



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
 RAYMOND H. AND MAYME MOSES,)
 J. O. AND OPAL L. BANKS, and)
 MORIAL AND EVA THORNBURG)

Appearances:

For Appellants: Archibald M. Mull, Jr., Attorney at Law
 For Respondent: F. Edward Caine, Senior 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 as follows:

| <u>Appellant</u> | <u>Year</u> | <u>Amount</u> |
|----------------------------------|-------------|---------------|
| Raymond H. Moses | 1951 | \$ 99.98 |
| Mayme Moses | 1951 | 99.98 |
| Raymond H. Moses and Mayme Moses | 1952 | 2,128.17 |
| | 1953 | 1,277.20 |
| Morial Thornburg | 1951 | 1,481.00 |
| Eva Thornburg | 1951 | 1,481.00 |
| J. O. Banks and Opal L. Banks | 1952 | 2,392.28 |
| | 1953 | 1,744.70 |

During 1951, Appellants Raymond H. Moses and Morial Thornburg owned and operated the T & B Buffet as a partnership and, in addition, Appellant Morial Thornburg, as a sole proprietor, owned the Brunswick Cafe and Lloyd's Place. On about December 31, 1951, Morial Thornburg sold his interest in the three business establishments and during 1952 and 1953 they were owned and operated by a partnership made up of Appellants J. O. Banks and Raymond H. Moses. The three establishments were located in the City of Wasco and all of them were basically bar-restaurant combinations.

Chances on punchboards were regularly sold at the three establishments during the years under appeal until the practice ceased on about August 31, 1953. Each punchboard had up to one thousand holes containing slips of paper with numbers, some of which had been designated as winning numbers. The players paid five cents for each opportunity to punch out a slip. Winners

Appeals of Raymond H. and Mayme Moses, et al.

on the punchboards usually received merchandise but sometimes they received **cash**.

The partnership of Raymond H. Moses and J. O. Banks reported gross receipts from punchboard activity for Federal wagering tax purposes of \$13,595.60 for 1952 and \$26,780.29 for 1953. **There** is no such clear evidence of the amount of punchboard receipts for 1951, but based upon an uncontroverted exhibit submitted by Respondent, showing an item of receipts titled "**Pool & Punch Boards,**" upon evidence that 450 punchboards were used during the period May 3, 1951, to October 29, 1951, and upon evidence that each board contained up to one thousand punches, it appears that the punchboard receipts for 1951 were approximately \$20,000.

For the period from May 3, 1951, through August 31, 1953, Respondent disallowed all expenses of the businesses, **except** cost of goods sold, 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.

As we have previously decided, the operation of a punchboard violates Section 330a of the Penal Code. (Appeal of Salvatore J. and Frances Campagna, Cal. St. Bd. of Equal., Dec. 13, 1961, CCH Cal. Tax Rep. Par. 201-867.) The operation also falls within Section 319 of the Penal Code. That section defines a lottery and Sections 320 to 325 prescribe numerous activities connected therewith, including the selling of chances, which are illegal. The elements of a lottery are (1) **considerations**, (2) **prize** and (3) **chance**. (California Gasoline Retailers v. Regal Petroleum Corp., 50 Cal. 2d 844 [330 P.2d 778]) Since all of these elements are present in the operation of punchboards their operation constitutes a lottery. (State v. Hudson, 1% W. Va. 655 [37 S.E. 2d 553].) Respondent was therefore clearly correct in applying Section 17359 of the Revenue and Taxation Code.

The various phases of business carried on at the T & B Buffet, Brunswick Cafe and Lloyd's Place were highly integrated. Each establishment utilized one large room to house a bar, cafe, **card**-room, poolroom, punchboards and miscellaneous amusement machines. We find that there was a substantial connection between the **illegal** activity relative to punchboards and the legal activities

Appeals of Raymond H. and Mayme Moses, et al.

carried on at the three establishments. Respondent, having allowed the cost of goods sold, was therefore correct in disallowing the remaining business expenses arising from the three establishments.

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,

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 as follows:

| <u>Appellant</u> | <u>Year</u> | <u>Amount</u> |
|----------------------------------|-------------|---------------|
| Raymond H. Moses | 1951 | \$ 99.98 |
| Mayme Moses | 1951 | 99.98 |
| Raymond H. Moses and Mayme Moses | 1952 | 2,128.17 |
| | 1953 | 1,277.20 |
| Morial Thornburg | 1951 | 1,481.00 |
| Eva Thornburg | 1951 | 1,481.00 |
| J. O. Banks and Opal L. Banks | 1952 | 2,392.28 |
| | 1953 | 1,744.70 |

be and the same is hereby sustained.

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

John W. Lynch, Chairman
Paul R. Leake, Member
Geo. R. Reilly, Member
Richard Nevins, Member
_____, Member

ATTEST: H. F. Freeman, Executive Secretary