

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-96 (1)
Income Tax
February 20, 1996

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I951031A

On October 31, 1995, a Petition for Advisory Opinion was received from Sam J. Nole, CPA, 230 Park Avenue, Suite 1512, New York, New York 10169.

The issue raised by Petitioner, Sam J. Nolo, is whether, for purposes of Article 22 of the Tax Law, gambling losses are fully deductible to the extent of the gains from gambling transactions consistent with the treatment of gambling losses for federal income tax purposes under section 165 (d) of the Internal Revenue Code ("IRC").

Petitioner presents the following facts. A New York State taxpayer has New York adjusted gross income of \$100,000 or more, and itemizes deductions when computing New York taxable income. The taxpayer is not a professional gambler, but has \$1,000,000 in reportable gambling winnings and has \$1,200,000 in total gambling losses.

For federal income tax purposes, an individual who is not a professional gambler reports gambling winnings as gross income and reports gambling losses as "other miscellaneous itemized deductions". Pursuant to section 165(d) of the IRC, the deduction for gambling losses is limited to the amount of gambling winnings. Gambling losses are not subject to the subtraction of two percent of adjusted gross income that is required by section 67 of the IRC or the overall limitation on itemized deductions that is contained in section 68 of the IRC. In this case, for federal income tax purposes, the taxpayer's deduction for gambling losses is limited to \$1,000,000 pursuant to section 165(d) of the IRC, and is fully deductible pursuant to sections 67 and 68 of the IRC.

Section 612(a) of Article 22 of the Tax Law defines New York adjusted gross income of a resident individual as the individual's federal adjusted gross income with certain modifications. There are no modifications that affect the inclusion of gambling winnings in New York adjusted gross income.

Section 615(a) of the Tax Law provides that if the federal taxable income of a resident individual is determined by itemizing deductions from the individual's federal adjusted gross income, the individual may elect to deduct the individual's New York itemized deduction in lieu of the individual's New York standard deduction. The New York itemized deduction of a resident individual means the total amount of the individual's deductions from federal adjusted gross income (other than federal deductions for personal exemptions) with the modifications specified in section 615 of the Tax Law, except as provided for under section 615(f) of the Tax Law.

Section 615(d) of the Tax Law provides for modifications that increase federal itemized deductions. However, there is no provision in section 615(d) that allows for an increase in the federal deduction for gambling losses that is limited to gambling winnings pursuant to section 165(d) of the IRC.

Section 615(f) of the Tax Law provides that the New York itemized deduction otherwise allowable under section 615 shall be reduced by the sum of the amounts determined under section 615(f) (1 and (2), which provide as follows:

(1) An amount equal to the New York itemized deduction otherwise allowable under [section 615(a)], multiplied by a percentage, such percentage to be determined by multiplying ... twenty-five percent, by a fraction,

(A) in the case of an unmarried individual or married individual filing a separate return, the numerator of which is the lesser of fifty thousand dollars or the excess of such individual's New York adjusted gross income over one hundred thousand dollars and the denominator of which is fifty thousand dollars;

(B) in the case of a married individual filing a joint return or a surviving spouse, the numerator of which is the lesser of fifty thousand dollars or the excess of such individual's New York adjusted gross income over two hundred thousand dollars and the denominator of which is fifty thousand dollars;

(C) in the case of a head of household, the numerator of which is the lesser of fifty thousand dollars or the excess of such individual's New York adjusted gross income over one hundred fifty thousand dollars and the denominator of which is fifty thousand dollars.

(2) An amount equal to the New York itemized deduction of an individual otherwise allowable under [section 615(a)], multiplied by a percentage, such percentage to be determined by multiplying ... twenty-five percent, by a fraction, the numerator of which is the lesser of fifty thousand dollars or the excess of such individual's New York adjusted gross income over four hundred seventy-five thousand dollars and the denominator of which is fifty thousand dollars.

As section 615 of the Tax Law indicates, where a taxpayer's New York adjusted gross income exceeds certain thresholds, the taxpayer's New York itemized deduction, otherwise allowable, is reduced by a specified amount. Section 615(f) (1) requires that the New York itemized deduction be reduced by an amount, the maximum of which is 25 percent, and section 615(f) (2) requires that the New York itemized deduction be reduced by an amount, the maximum of which is 25 percent, for a total reduction of up to 50 percent of the New York itemized deduction otherwise allowable.

There is no provision in the Tax Law exempting or otherwise removing gambling losses from the reduction calculation of section 615(f) of the Tax Law. Accordingly, the statutory scheme clearly dictates that in this case, the amount of the New York itemized deduction allowable could be reduced by an amount equaling up to 50 percent of the allowable deduction. Therefore, the \$1,000,000 deduction for gambling losses allowable as a federal itemized deduction could be reduced to \$500,000 for purposes of computing the allowable New York itemized deduction of the taxpayer.

Petitioner suggests that provisions regarding "claim of right" income might apply. Section 1341 of the IRC provides relief for "claim of right" income that is required to be paid back during the taxable year. "Claim of right" income is an item that was included in federal gross income for a prior taxable year because it appeared that the taxpayer had an unrestricted right to such item, and after the close of the prior taxable year it was established that the taxpayer did not have an unrestricted right to such item. The section 1341 of the IRC claim

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of right provision is not related to the gambling winnings and gambling losses that are at issue in this advisory opinion.

DATED: February 20, 1996

s/DORIS S. BAUMAN
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.