

## Poker Tournament Re-Buys Are Not Identical Wagers for Withholding

by Nathan J. Richman

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A recent IRS field attorney advice (FAA) memorandum states that multiple buy-ins to a poker tournament will not be treated as identical wagers subject to aggregation for the purposes of reporting and withholding on winnings.

In FAA 20153601F [□](#), released September 4, the IRS considered the effect of a re-buy in a poker tournament on the determination of the amount of the wager under section 3402(q). Under section 3402(q), winnings more than \$5,000 above the amount of the wager are subject to both reporting on Form W-2G, "Certain Gambling Winnings," and tax withholding. Reg. section 31.3402(q)-1(c) allows multiple identical wagers to be added together and treated as one wager for determining the amount of the wager.

The FAA addresses poker tournaments where a player who loses may pay another entry fee to reenter the tournament before a specified amount of time has passed. The later entry fee is added to all of the initial entry fees to determine the wagering pool.

The FAA contrasts the poker tournament re-buys with multiple "win" bets placed on the same horse in one race, noting that each bet in the latter case "would depend on the identical event occurring and [does] not actually change the odds of winning." By contrast, each re-buy would face a different set of circumstances, particularly the number of players in the tournament, according to the memo.

Also, the FAA compares the tournament re-buy to a separate "wager on a different horse or an exacta or trifecta bet at the race track." (An exacta is a bet naming the first and second place results, and a trifecta includes the third place result as well.) This summer, the horse-racing community sent the IRS and Treasury comment letters asking for exotic wagers such as "box," "key," and "wheel" wagers, in which the bettor wagers on an array of outcomes with one or two constants (such as one horse finishing in a specific place), to be aggregated as identical wagers if the whole array goes into one parimutuel wagering pool. (Prior coverage [□](#).)

Alexander Waldrop of the National Thoroughbred Racing Association said that the FAA supports the horse-racing community's comments since their request involves the whole wager being placed into the same parimutuel pool at the same time; thus, "the 'circumstances that must occur in order for [the bettor] to win' remain unchanged," he said, quoting the FAA. "These are the very principles that would apply to a bettor playing several combinations in a specific parimutuel pool."

Russell Fox of Clayton Financial and Tax said that the FAA is likely correct but is not good for poker. He said that while it is true that the conditions of the wager change over the course of the portion of the tournament when re-buys are allowed, all players are competing for the same prize pool, which is not defined until the re-buy period ends.

The problem for amateur players is that under the FAA, adjusted gross income is increased and coupled with loss deductions as opposed to just lower reported winnings, Fox said, adding that the increased AGI for the same taxable income "can cause a lot of bad things to a person's tax return." This negative result for taxpayers can lead to lower tax compliance, he said.

"From a practical standpoint, I think the ruling should have gone the other way," Fox said.

Robert D. Grossman Jr. of the Tax Law Center LLC in Las Vegas questioned the reasoning of the FAA asserting that the two separate buy-ins could be separated. Instead of the comparison with competing wagers on different horses in one race, the re-buy is like an additional bet on a later round within a single hand of poker, he said. "In the same poker hand, you can have numerous bets, odds change all the time, but I don't think it makes it a different event," he said, noting the effect of players folding and of new cards being dealt on the odds of each player winning the hand.

Grossman emphasized the definition of session of play. "I think that the segregation of bets at a poker table is not much different than a segregation of pulls on the same machine with a different game or different machines at the same session," he said, comparing table poker play with slot machine play.

Grossman noted the circuit court opinion in *Park v. Commissioner*, No. 12-1058 (D.C. Cir. 2013) [□](#), in which the court extended per-session, rather than per-pull, calculation of reportable slots winnings to foreign gamblers. He said the rationale for the FAA treating poker tournament re-buys as separate bets is not consistent with the rationale in *Park*. (Prior coverage [□](#).)