

September 17, 1945 it sold the picture to Columbia Pictures Corporation for \$25,000 cash and the cancellation of accounts payable to Columbia in the amount of \$30,481.83. The sales price was a net figure which was equivalent to \$85,356.66 in gross receipts from the exhibition of the picture. Deductions for amortization in the amounts of \$152,757.16 and \$306,402.61 were taken for the years ended July 31, 1944 and 1945, respectively, through use of the following figures in its formula:

Year ended July 31, 1944

$$\frac{\$257,103.36}{\$800,000.00} \times \$475,317.66 = \$152,757.16$$

Year ended July 31, 1945

$$\frac{\$515,701.62}{\$800,000.00} \times \$475,317.66 = \$306,402.61$$

Appellant, on November 15, 1945, filed a return for its second taxable year ended July 31, 1945. As its first taxable year had constituted a period of less than 12 months this return was also the basis for Appellant's tax for its third taxable year ended July 31, 1946. Because Appellant's returns showed a net loss for its taxable years ended July 31, 1944, and July 31, 1945, it paid only the minimum tax of \$21.25 for each of the taxable years in which it operated,

Upon audit of the Appellant's return for the year ended July 31, 1945, the Respondent determined that as of the end of that year the Appellant should have known, and prior to the time its return for that year was filed, it did know that total revenues from the picture would exceed its original estimate of gross receipts. Respondent, accordingly, adjusted amortization of the picture. Utilizing the formula used by Appellant it deducted from cost the amortization allowed for the previous year, which was then a closed year, and substituted gross receipts subsequent to the closed year for Appellant's original estimate of gross revenues. As thus computed, the amortization allowable for the year in question was \$270,241.19. This allowance was \$36,161.42 less than that deducted by Appellant, and resulted in the proposed additional tax involved in this appeal.

Section 8(f) of the Bank and Corporation Franchise Tax Act provided for "A reasonable allowance for exhaustion, wear and tear and obsolescence of property used in the trade or business.!" This is substantially the same as the Federal provision (Sec. 23(1) I.R.C.). In a controversy over the allowance, the taxpayer must establish the proper amount which may be deducted. Bennett v. Commissioner, 139 Fed. (2d) 961.

Granting the correctness of Appellant's contention that the reasonableness of the deduction must be determined in the light of conditions existing at the end of the period for which it is taken, Appellant has offered no evidence upon which such a determination may be made. Appellant states in its brief that domestic revenues had declined to the point that for the month ended May 26, 1945, they amounted to only \$2,029.79, that foreign revenues were dwindling with actual and threatened currency embargoes that made future foreign revenues doubtful. It adds that on July 31, 1945 total revenues were approximately \$27,000 short of its original \$800,000 estimate. We are not informed what foreign revenues were for the month of May, what total revenues were for the months of June and July, the rate of rise or decline in revenues at July 31, nor what foreknowledge, if any Appellant may have had as to the subsequent sale to its distributor. On the other hand, it appears that for the period August 1, 1945 to August 25, 1945, the receipts were \$14,468.03, and that on or about September 17, 1945, the picture was sufficiently valuable to sell for a consideration which was the equivalent of \$85,356.66 in gross receipts from the exhibition of the picture.

It would seem that Appellant having made an estimate of gross receipts in the light of conditions existing in October, 1944, which missed the mark only by an approximate 9%, might well have been able on July 31, 1945, to revise its estimate with a margin of error of less than 300% over the remaining life of the picture. Conceding that it was impossible at the end of the year in question to foresee the exact revenue later received, the taxpayer should have produced evidence showing the estimate to have been reasonable in the light of what was then known, and having failed to do so here, we must accept Respondent's figure.

In view of this conclusion, it is unnecessary to discuss Respondent's contention that Appellant's knowledge of the actual revenue prior to the filing of its return required the use of that figure in computing the deduction.

O R D E R

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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 25667 of the Revenue and Taxation Code that the action of the Franchise Tax Board on a protest of Address Unknown, Inc. to a proposed assessment of additional tax in the amount of \$1,435.46 for the income year ended July 31, 1945 (taxable years ended July 31, 1945 and 1946) be and the same is hereby sustained.

Done at Los Angeles, California, this 5th day of May, 1953, by the State Board of Equalization.

Wm. G. Bonelli, Chairman

J. H. Quinn, Member

Paul. R. Leake, Member

_____, Member

_____, Member

ATTEST: - Dixwell L. Pierce, Secretary