

Wagering; calcutta operated by social club; open to nonmembers. Taxes on wagering apply to a 'calcutta' that is operated in connection with a sports event by a nonprofit social club that allows members of similar social clubs to attend the events and uses a portion of entrance fees and wagers to help defray the expenses of operating the events.

#### ISSUE

Do the federal excise taxes on wagering apply to a 'calcutta' operated by a social club that is attended by members of other social clubs?

#### FACTS

As part of its regular activities and to further the pleasure and recreation of its members, a social club operates a calcutta (wagering pool) in connection with a sports event it conducts.

Participation in the calcutta and sports event is open a club members and members of other similar social clubs. All persons attending pay entrances fees that are used to help defray the expenses of the sports event and calcutta. Each player performing in the designated sports event is 'sold' at auction to the highest bidder. Ten to fifteen percent of the proceeds from this auction, known as a calcutta pool, is also kept by the club to offset is expenses of operating the calcutta and other related activities of the sports event. The remaining funds are divided as prize money among the 'owners' of the winning players, less a percentage that is shared among the winning players.

The club is exempt from income tax under section 501(a) of the Internal Revenue Code as a nonprofit organization described in section 501(c)(7).

#### LAW AND ANALYSIS

Section 4401(a) of the Code imposes a tax on wagers and section 4401(c) provides that each person who conducts any wagering pool or lottery shall be liable for and pay the tax on wagers placed in such pool or lottery. Section 4411 imposes a special occupational tax to be paid annually by each person liable for the section 4401 tax. The term 'wager,' as defined in section 4421(a), includes any wager placed in a wagering pool with respect to a sports event or a contest, if the pool is conducted for profit.

Under situation 2 in Rev. Rul. 74-425, 1974-2 C.B. 373, a calcutta conducted by a nonprofit social club exempt from income tax under section 501(a) of the Code for the pleasure and recreation of club members and guests only was held not to be

operated for profit. Although not so stated, the 'guests' who participated were guests of the individual members who paid for all the club charges relating to those guests. The Revenue Ruling concluded the guests would come under sections 501(c)(7) and 512(a)(3).

Rev. Proc. 71-17, 1971-1 C.B. 683, provides guidelines for determining the effect of gross receipts derived from nonmember use of a social club's facilities on the club's exemption under section 501(c)(7) of the Code. Rev. Proc. 71-17 states that where a club makes its facilities available to the general public to a substantial degree, the club is not operated exclusively for pleasure, recreation, or other nonprofitable purposes. The term 'general public,' as used in that Revenue Procedure, means persons other than members of a club, their dependents, or guests.

A guest of a nonprofit social club is an individual who is a guest of a member of the club and who ordinarily does not reimburse the member for the guest's expenses. On the other hand, amounts paid to a social club by visiting members of another social club are amounts paid by nonmembers, even though both clubs are of like nature and the amounts paid are for goods, facilities, or services provided by such social club under a reciprocal arrangement with such other social club.

Accordingly, in this case, the members of the other social clubs that attend the calcutta are not guests of the members of the host club, but are members of the general public within the meaning of Rev. Proc. 71-17. Therefore, for excise tax purposes, the calcutta does not come within the purview of Rev. Rul. 74-425, because it is not being operated for the pleasure and recreation of the club's members and their guests only. Further, the calcutta is being operated for profit, inasmuch as the general public through payment of the entrance fees, is providing income to help pay the operating expenses.

#### HOLDING

The social club is conducting a wagering pool for profit within the meaning of section 4421(a) of the Code and is liable for the taxes imposed by sections 4401 and 4411.