



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
BERTINE T. JOHNSON)

Appearances:

For Appellant: Bertine T. Johnson, in propria persona

For Respondent: W. M. Walsh, Assistant Franchise Tax
Commissioner

OPINION

This appeal is made pursuant to Section 19 of the Personal Income Tax Act (Stats. of 1935, p. 1090, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of Bertine T. Johnson to his proposed assessment of additional tax for the year ended December 31, 1935, in the amount of \$89.08.

The proposed assessment resulted from the disallowance by the Respondent of a deduction claimed by Appellant in the amount of \$5,000 on account of stock in the Mountain Monarch Gold Mining Company, purchased in 1927 and 1929 for the above amount and alleged to have become worthless during 1935. The deduction was disallowed by the Respondent on the ground that the stock actually became worthless prior to 1935, so that the loss was not "sustained during the taxable year," as required by Section 8(d) of the Personal Income Tax Act.

A taxpayer claiming a deduction on account of worthless stock, as a loss "sustained during the taxable year," has the burden of establishing that the stock actually became worthless during the year for which the deduction is claimed rather than in a previous year, and a failure to sustain this burden require that the deduction be denied; Squier v. Commissioner 68 F. (2d) 25; Eagleton v. Commissioner, 97 F. (2d) 62; Real Estate Trust Co. v. United States, 20 F. Supp. 20. To show that her stock still possessed value subsequent to 1934 the Appellant relies upon the fact that a meeting of the stockholders was held in February of 1935 at which a resolution was passed authorizing the officers and directors to negotiate a lease of the company's property. It appears, however, that the efforts to negotiate a lease of the company's property. It appears, however, that the efforts to negotiate such a lease were unsuccessful, and that during the latter part of the year the company's offices were closed. It also appears that the company's corporate powers were suspended on May 8, 1934, for failure to pay franchise taxes.

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taxes.

On the basis of these facts we must hold that the Appellant has failed to sustain the burden of establishing that the loss represented by her investment in the shares of the Mountain Monarch Gold Mining, Co. was actually sustained in the year 1935. The fact that during that year the company made an effort, which proved to be unsuccessful, to negotiate a lease of its property does not establish that either its property or its shares were of any value at that time.

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 Chas. **J. McColgan**, Franchise Tax Commissioner, in overruling the protest of Bertine T. Johnson to a proposed assessment of additional tax in the amount of \$89.08 for the year ended December 31, 1935, be and the same is hereby sustained.

Done at Sacramento, California, this 16th day of **June**, 1942, by the State Board of Equalization.

R. E. Collins, Chairman
Wm. G. **Bonelli**, Member
Geo. R. Reilly, Member
Harry B. Riley, Member

ATTEST; Dixwell L. Pierce, Secretary