

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the latter of the Appeal of)
JESSIE M. GIRDNER)

Appearances :

For Appellant: Archibald M. Full, Jr.,
Attorney at Law

For Respondent: Curl D. Lack, Chief 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 Jessie M. Girdner to proposed assessments of additional personal income tax in the amounts of \$1,162.43, \$3,756.45, \$5,800.05 and \$6,421.87 for the years 1951, 1952, 1953 and 1954, respectively,

Appellant owned a coin machine business. Operations were conducted in the Watsonville area under the name of Happy Jack Music Co. The business was operated under the direction of a manager, but appellant was familiar with the manner in which the manager was operating the business*

Happy Jack Music Co. owned multiple-odd bingo pinball machines and music machines. There were as many as seventeen music machines and up to twenty or thirty pinball machines. The equipment was placed in various locations such as bars and restaurants. The proceeds from each machine, after exclusion of expenses claimed by the location owner in connection with the operation of the machine, were, except as to music machines, divided equally between Happy Jack Music Co. and the location owner. Happy Jack Music Co. received 60 percent of the music machine proceeds,

The gross income reported in tax returns was the total of amounts retained from locations. Deductions were taken for salaries, depreciation, phonograph records and other business expenses. Respondent determined that appellant was renting space in the locations where his machines were placed and that all the coins deposited in the machines constituted gross income to him. Respondent also disallowed all expenses pursuant to section 17359 (now 17297) of the Revenue and Taxation Code which read:

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In computing net **income**, no deductions 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; nor shall any deductions be allowed to any taxpayer on any of his gross income derived from any other activities which tend to promote or to further, or are connected or associated with, such illegal activities,

The evidence indicates that the operating arrangements between appellant and each location owner were the same as those considered by us in Appeal of Hall, Cal. St. Bd. of Equal., Dec. 29, 1958, 2 CCH Cal. Tax Cas. Par. 201-197, 3 P-H State & Local Tax Serv. Cal. Par. 53145, Cur conclusion in Hall that the machine owner and each location owner were engaged in a joint **venture** in the operation of these machines is, accordingly, applicable here,

In Appeal of Advance Automatic Sales Co., Cal. St. Bd. of Equal., Oct. 9, 1957, 3 CCH Cal. Tax Cas. Par. _____, 2 P-H State & Local Tax Serv. Cal. Par. 13288, we held the ownership or possession of a pinball machine to be illegal under Penal Code sections 330b, 330.1 and 330.5 if the machine was pre-dominantly a game of chance or if cash was paid to players for unplayed free games, and we also held bingo pinball machines to be predominantly games of chance.

From the evidence submitted? it is clear that it was the general practice to pay cash to players of the pinball machines for unplayed free games, Accordingly, this phase of the business was illegal, both on the ground of ownership and possession of bingo pinball machines which were pre-dominantly games of chance and on the ground that cash was paid to winning players, Respondent was therefore correct in applying section 17359.

The same collector collected from all types of machines and the same repair man serviced all types of machines. Many of the locations had both a pinball machine and a music machine from Happy Jack Music Co, There was therefore substantial connection between the illegal. operation of multiple-&d bingo pinball machines and the legal operation of music machines and **responcent** was correct in disallowing all expenses of the business,

There were no records of amounts paid to winning players on the pinball machines and respondent estimated these unrecorded amounts as equal to **33-1/3** percent of the

