(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 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

physically receive the wager or contribution. Any wager or contribution received by an agent or employee on behalf of such person shall be considered to have been accepted by and placed with such person.

(2) Any person required to register under section 4412 by reason of having received wagers for or on behalf of another person, but who fails to register the name and place of residence of such other person (hereinafter in this subparagraph referred to as principal), shall be liable for the tax on all wagers received by him during the period in which he has failed to so register the name and place of residence of such principal. Subsequent compliance with section 4412 by the person receiving wagers for another does not relieve him of his liability and duty to pay such tax, nor will the fact that such person incurs liability with respect to the tax on such wagers, relieve his principal of liability for the tax imposed under section 4401 with respect to such wagers. Accordingly, both the person receiving the wagers and his principal shall be liable for the tax on such wagers until the tax is paid. Payment of the tax on such wagers shall not relieve the person receiving wagers of any penalty for failure to register as required by section 4412. This subparagraph has application only to wagers received after September 2, 1958.

(b) *In business of accepting wagers.* A person is engaged in the business of accepting wagers if he makes it a practice to accept wagers with respect to which he assumes the risk of profit or loss depending upon the outcome of the event or the contest with respect to which the wager is accepted. It is not intended that to be engaged in the business of accepting wagers a person must be either so engaged to the exclusion of all other activities or even primarily so engaged. Thus, for example, an individual may be primarily engaged in business as a salesman, and also for the purpose of the tax be engaged in the business of accepting wagers.

(c) *Lay-offs.* If a person engaged in the business of accepting wagers or conducting a lottery or betting pool for profits lays off all or part of the wagers placed with him with another person engaged in the business of accepting wagers or conducting a betting pool or lottery for profit, he shall, notwithstanding such lay-off, be liable for the tax on the wagers or contributions initially accepted by him. See § 44.6419–2 for credit and refund provisions applicable with respect to laid-off wagers.

§ 44.4401–3 When tax attaches.

The tax attaches when (a) a person engaged in the business of accepting wagers with respect to a sports event or a contest, or (b) a person who operates a wagering pool or lottery for profit, accepts a wager or contribution from a bettor. In the case of a wager on credit, the tax attaches whether or not the amount of the wager is actually collected from the bettor. However, if an amount equivalent to the amount of the wager is paid to the bettor prior to the close of the calendar month in which such wager was accepted, either because of the cancellation of the event upon which the wager was placed, or because the wager was cancelled or rescinded by mutual agreement, the wager need not be reported on the taxpayer's return for such month. Where such cancellation or rescission takes place in a month subsequent to the month in which the wager was accepted, credit or refund of the tax paid with respect to such wager may be made subject to the provisions of § 44.6419–1.

§ 44.4402–1 Exemptions.

(a) *Parimutuel wagering enterprises.* Section 4402 provides that no tax shall be imposed by section 4401 on any wager placed with, or on any wager placed in a wagering pool conducted by, a parimutuel wagering enterprise licensed under State law.

(b) *Wagering machines*—(1) *In general.* Section 4402 provides that no tax shall be imposed by section 4401 on any wager placed in a coin-operated device (as defined in section 4462 as in effect for years beginning before July 1, 1980), or on any amount paid, in lieu of inserting a coin, token, or similar object, to operate a device described in section 4462(a)(2) (as so in effect). These devices include:

(i) So-called ''slot'' machines that operate by means of the insertion of a