Rev. Rul. 69-21, 1969-1 C.B. 290

Where a baseball pool is purchased by an exempt organization with the seller being retained to operate the pool, the organization and the operator are jointly and severally liable for the tax on wagers and the occupational tax; M.T. 44 superseded.

The purpose of this Revenue Ruling is to update and restate the position set forth in M.T. 44, C.B. 1952-2, 251, under the current statute and regulations.

X, an organization exempt from Federal income tax under section 501(a) of the Internal Revenue Code of 1954 as an organization described in section 501(c)(4) of the Code, purchased a baseball pool from A, who formerly operated the pool. The contract of sale provided that X would retain A at a weekly salary as the general manager of the pool. The contract further provided that A would have exclusive control over the operation of the pool, including the hiring of personnel and the determination of their salaries. Although X maintains a separate bank account for operating the pool, A is the only person authorized to issue checks against the account. The organization's participation in the baseball pool constitutes only an insubstantial part of its activities.

During the baseball season, the winner of the pool is determined by the results of the baseball games played each day, and during the off-season period the winner is determined by the daily bank clearings used in conjunction with the results of the prior season's games.

Section 4401 of the Code imposes an excise tax on wagers. Section 4411 imposes a special annual tax to be paid by each person who is liable for tax under section 4401 or who is engaged in receiving wagers for or on behalf of any person so liable.

For purposes of these taxes, section 4421(1) of the Code defines the term "wager" to include, among other things, any wager placed in a lottery conducted for profit. Section 4421(2)(B) excludes from the term "lottery" any drawing conducted by an organization exempt from income tax under section 501 or 521, if no part of the net proceeds derived from such drawing inures to the benefit of any private shareholder or individual.

Section 44.4421-1(b)(1) of the Wagering Tax Regulations defines the term "lottery" in general as including any scheme or method for the distribution of prizes among persons who have paid or promised a consideration for a chance to win such prizes, usually as determined by the numbers or symbols on tickets as drawn from a lottery wheel or other receptacle, or by the outcome of an event, provided such lottery is conducted for profit.

It is held that the baseball pool involved here constitutes a lottery conducted for profit.

Although X is an organization exempt from income tax under the provisions of section 501 of the Code, the exemption from wagering tax provided by section 4421(2)(B) applies only to a "drawing" which is "conducted by" such an organization if no part of the net proceeds therefrom inures to the benefit of any private shareholder or individual. The term "drawing" refers to the physical drawing of a ticket, or the equivalent thereof, such as the use of a wheel or a similar device, whereby the winner is conclusively determined by a number, letter, legend, or symbol, without reference to any other event the happening of which is beyond the control of the operator. Thus, an operation in which the winner is determined by the outcome of events, such as bank clearing or similar figures, is not a "drawing" within the meaning of the statute.

A "drawing," as defined above, that is "conducted by" an organization exempt from Federal income tax under section 501 or 521 of the Code must, in fact, be operated by such organization in order to be excluded from wagering taxes. There is a basic distinction between mere sponsorship of a drawing and actual conduct thereof. In general, "conduct" denotes supervision and control, as distinguished from lending the name of an organization to the activity or endorsing it.

The exemption from wagering taxes provided by section 4421(2)(B) of the Code does not apply to the described pool since it is not a "drawing" as defined above and it is not "conducted by" X, a section 501 organization. For purposes of the wagering taxes, X and A are operating the pool jointly. Accordingly, both parties are jointly and severally liable for the excise tax on wagers and the annual occupational tax imposed by section 4401 and 4411 of the Code, respectively. Further, each person engaged in receiving wagers for or on behalf of these parties is also liable for the annual occupational tax.

M.T. 44 is hereby superseded since the conclusions thereof are restated under current law in this Revenue Ruling.

1 Prepared pursuant to Rev. Proc. 67-6, C.B. 1967-1, 576.