



STATE OF DELAWARE  
DEPARTMENT OF FINANCE  
DIVISION OF REVENUE  
CARVEL STATE BUILDING  
820 N. FRENCH STREET  
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WILMINGTON, DELAWARE 19899-8911

**DIVISION OF REVENUE**

**PROPOSED TECHNICAL INFORMATION MEMORANDUM 97-5**

**DATE:     OCTOBER 22, 1997**

**SUBJECT: GAMBLING LOSS DEDUCTION**

Public comment shall run from November 1, 1997, through November 30, 1997.

The following shall constitute Regulations of the Division of Revenue pursuant to 30 *Del. C.* § 354 and § 563.

Questions have arisen concerning the deductibility of gambling losses in excess of the amount of gambling winnings included in Delaware taxable income.

The starting point for determining Delaware taxable income is federal adjusted gross income. 30 *Del. C.* § 1105. Taxpayers electing to itemize their deductions start with federal itemized deductions. 30 *Del. C.* § 1109. Federal itemized deductions include wagering losses to the extent of wagering gains. Internal Revenue Code (26 U.S.C.) § 165(d). Professional gamblers may deduct gambling losses in determining adjusted gross income. Delaware law prohibits imposition of tax on "proceeds from a prize awarded by the state lottery." 29 *Del. C.* § 4817.

Under some circumstances Delaware lottery winnings may exceed the amount of net wagering gain subject to federal and state tax.

The amount of subtraction authorized under 29 *Del. C.* § 4817 is therefore limited to the lesser of:

(a) The difference between the amount of net gambling winnings included in federal adjusted gross income and the amount of gambling losses allowable in determining federal itemized deductions; and

(b) The amount of gain from Delaware lottery winnings.

This is the amount of proceeds from Delaware prizes on which a tax would have otherwise been imposed without the benefit of 29 *Del. C.* § 4817.

EXAMPLE:

During the tax year John Jones has winnings from the Delaware Lottery of \$500 and from other gambling sources of \$100. He has losses of \$200 from playing the Delaware Lottery and from other gambling of \$200. He itemizes deductions. The amount of gambling income upon which federal income tax is imposed is \$200; *i.e.*, \$600 in gambling income less \$400 in gambling losses. For Delaware purposes Mr. Jones may subtract from federal gambling income the amount of \$200 calculated as the lesser of:

(a)		
	(1) Federal gambling winnings	\$600
	<u>Less: (2) Federal gambling losses</u>	<u>(\$400)</u>
	Net gambling winnings	\$200

and

(b)		
	Delaware Lottery winnings	\$500

This Regulation shall be effective for tax years beginning after December 31, 1996.

Persons with questions concerning this Regulation should contact Colleen Yegla, Assistant Director, Personal Taxes, at (302) 577-8460.

*Wm Reisinger*