



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
M. D. GAYER)

Appearances:

For Appellant: Irvin B. Gayer
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 M. D. Gayer to proposed assessments of additional personal income tax and penalties in the total amounts of \$2,792.31 and \$12,249.26 for the years 1952 and 1953, respectively.

Appellant M. D. Gayer (hereinafter called appellant) owned a coin machine business consisting of some music machines, fifteen multiple-odd bingo pinball machines, four shuffle bowlers and two flipper pinball machines in 1952 and consisting of some music machines, fifty-three multiple-odd bingo pinball machines, seven shuffle bowlers and two flipper pinball machines in 1953. The business was managed by Irvin B. Gayer, appellant's husband, who also managed his own coin machine business and that of his son, Jack B. Gayer. Appellant's equipment was placed in several locations such as bars and restaurants, Some of these locations formerly had equipment owned by Jack B. Gayer. The proceeds from each machine, after exclusion of expenses claimed by the location owner in connection with the operation of the machine, were divided equally, Certain individuals collected from and repaired the machines in return for a third of the amounts collected from the locations,

The gross income reported in tax returns was the total of amounts retained from locations, Deductions were taken for commissions, depreciation and other business expenses. Respondent determined that appellant was renting space in the locations where her machines were placed and that all the coins deposited in the machines constituted gross income to her. Respondent also disallowed all expenses pursuant to section 1735'9 (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

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derived from any other activities which tend to promote or to further, or are connected or associated with, such illegal activities.

The facts in this matter are essentially the same as those in the closely related Appeal of Jack B. and Petronela Gayer, this day decided. The conclusions that we reached with respect to the taxpayers in that appeal apply to the appellant here, with the following additional finding.

In connection with the computation of the unrecorded payouts it was necessary to determine the amount of appellant's recorded gross income which was attributable to bingo pinball machines. Records kept by Irvin B. Gayer segregated appellant's recorded gross income between games and music machines and respondent treated all the income from games as attributable to bingo pinball machines. However, the evidence indicates that appellant had six non-bingo games in 1952 and nine non-bingo games in 1953. Accordingly, we believe some segregation of the game income must be made. In view of the total number of machines and recognizing the superior earning power of bingo pinball machines, we conclude that 12 percent of appellant's recorded gross income from games was attributable to non-bingo games in 1952 and that 8 percent of such income was attributable to non-bingo games in 1953.

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 M. D. Gayer to proposed assessments of additional personal income tax and penalties in the total amounts of \$2,792.31 and \$12,249.26 for the years-1952 and 1953, respectively, be modified in that the gross income is to recomputed in accordance with the opinion of the board. In all other respects the action of the Franchise Tax Board is sustained,

Done at Sacramento, California, this 7th day of January, 1964, by the State Board of Equalization.

Paul R. Leake _____, Chairman

John W. Lynch _____, Member

Geo. R. Reilly _____, Member

Richard Nevins _____, Member

_____, Member

ATTEST: H. F. Freeman, Secretary