BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
)
ERNEST A, AND FLORENCE SORSOLI)
FRANK AND WILMA DiBETTA)

Appearances:

For Appellants: Thomas W. Martin, Attorney at Law

For Respondent: Israel Rogers, Assistant Counsel

O P I N I O N

This appeal is made pursuant to Section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on protests to proposed assessments of additional personal income tax against Ernest A. and Florence Sorsoli in the amount of $401.72 for 1956 and against Frank and Wilma DiBetta in the amount of $392.40 for 1956,

Appellants Ernest A. Sorsoli and Frank DiBetta in 1954 became partners in the operation of a tavern in Martinez, As a means of stimulating business they initiated betting pools for patrons of the establishment. Winners of the pools were determined by the outcome of sporting events such as football games, baseball games and boxing matches.

The pools were popular with the patrons and the amounts wagered in each pool steadily increased* For the football game played in the Pasadena Rose Bowl on January 1, 1956, the pool totaled $15,000 in money placed by participants, The 1956 World Series pool amounted to $1,000, Participants in each of these two pools placed their money well in advance of the event. Smaller pools on other sporting events were customarily made up on the day of the event,

Appellants deposited the money from the Rose Bowl and World Series pools in a separate commercial banking account on which no interest was paid. The money from other pools was kept in their cash register. Winners were paid immediately after the results of the sporting events were known.

Appellants' accountant advised them that the money wagered in the pools was subject to the federal wagering tax. For the year 1956 Appellants filed a return and paid the federal tax which amounted to 10% of the amount in each pool. Appellants deducted the amount of the federal tax from each pool. The remaining 90% of each pool was distributed to the winning participants.

Respondent increased the reported gross income from the partnership business by $22,500, the total amount wagered in the pools in 1956. It disallowed deductions for the federal tax and for the amounts paid to winners. It also disallowed the expenses of the tavern business in the amount of $18,743.21.

From the evidence, it seems clear that the money wagered in the pools was received and held for the participants without any claim of right to it by Appellants, It was understood by the participants that all of the money in each pool, after deducting the amount of the federal wagering tax, would be promptly turned over to the winners, and this is in fact what occurred. Under these circumstances Appellants were merely stakeholders for the Participants in the pools and the money wagered did not become a part of their gross income.

The expenses of the tavern were disallowed pursuant to Section 17297 of the Revenue and Taxation Code, which reads:

> In computing taxable income, no deductions shall be allowed to any taxpayer on any of his gross income derived from illegal activities as defined in Chapters 9, 10 and 10.5 of Title 9 of Part 1 of the Penal Code of California; nor shall any deductions be allowed to any taxpayer on any of his gross income derived from any other activities which tend to promote or to further, or are connected or associated with, such illegal activities,

Section 337a is contained in Chapter 10, of Title 9 of Part 1 of the Penal Code and provides that "Every person ... who, whether for gain, hire, reward, or gratuitiously, or otherwise, receives, holds, or forwards.... any money ... staked, pledged, bet or wagered ... upon the result ... of any trial ... or contest ... of skill, speed or power of endurance of man or beast ... is punishable by imprisonment in the county jail or state prison for a period of not less than thirty days and not exceeding one year."

The receipt and holding by Appellants of the money wagered in the pools clearly violated Section 337a of the Penal Code. The pools were conducted on the tavern premises for the purpose of stimulating the tavern business. The tavern business, accordingly, was an activity associated or connected with Appellants' illegal activities as stakeholders for the betting pools, The disallowance of the expenses of the tavern business under authority of Section 17297 of the Revenue and Taxation Code was proper,

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,

Appeals of Ernest A. and Florence Sorsoli
Frank and Wilma DiBetta

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on protests to proposed assessments of additional personal income tax against Ernest A, and Florence Sorsoli in the amount of $401.72 for 1956 and against Frank and Wilma DiBetta in the amount of $392.40 for 1956 be and the same is hereby modified in that the amounts wagered in betting Pools are *not to be* included in their gross income. In all other respects the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 18th day of July, 1961, by the State Board of Equalization,

John W. Lynch, Chairman

George R. Reilly, Member

Paul R. Leake, Member

Richard Nevin, Member

, Member

ATTEST: Dixwell L. Pierce, Secretary