

Georgia Department of Revenue

Income Tax Division

Policy Statement IT-2003-03-28-1

Issue Date: March 28, 2003

Effective for tax years beginning on or after January 1, 2002

RE: Mississippi Income Taxes Withheld on Georgia Residents for Gaming Winnings

Changes to Mississippi Law for Tax Year 2002 Affecting Georgia Residents

The State of Mississippi recently made changes to gaming winnings beginning for the 2002 tax year. Under prior policies, when an individual, including residents of Mississippi and non-residents or part-year residents received a certain amount of money as a pay-out from a Mississippi casino, 5% was automatically withheld from their winnings. This was reflected on Form W-2G. Taxpayers were then required to file a Mississippi income tax return and include these gaming winnings as part of their Mississippi adjusted gross income and also reflect any Mississippi income tax withheld related to these winnings on their return.

However, beginning for the tax year 2002, Mississippi decreased the withholding tax to 3% but will no longer allow any taxpayers (regardless of residency status) to include Mississippi gaming winnings in their adjusted gross income nor any income tax withheld related to these winnings on their Mississippi returns. Furthermore, non-resident taxpayers are prohibited from filing a Mississippi return if their only source of Mississippi income is from gaming winnings. The funds withheld from the gaming winnings are remitted to the State and no refund can be claimed.

Georgia Income Tax Law, O.C.G.A. § 48-7-28, Credit for Taxes Paid to Other States

Under Georgia law, O.C.G.A. § 48-7-28, Georgia residents are allowed a credit for taxes paid to other states. Additionally, instructions in the IT-511 booklet for Line 17 of Form 500 state that "no credit for taxes paid to other state(s) will be allowed unless a copy of the other state(s)' income tax return is enclosed."

The instructions to Mississippi Form 80-100 refer to the withheld funds from gaming winnings as "income tax" but taxpayers are no longer allowed to include Mississippi gaming winnings on a Mississippi income tax return. Therefore, Georgia residents with gaming winnings from Mississippi are prohibited from filing Mississippi income tax returns and have no documentation of the winnings other than their Form W-2G.

Georgia Income Tax Law, O.C.G.A. § 48-7-27(b)(3), Add Back of Other State Income Taxes

Under Georgia law, O.C.G.A. § 48-7-27(b)(3), taxpayers are required to add to taxable income any income taxes imposed by any tax jurisdiction except the State of Georgia to the extent deducted in determining federal taxable income. This includes taxes paid to Mississippi related to gaming winnings in addition to any state income taxes paid to other states. Taxpayers who itemize deductions and have included taxes paid to Mississippi related to gaming winnings should reduce their itemized deductions used in computing their federal taxable income by the Mississippi taxes reflected on Form W-2G.

Mississippi Gaming Winnings

Georgia residents who have received a Form W-2G from a Mississippi casino have historically been considered eligible for the credit paid to other states under O.C.G.A. § 48-7-28. Therefore, in lieu of a Mississippi income tax return they should attach a copy of their Form W-2G which reflects the amount of winnings and the amount of Mississippi income tax withheld. **No credit will be allowed without BOTH a copy of Form W-2G and a copy of Form 1040 including the Schedule A if applicable, attached to the Georgia individual income tax return.**

Exception to Allowable Credit - Gambling Losses Reflected on Schedule A

Internal Revenue Code § 165(d) allows taxpayers to deduct gambling losses up to the amount of their gambling winnings only. The full amount of gambling income must be reported on Page 1 of IRS Form 1040. Any losses reducing this income amount should be reported on Schedule A as an itemized deduction not subject to the 2% rule.

Georgia residents who offset their gambling winnings by taking a deduction on Form 1040 Schedule A for gambling losses are only allowed a portion, if any of the credit for taxes paid to other states. See Examples 1 through 4 below.

Example 1

Taxpayer receives a W-2G from a Mississippi casino for hitting a jackpot which paid out \$20,000. The State of Mississippi withheld 3% or \$600 from her earnings. Her W-2G from the casino reflects \$20,000 of income and \$600 of income taxes withheld. The taxpayer's federal adjusted gross income includes the \$20,000 of income from the casino and consequently it is included in Georgia taxable income. Her Schedule A does not reflect any gambling losses, therefore the full \$20,000 has been included in Georgia taxable income. The taxpayer is allowed to include the full \$20,000 of income and the \$600 of taxes paid to Mississippi in the calculation of credit for taxes paid to other states determined using the worksheet in the IT-511 booklet.

Example 2

Taxpayer receives a W-2G from a Mississippi casino for hitting a jackpot which paid out \$20,000. The State of Mississippi withheld 3% or \$600 from his earnings. His W-2G from the casino reflects \$20,000 of income and \$600 of income taxes withheld. The taxpayer's federal adjusted gross income includes the \$20,000 of income from the casino. However, his Schedule A reflects \$20,000 in gambling losses for the year. Therefore, the \$20,000 has not been included in Georgia taxable income. The taxpayer is not allowed to include the \$20,000 of income or the \$600 of Mississippi income taxes withheld in the calculation of the credit for taxes paid to other states determined using the worksheet in the IT-511 booklet because the income related to the withheld income tax has not been included in Georgia taxable income.

Example 3

Taxpayer receives a W-2G from a Mississippi casino for hitting a jackpot which paid out \$20,000. The State of Mississippi withheld 3% or \$600 from his earnings. His W-2G from the casino reflects \$20,000 of income and \$600 of income taxes withheld. The taxpayer's federal adjusted gross income includes the \$20,000 of income from the casino. However, his Schedule A reflects \$15,000 in gambling losses for the year, resulting in only \$5,000 of the gaming winnings being included in federal taxable income. Therefore, the \$15,000 has not been included in Georgia taxable income. The taxpayer is only allowed to include \$5,000 of income and \$150 of income

taxes paid to Mississippi in the determination of the credit for taxes paid to other states calculated using the worksheet in the IT-511 booklet because only \$5,000 of income has been included in Georgia taxable income. The amount of taxes paid to Mississippi should be prorated and only \$150 of the income taxes withheld should be included on the worksheet used to calculate the credit for taxes paid to other states in the IT-511 booklet. See below for how eligible taxes are determined.

Gaming winnings		\$20,000
Gaming Losses per Schedule A, Line 27		\$15,000
Income included in federal taxable income		\$ 5,000
Percentage of gaming winnings included in federal and Georgia taxable income	$(\$5,000 / \$20,000)$	25%
Amount of taxes eligible to be included on worksheet for taxes paid to other states	$(\$600 \times 25\%)$	\$ 150

Example 4

Taxpayer receives a W-2G from a Mississippi casino for hitting a jackpot which paid out \$20,000. The State of Mississippi withheld 3% or \$600 from her earnings. Her W-2G from the casino reflects \$20,000 of income and \$600 of income taxes withheld. The taxpayer's federal adjusted gross income includes the \$20,000 of income from the casino. The taxpayer does not itemize deductions for federal income tax purposes, therefore the full \$20,000 has been included in her federal adjusted gross income and consequently included in her Georgia taxable income. The taxpayer is allowed to include the full \$20,000 of income and the \$600 of taxes withheld by Mississippi in the calculation of the credit for taxes paid to other states determined using the worksheet in the IT-511 booklet.

Please note: The purpose of a policy statement is to provide interpretive guidance to dealers, the general public and governmental employees. A policy statement is a position statement, which provides interpretation, details, or supplementary information concerning the application of the law. Relevant statute, case law, or rules and regulations, as well as subsequent policy statements may modify or negate any or all of the provisions of any policy statements.