



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
SAM KATZMAN PRODUCTIONS, INC.)

Appearances:

For Appellant: Sam Katzman, its President;
M. M. Ellis, Certified Public
Accountant

For Respondent: Burl D. Lack, Chief Counsel;
Crawford H. Thomas, Associate
Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 25667 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Sam Katzman Productions, Inc., to a proposed assessment of additional tax in the amount of \$520.26 for the income year ended December 31 1947 (taxable years ended December 31, 1947 and 19481.

We wish to call attention at the outset to the fact that our entire written record herein of the Appellant's position consists of a purely formal notice of appeal and a page and a half letter sent in response to our request for a statement of facts and a memorandum of points and authorities in support of the Appellant's position. The Appellant did not avail itself of the opportunity offered to it to reply to the memorandum filed by the Respondent. The brief letter of the Appellant contains virtually nothing by way of a factual statement, states disagreement with the Respondent's action but is devoid of argument except in the broadest possible terms, and cites no authorities whatever. Although issues of fact are present, Appellant offered no documentary evidence or testimony at the hearing of the matter but merely slightly amplified the statements appearing in the letter above mentioned. Under these circumstances we do not feel obliged to enter into any extended discussion of the Appellant's position.

The Appellant was incorporated under the laws of this State on November 15, 1945. It was engaged in the business of producing motion pictures and reported its income on a calendar year basis. Ninety percent of its capital stock was owned by Mr. Sam Katzman. Respondent determined that Appellant did not conduct any operations during 1945 and did business only during a portion of the year 1946 and, accordingly,, computed its tax liability for the taxable years 1947 and 1948 on the basis of its 1947 income under Section 13 of the Bank and Corporation Franchise Tax Act.

Appellant states in this connection

"We hold Form SS 6 Treasury Department Internal Revenue Service Notice of Employer's Identification #95-1471846, dated December 31, 1945; and for the entire year 1946, taxpayer paid to the U. S. Government 100% of its full 12 months production payroll taxes as a corporation. This identification dated in 1945, we feel is conclusive, in that it proves the taxpayer operated the full 12 months of 1946, and not a part of same as contended by the Franchise Tax Board."

It was asserted on behalf of Appellant at the hearing that when, on September 25, 1945, Mr. Katzman individually entered into a production contract with Monogram Pictures Corporation it was his intent to do business in corporate form, that he neither intended to nor did he enter into any individual activities under the contract, that his subsequent assignment of the contract to Appellant on March 15, 1946, was pursuant to his original intent, and that the corporation commenced to do business in 1945 and operated a full twelve months in 1946,

The Respondent's statement of facts included the following allegations of fact, none of which was specifically denied by the Appellant:

Mr. Katzman, on September 25, 1945, prior to the incorporation of Appellant, entered into the agreement with Monogram Pictures Corporation for the production and distribution of motion pictures. Production was started under that agreement which was not assigned by Mr. Katzman to Appellant until March 15, 1946. On November 6, 1945, a commercial bank account was opened under the name of Sam Katzman Productions and upon the signature card for the account Mr. Katzman was designated as sole owner of the business conducted under that name. Checks were drawn on this account until June 22, 1946, to meet pay rolls and other production costs and were signed Sam Katzman

Productions by Sam Katzman. On May 3, 1946, Appellant's Board of Directors adopted a resolution that the corporation establish a bank account in its name. Until that time Appellant apparently did not have a bank account, and it appears that not until May 16, 1946, was the first check issued from the Appellant's account. A permit to issue capital stock was granted to Appellant on April 1, 1946, and capital stock was first issued on April 2, 1946. These allegations were substantiated through testimony offered by Respondent at the hearing. It also appears from this testimony that prior to 1946 all loans were arranged and notes executed to finance production activities by Mr. Katzman individually, the first note signed by Appellant having been dated June 26, 1946.

On the basis of this record, we have no hesitation in concluding that Appellant has not established that it was doing business for a full twelve months during the calendar year 1946.

A second issue involves the allowance of a deduction from Appellant's gross income for the amortization of the cost of producing picture negatives. Appellant claimed an amortization deduction on the basis of 92-1/2% of that cost during the first 52 weeks after release of a picture and 7-1/2% during the second 52-week period. The Respondent rejected this method and followed his usual practice in the case of "independent" motion picture producers. Under that practice he allowed as a deduction for amortization in each year such portion of the cost of a picture as the gross receipts from distribution in the year bore to the estimated total gross receipts from the distribution of that picture. Appellant objects in the most general terms to the Respondent's method, but offers no factual matter or legal authorities tending to establish the correctness of the amount claimed by it as a deduction for amortization. It appears that the Respondent's method is usually employed by independents (see Tsnnenbaum, Amortization of Motion Pictures, Proceedings of the Tax Institute, University of Southern California School of Law, Major Tax Problems of 1948, wherein the author comments on the fairness of the formula as applied to independents). It was upheld by this Board in the Appeal of Pickford-Lasky Productions, Inc., decided April 1, 1948. The action of the Respondent is, therefore, sustained on this point.

A final question presented involves the deductibility from Appellant's gross income as an expense of the cost of film prints. It appears that such costs

were treated as a deductible expense in Appellant's, return of income for 1946. The Respondent, however, disallowed the deduction, treated the cost of the prints as a capital expenditure and allowed a deduction from the Appellant's gross income for 1946 and 1947 for the amortization or depreciation of the prints on the same basis as amortization was allowed of the cost of producing the film negatives. As a result of other adjustments made by the Respondent a deficiency was not assessed against Appellant for the income year 1946. It appears obvious that as respects the income year 1947, the only income year here in question, the Respondent's treatment of the 1946 print costs as a capital expenditure rather than a deductible expense operated to the Appellant's advantage and did not increase its tax liability computed on the basis of its 1947 income. It may be observed that in its return of income for 1947 Appellant did not claim a deduction for print costs but apparently itself-capitalized those costs.

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 the protest of Sam Kataman Productions, Inc., to a proposed assessment of additional tax in the amount of \$520.26 for the income year ended December 31, 1947 (taxable years ended December 31, 1947 and 1948) be and the same is hereby sustained.

Done at Sacramento, California, this 18th day of December, 1952, by the State Board of Equalization.

Wm. G. Bonelli, Chairman

J. H. Quinn, Member

Geo. R. Reilly, Member

_____, Member

_____, Member

Acting

ATTEST: F. S. Wahrhaftig Secretary