



[4830-01-p]

DEPARTMENT OF TREASURY

Internal Revenue Service

26 CFR Part 31

[TD 9824]

RIN 1545-BN58

Withholding on Payments of Certain Gambling Winnings

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations with respect to the withholding from, and the information reporting on, certain payments of gambling winnings from horse races, dog races, and jai alai and on certain other payments of gambling winnings. The final regulations affect both payers and payees of the gambling winnings.

DATES: *Effective date:* These regulations are effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

*Applicability Dates:* For dates of applicability, see §§31.3402(q)-1(g) and 31.3406(g)-2(h).

FOR FURTHER INFORMATION CONTACT: David Bergman, (202) 317-6845 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

**Background**

This document contains final regulations in Title 26 of the Code of Federal Regulations under section 3402 of the Internal Revenue Code (Code). The final

regulations amend, update, and clarify the existing withholding and information reporting requirements for certain gambling winnings under §31.3402(q)-1 of the Employment Tax Regulations, and make conforming changes to §31.3406(g)-2.

On December 30, 2016, the Treasury Department and the IRS published a notice of proposed rulemaking (REG-123841-16) in the **Federal Register**, 81 FR 96406, containing proposed regulations that would provide a new rule regarding how payers determine the amount of the wager in parimutuel wagering transactions with respect to horse races, dog races, and jai alai, and that would update the existing rules to reflect current law regarding the withholding thresholds and certain information reporting requirements.

Over 2,700 written public comments were received in response to the notice of proposed rulemaking. No public hearing was requested. After careful consideration of the written comments, the proposed regulations are adopted as modified by this Treasury Decision.

### **Explanation and Summary of Comments**

All of the written comments on the notice of proposed rulemaking were considered and are available at [www.regulations.gov](http://www.regulations.gov) or upon request. Many of these comments addressed similar issues and expressed similar points of view. These comments are summarized in this preamble.

#### *Rule for Determining the Amount of the Wager in the Case of Horse Races, Dog Races, and Jai Alai*

The proposed regulations contained a new rule for determining the amount of the wager in the case of horse races, dog races, and jai alai to allow all wagers placed in a single parimutuel pool and represented on a single ticket to be aggregated and treated

as a single wager. Commenters largely supported the proposed rules because they believe that the rules accurately and fairly reflect parimutuel wagering realities.

Some commenters raised concerns that the single ticket requirement in the proposed regulations did not address electronic wagering. Commenters stated that in horse racing a paper ticket can only accommodate six separate lines of bets. In contrast, electronic wagering utilizes an “account wagering” system that can accommodate dozens (or even hundreds) of lines of bets in a single parimutuel pool, allowing bettors to place more, customized wagers. As a result, some commenters requested a special rule for electronic wagering.

The proposed rule at §31.3402(q)-1(c)(1)(ii) is specifically not limited to a paper ticket, but also includes an electronic record that is presented to collect proceeds from a wager or wagers placed in a single parimutuel pool. Therefore, the rule in proposed §31.3402(q)-1(c)(1)(ii) is not dependent on the applicable industry’s ticketing format. Further, despite the commenters concern regarding the limits on the number of lines a paper ticket can accommodate, the proposed regulations do not limit the number of bets on a single ticket nor do the proposed regulations contain a rule governing the number of bets that can be contained on a single, electronic record of a wagering transaction.

Another commenter stated that the single ticket requirement puts a person making an electronic bet at a disadvantage because it removes the opportunity to place bets in a single parimutuel pool at multiple points in time throughout the allotted time period for wagering. The single ticket rule in the proposed regulations does not differentiate between electronic betting and placing a bet at a ticket window. Therefore, the proposed rule does not put an electronic bettor at a disadvantage. However, the

comment brings to light that there is some confusion regarding how the rule applies in the context of electronic betting.

The single-ticket requirement in the proposed regulations allows aggregation of wagers that are placed in the same parimutuel pool if they are represented on a single ticket. This is the case regardless of whether the ticket is paper or electronic. This requirement was included in the proposed regulations to limit the potential for fraud, such as a winning bettor collecting losing tickets from another bettor or bettors who placed bets in the same parimutuel pool to artificially increase the amount of the wager. In addition, the single-ticket requirement improves administrability because it does not require payers to collect information reflected on multiple tickets. As the preamble to the proposed regulations explains, the single ticket requirement was not intended to limit the amount of the wager to bets placed at a single point in time because a ticket containing prior bets in a single pool can be cancelled, and the original and additional wagers in that pool can be placed on a new ticket. The fraud and administrability concerns that apply to paper tickets do not apply equally to electronic records because each person's bets are reflected on a single electronic wagering account. Accordingly, electronic bettors may aggregate wagers placed at different points in time without having to cancel prior wagers and place them on a new ticket as long as the wagers meet the requirements in the proposed rule—that is, they are placed in a single parimutuel pool and are represented on a single, electronic record.

Because the comments received in response to the proposed rule do not justify any change, the final regulations adopt the proposed rule without modification.

#### *Effective/Applicability Dates*

The proposed regulations provided that final regulations would apply to payments made after the date they are published in the **Federal Register**. Some commenters requested a delayed effective date to allow time for industry stakeholders to update their systems and seek any necessary state regulatory approval. One commenter specifically suggested that 45 days following publication of the final regulations would be sufficient time to perform such updates. In addition, the commenters suggested that the final rules be effective for wagering transactions with respect to winning events that occur after the date that the final rules are published in the **Federal Register**. The Treasury Department and IRS agree with these comments. Therefore, the final regulations are applicable to reportable gambling winnings paid with respect to a winning event that occurs on or after 45 days from the date the final regulations are published in the **Federal Register**. If they so choose, payers may rely on the provisions of the final regulations for payments made after the date the final regulations are published in the **Federal Register**, regardless of when the related winning event occurred.

#### *Other Comments*

Several commenters raised concerns regarding the thresholds for information reporting and withholding for certain gambling winnings. Another commenter requested that the regulations provide an exception to withholding under section 3402(q). Neither the threshold for information reporting with respect to gambling winnings not subject to withholding nor exceptions to section 3402(q) withholding were the focus of the proposed regulations. In addition, the withholding thresholds are defined by statute.

These comments are outside the scope of the proposed regulations, and therefore the comments have not been adopted in the final regulations.

### **Special Analyses**

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required.

It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. Although this rule may affect a substantial number of small entities, the economic impact is minimal because this rule merely provides guidance as to the statutory withholding rules and filing of information returns for payers who make reportable payments of certain gambling winnings and who are required by sections 3402 and 6041 to withhold and make returns reporting those payments. This rule reduces the existing burden on payers to comply with the statutory requirement by simplifying the process for payers to verify payees' identities with a broader range of documents that are more readily available.

This rule also will result in a reduction in the number of forms filed. Instead of treating all components of a bet made by a gambler in a single parimutuel pool as a separate amount wagered, the rules treat all amounts wagered in a single parimutuel pool reflected on a single ticket as the amount wagered for purposes of determining whether reporting or withholding is needed. For the reasons stated, the final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. Chapter 6) is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the regulations' impact on small businesses, and no comments were received.

### **Drafting Information**

The principal author of these regulations is David Bergman of the Office of the Associate Chief Counsel (Procedure and Administration). However, other personnel from the Treasury Department and the IRS participated in their development.

### **List of Subjects in 26 CFR Part 31**

Employment taxes, Fishing vessels, Gambling, Income taxes, Penalties, Pensions, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

### **Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 31 is amended as follows:

#### **PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE**

Par. 1. The authority citation for part 31 continues to read in part as follows:

26 U.S.C. 7805 \* \* \*

Par. 2. Section 31.3402(q)-1 is amended:

1. By revising paragraphs (a)(1), (b), and (c)(1) and (4).
2. By redesignating paragraphs (d), (e) and (f) as paragraphs (f), (d), and (e), respectively.
3. By revising newly designated paragraphs (d) and (e).

4. By removing, in newly designated paragraph (f), Example 3 and Example 11, redesignating Examples 4 through 10 as Examples 3 through 9, and adding examples 10 through 16.

5. By removing, in newly designated paragraph (f) the language “example 4” in newly designated Example 4 and adding in its place the language “example 3” and by removing the language “example 6” in newly designated Example 6 and adding in its place the language “example 5” wherever it appears.

6. By adding paragraph (g).

The revisions and additions read as follows:

§31.3402(q)–1 Extension of withholding to certain gambling winnings.

(a) Withholding obligation--(1) General rule. Every person, including the Government of the United States, a State, or a political subdivision thereof, or any instrumentality of any of the foregoing making any payment of “winnings subject to withholding” (defined in paragraph (b) of the section) must deduct and withhold a tax in an amount equal to the product of the third lowest rate of tax applicable under section 1(c) and the payment. The tax must be deducted and withheld upon payment of the winnings by the person making the payment (“payer”). See paragraph (c)(5)(ii) of this section for a special rule relating to the time for making deposits of withheld amounts and filing the return with respect to those amounts. Any person receiving a payment of winnings subject to withholding must furnish the payer a statement as required in paragraph (d) of this section. Payers of winnings subject to withholding must file a return with the Internal Revenue Service and furnish a statement to the payee as required in paragraph (e) of this section. With respect to reporting requirements for

certain payments of gambling winnings not subject to withholding, see section 6041 and the regulations thereunder.

\* \* \* \* \*

(b) Winnings subject to withholding--(1) In general. Winnings subject to withholding means any payment from--

(i) A wager placed in a State-conducted lottery (defined in paragraph (c)(2) of this section) but only if the proceeds from the wager exceed \$5,000;

(ii) A wager placed in a sweepstakes, wagering pool, or lottery other than a State-conducted lottery but only if the proceeds from the wager exceed \$5,000; or

(iii) Any other wagering transaction (as defined in paragraph (c)(3) of this section) but only if the proceeds from the wager:

(A) Exceed \$5,000; and

(B) Are at least 300 times as large as the amount of the wager.

(2) Total proceeds subject to withholding. If proceeds from the wager qualify as winnings subject to withholding, then the total proceeds from the wager, and not merely amounts in excess of \$5,000, are subject to withholding.

(c) Definitions; special rules—(1) Rules for determining amount of proceeds from a wager—(i) In general. The amount of proceeds from a wager is the amount paid with respect to the wager, less the amount of the wager.

(ii) Amount of the wager in the case of horse races, dog races, and jai alai. In the case of a wagering transaction with respect to horse races, dog races, or jai alai, all wagers placed in a single parimutuel pool and represented on a single ticket are aggregated and treated as a single wager for purposes of determining the amount of the

wager. A ticket in the case of horse races, dog races, or jai alai is a written or electronic record that the payee must present to collect proceeds from a wager or wagers.

(iii) Amount paid with respect to a wager—(A) Identical wagers. Amounts paid with respect to identical wagers are treated as paid with respect to a single wager for purposes of calculating the amount of proceeds from a wager. Two or more wagers are identical wagers if winning depends on the occurrence (or non-occurrence) of the same event or events; the wagers are placed with the same payer; and, in the case of horse races, dog races, or jai alai, the wagers are placed in the same parimutuel pool. Wagers may be identical wagers even if the amounts wagered differ as long as the wagers are otherwise treated as identical wagers under this paragraph (c)(1)(iii)(A). Tickets purchased in a lottery generally are not identical wagers, because the designation of each ticket as a winner generally would not be based on the occurrence of the same event, for example, the drawing of a particular number.

(B) Non-monetary proceeds. In determining the amount paid with respect to a wager, proceeds which are not money are taken into account at the fair market value.

(C) Periodic payments. Periodic payments, including installment payments or payments which are to be made periodically for the life of a person, are aggregated for purposes of determining the amount paid with respect to the wager. The aggregate amount of periodic payments to be made for a person's life is based on that person's life expectancy. See §§1.72-5 and 1.72-9 of this chapter for rules used in computing the expected return on annuities. For purposes of determining the amount subject to withholding, the first periodic payment must be reduced by the amount of the wager.

\* \* \* \* \*

(4) Certain payments to nonresident aliens or foreign corporations. A payment of winnings that is subject to withholding tax under section 1441(a) (relating to withholding on nonresident aliens) or 1442(a) (relating to withholding on foreign corporations) is not subject to the tax imposed by section 3402(q) and this section when the payee is a foreign person, as determined under the rules of section 1441(a) and the regulations thereunder. A payment is treated as being subject to withholding tax under section 1441(a) or 1442(a) notwithstanding that the rate of such tax is reduced (even to zero) as may be provided by an applicable treaty with another country. However, a reduced or zero rate of withholding of tax must not be applied by the payer in lieu of the rate imposed by sections 1441 and 1442 unless the person receiving the winnings has provided to the payer the documentation required by §1.1441-6 of this chapter to establish entitlement to treaty benefits.

\* \* \* \* \*

(d) Statement furnished by payee—(1) In general. Each person who is making a payment subject to withholding under this section must obtain from the payee a statement described in paragraph (d)(2) of this section.

(2) Contents of statement. Each person who is to receive a payment of winnings subject to withholding under this section must furnish the payer a statement on Form W-2G or 5754 (whichever is applicable) made under the penalties of perjury containing--

(i) The name, address, and taxpayer identification number of the winner accompanied by a declaration that no other person is entitled to any portion of such payment, or

(ii) The name, address, and taxpayer identification number of the payee and of every person entitled to any portion of the payment.

(3) Multiple payments. If more than one payment of winnings subject to withholding is to be made with respect to a single wager, for example in the case of an annuity, the payee is required to furnish the payer a statement with respect to the first payment only, provided that the other payments are taken into account in a return required by paragraph (e) of this section.

(4) Reliance on statement for identical wagers. If the payee furnishes the statement which may be required pursuant to §1.6011-3 of this chapter (regarding the requirement of a statement from payees of certain gambling winnings), indicating that the payee (and any other persons entitled to a portion of the winnings) is entitled to winnings from identical wagers, as defined in paragraph (c)(1)(iii)(A) of this section, and indicating the amount of the winnings, if any, then the payer may rely upon the statement in determining the total amount of proceeds from the wager under paragraph (c)(1) of this section.

(e) Return of payer—(1) In general. Every person making payment of winnings for which a statement is required under paragraph (d) of this section must file a return on Form W-2G at the Internal Revenue Service location designated in the instructions to the form on or before February 28 (March 31 if filed electronically) of the calendar year following the calendar year in which the payment of winnings is made. The return required by this paragraph (e) need not include the statement by the payee required by paragraph (d) of this section and, therefore, need not be signed by the payee, provided the statement is retained by the payer as long as its contents may become material in

the administration of any internal revenue law. In addition, the return required by this paragraph (e) need not contain the information required by paragraph (e)(1)(v) of this section provided the information is obtained with respect to the payee and retained by the payer as long as its contents may become material in the administration of any internal revenue law. For payments to more than one winner, a separate Form W-2G, which in no event need be signed by the winner, must be filed with respect to each such winner. Each Form W-2G must contain the following:

- (i) The name, address, and taxpayer identification number of the payer;
- (ii) The name, address, and taxpayer identification number of the winner;
- (iii) The date, amount of the payment, and amount withheld;
- (iv) The type of wagering transaction;
- (v) Except with respect to winnings from a wager placed in a State-conducted lottery, a general description of the two types of identification (as described in paragraph (e)(2) of this section), one of which must have the payee's photograph on it (except in the case of tribal member identification cards in certain circumstances as described in paragraph (e)(3) of this section), that the payer relied on to verify the payee's name, address, and taxpayer identification number;
- (vi) The amount of winnings from identical wagers; and
- (vii) Any other information required by the form, instructions, or other applicable guidance published in the Internal Revenue Bulletin.

(2) Identification. The following items are treated as identification for purposes of paragraph (e)(1)(v) of this section--

(i) Government-issued identification (for example, a driver's license, passport, social security card, military identification card, tribal member identification card issued by a federally-recognized Indian tribe, or voter registration card) in the name of the payee; and

(ii) A Form W-9, "Request for Taxpayer Identification Number and Certification," signed by the payee that includes the payee's name, address, taxpayer identification number, and other information required by the form. A Form W-9 is not acceptable for this purpose if the payee has modified the form (other than pursuant to instructions to the form) or if the payee has deleted the jurat or other similar provisions by which the payee certifies or affirms the correctness of the statements contained on the form.

(3) Special rule for tribal member identification cards. A tribal member identification card need not contain the payee's photograph to meet the identification requirement described in paragraph (e)(1)(v) of this section if--

(i) The payee is a member of a federally-recognized Indian tribe;

(ii) The payee presents the payer with a tribal member identification card issued by a federally-recognized Indian tribe stating that the payee is a member of such tribe; and

(iii) The payer is a gaming establishment (as described in §1.6041-10(b)(2)(iv) of this chapter) owned or licensed (in accordance with 25 U.S.C. 2710) by the tribal government that issued the tribal member identification card referred to in paragraph (e)(3)(ii) of this section.

(4) Transmittal form. Persons making payments of winnings subject to withholding must use Form 1096 to transmit Forms W-2G to the Internal Revenue Service.

(5) Furnishing a statement to the payee. Every payer required to make a return under paragraph (e)(1) of this section must also make and furnish to each payee, with respect to each payment of winnings subject to withholding, a written statement that contains the information that is required to be included on the return under paragraph (e)(1) of this section. The payer must furnish the statement to the payee on or before January 31st of the year following the calendar year in which payment of the winnings subject to withholding is made. The statement will be considered furnished to the payee if it is provided to the payee at the time of payment or if it is mailed to the payee on or before January 31st of the year following the calendar year in which payment was made.

(f) \* \* \*

Example 10. (i) B places a \$15 bet at the cashier window at the racetrack for horse A to win the fifth race at the racetrack that day. After placing the first bet, B gains confidence in horse A's prospects to win and places an additional \$40 bet at the cashier window at the racetrack for horse A to win the fifth race, receiving a second ticket for this second bet. Horse A wins the fifth race, and B wins a total of \$5,500 (100 to 1 odds) on those bets. The \$15 bet and the \$40 bet are identical wagers under paragraph (c)(1)(iii)(A) of this section because winning on both bets depended on the occurrence of the same event and the bets are placed in the same parimutuel pool with the same payer. This is true regardless of the fact that the amount of the wager differs in each case.

(ii) B cashes the tickets at different cashier windows. Pursuant to paragraph (d) of this section and §1.6011-3, B completes a Form W-2G indicating that the amount of winnings is from identical wagers and provides the form to each cashier. The payments by each cashier of \$1,500 and \$4,000 are less than the \$5,000 threshold for withholding, but under paragraph (c)(1)(iii)(A) of this section, identical wagers are treated as paid with respect to a single wager for purposes of determining the proceeds from a wager. The payment is not subject to withholding or reporting because although the proceeds from the wager are \$5,445 (\$1,500 + \$4,000 - \$55), the proceeds from the

wager are not at least 300 times as great as the amount wagered ( $\$55 \times 300 = \$16,500$ ).

Example 11. B makes two \$1,000 bets in a single “show” pool for the same jai alai game, one bet on Player X to show and one bet on Player Y to show. A show bet is a winning bet if the player comes in first, second, or third in a single game. The bets are placed at the same time at the same cashier window, and B receives a single ticket showing both bets. Player X places second in the game, and Player Y does not place first, second, or third in the game. B wins \$8,000 from his bet on Player X. Because winning on both bets does not depend on the occurrence of the same event, the bets are not identical bets under paragraph (c)(1)(iii)(A) of this section. However, pursuant to the rule in paragraph (c)(1)(ii) of this section, the amount of the wager is the aggregate amount of both wagers (\$2,000) because the bets were placed in a single parimutuel pool and reflected on a single ticket. The payment is not subject to withholding or reporting because although the proceeds from the wager are \$6,000 ( $\$8,000 - \$2,000$ ), the proceeds from the wager are not at least 300 times as great as the amount wagered ( $\$2,000 \times 300 = \$600,000$ ).

Example 12. B bets a total of \$120 on a three-dog exacta box bet (\$20 for each one of the six combinations played) at the dog racetrack and receives a single ticket reflecting the bet from the cashier. B wins \$5,040 from one of the selected combinations. Pursuant to the rule in paragraph (c)(1)(ii) of this section, the amount of the wager is \$120, not \$20 for the single winning combination of the six combinations played. The payment is not subject to withholding under section 3402(q) because the proceeds from the wager are \$4,920 ( $\$5,040 - \$120$ ), which is below the section 3402(q) withholding threshold.

Example 13. B makes two \$12 Pick 6 bets at the horse racetrack at two different cashier windows and receives two different tickets each representing a single \$12 Pick 6 bet. In his two Pick 6 bets, B selects the same horses to win races 1-5 but selects different horses to win race 6. All Pick 6 bets on those races at that racetrack are part of a single parimutuel pool from which Pick 6 winning bets are paid. B wins \$5,020 from one of his Pick 6 bets. Pursuant to the rule in paragraph (c)(1)(ii) of this section, the bets are not aggregated for purposes of determining the amount of the wager because the bets are reflected on separate tickets. Assuming that the applicable rate is 25%, the racetrack must deduct and withhold \$1,252 ( $(\$5,020 - \$12) \times 25\%$ ) because the amount of the proceeds of \$5,008 ( $\$5,020 - \$12$ ) is greater than \$5,000 and is at least 300 times as great as the amount wagered ( $\$12 \times 300 = \$3,600$ ). The racetrack also must report B’s winnings on Form W-2G pursuant to paragraph (e) of this section and furnish a copy of the Form W-2G to B.

Example 14. C makes two \$50 bets in two different parimutuel pools for the same jai alai game. One bet is an “exacta” in which C bets on player M to win and player N to “place.” The other bet is a “trifecta” in which C bets on player M to win, player N to “place,” and player O to “show.” C wins both bets and is paid \$2,000 with respect to the bet in the “exacta” pool and \$3,100 with respect to the bet in the “trifecta”

pool. Under paragraph (c)(1)(iii)(A) of this section, the bets are not identical bets. Under paragraph (c)(1)(ii) of this section, the bets are not aggregated for purposes of determining the amount of the wager for either payment because they are not wagers in the same parimutuel pool. No section 3402(q) withholding is required on either payment because neither payment separately exceeds the \$5,000 withholding threshold.

Example 15. C makes two \$100 bets for the same dog to win a particular race. C places one bet at the racetrack and one bet at an off-track betting establishment, but the two pools constitute a single pool. C receives separate tickets for each bet. C wins both bets and is paid \$4,000 from the racetrack and \$4,000 from the off-track betting establishment. Under paragraph (c)(1)(ii) of this section, the bets are not aggregated for purposes of determining the amount of the wager because the wager placed at the racetrack and the wager placed at the off-track betting establishment are reflected on separate tickets, despite being placed in the same parimutuel pool. No section 3402(q) withholding is required because neither payment separately exceeds the \$5,000 withholding threshold.

Example 16. C places a \$200 Pick 6 bet for a series of races at the racetrack on a particular day and receives a single ticket for the bet. No wager correctly picks all six races that day, so that portion of the pool carries over to the following day. On the following day, C places an additional \$200 Pick 6 bet for that day's series of races and receives a new ticket for that bet. C wins \$100,000 on the second day. Pursuant to the rule in paragraph (c)(1)(ii) of this section, the bets are on two separate tickets, so C's two Pick 6 bets are not aggregated for purposes of determining the amount of the wager. Assuming that the applicable rate is 25%, the racetrack must deduct and withhold \$24,950 ( $(\$100,000 - \$200) \times 25\%$ ) because the amount of the proceeds of \$99,800 ( $\$100,000 - \$200$ ) is greater than \$5,000, and is at least 300 times as great as the amount wagered ( $\$200 \times 300 = \$60,000$ ). The racetrack also must report C's winnings on Form W-2G pursuant to paragraph (e) of this section and furnish a copy of the Form W-2G to C.

(g) Applicability date. The rules in this section apply to payments made with respect to a winning event that occurs after **INSERT DATE 45 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER**. For rules that apply to payments made with respect to a winning event on or before that date, see §31.3402(q)-1 as contained in 26 CFR part 31, revised April 1, 2017.

Par. 3. Section 31.3406-0 is amended by adding an entry for paragraph (h) to §31.3406(g)-2 to read as follows:

§31.3406-0 Outline of the backup withholding regulations.

\* \* \* \* \*

§31.3406(g)-2 Exception for reportable payments for which backup withholding is otherwise required.

\* \* \* \* \*

(h) Applicability date.

\* \* \* \* \*

Par. 4. Section 31.3406(g)-2 is amended by revising paragraphs (d)(2) and (3) and adding paragraph (h) to read as follows:

§ 31.3406(g)-2 Exception for reportable payment for which withholding is otherwise required.

\* \* \* \* \*

(d) \* \* \*

(2) Definition of a reportable gambling winning and determination of amount subject to backup withholding. For purposes of withholding under section 3406, a reportable gambling winning is any gambling winning subject to information reporting under section 6041. A gambling winning (other than a winning from bingo, keno, or slot machines) is a reportable gambling winning only if the amount paid with respect to the wager is \$600 or more and if the proceeds are at least 300 times as large as the amount wagered. See §1.6041-10 of this chapter to determine whether a winning from bingo, keno, or slot machines is a reportable gambling winning and thus subject to withholding under section 3406. The amount of a reportable gambling winning is--

(i) The amount paid with respect to the amount of the wager reduced, at the option of the payer; by

(ii) The amount of the wager.

(3) Special rules. For special rules for determining the amount of the wager in a wagering transaction with respect to horse racing, dog racing, and jai alai, or amounts paid with respect to identical wagers, see §31.3402(q)–1(c).

\* \* \* \* \*

(h) Applicability date. The rules apply to reportable gambling winnings paid with respect to a winning event that occurs after **[INSERT DATE 45 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. For rules that apply to payments made with respect to a winning event on or before that date, see §31.3406(g)-2 as contained in 26 CFR part 31, revised April 1, 2017.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

Approved: August 21, 2017.

David J. Kautter,

Assistant Secretary for Tax Policy.