BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
ROBERT DEAN TURNER)

For Appellant: John G. Vasil
Attorney at Law

For Respondent: James C. Stewart
Counsel

O P I N I O N

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 Robert Dean Turner for reassessment of a jeopardy assessment of personal income tax in the amount of $81,545 for the period January 1, 1979, to December 4, 1979.

Appeal of Robert Dean Turner

The sole issue is whether appellant has demonstrated error in respondent's determination.

From October 30, 1979, to December 4, 1979, appellant was under almost constant surveillance by undercover officers of the Santa Clara Sheriff's Department. Those officers observed that appellant had about 20 individual distributors whom he supplied with thousands of weekly football betting cards for distribution by those individuals to football bettors.

Those distributors collected the card bets made each week and turned them over to the appellant. Appellant later returned the cards recording winning bets and the payments due those bettors to the distributors, who paid the bettors. Losing bettors paid the distributors the amount of the lost bet plus an additional ten percent "vigorish" (a surcharge added by a bookie to bets placed with him). The distributors collected the losers' payments and were given a 25 percent commission when they paid the appellant for the losing card bets. Appellant made numerous layoff bets with other bookmakers in order to protect himself from big losses.

Appellant also took bets on other sports as well as using the football card betting system. Statements of an accomplice indicate that appellant had been operating his book for more than a year preceeding the investigation. As a result of the Santa Clara Sheriff's investigation, appellant, his girlfriend, and 22 other persons were arrested on December 4, 1979, in connection with a charge of bookmaking. Appellant later pleaded guilty to the bookmaking charge. At the time of appellant's arrest, the officers seized a listing of bets made from May 28, 1979, to June 9, 1979, on basketball games and horse races, This listing showed, by appellant's calculations, that $95,144 in bets had been made and that appellant had won approximately $63,714 in bets. From this, respondent estimated appellant's taxable income for the period May 28, 1979, to December 4, 1979, as $749,914. Respondent determined that collection of tax from appellant would be jeopardized by delay, so a jeopardy assessment for $81,545 was issued on December 5, 1979.

After appellant petitioned for a reassessment at a lower amount, respondent requested that appellant furnish it with information necessary to accurately compute his income, including income from illegal bookmaking activities, Little information was furnished. During the proceedings before and at the hearing held

by respondent on the protest, appellant contended that the records seized at the time of his arrest pertained to the approximately four months of the very active football betting season and that a projection of the active football bets over the period of the assessment resulted in an excessively high assessment. Appellant further maintained that the police estimate of his income was that 90 percent of it came from football betting cards and 10 percent of it came from other sports bets. Appellant also explained that his only asset was an interest in a ranch worth about $50,000, and that such a small holding was inconsistent with the level of betting activity contemplated by respondent's estimate and assessment. After considering the evidence and arguments presented, respondent affirmed its originally proposed assessment. This appeal followed.

The California Personal Income Tax Law requires a taxpayer to state specifically the items and amount of his gross income during the taxable year. Gross income includes gains derived from illegal activities, which must be reported on the taxpayer's return. (United States v. Sullivan,, 274 U.S. 259 [71 L.Ed. 10371 (1927); Farina v. McMahon, 2 Am.Fed.Tax R.2d 5918 (1958).)

In the absence of taxpayer-maintained records which will enable the taxpayer to file accurate returns, the Franchise Tax Board is authorized to compute income by whatever method will, in its opinion, clearly reflect income. (Rev. & Tax. Code, § 17561, subd. (b); Breland v. United States, 323 F.2d 492 (5th Cir. 1963); Harold E. Harbin, 40 T.C. 373 (1963); Appeal of John and Codelle Perez, Cal. St. Bd. of Equal., Feb. 16, 1971,)

The determination of a deficiency by the taxing authority is presumed correct, and the burden is on the taxpayer to prove that the correct income was an amount less than that on which the deficiency assessment was based. (Kenney v. Commissioner, 111 F.2d 374 (5th Cir. 1940); Appeal of John and Codelle Perez, supra.) No particular method of reconstructing income is required since the circumstances will vary in individual cases. (Harold E. Harbin, supra.) The existence and amount of unreported income may be demonstrated by any practical method of proof that is available. (See, e.g., Davis v. United States, 226 F.2d 331 (6th Cir. 1955); Agnellino v. Commissioner, 302 F.2d 797 (3d Cir. 1962); Isaac T. Mitchell, ¶ 68,137 P-H Memo. T.C. (1968), affd., 416 F.2d 101 (7th Cir. 1969); Appeal of John and Codelle Perez, supra; Appeal of Walter L. Johnson, Cal. St. Bd. of Equal., Sept. 17, 1973.)

The income which respondent estimated came from bookmaking, which is an offense contemplated by section 337a of the Penal Code. Since that section is contained in Chapter 10 of Title 9 of Part 1 of the Penal Code, the provisions of section 17297 of the Revenue and Taxation Code are relevant to respondent's computation. That section, as it read in 1979, provides:

> In computing taxable income, no deductions shall be allowed to any taxpayer on any of his gross income directly 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 directly tend to promote or to further, or are directly connected or associated with, such illegal activities.

Appellant first argues that the value of his owned assets was too small to be proportionate with the large amount of income attributed to him by respondent's estimate of that income,, and so respondent's estimate was demonstrably excessive in amount. Respondent's estimate of appellant's taxable income, however, was not intended to approach the amount of appellant's net spendable income since section 17297 prevented respondent from deducting any of appellant's estimated expenses from the estimated gross amount of appellant's illegal bookmaking income in computing appellant's estimated income.

Appellant argues also that respondent's estimate of his income for the assessment period (January 1 to December 4, 1979) was extrapolated from a record of his betting activity during the four-month football betting season, which is his most active season, and, therefore, the estimate was excessive as an assessment for the whole period. However, contrary to appellant's assertion, respondent made its original estimate by extrapolating bets appellant took on basketball and horse races during the period May 28, 1979, to June 9, 1979, from records seized at the time of appellant's arrest.

Examination of the other evidence seized at the time of the arrest does not demonstrate error in respondent's assessment. At the time of appellant's arrest, pay and owe sheets for that current period were seized which show that $89,896.50 was owed to appellant. These sheets normally show the amounts won and lost by bettors

during the prior week, and the amounts won and lost are paid and settled each week. But as respondent points out, if there were some continuing debts shown on the pay and owe sheets for.the prior week's action, and only $45,000 of the $89,896.50 was won by appellant in the single week preceeding his arrest on December 4, 1979, a projection of that income over the preceeding period of only 21 weeks would far exceed the amount of respondent's estimate of taxable income reflected in its assessment.

Also at the time of appellant's arrest, records were seized from him which show his 62-page summary of income from football cards and sports bets from late November and early December of 1979. While only some of the bookmaking bets were dated, those dates range between November 21, 1979, and December 3, 1979. Those pages show that appellant took $47,076 in sports bets and $108,747 in football card bets. Although the seized records of appellant for the May-June period show a net profit of over 14 percent on sports bets, appellant contended at the protest hearing that on the sports bets he won 50 percent and lost 50 percent of the bets he took but that the 10 percent vigorish he took on the amount of the bet from losing bettors amounted to a 5 percent overall profit on his sports bets. Thus, his estimated income from the $47,076 in sports bets amounts to 55 Percent of that overall amount, or $25,891.80. (See Appeal of Edwin V. Barmach, Cal. St. Bd. of Equal., July 29, 1981.)

Appellant's winnings from the football cards were estimated in a different manner. It was not clear from the records seized by the police whether appellant's records of receipts from the football cards were of the full payments individual bettors made to the distributors or were the payments of the bettors less the 25 percent commissions appellant allowed his distributors. Respondent considered the records to show the full payments by the individual bettors without deductions for the commissions retained by the distributors. Those amounts add to $81,560.63, which, when combined with the sports betting income of $25,891.80, total income of $107,452.43 for the 13-day period. Respondent's straight projection of this amount over the period from May 5, 1979, to December 4, 1979, indicates a taxable income to appellant of $1,264,710, which is considerably more than the amount upon which respondent bases the assessment here at issue.

Since appellant has not demonstrated any error in respondent's assessment, we have no alternative but to sustain that assessment.

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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 Robert Dean Turner for reassessment of a jeopardy assessment of personal income tax in the amount of $81,545 for the period January 1, 1979, to December 4, 1979, be and the same is hereby sustained.

Done at Sacramento, California, this 27th day of June, 1984, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Dronenburg, Mr. Collis and Mr. Bennett present.

Richard Nevins, Chairman

Ernest J. Dronenburg, Jr., Member

Conway H. Collis, Member

William M. Bennett, Member

_____, Member