

# Taxing Times

## GAMBLING - PROFESSIONAL OR AMATEUR?

Everyone has a God-given talent. Some talents, such as singing, writing or sinking 40-foot putts, are quite marketable. How about rooting for your team and making money at the same time?

Bloomberg Businessweek reports that the two primary daily fantasy football leagues, FanDuel and DraftKings, were expected to bring in \$60 million in entry fees in the first week of the NFL season. The Monday Morning Quarterback reported that one entrant, Saahil Sud, made over \$1 million during week 3 of the NFL season, and expects to make more than \$5 million for the entire year. Sud uses a computer program that he designed to make his picks. The program factors in data from box scores, weather sites and football analytics sites.



It isn't hard to argue that someone like Sud should be considered a professional fantasy sports player, and our tax laws agree. The Supreme Court has held that an individual who pursues gambling "*full time, in good faith, and with regularity, to the production of income for a livelihood, and is not merely [engaging in] a hobby*" may treat gambling as his or her trade or business. *Commissioner v. Groetzinger*, 480 U.S. 23 (1987).

Why treat gambling as a trade or business? In part for the deductions—a professional fantasy football player may deduct any "*ordinary and necessary*" expenses, such as a computer or travel. He or she also may net winnings and losses and report this single amount as gross receipts on the Schedule C. This is generally better than the method available to amateur gamblers, who must separately report winnings on the Form 1040 and losses as an itemized deduction on the Schedule A.

The downside to being a professional fantasy player? Self-employment taxes—a pro fantasy football player would have to pay taxes equal to 15.3% of any self-employment income, up to the wage base (\$118,500 for 2015 and 2016), 2.9% on any income in excess of this and an additional tax of 0.9% on income in excess of \$200,000 (\$250,000 for a joint return), although one-half of the self-employment tax is deductible above-the-line (except for the additional 0.9% tax).

*So should you consider becoming a professional fantasy football player? Summarizing the particular tax, and related, issues that you may want to consider:*

1. **Do you itemize your deductions?** If not, then consider professional gambling status, because you otherwise will not be able to take advantage of your losses. An amateur gamer must account for gambling losses as an itemized deduction; only a professional gambler may net these losses from his or her winnings.
2. **Do you have a spouse?** If so, do not become a professional gambler.
3. **Do you incur expenses to gamble?** If so, being a professional gambler would allow you to deduct these expenses.
4. **Are you any good?** If not, stay in school. But you are totally welcome to join my league anytime.



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