



87-SBE-032

BEFORE **THE** STATE BOARD **OF** EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
ISAAC **TILLMAN**) No. 85J-1224-GO
)

For Appellant: **Charles B. Maxey**
Financial Consultant

For Respondent: **Lorrie K. Inagaki**
Counsel

O P I N I O N

This appeal is made pursuant to section 18646^{1/} of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the petition of Isaac Tillman for reassessment of jeopardy assessments of personal income tax in the amount of ~~\$96,921~~ for the year 1983 and in the amount of **\$14,067^{2/}** for the period January 1, 1984, to March 5, 1984.

1/ Unless otherwise specified, all: section references are to sections of the Revenue and Taxation Code as in effect for the year and period in issue.

2/ We note that the appeal for 1984 has been incorrectly recorded as \$14,067. The correct amount of the assessment for 1984 and the amount of which appellant has been notified is **\$14,107.**

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The issue presented is whether respondent has properly reconstructed the unreported income from illegal gambling activities which appellant received during the period at issue.

Pursuant to a criminal investigation by the Los Angeles County Sheriff's Department (hereinafter "Sheriff's Department") in early 1984, appellant was observed for several weeks. (Resp. Br., Exs. A, B, & C.) That investigation culminated in appellant's arrest on March 8, 1984, for conspiracy to commit bookmaking. (Resp. Br., Ex. D.) In the course of this investigation, the Sheriff's Department determined that appellant had been stopped by deputies on November 28, 1983, for failure to stop at a stop sign. At the time of that stop, the deputy observed a gun protruding from a briefcase next to appellant. The deputy retrieved the weapon and found it to be fully loaded and appellant was arrested for possession of a concealed and loaded firearm. At the same time, the deputies also found in the vehicle a total of \$7,740.91 in cash wrapped in numerous bundles with papers attached. Some of the cash was found in envelopes labeled with various recent dates and dollar amounts and with the words "wins", "owes", "cash", and "pays". Also found were envelopes containing numerous betting markers and racing forms, and a record book containing wagers and pay-and-owe sheets. (Resp. Br., Exs. E & F.) When asked about the cash, appellant replied, "That's my gambling money." Appellant also stated, "Hey, man those are just one week's receipts, and I got people waiting to get paid." (Resp. Br., Ex. A at 9 6 10.) At that point, appellant was also arrested for bookmaking in violation of California Penal Code section 337a. (Resp. Br., Ex. A.) Records indicated that appellant had been arrested on bookmaking charges on eleven other occasions since 1958. Of these arrests, appellant had been convicted of, or pled guilty to, such charges on four occasions. The latest two charges were still pending. Appellant was convicted of additional charges of bookmaking on December 27, 1983, (Resp. Br., Ex. B.)

Based on the pay-and-owe sheets and other wagering records found at the time of appellant's arrests, the Sheriff's Department determined that appellant was involved in an extensive bookmaking operation. Names in appellant's records also indicated that he was associated with other known bookmakers. Consequently, on January 18, 1984, the aforementioned surveillance of appellant's residence and various locations indicated

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in appellant's records was initiated by the Sheriff's Department.

Surveillance of a location at 820 W. 136th Street, Compton, during January 1984 indicated heavy foot traffic entering and exiting. Some of the persons observed were carrying sporting publications and were identified by deputies as known bettors of horse racing events. A car registered to a known bookmaker was also observed in front of the location. Sheriff's Department records indicated that the location had previously been investigated for bookmaking and an arrest for bookmaking had occurred there on October 14, 1977.

Surveillance was also conducted during January of 1984 at 4252 San Luis Street, Compton, and at 15219 S. Washington Avenue, Lynwood, both locations which were noted in appellant's records. At both of these locations, deputies observed heavy foot traffic. Records indicated that the San Luis address had previously been investigated for bookmaking activities and arrests for bookmaking had occurred there on July 17, 1981, March 3, 1982, and February 23, 1983. A car parked in front of the Washington Avenue address was determined to be registered to a known bookmaker. Deputies also observed a person carrying a "scratch sheet," a daily racing paper reporting the betting odds for horse races, entering the Washington Avenue location which, deputies determined, indicated that these locations were all cash rooms and phone spots probably under appellant's control. (CA cash room is a place where the bettor places his wager with the bookmaker in person, while a phone spot is a place where the bettor calls and places his wager with the clerk for a bookmaking operation.)

The above surveillances were all conducted on scheduled horse racing days. Surveillance of the above three locations on January 31, 1984, a "dark day", a day in which no horse races were scheduled, indicated no foot traffic at all.

Surveillance was also instituted at 422 Olanda Street, Lynwood, and at 3772 S. Palm Avenue, Lynwood. Both locations had been connected to appellant during the investigation. Again, deputies regularly observed heavy foot traffic in and out of the locations with several persons carrying sporting publications. At the Palm Avenue location, deputies observed a woman enter carrying a scratch sheet.

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Surveillance was also conducted during January and Pebruary 1984 at **12413** Alpine Street, Lynwood, which was determined to be appellant's current residence, Deputies regularly observed appellant and a woman later identified as Shirley Eatcher, appellant's common-law wife, enter the residence. **On** occasion, Eatcher was observed carrying a scratch sheet.

During the investigation, deputies **also** learned that **814** W. Cedar Street, Compton, was frequented by appellant. Surveillance indicated heavy foot traffic at that location with some people carrying racing forms. The utilities to this location were registered to a known **bookmaker** and associate of appellant. Deputies called the telephone registered to the **Cedar** address and attempted to place a wager. The woman answering the phone stated, "**You need** a code **to place** a wager here." (**Resp. Br., Ex. B, Attachments. Nos. 10 & 11.**) Records indicated that the **Cedar** Street location had been investigated previously for bookmaking activities and had led to **several** bookmaking arrests. Shortly thereafter, on January **26**, 1984, several bookmaking **arrests** were made at this location.

Appellant was also followed on several occasions during January and February 1984 to 329 **1/4** Alondra Blvd., Compton, where deputies observed heavy **foot traffic**. Deputies observed appellant in the building and overheard appellant state over the telephone: "That horse is scratched, man. What else do you want? Okay, that's two across on the three horse." Appellant then made several notations. Appellant also yelled to a man, "**Hey** man, **you've** got to be on time to answer the phones. You make money and **I'll** make money. **When** these [expletive deleted] call and you're not here, they will make their bets somewhere else. Do you understand?" (**Resp. Br., Ex. B Attachment No. 13.**) Investigation revealed that the telephone number to the location was registered to a Karen **Tillman** and that the location had been the subject of several **bookmaking** investigations which had resulted in a bookmaking arrest on April 28, 1976. Appellant was also observed on several occasions entering the location carrying scratch sheets. Appellant was further observed exiting the location with a man who was known to the deputies as a bookmaker and who had previously been arrested for **bookmaking**.

During January and February 1984, deputies also conducted surveillance on 329 S. Central St., Compton, as

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a result of information obtained during the investigation of appellant. As with the other locations, deputies observed heavy foot traffic in and out of the location and observed a vehicle registered to a known bookmaker and associate of appellant parked in front of the address.

Surveillance was also instituted at 11916 S. Wilmington Avenue, Lynwood, and at 617 E. 105 Street, Los Angeles, when deputies received information that these locations were cash rooms belonging to appellant, Deputies observed heavy foot traffic at the locations. Deputies made a telephone call to the **105th** Street location and the following conversations took place:

Deputy: "[**T**]his is **J.D.** Am I too late for the daily double?"

Voice: "**No**, you're not. Who is this again?"

Deputy: "This is **J.D.** I used to bet with you a couple of months ago."

Voice: "**I** don't **remember** you, **J.D.**, and I can't take your action over the phone."

Deputy: "Okay, how about me coming over rater, will you take it in person?"

Voice: "Sure, come on **over**, that will be fine."
(**Resp.** Br., Ex. B, Attachment No. **16.**)

Sheriff's Department records indicated that the 105th Street location had been investigated previously for bookkeeping activities and several arrests had been made **from** that location, the last arrest being on August **1**, 1979.

On February 5, 1984, appellant was followed to **518 1/2** Magnolia Street, Compton, where deputies observed him meet with several men and exchange papers. Appellant was also observed later that day receiving papers from a woman at his residence, 12413 Alpine Street. Deputies determined that the woman was delivering the previous week's **bookmaking** results. Appellant also made several short trips-to various locations including 450 W. Peach Street. On February 6, 1984, appellant was observed by deputies delivering white envelopes to several locations including 2710 S. Central Avenue and **518 1/2** W. Magnolia Street. On February 8, 1984, surveillance was conducted

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at 450 W. Peach Street, Compton; 518 1/2 Magnolia Street, Compton; and at 2710 S. Central Avenue. At all locations, deputies observed heavy foot traffic and many persons were observed carrying sporting publications.. Some men were observed **counting currency**. A telephone call was made to 450 W. Peach Street, and the deputy asked, "Do you have the scratches for the second race at Santa Anita?" The female voice on the other line stated, ~~Yeah~~ "Yeah, honey, hold on." During the pause, the deputy overheard race results being broadcast over the radio. (Resp. Br., 8x. B, Attachment No. 20.) Sheriff's Department records indicated that the 450 W. Peach Street and the 2710 S. Central locations had previously been investigated for **bookmaking** and had been the location of several bookmaking **arrests** most recently on August 4, 1983, for the Peach Street location and December 22, 1983, for the 2710 S. Central location. On February 10, 1984, deputies made additional bookmaking arrests at those locations. Records on 518 1/2 W. Magnolia Street indicated that the utilities were **subscribed** by a known **bookmaker** and associate of' appellant.

During the bookmaking investigation involving appellant, deputies developed information that 317 S. Central Avenue, 315 S. Central Avenue, and 1837 W. 152nd Street, Compton, were **bookmaking** locations under the control of appellant and his associates. At various times in February 1984, surveillance was instituted at the above locations. On February 9, 1984, deputies observed a woman enter the 317 S. Central location **carrying** scratch sheets and racing **forms**. At 1831 W. 152nd Street, deputies observed a man **enter** carrying scratch sheets and racing forms. Deputies observed a woman enter 315 S. Central Avenue carrying scratch sheets and racing **forms**. All three had **emerged** from 329 S. Central Avenue, another cash room associated with appellant. There was heavy foot traffic at all four locations.. Departmental records indicated that 317 S. Central Avenue and 1831 W. 152nd Street had previously **been** investigated for bookmaking activities and several **arrests** had been made out of these locations. On February 16, 1994, deputies observed Shirley **Batcher**, who resided with appellant, drive to 9423 Beach Blvd., Los Angeles. Deputies observed heavy foot traffic in and out of this location. Records indicated that several investigations had been conducted at this location which had resulted in two **bookmaking arrests** on February 9, 1983, and November 17, 1983, .

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As a result of the above **investigation**, on February 28, 1984, a search warrant was obtained for appellant's residence on Alpine Street and, thereafter, on March 4, 1984, police found a **total** of \$134,741 in cash, numerous pay-and-owe sheets, and other bookmaking records for 1984 throughout the residence. (**Resp. Br., Exs. C & D.**) **Bookmaking arrests** were made at the following locations: 329 1/4 W. Alondra Blvd., Compton; 4252 San Luis, Compton; 15219 S. Washington Avenue, Compton; 4221 Olanda, Apt. A, Lynwood; 820 W. 136th Street, Compton; 617 S. 105th Street, Los Angeles; 3772 S. Palm Avenue, Lynwood; 329 S. Central Avenue, **Compton**; **518 1/2** W. Magnolia Street, Compton; **450** W. Peach Street, Compton; 2710 S. Central Avenue, **Compton**; **315 S. Central Avenue**, Compton; 317 S. Central Avenue, Compton; 1831 W. **152nd** Street, Compton; and 9423 Beach Street, Los Angeles. **At all the above locations, deputies found** varying amounts of cash, pay-and-owe sheets, and other **bookmaking** records. Persons arrested at the following locations indicated that they, or others at the location, were engaged in **bookmaking** activities: Alondra Blvd., **105th** Street, 3772 Palm Avenue, 329 S. **Central**, 317 S. Central and W. 152nd Street. Deputies also took incomirig wagers or requests **for wager** information at the Alondra, Washington Avenue, W. 136th Street, **105th Street**, **315** S. Central Avenue, and W. 152nd Street locations. Weapons were also found at several locations. A woman arrested for bookmaking at 317 S. Central Avenue indicated to deputies that she worked for appellant **Isaac Tillman**. (**Resp. Br., Rx. C.**)

Based upon the **above-noted** evidence, deputies formed the "expert opinion. . . that a major **bookmaking** operation [was] being conducted in Los Angeles County, and this operation [was] under the total control of Isaac **Ti llman**," appellant herein. (**Resp. Br., Ex. B**, Attachment No. **26.**) Appellant was later arrested and eventually admitted his guilt of **bookmaking**. (**Resp. Br., Ex. G.**)

Based on the above-noted information, respondent determined that appellant was engaged in **bookmaking** activities during 1983 and the period January 1, 1984, to March 5, 1984, resulting in California taxable income which had not been reported. Appellant's income from **bookmaking** was determined to be \$1,393,184 for 1983 and \$267,920 for the period under review in 1984. **The** incomes were determined from **bookmaking** pay-and-owe records kept over a **13-week** period in 1983 which had been seized from appellant in November 1983. **The 13-week**

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amount was projected over the entire year for 1983 and over 10 weeks for 1984. (Resp. Br. at 11.) Respondent further determined that the collection of tax would be jeopardized in whole or in part by delay in assessment. Accordingly, on March 5, 1984, respondent issued jeopardy tax assessments for \$151,695 for 1983 and \$27,916 for the period January 1, 1984, through March 5, 1984, based on the incomes as determined above. In addition, orders to withhold were issued by respondent to the Sheriff's Department and appellant's credit union. As a result, a total of \$154,122.33 was collected, \$144,782.79 of which was obtained through the Sheriff's Department. (Resp. Br., Ex. E and footnote 5 infra.) The remaining balance was collected from appellant's credit union account.

Appellant protested the assessment and submitted a statement of financial condition (Resp. Br., Ex. I) and a financial questionnaire (Resp. Br., Ex. J) as requested by respondent. On these statements, appellant indicated that he had assets totaling \$156,336, most of which were cash and that the cash found at his residence represented earnings from 1962 to 1982, pension payments for 1982 and 1983, loans from his credit union, a small 1966 inheritance and various other sources, (Resp. Br., Exs. I & J.) Appellant also indicated he had earned \$107,700 in 1983 and \$33,900 in the period January 1, 1984, to March 5, 1984, from specified "other" sources, presumably from the subject gambling activities. Appellant further filed an amended tax return for 1983, reporting \$43,900 in additional income for that year (Resp. Br., Ex. K) and a 1984 tax return reporting \$15,800 in such "other" income for 1984. (Resp. Br., Ex. M.) Accompanying the tax returns were schedules setting forth how the figures were determined and a summary of his bookmaking records from which he derived the totals. The bookmaking schedules submitted by appellant indicated 30 weeks of bookmaking activity in 1983 and 9 weeks of such activity in 1984. Appellant added all the winning bets marked "w" on his records to arrive at his bookmaking income, (Resp. Br., Exs. L & N.)⁵ Appellant's records did not correlate to the pay-and-owe sheets seized from him.

3/ There is a discrepancy between the income reflected in appellant's 1983 schedule and the "other" income reported on appellant's amended tax return for 1983. Although there has been no explanation as to the difference, it is presumed that there was an addition or transfer error.

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At a hearing for reassessment, held on July 9, 1985, appellant admitted that he had engaged in illegal bookmaking activities during the period at issue for which he earned income which he had not initially reported. Appellant's schedule indicated that he engaged in such activities for 30 weeks in 1983 and nine weeks for the period under review in 1984. (Resp. Br., Exs. L 6 N.) However, appellant argued that respondent's reconstruction of that income was unreasonable based upon the evidence available. (Resp. Br., Ex. G at 4.) Appellant argued that the correct amount of income was reported in his amended tax returns reflected as "other income."

After reviewing the evidence and arguments set forth by appellant, respondent rescheduled appellant's bookmaking income based upon the records seized from appellant. Respondent did not accept appellant's calculations since they did not appear to reflect the amounts indicated in the subject pay-and-owe records. For 1983, respondent added **all the** bets marked as winning bets ("**w**") from appellant's pay-and-owe records to arrive at a total of \$365,820 for the **12-week** period indicated in the 1983 records. (Resp. Br., Ex. F.) This amount was then projected over the 30 weeks-of bookmaking activity indicated by the schedule which appellant had prepared. (Resp. Br., Ex. L.) This resulted in an income of \$925,350 from bookmaking for 1983, \$43,900 of which had been reported on appellant's 1983 amended tax return. To the **bookmaking** income, respondent also added **\$9,930** in pension and interest income indicated on appellant's 1983 tax return. Appellant's **tax** deficiency for 1983 was determined to be \$96,921.^{4/} (Resp. Br., Ex. Q.)

Since the records for 1984 were destroyed by the Sheriff's Department, respondent used **the** same 1983 records and projected the weekly income over the period of nine weeks of **bookmaking** activity in 1984 indicated by appellant in his schedule. (Resp. Br., Ex. N.) This resulted in an income from gambling of \$274,365 for 1984. (Resp. Br., Ex. O.) However, since the 1984 records had been destroyed, respondent revised appellant's income for 1984 to \$144,781, which was the amount of cash seized from appellant's residence, cash rooms, and phone spots

^{4/} The correct amount is actually \$96,959. However, **appellant** was assessed the lower amount due to a mathematical error which respondent did not correct as the error was minimal and was in appellant's favor.

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on March 4, 1984.^{5/} Thus, appellant's additional tax liability for 1984 was determined to be \$14,067. (Resp. Br., Ex. Q.) Appellant disagreed with the revised assessment and filed this timely appeal.

Subsequent to the filing of the taxpayer's appeal, respondent reviewed the assessment and determined that the projection of 1984's income based upon the 1983 records was a valid method, considering the unavailability of the 1984 records. Consequently, respondent alternatively used the previously discussed projection method to determine appellant's bookmaking income for 1984. (Resp. Br., Ex. P.) However, since the income under the projection method exceeded the income determined by use of the cash seized, no new assessment was made.

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 all income from whatever source derived unless otherwise provided in the law. (I.R.C. § 61.) Gross income includes gains derived from illegal activities, including illegal gambling activities, which must be reported on the taxpayer's return. (United States v. Sullivan, 274 U.S. 259 [71 L.Ed. 1037] (1927); Farina v. McMahon, 2 A.F.T.R.2d (P-B) ¶ 58-5246 (1958).) Each taxpayer is required to maintain such accounting records as will enable him to file an accurate return. (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. (I.R.C. § 446(b).) The existence of unreported income may be demonstrated by any practical method of proof that is available. (Davis v. t e d

^{5/} The records indicate that a total of \$137,797.95 was seized from appellant's residence and his various cash rooms and phone spots. (Resp. Br., Ex. C.) However, respondent received \$144,782.79 from the Los Angeles County Sheriff's Department pursuant to orders to withhold. (Resp. Br., Ex. H.) Respondent's Exhibit H shows a total of \$144,982.79. However, respondent determined that \$200 was in counterfeit funds and was returned, resulting in a net of \$144,782.79. The cash amount used was \$1.79 less than the actual amount received but since the error was minimal and in appellant's favor, respondent made no correction.

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States, 226 F.2d 331 (6th Cir. 1955); Appeal of John and Codelle Perez, Cal. St. Bd. of Equal., Feb. 16, 1971.) Mathematical exactness is not required. (Harbin v. Commissioner, 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, 496 (5th Cir. 1963); Appeal of Marcel C. Robles, Cal. St. Bd. of Equal., June 28, 1979.)

In the instant appeal, respondent used the projection method to reconstruct appellant's income from the illegal gambling activities for 1983. In short, respondent projected a level of income over a period of time. Because of the difficulty in obtaining evidence in cases involving illegal activities, the courts and this board have recognized that the use of some assumptions must be allowed in cases of this sort. (See, e.g., Shades Ridge Holding Co., Inc. v. Commissioner, ¶ 64,275 T.C.M. (P-E) (1964), affd. sub nom., Fiorella v. Commissioner, 361 F.2d 326 (5th Cir. 1966); Appeal of Burr MacFarland Lyons Cal. St. Bd. of Equal., Dec. 15, 1976.) It has also been recognized, however, that a dilemma confronts the taxpayer whose income has been reconstructed. Since he bears the burden of proving that the reconstruction is erroneous (Breland v. United States, supra), the taxpayer is put in the position of having to prove a negative, i.e., that he did not receive the income attributed to him. In order to ensure that use of the projection method does not lead to injustice by forcing the taxpayer to pay tax on income he did not receive, the courts and this board have held that each assumption involved in the reconstruction must be based on fact rather than on conjecture. (Lucia v. United States, 474 F.2d 565 (5th Cir. 1973); Shapiro v. Secretary of State, 499 F.2d 527 (D.C. Cir. 1974), affd. sub nom., Commissioner v. Shapiro, 424 U.S. 614 [47 L.Ed.2d 278] (1976); Appeal of Burr MacFarland Lyons, supra.) Stated another way, there must be credible evidence in the record which, if accepted as true, would "induce a reasonable belief" that the amount of-tax assessed against the taxpayer is due and owing. (United States v. Bonaguro, 294 F.Supp. 750, 753 (E.D.N.Y. 1968), affd. sub nom., United States v. Dono, 428 F.2d 204 (2nd Cir. 1970).) If such evidence is not forthcoming, the assessment is arbitrary and must be reversed or modified. (Appeal of Burr MacFarland Lyons, supra; Appeal of David Leon Rose, Cal. St. Bd. of Equal., Mar. 8, 1976.)

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In this appeal, the evidence relied upon by respondent in reconstructing appellant's income for 1983 was derived from the **results** of the sheriff's investigation and statements made by appellant. Respondent determined that based upon pay-and-owe sheets seized that covered a **12-week** period, appellant earned \$365,820 from the subject gambling activities for that period. (**Resp. Br., Bx. F.**) As appellant admitted that his bookmaking activities **were** conducted over a **30-week** period in 1983 (**Resp. Br., Bx. L**), respondent projected **the average** weekly income determined **from the actual** pay-and-owe records over the **30-week** period to arrive at appellant's projected income **of \$925,350 for 1983.**

Since, as indicated above, the records for 1984 **were** destroyed, respondent used the **data for 1983** to project appellant's income over the **nine-week** period in 1984 during which appellant admitted he had **engaged** in the subject illegal gambling activities. Using this method, respondent projected **appellant's** income to be \$274,365 in 1984. **However,** upon reflection, respondent **revised** appellant's income for 1984 to \$144,781 reflecting the amount of cash seized **from** appellant on March 4, 1984. While respondent does not identify the theoretical basis **of** its revised **assessment for 1984**, it appears to be a variation of the net-worth method. The basic theory of the net-worth method revolves around what **a taxpayer** has done with his receipts. (See generally, discussion in Schmidt, Reconstruction of Income, 19 Tax. L. Rev. 277, 291-295 (1964).) Notwithstanding **respondent's** initial reluctance to use the 1983 data to project appellant's income in 1984, we have held that, in the absence **of** current records, the use **of data from a** prior year is valid to reconstruct income. (Appeal of Richard A. Evans, Cal. St. Rd. of Equal., June 29, 1982.) **Moreover,** it **is** well-settled that the theory upon which an assessment is based is immaterial and an assessment may be sustained upon any basis or theory of law upon which the taxing agency can show that amount of tax to be **due.** (Appeal of Gregory Lynell Wyatt, Cal. St. Rd. of Equal., July 30, 1985.) In this light, the use of the projection method to reconstruct appellant's income for 1984 is as appropriate as its use to reconstruct his income for 1983. ^{6/}

^{6/} Accordingly, no discussion of the net-worth method is **required** in this appeal.'

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In each year, respondent's reconstruction of appellant's income is based upon credible evidence. As indicated above, the period of appellant's activity in each year is based upon his own admission which he has not attempted to contradict or disavow on appeal. (**Resp. Br., Exs. L & N.**) Moreover, the amount of that income per week is based upon actual pay-and-owe sheets seized from appellant which span a **12-week** period. (**Resp. Br., Ex.F.**) Appellant has introduced no evidence which would contradict these records. Indeed, appellant's only arguments against the **assessments** appear to be socioeconomic in nature with no factual basis. For example, appellant argues that the **persons who** placed wagers with him were of the lower economic class who could not have placed wagers in the amounts determined by respondent. (**App. pet. for Reassessment, Oct. 8, 1985.**) **However,** this **allegation** is clearly contradicted by the actual pay-and-owe sheets of appellant upon which these assessments are based.

In such a situation, based upon the evidence presented, we have no choice but to find that respondent's reconstruction *of* appellant's income is based upon credible evidence and that its action must, therefore, be sustained.

