



STATE OF MICHIGAN
DEPARTMENT OF TREASURY

TREASURY BUILDING

LANSING, MICHIGAN 48922

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REVENUE ADMINISTRATIVE BULLETIN

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Full-Time Gambler

Considered in a Trade or Business

RAB-87-3. The purpose of this bulletin is to announce the tax treatment under the Michigan Income Tax Act of gambling losses incurred by a full-time gambler who gambles for his or her own account.

On February 24, 1987, the U.S. Supreme Court affirmed the decision of the U.S. Court of Appeals for the Seventh Circuit, Groetzinger v Commissioner of Internal Revenue, 771 F2d 269 (1985). Comm'r of Internal Revenue v Groetzinger, aff'd, _____ U.S. _____, (1987). A gambler who is considered to be in a trade or business within the meaning of Internal Revenue Code sections 62 and 162 shall be allowed the ordinary and necessary expenses incurred in such trade or business in the calculation of federal adjusted gross income.

The Internal Revenue Code and Treasury regulations do not clearly define a trade or business. Two primary considerations utilized by the Courts to determine whether activities constitute a trade or business have been (1) the continuity, repetition and extensiveness of activities and (2) the good faith intent of the taxpayer to make a profit or produce income. This does not, however, encompass purely "personal" activities no matter how "continuous" or "profitable" as discussed in Higgins v Commissioner of Revenue, 312 U.S. 212, at 215-218, (1941).

A taxpayer who can demonstrate that his or her activities are carried on as a trade or business shall be allowed all the ordinary and necessary expenses paid or incurred during the taxable year from such transactions. Such expenses are deductible from gross income in arriving at federal adjusted gross income.

Michigan Income Tax

A deduction for gambling losses is allowable in the computation of Michigan taxable income if the taxpayers activities qualify as a trade or business. Otherwise such expenses will be treated as federal itemized deductions and will not pass through to the Michigan return in the computation of taxable income. Each case will require an examination of facts.

Individuals who are considered to be in a trade or business as a full-time gambler and whose gambling expenses were denied in the computation of Michigan taxable income may file an amended return to claim a refund, as statutorily provided, within 4 years from the due date of the original return.