

**New York State Department of Taxation and Finance  
Office of Counsel**

TSB-A-16(5)I  
Income Tax  
August 31, 2016

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I140602A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner asks whether the New York Tax Law allows for a subtraction modification in computing New York adjusted gross income for the lesser of annual gambling losses or the gambling winnings incurred from slot machines<sup>1</sup> shown on Federal Form W-2G.

We conclude that there is no basis in the Tax Law to allow for a subtraction modification for the lesser of annual gambling losses or the gambling winnings incurred from slot machines.

**Facts**

Petitioner, a resident of New York City, frequents casinos to engage in the activity of gambling by use of slot machines. Petitioner contends that he loses more than he wins, and that the appropriate treatment for New York State purposes is to net his winnings with his losses by claiming his losses as a subtraction modification in computing New York adjusted gross income. Petitioner claims the standard deduction.

**Analysis**

The New York taxable income of a resident individual is his or her New York adjusted gross income less the standard deduction or, if applicable, the taxpayer’s itemized deductions, and New York exemptions. (Tax Law § 611). New York adjusted gross income is federal adjusted gross income with certain New York addition and subtraction modifications. (Tax Law § 612). Federal gross income is defined as all income from whatever source derived. (IRC § 61). Federal adjusted gross income is defined in the Internal Revenue Code as gross income minus certain deductions; gambling losses are not among the stated deductions used to compute federal adjusted gross income. (IRC § 62[a]). Accordingly, the IRS requires that the full amount of gambling winnings be reported as income, with an itemized deduction for the losses, not to exceed the amount of winnings (IRC § 165[d]). *See also Groetzinger v. Comm’r*, 771 F.2d 269, aff’d 480 US 23 (1987) (non-professional gambler’s gambling losses allowable only as an itemized deduction).

As for the reporting of the slot machine income to New York, because the starting point for calculating New York adjusted gross income is federal adjusted gross income, the full amount reported to the IRS as gambling winnings must be reported to New York. Moreover, Tax Law § 612(c) does not allow a subtraction modification against claimed gambling income for claimed gambling losses.

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<sup>1</sup> For purposes of this Opinion, the Department relies upon the specified facts contained within Petitioner’s request. The Department does not make a determination as to the undertaking of a gambling “trade or business” within the meaning of §162(a) of the Internal Revenue Code.

Tax Law § 615(a) 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. Tax Law § 615(d), which specifies items that increase the New York itemized deduction above the amount of the federal itemized deduction, does not include a modification that allows an increase in the federal deduction for gambling losses.

Tax Law § 615(f) and (g) provide formulas that reduce New York itemized deductions otherwise allowable under § 615 for higher income taxpayers. There is no provision in the Tax Law exempting or otherwise removing gambling losses from these reduction calculations. Accordingly, the amount of the New York itemized deductions, including any gambling losses deducted, may be subject to reduction if Petitioner's New York adjusted gross income meets the thresholds set forth in § 615(f) or (g).

In conclusion, the Tax Law clearly indicates that Petitioner may claim his gambling losses only as an itemized deduction in accordance with Tax Law § 615. Petitioner is not allowed a subtraction modification for gambling losses in his computation of New York adjusted gross income.

DATED: August 31, 2016

/S/  
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Deputy Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.