



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
F. L. AND V. T. ARROYO)

Appearances:

For Appellants: F. L. Arroyo, in pro. per.

For Respondent: A. Ben Jacobson, Associate Tax 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 F. L. and V. T. Arroyo to a proposed assessment of additional personal income tax in the amount of \$2,156.04 for 1952.

Appellants are husband and wife. The husband, F. L. Arroyo (hereinafter called "appellant"), was the lessee of a building in Delano. In the building there were four areas where four business activities were carried on. These were a bar and restaurant, a barber shop, a cardroom and a poolroom.

Respondent determined that illegal gambling took place in the cardroom and disallowed all expenses of the four business activities pursuant to Section 17359 (now 17297) of the Revenue and Taxation Code which read:

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.

Other adjustments made by Respondent are conceded by Appellant.

There were two tables in the cardroom. Three different card games were played at various times. Draw poker was played among the players and the house took 5 percent from each pot.

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Rummy was played among the players and from every third hand the house collected a fixed amount from each player. Palosi (a variation of poker) was played by a maximum of six players each playing against the house.

Section 330 of the Penal Code makes it a misdemeanor to deal or conduct "any banking or percentage game played with cards ... for money." The draw poker game as played in Appellant's establishment was a percentage game and therefore prohibited by Section 330. The palosi game was played as a banking game and was therefore prohibited by Section 330. Accordingly, it was correct for Respondent to disallow the expenses of operating the cardroom,

Respondent, as we have stated, disallowed the expenses of the entire premises, that is, cardroom, poolroom, bar and cafe, and barbershop. We have been furnished with a diagram of the building and the areas used for the various activities and it would appear that most cardplayers would enter the cardroom from the poolroom. In view of this and the fact that the nature of each game is such that many patrons were likely to play both cards and pool, we believe there was a substantial connection between the poolroom and the cardroom.

Card players would order drinks from the bar and cafe or would leave the game long enough to get some food and drink in the card and cafe. This constitutes a substantial connection between the cardroom and the bar and cafe.

The barbershop, however, would appear to have no relationship to the cardroom. There would appear to be no business purpose to operate a cardroom and a barbershop together. The presence of the barbershop is accounted for by the fact that barbering was Appellant's original occupation but this is merely a historical accident. We find that the barbershop did not tend to promote or further the cardroom and was not associated or connected with the cardroom.

Respondent's assessment must be sustained therefore except with respect to the expenses of the barbershop, which are to be allowed. The amount of such allowable expenses is the compensation received by the barber plus an apportioned amount of the expenses for rent, laundry, utilities, etc. We find this apportioned amount for the year in question to be \$700.00.

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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 on the protest of F. L. and V. T. Arroyo to a proposed assessment of additional personal income tax in the amount of \$2,156.04 for 1952 be modified in that the barbershop expenses are to be allowed as deductions. In all other respects the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 19th day of December, 1962, by the State Board of Equalization.

Geo. R. Reilly, Chairman

John W. Lynch, Member

Paul R. Leake, Member

Richard Nevins, Member

_____, Member

ATTEST: Dixwell L. Pierce, Secretary