BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
ALBERT A. G. AND ERNA CAMICIA)

Appearances:

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

For Respondent: Burl D. Lack, Chief 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 the protest of Albert A. G. and Erna Camicia to proposed assessments of additional personal income tax in the amounts of $3,212.78, $3,561.69, $3,790.59 and $2,508.05 for the years 1954, 1355, 1956 and 1957, respectively.

Appellant Albert A. G. Camicia (hereinafter called Appellant) conducted a coin machine business in the San Francisco area. Appellant owned music machines, bingo pinball machines, flipper pinball machines and other miscellaneous amusement machines. Appellant also rented equipment from Advance Automatic Sales Company. 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 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 depreciation, cost of phonograph records and other business expenses. Respondent determined that Appellant was renting space in the locations 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 17297 (17359 prior to June 6, 1955) 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 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 the same as those considered by us in Appeal of C. B. Hall, Sr., Cal. St. Bd. of Equal., Dec. 29, 1958, 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. Thus, only one-half of the amounts deposited in the machines operated under these arrangements was includible in Appellant's gross income.

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 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.

At the hearing of this matter one location owner admitted making payouts for free games, another testified that he could not remember but that there could have been a few payouts, and a third location owner testified that he did not make payouts but did not know whether his partners did. Respondent's auditor testified that during interviews with two of the above location owners and a partner of the third at the time of the audit all three admitted making payouts to winning players for unplayed free games. We find this phase of Appellant's business was 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 therefore correct in applying Section 17297.

Appellant was the sole collector from all types of machines and the only repairman, servicing all types of machines in the basement of his home. Several of the locations which had a bingo pinball machine also had a music machine or some miscellaneous amusement machine. There was, in our opinion, a substantial connection between the illegal activity of operating bingo pinball machines and the legal activity of operating music machines and miscellaneous amusement machines. Respondent was therefore correct in disallowing the expenses of the entire business.

$2,508.05 for the years 1954, 1955, 1956 and 1957, respectively, be modified in that the gross income is to be recomputed in accordance with the opinion of the Board. In all other respects the action of the Franchise Tax Board is sustained,

Done at Pasadena, California, this 21st day of October, 1963, by the State Board of Equalization.

John W. Lynch, Chairman

Geo. R. Reilly, Member

Paul R. Leake, Member

Richard Nevins, Member

_____, Member

ATTEST: H. F. Freeman, Executive Secretary