



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
)
CASSIANO G. AND JANE SILLA)

Appearances:

For Appellants: Archibald M. Mull, Jr., Attorney at Law

For Respondent: Burl D. Lack, Chief Counsel

O P I N I O N

These appeals are 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 Cassiano G. Silla in the amount of \$3,292.94 for the year 1951, against Jane Silla in the amount of \$3,292.94 for the year 1951, and against Cassiano G. and Jane Silla in the amounts of \$13,043.10, \$13,260.62 and \$14,431.43 for the years 1952, 1953 and 1954, respectively.

Appellant Cassiano G. Silla (hereinafter called appellant) conducted a coin machine business in the Oakland area and in Contra Costa County under the name of Silla Music Company. He owned music machines, bingo pinball machines, other types of pinball machines and shuffle alleys. The equipment was placed in some 150 locations and the proceeds from each machine, after exclusion of expenses claimed by the location owner in connection with the operation of the machine, were divided equally between appellant and the location owner.

The gross income reported in tax returns was the total of amounts retained from locations. Deductions were taken for salaries, depreciation, phonograph records, and other business expenses. Respondent determined that appellant was renting space in the loaatons where his machines were placed and that all the coins deposited in the machines constituted gross income to him. Respondent also disallowed all expenses pursuant to section 17359 (now 17297) of the Revenue and Taxation Code which read:

In computing net 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.

Appeals of Cassiano G. and Jane Silla

The evidence indicates that the operating arrangements between appellant and each location owner were the same as those considered by us in Appeal of C. B. Hall, Sr., Cal. St. Bd. 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 these machines is, accordingly, applicable here.

In Appeal of Advance Automatic Sales Co., Cal. St. Bd. of Equal., Oct. 9, 1962, CCH Cal. Tax Rep, Par, 201-984, 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 predominantl: 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.

One location owner testified that he did not make cash payouts for free games. An employee at another location, one which produced a high percentage of appellant's income from pinball machines, testified that such payouts were made. Respondent's auditor testified that he interviewed appellant and asked about reimbursement for free games paid off. His testimony concerning appellant's answer to this question is as follows: "He said that they might have or might not have, that he wouldn't know whether they did or not, but he believed they did, and he estimated that reimbursements would average around 25 percent on pinball games." We find that it was the practice to pay cash to players of appellant's pinball machines for unplayed free games. The pinball machine phase of appellant's business was therefore illegal both on the ground of ownership and possession of bingo pinball machines which were predominantly games of chance and on the ground that cash was paid to winning players. Respondent was correct in applying section 17359.

Appellant's collectors collected from all types of equipment and the repairmen repaired all types of equipment. Apparently many of the locations had a music machine and a pinball machine from appellant although in such a case the collector would prepare a separate collection report for each machine. Appellant maintained separate records of the income from pinball machines, from music machines and from shuffle alleys, Appellant's records also indicate the expenses attributable to music machines, pinball machines and shuffle alley. The general expenses not thus allocated amounted to only about 20 percent of the total recorded expenses. From these records it is clear that the pinball machines contributed by far the greatest proportion of the net profits of the business. There was a substantial connection between the illegal activity of owning and operating pinball machines and the legal activity of owning and operating music machines and shuffle alleys and respondent was therefore correct in disallowing all the expenses of the business.

Appellant's records contained no indication of the total amount of cash payouts to winning players and respondent estimated such amounts on the basis that they equalled 42 percent of the total amounts deposited in appellant's pinball machines. The 42 percent estimate was based on daily records maintained at one location where appellant had four or five pinball machines. Respondent's auditor examined that location's records for the month of June 1953 and concluded that the payouts amounted to 42 percent of the total deposited in the machines,

