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**From:** [REDACTED]  
**Sent:** Thursday, August 09, 2018 3:10:31 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Bcc:**  
**Subject:** RE: Wagering Tax Question

Good afternoon.

You have a case in which a taxpayer was convicted of operating an [REDACTED]. The Service completed SFRs. Assessments of the wagering excise tax under section 4401 were not assessed against the taxpayer. Rather, assessments were made against the taxpayer's LLC. The LLC is not at all related to the taxpayer's [REDACTED]. You initially thought that Exam had made the assessment against the LLC in error that the Service should correct its mistake by making an assessment against the taxpayer under his SSN. You later learned that wagering tax assessments are not made against SSNs; rather they are made against EINs. You asked for an explanation of why the Service does not make assessments against SSNs and for our views on what should happen now in your case.

There is nothing in the Code, the regs or the IRM that explains why specifically wagering tax assessments are made under EINs and not SSNs. I spoke with the Excise Group RA you spoke with, and he said that EINs have to be used in order to use the necessary Business Master File transaction codes. In any case, the wagering tax is one of the excise taxes on activities, and it appears that it being an excise tax is why the assessment is made under EINs. While the IRM does not explain *why* excise taxes, including the wagering tax, use EINs, it does state that they are what is used. See, e.g., IRM 21.7.13.5.1.4, Determining the Need for an EIN: Sole Proprietor (EINs assigned where, among other things, the taxpayer is planning to have employees or is liable for employment or excise tax). In addition, excise tax returns identify the taxpayer by EIN. IRM 3.11.23.10, Entity Perfection—General provides:

- (1) The entity area of excise tax returns identifies the taxpayer on the Business Master File. The entity section of the return contains the following:
  - a. EIN
  - b. Name
  - c. "In-care-of" name
  - d. Address

Specifically, Form 730, Monthly Tax Return for Wagers, the excise tax return used by taxpayers to report wagering tax, requires for the use of EINs. Taxpayers who do not have an EIN are instructed on how to obtain one. The Service uses EINs when working wagering excise cases in which taxpayers are voluntarily complying. There is no reason why the Service would not also use them in cases such as yours.

In your case, it is unclear how the mistake was made. All we know is that rather than creating an EIN for the taxpayer, the Service made the assessment against the taxpayer's LLC which had no involvement in the wagering business. You are correct that the Service should not have used that LLC's EIN for the assessment. The assessment statute is open, and the Service should now do what it normally does in cases such as this—it should establish an EIN for the taxpayer and make the assessment under that EIN. It should also abate the assessment it already made against the LLC, if it hasn't done so already.

If you would like to discuss this, please contact me.