

Office of Chief Counsel
Internal Revenue Service
memorandum

Number: **201251012**

Release Date: 12/21/2012

CC:PSI:7
POSTN-139955-12

Third Party Communication: None
Date of Communication: Not Applicable

UILC: 4401.00-00

date: November 20, 2012

to: Chief, Excise Tax Program
(Holly L. McCann)

from: Chief, Branch 7
Office of Associate Chief Counsel
(Passthroughs and Special Industries) CC:PSI:7
(Frank Boland)

subject: Federal Excise Tax on Wagers

This responds to your request for Non-Taxpayer Specific Legal Advice as to whether the excise tax on wagering imposed by section 4401 of the Internal Revenue Code applies to wagers accepted as described below.

This document may not be used or cited as precedent.

FACTS

DOM, a United States citizen who resides in the United States, operates a sporting event bookmaking business in a manner similar to a sole proprietor. All of DOM's bettors are residents of the United States. Related to this bookmaking business, DOM contracts with FOR, a company outside the United States, to maintain the betting information that DOM's bettors send to FOR. DOM's arrangement with FOR has the following features:

- DOM does not have an ownership or financial interest in FOR.
- FOR cannot commit DOM to a wager or reject or modify a wager.
- FOR does not have an interest in the outcome of the wagers made by DOM's bettors.
- FOR's only income from this arrangement is fixed monthly fees paid by DOM for each bettor's account information maintained by FOR.
- DOM's bettor does not deposit money with FOR or a bank designated by FOR.

POSTN-139955-12

DOM gives its bettors a toll free telephone number, a website address, an account number, and a password. A bettor using this information contacts FOR and describes the wager it wants to make. The bettor can also use the same information to access its wagering history.

DOM, using a different toll free number or the same website, a username, and a password accesses a bettor's wagers and account balance to monitor, accept, reject, or modify a bettor's wagers. Usually on a weekly basis, DOM personally pays out or collects cash to settle a bettor's account. DOM settles only by paying or accepting cash in the United States.

All of the bets involved in this case are "wagers" as that term is used in section 4401.

LAW

Section 4401(a) imposes a tax on certain wagers. Under section 4401(c), every person engaged in the business of accepting wagers is liable for the tax on each wager accepted by that person.

Section 4404 limits the wagering tax to wagers (1) accepted in the United States, or (2) placed by a person that is in the United States (A) with a person that is a citizen of or resident of the United States, or (B) in a wagering pool or lottery conducted by a person that is a citizen or resident of the United States.

Section 44.4401-2(b) of the Wagering Tax Regulations identifies a person engaged in the business of accepting wagers as a person who 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.

ANALYSIS

FOR only receives and maintains information regarding a wager that a bettor sends to FOR pursuant to DOM's directions. FOR stores this information for DOM who can readily access the information to accept, reject, or modify a bettor's wagering information. FOR's compensation is limited to the fixed account maintenance fees FOR charges DOM. These fees do not vary with the outcomes of sporting events with respect to which FOR receives bettors' information. Therefore, FOR's participation in this arrangement is limited to data maintenance.

Although DOM directs its bettors to provide FOR with their wagering information, DOM alone retains the ability to accept, reject, or modify wagers by accessing bettors' account information maintained by FOR. DOM, not FOR, assumes the risk of profit or loss depending upon the outcomes of sporting events with respect to which DOM accepts wagers. The acceptance of wagers for which DOM assumes the risk of profit or

POSTN-139955-12

loss depending upon the outcome of the event with respect to which the wagers are accepted identifies DOM as being in the business of accepting wagers. See § 44.4401-2(b). The fact that DOM arranges to have its bettors send their wagering information to FOR does not cause the wagers to be accepted by FOR because FOR only receives and maintains wagering information for DOM. Therefore, DOM is accepting wagers in the United States.

CONCLUSION

DOM is liable for the section 4401 tax because DOM is in the business of accepting wagers and DOM accepted the wagers in the United States.

Please call Celia Gabrysh at (202) 622-3130 if you have any further questions.