



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: September 25, 2003

Contact Person:

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Number: **INFO 2004-0003**

Identification Number:

Release Date: 3/31/04

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Dear Sir or Madam:

This responds to your request for general information regarding a church's reporting and withholding obligations with respect to raffle prize proceeds under the circumstances described below. You indicate that the church, which is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, conducts the raffle as a means of raising funds for its exempt activities.

Situation 1: An individual purchases a raffle ticket in a church-sponsored drawing. After purchasing the ticket, but before the raffle drawing, the individual gives the ticket to the church, or lists the church on the ticket as the beneficiary if the ticket is drawn. The church holds the raffle drawing and the church draws the winning ticket.

Situation 2: The facts are the same as Situation 1 but the purchaser makes another charity (not the charity sponsoring the raffle) the beneficiary of his raffle ticket.

Situation 3: An individual purchases a raffle ticket in a church-sponsored drawing. The church holds the raffle drawing and the individual holding the winning raffle ticket immediately refuses the prize without any qualification. The holder does not take any action that indicates he has accepted the prize. Therefore, the church retains the prize.

Situation 4: An individual purchases a raffle ticket in a church-sponsored drawing. The church holds the raffle drawing and the individual holding the winning raffle ticket takes actions that indicate he has accepted the prize. Subsequently, the individual assigns the prize to the church.

Section 61 of the Internal Revenue Code and section 1.61-1(a) of the Income Tax Regulations provide that gross income means all income from whatever source derived, whether from money, property, or services, unless an exception applies. In *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 431 (1955), the Supreme Court held that gross income includes accessions to wealth, clearly realized, over which the taxpayer has complete dominion.

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Section 74(a) of the Code provides that gross income includes amounts received as prizes and awards, unless an exception applies.

Section 3402(q)(1) of the Code and section 31.3402(q)-1(a)(1) of the Employment Tax Regulations provide the general rule that every person that makes “payment of winnings” subject to withholding must deduct and withhold income tax on the proceeds.

Section 3402(q)(3)(C)(i) defines the types of gaming winnings subject to withholding to include proceeds of more than \$5,000 from a wager placed in a sweepstakes, wagering pool, or lottery (other than a state-conducted lottery).

Section 31.3402(q)-1(e) provides that every person who receives a payment of winnings subject to withholding must furnish the payer a statement on Form W-2G, Statement for Recipients of Certain Gambling Winnings, or Form 5754, Statement by Person(s) Receiving Gambling Winnings, showing the name, address, and taxpayer identification number and similar information on any other person entitled to a share of the winnings.

Section 31.3402(q)-1(f) provides that every person making payment of winnings from which income tax is withheld for which a statement under section 31.3402(q)-1(e) is required must file a return with the Service on Form W-2G, Statement for Recipients of Certain Gambling Winnings.

Section 6041(a) provides that all persons making certain types of payments of \$600 or more in the course of a trade or business must file informational returns.

Section 1.6041-1(d)(3) lists certain payments that are specifically included under section 6041 and includes prizes and awards of \$600 or more.

The Internal Revenue Code does not define the term “payment.” However, section 1.6041-1(f) provides that for purposes of a return of information, an amount is deemed to have been paid when it is credited or set apart to a person without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and is made available to him so that it may be drawn at any time, and its receipt brought within his own control and disposition.

Black’s Law Dictionary 1016 (5th ed. 1979) defines payment as “a delivery of money or its equivalent ... by one person from whom it is due to another person to whom it is due.”

Rev. Rul. 85-46, 1985-1 C.B. 334, provides that an exempt organization under section 501(c)(3) of the Code must withhold on any payment exceeding \$5,000 that is made to an individual as part of a lottery conducted by the organization as a fund-raising activity.

Several court cases and a revenue ruling address whether the donor or the donee of a raffle ticket must include prize winnings in income. These authorities hold that if the donor transfers his interest in the ticket to the donee before the drawing is held, the donee is treated as the winner of the raffle or drawing. In *Silver v. Commissioner*, 42 BTA 461 (1940), *acq.*, 1940-2 C.B. 7, the Board held that the proceeds from a sweepstakes ticket acquired by gift before it became a winning ticket were includible in the gross income of the donee to the extent in excess of the value of the gift. See *also*

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Rev. Rul. 55-638, 1955-2 C.B. 35; *Chelius v. Commissioner*, T.C. Memo. 1958-29 (a taxpayer was not taxable on the proceeds of an undivided one-half interest in a winning ticket because she had transferred portions of that interest to her spouse and children before the ticket drawing was held).

In Rev. Rul. 57-374, 1957-2 C.B. 69, the Service determined that a contestant who refuses to accept an all-expense paid vacation trip he won as a prize in a contest does not need to include the fair market value of the trip in his gross income.

In Situation 1, the church does not have to withhold income tax and does not need to issue a Form W-2G. The individual in Situation 1, like the assignors in *Chelius* and Rev. Rul. 55-638, was not paid the raffle prize by the church and need not include the prize in his gross income. In this situation, the individual transferred his beneficial interest in the underlying raffle ticket to the church prior to the raffle drawing. In addition, although the church holds the winning ticket, it need not include the prize in its gross income because it does not have an accession to wealth. See *Glenshaw Glass*.

Section 3402(q)(1) provides that every person that makes payment of winnings subject to withholding must deduct and withhold income tax on the proceeds, and section 31.3402(q)-1(f) provides that every person making payment of winnings subject to withholding is required to file a return on Form W-2G. The church does not need to withhold income tax or issue a Form W-2G to the purchaser of the ticket because it was not *paid* to him. In addition, the prize was never “brought within [the individual’s] own control and disposition” within the meaning of section 1.6041-1(f). The church cannot be considered to have made payment to itself because it is merely retaining the prize and, consequently, the church does not need to issue a Form W-2G to itself.

In Situation 2, the church does not have to withhold income tax or issue a Form W-2G to the individual because he has waived his rights to the raffle prize by donating it to another charity before the drawing. The individual need not include the amount of the prize in his gross income. However, the funds are being paid to another charity rather than being retained by the sponsoring church.

Because the charity designated to receive the proceeds does have an accession to wealth, the church must issue it a Form W-2G and withhold the appropriate amount based on the amount of the prize. There is no exception to the general rule under section 3402(q)(1) of the Code and section 31.3402(q)-1(a)(1) of the Employment Tax Regulations that every person that makes “payment of winnings” subject to withholding must deduct and withhold income tax on the proceeds for charitable organizations.

In Situation 3, the church does not have to withhold income tax and does not need to issue a Form W-2G to the individual because the individual refused the prize, and thus the church has not made a “payment” to the individual for purposes of section 3402(q) and section 1.6041-1(f). As in situation 1, the church does not need to withhold income tax or issue a Form W-2G to the individual because the prize was not paid to him. Since it was refused, the prize was never “brought within [the individual’s] own control and disposition.”

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The church does not need to include the prize in its gross income because it does not have any accession to wealth. The church cannot be considered to have made payment to itself for purposes of section 31.3402(q)-1(f) because there has been no delivery as it merely retained the prize. Consequently, the church does not need to issue a Form W-2G to itself.

In Situation 4, if the individual takes actions that are inconsistent with an absolute refusal of a prize, the individual is deemed to have accepted it and must include its value in gross income under section 61 of the Code.

The determination of whether a winner has accepted a prize and assigned it or has refused the prize is based on all the facts and circumstances. In *Haverly v. United States*, 513 F.2d 224 (7th Cir. 1975), the court held that the principal of a public school must include in gross income the value of unsolicited sample textbooks which he subsequently donated to the school library and for which he claimed a charitable deduction. See also Rev. Rul. 70-498, 1970-2 C.B. 6 (book reviewer who received unsolicited books from various publishers, donated books to charity and claimed a charitable deduction under section 170 of the Code found to have received gross income). For example, if a raffle winner takes a section 170 deduction for contributing the prize to the church, or conditions the assignment of the prize to the church by, for example, requiring the church to use the prize for a specific purpose, he has accepted the prize and must include its value, less his basis in the ticket, as gross income under sections 61 and 74(a) of the Code. Under the circumstances, the church has made a payment of winnings subject to withholding to the individual, and must issue a Form W-2G to the ticket holder.

Because the determination of whether a taxpayer has accepted or rejected a prize is based on all of the facts and circumstances, each situation must be examined to determine whether the taxpayer has accepted a prize. If the prize is accepted, the church has made a payment subject to withholding and must issue a Form W-2G to the ticket holder. If possible, contest sponsors should obtain a statement from the ticket holder in situations in which the intent of the holder is unclear. For example, in Situation 1, merely listing the church as “beneficiary” does not clearly indicate a transfer of the ticket, but may indicate only an assignment of the proceeds.

Based on the above discussion, we would resolve the fact patterns described above as follows:

Situation 1: The church does not have to withhold income tax and does not need to issue a Form W-2G. The individual was not paid the raffle prize by the church and need not include the prize in his gross income. Here, the individual transferred his beneficial interest in the underlying raffle ticket to the church prior to the raffle drawing. In addition, although the church holds the winning ticket, it need not include the prize in its gross income because it does not have an accession to wealth.

Situation 2: The church in this case must issue a Form W-2G to the designated charity and must withhold tax based on the amount of the prize. The charity will have to file for a refund of the tax withheld. In addition, the recipient charity must include the amount of the prize in its gross income.

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Situation 3: The church does not have to withhold income tax and does not need to issue a Form W-2G to the individual because the individual refused the prize, and thus the church has not made a "payment" to the individual.

Situation 4: If the individual takes actions that are inconsistent with an absolute refusal of a prize, the individual is deemed to have accepted it and must include its value in gross income. The church must withhold and issue a Form W-2G to the individual.

Please be advised that this letter is advisory only and has no binding effect on the Service. The information provided here cannot be relied upon as a ruling on the matters discussed. If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Debra J. Kawecki

Debra J. Kawecki
Acting Manager,
Exempt Organizations
Technical Group 4