



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
)
ROBERT M. AND JEANNE CHACON and)
RICHARD AND VERLA LUEBBERT)

Appearances:

For Appellants: Robert M. Chacon and Verla Luebbert,
in pro per.

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 Robert M. and Jeanne Chacon in the amounts of \$1,044.16, \$2,866.92 and \$3,718.70 for the years 1951, 1952 and 1953, respectively, and against Richard and Verla Luebbert in the amounts of \$121.41, \$522.52 and \$563.11 for the years 1951, 1952 and 1953, respectively.

Respondent has abated the proposed assessments against Richard and Verla Luebbert for the years 1951 and 1952 and their appeals with respect to those years will be dismissed.

During the years in question, Robert M. Chacon and Richard Luebbert were partners in the Base Novelty Company which operated a coin machine business in Orange, Riverside and San Bernardino Counties. The partnership owned multiple-odd bingo pinball machines, flipper pinball machines and some miscellaneous amusement machines. Appellant Robert M. Chacon also owned the same types of equipment as an individual and operated a separate coin machine business in Orange County as a sole proprietor. Each business had a relatively large proportion of pinball machines which were predominantly multiple-odd bingo pinball machines. The equipment was placed in various locations such as bars and restaurants. The proceeds from each machine, after exclusion of expenses claimed by the location owner in connection with the operation of the machine, were in some instances divided equally between the machine owner and the location owner while in other instances the net proceeds were divided 60 - 40 with the higher percentage going to the location owner,

The gross income reported in tax returns was the aggregate of amounts retained from locations. Deductions were taken for various business expenses, Respondent determined that Base Novelty Company and appellant Robert M. Chacon,

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with respect to his separate business, were renting space in the locations where their machines were placed and that all the coins deposited in the machines constituted gross income to the partnership and appellant Robert M. Chacon, respectively. 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 Y, 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 the partnership 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. The evidence supports the same conclusion relative to the arrangements between appellant Robert M. Chacon and each of the location owners on his separate route.

In Appeal of Advance Automatic Sales Co., Cal. St. Bd. of Equal., Oct. Y, 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 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,

From the evidence submitted, it is clear that it was the general practice to pay cash to players of the bingo pinball machines for unplayed free games. Accordingly, this phase of each business was illegal, both on the grounds 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 therefore correct in applying section 17359.

Appellants had no employees and they personally collected from all types of machines and also serviced them. There was, accordingly, a substantial connection between the illegal activity of operating multiple-odd bingo pinball machines and the legal operation of various amusement devices and respondent was correct in disallowing all expenses of the two businesses.

Respondent estimated amounts paid to winning players on the pinball machines as equal to 36 percent of the total amount deposited in such machines. This estimate was based on an actual mathematical computation of the average

