



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
LINDSAY C. HOWARD)

Appearances:

For Appellant: Orville R. Vaughn, Attorney at Law

For Respondent: James J. Arditto, Franchise Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 18593 of the Revenue and Taxation Code (formerly Section 19 of the Personal Income Tax Act) from the action of the Franchise Tax Commissioner in overruling the protest of Lindsay C. Howard to a proposed assessment of additional tax in the amount of \$687.44 for the taxable year ended December 31, 1937.

The partnership of Howard and Reynal, of which Appellant owned a one-half interest, reported as income for the year 1937, during which it was dissolved, a profit of \$36.00. The partners reported their income from this partnership on their individual personal income tax returns as follows:

| | |
|------------------------------|-----------------|
| To Juan J. Reynal (profit) | \$4,827.63 |
| To Lindsay C. Howard (loss) | <u>4,791.63</u> |
| Total partnership net income | <u>\$ 36.00</u> |

In proposing the additional assessment against the Appellant, the **Commissioner** disallowed the loss deduction claimed by the taxpayer and added to his income the sum of \$18.00, being one-half of the net profit reported by the partnership. The basis of this action was an entry, made on the partnership ledger at the time of the formation of the partnership, that profits were to be equally divided. There was *no* written partnership contract and the Appellant has not attempted to show a different agreement as to the **division** of profits. Instead, Appellant contends that "**said partnership loss**, in amount of \$4,809.63, was the result of the operation of the partnership business and the settlement of accounts with the other partner ..."

The burden of justifying a deduction for a loss which has been disallowed by the Commissioner is upon the taxpayer. See Botany Worsted Mills v. United States, 278 U.S. 282, and Burnet v. Houston, 283 U.S. 223. The taxpayer has failed to **explain**, however, how the reported partnership profit of \$36.00 constituted