

August 5, 2019

The Honorable David Kautter
Assistant Secretary, Tax Policy
U.S. Department of the Treasury
Washington, DC 20220

Dear Assistant Secretary Kautter,

The American Gaming Association (AGA) strongly urges that the Treasury Department exercise its regulatory authority under section 7805 of the Internal Revenue Code to update the dollar threshold for tax information reporting for slot machine jackpots under current Treasury Regulation § 1.6041-10. Based on the reasons outlined below, the gaming industry supports a modernization of the outdated slot jackpot reporting threshold.

The Outdated Slot Reporting Threshold Imposes Undue Burdens on Both IRS and Industry

Reg. § 1.6041-10 currently sets the casino's tax information reporting threshold for a patron's slot jackpot win at \$1,200. The same \$1,200 slot jackpot reporting threshold has been in place since 1977, more than 40 years. It is outdated and imposes significant compliance burdens on both the IRS and the gaming industry:

- **The Reporting Threshold Should Be Updated to Properly Reflect Inflation**

Clearly a \$1,200 slot jackpot today is not the same as a \$1,200 jackpot in 1977. Based on inflation over the past 40 years, a comparable jackpot reporting threshold today would be in the range of \$4,700. This static reporting threshold has dramatically increased the number of reportable jackpots, which has increased the operational costs and associated burdens of the casinos, their customers, and the IRS.

- **Tax Administration Would Benefit from a Threshold Targeted at Customers with Net Gaming Income at the End of the Year**

Currently a sea of slot jackpot reports on Form W-2G floods an underfunded and understaffed IRS each year. We understand that as many as 2 million Forms W-2G are filed

with the IRS annually. At the same time, most slot customers are in a losing position at the end of the year.

It is important to remember that, unlike other forms of tax information reporting, such as bank interest on Form 1099, which report actual income, the Form W-2G “flag” reporting of a “payment” on a gross basis is different from the ultimate determination of the patron’s taxable gain or loss from slot play. The IRS in Chief Counsel Advice from the Associate Chief Counsel for Income Tax & Accounting has stated: “We note that § 6041 requires gambling businesses to report payments over certain dollar amounts, ‘gross receipts’ reporting. The amount reported as gross receipts is not reduced by the amount (basis) of the wager.” The Chief Counsel Advice continued, “However, such reported payments are not necessarily taxable wagering gains. A gambling business may issue *an information return for a casual gambler’s winning spin*, but the gambler continues to play and wagers and loses that amount during slot machine play. Wagering gain or loss is determined at the time the casual gambler redeems his or her tokens at the end of slot machine play.” (IRS Chief Counsel Advice Memorandum AM2008-011, PSTN-138904-08 (dated 12/5/08), at p. 5 n. 2 [emphasis added] (attached)).

Updating the slot jackpot reporting threshold to a realistic level such as \$5,000 would enable the IRS to focus its limited enforcement resources on those taxpayers who are most likely to have net slot winnings at the end of the taxable year.

- **The Gaming Industry Burden Faces a Substantial Burden from Tax Information Reporting on Slot Play**

When a slot patron hits a jackpot of \$1,200 or more, the slot machine locks up and is out of service while the casino staff manually processes the tax information reporting paperwork. AGA is not aware of any other industry that must take its assets out of production in order to comply with its tax information reporting obligations.

Treasury Has the Regulatory Authority to Update the Slot Reporting Threshold and Has Exercised Such Authority in the Past

The history of Treasury’s regulations on the slot jackpot reporting threshold underscores that Treasury has regulatory authority to update the threshold. Treasury described this regulatory history in the preamble to the proposed version of Reg. § 1.6041-10:

“Section 6041 generally requires information reporting by every person engaged in a trade or business who, in the course of such trade or business, makes payments of gross income of \$600 or more in any taxable year. The current regulatory reporting thresholds for winnings from bingo, keno, and slot machines deviate from this general rule. Prior to the adoption of the current thresholds in 1977, reporting from bingo, keno, and slot

machines was based on a sliding scale threshold tied to the amount of the wager and required the wager odds to be at least 300 to 1. On January 7, 1977, temporary regulation §7.6041-1 was published establishing reporting thresholds for payments of winnings from bingo, keno, and slot machine play in the amount of \$600.¹ In Announcement 77-63, 1977-8 IRB 25, the IRS announced that it would not assert penalties for failure to file information returns before May 1, 1977, to allow the casino industry to submit, and the IRS to consider, information regarding the industry's problems in complying with the reporting requirements.² After considering the evidence presented by the industry, the IRS announced in a press release that effective May 1, 1977, information reporting to the IRS would be required on payments of winnings of \$1,200 or more from a bingo game or a slot machine play, and \$1,500 or more from a keno game net of wager. On June 30, 1977, § 7.6041-1 was amended to raise the reporting thresholds for winnings from a bingo game and slot machine play to \$1,200, and the reporting threshold for winnings from a keno game to \$1,500.³ [See Preamble to Prop. Reg. §1.6041-10, 80 *Federal Register* 11600 (March 4, 2015). (attached)]

The amendment to Reg. § 7.6041 raising the slot reporting threshold to \$1,200 in 1977 was “issued under the authority contained in section 7805 of the Internal Revenue Code of 1954.” (Treasury Decision 7492, 42 *Federal Register* 33286 (June 30, 1977) (attached)). Code section 7805 provides that “the Secretary shall prescribe all needful rules and regulations for the enforcement of this title [Internal Revenue Code]. . . .”⁴

Conclusion

For all of the reasons outlined above, AGA respectfully requests that the Secretary once again, as he has in the past, exercise his regulatory authority under section 7805 to update the reporting threshold for slot jackpots to a substantially higher level that reflects current realities, such as \$5,000.

¹ 42 *Federal Register* 1471 (January 7, 1977) (attached).

² In Announcement 77-63, the IRS stated: “The Service has announced that it will not assert penalties for failure to file information returns, with respect to payments made before May 1, 1977, to report winnings of \$1,000 or more from a keno or bingo game or slot machine play. The extension of the penalty deadline has been made in order to allow the Treasury Department time to consider information which is to be submitted by the gaming industry dealing with its problems of compliance with the requirements.” (attached).

³ According to the preamble to the amendment to Regulation § 7.6041-1, “this Treasury decision changes from \$600 to \$1,200 the threshold for the requirement that the payor report payments of winnings from a bingo game or slot machine play to the Internal Revenue Service. The threshold amount for the requirement of reporting winnings from a keno game has been changed from \$600 to \$1,500 and may be determined by reducing the amount won in one game by the amount wagered in that one game. The amendments promulgated in this Treasury decision were announced by the Internal Revenue Service in Reno, Nevada, by a press release dated May 2, 1977.” T.D. 7492, 42 *Federal Register* 33286 (June 30, 1977). (attached).

⁴ The current \$1,200 slot jackpot reporting threshold is now found in Treas. Reg. § 1.6041-10(b)(1)(i)(C) (T.D. 9807 (12/29/2016)).

We appreciate your consideration of this request and look forward to further dialogue with the Department regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "W. C. Miller, Jr.", with a stylized flourish at the end.

William C. Miller, Jr.
President & CEO

Enclosures: IRS Memo Re: Reporting of Wagering Gains and Losses, December 12, 2008
Excerpt from Fed. Register, Vol. 80, No. 42, March 4, 2015
Excerpt from Fed. Register, Vol. 42, No. 126, June 30, 1977