

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
ESTATE OF RICHARD LUEBBERT,)
DECEASED, AND VERLA LUEBBERT)

For Appellants: Verla Luebbert, in pro., per.

For Respondent: Crawford H. Thomas
Chief Counsel

Joseph W. Kegler
Supervising 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 Richard Luebbert, Deceased, and Verla Luebbert against proposed assessments of additional personal income tax in the amounts of \$275.58, \$317.37, and \$62.66 for the years 1957, 1958, and 1959, respectively.

Prior to his death on May 8, 1959, Richard Luebbert was a partner with Robert M. Chacon in the Base Novelty Company which operated a coin machine business, in Orange, Riverside, and San Bernardino Counties. The partnership owned a substantial number of pinball machines, most of which were multiple-odd bingo pinball machines. The latter were placed in various locations such as bars and restaurants. Mr. Chacon also owned similar equipment as an individual and operated a separate coin machine business in Orange County as a sole proprietor.

In Appeal of Robert M. and Jeanne Chacon and ~~Richard and Verla Luebbert~~ M a y 7, 1963, this board considered additional assessments of personal income tax against the Luebberts for the year 1953 and against

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the Chacons for the years 1951 through 1953. We there concluded that the arrangements between the partnership and each location owner constituted a joint venture in the operation of the machines. In that decision we also determined that bingo pinball machines were predominantly games of chance and that respondent was correct in applying section 17359 (now 17297) of the Revenue and Taxation Code, because it was the general practice to pay cash to players of the bingo pinball machines for unplayed free games. Under section 17359 we concluded that respondent had correctly disallowed all expense deductions on gross income derived from such illegal activities.

In the present matter, respondent determined that the facts disclosed in the prior appeal continued to exist throughout the years here on appeal. Accordingly, respondent computed the proposed assessments on the basis of the joint venture theory. It estimated that 80 percent of the actual receipts recorded by the partnership were derived from the illegal games and that the amount paid out to winning players on the illegal games was 25 percent of the amount played in the machines. Respondent then added the amount of payouts back to determine the total deposited in the machines and, thus the total income of the partnership and concluded that 64.21 percent of total income was derived from illegal games. That percentage of the business expense deductions was disallowed.

The determination of the Franchise Tax Board is presumed correct and the burden of proving it incorrect is on the taxpayer. (Todd v. McColgan, 89 Cal. App.2d 509 [201 P.2d 414].) Here appellants have not disputed the accuracy or the validity of respondent's computations; they have only asserted their inability to pay the assessments. This board lacks the authority to strike down a valid assessment of tax on the ground that payment will be difficult. Since the action taken by respondent appears reasonable and proper, it must be affirmed.

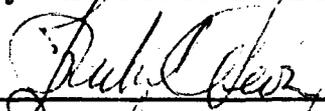
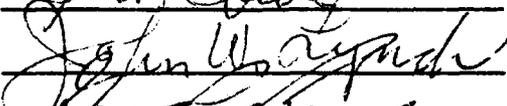
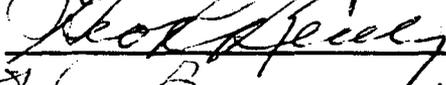
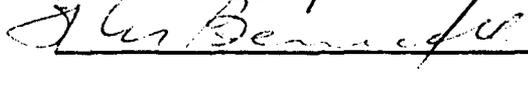
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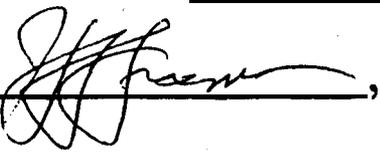
Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

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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 Richard Luebbert, Deceased, and Verla Luebbert against proposed assessments of additional personal income tax in the amounts of \$275.58, \$317.37, and \$62.66 for the years 1957, 1958, and 1959, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 13th day of September, 1971, by the State Board of Equalization.

, Chairman
, Member
, Member
, Member
_____, Member

ATTEST: , Secretary