STATE OF WISCONSIN

TAX APPEALS COMMISSION

JULIE CHIER, DOCKET NO. 17-I-223

Petitioner,

v.

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

DECISION AND ORDER

LORNA HEMP BOLL, CHAIR:

This case comes before the Wisconsin Tax Appeals Commission ("the Commission") following a trial held on September 16, 2021, in Madison, Wisconsin. The Petitioner, Julie Chier, of Green Lake, Wisconsin, appeared on her own behalf. The Respondent, the Wisconsin Department of Revenue ("the Department"), appeared by Attorney Sheree Robertson. At the hearing, the Commission received and entered into evidence Petitioner's Exhibits, B, C, and I, as well as Department's Exhibits 1-3, 5-8, 10, 11, 13, and 16-18. Petitioner introduced the sworn testimony of two witnesses, Monica Klaas, and Shane Hein, and provided her own sworn testimony. The Department presented sworn testimony from Mr. Michael Flaten, a Department Auditor.

This case involves a disputed assessment primarily related to unreported gambling income for the tax years 2012-2014.

Having considered the record before it in its entirety, the Commission finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On November 8, 2016, the Department issued a Notice of Amount Due - Individual Income Tax to the Petitioner for amounts due relative to the periods ending December 31, 2012, through December 31, 2014.

2. On January 15, 2017, Petitioner filed a Petition for Redetermination, which was denied by the Department in a Notice of Action dated July 17, 2017.

3. On October 6, 2017, Petitioner filed a timely Petition for Review with the Commission.

4. In its Notice of Amount Due, the Department disallowed gambling losses/expenses of $186,998 for tax year 2012 and $76,586 for tax year 2013 and added those amounts to Petitioner's Wisconsin income for those years. The Department also added $42,474 in unreported gambling income to Petitioner's 2014 Wisconsin income, which was supported by federal Forms 2014 W-2G.

5. The Department considered Petitioner's substantiation and casino generated records of Petitioner's gaming activity from various casinos during the years at issue. The Department did not find Petitioner's notes to be credible. The Department did, however, reduce its assessment in accordance with session information contained in the casino records and issued a modified Notice of Assessment (Trial Ex. 16), indicating that Petitioner's tax liability is $13,422.46 with interest computed to July 20, 2020.

6. Petitioner's gambling activity was in the form of slot machine gaming. During the years at issue, Petitioner played slot machines at several Wisconsin casinos, including Ho-Chunk Gaming, Oneida Casino, Lake of the Torches Resort, and Island Resort Casino.

7. Petitioner did not have a separate bank account for her gambling activity. She did not track her activity on a computer spreadsheet. She did not have a business plan. She did not carry on her gambling activity in a professional manner.

8. In a notice dated April 27, 2015, the IRS determined that Petitioner did not qualify as a professional gambler.

9. At trial and in post-trial briefing, Petitioner conceded she was not a professional gambler.

10. The Department's witness, an experienced auditor, explained that the Department accepts the session method of reporting gambling income; if that is not available, the Department will accept daily records. When those types of records do not exist, the Department relies on the winnings reported by the casinos on Forms W2-G. This method of proof is explained in Trial Ex. 18, Wisconsin Tax Bulletin 171 - April 2011, and Trial Ex. B, Department of Revenue Fact Sheet 1104.

11. Petitioner used player's cards which tracked her gaming activity at Ho-Chunk Gaming, Oneida Casino, Lake of the Torches Resort, and Island Resort Casino.

12. Petitioner's notes properly introduced at trial (Trial Ex. C) reflected dates gambled at Ho-Chunk; those dates did not include times of day. Petitioner's notes include all dates included in the Ho-Chunk records. The dates are the same as those

reflected on the casino records, with some additions of round number losses, usually $1500, $2000, or $4000, for other dates.

13. With a very few exceptions, Petitioner's session submissions, which number in the hundreds, match to the casino's session numbers to the exact penny.

14. In about 25 instances, Petitioner's numbers for "coin in" for each session are higher by round amounts of $1000, $1500, or $2000. In a few others, the round additions are $200, $1100, or up to $4000.

15. The notes were not contemporaneously kept. On one page of her written 2014 Ho-Chunk notes, Petitioner's apparent copying of the casino records skipped a date but not an amount, so her session numbers for the next handful of visits match the exact casino numbers for the next subsequent visits to the casino.

16. The Department's witness testified that "coin in" includes not only the money a player physically inserts but also any winnings reinvested during a session.

17. Petitioner's Petition (Trial Ex. 8) included some additional hand-written notes of "Cash Sessions Card Not Played" at various casinos for the years at issue. Petitioner's hand-written notes did not include times but only dates on which she gambled. These notes were reconstructed after the fact and consisted of amounts which appeared to be only roughly estimated. Again, Petitioner claimed that she gambled every session down to zero. These notes were lacking in credibility.

18. The Ho-Chunk Gaming records (Ex. 10, pp. 9-10) credibly show Petitioner had the following winning sessions in 2012:

3/29/2012	$178.09
4/19/2012	$12,594.83
8/15/2012	$7,977.18
8/28/2012	$704.07
10/18/2012	$11,169.57
12/4/2012	$2,515.36
Total 2012	$35,139.10

19. The Ho-Chunk Gaming records credibly show Petitioner had the following winning sessions in 2013:

3/10/2013	$485.75
4/1/2013	$374.92
4/13/2013	$6,109.55
7/9/2013	$174.30
7/24/2013	$775.46
Total 2013	$7,919.98

20. In its review of the casino records, the Department apparently overlooked the $485.75 income from the 3/10/2013 winning session, so the modified assessment rests on $7,434.23 in winning income from Ho-Chunk for 2013.

21. The Ho-Chunk Gaming records credibly show Petitioner had the following income from winning sessions in 2014:

7/12/2014	$19.30
8/17/2014	$101.20
11/17/2014	$237.49
12/10/2014	$45.14
12/20/2014	$62.56
	$465.69

22. In its review of the casino records, the Department apparently overlooked the income from the 8/17/2014 and 11/17/2014 winning sessions, $101.20 and $237.49, respectively, so the modified assessment rests on $127.00 in winning income from Ho-Chunk for 2014.

23. The Oneida Casino records credibly show Petitioner had the following winning sessions in 2012:

Oneida Dept Ex 11	Session	Net Winnings
1/12/2012	9:45 - 13:15	$996.81
4/4/2012	17:13 - 19:17	$0.00
4/4/2012	20:37 - 21:29	$0.00
4/7/2012	15:46 - 17:41	$0.00
4/7/2012	18:45 - 19:20	$0.00
4/7/2012	20:10 - 20:48	$0.00
5/5/2012	16:00 - 18:15	$0.00
5/5/2012	18:58 - 20:57	$181.89
7/8/2012	16:48 - 19:10	$0.00
8/31/2012 - 9/1/2012	21:24 - 1:06	$0.00
9/1/2012	1:48 - 3:16	$0.00
9/1/2012	20:19 - 23:06	$0.00
Total 2012		$1,178.70

24. The Oneida Casino records credibly show Petitioner had the following winning sessions in 2013:

7/14/2013	15:40 - 16:52	$106.08
7/14/2013	17:47 - 20:43	$85.84
Total 2013		$191.92

25. The Oneida Casino records credibly show Petitioner had no winning sessions in 2014.

26. The Lake of the Torches Resort Casino records credibly show Petitioner had the following winning sessions in 2012:

1/1/2012	$1,884.06
1/2/2012	$13,637.36
2/27/2012	$10,036.93
2/28/2012	$23,500.12
	$49,058.47

27. The Lake of the Torches Resort Casino records credibly show Petitioner had the following winning sessions in 2013:

3/23/2013	$884.93
3/24/2013	$2,111.46
	$2,996.39

28. The Lake of the Torches Resort Casino records credibly show Petitioner had no winning sessions in 2014.

29. Petitioner produced 2012 and 2013 records from Island Resort Casino; those records showed no winning sessions. Petitioner failed to produce any records for 2014 for the Island Resort Casino, but the Department provided credible testimony of a 2014 W2-G from Island Resort Casino indicating Petitioner won $7,872.00 in 2014.

30. There was no evidence to support the finding of any winning sessions at any additional casinos, such as Potowatomi Carter Casino Hotel, Northstar Mohican Casino, or Menomonee Casino Resort.

31. Petitioner's blanket testimony and her handwritten notes indicating that she never once left any casino ever with any winnings were not credible. Likewise, her witnesses' testimony, which lacked any documentary evidence or detail, also lacked

credibility in this regard.

DECISION

At trial, the primary question was whether Petitioner had unreported income from her gambling activity for 2012, 2013, and/or 2014.[1] Prior to trial, after consideration of session information, the Department issued the Modified Audit Detail Summary ("revised assessment"), presented as Trial Exhibit 16, which serves as our starting point. Petitioner contests the amounts included by the Department as Line 1. Gambling Income.

The Department's assessment is presumed to be correct, and Petitioner has the burden of proof to prove by clear and satisfactory evidence in what respects the Department erred in its determination. *Edwin J. Puissant, Jr. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶202-401 (WTAC 1984).

Petitioner's Status as a Professional Gambler

Petitioner claimed significant gambling losses which she used to offset her income for the years at issue. Petitioner claimed she was a professional gambler and that the losses were, therefore, business expenses on Schedule C. Since 2000, Wisconsin does not allow the deduction of gambling losses unless the taxpayer is engaged in the trade or business of gambling; i.e., the taxpayer must be a professional gambler. *Ring v Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 401-130 (WTAC 2008).

The IRS rejected Petitioner's assertion, finding that she was not a professional gambler. Petitioner reluctantly conceded this point at trial. Petitioner has confirmed this

[1] A few smaller ancillary issues, such as the denial of expenses related to billboards, were abandoned at trial or remained unsubstantiated.

concession in her response brief in which she stated, "Julie Chier is not disputing that she did not conduct her gambling activity as a trade or business for Wisconsin tax purposes. Julie Chier agrees that her taxes should have been submitted using the session method."

For these reasons, we find Petitioner was not a professional gambler and that the Department properly disallowed the losses she claimed on Schedule C.

Gambling - Reporting of Winnings and Losses

In contrast to federal tax rules, Wisconsin law does not provide a deduction for losses incurred by nonprofessional gamblers. Gambling losses, which are allowed as a federal miscellaneous itemized deduction, are not allowed in computing the Wisconsin itemized deduction credit. *See Grundahl v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 401-345 (WTAC 2010).

Gambling winnings must be reported as income under Wis. Stat. § 71.07(5)(a)7. Wisconsin's rules on reporting gambling winnings have eased in recent years to the taxpayer's advantage since Wisconsin has adopted a session method of calculating gambling winnings. Under this method, the Department will accept taxpayers' contemporaneous notes or player's card records as substantiation of net winnings of each gambling "session," defined as a period of continuous play with only short breaks (bathroom or beverage breaks, changes of tables or machines, etc.). *See* Wisconsin Tax Bulletin 171 and Wisconsin Department of Revenue Fact Sheet 1104.

Under the session method, if a person plays, for example, for one hour, then takes a two-hour break for a meal, then plays again for another hour, that person has played two sessions. Assume the person begins the first hour with $100, wins a $250 jackpot, loses

most of it back, and finishes with $50; for that first session, there are no winnings (beginning amount $100, ending amount $50), and the loss is not deductible. Assume then, that the person returns with the $50, wins another $250 jackpot, loses some of the winnings, and finishes with $100; for that session, that person has $50 of winnings (beginning amount $50, ending amount $100). Under the previous reporting requirements, that person's reportable winnings were $500, the total of both jackpots; currently, only the $50 from the one winning session would have to be reported as taxable income.

Trial Evidence

Petitioner testified at trial that she had no gambling income in any of the years at issue. While it is apparent that Petitioner spent a considerable amount of time and money at casinos during the years at issue, her assertion that she never had any winning sessions was simply was not credible.

The substantiation Petitioner offered at trial included notes which did not appear to have been created contemporaneously with the gambling activity. The notes appeared to have been written in one or a small handful of sittings; a consistency of margins and style was evident throughout. The notes also appeared to have, for the most part, been copied from the Ho-Chunk casino records; in one section, a date was missed so the records match the casino amounts while the dates are off by one day.

The notes contained no time details as to beginnings and ends of sessions played. In addition, Petitioner's numbers for amounts "coin in" on nearly every single entry are exactly those from the casino records to the penny. If she had not always used her player's cards, there would have been instances where her "coin in" amount would have

differed from the amounts recorded by the casinos. Given that the "coin in" amounts included every small win during the session that was not cashed out but gambled away, it would be nearly impossible for Petitioner to have determined the exact amounts that the casino records showed as "coin in." However, when there were differences, the difference was, with only a handful of exceptions, always an addition of a round number of hundreds, usually $1000, $1500, or $2000. We find the notes were not credible when compared with the casino record evidence introduced by the Department.

Petitioner testified that she had player's cards at most of the casinos at which she played. She also testified that, although she usually used her player's card, she always gambled down to zero. She claimed that every entry on the casino reports which showed a winning session was in error because, on those winning occasions, she had either forgotten or chosen not to use her player's card while she was losing the last of her money in each of those sessions. There was contrasting credible evidence in the casino records that Petitioner likely put her card into every different machine she played; sometimes her card clocked in numerous times in a 5-minute timeframe. Given the conscientiousness displayed in the records of Petitioner's use of her player's card at Oneida Casino, where sessions were tracked by the minute, it is not credible that she continued to play without her card at the ends of every one of her winning sessions.

Petitioner claimed that every session ended only when she ran completely out of money and sometimes after she borrowed more from friends and lost that as well. She presented two witnesses who supported her testimony that she was indeed a voracious gambler; however, neither witness could recall specific dates or details. The witnesses

offered only had general recollections with no corroborating notes or evidence of Petitioner's gambling habits or results. One of the witnesses did testify that she joined Petitioner for crab leg dinners at the casinos on many Friday and Saturday nights, which indicated that Petitioner did not spend all of her available money playing the slot machines.

Petitioner also argues from the casino records that some entries are overstated because she claims that, at times, she gambled past midnight so certain days should be combined which would have resulted in losses instead of gains. However, Petitioner offered no notes or testimony or other substantiation at trial as to specific dates or times of any overnight sessions. It is only in her post-trial briefing that Petitioner makes this assertion with any specificity. Moreover, Petitioner's own trial evidence contradicted her assertion. One example is Petitioner's handwritten notes (Trial Ex. C.) of supposedly combined Ho-Chunk sessions of August 28 and August 29, 2012. Petitioner's notes for those days show two separate sessions with exactly the same "coin in" amounts each day as the casino records show. *See* Trial Ex. 10, Ho-Chunk records. We will not consider post-trial submissions which are not supported, and which are actually contradicted, by trial testimony or evidence.

The Oneida records are the only records which show actual times of sessions. The Department's interpretation of the session records may have assumed that every calendar day began a new session; however, the Oneida records show only two instances of sessions extending past midnight, August 31, 2012, to September 1, 2012, and October 15-16, 2014; those time periods show no winnings so combining those dates is of no consequence.

The Department introduced specific and more credible evidence of Petitioner's gambling activity for 2012, 2013, and 2014. The Department's evidence credibly supported the Department's calculations in the Modified Audit Detail Summary.

CONCLUSIONS OF LAW

1. Petitioner has failed to prove by clear and satisfactory evidence that she is a professional gambler; therefore, the Department properly disallowed her claim for Schedule C gaming losses.

2. Petitioner failed to prove by clear and satisfactory evidence that the Department's Modified Assessment was in error; therefore, the Department's presumption of correctness remains intact.

3. Petitioner's unreported gambling winnings must be included in her income for years at issue. The amounts proven at trial, limited to the amounts included in the modified assessment, are as follows[2]:

Casino	2012	2013	2014
HoChunk	$35,139.10	$7,434.23	$127.00
Oneida	$996.81	$191.92	$0.00
Torches	$49,058.47	$2,996.39	$0.00
Island Resort	$0.00	$0.00	$7,872.00
Rounded totals	$85,194	$10,623	$7,999

[2] The amounts proven at trial were slightly higher, but the Commission's powers are limited to a finding of the lower of the Department's assessment or the credible proof offered at trial.

ORDER

Based upon the factual findings of this Commission following a trial in this matter and the applicable law,

IT IS ORDERED that the Department's assessment, as modified per Trial Exhibit 16, is affirmed and Petitioner's Petition for Review is dismissed.

Dated in Madison, Wisconsin, this 22nd day of March, 2022.

WISCONSIN TAX APPEALS COMMISSION

Elizabeth Kessler, Chair

Lorna Hemp Boll, Commissioner

Jessica Roulette, Commissioner

ATTACHMENT: NOTICE OF APPEAL INFORMATION

WISCONSIN TAX APPEALS COMMISSION
5005 University Avenue - Suite 110
Madison, Wisconsin 53705

NOTICE OF APPEAL INFORMATION

NOTICE OF RIGHTS FOR REHEARING, OR JUDICIAL REVIEW, THE TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE PARTY TO BE NAMED AS RESPONDENT

A taxpayer has two options after receiving a Commission final decision:

Option 1: PETITION FOR REHEARING BEFORE THE COMMISSION

The taxpayer has a right to petition for a rehearing of a final decision within 20 days of the service of this decision, as provided in Wis. Stat. § 227.49. The 20-day period commences the day after personal service on the taxpayer or on the date the Commission issued its original decision to the taxpayer. The petition for rehearing should be filed with the Tax Appeals Commission and served upon the other party (which usually is the Department of Revenue). The Petition for Rehearing can be served either in-person, by USPS, or by courier; however, the filing must arrive at the Commission within the 20-day timeframe of the order to be accepted. Alternately, the taxpayer can appeal this decision directly to circuit court through the filing of a petition for judicial review. It is not necessary to petition for a rehearing first.

AND/OR

Option 2: PETITION FOR JUDICIAL REVIEW

Wis. Stat. § 227.53 provides for judicial review of a final decision. Several points about starting a case:

1. The petition must be filed in the appropriate county circuit court and served upon the Tax Appeal Commission and the other party (which usually is the Department of Revenue) either in-person, by certified mail, or by courier, within 30 days of this decision if there has been no petition for rehearing or, within 30 days of service of the order that decides a timely petition for rehearing.
2. If a party files a late petition for rehearing, the 30-day period for judicial review starts on the date the Commission issued its original decision to the taxpayer.
3. The 30-day period starts the day after personal service, or the day we mail the decision.
4. The petition for judicial review should name the other party (which is usually the Department of Revenue) as the Respondent, but not the Commission, which is not a party.

For more information about the other requirements for commencing an appeal to the circuit court, you may wish to contact the clerk of the appropriate circuit court or, the Wisconsin Statutes. The website for the courts is *https://wicourts.gov*.

This notice is part of the decision and incorporated therein.