

Internal Revenue Service, Treasury

§ 44.0-2

Subpart D—Miscellaneous and General Provisions Applicable to Taxes on Wagering

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AUTHORITY: 26 U.S.C. 7805.

SOURCE: T.D. 6370, 24 FR 2614, Apr. 4, 1959, unless otherwise noted.

Subpart A—Introduction

§ 44.0-1 Introduction.

(a) *In general.* The regulations in this part are designated “Wagering Tax Regulations.” The regulations relate to the taxes imposed by Chapter 35 of the Internal Revenue Code of 1954, as amended, to certain general provisions of Chapter 40 of such Code, and to certain related administrative provisions of Subtitle F of such Code. Chapter 35 imposes an excise tax on wagers and a special tax to be paid by each person liable for the tax imposed on wagers and by each person engaged in receiving wagers for or on behalf of any person liable for the tax imposed on wagers. References in these regulations to the “Internal Revenue Code” or the “Code” are references to the Internal Revenue Code of 1954, as amended, unless otherwise indicated. References to a section or other provision of law are references to a section or other provi-

sion of the Internal Revenue Code, as amended, unless otherwise indicated.

(b) *Division of regulations.* The regulations in this part are divided into five subparts. Subpart A contains provisions relating to the arrangement and numbering of the sections of the regulations in this part, general definitions and use of terms, scope of the regulations, and the extent to which the regulations in this part supersede prior regulations relating to the taxes imposed by Chapter 35 of the Internal Revenue Code. Subpart B relates to the tax on wagers. Subpart C relates to the special tax. Subpart D relates to certain miscellaneous and general provisions having application to taxes imposed by Chapter 35. Subpart E relates to selected provisions of subtitle F of the Code (Procedure and Administration) which have special application to the taxes imposed by Chapter 35 of the Code.

(c) *Arrangement and numbering.* Each section of the regulations in this part (other than Subpart A) is designated by a number composed of the part number followed by a decimal point (44.); the section of the Internal Revenue Code which it interprets; a hyphen (-); and a number identifying the section. By use of these designations one can ascertain the sections of the regulations relating to a provision of the Code. For example, the regulations pertaining to section 4401 of the Code are designated §§ 41.4401-1, 41.4401-2, and 41.4401-3.

[T.D. 6370, 24 FR 2614, Apr. 4, 1959, as amended by T.D. 7665, 45 FR 6090, Jan. 25, 1980]

§ 44.0-2 General definitions and use of terms.

As used in the regulations in this part, unless otherwise expressly indicated:

(a) The terms defined in the provisions of law contained in the regulations in this part shall have the meanings so assigned to them.

(b) The Internal Revenue Code of 1954 means the Act approved August 16, 1954 (68A Stat.), entitled “An Act To revise the internal revenue laws of the United States”, as amended.

(c) District director means district director of internal revenue.

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(d) The cross references in the regulations in this part to other portions of the regulations, when the word “see” is used, are made only for convenience and shall be given no legal effect.

§ 44.0-3 Scope of regulations.

The regulations in this part apply to wagering activity on and after January 1, 1955.

§ 44.0-4 Extent to which the regulations in this part supersede prior regulations.

The regulations in this part, with respect to the subject matter within the scope thereof, supersede Regulations 132, 26 CFR (1939) Part 325.

Subpart B—Tax on Wagers

§ 44.4401-1 Imposition of tax.

(a) *In general.* Section 4401 imposes a tax on all wagers, as defined in section 4421. See section 4421 and § 44.4421-1 for definition of the term “wager.”

(b) *Rate of tax; amount of wager—(1) Rate of tax.* The tax is imposed at the rate of 10 percent of the amount of any taxable wager.

(2) *Amount of wager.* (i) The amount of the wager is the amount risked by the bettor, including any charge or fee incident to the placing of the wager as provided in subdivision (iv) of this subparagraph, rather than the amount which he stands to win. Thus, if a bettor bets \$5 against a bookmaker’s \$7 with respect to the outcome of a prize fight, the amount of the wager subject to tax is \$5.

(ii) In the case of a “parlay” wager (i.e., a single wager made by a bettor on the outcome of a series of events, usually horse races), the amount of the taxable wager is the amount initially wagered by the bettor irrespective of whether the parlay is successful. In the case of an “if” wager, the amount of the taxable wager is the total of all amounts wagered on each selection of the bettor. For example, A makes a \$10 wager on horse R with the understanding that if horse R wins, \$5 is to be wagered on horse S and \$5 on horse T. If horse R wins, the taxable wager is \$20. If horse R loses, the taxable wager is \$10. In determining the amount of a taxable wager involving the features

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of, or a combination of, “parlay” and “if” bets, such as wagers sometimes referred to as a “whipsaw” or an “if and reverse” bet, the rules set forth above relating to “parlay” and “if” bets are to be followed. For example, assume B wagers \$10 on horse R with the understanding that if horse R wins, \$5 is to be placed as a parlay wager on horses S and T. In such a case, if horse R loses, the taxable wager is \$10; if horse R wins, there are two taxable wagers amounting in the aggregate to \$15.

(iii) In the case of punchboards with prizes of merchandise, cash, or free plays listed thereon, the amount of the taxable wager is the amount risked by the bettor for all chances taken by him, including the chances taken by the bettor in lieu of the acceptance of an equivalent amount in cash or merchandise.

(iv) In determining the amount of any wager subject to tax there shall be included any charge or fee incident to the placing of the wager. For example, in the case of a wager with respect to a horse race, any amount paid to a bookmaker for the purpose of guaranteeing the bettor a pay-off based on actual track odds is to be included as a part of the wager. Similarly, in the case of a lottery, any amount paid to the operator thereof by the bettor for the privilege of making a contribution to the pool or bank is also to be included in the amount of the wager. However, the amount of the wager subject to tax shall not include the amount of the tax where it is established by actual records of the taxpayer that such amount of tax was collected from the bettor as a separate charge.

§ 44.4401-2 Person liable for tax.

(a) *In general.* (1) Every person engaged in the business of accepting wagers with respect to a sports event or a contest is liable for the tax on any such wager accepted by him. Every person who operates a wagering pool or lottery conducted for profit is liable for the tax with respect to any wager or contribution placed in such pool or lottery. To be liable for the tax, it is not necessary that the person engaged in the business of accepting wagers or operating a wagering pool or lottery