



Appeal of Allen C. and Mildred Anderson

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, or 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,

The evidence indicates that the operating arrangements between appellant and each location owner were, except as to cigarette vending machines, the same as those considered by us in Appeal of Hall, Cal, St. Ed. of Equal., Dec. 29, 1958, 2 CCH Cal, Tax Cas. Par. 201-197, 3 P-H State & Local Tax Serv. Cal. Par, 58145, Our conclusion in Hall that the machine owner and each location owner were engaged in a joint venture in the operation of the machines is, accordingly, applicable here.

The evidence indicates that the operating arrangements between appellant and each location owner as to cigarette vending machines were the same as those considered by us in Appeal of Reinert, Cal, St, Bd. of Equal., March 22, 1962, 3 CCH Cal. Tax Cas. Par. 201-913, 3 P-H State & Local Tax Serv. Cal, Par, 58232, Our conclusion in Reinert that the machine owner rented space in the locations for his cigarette vending machines and that the machine owner's gross income from such machines was the entire amount of coins deposited therein is, accordingly, applicable here,

In Appeal of Advance Automatic Sales Co., Cal, St. Bd. of Equal., Oct. 9, 1962, 3 CCH Cal. Tax Cas. Par, \_\_\_\_\_, 2 P-H State & Local Tax Serv. Cal. Par, 13288, we held the ownership or possession of a pinball machine to be illegal under Penal Code sections 330b, 330.1 and 330.5 if the machine was predominantly a game of chance or if cash was paid to players for unplayed free games, and we also held bingo pinball machines to be predominantly games of chance,

The evidence as to cash payouts is not without conflict but three locations owners testified that cash payouts were made in redemption of free games won on multiple-odd pinball machines,, One location owner testified that he never made such payments but he had stated the contrary to respondent's agents in 1958 and again a few days prior to the hearing in this appeal, Appellant also testified that machines had been drilled. This permits the wrongful manipulation of the mechanism by the insertion of a wire or other object, a form of cheating which would be unlikely in the absence of such payouts, From the evidence before us we conclude that it was the general practice to make cash payouts to players of these machines for free games not played off, Accordingly, this phase of appellant's business was illegal, both on the ground of ownership and possession of

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bingo pinball machines which were predominantly games of chance and on the ground that cash was paid to winning players, Respondent was therefore correct in applying section 17297.

Appellant had two employees, a collector and a **mechanic**. The collector collected from all types of machines owned by appellant, The mechanic repaired all types of machines owned by appellant. There was a repair shop where the more difficult repair work was done. Appellant solicited new locations and in doing so tried to place as much of his equipment as possible, Appellant had music machines in virtually all of his locations, cigarette machines in about 90 percent of his locations and pinball machines in from 50 percent to 75 percent of his locations,

We find that there was a substantial connection between the illegal activity of operating multiple-odd bingo pinball machines and the legal activity of operating music machines, amusement machines and vending machines, Respondent was therefore correct in disallowing the expenses of the entire business.

There were not complete records of amounts paid to winning players on the multiple-odd bingo pinball machines and respondent estimated these unrecorded amounts as equal to 50 percent of the total amount deposited in such **machines**.

At the time of making the audit in 1958, **respondent's** auditor interviewed owners of four locations in which **multiple-odd bingo machines acquired** from appellant were operated during the years *in question*, Two of these location owners estimated that on the average the cash payouts **equalled** 60 percent of the coins deposited in the machines\* One location owner estimated the cash payouts at **33-1/3** percent and another location owner stated **that** the cash payouts were "**moderate.**" Each of the last **two** locations was in operation for only a short time,

We believe that the lower estimates of two of the location owners should not be wholly disregarded even though the length of time they operated was **short**. We find that the cash payouts on multiple-odd bingo pinball machines **equalled** 50 percent of the coins deposited in the **machines**.

Appellant has raised a question as to whether the notices of proposed assessment were timely, The notices of proposed assessment were issued by respondent on **March 19, 1959**, **The** returns for the years 1952, 1953, 1954, 1955, 1956 and 1957 were due on April **15, 1953, 1954, 1955, 1956, 1957 and 1958**, respectively. (Rev, and Tax, Code, Par, 18432,) The notices of proposed assessment for 1954, 1955 1956 and 1957 were issued less than four years after the due date of the **returns**. The notices of proposed assessment for 1952 and 1953 were issued

