E. EXCISE TAX AND OCCUPATIONAL TAX ON WAGERING

by
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1. Introduction

The purpose of this topic is to discuss excise taxes on wagering activities common to tax-exempt organizations such as bingo, pull-tabs, raffles, wheels, casino nights. This topic does not discuss gambling activities such as bookmaking.

Organizations that are exempt from income tax under section 501 or 521 of the Internal Revenue Code are **not** categorically exempt from the excise tax on wagering or the occupational tax. (See sections 7 & 8 below.) Federal wagering tax laws apply to both authorized and unauthorized gaming activities conducted by exempt organizations. The facts and circumstances of the types of wagering conducted, as well as the benefits derived therefrom, may have a bearing on whether the wagers are subject to the taxes.

Internal Revenue Code Sections 4401 and 4411 impose excise taxes on the gaming industry. Section 4401 figures the tax on the wagers themselves while its companion occupational tax under Section 4411 is figured by two rates of tax.

Form 730, Tax on Wagering, and Form 11-C, Special Tax Return and Application for Registry - Wagering, are used for reporting wagering taxes to the Internal Revenue Service. Effective January 1, 1997, Forms 11-C and 730 processing will be centralized at Cincinnati Service Center.

2. Disclosure of Wagering Tax Information

Section 4424 of the Code provides that no Treasury Department official or employee may disclose, except in connection with the administration or enforcement of internal revenue taxes, any document or record supplied by a taxpayer in connection with such taxes or any information obtained through any such documents or records. Further, certain documents related to the wagering taxes and information obtained through such documents may not be used against the taxpayer in any criminal proceeding except in connection with the administration or enforcement of internal revenue taxes.

Congress enacted section 4424 of the Code with the intent of removing any constitutional impediment to the enforcement of the wagering taxes. Therefore, a taxpayer who complies with the wagering tax statutes is no longer confronted by substantial hazards of self-incrimination.

Thus no disclosure in any manner to any person of the documents or records described above should be made without first consulting the district disclosure office.

3. Excise Tax on Wagering

IRC 4401(a)(1) imposes a 0.25 percent tax on the amount of any wager authorized under the law of the state in which accepted.

IRC 4401(a)(2) imposes a 2 percent tax on the amount of any wager not described in IRC 4401(a)(2) (i.e., those not authorized by state law).

4. Imposition of Tax

IRC 4404 provides that the tax applies to wagers:

- Accepted in the United States, or
- Placed by a person who is in the United States with a U.S. citizen or resident, or in a wagering pool conducted by a U.S. citizen or resident.

Further, Reg. 44.4404-1(a) states that all wagers made within the United States are taxable regardless of the citizenship or place of residence of the parties to the wager. Thus, the tax applies to wagers placed within the United States, even though the person for whom or on whose behalf the wagers are received is located in a foreign country and is not a citizen or resident of the United States. Likewise, a wager accepted outside the United States by a citizen or resident of the United States is taxable if the person making such wager is within the United States at the time the wager is made.

5. Who is Liable for the Tax, and When

IRC 4401(c) and Reg. 44.4401-2 describe persons who are liable for the tax on wagers as those who

(1) engage in the business of **accepting** wagers;

(2) conduct any wagering pool or lottery; or

(3) **receive** wagers for, or on behalf of, another person.

There is a difference between a person who "accepts" a wager and a person who "receives" a wager. The courts have ruled that an "acceptor of a wager" generally designates the "principal" who is liable for both the tax on wagers and the special tax. "Receiver" designates an "agent" who is liable only for the special tax. See United States v. Pepe, 198 F. Supp. 226 (D. Del. 1961).

Therefore, a principal is a person who is in the business of accepting wagers for his or her own account. This is the person who is at risk for the profit or loss depending on the outcome of the event or contest to which the wager was accepted. The employee-agent is the paid employee of the principal who accepts wagers for the principal.

The excise tax on wagers attaches when a person who operates a lottery for profit accepts a wager or contribution. See Reg. 44.4401-3.

6. Computation of Tax

The tax applies to (1) wagers on sports events or contests placed with a person engaged in the business of accepting such wagers, (2) wagers placed in a wagering pool that involves a sports event or contest, if the pool is conducted for profit, and (3) wagers placed in a lottery conducted for profit. See section 7. below.

Reg. 44.4401-1(b)(2) provides that the tax base on wagers is the gross amount of wagers accepted. Form 730 figures the tax on the wagers themselves. The amount of the wager is the amount risked by the bettor including any fee or charge incident to placing the wager. It is not the amount that the bettor stands to win.

7. Taxable Wagers

IRC 4421 and Reg. 44.4421-1(a) provide that a wager is a bet:

(1) made on sports events or contests with a person in the business of accepting wagers,

(2) placed in a wagering pool on a sports event or contest, if such pool is conducted for profit, and

(3) placed in a lottery conducted for profit.

The excise taxes apply to all race and sports book establishments whether they are authorized or unauthorized.

Where a wagering pool or lottery is operated with the expectation of a profit in the form of increased sales, attendance, or other indirect benefits, the event is staged for profit. See Reg. 44.4421-1(c)(4).

Reg. 44.4421-1(c(1) defines wagering pool. A wagering pool conducted for profit includes any method or scheme for the distribution of prizes to one or more winning bettors based on the outcome of a sports event (see Reg. 44.4421-1(c)(2)), a contest, or a combination or series of such events or contests, if the wagering pool is managed and conducted for the purpose of making a profit.

Reg. 44.4421-1(c)(3) provides that a contest includes any type of competition involving speed, skill, endurance, popularity, politics, strength, appearance, etc., such as a general or primary election, the outcome of a nomination convention, a dance marathon, a log rolling, wood-chopping, weight-lifting, corn-husking, beauty contest, etc.

Reg. 44.4421-1(b)(1) provides the term lottery includes the numbers game, policy, and similar types of wagering. In general, a lottery conducted for profit includes any scheme or method for the distribution of prizes among persons who have paid or promised a consideration for a chance to win such prizes, usually determined by the numbers or symbols on tickets as drawn from a lottery wheel or other receptacle, or by the outcome of an event. **The operation of a punch board or a similar gaming device for profit is also considered to be the operation of a lottery.**

Rev. Rul. 57-258, 1957-1 C.B. 418, holds that a pull-tab game is essentially nothing more than a type of punchboard game that falls within the meaning of the term "lottery" as used in section 4421(2) of the Code and, as such, is subject to the wagering taxes imposed by section 4401 and 4411.

Most legal wagering conducted by non-profit organizations relates to lotteries. "Pull-tab" or "instant" games meet the definition of taxable wagers placed in a lottery. See Rev. Rul. 57-258, supra.

Section 4421(2)(A) of the Code provides that the term lottery does not include games where the wagers are placed, the winners are determined, and the prizes are distributed in the presence of all persons placing wagers in the game. Reg.

44.4421-1(b)(2)(i) provides for example, no tax would be payable with respect to wagers made in a bingo or keno game since such game is usually conducted under circumstances in which the wagers are placed, the winners are determined, and the distribution of prizes is made in the presence of all persons participating in the game. For the same reason, no tax would apply in the case of card games, dice games, or games involving wheels of chance, such as roulette wheels, and gambling wheels of a type used at carnivals and public fairs. Bingo and gambling wheels and perhaps keno are common gaming activities conducted by tax-exempt organizations. Although bingo operations are exempt from excise taxes, bingo must be analyzed to determine if it is played in the traditional manner as described in Reg. 44.4421-1(b)(2)(i).

Reg. 44.4421-1(b)(2)(ii) states that a lottery, for these purposes, is not a drawing conducted by an organization exempt from tax under section 501, if no part of the net proceeds derived from such drawing inures to the benefit of any private shareholder or individual. The term "lottery" does not include any wagering conducted by an exempt organization if no part of the net proceeds derived from the activity inures to the benefit of any private individual or shareholder. See Rev. Rul. 57-241, 1957-1 C.B. 419. See also P.L.R. 8806001 (May 18, 1987); G.C.M. 39740 (May 31, 1988).

Whether inurement exists may depend on the section of the Code under which a particular organization is exempt. Where participation in the revenue raising activity of gambling was limited to members of a social or fraternal organization, inurement was not established since the financial resources were merely shifted between members of the group. Rochester Liederkranz v. United States, 450 F.2d 152 (2d Cir. 1972).

The general rule is that an organization exempt under IRC 501(a) will not be subject to the wagering taxes if no part of the pull-tab net proceeds inures to the private shareholder or individual. However, where inurement to a private shareholder or individual exists with regard to any net income from a pull-tab game conducted for profit, the exemption from the wagering taxes provided by section 4421(2)(B) would not be applicable. An organization may use the proceeds to further its exempt purpose without inurement occurring. For example, a volunteer fire department may use wagering proceeds to purchase equipment, but a social club's use of non-member wagering proceeds to subsidize member activities constitutes inurement for purposes of the wagering tax provisions.

Knights of Columbus Council No. 3660 v. United States, 783 F.2d 69 (7th Cir. 1986), concerned an exempt fraternal organization which sold lottery tickets to the general public and held weekly drawings. The court noted that the Council used proceeds from the drawings to defray club operating expenses and to subsidize membership activities, recreational and social functions. Further, the court found that inurement was present because the income from its public ticket sales was used for the general operation of the organization. Without the income, Council members would have had to pay higher membership dues or see the quality and quantity of membership benefits and services substantially reduced. The court concluded that the taxpayer is liable for the wagering taxes imposed by section 4401 and 4411 of the Code with respect to public ticket sales.

Technical Advice Memorandum 9529004 describes a section 501(c)(19) organization that conducts pull-tab drawings for profit. The pull-tabs are sold to anyone who attends its public bingo games, whether member or not. A portion of the net proceeds is used to pay the operating expense of the organization and, thus, indirectly inures to the members. The TAM concluded that the taxpayer is liable for the wagering taxes imposed by section 4401 and 4411 of the Code with respect to sales of pull-tabs even though the sales were made by uncompensated volunteer members.

Technical Advice Memorandum 9509001 found that a drawing conducted by a 501(c)(3) public charity is not a taxable lottery if no part of the net proceeds inures to the benefit of any private shareholder or individual. The organization is a non-stock, non-dues membership corporation. There was no private inurement resulting from the organization's pull-tab operation. The TAM concluded that the taxpayer is not liable for the wagering taxes imposed by section 4401 and 4411 of the Code with respect to amounts wagered on pull-tab games. See section 44.4421-1(b)(2)(ii) of the Wagering Tax Regulations and Rev. Rul. 74-425, 1974-2 C.B. 373.

Although TAM's cannot be cited as authority, the rationale and discussion contained therein can be used.

The U.S. Tax Court Memorandum Opinion 1995-439, Julius M. Israel Lodge of B'nai B'rith No.2113, v. Commissioner filed September 14, 1995, stated that Federal law dictates when and how to tax regardless of State classification. The Tax Court held that "instant bingo" does not satisfy the requirements of IRC 513(f) and the proceeds from instant bingo activities are subject to the unrelated trade or business income tax under IRC 511(a). Therefore, instant bingo is a type of pull-tab game. Rev. Rul. 57-258, supra, holds that a pull-tab game is

essentially nothing more than a type of punchboard game that falls within the meaning of the term "lottery" as used in section 4421(2) of the Code and, as such, is subject to the wagering taxes imposed by section 4401 and 4411. However, pursuant to Rev. Rul. 54-240, 1954-1 C.B. 254, otherwise taxable punchboard type games conducted by an exempt organization may come within the meaning of a "drawing" as that term is used in section 4421(2). As such, drawings are exempt from the wagering taxes provided no part of the net proceeds derived from such operation inures to the benefit of any private shareholder or individual of the exempt organization.

8. Exemptions and Exclusions From Tax

A. IRC 4402 and Reg. 44.4402-1 provide three exemptions to the taxes on wagering:

(1) Parimutuel Wagering Enterprises Licensed Under Any State Law

> If an exempt organization derives income from operating parimutuel wagering on horse racing conducted in conjunction with a fair or exposition, the wagers are not subject to excise tax

(2) Coin-operated Devices

Regulation 44.4402-1(b)(1) provides that these devices include:

> so-called "slot" machines that operate by means of the insertion of a coin, token, or similar object and that, by application of the element of chance, may deliver, or entitle the person playing or operating the machine to receive cash, premiums, merchandise, or tokens; and machines that are similar to slot machines described above and are operated without the insertion of a coin, token, or similar object.
>
> Regulation 44.4402-1(2) provides as examples of wagering machines some pinball type machines that have the features and characteristics of a gaming device; so called crane/claw/digger devices; and a coin-operated machine that displays a poker hand or delivers a ticket with a poker hand symbolized on it that entitles the player to a prize if the poker hand displayed by the machine or symbolized on the ticket constitutes a winning hand.

The IRS has not published a decision as to whether pull-tab dispensing machines and electronically simulated pull-tab games devices are wagering machines within the meaning of Regulation 44.4402-1(b). Therefore, technical

advice should be requested where pull-tab dispensing machines or electronically simulated pull-tab games devices are encountered during examinations.

(3) Sweepstakes, Wagering Pools, or Lotteries Conducted By a State Agency

B. Drawings Conducted by Exempt Organizations

For purposes of IRC 4421(2)(B), any drawing conducted by an organization exempt from income tax under IRC 501 and 521, is not subject to wagering excise and occupational taxes if no part of the net proceeds inures to the benefit of any private interest. If the drawing is conducted by someone other than the organization, the exemption does not apply.

Rev. Rul. 69-21, 1969-1 C.B. 290, concludes that a "drawing" that is "conducted by" an organization exempt under IRC 501 must, in fact, be operated by such organization to be excluded from wagering taxes. The term "drawing" as it relates to wagering taxes refers to the physical drawing of a ticket, or its equivalent thereof, such as the use of a wheel or a similar device whereby the winner is conclusively determined by a number, letter, legend, or symbol without reference to any other event, the happening of which is beyond the control of the operator. The ruling held that there is a basic distinction between mere sponsorship of a drawing and actual conduct thereof. In general, "conduct" denotes supervision and control, as distinguished from lending the name of an organization to the activity or endorsing it.

Presumably, this would also be true for IRC 527 organizations.

Consider the case of a tax exempt organization that arranges with a carnival operator to conduct a carnival under the tax-exempt organization's auspices. The entire operation is managed and controlled by the carnival operator, including the sale of raffle tickets on an automobile. Under the financial agreement between the two parties, the carnival operator receives a percentage of the amount of raffle ticket sales. The question of whether or not net proceeds are inuring to the benefit of private individuals must be determined not only by the amount of the commissions paid, but by all other factors bearing upon the relationship of the parties to each other. Where there are joint ventures with non-exempt organizations or individuals, the exclusion from the wagering tax is thus defeated not only because the operation is not "conducted by" an exempt organization but also because it follows from the nature of the enterprise that some part of the net proceeds inures to the benefit of the non-exempt organization or individuals involved and the second requirement for exclusion is not met.

C. Social Bets

During the baseball world series, a group of employees in an office each contribute $5 for a chance to win the entire proceeds contributed to the pool. The winner is the person holding the ticket for the inning in which the highest number of runs is scored. This is a social or friendly type of operation because it is not conducted for profit.

A social or friendly bet is not a wager as defined in IRC 4421 and Reg. 44.4421-1(a). However, according to Reg. 44.4421-1(c)(4), a wagering pool or lottery may be conducted for profit even though direct profit will not inure from the operation. If it is operated with expectation of a profit in the form of increased sales or attendance or other indirect benefits, the wagering pool or lottery is conducted for profit for wagering tax purposes.

D. Games When All Are Present

Bingo, for example is customarily played one game at a time and meets the exception to the lottery provisions because the winners are determined and the prizes or other property are awarded in the presence of all persons placing wagers in the game. But bingo must be analyzed to see if it is played in the traditional manner to insure that it is not a lottery for the purposes of excise tax (see section 7. above).

9. Returns, Payments, and Records

Reg. 44.6011(a)-1 requires that Form 730 be used to compute and pay the excise tax under IRC 4401.

Rev. Rul. 77-51, 1977-1 C.B. 346, holds that in view of the enactment of section 4420 of the Code, the delinquency and fraud penalties imposed by sections 6651 and 6653 may be assessed and collected for failure to file wagering Forms 730 and 11-C and pay the required taxes. Congress enacted section 4424 of the Code with the intent of removing any constitutional impediment to the enforcement of the wagering taxes.

Every person required to pay the tax on wagers imposed by section 4401 of the Code shall file Form 730 each month. A return shall be made for each month whether or not liability has been incurred for that month. If the taxpayer ceases operations which make him liable for the tax, the last return shall be marked "Final Return". See Reg. 44.6011(a)-(1)(a).

10. Return and Record Requirements

Tax assessments are generally based on a return filed by a taxpayer upon which he or she has determined the liability. Every person required to pay the tax on wagers must keep adequate records.

IRC 4403 provides that each person liable for the wagering tax shall keep a daily record showing the gross amount of all wagers on which he is so liable, in addition to all other records required pursuant to section 6001(a).

Section 44.4403-1 of the Excise Tax Regulations provides that every person liable for tax under section 4401 shall keep such records as will clearly show as to each day's operations:

(1) The gross amount of all wagers accepted;

(2) The gross amount of each class or type of wager accepted on each separate event, contest, or other wagering medium.

For example, bingo and pull-tab gross wagers should be shown separately.

11. Applicability of Federal and State Laws

IRC 4422 and Reg. 44.4422-1 provide that paying the wagering tax does not protect a person from prosecution for violation of any Federal or state law.

12. Inspection of Books

Section 4423 of the Code provides that notwithstanding section 7605(b), the books of account of any person liable for taxes on wagering may be examined and inspected as frequently as may be needful to the enforcement of taxes on wagering.

13. Record Retention Period

Section 44.6001-1 of the Excise Tax Regulations provides additional provisions relating to general records, records of agent or employee, record of claimants, place for keeping records, and period for retaining records. Rev. Rul. 72-554, 1972-2 C.B. 630, holds that certain documents prepared and used by gambling establishments constitute records within the meaning of section 6001 of the Code and the regulations and must be retained so long as they may become material to the administration of any tax law.

Excise Tax Regulation 44.6001-1(e) provides that all records required by these regulations shall at all times be available for inspection by internal revenue officers. Further, that the records required by section 44.4403-1 and general records required by this section shall be maintained for a period of at least three years from the date the tax became due; records required of agent or employee shall be maintained for a period of at least three years from the date the wager was received; and records required of claimants shall be maintained for a period of at least three years from the date any credit is taken or refund is claimed.

When any person liable for the wagering tax imposed by IRC 4401 or who is engaged in receiving for or on behalf of another person (at any place other than a registered place of business of such other person) wagers of a type subject to the tax imposed by IRC 4401, has failed to maintain sufficient records as required by Regulations 44.4403-1 and 44.6001, a notice on Letter 911 (DO) (Notice of Inadequate Records to Wagering Taxpayers) or Letter 912 (DO)(Notice of Inadequate Records to Agents or Employers of Wagering Taxpayers) may be issued. See IRM 4791. The factors in IRM 4271.21:(4)(b) should be applied in reaching a decision to send a notice of inadequate records.

14. Credit or Refund

If a person overpays the tax imposed under section 4401, IRC 6416 and the regulations thereunder, provide that he or she may either file a claim for refund on Form 8849, Claim for Refund of Excise Taxes, or take credit for such overpayment against the tax due on subsequent monthly return.

A complete statement of the facts involving the overpayment shall be attached either to the claim or to the return on which the credit is claimed. See Excise Tax Regulation 44.6419-1.

15. Occupational Tax

The occupational tax is a companion to the excise tax on wagering.

IRC 4901 and Reg. 44.4901-1(a) hold that persons who plan to engage in the business of **accepting** wagers; conducting any wagering pool or lottery; or **receive** wagers for, or on behalf of, another person are liable for the tax on wagers.

Form 11-C is used by the person who accepts the wagers subject to excise tax to pay the annual occupational tax under IRC 4411. Form 11-C is also used

by each individual who accepts wagers for another person to register under IRC 4412 and pay the annual occupational tax. Reg. 44.4412-1 provides that registration is made by filing Form 11-C. After the form is filed and the tax is paid, the Service issues the taxpayer a special tax stamp as evidence of registration and payment. See Reg. 44.4901-1.

16. Rate and Imposition of Tax

IRC 4411(a) imposes an occupational tax of $500 per year on each person liable for the tax under IRC 4401 on wagers, or upon the person engaged in receiving wagers for or on behalf of any person so liable.

IRC 4411(b) reduces the occupational tax to $50 where liability for the tax under IRC 4401 is determined under IRC 4401(a)(1) (i.e., state authorized wagers) and for persons who are engaged in accepting wagers only for or on behalf of persons so liable.

The occupational tax shall be paid at the time fixed for filing the returns. See section 20. below regarding when returns must be filed and the tax paid. See Reg. 44.6151-1.

17. Partnership Liability

IRC 4902 and Reg. 44.4902-1 provide that only one occupational tax stamp is required of persons in a copartnership.

18. Change of Address

Where there is a change of business or residence address, IRC 4905 and Reg. 44.4905-2 requires the filing of a "Supplemental Return" on Form 11-C.

19. Application of State Laws

IRC 4906 provides that paying the wagering tax does not protect a person from prosecution for violation of any state law. For provisions relating to the applicability of Federal and state laws, see IRC 4422 and Reg. 44.4422.

20. Registration and Penalties

IRC 4901 and Reg. 44.4901-1(a) requires that the occupational tax must be paid before anyone engages in any wagering activities. Registration is accomplished by filing a return, with remittance in full, on Form 11-C.

Form 11-C is filed by a principal or an employee agent. The principal or employee agent must have an EIN (employer identification number); a social security number cannot be used. The Form 11-C requires an EIN.

Section 4901 of the Code provides that for purposes of the occupational tax imposed by section 4411, the tax year begins July 1. In the case of a person commencing any trade or business on which the tax applies, the individual shall pay a proportionate part of the annual tax from the first day of the month in which the liability for the tax commences. Section 44.4901-1(b)(2) of the regulations defines "commencing business" as a person's initial acceptance of a wager subject to the tax imposed by section 4401. Thereafter, the person must pay the full tax by July 1 of each year. Persons in business for only a portion of a month are liable for tax for the full month, i.e. a person first becoming subject to the special tax on, for example, the 20th day of a month, is liable for tax the entire month.

Taxpayers who accept wagers only a few months of the year (wagers are accepted only on a seasonal basis) are still engaged in the business of accepting wagers all year. They may not reduce the tax imposed by section 4411 of the Code and must pay the full occupational tax by July 1 of each year. See Rev. Rul. 81-258, 1981-2 C.B. 216.

Rev. Rul. 77-933, 1977-2 C.B. 382, holds that employees hired before the end of a taxable year to replace employees who had been engaged in receiving wagers on behalf of another person, and who had paid the occupational tax imposed by section 4411 of the Code for the entire taxable year, are also subject to the tax in that taxable year. However, new employees would be liable only for the proportionate part of the tax computed from the first day of the month during which they began receiving wagers to the following June 30th. For example, if D had commenced receiving wagers on A's behalf on April 15, D would have been liable for a special tax of $125 (based on 1/4 of a year) rather than the full $500. In addition, there is no refund available of the occupational tax paid by employees who leave the employ of the person accepting wagers on behalf of another person.

Rev. Rul. 77-51, supra, holds that in view of the enactment of section 4424 of the Code, the delinquency and fraud penalties imposed by sections 6651 and 6653 may be assessed and collected for failure to file wagering Forms 730 and 11-C and pay the required taxes. Congress enacted section 4424 of the Code with the intent of removing any constitutional impediment to the enforcement of the wagering taxes.

21. Examination Techniques

An examination of the wagering tax and determination of gaming gross income or unrelated trade or business income tax should be done simultaneously, since the figures used in both examinations, such as gross wagers, are the same. If no records are kept by the taxpayer as to wagering activity or amounts wagered, it will be necessary to reconstruct daily wager play.

Information that would be helpful in reconstructing an average wager daily amount include copies of any available records from local law enforcement officials or gaming regulators. This information may be useful in determining an average daily wager which can be projected between periods that the taxpayer appeared to be in the wagering business.

The Form 11-C should be secured for the period covered by the Forms 730.

Computer generated alphabetical listings for Forms 11-C and Forms 730 are produced in March of each year for the prior calendar year. The listing may be used to determine whether organizations engaged in wagering have filed Forms 11-C and 730.

For a more complete discussion of examination techniques in cases involving gaming activities, see IRM 4700, Excise Tax Procedure, and IRM 4235, Techniques Handbook for In-Depth Examinations.

For a discussion of examination techniques where fraud is suspected, see Topic D. Detecting Fraud in Charity Gaming of this text.

22. Jeopardy Assessment

Where the collection of excise taxes is in jeopardy, appropriate jeopardy assessment action may be taken. The statutory authority for jeopardy assessments in excise tax cases is IRC 6862.

23. Summary

Organizations that are exempt from income tax under section 501 or 521 of the Internal Revenue Code are **not** categorically exempt from the excise tax on wagering or the occupational tax. Federal wagering tax laws apply to both authorized and unauthorized gaming activities conducted by exempt organizations.

Most legal wagering conducted by non-profit organizations relates to lotteries. "Pull-tab" or "instant" games meet the definition of taxable wagers placed in a lottery. Bingo games are specifically excluded from the tax. The term "lottery" does not include any wagering conducted by an exempt organization if no part of the net proceeds derived from the activity inures to the benefit of any individual.

Certain gaming activities which are "conducted by" organizations exempt under IRC 501 are not subject to wagering excise and occupational taxes, pursuant to IRC 4421(2)(B).

The facts and circumstances of the types of wagering conducted, as well as the benefits derived therefrom, may have a bearing on whether the wagers are subject to the taxes.

Publication 510, Excise Taxes for 1996 includes a general discussion of the wagering taxes.