

A casual gambler may not offset winnings by losses

The Tax Court in Bon Viso v. Comm., T.C. Memo 2017-154 (TCM 2017) requires that an individual had to report as income the full amount of his gambling winnings reflected on the Forms W-2G (Certain Gambling Winnings) he received without deducting the amounts bet. Since the Taxpayer was not engaged in the gambling business, he could only deduct his gambling losses as a miscellaneous itemized deduction and not as an offset to his income.

Under I.R.C. § 61(a), gross income includes all income from whatever source derived. McClanahan v. U.S., 292 F.2d 630 (5th Cir. 1961) has held that gambling winnings are includable in gross income. According to Lutz v. Comm., TC Memo 2002-89 (TCM 2002) and Hochman v. Comm., TC Memo 1986-24 (TCM 1986) a casual gambler's gross income from a wagering transaction is netted by the amount wagered. But the Bon Viso court stated that the Taxpayer did not prove the amount bet. The Taxpayer tried to utilize the Cohan rule stated in Cohan v. Comm., 39 F.2d 540 (2d Cir. 1930) (court may estimate the amount of a deduction, bearing heavily against the taxpayer whose inexactitude is of his own making and the taxpayer must present sufficient evidence for a court to even provide an estimate)

While people in the gambling business may deduct all their wagers for the year against all of their winnings for the year, casual gamblers deduct gambling losses (to extent of gambling gains) only as miscellaneous itemized deductions. Torpie v. Comm., TC Memo 2000-168 (TCM 2000)

In sum, the Bon Viso Court held that the taxpayer had to include his full \$5,060 gambling winnings in his gross income and since the Taxpayer was not engaged in the gambling business, he could only deduct his gambling losses (to extent of gambling gains) as a miscellaneous itemized deduction.

His losses at other casinos, lottery tickets and sports wagers were simply only available as miscellaneous itemized deductions but since he could not prove them, they were not allowed.

Lesson: Keep adequate records of losses throughout each year because if you ever do hit a winning, you will wish to at least be able to deduct the losses even if they may only be allowed as an itemized deduction.