

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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KAREN DOMBROWSKI,

Petitioner-Appellee,

v

DEPARTMENT OF TREASURY,

Respondent-Appellant.

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UNPUBLISHED  
October 21, 2014

No. 316888  
Tax Tribunal  
LC No. 00-431549

Before: METER, P.J., and WHITBECK and RIORDAN, JJ.

PER CURIAM.

Respondent, the Department of Treasury (the Department), appeals as of right the Michigan Tax Tribunal's determination that petitioner, Karen Dombrowski, was a professional gambler during the tax years 2008 through 2010. We affirm.

**I. FACTS**

**A. BACKGROUND FACTS**

Dombrowski testified that she was a professional gambler until October 2012 and that gambling was her full-time occupation. According to Dombrowski, she would observe slot machines to determine whether they were likely to "hit," and then play the machines. She could spend up to 16 hours playing machines a day, and then simply observe them the next. Dombrowski spent two or four days a week at the casino for an average of 12 hours a day. She relied on her yearly win/loss statements she received from the casinos rather than on a record of her daily gambling activity. Dombrowski admitted that the statements did not track all of her activity because she did not always use her player's card, which tracks a player's playing activity and accumulation of loyalty points. Dombrowski only personally recorded wins of \$1,200 or more, and she admitted that she kept incomplete records.

Maria Salmons, Dombrowski's friend, testified that Dombrowski was a professional gambler. According to Salmons, she visited the casinos with Dombrowski "on a regular basis" and "better than 40 weeks out of the year" for two-, five-, or ten-hour sessions, but Salmons did not accompany Dombrowski on all of Dombrowski's visits. According to Salmons, Dombrowski did not always use her player's card. Salmons indicated that Dombrowski would also visit the casinos "to check on the progressive machines" as a form of business research.

Lorraine Dombrowski, Dombrowski's mother, testified that gambling was Dombrowski's only job and principle source of income. According to Lorraine Dombrowski, she accompanied Dombrowski to the casino to observe progressive slot machines. Lorraine Dombrowski would drive separately because Dombrowski would stay later than Lorraine Dombrowski would.

Richard Herbert, a Certified Professional Accountant, testified that he prepared Dombrowski's income tax returns. Herber testified that Dombrowski gambled for more than 40 hours a day, five days a week, all year long, in an attempt to make a profit. Documents recording Dombrowski's winnings and losses from three casinos—Motor City Casino, MGM Grand, and Greektown Casino—provided the basis for Dombrowski's income and loss statements. Herbert testified that only casual gamblers keep daily records, while professional gamblers simply record their total wins and losses.

Sara Pierson, an attorney and Certified Professional Accountant with the Department, testified that keeping records of activities is an important part of establishing a trade or business. Pierson opined that Dombrowski's records were insufficient under Michigan law. According to Pierson, the Department does not view slot machine gambling as a trade or business because it does not require skill.

## B. PROCEDURAL HISTORY

On October and November 2011, the Department notified Dombrowski that it intended to assess \$164,482 in taxes due for 2008, \$175,092 in taxes due for 2009, and \$7,103 in taxes due for 2010. The Department contended that Dombrowski was not entitled to deduct her gambling losses because she was not operating a trade or business. Dombrowski contended that she was entitled to deduct her losses because she was engaged in gambling as a trade or business.

On June 5, 2013, the Tax Tribunal issued its opinion. After an extensive review of the documents and testimony, the Tribunal found credible Dombrowski's testimony that she engaged in full time observation of and participation in slot machines. The Tribunal found that Dombrowski had no income or employment outside of gambling. It found that Dombrowski was not engaging in gambling as a hobby or amusement. However, the Tribunal found that the documentary evidence did not indicate how many days she did in fact visit the casinos because she spent part of her time observing. On the basis of Dombrowski's player activity cards, the Tribunal determined that Dombrowski gambled at casinos an average of 8.4 days a month for 10 hours a visit, and therefore spent an average of 20 hours a week gambling in the casinos.

Concerning Dombrowski's failure to keep a daily logs, the Tribunal concluded that Dombrowski relied on erroneous advice that only casual gamblers keep daily logs of gambling activity. It found that Dombrowski instead relied on the casinos' statements and estimate reports. The Tribunal found that Dombrowski "did have a legitimate profit objective" and that her failure to keep accurate records did not undermine her claim to be a professional gambler.

Considering *Comm’r of Internal Revenue v Groetzinger*,<sup>1</sup> the Tribunal concluded that Dombrowski was engaged in the trade or business of gambling. The Tribunal concluded that skill was not a requirement to be a professional gambler. The Tribunal instead focused on whether Dombrowski pursued gambling for the production of income and for a livelihood. Concluding that Dombrowski did so, the Tribunal cancelled Dombrowski’s tax assessments for years 2008, 2009, and 2010. The Department now appeals.

## II. DOMBROWSKI’S TAX DEDUCTIONS AS A PROFESSIONAL GAMBLER

### A. STANDARD OF REVIEW

This Court’s review of a decision by the Tax Tribunal is limited.<sup>2</sup> We must accept the Tax Tribunal’s factual findings if “competent, material, and substantial evidence on the record” supports them.<sup>3</sup> Substantial evidence supports the Tax Tribunal’s findings if a reasonable person would accept the evidence as sufficient to support the conclusion.<sup>4</sup> Substantial evidence “may be substantially less than a preponderance.”<sup>5</sup>

This Court may review whether the Tribunal “made an error of law or adopted a wrong principle.”<sup>6</sup> We review de novo whether the Tribunal made an error of law or adopted a wrong principle.<sup>7</sup>

### B. TRADE OR BUSINESS OF GAMBLING

#### 1. LEGAL STANDARDS

The Michigan Income Tax Act (the Act) indicates that, subject to exceptions that do not apply in this case, “income subject to tax [is] the same as taxable income defined and applicable to the subject taxpayer in the internal revenue code, [26 USC 1 *et seq.*].”<sup>8</sup> The Act defines “taxable income” as “adjusted gross income as defined in the internal revenue code.”<sup>9</sup> The Internal Revenue Code defines adjusted gross income as gross income minus specific

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<sup>1</sup> *Comm’r of Internal Revenue v Groetzinger*, 480 US 23; 107 S Ct 980; 94 L Ed 2d 25 (1987).

<sup>2</sup> *Michigan Props, LLC v Meridian Twp*, 491 Mich 518, 527; 817 NW2d 548 (2012).

<sup>3</sup> Const 1963, art 6, § 28. See also *Michigan Props, LLC*, 491 Mich at 527.

<sup>4</sup> *In re Payne*, 444 Mich 679, 692; 514 NW2d 121 (1994); *Wayne Co v Mich State Tax Comm*, 261 Mich App 174, 186-187; 682 NW2d 100 (2004).

<sup>5</sup> *In re Payne*, 444 Mich at 692; *Wayne Co*, 261 Mich App at 186-187.

<sup>6</sup> *Michigan Props, LLC*, 491 Mich at 527-528.

<sup>7</sup> *Credit Acceptance Corp v Dep’t of Treasury*, 236 Mich App 478, 482; 601 NW2d 109 (1999).

<sup>8</sup> MCL 206.2(3).

<sup>9</sup> MCL 206.30(1).

deductions.<sup>10</sup> The Internal Revenue Code specifically allows taxpayers to deduct trade or business losses.<sup>11</sup>

Professional gamblers may be engaged in a trade or business for the purposes of the Internal Revenue Code.<sup>12</sup> Professional gamblers use Schedule C, Form 1040, to report business income or losses from gambling.<sup>13</sup> Whether a particular gambler is a professional gambler “requires an examination of the facts in each case.”<sup>14</sup> The taxpayer is engaged in a trade or business as a professional gambler if he or she is “involved in the activity with continuity and regularity and . . . the taxpayer’s primary purpose of engaging in the activity must be for income or profit.”<sup>15</sup>

## 2. APPLYING THE STANDARDS

The Department contends that the Tribunal erred when it found that Dombrowski was a professional gambler because (1) she did not gamble with sufficient frequency and regularity, (2) she did not keep adequate business records, and (3) slot machine gambling does not require skill. We conclude that substantial evidence supported the Tribunal’s finding that Dombrowski was a professional gambler.

First, the Department contends that, according to the casinos’ records, Dombrowski only spent an average of twenty hours a week gambling. In *Groetzing*, the United States Supreme Court declined to formulate a specific test for whether a gambler is engaged in a trade or business.<sup>16</sup> Rather, the Supreme Court indicated that the taxpayer’s status depends on an examination of the entire case.<sup>17</sup>

Here, Dombrowski testified that she gambled full-time and spent an average of 48 hours a week at casinos. Salmons also testified that Dombrowski spent more than 40 hours a week at casinos. The Tribunal found Dombrowski and Salmons to be credible witnesses. The credibility

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<sup>10</sup> 26 USC 62(a).

<sup>11</sup> 26 USC 62(a)(1).

<sup>12</sup> *Groetzing*, 480 US at 36.

<sup>13</sup> See *Valenti v Comm’r of Internal Revenue*, unpublished memorandum opinion of the United States Tax Court, issued October 4, 1994 (Docket No. 12836-92).

<sup>14</sup> *Groetzing*, 480 US at 36 (quotation marks and citation omitted).

<sup>15</sup> *Id.* at 35.

<sup>16</sup> *Id.* at 36.

<sup>17</sup> *Id.*

of the witnesses is a matter for the Tax Tribunal to determine,<sup>18</sup> and we decline to interfere with its credibility determination.

Further, the amount of time that Dombrowski spent gambling is not determinative. The question is whether Dombrowski was “involved in the activity with continuity and regularity and that the taxpayer’s primary purpose of engaging in the activity must be for income or profit.”<sup>19</sup> The documented amount of time Dombrowski spent actually gambling in casinos per week does not necessarily determine whether Dombrowski was engaged in gambling with continuity and regularity. Various witnesses testified that Dombrowski spent time observing and participating in slot machines, and while the Tribunal could not assign a specific number of hours to that activity, the Tribunal found this testimony credible.

The Tribunal’s finding that Dombrowski spent 20 hours a week *in casinos* is not inconsistent with its finding that Dombrowski was a full-time gambler. The Tribunal indicated that it would not find that Dombrowski spent researching slot machines because there was no evidence to support how much time she spent doing so. However, we note that, while the Tribunal did not include Dombrowski’s time spent researching slot machines in its calculations of the average amount of time that Dombrowski spent gambling per week, it was entitled to consider Dombrowski’s testimony that she did spend time engaged in research because it found her credible.

Next, the Department contends that the Tribunal erred because Dombrowski’s failure to keep complete and accurate records indicated that she was not engaged in gambling for income or profit. We will not interfere with the Tax Tribunal’s determinations of the weight to assign to the evidence.<sup>20</sup>

Whether Dombrowski adequately kept records documenting her business activities is certainly relevant. Here, the Tribunal considered Dombrowski’s inadequate record-keeping. But the Tax Tribunal found, on the weight of the other evidence, that Dombrowski’s primary purpose of gambling was for income or profit. Multiple witnesses testified that gambling was Dombrowski’s sole source of income. Dombrowski testified that she did not believe that professional gamblers kept daily journals, and Herbert, her accountant, gave similar testimony. The Tribunal found that Dombrowski mistakenly followed Herbert’s advice. We decline to interfere with the Tribunal’s credibility determinations or the weight that the Tribunal assigned to the evidence.

Finally, the Department contends that the Tribunal erred when it found that Dombrowski was engaged in a trade or business because the United States Supreme Court in *Groetzinger*

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<sup>18</sup> *President Inn Props, LLC v City of Grand Rapids*, 291 Mich App 625, 636; 806 NW2d 342 (2011).

<sup>19</sup> *Groetzinger*, 480 US at 35.

<sup>20</sup> *Great Lakes Div of Nat’l Steel Corp v City of Ecorse*, 227 Mich App 379, 404; 576 NW2d 667 (1998).

indicated that gambling is only a trade or business when it requires skill. We reject this argument.

While the United States Supreme Court in *Groetzinger* did consider that Groetzinger's gambling required and applied skill, it was only one fact that the Court considered in that case. Ultimately, the United States Supreme Court emphasized that whether a gambler is engaged in a trade or business depends on the specific facts of the case.<sup>21</sup> The United States Supreme Court declined to enumerate and mechanically apply elements of the trade or business of gambling. There is no indication that the United States Supreme Court intended to hold that a person may only engage in a trade or business as a professional gambler if his or her trade or business requires skill. Therefore, we decline to conclude that the Tribunal adopted a wrong principle when it determined that whether a gambling activity required skill was not determinative, and will not interfere with the weight that the Tribunal assigned to the fact that slot machine gambling does not employ skill.

We conclude that the Tribunal's finding that Dombrowski was engaged in the trade or business of gambling was supported by substantial evidence.

### C. ADEQUACY OF DOMBROWSKI'S BUSINESS RECORDS

#### 1. LEGAL STANDARDS

A tax deduction is a reduction of gross income to arrive at taxable income.<sup>22</sup> “[A] deduction presents a matter of legislative grace, and a clear provision must be identified to allow for a particular deduction.”<sup>23</sup> The burden of proving the right to a deduction is on the taxpayer.<sup>24</sup> The Act provides that a “person liable for any tax imposed under this part shall keep and maintain accurate records in a form as to make it possible to determine the tax due under this part.”<sup>25</sup>

#### 2. APPLYING THE STANDARDS

The Department contends that there was insufficient evidence supporting Dombrowski's right to a tax deduction because Dombrowski did not maintain adequate records of her winnings and losses and, therefore, Dombrowski was not entitled to a tax deduction. We disagree.

Here, Dombrowski submitted her daily “jackpot” logs in which she recorded winnings of \$1,200 or more and her win/loss statements from the Motor City Casino, MGM Grand Casino,

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<sup>21</sup> See *id.* at 36.

<sup>22</sup> *Menard Inc v Dep't of Treasury*, 302 Mich App 467, 473; 838 NW2d 736 (2013).

<sup>23</sup> *Id.* at 473.

<sup>24</sup> See *id.* at 474.

<sup>25</sup> MCL 206.408.

and Greektown Casino. Though the Department contended below, as they contend on appeal, that the casino's statements were not a reliable indication of Dombrowski's asserted deduction because Dombrowski admitted that she did not always use her player's card, the Tribunal found that the casinos' statements and reports provided the best available information to support Dombrowski's profits and losses. Again, we will not interfere with the Tribunal's determination of the weight of the evidence.<sup>26</sup> We conclude that the casinos' win/loss statements provided substantial evidence that supported the Tribunal's finding that Dombrowski was entitled to deduct her losses.

### III. CONCLUSION

We conclude that substantial evidence supported the Tribunal's findings that Dombrowski was engaged in the trade or business of being a professional gambler in tax years 2008, 2009, and 2010, and that the casinos' win/loss statements provided sufficient evidence from which to conclude that Dombrowski was entitled to a deduction.

We affirm.

/s/ Patrick M. Meter  
/s/ William C. Whitbeck  
/s/ Michael J. Riordan

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<sup>26</sup> *Great Lakes Div of Nat'l Steel Corp*, 227 Mich App at 404.