

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 003

June 27, 1958

ILLEGAL EXPENSES: COST OF GOODS

Syllabus:

The amount paid in excess of OPA ceiling prices may be included as a part of the cost of goods sold in determining gross income.

The particular problem involved concerns the inclusion or exclusion of the amount paid in excess of OPA ceiling prices as a part of the cost of goods sold in determining gross income.

Irrespective of the rule in the case of illegal expense there should be no question with respect to the cost of goods sold. Deductions are traditionally a matter of legislative grace but the cost of the goods is a determinant of gross income. In Andrew Kjar, CCH Dec. 12114-E, the court disallowed deductions incurred in an illegal business, but permitted the reduction of gross income by the cost of illegal merchandise sold. See Anthony C. Stralla, 9 TC 801. The Tax Court has followed this rule in the case of purchases in violation of OPA price ceilings, despite the Bureau's attempt to convert the tax law into a police statute for this purpose, and has recognized the full purchase price as cost of goods. Lela Sullenger, 11 TC 1076, overruling IT 3724, CB 1945, 57.