

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

**§ 44.4403-1**

**26 CFR Ch. I (4-1-02 Edition)**

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

(ii) Machines that are similar to machines described in paragraph (b)(1)(i) of this section and are operated without the insertion of a coin, token, or similar object.

(2) *Examples.* The following devices and machines are examples of the devices referred to in paragraph (b)(1) of this section:

(i) A machine that is operated by means of the insertion of a coin, token, or similar object and that, even though it does not dispense cash or tokens, has the features and characteristics of a gaming device whether or not evidence exists as to actual payoffs.

(ii) A so-called crane machine, claw, digger, or rotary merchandising type device that is operated by the insertion of a coin and adjustment of a control lever for the purpose or removing from the machine, by gripping, pushing, or other manipulation articles such as figurines, lighters, etc., in the machine.

(iii) A pinball machine equipped with a pushbutton for releasing free plays and a meter for recording the plays so released, or equipped with provisions for multiple coin insertion for increasing the odds.

(iv) Pinball machines in connection with which free plays are redeemed in cash, tokens, or merchandise, or prizes are offered to any person for the attainment of designated scores.

(v) 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.

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**§ 44.4403-1 Daily record.**

Every person liable for tax under section 4401 shall keep such records as will clearly show as to each day's operations:

(a) The gross amount of all wagers accepted;

(b) The gross amount of each class or type of wager accepted on each separate event, contest, or other wagering medium. For example, in the case of wagers accepted on a horse race, the daily record shall show separately the gross amount of each class or type of wagers (straight bets, parlays, "if" bets, etc.) accepted on each horse in the race. Similarly, in the case of the numbers game, the daily record shall show the gross amount of each class or type of wager accepted on each number.

For additional provisions relating to records, see section 6001 and § 44.6001-1.

**§ 44.4404-1 Territorial extent.**

(a) *In general.* The tax imposed by section 4401 applies to wagers (1) accepted in the United States, or (2) placed by a person who is in the United States (i) with a person who is a citizen or resident of the United States, or (ii) in a wagering pool or lottery conducted by a person who is a citizen or resident of the United States. All wagers made within the United States are taxable irrespective 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.

(b) *Examples.* The following examples illustrate the application of paragraph (a) of this section:

*Example (1).* A syndicate which maintains its headquarters in a foreign country has representatives in the United States who receive wagers in the United States for or on behalf of such syndicate. For the purposes of section 4404, such wagers are considered as accepted within the United States, the syndicate is considered to be in the business of accepting wagers within the United States, and such wagers are subject to the tax. This is true regardless of the nationality or residence of the members of the syndicate.