



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
GEORGE B. GOLDENBERG)

Appearances:

For Appellant: Harry Sackman

For Respondent: Harrison Harkins, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 19 of the Personal Income Tax Act (Chapter 329, Statutes of 1935, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of George B. Goldenberg to a proposed assessment of additional tax for the year ended December 31, 1936, in the amount of \$121.19.

The Appellant, during the year ended December 31, 1936, was a member of a partnership conducting a horse race bookmaking establishment, and also, on the same premises, conducted individually a venture of a similar nature. It is alleged by the Appellant that during that year he suffered a loss of \$6,173.00 from this individual venture, which he seeks to offset against his distributive share of the gains of the partnership for the same period, amounting to \$7,847.93. The proposed assessment resulted from the refusal of the Respondent to allow this offset.

The deduction of individual gambling losses against partnership gambling gains is permissible. See Personal Income Tax Act, Section 8(e), Neuberger v. Commissioner (1940) 311 U. S. 83; Jennings v. Commissioner (1940) 110 F 2d 945, certiorari denied, 311 u. s. 704. In the instant matter; however, the Appellant has not sustained the burden of proving the losses. At the hearing in this appeal a penciled memorandum of daily balances was the only proof offered. We do not consider this to constitute a substantiation of the losses claimed, particularly in view of the fact that the memorandum was not produced and apparently was not available at the time of the original audit of the Appellant's return.

O R D E R

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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the action of Charles J. McColgan, Franchise Tax Commissioner, in overruling

Appeal of George B. Goldenberg

the protest of George B. Goldenberg to a proposed assessment of additional tax in the amount of \$121.19 for the year ended December 31, 1936, be and the same is hereby sustained.

Done at Sacramento, California, this 4th day of August, 1942, by the State Board of Equalization.

R. E. Collins, Chairman
Wm. G. Bonelli, Member
George R. Reilly, Member

ATTEST: Dixwell L. Pierce, Secretary