(b) *Substitution.—(1) In general.* A foreign tax satisfies the substitution requirement if the tax in fact operates as a tax imposed in substitution for, and not in addition to, an income tax or a series of income taxes otherwise generally imposed. However, not all income derived by persons subject to the foreign tax need be exempt from the income tax. If, for example, a taxpayer is subject to a generally imposed income tax except that, pursuant to an agreement with the foreign country, the taxpayer's income from insurance is subject to a gross receipts tax and not to the income tax, then the gross receipts tax meets the substitution requirement notwithstanding the fact that the taxpayer's income from other activities, such as the operation of a hotel, is subject to the generally imposed income tax. A comparison between the tax burden of this insurance gross receipts tax and the tax burden that would have obtained under the generally imposed income tax is irrelevant to this determination.

(2) *Soak-up taxes.* A foreign tax satisfies the substitution requirement only to the extent that liability for the foreign tax is not dependent (by its terms or otherwise) on the availability of a credit for the foreign tax against income tax liability to another country. If, without regard to this paragraph (b)(2), a foreign tax satisfies the requirement of paragraph (b)(1) of this section (including for this purpose any foreign tax that both satisfies such requirement an also is and income tax within the meaning of § 1.901–2(a)(1)), liability for the foreign tax is dependent on the availability of a credit for the foreign tax against income tax liability to another country only to the extent of the lesser of—

(i) The amount of foreign tax that would not be imposed on the taxpayer but for the availability of such a credit to the taxpayer (within the meaning of § 1.901–2(c)), or

(ii) The amount, if any, by which the foreign tax paid by the taxpayer exceeds the amount of foreign income tax that would have been paid by the taxpayer if it had instead been subject to the generally imposed income tax of the foreign country.

(3) *Examples.* The provisions of this paragraph (b) may be illustrated by the following examples:

Example (1). Country X has a tax on realized net income that is generally imposed except that nonresidents are not subject to that tax. Nonresidents are subject to a gross income tax on income from country X that is not attributable to a trade or business carried on in country X. The gross income tax imposed on nonresidents satisfies the substitution requirement set forth in this paragraph (b). See also examples (1) and (2) of § 1.901–2(b)(4)(iv).

Example (2). The facts are the same as in example (1), with the additional fact that payors located in country X are required by country X law to withhold the gross income tax from payments they make to nonresidents, and to remit such withheld tax to the government of country X. The result is the same as in example (1).

Example (3). The facts are the same as in example (2), with the additional fact that the gross income tax on nonresidents applies to payments for technical services performed by them outside of country X. The result is the same as in example (2).

Example (4). Country X has a tax that is generally imposed on the realized net income of nonresident corporations that is attributable to trade or business carried on in country X. The tax applies to all nonresident corporations that engage in business in country X except for such corporations that engage in contracting activities, each of which is instead subject to two different taxes. The taxes applicable to nonresident corporations that engage in contracting activities satisfy the substitution requirement set forth in this paragraph (b).

Example (5). Country X imposes both an exise tax and an income tax. The excise tax, which is payable independently of the income tax,is allowed as a credit against the income tax. For 1983 *A* has a tentative income tax liability of 100u (units of country X currency) but is allowed a credit for 30u of excise tax that it has paid. Pursuant to paragraph (e)(4)(i) of § 1.901–2, the amount of excise tax *A* has paid to country X is 30u and the amount of income tax *A* has paid to country X is 70u. The excise tax paid by *A* does not satisfy the substitution requirement set forth in this paragraph (b) because the excise tax is imposed on *A* in addition to, and not insubstitution for, the generally imposed income tax.

Example (6). Pursuant to a contract with country X, *A*, a domestic corporation engaged in manufacturing activities in country X, must pay tax to country X equal to the greater of (i) 5u (units of country X currency) per item produced, or (ii) the maximum amount creditable by *A* against its U.S. income tax liability for that year with respect to income from its country X operation. Also pursuant to the contract, *A* is exempted from otherwise generally imposed income tax. *A* produces 16 items in 1984 and the maximum amount creditable by *A* against its U.S. income tax liability for 1984 is 125u. If *A* had been subject to country X's otherwise generally imposed income tax it would have paid a tax of 150u. Pursuant to paragraph (b)(2) of this section, the amount of tax paid by *A* that is dependent on the availability of a credit against income tax of another country is 0 (lesser of (i) 45u, the amount that would not be imposed but for the availability of a credit (125u–80u) or (ii) 0, the amount by which the contractual tax (125u) exceeds the generally imposed income tax (150u)).

Example (7). The facts are the same as in example (6) except that, of the 150u *A* would have paid if it had been subject to the otherwise generally imposed income tax, 60u is dependent on the availability of a credit against income tax of another country. The amount of tax actually paid by *A* (i.e., 125u) that is dependent on the availability of a credit against income tax of another country is 35u (lesser of (i) 45u, computed as in example (6), or (ii) 35u, the amount by which the contractual tax (125u) exceeds the amount *A* would have paid as income tax if it had been subject to the otherwise generally imposed income tax (90u, i.e., 150u–60u).

(c) *Effective date.* The effective date of this section is as provided in § 1.901–2(h).

PART 4—[AMENDED]

§§ 4.901–2 and 4.903–1 [Removed]

Par. 4. Sections 4.901–2 and 4.903–1 of 26 CFR Part 4 are removed.

This Treasury Decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

Approved: September 28, 1983.

John E. Chapoton,
Assistant Secretary of the Treasury.

[FR Doc. 83-27466 Filed 10-6-83; 12:10 p.m.]
BILLING CODE 4830-01-M

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26 CFR Parts 1 and 31

[T.D. 7919]

Employment and Income Taxes; Information From Recipients of Gambling Winnings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to withholding on certain payments of gambling winnings and to statements furnished by their recipients. These rules are necessary to implement the withholding of tax on certain payments of winnings and will affect both payers and recipients of winnings.

DATE: The regulations generally apply to payments of winnings made after November 14, 1983.

FOR FURTHER INFORMATION CONTACT: John P. MacMaster of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202–566–3294)

SUPPLEMENTARY INFORMATION:

Background

On September 23, 1981, the Federal Register published proposed amendments both of the Income Tax Regulations (26 CFR Part 1) under section 6011 of the Internal Revenue Code and of the Employment Tax Regulations (26 CFR Part 31) under Code section 3402(q). The amendments to the regulations under section 3402(q) were a revision of part of an earlier proposal (44 FR 65777) concerning the withholding of tax on certain payments of gambling winnings. Treasury Decision 7787 (46 FR 46906) adopted that earlier proposal, reserving those portions re-proposed in the notice of proposed rulemaking of September 23, 1981.

A public hearing was held on January 20, 1982. After consideration of the comments, this Treasury decision adopts the proposed amendments with one change.

Explanation of Provision

Section 3402(q) requires payers of gambling winnings to deduct and withhold 20 percent of payments in certain circumstances, generally depending on the type of wagering transaction, the total amount of winnings, and in some cases the odds of the wager. For example, withholding generally is required on winnings from a wager in a parimutuel pool on a horse race if the total amount of the winnings exceeds $1,000. Under § 31.3402(q)–1 winnings on identical bets must be aggregated to determine if the $1,000 floor has been exceeded. This ensures that bettors are treated the same, whether or not a wager is divided into several small components. Identical bets are those in which winning depends on the occurrence (or non-occurrence) of the same event or events. For example, two wagers on a horse to win a particular race generally are identical.

Payers of gambling winnings generally are liable for any tax required to be deducted and withheld. The responsibility for identifying payments subject to withholding would, therefore, devolve to payers. In view of the expense of eliciting the information necessary to determine whether a payment is subject to withholding solely by reason of identical wagers, the regulations provide that payers may, in certain circumstances, require payees to supply information concerning any identical, or fragmented, wagers and then rely upon that information in determining whether the payment is subject to withholding. Generally, such information may be required of payees with respect to any payment subject to information reporting requirements under section 6041, *i.e.*, payments of $600 or more, but only if the payment by itself does not exceed the statutory floor of $1,000 ($5,000 in certain circumstances). If the payment either is subject to withholding without regard to winnings from identical wagers or is made with respect to a type of transaction not subject to withholding under section 3402(q) (*i.e.*, slot machine plays, bingo, or keno) the payer may not require the additional information. Indeed, it would have no application.

The final regulations differ from the rules as proposed in two respects—§ 31.3402(q)–1 makes clear that wagers in different wagering pools are not identical wagers, even if identical in other respects. Thus, for example, if an individual places a bet of $10 at the track for a horse to win a race and also places a $10 bet through an off-track betting operation on that horse to win the same race, those wagers are not aggregated for purposes of sections 3402(q) and 6011, provided the two operations conduct separate pools. Second, an example is added to indicate clearly that wagers containing different elements, *e.g.*, and "exacta" and a "trifecta" are not identical.

Evaluation of the effectiveness of these regulations will be based on comments received from offices within the Treasury Department, other governmental agencies, and the public. These regulations impose no burdensome reporting or record keeping requirements, but rather provide a less burdensome, optional procedure for fully implementing section 3402(q).

Non-Application of Executive Order 12291

The Treasury Department has determined that this regulation is not subject to review under Executive Order 12291 or the Treasury or OMB implementation of the Order dated April 29, 1983.

Regulatory Flexibility Act

Pursuant to 5 U.S.C. 605(b), the Secretary of the Treasury has certified that the requirements of the Regulatory Flexibility Act do not apply to this Treasury decision as it will not have a significant impact on a substantial number of small entities. The regulations merely provide payers of gambling winnings an optional procedure for fulfilling the requirements of withholding pursuant to section 3402(q). Payers are not precluded from using other means to ascertain the necesssary information to implement the withholding requirement. As already explained, this procedure is designed to provide a less burdensome means of assuring proper withholding on gambling winnings. It does not create a significantly increased reporting burden inasmuch as payees of gambling winnings should have the necessary information readily available for payers, and the optional procedure applies only as a concomitant of existing reporting requirements.

Drafting Information

The principal author of this regulation is John P. MacMaster of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation substantively and stylistically.

List of Subjects

26 CFR §§ 1.6001–1—1.6109–2

Income taxes, Administration and procedure, Filing requirements.

26 CFR Part 31

Employment taxes, Income taxes, Lotteries, Railroad retirement, Social security, Unemployment tax, Withholding.

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The following new section is added immediately after § 1.6011–2:

§ 1.6011–3 Requirement of statement from payees of certain gambling winnings.

(a) *General rule.* Except as provided in paragraph (c) of this section, any person receiving a payment with respect to a wager in a sweepstakes, wagering pool, lottery, or other wagering transaction (including a parimutuel pool with respect to horse races, dog races, or jai alai) shall make a statement to the payer of such winnings upon the payer's demand. Such statements shall accompany the payer's return made with respect to the payment as required pursuant to section 3402(q) or 6041, as the case may be.

(b) *Contents of statement.* The statement referred to in paragraph (a) shall contain information (in addition to that required under section 6041(c)) as to the amount, if any, of winnings from identical wagers to which the recipient is entitled. If any person other than the recipient is entitled to all or a portion of

the payment, the statement shall also include information as to the amount, if any, of winnings from identical wagers to which each such person is entitled. The statement shall be provided on Form W-2G or, if persons other than the recipient are entitled to all or a portion of such payment, on Form 5754.

(c) *Exception.* The requirement of paragraph (a) of this section does not apply with respect to any payment of winnings—

(1) From a slot machine play, or a bingo or keno game,

(2) Which is subject to withholding under section 3402(q) without regard to the existence of winnings from identical wagers, or

(3) For which no return of information under section 6041 is required of the payer.

(d) *Meaning of terms.* For purposes of this section, the terms "sweepstakes", "wagering pool", "lottery", "other wagering transaction" and "identical wagers" shall have the same meanings as ascribed to them under § 31.3402(q)-1.

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

Par. 2. Paragraphs (c)(1)(ii), and (d) *Example (3),* and (f)(1)(vi) of § 31.3402(q)-1 are revised to read as set forth below, and a new paragraph (d) *Example (4)* is added to read as set forth below:

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

* * * * *

(c) *Definitions; special rules*—(1) *Rules for determining amount of proceeds from a wager.* * * *

(ii) Amounts paid after November 14, 1983, 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. For example, amounts paid on two bets placed in a parimutuel pool on a particular horse to win a particular race are treated as paid with respect to the same wager. However, those two bets would not be identical were one "to win" and the other "to place", or if the bets were placed in different parimutuel pools, *e.g.*, a pool conducted by the racetrack and a separate pool conducted by an off-track betting establishment in which the wagers are not pooled with those placed at the track. 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, *e.g.*, the drawing of a particular number. If the recipient makes the statement which may be required pursuant to § 1.6011-3, indicating whether or not the recipient (and any other persons entitled to a portion of the winnings) is entitled to winnings from identical wagers and indicating the amount of such winnings, if any, then the payer may rely upon such statement in determining the total amount of proceeds from the wager under paragraph (c)(1) of this section attributable to identical wagers.

* * * * *

(d) *Examples.* * * *

Example (3). On December 1, 1983, B makes two $2 bets in a parimutuel pool for a horse race. Each bet is on the same horse to win a particular race. B wins a total of $1,300 on those bets. B cashes the tickest at different cashier windows indicating on the statement demanded by each cashier the amount of winnings from identical wagers. Although the payment by each cashier ($650) is less than the $1,000 floor for the withholding requirement on payments of winnings from horse race parimutuel pools, each cashier is required to deduct and withhold tax from B's winnings equal to $129.60 (($650 − $2) × 20 percent = $129.60) based on the information B submitted indicating that the aggregated proceeds from the identical wagers ($1,300 − $4 = $1,296) exceed $1,000 and the amount is at least 300 times as great as the amount wagered ($4 × 300 = $1,200). Had B refused to make the statements, the payer would have no basis provided by the payee upon which to rely in determining whether the payment is subject to withholding. Under these circumstances, the payer would be required to deduct and withhold tax from the payment.

Example (4). C makes two $2 bets in the same parimutuel pool for a horse race. One bet is an "exacta" in which C bets on horse M to win and horse N to "place". The other bet is a "trifecta". C bets on horse M to win, horse N to "place" and horse O to "show". C wins both bets and is paid $600 with respect to the "exacta" and $900 with respect to the "trifecta". The bets are not identical wagers, however, and on these facts neither payment is subject to withholding.

* * * * *

(f) *Return of payer*—(1) *In general.* * * *

(vi) With respect to amounts paid after November 4, 1983, the amount of winnings from identical wagers. * * *

* * * * *

This Treasury decision is issued under the authority contained in sections 6011 and 7805 of the Internal Revenue Code of 1954 (68A Stat. 732, 917; 26 U.S.C. 6011, 7805).

(Approved by the Office of Management and Budget under control number 1545-0238)

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: May 5, 1983.

John E. Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 83-27691 Filed 10-11-83; 8:45 am]

BILLING CODE 4830-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

Handling of Employment Discrimination Charges; 706 Agencies

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission amends its regulations designating certain State and local fair employment practices agencies (706 Agencies) so that they may handle employment discrimination charges, within their jurisdictions, filed with the Commission. Publication of this amendment effectuates the designation of the Texas Commission on Human Rights as a 706 Agency.

EFFECTIVE DATE: October 12, 1983.

FOR FURTHER INFORMATION CONTACT: Hollis Larkins, Equal Employment Opportunity Commission, Office of Program Operations, Special Services Staff, 2401 E Street, NW., Washington, D.C. 20507, telephone 202/634-6806.

SUPPLEMENTARY INFORMATION:

List of Subjects in 29 CFR Part 1601

Administrative practice and procedure, Equal employment opportunity, Intergovernmental relations.

PART 1601—PROCEDURAL REGULATIONS

Accordingly, Title 29, Chapter XIV of the Code of Federal Regulations, 29 CFR 1601.74(a) is amended by adding in alphabetical order the following agency:

§ 1601.74 Designated and notice agencies.

(a) * * * Texas Commission on Human Rights

* * * * *

(Sec. 713(a) 78 Stat. 265 (42 U.S.C. 2000e 12(a))

Signed at Washington, D.C. this Sixth day of October, 1983.