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United States Tax Court

Washington, DC 20217

JACOB BRIGHT,

Petitioner

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent

Docket No. 10095-22.

ORDER

Pursuant to Rule 152(b), Tax Court Rules of Practice and Procedure, it is

ORDERED that the Clerk of the Court shall transmit with this order to petitioner and respondent a copy of the pages of the transcript of the trial in this case before Judge Ronald L. Buch at St. Paul, Minnesota, containing his oral findings of fact and opinion rendered at the trial session at which the case was heard.

In accordance with the oral findings of fact and opinion, a decision will be entered under Rule 155.

(Signed) Ronald L. Buch
Judge

Served 05/04/23

1 Bench Opinion by Judge Ronald L. Buch
2 March 30, 2023
3 Jacob Bright v. Commissioner of Internal Revenue
4 Docket No. 10095-22

5 THE COURT: The following represents the Court's
6 oral findings of fact and opinion. The oral findings of
7 fact and opinion may not be relied upon as precedent in
8 any other case. These oral findings of fact and opinion
9 are made pursuant to the authority granted by section
10 7459(b) of the Internal Revenue Code and Tax Court Rule
11 152. Rule references in this opinion are to the Tax Court
12 Rules of Practice and Procedure, and section references
13 are to the Internal Revenue Code, in effect at all
14 relevant times.

15 Jacob Bright gambled extensively in 2019, and he
16 had substantial winnings and substantial losses. He hired
17 a return preparer who reported that Mr. Bright was a
18 professional gambler, which all parties agree he was not.
19 It is unclear where the return preparer obtained the
20 amounts of winnings and losses that were reported on Mr.
21 Bright's return. The Commissioner accepted the amount of
22 winnings reported on Mr. Bright's return but disallowed
23 the losses. Mr. Bright argues that he had less in
24 winnings than reported on his return and that his losses
25 were at least equal to his winnings. In support of his

1 argument, Mr. Bright offers casino records showing at
2 least some of his losses. Mr. Bright did not establish
3 that his gambling winnings were less than what he reported
4 on his return; however from casino records, the Court was
5 able to reconstruct at least a portion of his gambling
6 losses.

7 FINDINGS OF FACT

8 Jacob Bright has been gambling for half his
9 life. Mr. Bright is 36 years old. He completed two years
10 of college, where he studied automobile repair, but he
11 performs storm restoration work as his occupation. He
12 began gambling when he was 18, primarily to make money,
13 but also for entertainment. He has gambled more
14 frequently in the last 4 to 5 years. He cashes most of
15 his paychecks to gamble and loses substantial amounts of
16 money. His bank account records show that his account
17 frequently had a low or negative balance in 2019. Mr.
18 Bright recognizes and regrets the negative effect that
19 gambling has had on his life.

20 Mr. Bright principally tries his luck at three
21 casinos. These include Mystic Lake Casino and Treasure
22 Island Resort and Casino in Minnesota, and Diamond Jo
23 Worth Casino in Iowa. He plays different games including
24 slot machines and table games, specifically blackjack, and
25 he bets on sports. He primarily plays slot machines, and



1 his sports betting takes place at Diamond Jo. He
2 typically uses a player's card issued by a given casino to
3 place bets from his balance on the card. The casinos
4 track Mr. Bright's gambling activity while using the
5 player's card. He almost always uses his player's card.
6 He has obtained reports from the casinos summarizing his
7 tracked activity for 2019.

8 According to casino records, Mr. Bright lost
9 money. At Mystic Lake, he had an annual net loss of
10 \$22,375. The Mystic Lake activity report calculates the
11 annual net loss as the sum of monthly net wins and losses.
12 The monthly net losses included \$1,932 for January, \$1,091
13 for March, \$3,886 for April, \$160 for June, \$78 for July,
14 \$16,779 for August, \$4,100 for September, and \$13,351 for
15 December. The monthly net gains included \$2,816 for
16 February and \$15,447 for November. The report does not
17 include any data from May or October. At Treasure Island,
18 Mr. Bright had an annual net loss of \$16,580. This
19 consisted of a \$7,980 net loss from the pit gaming area,
20 and an \$8,600 net loss from the slot gaming area. The
21 report calculated these net loss amounts by tracking the
22 annual "dollars in" and "dollars out" per gaming area.
23 For pit gaming, Mr. Bright put in \$15,580 and got out
24 \$7,600. For slot machines, he put in \$42,354 and got out
25 \$33,753. At Diamond Jo, he had an annual net loss of \$894



1 from slot machine play; the report does not include
2 amounts won or lost from sports betting in the
3 calculation.

4 On those occasions when Mr. Bright had a sizable
5 winning, the date, amount, and type of game was reported
6 to the IRS on Form W-2G. Each W-2G listed "Slot Machines"
7 as the source of the gross winnings. An IRS Wage & Income
8 Transcript reflects the following wins:

- 9 • Mystic Lake - January 3, 2019 - \$4,932
- 10 • Mystic Lake - January 25, 2019 - \$2,000
- 11 • Mystic Lake - January 30, 2019 - \$1,230
- 12 • Mystic Lake - February 4, 2019 - \$1,796
- 13 • Mystic Lake - February 6, 2019 - \$3,649
- 14 • Mystic Lake - February 7, 2019 - \$3,932
- 15 • Treasure Island - July 1, 2019 - \$1,792
- 16 • Treasure Island - July 2, 2019 - \$1,483
- 17 • Mystic Lake - August 22, 2019 - \$2,360
- 18 • Mystic Lake - August 23, 2019 - \$2,050
- 19 • Mystic Lake - August 27, 2019 - \$4,636
- 20 • Mystic Lake - August 30, 2019 - \$1,588
- 21 • Mystic Lake - August 31, 2019 - \$9,416
- 22 • Treasure Island - September 27, 2019 - \$1,845
- 23 • Treasure Island - September 27, 2019 - \$3,894
- 24 • Treasure Island - September 27, 2019 - \$1,512
- 25 • Mystic Lake - November 15, 2019 - \$25,317
- Mystic Lake - November 19, 2019 - \$5,155
- Diamond Jo - November 27, 2019 - \$2,131
- Diamond Jo - December 2, 2019 - \$1,437
- Mystic Lake - December 9, 2019 - \$15,010
- Mystic Lake - December 15, 2019 - \$5,246
- Mystic Lake - December 16, 2019 - \$6,332
- Mystic Lake - December 23, 2019 - \$1,810

23 Mr. Bright hired a return preparer who was
24 recommended to him, but he did not get what or whom he
25 expected. Rather than the recommended preparer, the



1 return preparer's daughter actually prepared his return.
2 The return preparer reported that Mr. Bright was a
3 professional gambler, although the parties appear to agree
4 that he was not and the evidence does not support him
5 being a professional gambler. When the preparer presented
6 Mr. Bright with his completed return, he did not review
7 it. He is unaware of how the preparer came up with his
8 reported gambling income. As relevant to this Opinion,
9 the return showed \$240,895 of gross receipts from
10 "professional gambling" and an equal amount of expenses on
11 Schedule C, Profit or Loss from Business. The expenses
12 reduced the net profit from gambling to zero.

13 The Commissioner determined that the reporting
14 on Mr. Bright's return was incorrect. In a notice of
15 deficiency dated April 22, 2022, the Commissioner
16 determined a tax deficiency of \$68,214 and a substantial
17 understatement penalty pursuant to section 6662(a) of
18 \$13,643. The Commissioner determined that Mr. Bright was
19 not allowed to report gambling winnings and losses on
20 Schedule C because he was not a professional gambler. The
21 Commissioner accepted the reported amount of gambling
22 winnings and moved them on the return but disallowed the
23 gambling losses reported on Schedule C. Mr. Bright
24 subsequently filed an amended return on which he reported
25 gambling losses to the extent of his winnings on Schedule



1 A, Itemized Deductions. The Commissioner did not allow
2 the adjustments reported on the amended return and based
3 his notice of deficiency on the original return.

4 While residing in Minnesota, Mr. Bright filed a
5 petition challenging the Commissioner's determinations.
6 In his petition, Mr. Bright contends that the Commissioner
7 erred in computing his gambling wins and losses and in
8 denying gambling losses and deductions. He also contends
9 that he acted reasonably in his tax reporting and is not
10 liable for the section 6662(a) penalty. The Commissioner
11 agrees that Mr. Bright is not liable for the penalty.

12 OPINION

13 In this case, no one disagrees with the basics
14 of how gambling winnings and losses are to be reported.
15 Under section 61(a), gross income includes all income from
16 whatever source derived, including gambling winnings.
17 Coleman v. Commissioner, T.C. Memo. 2020-146 at *12.
18 Gross income from gambling is calculated per session of
19 gambling. See Shollenberger v. Commissioner, T.C. Memo.
20 2009-306. For amateur gamblers, sessions with gains
21 should be totaled and included as other income. Id.;
22 Estate of Chow v. Commissioner, T.C. Memo 2014-49 at *12.
23 Amateur gamblers can deduct losses to the extent of their
24 winnings pursuant to section 165(d) but must separately
25 report those losses as an itemized deduction on Schedule



1 A. Coleman v. Commissioner, T.C. Memo. 2020-146 at *12.
2 They cannot deduct gambling losses if they use the
3 standard deduction. See Estate of Chow v. Commissioner,
4 T.C. Memo 2014-49 at *12; Bon Viso v. Commissioner, T.C.
5 Memo 2017-154.

6 At its core, this is a substantiation case. Mr.
7 Bright argues that he should not be bound by the amount of
8 gambling winnings reported on his return. Rather, he
9 contends that \$110,553, the cumulative reported amount on
10 the Forms W-2G, is the better amount. Alternatively, he
11 contends that his gambling income should be zero, because
12 the IRS has no logical basis for using either the amount
13 reported on the returns or the Forms W-2G such that a
14 deficiency based on either figure is a "naked assessment."
15 The Commissioner, on the other hand, argues that he
16 reasonably relied on the amount of the gambling winnings
17 reported on the 2019 return. The Commissioner further
18 contends that Mr. Bright has failed to meet his burden of
19 proving that the Commissioner's determination is incorrect
20 or that he may deduct losses under section 165(d).

21 Income from Gambling Winnings

22 Generally, the Commissioner's determinations in
23 a notice of deficiency are presumed correct, and the
24 taxpayer bears the burden of proving error. Rule 142(a);
25 Welch v. Helvering, 290 U.S. 111, 115 (1933). The burden



1 of proof may shift to the Commissioner in certain
2 circumstances. I.R.C. § 7491(a)(1). To shift the burden,
3 taxpayers must have complied with applicable
4 substantiation and record-keeping requirements and have
5 cooperated with the Commissioner's reasonable requests
6 "for witnesses, information, documents, meetings, and
7 interviews." I.R.C. § 7491(a)(2). Because Mr. Bright has
8 not kept adequate records of his gambling activities, the
9 record does not support shifting the burden to the
10 Commissioner.

11 Mr. Bright failed to establish that his winnings
12 were less than what he reported on his return. Although
13 he is unaware of how his return preparer calculated the
14 reported amounts, he has failed to demonstrate that the
15 amounts he reported were erroneous. Further, Forms W-2G
16 show that he had gambling winnings from slot machines of
17 at least \$110,553, which represents only part of his
18 winnings. Casinos are required to issue Forms W-2G only
19 for slot machine jackpots of \$1,200 or more and are not
20 required to keep track of smaller winnings. See Coleman
21 v. Commissioner, T.C. Memo. 2020-146 at *4-5. Given the
22 frequency of Mr. Bright's gambling and the fact that he
23 played games other than slot machines, we know that he had
24 winnings beyond what was reported on those forms. For
25 example, casino reports show that Mr. Bright gambled



1 during the months for which he was not issued a Form W-2G.
2 In sum, the Forms W-2G clearly do not reflect all of Mr.
3 Bright's gambling winnings, and he has failed to negate
4 his own reporting.

5 Deductions for Gambling Losses

6 Taxpayers bear the burden of proving they are
7 entitled to deductions. Rule 142(a); INDOPCO, Inc. v.
8 Commissioner, 503 U.S. 79, 84 (1992). That burden often
9 requires substantiation. Higbee v. Commissioner, 116 T.C.
10 438, 440 (2001). Taxpayers must maintain records
11 sufficient to establish the amount of each deduction. See
12 I.R.C. § 6001; Rogers v. Commissioner, T.C. Memo. 2014-
13 141, at *17; Treas. Reg. § 1.6001-1(a), (e). Where a
14 taxpayer establishes that he paid or incurred a deductible
15 expense but does not establish its precise amount, we may
16 supply an estimate. See Cohan v. Commissioner, 39 F.2d
17 540 (2d Cir. 1930). However, we must have some basis upon
18 which an estimate can be made. Vanicek v. Commissioner,
19 85 T.C. 731, 743 (1985). We may apply this rule to
20 estimate a gambler's losses for purposes of a deduction
21 pursuant to section 165. See, e.g., Coleman v.
22 Commissioner, T.C. Memo. 2020-146 at *13. In past cases,
23 taxpayers have substantiated gambling losses with evidence
24 such as casino ATM receipts, checks made payable to
25 casinos, bank statements, and evidence about the



1 taxpayer's modest lifestyle and overall financial
2 condition, among other things. Id. at *14.

3 Casino documents, coupled with Mr. Bright's
4 testimony, make clear the he suffered substantial gambling
5 losses. He testified that he has lost more than he has
6 gained from gambling, and that gambling has made life
7 financially difficult for him. Indeed, the casino reports
8 confirm his testimony, showing that even with some sizable
9 winnings, he lost more than he won for those times when
10 his wins and losses were captured. Although the casino
11 records do not capture the full picture, they provide a
12 sufficient basis upon which we can make an estimate.
13 Because each casino's records report Mr. Bright's activity
14 in a different way, our estimation method differs per
15 casino.

16 For Mystic Lake, we estimate a minimum amount of
17 loss by calculating the difference between Mr. Bright's
18 Form W-2G winnings from Mystic Lake for a given month and
19 his net gain or loss from Mystic Lake's casino report for
20 that month. For example, his Form W-2G winnings at Mystic
21 Lake for January totaled \$8,162, but he had an overall net
22 loss of \$1,192, he must have lost \$9,354. For him to have
23 won \$8,162 and yet netted a loss of \$1,192, he must have
24 lost \$9,354. Thus, we conclude that Mr. Bright lost at
25 least that much at Mystic Lake in January. For months in

1 which he had a net loss but no Form W-2G winnings, our
2 loss estimate is limited to the net loss. We estimate the
3 annual loss from Mystic Lake by adding the monthly
4 amounts.

5 To reach this conclusion, we accept Mr. Bright's
6 testimony that he rarely gambled when not using his casino
7 card. Again, Mr. Bright's testimony in this regard is
8 supported by the documents from the casinos. For example,
9 in November 2019, Mr. Bright won \$25,317 in slots at
10 Mystic Lake. On the player's estimated win/loss statement
11 from Mystic Lake, November 2019 is one of only two months
12 where Mr. Bright did not net a loss. When comparing the
13 Forms W-2G and the Mystic Lake statement, it is clear that
14 the W-2G winnings reported by that casino are likewise
15 reflected in the statement. From that, we infer that his
16 W-2G earnings were likewise included in the statements
17 from the other casinos.

18 For Treasure Island, we estimate Mr. Bright's
19 loss differently depending on the type of play. Unlike
20 Mystic Lake, the Treasure Island activity report shows
21 only annual net gain or loss, but it tracks the source of
22 the gain or loss as being from either slot machines or the
23 pit area. It also tells us the dollars Mr. Bright put
24 into each area. Because he had net losses from both, we
25 know that his actual loss was at least the amount of money



1 he put in. However, for slot machines, we also know that
2 his loss includes the amount of his annual Form W-2G
3 winnings from Treasure Island because for him to have
4 netted a loss, he must have also lost what he won. For
5 the pit, Mr. Bright put in \$15,580. For slots, he put in
6 \$42,354, and he had annual Form W-2G winnings of \$10,526.
7 We estimate his annual losses from Treasure Island by
8 combining these amounts.

9 For Diamond Jo, we estimate Mr. Bright's loss
10 similarly to Mystic Lake. Diamond Jo's records report an
11 annual net loss from slot machines. Thus, we estimate
12 loss by calculating the difference between Mr. Bright's
13 annual Form W-2G slot machine winnings from Diamond Jo, or
14 \$3,568, and his annual net loss of \$894.

15 From the three casinos for which we have
16 information, Mr. Bright suffered gambling losses of at
17 least \$191,756, which is the sum of the \$118,834 he lost
18 at Mystic Lake, the \$68,460 he lost at Treasure Island,
19 and the \$4,462 he lost at Diamond Jo. Mr. Bright may
20 deduct the \$191,756 loss pursuant to section 165(d).

21 Conclusion

22 Mr. Bright failed to establish that his gambling
23 winnings were less than what he reported on his own
24 return. And he failed to establish gambling losses in the
25 amount he reported on his return. Casino records,

1 however, establish that he had gambling losses of no less
2 than \$191,756. While we recognize that his gambling
3 losses may have been greater, the record only supports
4 this amount. Decision will be entered under Rule 155.

5 This concludes the Court's oral findings of fact
6 and opinion in this case.

7 (Whereupon, at 10:21 a.m., the above-entitled
8 matter was concluded.)

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