

WAGERING TAX AMENDMENTS OF 1970

DECEMBER 30 (legislative day, DECEMBER 28), 1970.—Ordered to be printed

Mr. LONG, from the Committee on Finance,
 submitted the following

REPORT

[To accompany H.R. 322]

The Committee on Finance, to which was referred the bill (H.R. 322) to amend the Internal Revenue Code of 1954 to modify the provisions relating to taxes on wagering to insure the constitutional rights of taxpayers, to facilitate the collection of such taxes, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

I. SUMMARY

This bill, H.R. 322, revises the wagering tax provisions of the tax laws to remove constitutional infirmities in those provisions. The bill increases the occupational taxes from \$50 to \$1,000 for principals and agents; imposes a \$100 occupational tax upon pickup men, employees, and punchboard operators; provides a credit against both the tax on wagers and the occupational tax, in the case of those persons who pay similar taxes to State and local governments; and increases the criminal penalties of existing law.

The Treasury Department and the Justice Department recommend the enactment of this bill.

II. REASONS FOR THE BILL

In January 1968, the Supreme Court, in *Marchetti v. United States* (390 U.S. 39) and *Grosso v. United States* (390 U.S. 63), held that a person may validly refuse to comply with the Federal wagering tax statute by asserting the self-incrimination privilege of the fifth amendment to the Constitution, where complying with the statute could incriminate him. The Court found that persons complying with the wagering taxes had no assurance under existing law that information given to the Internal Revenue Service in connection with such

compliance would not be used against them in criminal proceedings based upon their gambling activities. As a result of the *Marchetti* and *Grosso* cases, the wagering taxes have become largely unenforceable.

A study of this tax by the committee also disclosed that there are several other features of the wagering tax which can be improved.

First, under present law little revenue is collected from the occupational tax. The committee has determined that proper enforcement of these provisions requires significant additional manpower and believes that, in recognition of this fact, the occupational taxes should be substantially increased. The Treasury Department has estimated that these taxes will yield \$20 to \$25 million annually. (It is estimated that, if enforcement of present law had not been impeded by the court decisions referred to above, revenue from the present provisions would be approximately \$6 million annually.)

Second, to avoid pre-empting the States from this field of taxation, the committee concluded that State and local taxes paid by licensed persons under similar provisions in State law should be credited against the amount of the Federal tax liability.

Finally, the committee is concerned that the sanctions under existing law for failure to comply with the wagering tax provisions do not appear to be sufficient in many cases to deter would-be violators, and accordingly, has provided for increased sanctions.

III. EXPLANATION OF PROVISIONS

A. Disclosure of wagering tax information (secs. 2 and 3(a) of the bill and secs. 4423 and 7213 of the code)

The central provisions in the bill are those dealing with the disclosure and use of information pertaining to taxpayer compliance with the wagering taxes. Although existing law (sec. 6103) provides broad limitations on the publicity of income tax returns, no such restrictions exist with respect to returns and other documents related to the wagering taxes. Indeed, prior to the enactment of the Gun Control Act of 1968 (Public Law 90-618), the Internal Revenue Code (sec. 6107) provided for public inspection of the names of all persons paying occupational taxes, including the wagering occupational tax. Although this section was repealed by the 1968 Act, the effect of such repeal is to a large extent ambiguous, since no provision exists in current law forbidding disclosure of wagering tax information. Thus, despite the repeal, existing law may still be questioned under the *Marchetti* and *Grosso* cases.

In order to resolve any such questions, the bill provides that no Treasury Department official or employee may disclose, except in connection with the administration or enforcement of internal revenue taxes, any document or record supplied by a taxpayer in connection with such taxes, or any information come at by the exploitation of any such documents or records. Additionally, the bill provides that certain documents related to the wagering taxes, and information come at by the exploitation of such documents, may not be used against the taxpayer in any criminal proceeding, except in connection with the administration or enforcement of internal revenue taxes.

To insure that Government personnel comply with these nondisclosure provisions, the bill provides (at sec. 7213 of the code) a fine of not more than \$1,000 or imprisonment of not more than one year, or both, for any officer or employee of the United States who violates the wagering tax nondisclosure provisions.

It is expected that these changes in the law will remove any constitutional problems regarding enforcement of the wagering taxes.

B. Rates of tax (sec. 2 of the bill and secs. 4401 through 4414 of the code)

Existing law imposes a 10-percent tax on wagers. Liability for this tax is placed on persons in the business of accepting wagers and on persons who receive wagers for or on behalf of others but who fail to comply with the registration requirements of the occupational tax in that they fail to provide certain information regarding those for whom they are receiving the wagers. The bill makes such persons (referred to as "agents" in the bill) liable if they fail to comply with any of the registration requirements. The bill retains these provisions without any other significant change.

Under existing law, a \$50 annual occupational tax is imposed on persons liable for payment of the tax on wagers and on persons engaged in receiving wagers. These persons, denominated "principals," "agents" and "punchboard operators" under the bill, will continue to be subject to the occupational tax. However, principals and agents will be subject to a \$1,000 tax and punchboard operators will be subject to a \$100 tax. Additional categories of persons not now subject to the tax will be subject to a \$100 annual occupational tax.

These persons include "pickup men" and other "employees" of a gambling enterprise. An individual who is subject to tax under more than one of these categories, is only required to pay one tax, at the highest applicable rate. The bill continues in effect the rule in existing law requiring persons liable for the occupational tax to register with the Internal Revenue Service.

C. Credit for State and local taxes (sec. 2 of the bill and sec. 4425 of the code)

Existing law does not provide for any reduction in the wagering taxes on account of any State or local taxes paid which are analogous to the wagering taxes, nor does it provide any exemption from the wagering taxes for persons liable for similar State or local taxes.¹ The committee, however, believes that relief should be afforded persons liable for the wagering taxes who are also required to pay similar State or local taxes. Accordingly, the bill provides a credit for persons licensed under State or local law to engage in wagering activities, against both the tax on wagers and the occupational tax, for State or local taxes which are similar in nature to the wagering taxes. The bill makes clear that the credit is allowable only for State or local taxes which are actually paid; it also provides an administrative provision under which persons liable for the wagering taxes may deduct from their tax payments the amount of the estimated credit for the State or local taxes.

¹ Also, existing law provides that the payment of Federal wagering taxes does not result in an exemption from State taxes on wagering, or from Federal or State laws prohibiting gambling. The bill continues this rule.

The amount of the credit for any year (July 1 through the following June 30) is the sum of (1) the State and local taxes on wagers placed during that year and (2) the State and local occupational taxes for that year or parts of that year. If the State wagering tax liability for that year exceeds the Federal wagering tax liability for that year, no credit is allowable for the excess. Although the taxpayer is permitted to accrue these State and local taxes, in order to receive the credit he must actually pay the tax not later than the last day provided by the appropriate State or local law for payment of the tax or, if earlier, the last day of the year following the year or portion thereof for which the State or local tax was paid.

For example, assume State X imposes an annual license tax of \$400 for the calendar year 1972 and this tax is payable by December 31, 1971. Half of the State tax, \$200, is to be allocable to the Federal fiscal year July 1, 1971, through June 30, 1972, and to the fiscal year 1973. However, both halves of the State tax must actually have been paid by December 31, 1971.

Assume that State X also imposes a tax on wagers and requires this tax to be paid by the end of the month following the calendar quarter during which the wagers were placed. Under the bill, the taxpayer is to be permitted to credit against his Federal wagering taxes for fiscal 1972 the amount of his State taxes for that year, but only if he has actually paid those taxes by the State due dates.

Such credits are to be allowed against the Federal taxes for any year in the following order: First, against the taxpayer's Federal occupational tax (sec. 4411); second, against the taxpayer's 10-percent wagering tax (sec. 4401); and third, against the occupational taxes of the taxpayer's licensed agents, pickup men, or employees.

If the taxpayer establishes to the satisfaction of the Treasury Department that he reasonably expects to be allowed a credit, then he may pay as a tentative tax the amount of the expected net tax. In the above example, assume that the State tax on wagers is at 4 percent and is expected to amount to a total of \$10,000 for fiscal 1972. The taxpayer can demonstrate, under Treasury regulations and to the satisfaction of the appropriate Internal Revenue Service officials, that he will pay that \$10,000 when due and also will pay the \$400 occupational taxes for calendar 1972 and calendar 1973. The taxpayer will then be entitled to compute his tentative Federal taxes by taking a credit of \$10,400 for fiscal 1972 (State X tax on wagers—\$10,000; July 1–December 31, 1971, portion of State X calendar 1971 occupational tax—\$200; and January 1–June 30, 1972, portion of State X calendar 1972 occupational tax—\$200).

Under the bill, \$1,000 of this credit is to be applied against the taxpayer's Federal occupational tax (assuming he is a principal or agent) and the remaining \$9,400 is to be applied to the taxpayer's Federal tax of \$25,000 on wagers for that year. The amount of the credit will be the same whether or not the taxpayer collected the tax from the bettors.

D. Criminal penalties (sec. 3(b) of the bill and sec. 7262 of the code)

Present law provides three criminal penalties which have application to the wagering tax. The first one relates only to the \$50 occupational tax (that is, any person engaged in the business of accepting

wagers, and persons who receive wagers on his behalf). It provides that anyone who fails to pay this occupational tax is subject to a fine of not less than \$1,000 and not more than \$5,000. Under the definitions of present law (18 U.S.C. 1(2)), violation of this provision constitutes a misdemeanor.

The two other penalties under present law to which violators of the wagering provisions are subject are contained in the general criminal provisions of the Internal Revenue Code. One of these provides that a willful attempt to evade or defeat tax is a felony, which subjects the violator to a fine of not more than \$10,000 or imprisonment for not more than 5 years, or both (sec. 7201). However, it has been held (*Spies v. United States*, 317 U.S. 492 (1943)) that to be liable for this penalty it is not enough for a taxpayer to willfully fail to pay tax, he must have committed an affirmative act in an attempt to evade or defeat tax.

The remaining applicable penalty under existing law provides that a willful failure to pay tax is punishable as a misdemeanor (sec. 7203). This provides a fine of not more than \$10,000 or imprisonment for not more than 1 year, or both. These last two general provisions apply both to the occupational tax and to the tax on wagers.

The committee concluded that the existing penalty structure impedes enforcement of the wagering taxes by not providing penalties commensurate with the seriousness of the crimes involved in nonpayment of wagering taxes. As a result, the bill makes a willful failure to pay the tax on wagers a felony, punishable by a fine of up to \$10,000 (or, if greater, up to 3 times the amount of tax due), or imprisonment for up to 5 years, or both. Failure to pay the tax on wagers without the element of willfulness, is made a misdemeanor, punishable by a fine of up to \$5,000 (or, if greater, up to 2 times the tax due), or imprisonment for up to 1 year, or both.

Parallel penalties are provided in the case of the occupational taxes, except that the maximum fines do not depend on the amount of tax for which the violator is liable. That is, the willful failure to pay the occupational tax is made a felony, punishable by a fine of not more than \$10,000 or imprisonment for not more than 5 years, or both; failure to pay the occupational tax, without the element of willfulness, is made a misdemeanor, punishable by a fine of up to \$5,000, or imprisonment for not more than one year, or both.

A related enforcement provision, appearing in H.R. 322 as introduced, would have provided for immunity from prosecution under certain circumstances. In view of the recent enactment of the "Organized Crime Control Act of 1970" (Public Law 91-452) title II of which revised the law concerning immunity of witnesses, the committee concluded that there was no need for such a provision in this bill.

E. Inspection of books (sec. 2 of the bill and sec. 4423 of the code)

Existing law (sec. 4423) provides that the books of account of any person liable for the wagering tax or the occupational tax may be examined as frequently as may be required for the enforcement of the tax. The bill repeals this provision and, thus, makes applicable the present general provision (sec. 7605(b)) limiting the frequency with which the Government may examine a taxpayer's records. By this

repeal, the committee intends to eliminate the basis for any claim that the wagering taxes subject taxpayers to undue harassment.

F. Effective date (sec. 1 of the bill)

In order to allow for the orderly implementation of the bill's provisions, the bill provides for an effective date on the first day of the third month which begins after the date of enactment.

To eliminate the possibility of any constitutional infirmity resulting from a person being liable to pay an occupational tax under both the old and the new law with respect to the same year, the bill provides that a person who paid the occupational tax provided by existing law for the year ending June 30, 1971, and registered under existing law for this year, is not required to pay any additional tax or again register for this year.

IV. CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman) :

INTERNAL REVENUE CODE OF 1954

[CHAPTER 35—TAXES ON WAGERING

- [SUBCHAPTER A. Tax on wagers.
- [SUBCHAPTER B. Occupational tax.
- [SUBCHAPTER C. Miscellaneous provisions.

[Subchapter A—Tax on Wagers

- [SUBCHAPTER A. Tax on wagers.
- [Sec. 4402. Exemptions.
- [Sec. 4403. Record requirements.
- [Sec. 4404. Territorial extent.
- [Sec. 4405. Cross references.

[SEC. 4401. IMPOSITION OF TAX.

[(a) WAGERS.—There shall be imposed on wagers, as defined in section 4421, an excise tax equal to 10 percent of the amount thereof.

[(b) AMOUNT OF WAGER.—In determining the amount of any wager for the purposes of this subchapter, all charges incident to the placing of such wager shall be included; except that if the taxpayer establishes, in accordance with regulations prescribed by the Secretary or his delegate, that an amount equal to the tax imposed by this subchapter has been collected as a separate charge from the person placing such wager, the amount so collected shall be excluded.

[(c) PERSONS LIABLE FOR TAX.—Each person who is engaged in the business of accepting wagers shall be liable for and shall pay the tax under this subchapter on all wagers placed with him. Each person who conducts any wagering pool or lottery shall be liable for and shall pay the tax under this subchapter on all wagers placed in such pool or lottery. Any person required to register under section 4412 who receives wagers for or on behalf of another person without having

registered under section 4412 the name and place of residence of such other person shall be liable for and shall pay the tax under this subchapter on all such wagers received by him.

[SEC. 4402. EXEMPTIONS.

[No tax shall be imposed by this subchapter—

[(1) PARIMUTUELS.—On any wager placed with, or on any wager placed in a wagering pool conducted by, a parimutuel wagering enterprise licensed under State law,

[(2) COIN-OPERATED DEVICES.—On any wager placed in a coin-operated device with respect to which an occupational tax is imposed by section 4461, or on any amount paid, in lieu of inserting a coin, token, or similar object, to operate a device described in section 4462(a) (2), if an occupational tax is imposed with respect to such device by section 4461, or

[(3) STATE-CONDUCTED SWEEPSTAKES.—On any wager placed in a sweepstakes, wagering pool, or lottery—

[(A) which is conducted by an agency of a State acting under authority of State law, and

[(B) the ultimate winners in which are determined by the results of a horse race,

but only if such wager is placed with the State agency conducting such sweepstakes, wagering pool, or lottery, or with its authorized employees or agents.

[SEC. 4403. RECORD REQUIREMENTS.

[Each person liable for tax under this subchapter shall keep a daily record showing the gross amount of all wagers on which he is so liable, in addition to all other records required pursuant to section 6001(a).

[SEC. 4404. TERRITORIAL EXTENT.

[The tax imposed by this subchapter shall apply only to wagers

[(1) accepted in the United States, or

[(2) placed by a person who is in the United States

[(A) with a person who is a citizen or resident of the United States, or

[(B) in a wagering pool or lottery conducted by a person who is a citizen or resident of the United States.

[SEC. 4405. CROSS REFERENCES.

[For penalties and other administrative provisions applicable to this subchapter, see sections 4421 to 4423, inclusive; and subtitle F.

Subchapter B—Occupational Tax

[Sec. 4411. Imposition of tax.

[Sec. 4412. Registration.

[Sec. 4413. Certain provisions made applicable.

[Sec. 4414. Cross references.

[SEC. 4411. IMPOSITION OF TAX.

[There shall be imposed a special tax of \$50 per year to be paid by each person who is liable for tax under section 4401 or who is engaged in receiving wagers for or on behalf of any person so liable.

[SEC. 4412. REGISTRATION.

[(a) REQUIREMENT.—Each person required to pay a special tax under this subchapter shall register with the official in charge of the internal revenue district—

[(1) his name and place of residence;

[(2) if he is liable for tax under subchapter A, each place of business where the activity which makes his so liable is carried on, and the name and place of residence of each person who is engaged in receiving wagers for him or on his behalf; and

[(3) if he is engaged in receiving wagers for or on behalf of any person liable for tax under subchapter A, the name and place of residence of each such person.

[(b) FIRM OR COMPANY.—Where subsection (a) requires the name and place of residence of a firm or company to be registered, the names and places of residence of the several persons constituting the firm or company shall be registered.

[(c) SUPPLEMENTAL INFORMATION.—In accordance with regulations prescribed by the Secretary, he or his delegate may require from time to time such supplemental information from any person required to register under this section as may be needful to the enforcement of this chapter.

[SEC. 4413. CERTAIN PROVISIONS MADE APPLICABLE.

[Sections 4901, 4902, 4904, 4905, and 4906 shall extend to and apply to the special tax imposed by this subchapter and to the persons upon whom it is imposed, and for that purpose any activity which makes a person liable for special tax under this subchapter shall be considered to be a business or occupation referred to in such sections. No other provision of sections 4901 to 4907, inclusive, shall so extend or apply.

[SEC. 4414. CROSS REFERENCES.

[For penalties and other general and administrative provisions applicable to this subchapter, see sections 4421 to 4423, inclusive; and subtitle F.

[Subchapter C—Miscellaneous Provisions

[Sec. 4421. Definitions.

[Sec. 4422. Applicability of federal and state laws.

[Sec. 4423. Inspection of books.

[SEC. 4421. DEFINITIONS.

[For purposes of this chapter—

[(1) WAGER.—The term “wager” means—

[(A) any wager with respect to a sports event or a contest placed with a person engaged in the business of accepting such wagers,

[(B) any wager placed in a wagering pool with respect to a sports event or a contest, if such pool is conducted for profit, and

[(C) any wager placed in a lottery conducted for profit.

[(2) LOTTERY.—The term “lottery” includes the numbers game, policy, and similar types of wagering. The term does not include—

[(A) any game of a type in which usually

[(i) the wagers are placed.

- [(ii) the winners are determined, and
- [(iii) the distribution of prizes or other property is made, in the presence of all persons placing wagers in such game, and
- [(B) any drawing conducted by an organization exempt from tax under sections 501 and 521, if no part of the net proceeds derived from such drawing inures to the benefit of any private shareholder or individual.

[SEC. 4422. APPLICABILITY OF FEDERAL AND STATE LAWS.

[The payment of any tax imposed by this chapter with respect to any activity shall not exempt any person from any penalty provided by a law of the United States or of any State for engaging in the same activity, nor shall the payment of any such tax prohibit any State from placing a tax on the same activity for State or other purposes.]

[SEC. 4423. INSPECTION OF BOOKS.

[Notwithstanding section 7605(b), the books of account of any person liable for tax under this chapter may be examined and inspected as frequently as may be needful to the enforcement of this chapter.]

CHAPTER 35—TAXES ON WAGERING

SUBCHAPTER A. TAX ON WAGERS.

SUBCHAPTER B. OCCUPATIONAL TAXES.

SUBCHAPTER C. MISCELLANEOUS PROVISIONS.

Subchapter A—Tax on Wagers

Sec. 4401. Imposition of tax.

Sec. 4402. Cross references.

SEC. 4401. IMPOSITION OF TAX.

(a) *WAGERS.*—There is hereby imposed on wagers (as defined in section 4421) an excise tax equal to 10 percent of the amount thereof.

(b) *AMOUNT OF WAGER.*—In determining the amount of any wager for purposes of this subchapter, all charges incident to the placing of such wager shall be included; except that if the taxpayer establishes, in accordance with regulations prescribed by the Secretary or his delegate, that an amount equal to the tax imposed by this subchapter has been collected as a separate charge from the person placing such wager, the amount so collected shall be excluded.

(c) *PERSONS LIABLE FOR TAX.*—The following persons shall be liable for the excise tax imposed by this subchapter:

(1) *PRINCIPALS AND PUNCHBOARD OPERATORS.*—Each person who is a principal or a punchboard operator (as defined in section 4421) shall be liable for and shall pay the tax under this subchapter on all wagers placed with him or in a pool or lottery conducted by him.

(2) *AGENTS.*—Each person who is an agent (as defined in section 4421) and who fails to register under section 4412 shall be liable for and shall pay the tax imposed by this subchapter on all wagers received by him.

SEC. 4402. CROSS REFERENCES.

For penalties and other administrative provisions applicable to this subchapter, see sections 4421 to 4425, inclusive, and subtitle F.

Subchapter B—Occupational Taxes

- Sec. 4411. Imposition of taxes.
Sec. 4412. Registration.
Sec. 4413. Certain provisions made applicable.
Sec. 4414. Cross references.*

SEC. 4411. IMPOSITION OF TAXES.

(a) **PERSONS LIABLE FOR TAX.**—*There is hereby imposed—*

(1) **PRINCIPALS AND AGENTS.**—*A special tax of \$1,000 per year to be paid by each person who is a principal or an agent.*

(2) **PICKUP MEN, EMPLOYEES, AND PUNCHBOARD OPERATORS.**—*A special tax of \$100 per year to be paid by each person who is a pickup man, an employee, or a punchboard operator.*

(b) **LIMITATION.**—*Any person who, but for this subsection, would be subject to a special tax under both paragraphs (1) and (2) of subsection (a), shall be liable only for the tax imposed by paragraph (1).*

SEC. 4412. REGISTRATION.

(a) **REGISTRATION REQUIREMENTS.**—*Each principal, agent, pickup man, employee, and punchboard operator shall register with the official in charge of the internal revenue district in which such person is principally engaged in the activity which makes him liable for tax under this subchapter. The form of the registration and the information to be provided by such person shall be prescribed by the Secretary or his delegate in such regulations as may be necessary to carry out the purposes of this chapter.*

(b) **FIRM OR COMPANY.**—*Where under subsection (a) the name and place of residence of a firm or company is required to be provided, the names and places of residence of the several persons constituting the firm or company shall be provided.*

(c) **SUPPLEMENTAL INFORMATION.**—*The Secretary or his delegate may, in accordance with regulations prescribed by him, require from time to time such supplemental information from any person required to register under this section as may be needed for the enforcement of this chapter.*

SEC. 4413. CERTAIN PROVISIONS MADE APPLICABLE

Sections 4901, 4902, 4904, 4905, and 4906 shall extend to and apply to the special taxes imposed by this subchapter and to the persons upon whom they are imposed, and for that purpose any activity which makes a person liable for a special tax under this subchapter shall be considered to be a business or occupation referred to in such sections. No other provision of sections 4901 to 4907, inclusive, shall so extend or apply.

SEC. 4414. CROSS REFERENCES.

For penalties and other administrative provisions applicable to this subchapter, see sections 4421 to 4425, inclusive, and subtitle F.

Subchapter C—Miscellaneous Provisions

Sec. 4421. Definitions.

Sec. 4422. Applicability of Federal and State laws.

Sec. 4423. Disclosure of wagering tax information.

Sec. 4424. Territorial extent.

Sec. 4425. Credit for State and local taxes paid by licensed persons.

SEC. 4421. DEFINITIONS.

(a) **WAGER.**—For purposes of this chapter—

(1) **IN GENERAL.**—The term “wager” means—

(A) any wager with respect to a sports event or a contest placed with a person engaged in the business of accepting such wagers,

(B) any wager placed in a wagering pool with respect to a sports event or a contest, if such pool is conducted for profit, and

(C) any wager placed in a lottery conducted for profit.

(2) **EXCEPTIONS.**—The term “wager” does not include—

(A) any wager placed with, or any wager placed in a wagering pool conducted by, a parimutuel wagering enterprise licensed under State law,

(B) any wager placed in a coin-operated device with respect to which an occupational tax is imposed by section 4461, or any amount paid in lieu of inserting a coin, token, or similar object, to operate a device described in section 4462(a)(2), if an occupational tax is imposed with respect to such device by section 4461, or

(C) any wager placed in a sweepstakes, wagering pool, or lottery—

(i) which is conducted by an agency of a State acting under authority of State laws, and

(ii) the ultimate winners in which are determined by the results of a horserace,

but only if such wager is placed with the State agency conducting such sweepstakes, wagering pool, or lottery, or with its authorized employees or agents.

(b) **LOTTERY.**—For purposes of this chapter.—

(1) **IN GENERAL.**—The term “lottery” includes the numbers game, policy, and similar types of wagering.

(2) **EXCEPTIONS.**—The term “lottery” does not include—

(A) any game of a type in which usually—

(i) the wagers are placed,

(ii) the winners are determined, and

(iii) the distribution of prizes or other property is made,

in the presence of all persons placing wagers in such game; and

(B) any drawing conducted by an organization exempt from tax under section 501 or 521, if no part of the net proceeds derived from such drawing inures to the benefit of any private shareholder or individual.

(c) **PRINCIPAL.**—For purposes of this chapter, the term “principal” means any person (other than a punchboard operator) who is engaged

in the business of accepting wagers or who conducts any wagering pool or lottery.

(d) **AGENT.**—For purposes of this chapter, the term “agent” means any person who is engaged in receiving wagers for or on behalf of a principal.

(e) **PICKUP MAN.**—For purposes of this chapter, the term “pickup man” means any person who knowingly is engaged in transmitting in any manner wagers, or information, records, or payments relating to wagers, between any principal, agent, pickup man or employee and any other principal, agent, pickup man, or employee.

(f) **EMPLOYEE.**—For purposes of this chapter, the term “employee” means any person (other than an agent or pickup man) who knowingly is employed to assist in any capacity in an activity which makes another person liable for special tax as a principal, agent, pickup man, or punchboard operator.

(g) **PUNCHBOARD OPERATOR.**—The term “punchboard operator” means any person who accepts wagers only in the form of chances on a punchboard, “five card draw game,” or similar gaming device for profit, on his own behalf.

SEC. 4422. APPLICABILITY OF FEDERAL AND STATE LAWS.

The payment of any tax imposed by this chapter with respect to any activity shall not exempt any person from any penalty provided by a law of the United States or of any State for engaging in the same activity, nor shall the payment of any such tax prohibit any State from placing a tax on the same activity for State or other purposes.

SEC. 4423. DISCLOSURE OF WAGERING TAX INFORMATION.

(a) **GENERAL RULE.**—Except as otherwise provided in this section, neither the Secretary or his delegate nor any other officer or employee of the Treasury Department may divulge or make known in any manner whatever to any person—

(1) any original, copy, or abstract of any return, payment, or registration made pursuant to this chapter,

(2) any record required for making any such return, payment, or registration, which the Secretary or his delegate is permitted by the taxpayer to examine or which is produced pursuant to section 7602, or

(3) any information come at by the exploitation of any such return, payment, registration, or record.

(b) **PERMISSIBLE DISCLOSURE.**—A disclosure otherwise prohibited by subsection (a) may be made in connection with the administration or civil or criminal enforcement of any tax imposed by this title. However, any document or information so disclosed may not be—

(1) divulged or made known in any manner whatever by any officer or employee of the United States to any person except in connection with the administration or civil or criminal enforcement of this title, nor

(2) used, directly or indirectly, in any criminal prosecution for any offense occurring before the effective date of the Wagering Tax Amendments of 1970.

(c) *USE OF DOCUMENTS POSSESSED BY TAXPAYER.*—Except in connection with the administration or civil or criminal enforcement of any tax imposed by this title—

(1) any stamp denoting payment of the special tax under this chapter,

(2) any original, copy, or abstract possessed by a taxpayer of any return, payment, or registration made by such taxpayer pursuant to this chapter, and

(3) any information come at by the exploitation of any such document,

shall not be used against such taxpayer in any criminal proceeding.

(d) *INSPECTION BY COMMITTEES OF CONGRESS.*—Section 6103(d) shall apply with respect to any return, payment, or registration made pursuant to this chapter.

SEC. 4424. TERRITORIAL EXTENT.

The taxes imposed by this chapter shall apply only in the case of—

“(1) wagers accepted in the United States, and

“(2) wagers placed by a person who is in the United States—

(A) with a person who is a citizen or resident of the United States, or

(B) in a wagering pool or lottery conducted by a person who is a citizen or resident of the United States.

SEC. 4425. CREDIT FOR STATE AND LOCAL TAXES PAID BY LICENSED PERSONS.

(a) *GENERAL RULE.*—There shall be allowed as a credit against the taxes imposed by sections 4401 and 4411, in the order provided by subsection (b), the sum of—

(1) the taxes paid or accrued by a licensed person with respect to wagers placed with him, or in a pool or lottery conducted by him, during any year under a law of a State or political subdivision thereof which imposes an excise tax or similar tax with respect to wagers, and

(2) the taxes and fees paid or accrued by a licensed person for any year (or portion thereof) under a law of a State or political subdivision which imposes an occupational tax, license fee, or similar tax or fee on an activity which makes such person liable for payment of a special tax under section 4411.

(b) *ORDER.*—The credit allowable under subsection (a) for taxes and fees paid or accrued by a licensed person for any year shall be allowed—

(1) against the tax imposed by section 4411 on such person for such year,

(2) if such credit exceeds the tax imposed by section 4411 of such person for such year, against the taxes imposed by section 4401 on wagers placed with such person, or in a pool or lottery conducted by such person, during such year, and

(3) if such credit exceeds the taxes described in paragraphs (1) and (2) for such year, in such amounts as such person may designate under regulations prescribed by the Secretary or his delegate, against the tax imposed by section 4411 for such year on

licensed persons who are agents, pickup men, or employees of such person.

(c) *LIMITATION.*—No credit shall be allowed under this section for any tax or fee imposed under a law of a State or political subdivision unless such tax or fee is paid not later than the earlier of—

- (1) the last day provided by such law for payment, or
- (2) the last day of the year following the year (or portion thereof) for which such tax or fee was imposed.

(d) *PAYMENT OF TENTATIVE TAXES.*—Any licensed person who establishes to the satisfaction of the Secretary or his delegate that, for any year, he reasonably expects to be allowed a credit under this section with respect to the taxes for which he is liable under sections 4401 and 4411, may elect, under regulations prescribed by the Secretary or his delegate, to pay tentative taxes equal to the amount of such taxes reduced by the amount of the credit reasonably expected under this section for such year. Payment of such tentative taxes for any year shall not relieve such person from payment of the liability for the taxes imposed for such year by sections 4401 and 4411, reduced by the credits allowed under this section, both determined as of the close of such year.

(e) *DEFINITIONS.*—For purposes of this section—

(1) The term “licensed person” means a person who (A) is licensed under the laws of a State or a political subdivision thereof to engage in one or more activities with respect to wagers, and (B) solely by reason of such activities, is liable for payment of a special tax under section 4411.

(2) The term “year” means the one-year period beginning on July 1, except that, in the case of the period in which falls the date of the enactment of the Wagering Tax Amendments of 1970, such term means the period beginning on the first day of the third month which begins after such date and ending on June 30 following such date.

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CHAPTER 61—INFORMATION AND RETURNS

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Subchapter B—Miscellaneous Provisions

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SEC. 6110. CROSS REFERENCES.

- (1) For reports of Secretary of Agriculture concerning cotton futures, see section 4876.
- (2) For inspection of returns, order forms, and prescriptions concerning narcotics, see section 4773.
- (3) For inspection of returns, order forms, and prescriptions concerning marihuana, see section 4773.
- (4) For authority of Secretary or his delegate to furnish list of special taxpayers, see section 4775.
- (5) For inspection of records, returns, etc., concerning gasoline or lubricating oils, see section 4102.
- (6) For prohibition on disclosure of wagering tax information, see section 4423.

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**CHAPTER 75—CRIMES, OTHER OFFENSES,
AND FORFEITURES**

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Subchapter A—Crimes

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SEC. 7203. WILLFUL FAILURE TO FILE RETURN, SUPPLY INFORMATION, OR PAY TAX.

Any person required under this title to pay any estimated tax or tax (*other than a tax imposed by chapter 35*), or required by this title or by regulations made under authority thereof to make a return (other than a return required under authority of section 6015), keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$10,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution.

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SEC. 7213. UNAUTHORIZED DISCLOSURE OF INFORMATION.

(a) **INCOME RETURNS.—**

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(d) **DISCLOSURES BY CERTAIN DELEGATES OF SECRETARY.—**All provisions of law relating to the disclosure of information, and all provisions of law relating to penalties for unauthorized disclosure of information, which are applicable in respect to any function under this title when performed by an officer or employee of the Treasury Department are likewise applicable in respect of such function when performed by any person who is a "delegate" within the meaning of section 7701(a)(12)(B).

(e) **WAGERING TAX RETURNS.—***Any officer or employee of the United States who violates section 4423 shall be guilty of misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or imprisoned not more than 1 year, or both, together with the cost of prosecution; and the offender shall be dismissed from office or discharged from employment.*

[(e)] (f) CROSS REFERENCES.—

(1) **RETURNS OF FEDERAL UNEMPLOYMENT TAX.—**

For special provisions applicable to returns of tax under chapter 23 (relating to Federal Unemployment Tax), see section 6106.

(2) **PENALTIES FOR DISCLOSURE OF CONFIDENTIAL INFORMATION.—**

For penalties for disclosure of confidential information by any officer or employee of the United States or any department or agency thereof, see 18 U.S.C. 1905.

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Subchapter B—Other Offenses

Sec. 7261. Representation that retailers' excise tax is excluded from price of article.

Sec. 7262. Violation of [occupational tax laws relating to wagering—failure to pay special tax] *wagering excise and occupational tax laws.*

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[SEC. 7262. VIOLATION OF OCCUPATIONAL TAX LAWS RELATING TO WAGERING—FAILURE TO PAY SPECIAL TAX.

[Any person who does any act which makes him liable for special tax under subchapter B of chapter 35 without having paid such tax, shall, besides being liable to the payment of the tax, be fined not less than \$1,000 and not more than \$5,000.]

SEC. 7262. VIOLATION OF WAGERING EXCISE AND OCCUPATIONAL TAX LAWS.

(a) *WILLFUL FAILURE TO PAY EXCISE TAX.*—Any person required to pay the tax imposed under subchapter A of chapter 35 who willfully fails to pay such tax at the time or times required by law or regulations shall, in addition to being liable for the payment of the tax, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or up to treble the amount of the tax with respect to which the failure occurred, whichever is greater, or imprisoned not more than 5 years, or both, together with the costs of prosecution.

(b) *FAILURE TO PAY EXCISE TAX.*—Any person required to pay the tax imposed under subchapter A of chapter 35 who fails to pay such tax at the time or times required by law or regulations shall, in addition to being liable for the payment of the tax, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$5,000 or up to double the amount of the tax with respect to which the failure occurred, whichever is greater, or imprisoned not more than 1 year, or both, together with the costs of prosecution.

(c) *WILLFUL FAILURE TO PAY OCCUPATIONAL TAX.*—Any person required to pay a special tax imposed under subchapter B of chapter 35 who willfully fails to pay such tax at the time or times required by law or regulations shall, in addition to being liable for the payment of the tax, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution.

(d) *DOING ANY ACT WITHOUT HAVING PAID OCCUPATIONAL TAX.*—Any person who does any act which makes him liable for payment of the special tax imposed under subchapter B of chapter 35 without having paid such tax shall, in addition to being liable for the payment of the tax, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$5,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution.

CHAPTER 78—DISCOVERY OF LIABILITY AND ENFORCEMENT OF TITLE

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Subchapter A—Examination and Inspection

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SEC. 7609. CROSS REFERENCES.

(a) INSPECTION OF BOOKS, PAPERS, RECORDS, OR OTHER DATA.—
For inspection of books, papers, records, or other data in the
case of—

(1) Wholesale dealers in oleomargarine, see section 4597.

(2) Wholesale dealers in process or renovated butter or
adulterated butter, see section 4815(b).

(3) Opium, opiates, and coca leaves, see sections 4702(a),
4705, 4721, and 4773.

(4) Marihuana, see sections 4742, 4753 (b), and 4773.

[(5) Wagering, see section 4423.]

[(6)] (5) Alcohol, tobacco, and firearms taxes, see sub-
title E.

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