



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
ESTATE OF EDITH C. PANUZZI, DECEASED,)
JOSEPH O. PANUZZI, EXECUTOR)

Appearances:

For Appellant: Enrico Dell'Osso
Attorney at Law

For Respondent: John D. Schell
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 protests of Estate of Edith C. Panuzzi, Deceased, Joseph O. Panuzzi, Executor, against proposed assessments of additional personal income tax in the amounts of \$794.16, \$799.58, \$996.37, \$1,023.01, \$1,151.72, \$994.52, \$893.53, \$84.99 and \$1,193.64 for the years 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964 and 1965, respectively.

The sole question for decision is whether the expenditures of "house players" in draw poker games were deductible by the house as business expenses or whether they were gambling losses, the deduction of which was limited by subdivision (d) of section 17206 of the Revenue and Taxation Code.

During the years on appeal Edith C. Panuzzi and Catherine E. Conger were equal partners in the operation of the Avalon Club, a legal draw poker establishment located in Emeryville, California: Mrs. Panuzzi died on September 1, 1967, and it is her estate which brings this appeal.

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When in operation the house (Avalon Club) collected seat rental charges each half-hour from all players. It employed so-called house players to make up the minimum number of players necessary to start a new game or to keep a game in progress. House players were provided with chips for betting and for seat rental charges, and they were instructed to follow certain conservative rules of play. They were to remain in a game only until there were customers available. When a house player left a game he returned to the house all of the chips remaining in his possession. At the end of each day's play a cashier recorded each house player's net winnings or losses. In each of the years in question the total of the amounts returned by the house players was less than the amounts originally provided them. The records which were kept did not distinguish between seat rentals paid and betting losses sustained by the house players.)

In the personal income tax returns which she filed for each of the appeal years, Edith C. Panuzzi reported her share of the partnership income from the Avalon Club. In arriving at its taxable income for each year, the club had deducted the net expenditures of the house players as a business promotion expense. Respondent determined that that deduction by the Avalon Club was improper, and the resulting assessments against Mrs. Panuzzi gave rise to this appeal.

Appellant contends that the Avalon Club was primarily engaged in the seat rental business, and its house players were employed for the purpose of stimulating that business. Appellant argues that although the club patrons were engaged in gambling activity the house players were not, since as a result of the strict house rules imposed upon them, the element of chance was eliminated from their play. That being so, argues appellant, the expense of employing and maintaining the house players was deductible as an ordinary and necessary business expense under section 17202, subdivision (a), of the Revenue and Taxation Code.

It is respondent's position that in spite of any limitations placed on the playing techniques of the house players, or whether they won or lost, their activity nevertheless constituted gambling. That being the case, respondent argues, the expenditures of the house players were gambling losses deductible only to the extent of gains from such transactions, as expressly provided in section 17206, subdivision (d), of the Revenue and Taxation Code.

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We have on several earlier occasions been confronted with cases virtually identical to this.; (Appeals of Ernest Evelyn Primm, et al., Cal. St. Bd. of Equal., July 23, 1959; Appeal of Harry and r ly Klassman, Cal. St. Bd. of Equal., February 13, 1962; Appeal of Edith C. Panuzzi and Catherine E. Conger, Cal. St. Bd. of Equal., February 13, 1962.) The Appeal of Edith C. Panuzzi and Catherine E. Conger, supra, involved the operations of the same business establishment with which we are here concerned, for the earlier taxable years 1953 through 1956. In all of these cases we have consistently held that the transactions engaged in through the house players constituted wagering, and losses arising from them were therefore governed by section 17206, subdivision (d), of the Revenue and Taxation Code.

The Avalon Club's methods of operation continued unchanged during the years now on appeal. Appellant has submitted no new facts, and its position is essentially that our previous decisions were wrong. Upon review of the law and on the basis of the record before us, we see no justification for changing our earlier conclusion' on this issue.

Some portion of the amounts disallowed as deductions by respondent includes seat rentals paid by the house players. Although the Avalon Club itself originally provided the funds for those rentals, it is possible that it included them in gross income together with rentals paid by persons other than house players. The record before us does not establish whether this was the case nor does it indicate the amount of the house player seat rentals.. Under the circumstances, we can make no adjustment with respect to this item.

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,

Anneal of Estate of Edith C. Panuzzi, Deceased, et al.

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 protests of Estate of **Edith C. Panuzzi**, Deceased, and Joseph O. Panuzzi, Executor, against proposed assessments of additional personal income tax in the amounts of \$794.16, \$799.58, \$996.37, \$1,023.01, \$1,151.72, \$994.52, \$893.53, \$864.99 and \$1,193.64 for the years 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964 and 1965, respectively, be and the same is hereby sustained.

Done at Sacramento, California, ~~this~~ 14th day of September, 1970, by the State Board of Equalization.

Leo R. Jones, Chairman
John W. Lynch, Member
Richard A. ..., Member
_____, Member
_____, Member

ATTEST: *[Signature]*, Secretary