



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JAMES T. SHIOSAKI)

Appearances:

For Appellant: James T. Shiosaki, in pro. per.
For Respondent: John D. Schell
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 James T. Shiosaki against proposed assessments of additional personal income tax in the amounts of \$37.97, \$29.45 and \$41.76 for the years 1964, 1965 and 1966, respectively.

The sole issue raised by this appeal is whether transportation, lodging and meal expenses incurred by appellant in several gambling trips to Nevada are deductible under section 17252, subdivision (a), of the Revenue and Taxation Code as ordinary and necessary expenses paid for the production of income.

Appellant, a Southern California resident, is employed full time as an electrical engineer. Appellant took eight weekend trips to Las Vegas, Nevada, in 1964, seven in 1965, and eight in 1966. In seven instances the trips were taken on successive weekends. On each trip appellant engaged in casino gambling activities which were reported on his personal income tax returns. The transportation, lodging and meal expenses totaled more than \$2,500 for the three-year period.

Appellant reported gambling winnings and offsetting losses in even amounts of \$6,500, \$1,000 and \$1,500 for 1964, 1965 and 1966, respectively. In each

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year losses exceeded winnings by more than \$4,000. In compliance with the express provisions of section 17206, subdivision (d), of the Revenue and Taxation Code, appellant did not deduct the excess losses. In the gambling that was undertaken from 1960 through 1963 the magnitude of the losses was comparable to the years under consideration. In 1959 appellant reported winnings of \$12,261 and deducted losses of \$5,835. More than three-fourths of appellant's income, after providing for necessities such as food, clothing and shelter, was devoted to gambling during the years in question.

This appeal was taken from respondent's disallowance of the deductions made by the appellant for the transportation, lodging and meal expenses. Respondent regarded them as nondeductible personal expenses. Appellant has conceded they are not deductible trade or business expenses under section 17202 of the Revenue and Taxation Code.

Section 17252, subdivision (a), of the Revenue and Taxation Code allows an individual to deduct all ordinary and necessary expenses paid or incurred for the production or collection of income. Section 17282 states generally that "no deduction shall be allowed for personal, family or living expenses."

Regulation 17252, title 18, California Administrative Code provides in part:

(c) Expenses of carrying on transactions which do not constitute a trade or business of the taxpayer and are not carried on for the production or collection of income or for the management, conservation, or maintenance of property held for the production of income, but which are carried on primarily as a sport, hobby, or recreation are not allowable as non-trade or nonbusiness expenses. The question whether or not a transaction is carried on primarily for the production of income or for the management, conservation, or maintenance of property held for the production or collection of income, rather than primarily as a sport, hobby, or recreation, is not to be determined solely from the intention of the taxpayer but rather from all the circumstances of the case. For example, consideration will be given to the record of prior gain or loss of the taxpayer in the activity, the relation between the type

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of activity and the principal occupation of the taxpayer, and the uses to which the property or what it produces is put by the taxpayer.

Appellant contends that his gambling was the pursuit of an income producing activity, stressing that it was primarily a financial activity involving a direct change in capital rather than a hobby, recreation or sport, and that it was undertaken with the hope and expectation of producing income.

It is well established that deductions generally are a matter of legislative grace and the burden is imposed upon the taxpayer to establish the deductibility of such expenditures. (New Colonial Ice Co. v. Heivring, U.S. 435 [78 L. Ed. 1348]; Deputy v. du Pont, 308 J.S. 488 [84 L. Ed. 416].)

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Clearly most persons engage in casino gambling for sport or pleasure. It is not true that every time a game of chance is entered into with the hope of winning that this constitutes a transaction entered into for profit; profit is not what motivates the continued playing, it is the thrill and exhilaration which are inherent in taking a chance. (Citizens & Southern National Bank et al. v. United States, 14 F. Supp. 915.) In view of "house" percentages, chances of winning in this sort of gambling are less than even. Accordingly, such gambling is ordinarily not an income producing activity and is more likely to reduce the capital of the patron, than to increase it. In addition to engaging in what is usually regarded as a sport or recreational activity, appellant participated in this activity at a time usually devoted to recreation, and at a location well known for recreation and entertainment as well as for gambling. Furthermore, appellant has incurred substantial losses for each of the years 1960 through 1967, citing a net gain from gambling only for the year 1959. Based upon these considerations, we conclude that appellant has failed to establish that the expenditures in-question were other than nondeductible personal expenses.

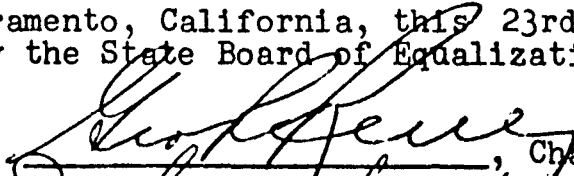
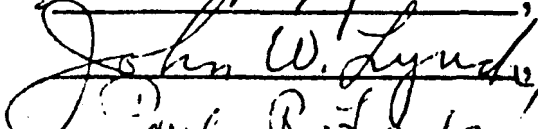

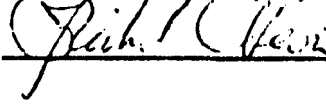
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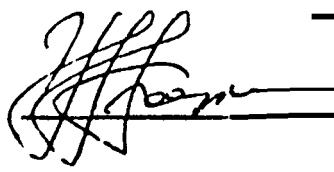
Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

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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 the protest of James T. Shiosaki against proposed assessments of additional personal income tax in the amounts of \$37.97, \$29.45 and \$41.76 for the years 1964, 1965 and 1966, respectively be and the same is hereby sustained.

Done at Sacramento, California, this 23rd day of March, 1970, by the State Board of Equalization.


_____, Chairman

_____, Member

_____, Member

_____, Member
_____, Member

ATTEST:  _____, Secretary