fact in reviewing the ruling of the court below. 5 Am.Jur.2d *Appeal and Error* § 606.

In view of the foregoing, judgment of the Trial Court is hereby AFFIRMED.

PEDRO P. TENORIO, d/b/a P/S AMUSEMENT COMPANY, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS and RONALD A. PETERSON, Director of Finance, Appellees

Civil Appeal No. 190

Appellate Division of the High Court

Mariana Islands District

April 10, 1978

Payer of gross receipts tax appealed from decision against him in his declaratory judgment action, brought when government defined total amount of money inserted in slot machines as taxable gross receipts. The Appellate Division of the High Court, Hefner, Associate Justice, held that gross receipts included neither payoffs made by the machine nor payoffs by the owner of the machine after he took from the machine the money not paid off by the machine, and that that part of the money not paid off by the machine which was given to proprietor of the establishment where the machine stood was rent and to be included in gross receipts of owner of the machine.

1. **Taxation—Gross Revenue Tax—Construction**

   Letter from Director of Finance to taxpayer interpreting term "gross revenue" as used in tax law was not an unlawful usurpation of legislative authority, but rather, an administrative interpretation of the law, and construction of the law ultimately rested with the court. (77 TTC § 251(7))

2. **Taxation—Generally**

   The obligation to pay taxes arises only from legislation and the interpretation of that legislation is guided by the rule that words are to be given their common and ordinary meaning.

3. **Taxation—Gross Revenue Tax—Gross Receipts**

   "Gross receipts" does not include receipts held for the account of another.

4. **Taxation—Gross Revenue Tax—Gross Receipts**

"Gross receipts" as used in gross receipts tax law does not mean the total amount of money put into a slot machine, but rather, the money taken out of the machine by the owner after opening the machine; the tax may not be levied upon the total amount inserted in the machine, and the money is not "received" until the machine is opened and that portion of the money inserted which has not been paid out by the machine as winnings is taken out of the machine by the owner. (77 TTC §§ 251(7), 258)

5. **Taxation—Gross Revenue Tax—Gross Receipts**

Where, after taking out of slot machines the money that was not paid out by the machines, the owner of the machines used part of that money for jackpot payoffs, that part of the money was not gross receipts includable in gross receipts tax. (77 TTC §§ 251(7), 258)

6. **Taxation—Gross Revenue Tax—Gross Receipts**

Where slot machine owner split with proprietor of the establishment where the machine was located the money inserted in the machine and not paid out as winnings, the proprietor's share was rent and not an expense allowable as a deduction from gross receipts tax on the gross receipts from the machine. (77 TTC §§ 251(7), 258)

Counsel for Appellant: MICHAEL A. WHITE, ESQ.
Counsel for Appellees: MACK REDFORD, *Attorney General's Office,* Trust Territory

Before BURNETT, *Chief Justice,* HEFNER, *Associate Justice,* and CRARY, *Temporary Justice**

HEFNER, *Associate Justice*

In 1974, pursuant to local law, the operation of slot machines was authorized in the Mariana Islands District. The appellant purchased a good number of machines and placed them in various establishments.

The appellant filed his tax returns for his "gross revenues" as defined in 77 TTC § 251(7) by reporting the operator's share of the total amount taken out of the machines, less money he had put in machines, less jackpot payouts

* The Honorable E. Avery Crary, Senior Judge, U.S. District Court, C.D. California, appointed by the Secretary of the Interior pursuant to Part IV, Secretarial Order 2918 (as amended).

paid from the machines and less a payment to the establishment for use of the premises.

On November 6, 1974, the appellee Peterson, the then Director of Finance, notified the appellant that he was erroneously reporting his gross receipts and that the Government interpreted 77 TTC § 251(7) as requiring slot machine operators to report and pay gross revenue tax on the total amount received by the machines. No deduction was to be allowed jackpot payments or the proprietor's share. The appellant filed his action for Declaratory Judgment shortly thereafter contesting the appellees' interpretation.

The matter was submitted to the Trial Court on stipulated facts and the Court ruled in favor of the appellees.

The issues presented by the appellant on appeal are:

1. Whether appellees' actions constituted an unlawful usurpation of legislative authority and were therefore void.

   Answered in the negative by the Trial Division.

2. Whether appellees' failure to observe the procedure prescribed by law required a remand to the Department of Finance.

   Answered in the negative by the Trial Division.

3. Whether the interpretive ruling by appellees as to what constitutes appellant's gross revenue was arbitrary, capricious, and an abuse of discretion.

   Not answered by the Trial Division.

4. Whether the term "gross revenue" as applied to appellant includes the total amount of coins inserted into the machines by players, without allowance for any payouts or for the proprietor's share of the net cashbox proceeds.

   Answered in the affirmative by the Trial Division.

[1] In considering the first issue on appeal, it does not appear that the appellees are attempting to assume legisla-

tive authority in effecting a change with respect to any of the sections of the Trust Territory Code. This Court interprets the appellee's letter of November 6, 1974, as being an interpretation of the provisions of 77 TTC secs. 251(7) and 258.

Although the appellees have every right, in the circumstances, to *interpret* the statutes, their interpretation is by no means final. The letter of November 6, 1974, interpreting "gross revenue" appears to constitute an administrative interpretation or rule subject to Chapter 1, Title 17, TTC; however, as stated by the Trial Court, although an administrative agency may interpret a statute, the construction of a statute is an exercise of judicial power and the ultimate interpretation rests with the Court. We agree with the Trial Court that for that reason it is unnecessary to remand the matter to the agency.

By this ruling the second issue is determined in favor of the appellees. It is also to be noted that the letter of the appellant's counsel, dated 12/4/74, waives any procedural defects in determining appellant's tax liability.

It is conceded by both parties that the legislative history of the Trust Territory Income Tax Law (Chapter 11, Title 77, TTC) is not helpful as there is no indication that the Congress of Micronesia contemplated slot machines when the definition of gross revenue was formulated. Therefore, the Court, in resolving this issue, must look to the ordinary and common usage of the words incorporated in the statute.

It is the very nature of a slot machine which presents the dilemma here, and an analogy is of little or no help. On the overall average, the player or players, in the process of winning or losing, deposit far many more coins in the coin receptacle than are actually removed from the machine by the owner. The simple fact is that a mechanical contrivance is between the player and the owner of the machine. The machine is preset so it must return on the average at least

80% of all money put in the coin receptacle to the player. Saipan Municipal Ordinance No. 25-28-1974.[1] Thus, even though the machine is owned and controlled by the taxpayer, of the total amount of coins that are inserted into the machine, the taxpayer cannot receive more than 20% of the total played.

In the letter of the Director of Finance to the appellant, the interpretation of the Government is stated as follows:

> Slot machine operators must report and pay Trust Territory Gross Receipts Tax on the *total gross receipts of all machines* they operate within the Trust Territory. *Slot machine gross receipts* have been defined to include total play, i.e., amount deposited in or collected by the machine. Taxable gross receipts must be computed without deductions for jackpots, payouts or take splits. (Emphasis added.)

It is clear, therefore, that the Government equates receipt by the machine as receipt by the taxpayer, notwithstanding Saipan Ordinance 25-28-1974.

Section 251(7) of Title 77 reads in pertinent part:

> "Gross Revenue" means the . . . gross receipts *of the taxpayer*, derived from . . . trade, business, commerce or sales and the value proceeding or accruing from the sale of tangible personal property, or service, or both . . . (emphasis added).

[2] The obligation to pay taxes arises only from legislative provision and the interpretation of tax measures is guided by the rule that words are to be given their common and ordinary meaning. *Crane v. Commissioner of Internal Revenue*, 331 U.S. 1, 67 S.Ct. 1047, 91 L.Ed. 1301; *Old Colony R. Co. v. Commissioner of Internal Revenue*, 284 U.S. 552, 52 S.Ct. 211, 76 L.Ed. 484; *Baker v. United States*, 292 F.Supp. 1014; *Prudential Ins. Co. v. United States*, 319

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[1] The ordinance states: "It shall be unlawful for any person to offer any slot machine for play unless such slot machine has been adjusted to return not less than eighty percent (80%) on the average, of all money played to the players thereof."

F.2d 161. See also *Sutherland Statutory Construction*, 3rd edition, Sec. 6710.

The term "receipts" is derived from the verb "receive." To "receive" is to take or accept or to take possession or delivery of; to knowingly accept; to take in; act as a receptacle or container for. (*Webster's Third New International Dictionary.*)

[3] "Gross Receipts" has been construed to include for tax purposes only those receipts which are the property of the taxpayer or which the taxpayer is entitled to retain and use for the benefit of its business and out of which receipts it could pay and discharge obligations of its business. *State v. Coshocton Gas Co.*, 22 Ohio Dec. 412, 12 Ohio N.P.N.S. 570; *Laclede Gas Co. v. City of St. Louis*, 253 S.W.2d 832, 363 Mo. 842; *City of Los Angeles v. Clinton Merchandising Corp.*, 375 P.2d 851, 25 Cal. Rptr. 859. As the Court in *City of Los Angeles* held, the term "gross receipts" does not include those receipts which are held for the account of another. (At page 855.)

Section 258 of Title 77 prescribes that the tax shall be paid ". . . upon that portion of the amount of *gross revenues earned* by every business subject to the provisions of this chapter . . ." (emphasis added).

The same tax form that the taxpayer in this case used to file his return directed him to insert "the total amount of revenue earned." Section 295 obligates the taxpayer to file a return showing all "gross revenue received, accrued, or earned."

To earn is to reap; to receive as equitable return for work done or services rendered; to have accredited to one as remuneration; to come to be duly worthy of or entitled to as remuneration for work or services. *Webster's Third New International Dictionary.*

The Government argues, in effect, that since Section 251(7) denies any deduction for any expenses whatsoever,

this must include everything conceivable that the taxpayer receives in a business. Yet the same section excludes from gross revenue, refunds, rebates, returns and monies held in a fiduciary capacity. By regulation, the Government has further eliminated taxes imposed upon a purchaser by a taxing authority and collected by the seller. Part 15.1 *Trust Territory Income Tax Regulations.*

[4] Interpreting the terms in the tax law as commonly used, it must be concluded that it is improper to levy a tax on the total amount inserted in the coin receptacle of the machine. The money put in the slot is received mechanically by the machine, not the taxpayer. It is not earned money. During the time the money is in the machine or circulating from the payout slot to the payin slot or to the player's pocket (if he is lucky) it cannot be said that the money is received by the taxpayer or that the taxpayer is entitled to retain and use the money for its benefit and out of which receipts it could pay and discharge obligations of its business. The money is not accredited to the taxpayer as a return for the services of supplying the machine nor is it earned until the owner of the machine takes money from the machine. At the time of the opening of the machine and taking coins from it, the receipt by the owner is established but not before. The money withdrawn is used to pay the obligations of the taxpayer. The money is earned at that point.

This conclusion is further buttressed by the fact that the owner of the slot machine must initially place his own coins in the machine to have, in effect, a bank to pay off in the event the player wins more coins than he has placed in the machine.[2] If the owner's own coins are used to pay off a winner and then reinserted in the coin receptacle, the owner would be paying tax on his own money if the Gov-

[2] This initial placement of coins in the machine by the owner is known as "fill" and usually consists of 400 coins.

ernment's position is sustained. Such a result, of course, cannot be said to be intended when interpreting a gross receipts tax. Section 251(7)(a) provides that refunds, rebates and returns are not included in gross revenue. Thus, whether the fill is never used or whether it circulates in the machine, it still remains the property of the taxpayer who, in effect, has made a loan to the machine. One cannot receive what he already has. One cannot earn what already belongs to him.

The appellant contends that he should be allowed to report only the coins taken from the machine less the fill and less money paid to the players of the machines in addition to money paid directly from the machines (referred to as jackpot payouts) and less the amount of money paid to the proprietor of the establishments in which the machines are located.

[5] Since the money manually paid to players (jackpot payouts) is to comply with the Saipan Ordinance limiting the slot machine owner's take, this must be treated the same way as machine payouts. When the owner takes coins from the machines, he is obligated by law to hold sufficient funds so that on the average a player or players will be returned at least 80% of their money. Thus, although the money taken from the machines by the owner is technically received by him, it is only his money to the extent the law allows. The owner is in the status similar to a bank which holds funds for another. Therefore, the money taken for jackpot payouts is not a receipt to the taxpayer nor is it earned. The receipt by the owner from the machine of the balance (after fill and jackpot payouts) is truly the taxpayer's gross receipts.

[6] The fact that the owner of the machine then splits the proceeds with the proprietor of the establishment does not make them partners. As pointed out by the Government, this is nothing more than a payment of rent. Such an

expense is not allowed as a deduction from the gross receipts.

Accordingly, it is held that for the purposes of slot machine operations, gross revenue, for the purposes of 77 TTC secs. 251(7) and 258, is the amount actually taken from the machines by the owner/taxpayer less the amount of fill or money put in the machine by the owner/taxpayer and less the amount of money paid to players directly from the machines, commonly known as "jackpot payouts."

The judgment of the Trial Court is reversed in part and confirmed in part as indicated above.

CRARY, *Temporary Judge*, concurring. I concur with Justice Hefner's opinion in which Chief Justice Burnett concurs on the authority of Section 258 of Title 77, which prescribes that tax shall be paid "* * * upon that portion of the amount of gross revenue *earned* by every business subject to the provisions of this chapter * * *." [Emphasis added.] I am unable to agree with the conclusion set forth in the opinion as to what constitutes the "gross revenue" where the operators of slot machines are involved.

ISAO SATO, Plaintiff-Appellant

v.

SHIRO BEDUL, Defendant-Appellee

Civil Appeal No. 193

Appellate Division of the High Court

Palau District

May 15, 1978

Appeal from Trial Division of the High Court. The Appellate Division of the High Court, Burnett, Chief Justice, affirmed.

1. Appeal and Error—Evidence—Weight

Reweighing of the evidence is not a proper function of an appellate court.