

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
BEECHER MOORE)

Appearances:

For Appellant: Beecher Moore, appearing on his own behalf.

For Respondent: W.M. Walsh, Assistant Franchise Tax Commissioner; James J. Arditto, Franchise Tax Counsel; Hebard P. Smith, Assistant Tax Counsel.

O P I N I O N

This appeal is made pursuant to Section 19 of the Personal Income Tax Act (Chapter 329, Statutes of 1935, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of Beecher Moore to a proposed assessment of additional tax in the amount of \$37.36 for the taxable year ended December 31, 1936.

During that year the Appellant made a profit of approximately \$5,000 from the purchase and sale of grain future options on the Chicago Board of Trade. He also made a large number of wagers on the outcome of races at the Santa Anita Track at Arcadia, losing around \$2,000 from that activity. The Commissioner held that the income from the trading in grain options was taxable as ordinary income. The deduction of the losses from the wagering on horse races was disallowed, however, in reliance upon Section 8(e) of the Act, which provides that in computing net income there shall be allowed as deductions:

"Losses from wagering transactions shall be allowed only to the extent of the gains from such transactions."

The Appellant contends that his racing losses may be offset against his grain option gains for the reason that since race track betting is legal in California the losses do not fall within the provisions of Section 8(e), or, if that ground be untenable, because the option trading gains arose from wagering transactions.

It is to be observed, however, that Section 8(e) makes no distinction between wagering transactions that are lawful and those that are unlawful. That no such distinction was intended

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is apparent from the Report of the Ways and Means Committee in connection with the Federal Revenue Act of 1934, the wagering loss provision subsequently placed in the California Personal Income Tax Act in 1935 being identical with that of the Federal Act of 1934. The Report provided as follows:

"Existing law (1932 Act) does not limit the deduction of losses from gambling transactions where such transactions are legal. Under the interpretation of the courts, illegal gambling losses can only be taken to the extent of the gains on such transactions. A similar limitation on losses from legalized gambling is provided for in the bill. Under the present law (1932 Act) many taxpayers take deductions for gambling losses but fail to report gambling gains. This limitation will force taxpayers to report their gambling gains if they desire to deduct their gambling **losses.**" (Underscoring added)

The grain options purchased by the Appellant gave him the right to purchase at a future date a certain quantity of grain at a specified price. Such options constitute property rights and are subjects of purchase and sale as are other property rights. To be sure, speculative risks are involved in trading in the grain options, but they are of the same type as those involved in buying and selling stocks, bonds, or other forms of property of fluctuating value, trading operations in which are not regarded as wagering transactions. See, for example, Valley Waste Mills v. Page, 115 Fed. (2d) 1005, which involved the **taxability** of income from the purchase and sale of cotton futures and in which such income was regarded as ordinary business income with no intimation whatever that the activity in question involved wagering.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the action of Chas. J. **McColgan**, Franchise Tax Commissioner, in overruling the protest of **Beecher** Moore to a proposed assessment of additional tax in the amount of \$37.36 for the taxable year ended December 31, 1936, be and the same is hereby sustained.

Done at Sacramento, California, this 2nd day of December, 1942, by the State Board of Equalization.

R. E. Collins, Chairman
George R. Reilly, Member
Wm. G. Bonelli, Member

ATTEST: Dixwell L. Pierce, Secretary