wagers were placed over a period of 4 different days as illustrated in the following schedule:

Date	Winnings from wagers	Total amount wagered	Net winnings (losses) from period
March 17, 2026	$35,000	$28,000	$7,000
June 19, 2026	$20,000	$30,000	($10,000)
October 31, 2026	$50,000	$39,000	$11,000
November 27, 2026	$15,000	$21,000	($6,000)
Totals	**$120,000**	**$118,000**	**$2,000**

For comparison, assume Taxpayers A&B report each payout as a separate item of gross wagering income and treat the corresponding amounts wagered as wagering losses, rather than measuring gain or loss by session. Under this method, A&B would report $120,000 of wagering gains and $118,000 of wagering losses. Because the deduction is limited to 90% of losses, the allowable wagering-loss deduction would be $106,200. This would result in net wagering income of $13,800 despite an economic gain of $2,000. Together with their other itemized deductions, A&B would have total itemized deductions of $138,400, resulting in taxable income of $76,600 ($95,000 of wages plus $120,000 of wagering income, less $138,400 of itemized deductions).

Under the session method, A&B would instead report $18,000 of session gains and $16,000 of session losses. After applying the 90 percent limitation, their allowable wagering-loss deduction would be $14,400. Because wagering losses are deductible only as itemized deductions, A&B must itemize to claim the deduction. Together with

their other itemized deductions, A&B would have total itemized deductions of $46,600, resulting in taxable income of $66,400 ($95,000 of wages plus $18,000 of wagering income, less $46,600 of itemized deductions).

The two methods produce a $10,200 difference in taxable income, equal to 10 percent of the $102,000 difference in recognized wagering losses. Although A&B have the same $2,000 economic gain under either method, the finer unit of measurement increases the amount exposed to the 10 percent disallowance.

Example 2

Assume the same facts as Example 1, except that Taxpayers A&B have no other itemized deductions.

Under the assumed gross-reporting method, Taxpayers A&B would have AGI of $215,000 ($95,000 of wages and $120,000 of wagering income). Because allowable wagering losses are claimed as itemized deductions, Taxpayers A&B would compare their $106,200 allowable wagering-loss deduction with the applicable standard deduction. Assuming no other itemized deductions, they would itemize and report taxable income of $108,800.

Using the session method, Taxpayers A&B would have AGI of $113,000 ($95,000 of wages and $18,000 of session gains). Their allowable wagering-loss deduction would be $14,400, which is equal to 90 percent of the $16,000 of session losses. Assuming a standard deduction of $32,200 and no other available itemized deductions, Taxpayers A&B would claim the standard deduction rather than the smaller wagering-loss deduction, resulting in taxable income of $80,800.

The two methods produce a $28,000 difference in taxable income comprised of $10,200 from the 10 percent disallowance, and $17,800 from the loss of the standard deduction under the gross-reporting method. Under the gross reporting method, Taxpayers A&B forgo the $32,200 standard deduction to claim $106,200 of wagering losses. Under the session method, their $14,400 wagering-loss deduction is less than the standard deduction, therefore, they will claim the $32,200 standard deduction. Proper session measurement reduces the distortion caused by gross reporting and preserves the otherwise available standard deduction.

The gross reporting method also overstates AGI in both examples, potentially affecting income-based phaseouts, Income-Related Monthly Adjustment Amounts (IRMAA), and state income taxes for states that begin with federal AGI without providing a corresponding wagering loss deduction. These consequences further demonstrate why the unit used to measure wagering gain or loss matters independently of the section 165(d) limitation.

The inclusion of a safe harbor for determining a session would promote administrability and reduce taxpayer burden. Rather than limiting a session to a particular game or location, the safe harbor should define a session as a specified period of gambling activity, such as a calendar day in the taxpayer's time zone, or an elected 24-hour period. A taxpayer should use similar rules as Treas. Reg. 1.6041-10(b)(2), which defines the "information reporting period" for winnings as being the 24-hour period, either a calendar day or a gaming day, which is defined as a 24 hour period other than a calendar day as selected by the taxpayer.[8] This would prevent

[8] Treas. Reg. 1.6041-10(b)(2).

mobile gaming accounts and other continuously maintained balances from creating the appearance of sessions that effectively remain open indefinitely, while still allowing taxpayers to determine gains and losses within a reasonable and objective measurement period.

In certain instances, a weekend or another reasonable timeframe may be appropriate (e.g., a weekend poker tournament) the taxpayer would bear the burden of substantiating a period greater than 24 hours. Under the safe harbor, all wagering activity occurring during that period would be aggregated and treated as a single session, regardless of the types of wagers placed or whether the taxpayer gambles at multiple casinos, online platforms, or mobile gaming applications. This approach would better align with contemporary gambling practices and advances in player-tracking technology. This time-based safe harbor is also consistent with the principles of AM 2008-011, which recognized that treating every wager as a separate taxable event would be unduly burdensome and instead measured gain or loss over a broader period of gambling activity.

There is an upper limit for the maximum session length, as taxable income must be computed based on the taxpayer's annual accounting period. Therefore, a session cannot extend beyond the end of the taxable year merely because the taxpayer has not withdrawn an account balance.[9] Sections 61 and 165(d) do not defer measurement until a taxpayer chooses to withdraw the credited balance. Amounts credited to a player account and available to the taxpayer on demand are treated as constructively received, even if the taxpayer does not withdraw the funds.[10]

The principle recognized in AM 2008-011 is narrower than a withdrawal-based rule suggests. Amounts left in play during a continuous course of wagering are not accessions to wealth until play concludes, which distinguishes funds at risk from funds at rest rather than funds withdrawn from funds left on deposit. A fixed measurement period is an administrable way to reconcile the principles of AM 2008-011, which focuses on economic result, with the taxpayer’s requirement to report their gains and losses annually. The recommended 24-hour default session establishes a practical approach to measurement without reintroducing wager-by-wager tracing and without making the taxpayer's inclusion based on the timing of a withdrawal the taxpayer controls.

A 24-hour measurement period is also generally consistent with the IRS's existing gambling information-reporting framework. Existing regulations permit aggregate information reporting over a single 24-hour gaming day for winnings from bingo, keno, and slot machine play. The current Form W-2G instructions likewise permit a gaming operator to aggregate a payee's bingo, keno, and slot machine winnings received during a single 24-hour gaming day on one information return.[11] The Proposed Regulations also demonstrate why a session definition is necessary rather than duplicative of existing rules: reportable winnings from bingo and slot machine play are determined without netting the amount wagered against the winnings, while the amount wagered is subtracted in the case of keno. Information reporting generally requires wagering amounts to be reported on a gross basis for most game formats. However, the reporting treatment is inconsistent across formats. As a result, taxpayers must separately determine their net wagering gains and losses for purposes of sections 61 and 165(d). Although information reporting rules do not determine taxable income, using a comparable measurement period would promote consistency between taxpayers' records and existing gaming operator

[9] Section 441(a) provides that a taxpayer’s taxable income must be computed on the basis of their taxable year.
[10] Treas. Reg. § 1.451-2(a).
[11] Treas. Reg. § 1.6041-10.

reporting systems and provide taxpayers, preparers, gaming operators, and the IRS with a common point of reference for measuring wagering gains and losses.

The safe harbor should operate as a default rule rather than a mandatory limitation. Neither section 165(d) nor Treas. Reg. § 1.165-10 ties a wagering transaction to a calendar day, and the measurement point recognized in AM 2008-011 is based on when the taxpayer can determine the amount above or below the amount committed to play. Certain gambling activities naturally extend beyond a 24-hour period and are more appropriately viewed as a single continuous course of play. For example, a multi-day tournament involving a single buy-in, re-buys, and a final payout may constitute a single economic activity even though it spans more than one day. Accordingly, taxpayers should be permitted to demonstrate that a longer period constitutes a single session when supported by the facts and circumstances.

For the same reason, the safe harbor should encompass all wagering activity within the period rather than determined game-by-game, or venue-by-venue. The per-game framing in the Notice was developed for electronically tracked slot machine play. Extending the per-game approach to taxpayers who move between different games or gaming establishments during a single outing would reintroduce the wager-by-wager tracing that AM 2008-011 identified as unduly burdensome and could produce different results based on the form of wagering rather than the taxpayer's economic gain.

The session method should also apply regardless of whether a taxpayer's wagering activity rises to the level of a trade or business under *Commissioner v. Groetzinger*.[12] Neither section 61 nor section 165(d) conditions the measurement of a wagering transaction on the taxpayer's status, and a uniform rule would promote fairness by treating similarly situated taxpayers the same. This guidance carries greater significance when considering the 90 percent limitation, which applies to professional and casual gamblers alike.

Providing the definition of a session would also resolve a measurement question that arises for nonresident individuals. Section 871(a) taxes a nonresident alien's gambling winnings on a gross basis, and apart from the games excepted by section 872(b)(5) and relief available under certain income tax treaties, a recreational nonresident alien is allowed no deduction for wagering losses. The amount subject to tax is dependent almost entirely on whether gain is measured wager by wager or by session, which is precisely the question the D.C. Circuit resolved. Accordingly, guidance should state that the session definition applies for withholding and nonresident reporting purposes as well as for purposes of sections 61 and 165(d), so that withholding agents, nonresident taxpayers, and the Service apply a single measurement period.

II. Substantiation of session gains and losses

Background

Many gaming operators and digital gambling providers track taxpayer wagering activity through player loyalty programs, player accounts, and similar systems. These systems commonly maintain information regarding wagers placed, amounts wagered, winnings, account activity, cash-in and cash-out transactions, and timestamps. Taxpayers may have access to portions of this information through account histories, win-loss statements, player activity summaries, or similar records derived from player-tracking systems, although the content and availability of these records vary among operators and platforms.

[12] *Commissioner v. Groetzinger*, 480 U.S. 23 (1987).

Existing IRS recordkeeping guidance does not reflect these developments. Rev. Proc. 77-29, published in 1977, remains the principal recordkeeping guidance for wagering activity, and principally contemplates a paper diary supported by records such as wagering tickets, canceled checks, and credit records.

Issue

Taxpayers bear the responsibility of substantiating wagering gains and losses, but existing authorities do not describe how to document wagering activity in a manner that corresponds to the session method recognized in IRS guidance and case law. Although many gaming operators track wagering activity through player cards, loyalty programs, and online account systems, no guidance establishes a uniform method for furnishing that information to taxpayers or identifies which of those records the IRS will accept as adequate substantiation of session gains and losses.

The problem is compounded by differences in how gaming operators track and report player activity. Some operators use a calendar-day reporting period, while others use a designated gaming day that begins and ends at specified times that may differ from midnight. For example, some operators use midnight to 11:59 p.m., while others use 5:00 a.m. to 4:59 a.m. the following day. These reporting periods may reflect state regulatory requirements, industry practices, or operator-specific administrative considerations. Because no standardized reporting framework exists, taxpayers may receive records based on different measurement periods that do not correspond to the session method ultimately adopted for federal income tax purposes. Accordingly, additional guidance is needed identifying the records that may be used to substantiate session gains and losses, including the operator-generated records already received by taxpayers.

Recommendation

The AICPA recommends that Treasury and the IRS issue guidance under section 6001 identifying which records constitute adequate substantiation of wagering gains and losses under the session method, and confirming that the account histories, win-loss statements, player activity summaries, and similar records that gaming operators already furnished to patrons may be relied on for that purpose.

We also recommend that the guidance clarify that reporting wagering income on a session basis is consistent with the gross reporting of winnings on Forms W-2G. Additionally, guidance should provide a way for taxpayers to reconcile the two methods, whether through return disclosure, examination procedures, or automated under reporter screening.

Rationale

Section 6001 requires taxpayers to maintain records sufficient to establish the items reported on their returns. AM 2008-011 similarly assumes proper substantiation before applying a session-based methodology. Although these authorities place the burden of substantiation on taxpayers, neither the Code nor existing guidance specifies what records are sufficient to substantiate session-based reporting.

The practical challenges resulting from this gap are reflected in *Coleman v. Commissioner*. The Tax Court concluded that the taxpayer substantiated wagering losses through a combination of

financial records, testimony, and expert analysis after declining to rely on casino rewards-card records that the court found incomplete and skewed toward reporting winnings.[13] A taxpayer should not need an expert witness to establish a session result when gaming operators often maintain much of the underlying wagering information through their existing player-tracking systems. An optional standardized gaming operator statement could help address these evidentiary challenges by providing taxpayers with consistent information in a format designed to support session-based reporting.

Guidance identifying the types of records that taxpayers can use to substantiate wagering gains and losses would bridge this gap. Many gaming operators and digital gambling providers already maintain player-account information, wagering histories, cash-in and cash-out records, win-loss data, and timestamps through player-tracking systems, player cards, and similar operational records. Providing guidance that indicates which of those existing records the Service will accept as substantiation, would provide clarity to taxpayers without requiring gaming operators to furnish a new statement, form, or filing.

Guidance should identify the data elements that generally make an operator-generated record sufficient to substantiate a session, such as taxpayer identifying information, the type of wagering activity, amounts wagered, amounts won or paid out, and the dates and times on which the activity occurred. The guidance should recognize that operator records may vary in content and may use different reporting periods; accordingly, a record should not be considered inadequate solely because it does not contain every identified element. Taxpayers would remain responsible for determining the result of each session. By clarifying which operator-generated records may be relied upon and how taxpayers may reconcile records maintained on an operator's gaming day with the taxpayer's session measurement period the guidance would reduce uncertainty regarding adequate substantiation.

For taxpayers who engage in in-person cash wagering without using a player card or without linking their identifying information, gaming operators may not have sufficient information to provide an operator-generated statement. We are not recommending that operators be required to provide a statement in these circumstances. Instead, taxpayers could continue to rely on Rev. Proc. 77-29 and information reported on Forms W-2G to substantiate their wagering activity.

The need for guidance is further reinforced by the increase in Form W-2G reporting threshold to $2,000. As fewer gambling transactions generate information returns, taxpayers will increasingly rely on player-card records, account histories, and other gaming operator data to substantiate wagering gains and losses. Confirming what records constitute acceptable substantiation would promote accurate reporting, improve voluntary compliance, and reduce disputes regarding the sufficiency of taxpayer records.

Finally, guidance should address the reconciliation between session-based reporting and Forms W-2G reporting gross winnings. A taxpayer may report a net session gain smaller than the aggregate gross winnings shown on Forms W-2G and may receive an underreporting notice on an accurate return. The issue becomes more significant under the 90 percent limitation because unreconciled gross winnings may result in taxable income that exceeds the taxpayer’s economic gain. Guidance explaining how a taxpayer should reconcile their net earnings with wagering information provided by operators would reduce this risk and promote accurate reporting.

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[13] *Coleman v. Commissioner*, T.C. Memo. 2020-146.

III. Application of session method to multiple wager types

Background

In AM 2008-011, the IRS concluded that slot machine play may be measured on a session basis. Subsequently, the Notice requested comments on whether safe harbor methods for determining wagering gain or loss should be developed for other forms of gambling, including keno, table games, and pari-mutuel wagering. However, neither authority establishes rules for other wagering activities.

Issue

The session method has been expressly recognized for slot machine play, but Treasury and the IRS have not clarified whether the same approach applies to other forms of wagering. As gambling activity increasingly occurs through table games, sports wagering, horse racing, online gaming platforms, mobile applications, and tournaments taxpayers may engage in a connected course of wagering activity that produces numerous interim wins and losses before a final economic outcome is realized. The absence of guidance creates uncertainty regarding whether these activities may be measured on a session basis, and how a session should be defined for different wager types.

Recommendation

The AICPA recommends that Treasury and the IRS provide guidance stating that the session method can be used for multiple wager types, such as gaming operator table games, horse racing, electronic gaming, or other types of wagers.

Rationale

The session method reflects the principle that taxable income should be measured based on a taxpayer's actual economic gain or loss, rather than temporary fluctuations occurring during wagering activity. AM 2008-011 correctly recognized that amounts won and subsequently wagered during play are not accessions to wealth until the taxpayer concludes the wagering activity and can determine the overall economic result. As the IRS stated, “[w]e think that the fluctuating wins and losses left in play are not accessions to wealth until the taxpayer redeems her tokens and can definitively calculate the amount above or below basis (the wager) realized.”[14] Interim fluctuations therefore should not give rise to separate taxable events.

The statute does not limit this principle to slot machine play. Section 165(d) applies generally to losses from wagering transactions, and section 61 includes wagering gains in gross income without distinguishing among wager types. Likewise, Treas. Reg. § 1.165-10 refers broadly to wagering transactions. Although AM 2008-011 and the Notice address slot machine play, the session concept they describe is not necessarily limited to that context. The same economic principles apply when taxpayers engage in table games, sports wagering, horse racing, online gaming, or tournament play, where numerous interim wins and losses may occur before a final gain or loss can be determined.

Applying the session method across wagering activities would promote consistent treatment of economically similar transactions. A taxpayer playing blackjack, placing multiple sports wagers

[14] IRS Assoc. Chief Couns. Mem. AM 2008-011 (Dec. 5, 2008).

through an online account, or participating in a poker tournament may experience many interim gains and losses before realizing a final economic outcome. Treating each hand, race, spin, or wager as a separate taxable event would create significant tracing and basis-allocation burdens while producing different tax results based solely on wager format rather than actual economic gain.

Furthermore, taxpayers may move between multiple establishments, playing games with identical rules, and odds. For example, in many areas there are more than one casino whereby a player can exit Casino A, enter Casino B to play the same game, then continue to Casino C, or could return to Casino A before ending their session. Similarly, with the advent of online wagering a taxpayer may take out multiple bets on different games simultaneously, across both game types and establishments. Requiring separate tracking and netting for each activity or establishment creates significant administrative burdens, whereas permitting gains and losses to be netted across wagering activities and establishments better reflects the economic reality of the taxpayer's wagering activity and simplifies compliance.