Godfrey-Weidig, Elizabeth

From:	Stuckey, Kelly
Sent:	Thursday, May 18, 2023 5:35 PM
To:	Stuckey, Kelly
Subject:	Lotto notes
Attachments:	1 TREATY excerpt.pdf; 2 TREASURY excerpt.pdf; 3 IRS 515 excerpts.pdf; 4 Expat Tax Article.pdf
Importance:	High

57,804,374.37	Gross
0.30	Tax Rate
17,341,312.31	Tax Amount
40,463,062.06	Net

Jackpot Prize Calculation

Advertised Jackpot Amount		**$95,0(**
Cost of 29 Investments		54,644,3
Initial Payment (excluding excess available)		3,160,0
Cost of 30 Payments (excluding excess available)		57,804,3
Amount Available (applicable sales contribution for the jackpot (1st) prize.)		55,941,0
Difference Between Amount Available and the Cost of 30 Payments		(1,863,2
Additional Sales Contribution (The excess will be divided equally between each jackpot prize share. For the annual payments option, the excess funds will be applied to the initial payment.)		
Total Cost of Prizes (Including Excess Available)		**57,804,3**
Decrease in Authorized Sources	Decrease	(1,863,2

Last read

Pair, Tia 12:33 PM

I reached out with 2 questions to our contact. One about UK tax treaty and one about 5754. She responded that she is finding the best contacts for us. I also found a tool on IRS website about applicable tax rates with treaties. I put in info and it returned as no tax due. Either zero withheld or a refund by filing with the IRS. I'll send you the link.

Notes from Meeting

Black Swan Data-competitor-claimed that the courier got together and buy all combinations. To create confusion. While Swan Data-this group; do the ticket purchase on the ground. Try to do it up and up.

No restriction on how many tickets can buy....can also be another country.

Tax Withholding: if presented a W8Ben subject to tax treaty. Therefore, not subject to federal tax. UK treaty.
IRS only mentions casino games.

Bernard Marantelli-they have done it before. 4 times have asked us not to OR, NM, RI and MI. Starting premise to withhold tax. All 4 agree to not 2 did not. 1 said system would not allow otherwise. Last one, agreed with you but still withhold and asked them to deal with IRS. Were all lottery not casino.

Would IRS even know? Yes, we send a file annually in March of the individual

Troutman and Pepper-law firm. Trout.com

Ticket in safety deposit box in Austin in bank. One participant signed the ticket because they put in hotel safe. They can have original signature person there and then another person actually claim.

Can a Form 5754 form be used for non resident?

Likely to withhold.

Not sure if they will be able to be a business. Since gambling is not a business that one relies on gaming to survive.

5.12.23

Non-Resident Aliens (“NRAs”) Not Subject t

- **NRAs may be subject to 30% withholding and 1042 reporting**

- **Form 5754 is not limited in use to domestic payees -- form is merely a means of collecting the beneficial owner information (confirmed with IRS on May 11, 2023)**

- **Alternatively, ticket claimant may provide Form W-81MY and attach Form W-8BEN/ECI from the beneficial holders**

- **IRS agreed that use of Form 5754 would be simpler**

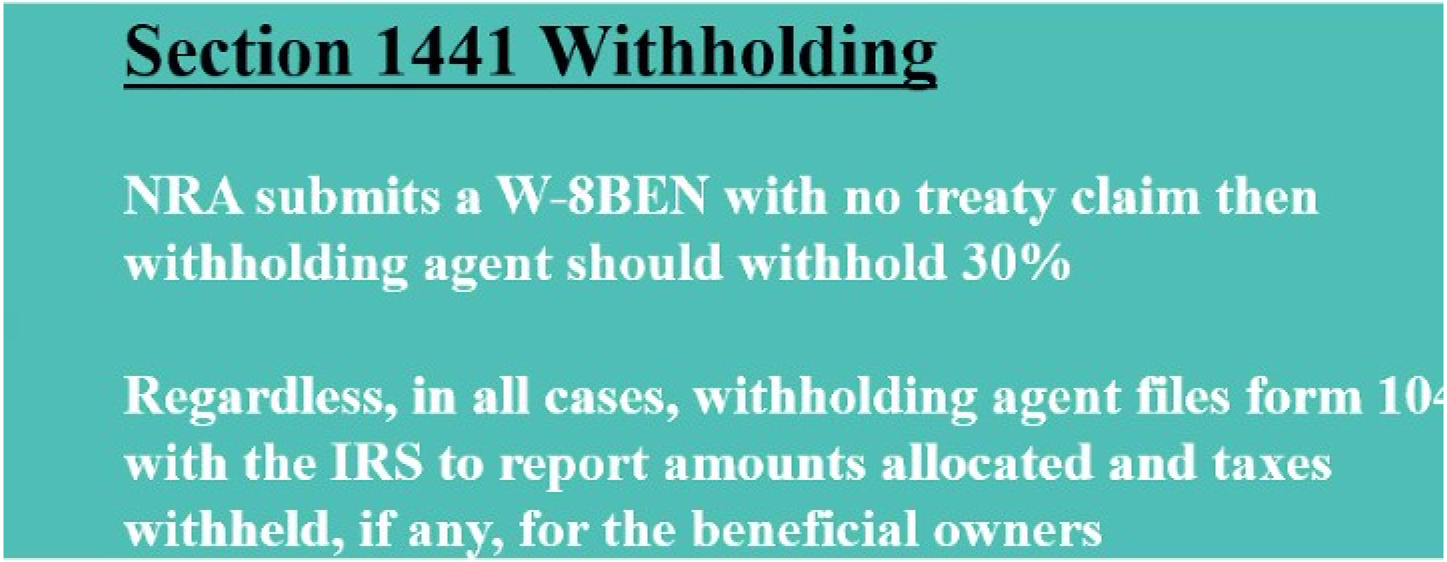
NRAs Not Subject to Withholding Under Sect

Example 1: NRA claims treaty benefits that exempt the payments from withholding. Treas. Reg. 1.1441-6.

- NRA may claim not engaged in a business in the US, and the treaty provides that "other income" is only taxable in his home country (e.g., Art 22 in UI treaty)
- NRA may claim engaged in a business in the US, but does not have a permanent establishment (PE) i the US, and the treaty provides that without a PE th US cannot tax business income (e.g., Art 7 of the UK treaty)
- Withholding agent may rely on this form and not withhold, absent actual knowledge or reason to know of unreliability

3

Regarding the treaties. Does TX have any liability, as long as W8BEN provided, then TX is discharged of this . If IRS decides to audit, then normal audit process. They are doing self declaration.



W8BEN from each person listed on Form 5754.

May call Joan directly to discuss taxes.

No one has tax ID number.

From: Biard, Bob <Bob.Biard@lottery.state.tx.us>
Sent: Sunday, May 7, 2023 4:26 PM
To: Stuckey, Kelly <Kelly.Stuckey@lottery.state.tx.us>
Cc: Mindell, Ryan <Ryan.Mindell@lottery.state.tx.us>
Subject: RE: Lotto Texas Jackpot Winner
Importance: High

Kelly –
I wanted to share what I learned so far before our Zoom call tomorrow morning on the L-T claim. Ryan, feel free to add anything you like.
Attached are four short documents: 1 -an excerpt from the US-UK double taxation treaty, 2 and 3 - excerpts from a US Treasury guidance document and an IRS guidance document that each address gambling winnings (but do not specifically mention lottery prizes), and 4 - an article from a expatriate tax consulting forms on non-resident aliens claiming US gambling winnings (again not specifically referencing lottery prizes).

1. I agree Article 22 of the treaty ("Other Income") is the relevant language, and this is confirmed by the other attachments that say gambling winnings are included in "other income." In paragraph 1 it says "other income" (i.e., income not addressed elsewhere in the treaty) is taxed only in the country where the beneficial owner resides.

Which, absent any other considerations would mean if the winner is a UK resident the income is taxed only in the UK (which may or may not tax lottery prizes).

However, paragraph 2 contains a significant exception to this treatment. It says para. 1 would not apply if the UK resident carries on business in the U.S. "through a permanent establishment situated therein, and the income is attributable to such permanent establishment." **This is a fact question we don't know the answer to and I'm not sure how we can know it with certainty, which is crucial since the IRS document attached (at p. 3) indicates that the TLC would be liable for any required withholding amount that is not paid.** In other words, it seems to me we can't just take their word for it and I'm not aware of how they can prove this to our satisfaction. Maybe there some official form or process they can tell us about.

But the issue of conducting business in the U.S. is not my only concern. There is also a question of whether <u>lottery</u> prizes are included in "other income."

2. The second page of the Treasury guidance attachment also states that "other income" under Section 22 of the Treaty includes income from gambling, again "to the extent derived by persons **<u>not engaged in the trade or business</u>** of dealing in such instruments…."

3. The IRS publication 515, on p. 24 (third page of attachment) again says that "**<u>nonbusiness gambling income</u>** of a non-resident alien playing **<u>blackjack, baccarat, craps, roulette, or big 6 wheel</u> in the United States"** is not subject to withholding. In addition to affirming the requirement that the winnings cannot be from an ongoing business conducted in the US, the list of games the IRS provides does not include lottery and does not say it is an inexhaustive list. This list of six specific casino-type games is repeated on page 38. I would say this suggests the IRS has interpreted the treaty and Treasury documents to limited "other income" from gambling to only certain games. It would have been very easy for the IRS to include lottery and they didn't.

   I want to note that the examples on pp. 40-41 of this document describe facts where the non-resident alien won at a slot machine, and it says slot winnings are not subject to US tax under a treaty with <u>Ireland</u> (and Northern Ireland is included in the US-UK treaty). As a legal matter that is not enough for me to say that lottery winnings are included in the treaty.

   I did a Westlaw search for IRS revenue rulings and didn't find anything on point.

4. This article is from a website for expatriate tax consulting services. Again, it focuses on casino winnings and does not mention lottery. It emphasizes the US trade/business issue, first in the context of whether the US tax rate or a higher 30% tax rate would apply if there is no exemption. And it discusses here what it means for a non-resident alien to engage in a U.S. trade or business, which is one of our issues for determining whether gambling winnings are exempt under the treaty.

   Page two of this document again limits the games where winnings are exempt under a treaty by citing the IRS: blackjack, craps, baccarat, roulette or big six wheel. According to this article there is a process for a winner of gambling income who has a portion of their winnings withheld to petition the IRS for a refund.

<u>Questions I have</u>:

1. Are there other treaties involved or is the UK treaty the only one?
2. Do the claimants have any legal analysis they can share; or, if they don't want to provide a document can they point me to an analysis, court or IRS decision or guidance that would give us assurance that lottery winnings are exempt under the treaty.
3. Even if we get to that comfort level, how can we know the claimants are not engaged in an ongoing gambling business in the U.S.? The TLC is not set up to conduct an independent investigation and even if we did would the TLC want to risk the withholding tax liability if we are wrong.

These are just my initial thoughts based on what I could find since Friday. Obviously the most prudent approach would be for the TLC to withhold an let the claimants seek a refund from the IRS. I recall Kathy saying the agency has an IRS liaison/advocate, and was wondering if that person might be able to help us with this issue?

Let me know if you would like to discuss.
Thanks,
Bob

From: Biard, Bob
Sent: Friday, May 5, 2023 3:15 PM
To: Stuckey, Kelly <Kelly.Stuckey@lottery.state.tx.us>
Cc: Mindell, Ryan <Ryan.Mindell@lottery.state.tx.us>
Subject: RE: Lotto Texas Jackpot Winner
Importance: High

Thanks Kelly. I'll review this, do some research, and get back to you.

Is 10:00 a.m. Monday a good time for our call?
Also, I want to make sure there are no other countries/treaties we need to look at.
Thanks,
Bob

From: Stuckey, Kelly <Kelly.Stuckey@lottery.state.tx.us>
Sent: Friday, May 5, 2023 2:47 PM
To: Biard, Bob <Bob.Biard@lottery.state.tx.us>
Cc: Mindell, Ryan <Ryan.Mindell@lottery.state.tx.us>
Subject: Lotto Texas Jackpot Winner

Bob, in visiting with Ryan, I was asked to do some research on a UK resident claiming a TX Lottery prize. As you know, there are certain countries we have tax treaties with and UK being one of them. Tia and I both have researched and found the attached UK tax treaty. As I read it, I believe lottery winnings would fall under Article 22 "Other Income" and would not be taxed. But there is a lot of "legalese" that I was getting a bit confused with so wanted to get your and/or your team to review as well.

Thanks,
Kelly