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Voluntary Disclosures and Deduction of Online Gambling Losses

June 13, 2011

In general, losses from gambling are limited to gains from gambling for non-professional gamblers. In order to take the losses the gambler/player must be able to substantiate (that is have records which show how much was invested and how much was won or lost). With online gambling, including online poker, record keeping should be rather straight forward. The gambler taxpayer should be able to obtain records of all transfers to the gaming site and records of all sums paid out and the balance on deposit as of December 31 of each year. However, for some taxpayer/gamblers who did not report net gambling income they may now find themselves in a predicament with some sites not currently returning player deposits. The focus of this note is not on whether funds will or will not be returned, time will tell, but if they are not, then some of the players may have to think about how to report the losses. This is where the player may wish to consider the following options:

- 1) participating in the Offshore Voluntary Disclosure Initiative offered by the [IRS](#) and similar state programs, like that offered by California.
- 2) filing an Report of Foreign Bank Account (FBAR) with a disclosure stating the facts and circumstances of reporting. It is not clear whether an FBAR is due for funds in which the player is a general unsecured creditor (meaning the player has no control over the investment of the funds or signatory authority over the account).
- 3) do nothing and suffer the loss.

The advantage of the first option is that the OVDI is a formal disclosure under penalty of perjury, which if approved results in a waiver of criminal prosecution. The big disadvantage is the cost of the program (a misc civil penalty of 25% of the highest account balance in a single year, plus tax on unreported income, plus an accuracy related penalty of 20% of the tax and interest. These costs could prove to be a huge deterrent. The California version of Voluntary Disclosure is less severe.

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The advantage of the second option, filing an FBAR with a disclosure is that it is also a formal filing and filing this alone, if there is no unreported income, may be valuable in establishing the losses. The disadvantage of filing an FBAR is that if there is unreported income an exam is rendered more likely and criminal protection is not afforded.

The third option results in no deduction and possible audit if records are turned over by any of the offshore sites as a result of pending investigations and legal proceedings.

Ultimately it is up to the player to make a decision about which direction to take. However, the 2010 FBAR is due (must be received) by June 30, 2011 and the OVDI for federal purposes if due by August 31, 2011. For some the passage of time will be the deciding point. For others the third option, doing nothing, will be a risk based/odds based decision where they bet they will not get discovered, and if discovered have no criminal exposure. The risk, put simply is betting that they will not face charges of tax evasion, money laundering or civil fraud penalties.

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