BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
JULIE ANN CLINE (DE LA HOYA))

For Appellant: Julie Ann Cline, in pro. per.

For Respondent: Mark McEvilly Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax. Board on the protest of Julie Ann Cline (De La Hoya) against a proposed assessment of additional personal income tax in the amount of $181.50 for the year 1979.

Appeal of Julie Ann Cline (De La Hoya)

The question for resolut'ion is whether respondent properly denied appellant head of household status.

Appellant filed her personal income tax return for 1979, indicating head of household status and claiming her son Antonio as her qualifying dependent. In a subsequently completed questionnaire dated May 31, 1981, appellant stated that she had been married during 1979 and had lived with her spouse from January 1, 19713, to April 26, 1979. The questionnaire provided no information regarding any final judgment for dissolution of marriage or separate maintenance. On the basis of this information, respondent determined that appellant was not entitled to the head of household status which she had claimed.

Section 17042 of the Revenue and Taxation Code provides, in part:

> For purposes of this part, an individual shall be considered a head of a household if, and only if, such individual is not married at the close of his taxable year, ...
>
> * * *
>
> For purposes of this section, an individual who, under subdivision (c) of Section 17173 is not to be considered as married, shall not be considered as married.

An individual is considered legally married unless she was separated from her spouse under a final decree of divorce or of separate maintenance at the close of the taxable year. (Rev. & Tax. Code, § 17043; Appeal of Enis V. Harrison , Cal. St. Bd. of Equal., June 28, 1977.) Since it appears that appellant was still married at the end of 1979, no indication to the contrary having been noted on the head of household questionnaire, she was not entitled to head of household status for that year unless she qualified as "an individual who, under subdivision (c) of Section 17173 is not to be considered as married." Subdivision (c) of section 17173 provides, in part:

> (c) If--
>
> (1) An individual who is married .. . and who files a separate return maintains as his home a household which constitutes for

> more than one-half of the taxable year the principal place of abode of a dependent (A) who ... is a son, stepson, daughter, or stepdaughter of the individual, and ...
>
> * * *
>
> (3) During the entire taxable year such individual's spouse is not a member of such household,
>
> such individual shall not be considered as married.

Since appellant did not live apart from her husband for all of 1979 but instead shared the same household for almost five months of that year, subdivision (c) of section 17173 does not apply. Therefore, for purposes of determining head of household status, appellant was married. Consequently, respondent acted properly in denying head of household status to appellant.

Appeal of Julie Ann Cline (De La Hoya)

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 the protest of Julie Ann Cline (De La Hoya) against a proposed assessment of additional personal income tax in the amount of $181.50 for the year 1979, be and the same is hereby sustained.

Done at Sacramento, California, this 21st day of June , 1983, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg and Mr. Nevins present.

William M. Bennett , Chairman

Conway H. Collis , Member

Ernest J. Dronenburg, Jr. , Member

Richard Nevins , Member

, Member

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
JOSEPH M. DeFRANCESCO)

For Appellant: Lawrence Kritzer
Attorney at Law

For Respondent: James C. Stewart
Counsel

OPINION

This appeal is made pursuant to section 18646 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the petition of Joseph M. DeFrancesco for reassessment of a jeopardy assessment of personal income tax in the amount of $15,820.00 for the period January 1, 1976, through September 27, 1976.

Appeal of Joseph' M. DeFrancesco

The issues for determination are the following: (i) did appellant receive unreported income from illegal bookmaking activities during the appeal period; (ii) if he did, did respondent properly reconstruct the amount of that income.

On September 27, 1976, respondent received information 'from the Federal Bureau of Investigation that the Bureau had arrested appellant and Michael Superman for bookmaking. The FBI seized evidence of bookmaking activities and $6,275 from appellant's person and residence.

Respondent estimated appellant's income, from bookmaking at $4,000 a week for 38 weeks, a $152,000 total income from wagering. Respondent determined also that collection of any tax from appellant would be placed in jeopardy by delay. Accordingly, respondent issued a jeopardy assessment for $15,820 for the period January 1, 1976, to September 27, 1976. Thereafter, an order to withhold tax was issued to the FBI's West Los Angeles office, and respondent collected the $6,275.

On October 7, 1976, appellant petitioned for reassessment of the jeopardy assessment.

At respondent's request, appellant completed and submitted a financial statement on respondent's financial statement form. Appellant's financial statement contained no information about any bookmaking income.

Respondent subsequently received copies of FBI special agents' memoranda, an affidavit for a search warrant, and an FBI laboratory report, all concerned with the FBI's investigation of bookmaking activities by appellant and others. Later the FBI decided not to federally prosecute appellant's case and turned over to respondent the physical evidence it seized at the time of appellant's arrest on September 26, 1976.

The FBI documents indicated that appellant had been arrested and convicted for bookmaking during 1975. Police authorities believed appellant resumed bookmaking activities in 1976. Several FBI informants stated that appellant and a Michael Superman were equal partners in the 1976 bookmaking activity, which employed five or six named subordinates as well as themselves. One informant stated that in his experience from April 1976 through September 20, 1976, appellant's bookmaking organization

would accept bets of up to $500 per game per bettor if the bettor bet four or more games at one time, and that informant himself in the five month period before September 20, 1976, had bet large amounts, up to a maximum of $7,500 a week, with appellant's bookmaking organization. Two other informants stated that during the assessment period the partnership had attempted to become the largest bookmaking operation in Los Angeles, and were commonly accepting large numbers of bets. Another informant stated that he had regularly bet up to $500 a game with the partnership, and was told by appellant that he managed the operation.

Appellant was arrested for bookmaking on September 26, 1976, at his residence. The FBI seized handwritten materials at appellant's residence, which the FBI laboratory confirmed were records of bets taken by the partnership on college and professional football games and on horse races. Those records were of bets for the 25th, 26th and 27th of September, 1976. Those bets for those three days alone totaled $69,016. The FBI also seized $5,500 in cash.

The first issue is whether respondent could reasonably conclude that appellant was engaged in illegal bookmaking during the assessment period in 1976. The documents provided respondent by the FBI recorded that FBI informants had repeatedly placed large bets with appellant's organization during the assessment period.

Appellant contends that such statements are insufficient to support a conclusion that he was engaged in bookmaking in 1976. But appellant offers no evidence which challenges those statements except his own denial. Therefore, unless those statements are simply rejected, the conclusion follows that appellant was operating a book during the assessment period. We find no compelling reason to reject those statements.

The second issue is whether respondent properly reconstructed the amount of appellant's income from illegal bookmaking activities. Under the California Personal Income Tax Law, taxpayers are required to specifically state the items of their gross income during the taxable year. (Rev. & Tax. Code, § 18401.) As in the federal income tax law, gross income is defined to include "all income from whatever source derived," unless otherwise provided in the law. (Rev. & Tax. Code, § 17071; Int. Rev. Code of 1954, § 61.) Specifi-

cally, gross income includes gains derived from illegal activities. (United States v. Sullivan, 274 U.S. 259 [71 L.Ed. 1037] (1927); Farina v. McMahon, 2 Am.Fed.Tax R.2d 5918 (1958).)

Each taxpayer is required to maintain such accounting records as will enable him to file an accurate return. (Cal. Admin. Code, tit. 18, reg. 17561, subd. (a)(4); Treas. Reg. 1.446-1(a)(4).) In the absence of such records, the taxing agency is authorized to compute a taxpayer's income by whatever method will, in its judgment, clearly reflect income. (Rev. & Tax. Code, § 17561, subd. (b); Int. Rev. Code of 1954, § 446(b).) The existence of unreported income may be demonstrated by any practical method of proof that is available. (Davis v. United States, 226 F.2d 334 (6th Cir. 1955); Appeal of John and Codelle Perez, Cal. St. Bd. of Equal., Feb. 16, 1971.) Mathematical exactness is not required. (Harold E. Harbin, 40 T.C. 373, 377 (1963).) Furthermore, a reasonable reconstruction of income is presumed correct, and the taxpayer bears the burden of proving it erroneous. (Breland v. United States, 323 F.2d 492, 296 (5th Cir. 1963); Appeal of Marcel C. Robles, Cal. St. Bd. of Equal., June 28, 1979.)

In light of the evidence of this level of betting activity from the several informants and from the seized betting notes, we cannot find that respondent's estimate that appellant's share of the two-man partnership income averaged $4,000 a week is unreasonable.

Appeal of Joseph M. DeFrancesco

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 in denying the petition of Joseph M. DeFrancesco for reassessment of a jeopardy assessment of personal income tax in the amount of **$15,820.00** for the period January **1,** 1976, through September 27, 1976, be and the same is hereby sustained.

Done at Sacramento, California, this 29th day of June , 1982, by the State Board of **Equalization,** with Board **Members** Mr. Bennett, Mr. Dronenburg and Mr. Nevins present.

William M. Bennett , Chairman

Ernest J. Dronenburg, Jr. , Member

Richard Nevins , Member

, Member

, Member