



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
BYRON B. AND GENE L. BROWNELL }

Appearandes:

For Appellants: Byron B. Brownell, in propria persona

For Respondent: Lawrence M. Goldstein, Associate Tax 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 Byron B. and Gene L. Brownell to a proposed assessment of additional personal income tax in the amount of \$1,439.69 for the year 1951.

On November 16, 1951, Byron B. Brownell, the husband of Gene L. Brownell, was arrested on a charge of bookmaking, that is, accepting wagers on horse races, in violation of Section 337a of the Penal Code, According to the report of the arresting officer, Appellant had in his possession a looseleaf notebook which Appellant stated was a record of money owed him by persons who placed bets with him, The report stated that papers declared by Appellant to be records of wagers received on November 15, 1951, indicated the horses on which bets were made,

Appellant entered a plea of not guilty to two counts of bookmaking and was brought to trial on March 12, 1952. At the conclusion of his testimony at the trial he changed his plea to guilty on one count and the other count was dismissed, On April 8, 1952, he was sentenced to seven months in the county jail and was fined \$700.00.

On November 30, 1951, while he was free on bail on the foregoing charge, he acquired a Federal gambling tax license stamp under the provisions of Sections 3285 and 3298 of the Internal Revenue Code of 1939. These provisions became effective on November 1, 1951.

Appellants filed a joint State income tax return for the year 1951 in which they reported an item of income in the amount of \$7,653.00, which was designated as from

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"Race Track Speculation," ✓

The Franchise Tax Board recomputed Appellants' income on the basis that bets lost subsequent to May 3, 1951, the effective date of Section 17359 of the Revenue and Taxation Code, were not deductible from income derived from bookmaking. Since Appellants had no records of the amount of bets lost, the Franchise Tax Board determined that this amount was 86 percent of the sum reported as derived from "Race Track Speculation." This determination was based on the fact that at California tracks 86 percent of the parimutuel pools were, during the period in question; returned to the patrons. The figure thus arrived at was \$31,340.86, which was added to the reported sum of \$7,653.00 to establish Appellants' taxable income from bookmaking.

Section 17359 (now 17297) of the Revenue and Taxation Code provides:

"In computing net income, no deduction 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 . . ."

Section 337a, under which Appellant Byron Brownell was convicted, is contained in the portion of the Penal Code referred to in the above-quoted section.

Appellant alleges that his illegal activities consisted entirely of carrying bets to the tracks for friends during two weeks of 1951 and that he merely received a commission on the winnings. He states that he pleaded guilty to the bookmaking charge only because of an appellate court decision which held that activities of the type he engaged in were in violation of Section 337a of the Penal Code,

He contends that his income for the year in question was derived primarily from bets which he legitimately placed at the tracks on his own account. In support of this contention he has submitted two sheets from a loose-leaf notebook. On these sheets there appear amounts with plus or minus signs in front of them for each week of 1951 and a total of \$8,553.00 for the year. From this total there is subtracted an amount of \$900 designated as "un-collected," leaving a "net" of \$7,653.00.

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There is no question as to whether Appellant was engaged in illegal activities of the type contemplated by Section 17359 of the Revenue and Taxation Code. The sole issue concerns the amount of gross income derived therefrom. On this point, the evidence submitted by Appellant is far from convincing.

His statement that his illegal activities consisted of taking bets to the tracks for friends is belied by the fact that he acquired a Federal gambling tax stamp. The Federal gambling tax act clearly excludes from its application any wagers placed with a parimutual wagering enterprise such as a licensed race-track (Sections 3285(e), 3290 and 3293 of the Internal Revenue Code of 1939).

If the records which Appellant has submitted do actually reflect gain from legitimate bets on his own account, then they are of no assistance in determining the income from his illegal activities. There is, however, a notable absence of the type of records which were in Appellant's possession at the time of his arrest. These records identified persons who owed Appellant money and horses on which wagers were placed.

Evidence more substantial than that presented by Appellant has been held insufficient where the Commissioner of Internal Revenue estimated the taxable income of a bookmaker on a basis similar to that here employed by the Franchise Tax Board (Albert D. McGrath, 27 T. C. 117; see also Hodoh v. United States, 153 Fed. Supp. 822). We cannot conclude on the record before us that the assessment in question was erroneous.

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 Byron B. and Gene L. Brownell to a proposed assessment of

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additional personal income tax in the amount of \$1,439.69 for the year 1951 be and the same is hereby sustained.

Done at Sacramento, California, this 13th day of October, 1959, by the State Board of Equalization.

Paul R. Leake _____, Chairman

George R. Reilly _____, Member

John W. Lynch _____, Member

Richard Nevins _____, Member

_____, Member

ATTEST: Dixwell L. Pierce _____, Secretary