



## Robert W. Wood THE TAX LAWYER

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### Powerball Losers Make Lemonade By Selling Losing Lottery Tickets

Everyone wants to win, but if you don't, at least you don't have to pay taxes. On the other hand, can you deduct all your losses? Usually, the answer is no, since gambling losses are generally only deductible to the extent you have gambling winnings. You can deduct your gambling losses on Schedule A to your Form 1040. That's where all your itemized deductions go. But your deduction is limited to the amount of your winnings. You must report your winnings as income and claim your allowable losses separately.

You cannot reduce your winnings by your losses and report the difference. However, if you win \$100 but spend \$50 on tickets, you really only have a \$50 profit. From that simple rule, a business idea was born to straddle the gap between lottery winners and lottery losers. This 'business' is a controversial [cottage industry that helps lottery winners dodge taxes](#). The idea was to gather up and sell losing lottery tickets. Just go on on Craigslist and eBay.



Perhaps you might help winners offset the profits with what might *look like real* gambling losses. But beware, these losses are phony. Large volumes of losing tickets are worthless, but in an odd tax-shelter way, not necessarily to everybody. Someone out there might want to buy them! And what about the flip side of this anything-goes marketplace? Some advertisers want to buy winners, not losers. This is also pretty clever. Say you have a winning ticket, but you don't want to step forward to claim it. You know it's a surefire winner, but to stay in the shadows, you might be willing to sell it at a discount.

That way, the reasoning goes, you won't have to pay tax. And the person who buys it will have to claim it and get taxed. In fairness, it's not just the taxes that these closet winners are trying to dodge. There could be court orders like child support or spousal maintenance, or other types of legal debts. Sometimes the ads are explicit, indicating willingness to buy a \$1,000 ticket for \$750 and take care of the taxes.

Some people call these underground buyers "[Ten Percenters](#)." For a fee, they'll cash in your winning ticket so you can stay on the down low. But be careful. For all parties, there could be criminal violations here. The state or federal government might even be able to add a conspiracy charge. To be clear, being—or dealing with—a Ten Percenter is not wise.

The fact that the lotteries *themselves* are unhappy about this may be the biggest warning sign. Some claim that no one is doing enough to discourage this. In Massachusetts, the Attorney General's office is said to be stirring the Ten Percenter pot. If someone cashes hundreds of winning tickets, what are the odds? Arguably, though, buying losing tickets is a more nuanced strategy. Losing tickets seem to be easy to find to generate phony losses.

If you had to prove you bought them when they still had a chance to win, that could mess up any tax strategy, no matter how misguided. So how big is this problem? It's not clear, and much of the juice may be in small but repetitive dollars. That could mean the IRS won't look too hard. Conversely, Ten Percenters in the horse racing industry—or in more big time lottery payments—could face tax evasion charges and jail.

But what's legal and what's not can be debated. It is evidently legal to buy or sell used tickets, though not for the purpose of tax evasion or fraud. A run for

the state border with your cash isn't likely to work either, however tempting it may sound.

Remember, you can be taxed even if you split the money with family, friends or charity unless you are careful. Lottery winners frequently make tax mistakes. In *Dickerson v. Commissioner*, an Alabama waitress won a \$10 million jackpot on a ticket given to her by a customer. The Tax Court held her liable for gift tax when she transferred the winning ticket to a family corporation. Maybe you shouldn't [do tax planning in a waffle house](#).

The moral? Plan your tax moves carefully. Tax problems can snowball—not unlike Powerball jackpots.

*For alerts to future tax articles, email me at [Wood@WoodLLP.com](mailto:Wood@WoodLLP.com). This discussion is not legal advice.*