



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
FIDELITY SECURITIES CORPORATION )

**Appearances:**

For Appellant: Wm. T. Hopper, President of Appellant Corporation  
For Respondent: Chas. J. **McColgan**, Franchise Tax Commissioner

O P I N I O N

This is an appeal pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of Fidelity Securities Corporation to a proposed assessment of an additional tax in the amount of **\$429.14**, based upon the return of the above corporation for the taxable year ended December 31, 1933.

For the year ended December 31, 1933, Appellant joined in filing a consolidated return with two affiliated corporations known as Cinema Consolidated Mercantile Corp., Ltd. and Berwillia Film Corporation, respectively. Inasmuch as Cinema Consolidated Mercantile Corp., Ltd. had become inactive, the Commissioner eliminated this corporation from the consolidation. His action in so doing accounted for **\$75** of the proposed additional assessment. The balance of the additional assessment was proposed due to **the disallowance** of a deduction for a bad debt in the amount of **\$22,530**, due Berwillia Film Corporation. The deduction was disallowed on the grounds that the debt was ascertained to be worthless in a prior year.

Appellant does not question the propriety of the Commissioner's action in eliminating Cinema Consolidated Mercantile Corp., Ltd. from the Consolidation, but insists that the Commissioner acted wrongfully in disallowing the deduction for the debt due Berwillia Film Corporation.

Neither the Appellant nor the Commissioner has furnished us with very complete details respecting the debt in question. From various statements made by Appellant in its appeal and by its representatives at the hearing held before us, we infer, however, that in **1926**, or prior thereto, one Richard Thomas, a moving picture producer, became indebted to Berwillia Film Corporation in the amount of \$18,000. On July 20, 1929, Merger Pictures., Inc. made a note payable in one year to Berwillia Film Corporation in the amount of **\$20,970** with interest at the rate of **6%** per annum from date until paid. Although the relationship between Thomas and Merger Pictures, Inc. does not appear, Appellant states that the note was given as additional security for the debt due from Thomas. The consideration for the note

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consisted of the promise of Berwillla Film Corporation to suspend action on a suit instituted against Thomas until the maturity of the note. The amount of \$20,970 which Merger Pictures, Inc. promised to pay; apparently represented the amount of \$18,000 due from Thomas, plus accrued interest from November 1, 1926. In order to prevent the accruing of interest on interest, the note provided that interest should be computed from the date of the note on \$18,000 only.

It is the amount of this note, plus interest on \$18,000 from July 20, 1929, that Appellant claims was deductible from Berwillla Film Corporation's gross income for 1933 as a debt ascertained to be worthless and charged off during the year.

Appellant has not called to our attention any facts or circumstances which would permit us to hold that the Commissioner erred in his determination that the debt was ascertained to be worthless prior to 1933. His determination was based on the fact that Merger Pictures, Inc., ceased doing business in 1929 and on the fact that for a considerable period prior to 1933 there was but little, if any, likelihood of obtaining payment from Thomas. It may be that notwithstanding these facts, Berwillla Film Corporation had good reason for believing until 1933, that the debt would be paid, and, that in that year it obtained additional information respecting its debtors which forced it to the realization that the debt was worthless. It has not been shown, however, that this was the case. For all that appears in the record, Berwillla Film Corporation knew nothing more concerning the status of its debtors in 1933 than it knew in prior years. Accordingly, if it considered the debt worthless in 1933, it must have considered it equally worthless in prior years.

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, that the action of Charles J. McColgan, Franchise Tax Commissioner, in overruling the protest of Fidelity Securities Corporation, against a propose assessment of an additional tax in the amount of \$429.14, based upon the return of said corporation for the year ended December 31, 1933, pursuant to Chapter 13, Statutes of 1929, as amended, be and the same is hereby sustained.

Done at Sacramento, California, this 25th day of October, 1935, by the State Board of Equalization.

R. E. Collins, Chairman  
John C. Corbett, Member  
Fred E. Stewart, -Member  
Orfa Jean Shontz, Member  
Ray L. Riley, Member

ATTEST: Dixwell L. Pierce, Secretary