

(v) Labeling must include the following:

(A) A clear description of the technological features of the device including identification of device materials and the principles of device operation;

(B) Intended use and indications for use, including levels of fixation;

(C) Identification of magnetic resonance (MR) compatibility status;

(D) Cleaning and sterilization instructions for devices and instruments that are provided non-sterile to the end user; and

(E) Detailed instructions of each surgical step, including device removal.

(3) Class II (special controls), when a semi-rigid system is intended to provide immobilization and stabilization of spinal segments in the thoracic, lumbar, and sacral spine as an adjunct to fusion for any indication. In addition to complying with the special controls in paragraphs (b)(2)(i) through (v) of this section, these pedicle screw systems must comply with the following special controls:

(i) Demonstration that clinical performance characteristics of the device support the intended use of the product, including assessment of fusion compared to a clinically acceptable fusion rate.

(ii) Semi-rigid systems marketed prior to the effective date of this reclassification must submit an amendment to their previously cleared premarket notification (510(k)) demonstrating compliance with the special controls in paragraphs (b)(2)(i) through (v) and paragraph (b)(3)(i) of this section.

Dated: December 22, 2016.

Leslie Kux,

Associate Commissioner for Policy.

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DEPARTMENT OF TREASURY

Internal Revenue Service

26 CFR Parts 1, 7, and 31

[TD 9807]

RIN 1545-BL68

Information Returns; Winnings From Bingo, Keno, and Slot Machines

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 6041

regarding the filing of information returns to report winnings from bingo, keno, and slot machine play. The rules update the existing requirements regarding the filing, form, and content of such information returns; allow for an additional form of payee identification; and provide an optional aggregate reporting method. The final regulations affect persons who pay winnings of \$1,200 or more from bingo and slot machine play, \$1,500 or more from keno, and recipients of such payments.

DATES: These regulations are effective on December 30, 2016.

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 6041 of the Internal Revenue Code. The final regulations replace the existing information reporting requirements under § 7.6041-1 of the Temporary Income Tax Regulations under the Tax Reform Act of 1976 for persons who make reportable payments of bingo, keno, or slot machine winnings. The new requirements are set forth in a new § 1.6041-10 of the regulations. Because the new requirements replace the existing requirements, the regulations under § 7.6041-1 are being removed.

On March 4, 2015, the Treasury Department and the IRS published a notice of proposed rulemaking (REG-132253-11) in the **Federal Register**, 80 FR 11600, containing proposed regulations that would update the existing rules and add rules for electronically tracked slot machine play, payee identification, and an optional aggregate reporting method.

A public hearing was held on June 17, 2015, and five speakers provided testimony. In addition, over 14,000 written public comments were received. After careful consideration of the written comments and statements made during the hearing, the proposed regulations are adopted as modified by this Treasury Decision.

Explanation and Summary of Comments

All of the 14,000 written comments on the notice of proposed rulemaking were considered and are available at 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. Comments pertaining to parimutuel gambling in the case of

horse races, dog races, and jai alai are being considered in a separate regulations project under section 3402(q).

Filing Requirement, Form, and Content of the Information Return

Commentators supported the proposed rules regarding filing requirements and the form and content of the information returns required to be filed. Accordingly, the Treasury Department and the IRS conclude that the final regulations should adopt the filing requirements without modification.

Electronically Tracked Slot Machine Play

The proposed regulations created rules for electronically tracked slot machine play, which was defined in proposed § 1.6041-10(b)(1) as slot machine play where an electronic player system controlled by the gaming establishment (such as through the use of a player's card or similar system) records the amount a specific individual wins and wagers on slot machine play. Section 1.6041-10(b)(2)(i)(D) of the proposed regulations provided that gambling winnings for electronically tracked slot machine play are required to be reported if (1) the total amount of winnings netted against the total amount of wagers during the same session of play was \$1,200 or more, and (2) at least one single win during the session was \$1,200 or more without regard to the wager. A "session" of play was determined with reference to a calendar day. The changes were intended to facilitate reporting by payees on their individual income tax returns under the proposed safe harbor in Notice 2015-21, 2015-12 I.R.B. 765.

Some commentators expressed concern regarding the feasibility of the proposed rules given existing technology and recommended that the proposed rules not be adopted. Commentators stated that one of the purposes of electronic player systems was for marketing and customer loyalty and that current systems should not be used as a mandatory method for tracking winnings and wagers for purposes of tax reporting. Moreover, commentators stated that the use of electronic player systems for tax reporting may chill customer use and have a negative effect on customer relations. In addition, some commentators stated that their electronic player systems lack the necessary controls to be used for tax reporting, and that implementing such controls may be costly and labor-intensive. Based on these comments, the

final regulations do not adopt the proposed rules for electronically tracked slot machine play.

Payee Identification Requirements

The proposed regulations retain the rule in § 7.6041-1(c)(3) of the Temporary Income Tax Regulations that the payor must obtain two forms of identification from the payee to verify the payee's identity. However, § 1.6041-10(f) of the proposed regulations modifies the rules for acceptable identification by requiring that one of the forms of identification include the payee's photograph and by providing that the payor may accept a properly completed Form W-9 in lieu of identification that includes the payee's social security number. The proposed regulations provide that payors may rely on this provision prior to publication of final regulations in the **Federal Register**.

Most commentators supported the proposed rules regarding the types of identification that can be relied on to verify a payee's identity. In particular, commentators supported the provision that allows a Form W-9 to be used as an acceptable means of verifying a payee's identity in lieu of identification that includes the payee's social security number. This rule is consistent with procedures currently used by many payors to address the fact that, today, most forms of identification that payees carry with them do not contain a social security number.

Other commentators suggested that the list of examples of acceptable forms of government-issued identification be expanded to include tribal member identification cards issued by a federally recognized Indian tribe. Some commentators also suggested that an exception from the photo identification requirement be provided for tribal identification cards presented at tribal government gaming facilities because many tribal identification cards do not contain photographs.

In response to the comments received, the list of examples of acceptable government-issued identification has been expanded in § 1.6041-10(e)(1) of the final regulations to include tribal member identification cards issued by a federally recognized Indian tribe. In addition, in response to comments, § 1.6041-10(d)(2) of the final regulations provides an exception to the photo identification requirement if one of the forms of identification is a tribal identification card presented at a gaming establishment owned or licensed by the tribal government that issued the tribal member identification card.

Optional Aggregate Reporting Method and Session

Section 1.6041-10(h) of the proposed regulations provides a new rule for an optional aggregate reporting method. Under § 7.6041-1(a), reporting of gambling winnings from bingo, keno, and slot machine play is required each time a payor makes a payment of reportable gambling winnings (*i.e.*, a payment that meets the reporting threshold). The aggregate reporting method allows a payor who makes more than one payment of reportable gambling winnings to the same payee from the same type of game during a "session" to report the aggregate amount of such reportable gambling winnings on one Form W-2G, provided the payor satisfies certain recordkeeping requirements set forth in the regulations. Under § 1.6041-10(b)(3) of the proposed regulations, a "session" is generally defined as a period of play that begins when a patron places the first wager on a particular type of game at a gaming establishment and ends when the patron places his or her last wager on the same type of game before the end of the same calendar day at the same gaming establishment. This aggregate reporting method may be used at the payor's option. The proposed regulations provide that payors may rely on this provision prior to publication of final regulations in the **Federal Register**.

Commentators were generally supportive of the proposed optional aggregate reporting method but did suggest some changes. Accordingly, the final regulations adopt the proposed optional aggregate reporting method with some modifications.

First, the period for purposes of the aggregate reporting method in the final regulations is not referred to as a "session." Rather, in § 1.6041-10(g) of the final regulations, the period used for purposes of the aggregate reporting method is now referred to as an "information reporting period." The proposed regulations' definition of a "session" was intended to mirror the concept of "session" set forth in the safe harbor for the determination of wagering gains and losses from electronically tracked slot machine play that was published in a Notice and draft Revenue Procedure on the same date as the proposed regulations. Notice 2015-21. The Treasury Department and the IRS are still considering the income tax reporting rules in this area, and the draft Revenue Procedure has not been finalized. Therefore, to avoid confusion, the aggregate reporting method rules in § 1.6041-10(g) of the final regulations have been modified so that the period

during which reporting may be aggregated is referred to as the "information reporting period" rather than as a "session."

Second, commentators suggested that rather than a calendar day, payors should have the option of using the 24-hour period known commonly in the industry as the "gaming day" for purposes of the aggregate reporting method. The comments explained that the period of a "gaming day" is used by gaming establishments for financial accounting, gaming control board, and other regulatory purposes, and allows each establishment the flexibility to define a day for these purposes by taking into account peak gaming times. The "gaming day" period is also utilized in complying with anti-money laundering reporting obligations. According to the comments, a gaming day is a 24-hour period that ends at a time during which the gaming establishment is closed or when business is slowest, typically between 3 a.m. and 6 a.m. The comments indicate that allowing payors to use the same period for purposes of information reporting as for other regulatory purposes will enhance the benefits of aggregate reporting for payors by not having a different reporting period for tax reporting, and by allowing aggregate reports to be generated during non-peak gaming times.

To give payors more flexibility, the final regulations adopt these suggestions and provide a flexible "information reporting period" as the period to be used for aggregate reporting. Under § 1.6041-10(b)(2) of the final regulations, an "information reporting period" is either a "calendar day" or a "gaming day," so long as that period is applied uniformly by the payor to all payees during the calendar year. A payor may adopt a different "information reporting period" from one calendar year to the next, but may not change the "information reporting period" in the middle of a calendar year. Changes to a payor's "information reporting period" from one calendar year to the next must be implemented on January 1. In addition, the final regulations provide that on December 31st, all open information reporting periods must end at 11:59 p.m. in order to end by the end of the calendar year. This rule is necessary to maintain calendar year federal income tax reporting that is the bedrock of the information reporting regime and that is required by section 6041. Section 1.6041-10(b)(2)(iii) of the final regulations provides that if a "gaming day" is adopted for a calendar year, the information reporting period for

December 31st ends at 11:59 p.m. on December 31, and the information reporting period for January 1st begins at 12 a.m. on January 1, regardless of the number of hours of the December 31st and January 1st information reporting periods.

Third, commentators noted that the proposed regulations did not specifically define “gaming establishment,” and how to deal with common ownership between various casinos. Section 1.6041–10(b)(2)(iv) of the final regulations defines the term “gaming establishment” as a business entity of a payor of reportable gambling winnings with respect to bingo, keno, or slot machine play, and includes all gaming establishments owned by the payor using the same employer identification number (EIN) issued to such payor in accordance with section 6109.

Finally, commentators requested that the proposed recordkeeping requirements with respect to aggregate reporting be updated to reflect the actual credentials held by various casino representatives. These recordkeeping requirements require that payors maintain a record of every payment that will be reported using the aggregate reporting method and that each entry in the record be verified by a designated casino representative. Section § 1.6041–10(g)(3)(vii) of the proposed regulations requires that the designated individual provide a gaming license number. The final regulations do not require that a gaming license number be provided. Instead, § 1.6041–10(g)(3)(vii) of the final regulations requires that the person authorized by the applicable gaming regulatory control authority to ensure accuracy in reporting provide his or her unique identification number.

Reporting Thresholds

The proposed rules maintained the reporting thresholds of \$1,200 for bingo and slot machine play and \$1,500 for keno in § 7.6041–1(a), but invited comments on the feasibility of reducing these thresholds. Commentators overwhelmingly opposed the idea of reducing these reporting thresholds. Payors opposed lowering the thresholds because it would result in more reporting, which would increase compliance burdens for the industry. In fact, many commentators suggested that rather than reducing the current thresholds, they should be increased to account for inflation. These final regulations do not change the existing reporting thresholds for bingo, keno, and slot machine play.

Netting Wagers

The proposed regulations retain the rules in § 7.6041–1(b) that, in determining whether the reporting threshold is satisfied, the amount of winnings from bingo and slot machine play is not reduced by the amount of the wager, but the amount of winnings from one keno game is reduced by the amount of the wager in that one game. Commentators were divided as to whether uniform application of netting the wager against the winnings was feasible, citing compliance cost and labor concerns. In light of these concerns, the Treasury Department and the IRS conclude that the existing approach, as described in the proposed regulations, should be retained. Accordingly, § 1.6041–10(b)(1)(i) of the final regulations provides that reportable gambling winnings in the case of bingo and slot machine play are not determined by netting the wager against the winnings, but reportable gambling winnings in the case of keno are determined by netting the wager in that one game against the winnings from that game.

Definition of Slot Machine and Reportable Gambling Winnings

For purposes of information reporting, proposed § 1.6041–10(b)(4) defines a slot machine as a device that, by application of the element of chance, may deliver or entitle the person playing or operating the device to receive cash, premiums, merchandise, or tokens, whether or not the device is operated by inserting a coin, token, or similar object. One commentator suggested that the definition of slot machines be changed to adopt either of the definitions that has been adopted by the states of New Jersey or Nevada, both of which define slot machines more broadly. Other commentators suggested that the definition of slot machine in the proposed regulations is too broad because it could include technologic aids to Class II gaming as defined under the Indian Gaming Regulatory Act, 25 U.S.C. 2701–2721, such as electronic bingo or electronic pull-tabs.

As discussed in the preamble of the proposed regulations, the definition of slot machine in proposed § 1.6041–10(b)(4) is intended to be consistent with the definition of slot machine in § 44.4402–1(b)(1) of the Wagering Tax Regulations. Having consistent definitions benefits tax administration and may prevent unintended confusion that could arise from having different definitions for federal tax purposes. Because the Treasury Department and the IRS conclude that, on balance, the

proposed definition of slot machine is the most appropriate definition, the final regulations adopt the proposed definition of the term “slot machine” without modification.

Section 1.6041–10(b)(2)(i) of the proposed regulations provides that all winnings from all cards played during one bingo game are combined and that all winnings from all “ways” on a multi-way keno ticket are combined. In addition, § 1.6041–10(b)(2)(ii) of the proposed regulations provides that winnings from different types of games are not combined to determine whether the reporting thresholds are satisfied, and that bingo, keno, and slot machine play are all different types of games. Commentators did not oppose inclusion of these rules in the definition of reportable gambling winnings in the proposed regulations. Accordingly, the final regulations adopt these aspects of the definition of reportable gambling winnings without modification.

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. This certification is based on the fact that this rule merely provides guidance as to the filing of information reporting returns for payors who make reportable payments of bingo, keno, or slot machine winnings and who are required by section 6041 to make returns reporting those payments. The requirement for payors to make information returns is imposed by statute and not these regulations. In addition, this rule reduces the existing burden on payors to comply with the statutory requirement by simplifying the process for payors to verify payees’ identities with a broader range of documents that are more readily available, and also by allowing payors to reduce the number of information returns they issue if they adopt the new aggregate reporting methodology. Therefore, 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 Associate Chief Counsel (Procedure & Administration).

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 7

Temporary income tax regulations under the Tax Reform Act of 1976.

26 CFR Part 31

Employment Taxes and Collection of Income Tax at Source.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 7, and 31 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.6041–10 is added to read as follows:

§ 1.6041–10 Return of information as to payments of winnings from bingo, keno, and slot machine play.

(a) *In general.* Every person engaged in a trade or business (as defined in § 1.6041–1(b)) and who, in the course of such trade or business, makes a payment of reportable gambling winnings (defined in paragraph (b)(1) of this section) must make an information return with respect to such payment. Unless the provisions of paragraph (g) of this section (regarding aggregate reporting) apply, a separate information return is required with respect to each payment of reportable gambling winnings.

(b) *Definitions*—(1) *Reportable gambling winnings.* (i) For purposes of this section, the term reportable gambling winnings is defined as follows:

(A) For bingo, the term “reportable gambling winnings” means winnings of \$1,200 or more from one bingo game, without reduction for the amount wagered. All winnings received from all wagers made during one bingo game are combined (for example, all winnings from all cards played during one bingo game are combined).

(B) For keno, the term “reportable gambling winnings” means winnings of

\$1,500 or more from one keno game reduced by the amount wagered on the same keno game. All winnings received from all wagers made during one keno game are combined (for example, all winnings from all “ways” on a multi-way keno ticket are combined).

(C) For slot machine play, the term “reportable gambling winnings” means winnings of \$1,200 or more from one slot machine play, without reduction for the amount wagered.

(ii) Winnings and wagers from different types of games are not combined to determine if the reporting threshold is satisfied. Bingo, keno, and slot machine play are different types of games.

(iii) Winnings include the fair market value of a payment in any medium other than cash.

(iv) The amount wagered in the case of a free play is zero.

(2) *Information reporting period*—(i) *In general.* For purposes of paragraph (g) of this section, the “information reporting period” begins when a patron places the first wager on a particular type of game at a gaming establishment, as defined in paragraph (b)(2)(iv) of this section, and ends when the patron places his or her last wager on the same type of game at the same gaming establishment before the end of the “information reporting period.” An information reporting period is a 24-hour period. A payor may select a calendar day (as defined in paragraph (b)(2)(ii) of this section) or a gaming day (as defined in paragraph (b)(2)(iii) of this section) as the information reporting period for purposes of the aggregate reporting method in paragraph (g) of this section. For purposes of this paragraph (b)(2), time is determined by the time zone of the location where the patron places the wager. A payor must use the same information reporting period (a calendar day or gaming day) to report all “reportable gambling winnings” paid during the calendar year. Once selected, a payor may not change its information reporting period during a calendar year. Any changes to a payor’s information reporting period from one calendar year to another must be implemented on January 1.

(ii) *Calendar day.* A calendar day is determined with reference to a period beginning at 12 a.m. and ending no later than 11:59 p.m. of the same calendar day.

(iii) *Gaming day*—(A) *In general.* A gaming day is a 24-hour period other than a calendar day (as defined in paragraph (b)(2)(ii) of this section) selected by the payor, subject to the special rules for December 31 and

January 1 in paragraphs (b)(2)(iii)(B) and (C) of this section.

(B) *Special rule for December 31.* For purposes of paragraph (b)(2)(iii) of this section, the gaming day that begins on December 31 of any calendar year ends at 11:59 p.m. on December 31, regardless of the time on December 31 on which that gaming day began.

(C) *Special rule for January 1.* For purposes of paragraph (b)(2)(iii) of this section, the gaming day of January 1 begins at 12:00 a.m. on January 1, regardless of the time and calendar day on which that gaming day ends, and may extend beyond 24 hours.

(iv) *Gaming establishment.* For purposes of this section, a gaming establishment is a business entity of a payor of reportable gambling winnings with respect to bingo, keno, or slot machine play, and includes all gaming establishments owned by such payor using the same employer identification number (EIN) issued to such payor in accordance with section 6109.

(v) *Examples.* The following examples illustrate the provisions of paragraph (b)(2) of this section.

Example 1. Casino R uses the aggregate reporting method under paragraph (g) of this section to report certain reportable gambling winnings. For other regulatory purposes, Casino R uses a gaming day that begins at 3 a.m. and ends at 2:59 a.m. the following calendar day. Casino R chooses to use its gaming day as its information reporting period for purposes of paragraph (b)(2) of this section during Year 1. Accordingly, the information reporting period for purposes of paragraph (g) of this section for each day during Year 1 begins at 3 a.m. and ends at 2:59 a.m. the following day. The information reporting period for December 31 of Year 1 begins at 3 a.m. on December 31 of Year 1 and ends at 11:59 p.m. on December 31 of Year 1. The information reporting period for January 1 of Year 2 begins at 12 a.m. on January 1 of Year 2 and ends at 2:59 a.m. on January 2 of Year 2.

Example 2. The facts are the same as Example 1, except Casino R uses a calendar day as its information reporting period for purposes of paragraph (b)(2) of this section during Year 1. Accordingly, the information reporting period for purpose of paragraph (g) of this section for each day during Year 1 begins at 12 a.m. and ends at 11:59 p.m. on the same day.

Example 3. Casino R uses the aggregate reporting method under paragraph (g) of this section to report certain reportable gambling winnings. For other regulatory purposes, Casino R uses a gaming day that begins at 9:00 p.m. and ends at 8:59 p.m. the following calendar day. Casino R chooses to use its gaming day as its information reporting period for purposes of paragraph (b)(2) of this section during Year 1. Accordingly, the information reporting period for purposes of paragraph (g) of this section for each day during Year 1 begins at 9:00 p.m. and ends at 8:59 p.m. the following day. The

information reporting period for December 31 of Year 1 begins at 9:00 p.m. on December 30 and ends at 8:59 p.m. on December 31. A second information reporting period for December 31 then begins at 9:00 p.m. on December 31 and ends at 11:59 p.m. on December 31. The information reporting period for January 1 of Year 2 begins at 12:00 a.m. on January 1 and ends at 8:59 p.m. on January 1 of Year 2.

Example 4. Casino R uses the aggregate reporting method under paragraph (g) of this section to report certain reportable gambling winnings. In Year 1, Casino R chooses to use a “gaming day” that begins at 3 a.m. and ends at 2:59 a.m. the following day as its information reporting period. During the course of Year 1, Casino R decides that it would like to change its information reporting period to instead begin at 5 a.m. and end at 4:59 a.m. the following day. Casino R must wait until January 1 of Year 2 to implement such a change. On January 1 of Year 2, Casino R’s information reporting period will begin at 12 a.m. and end at 4:59 a.m. on January 2. On December 31 of Year 2, Casino R’s information reporting period will begin at 5 a.m. and end at 11:59 p.m.

(3) *Slot machine.* The term “slot machine” means a device that, by application of the element of chance, may deliver, or entitle the person playing or operating the device to receive cash, premiums, merchandise, or tokens whether or not the device is operated by insertion of a coin, token, or similar object.

(c) *Prescribed form; time and place for filing the return.* The return described in paragraph (a) of this section is a Form W-2G, “Certain Gambling Winnings.” The Form W-2G must be filed with the appropriate Internal Revenue Service location designated in the instructions to the form on or before February 28 (March 31, if filed electronically) of the year following the calendar year in which the reportable gambling winnings were paid. See section 6011 and § 1.6011-2 for requirements to file electronically.

(d) *Information included on the return—(1) In general.* Each return required by paragraph (a) of this section must contain:

- (i) The name, address, and taxpayer identification number of the payor;
- (ii) The name, address, and taxpayer identification number of the payee;
- (iii) A general description of the two types of identification (as described in paragraph (e) 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 (d)(2) of this section) that the payor relied on to verify the payee’s name, address, and taxpayer identification number;
- (iv) The date and amount of payment;

(v) The type of wagering transaction (bingo, keno, or slot machine play);

(vi) In the case of a bingo or keno game, any number, color, or other designation assigned to the game for which the payment is made;

(vii) In the case of slot machine play, the identification number of the slot machine(s) (for example, location and asset number);

(viii) Any other information required by the forms, instructions, revenue procedures, or other applicable guidance published in the Internal Revenue Bulletin.

(2) *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 (d)(1)(iii) of this section if:

- (i) The payee is a member of a federally recognized Indian tribe;
- (ii) The payee presents the payor 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 payor is a gaming establishment (as described in paragraph (b)(2)(iv) of this section) 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 (d)(2)(ii).

(3) *Special rule for optional aggregate reporting method.* In the case of aggregate reporting under paragraph (g) of this section, the amount of the payment in paragraph (d)(1)(iv) of this section is the aggregate amount of payments of reportable gambling winnings from the same type of game (bingo, keno, or slot machine play) made to the same payee during the same information reporting period (as defined in paragraph (b)(2) of this section). Unless otherwise provided in forms, instructions, or other guidance, in the case of aggregate reporting under paragraph (g) of this section, the information required by paragraphs (d)(1)(v) through (viii) of this section must be maintained by the payor as described in paragraph (g)(3) of this section.

(e) *Identification.* The following items are treated as identification for purposes of paragraph (d)(1)(iii) of this section—

- (1) 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

(2) 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.

(f) *Furnishing a statement to the payee.* Every payor required to make a return under paragraph (a) of this section must also make and furnish to each payee, with respect to each payment of reportable gambling winnings, a written statement that contains the information that is required to be included on the return under paragraph (d) of this section. The payor must furnish the statement to the payee on or before January 31st of the year following the calendar year in which payment of the reportable gambling winnings 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.

(g) *Aggregate reporting of bingo, keno, and slot machine winnings—(1) In general.* In lieu of filing a separate information return for each payment of reportable gambling winnings as required by paragraph (a) of this section, a payor may use the aggregate reporting method (defined in paragraph (g)(2) of this section) to report reportable gambling winnings from bingo, keno, or slot machine play. A payor using the aggregate reporting method to file information returns under paragraph (a) of this section must also furnish statements to the payee under paragraph (f) of this section using the aggregate reporting method.

(2) *Aggregate reporting method defined.* (i) The aggregate reporting method is a method of reporting more than one payment of reportable gambling winnings from the same type of game (bingo, keno, or slot machine play) made to the same payee during the same information reporting period (as defined in this paragraph (b)(2) of this section) on one information return or statement.

(ii) A payor may use the aggregate reporting method for payments to some payees and not others, at its own discretion. In addition, with respect to a single payee, the payor may use the aggregate reporting method to report

winnings from one type of game, but not for winnings from another type of game.

(iii) Failure to report some reportable gambling winnings from a particular type of game during one information reporting period to a particular payee under the aggregate reporting method (for whatever reason, including because the winnings are not permitted to be reported using the aggregate reporting method under paragraph (g)(4) of this section) will not disqualify the payor from using the aggregate reporting method to report other reportable gambling winnings from that type of game during that information reporting period to that payee. The payor may stop using the aggregate reporting method for a particular payee or for all payees before the end of the payor's information reporting period for any reason.

(3) *Recordkeeping under the aggregate reporting method.* A payor using the aggregate reporting method must maintain a record of every payment of reportable gambling winnings from the same type of game made to the same payee during the information reporting period that will be reported using the aggregate reporting method. Every individual that the payor has determined is responsible for an entry in the record must confirm the information in the entry by signing the record in a manner that will enable the signature to be associated with the relevant entry. Each payment of a reportable gambling winning made to the same payee and reported under the aggregate reporting method must have its own entry in the record, however, the information required by paragraphs (d)(1)(i) through (iii) of this section is not required to be recorded more than one time per information reporting period. A payor that uses the aggregate reporting method must retain a copy of the record in its files. The record (which may be electronic provided the requirements set forth in forms, instructions, or guidance published in the Internal Revenue Bulletin are met) must include the following information about each payment:

(i) The payee's signature confirming the information in the record;

(ii) The information required under paragraph (d) of this section;

(iii) The time of the win resulting in the reportable gambling winnings;

(iv) The total amount of reportable gambling winnings with respect to all payments to the payee during the information reporting period;

(v) The amount of reportable gambling winnings with respect to each particular payment;

(vi) The method of payment to the payee (for example, cash, check, voucher, credit, token, or chips); and

(vii) The name and unique identification number of the individual who the payor has determined is responsible for ensuring that the entry with respect to the reportable gambling winnings (including the general description of two types of identification used to verify the payee's name, address, and taxpayer identification number) is complete and accurate and who is authorized to perform that function by the applicable gaming regulatory control authority. Such individual may or may not be the same individual who prepared the entry.

(4) *When the aggregate reporting method may not be used.* A payor cannot use the aggregate reporting method if—

(i) The payment is to a foreign person, as described in section 1.6041–10(h);

(ii) The payor knows or has reason to know that the person making the wager is not the person entitled to the winnings or is not the only person entitled to the winnings (regardless of whether the person making the wager furnishes a Form 5754, "Statement by Person(s) Receiving Gambling Winnings"); or

(iii) Backup withholding under section 3406(a) applies to the payment.

(5) *Examples.* The following examples illustrate the provisions of this section. For each example, assume that for purposes of the aggregate reporting method in paragraph (g) of this section, Casino R's "information reporting period" for all calendar years is a gaming day that begins at 3 a.m. and ends at 2:59 a.m. the following day (except for January 1 and December 31) and that individuals C, D, and E are U.S. persons.

Example 1. On Day 1, between 7 a.m. and 4 p.m., C places five wagers at casino R on five different slot machines. The first two wagers result in no win. The third wager results in a \$1,500 win. The fourth wager results in a \$2,500 win. The fifth wager results in an \$800 win:

(i) Under paragraph (b)(1)(i)(C) of this section, there are reportable gambling winnings from the slot machine play of \$4,000 (\$1,500 + \$2,500). The \$800 win is not a reportable gambling winning from slot machine play because it does not equal or exceed the \$1,200 threshold.

(ii) Because all of the amounts were won on the same type of game (even though each of the winnings occurred on different machines) during the same information reporting period, R is permitted to use the aggregate reporting method under this paragraph (g). If R decides not to use the aggregate reporting method, a separate Form

W-2G would have to be filed and furnished for the payment of reportable gambling winnings of \$1,500 and for the payment of reportable gambling winnings of \$2,500. However, if R decides to use the aggregate reporting method, R may report total reportable gambling winnings from slot machine play of \$4,000 (\$1,500 + \$2,500) on one Form W-2G.

Example 2. Assume the same facts as *Example 1*, except that in addition to the winnings described in *Example 1*, at 5 a.m. on Day 2, C wins \$3,250 from one slot machine play at casino R. Even though C played the same type of game (slot machine play) on Day 1 and Day 2, under paragraph (b)(2) of this section, the win at 5 a.m. on Day 2 is a win during a separate information reporting period. Under paragraph (g)(2)(i) of this section, the \$3,250 of reportable gambling winnings on Day 2 cannot be aggregated with the reportable gambling winnings of \$4,000 from Day 1 on a single Form W-2G. Accordingly, if R uses the aggregate reporting method, R must file two Forms W-2G with respect to C's reportable gambling winnings on Day 1 and Day 2. R must report \$4,000 of reportable gambling winnings from slot machine play paid to C on Day 1 on the first Form W-2G, and \$3,250 of reportable gambling winnings from slot machine play paid to C on Day 2 on the second Form W-2G.

Example 3. On December 31 of Year 1 at 4:00 p.m., C wins \$10,000 from one slot machine play at casino R. At 12:30 a.m. on January 1 of Year 2, C wins \$4,000 from one slot machine play at casino R. Under paragraphs (b)(2)(iii)(B) and (C) of this section, the win at 4 p.m. on December 31 of Year 1 and the win at 12:30 a.m. on January 1 of Year 2 are wins during different information reporting periods. Under paragraph (g)(2)(i) of this section, the \$4,000 of reportable gambling winnings on January 1 cannot be aggregated with the reportable gambling winnings of \$10,000 from December 31 on a single Form W-2G. Accordingly, if R uses the aggregate reporting method, R must file two Forms W-2G with respect to C's reportable gambling winnings on Day 1 and Day 2. R must report \$10,000 of reportable gambling winnings from slot machine play paid to C on December 31 on the first Form W-2G and \$4,000 of reportable gambling winnings from slot machine play paid to C on January 1 on the second Form W-2G.

Example 4. Assume the same facts as example 3, except that C also wins \$5,000 from one slot machine play at 3:30 p.m. on January 1 and \$7,000 from one slot machine play at 1:30 a.m. on January 2. Under the special rule of paragraph (b)(2)(iii) of this section, the "information reporting period" begins at 12:00 a.m. on January 1 and extends until the start of the next information reporting period, in this case 2:59 a.m. on January 2. Under paragraph (b)(1)(C) of this section, Casino R will pay C a total of \$26,000 (\$10,000 + \$4,000 + \$5,000 + \$7,000) in reportable gambling winnings; however, \$10,000 must be reported in Year 1, and \$16,000 must be reported in Year 2. Because all of the amounts won in Year 2 were won on the same type of game and during the

same information reporting period, R is permitted to use the aggregate reporting method under this paragraph (g). If R decides to use the aggregate reporting method, R may report \$10,000 of reportable gambling winnings from slot machine play paid to C on December 31 on the first Form W-2G and \$16,000 of total reportable gambling winnings from slot machine play paid to C on January 1 on the second Form W-2G.

Example 5. At 2 p.m. on Day 1, D won \$2,000 (after reducing the amount of the win by the amount wagered) playing one keno game at casino R. D provides R with his driver's license. The driver's license has D's photograph on it, as well as D's name and address. The driver's license does not include D's social security number. D cannot remember his social security number and has no other identification at the time with his social security number on it. D does not provide R with his social security number before R pays the winnings to D. Because D cannot remember his social security number, D cannot complete and sign a Form W-9. R deducts and withholds \$560 (28 percent of \$2,000) under the backup withholding provisions of section 3406(a) and pays the remaining \$1,440 in winnings to D. D returns to casino R and at 6 p.m. on Day 1 wins \$1,500 (after reducing the amount of the win by the amount wagered) in one keno game. D provides R with his driver's license as well as D's social security card. R generally uses the aggregate reporting method and in all cases where it is used, R complies with the requirements of this paragraph (g). At 8 p.m. and 10 p.m. on Day 1, D wins an additional \$1,800 and \$1,700 (after reducing the amount of the win by the amount wagered), respectively, from two different keno games. For each of these two wins, an employee of R obtains the information from D required by this paragraph (g):

(i) Under paragraph (b)(1)(i)(B) of this section, each of D's wins from the four games of keno on Day 1 (\$2,000, \$1,500, \$1,800, and \$1,700) are reportable gambling winnings. Because D's first win on Day 1 was at 2 p.m. and D's last win on Day 1 was at 10 p.m., all of D's reportable gambling winnings from keno are won during the same information reporting period. Because R satisfies the requirements of paragraph (g)(2)(i), R may use the aggregate reporting method to report D's reportable gambling winnings from keno. However, pursuant to paragraph (g)(4)(iii) of this section, the \$2,000 payment made to D at 2 p.m. cannot be reported under the aggregate reporting method because that payment was subject to backup withholding. Accordingly, if R uses the aggregate reporting method under this paragraph (g), R will have to file two Forms W-2G with respect to D's reportable gambling winnings from keno on Day 1. On the first Form W-2G, R will report \$2,000 of reportable gambling winnings and \$560 of backup withholding with respect to the 2 p.m. win from keno, and, on the second Form W-2G, R will report \$5,000 of reportable gambling winnings from keno (representing the three payments of \$1,500, \$1,800, and \$1,700 that D won between 6 p.m. and 10 p.m. on Day 1).

Example 6. In one information reporting period on Day 1, E won five reportable

gambling winnings from five different bingo games at a casino R. R generally uses the aggregate reporting method and in all cases where it is used, R complies with the requirements of this paragraph (g). Although E signed the entry in the record R maintains for payment of the first four reportable gambling winnings, E refuses to sign the entry in the record for the fifth payment of reportable gambling winnings. R may use the aggregate reporting method for the first four payments of reportable gambling winnings to E. However, because the entry in the record for the fifth payment of reportable gambling winnings does not include E's signature, as required by paragraph (g)(3)(i) of this section, that payment may not be reported under the aggregate reporting method. Accordingly, if R uses the aggregate reporting method under paragraph (g) of this section, R must prepare two Forms W-2G as follows: On the first Form W-2G, R must report the first four payments of reportable gambling winnings from bingo made to E on Day 1. On the second Form W-2G, R must report the fifth payment of reportable gambling winnings from bingo made to E on Day 1.

(h) *Payments to foreign persons.* See § 1.6041-4 regarding payments to foreign persons. See § 1.6049-5(d) for determining whether the payee is a foreign person.

(i) *Effective/applicability date.* Section 1.6041-10(b)(2), concerning payor-selected "information reporting periods," applies to payments of reportable gambling winnings from bingo, keno, or slot machine play made on or after January 1 of the year following the date these regulations are published in the **Federal Register**. All other sections contained herein apply to payments of reportable gambling winnings from bingo, keno, or slot machine play made on or after December 30, 2016.

(j) *Cross-references for certain gambling winnings.* For provisions relating to backup withholding for winnings from bingo, keno, and slot machine play and other reportable gambling winnings, see § 31.3406(g)-2(d). For provisions relating to withholding and reporting for gambling winnings from lotteries, sweepstakes, wagering pools, and other wagering transactions, including a wagering transaction in a parimutuel pool with respect to horse races, dog races, or jai alai, see § 31.3402(q)-1.

PART 7—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1976

■ **Par. 3.** The authority citation for part 7 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 7.6041-1 [Removed]

■ **Par. 4.** Section 7.6041-1 is removed.

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

■ **Par. 5.** The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 31.3406(g)-2 [Amended]

■ **Par. 6.** In § 31.3406(g)-2, paragraph (d)(3) is amended by removing the citation "§ 7.6041-1" and adding the citation "§ 1.6041-10" in its place.

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John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: December 13, 2016.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2016-0939]

Liberty Island Safety Zone; Fireworks Display in Captain of the Port New York Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone within the Captain of the Port New York Zone on the specified date and time. This action is necessary to ensure the safety of vessels and spectators from hazards associated with fireworks displays. During the enforcement period, no person or vessel may enter the safety zone without permission of the Captain of the Port (COTP).

DATES: The regulation for the safety zone described in 33 CFR 165.160 will be enforced on the date and time listed in the table below.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Petty Officer First Class Ronald Sampert, U.S. Coast Guard; telephone 718-354-4154, email ronald.j.sampert@uscg.mil.

SUPPLEMENTARY INFORMATION:

The Coast Guard will enforce the safety zone listed in 33 CFR 165.160 on the specified date and time as indicated