

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
INYO MARBLE COMPANY OF CALIFORNIA)

Appearances:

For Appellant: Perry F. Backus, Pttorney at Law.
For Respondent: James J. Arditto, Franchise Tax Counsel.

O P I N I O N

This appeal is made 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 Inyo Marble Company of California to his proposed assessment of additional tax in the amount of \$68.01 for the taxable year ended December 31, 1938, based upon the income of the company for the year ended December 31, 1937.

One Bowman some time prior to 1931 subscribed **for capital** stock of the Appellant. The stock was issued prior to full payment of the purchase price and upon Bowman's failure to pay the balance, Appellant instituted an action which resulted in judgment being rendered in 1931 in favor of Appellant and against Bowman for approximately \$4,800. The efforts of Appellant to secure **satis** faction of the judgment proved unavailing and on January 15, 1932, O.E. Cook wrote to Appellant, in part, as follows:

"You assign me this judgment and rights to the case and permit me to collect same according to my own plans and methods which I have formed and have discussed with you and I'll pay you \$2400.00 out of the proceeds. To secure same, I enclose my note for \$2400.00 due on or before one year and I will deposit with your vice-president my agreement to refrain from changing the attorney handling the case and I will pay your note out of the first moneys I collect ..."

With that letter, Mr. Cook enclosed the note for \$2,400.00.

It is Appellant's contention that the note **became** worthless on January 15, 1937, four years from its due date, that the statute of limitations became available as a defense to any action brought thereon, and that the bad debt deduction in the amount of \$4,797.51 which **was** claimed by Appellant and disallowed by the commissioner, was a proper deduction to the extent of \$3,120, being the principal of the note plus accrued interest in the sum of \$720.

Appeal of Inyo Marble Company of California

Appellant was on a cash basis and never reported the accrued interest as income. If, accordingly, any deduction were proper, it could not exceed \$2,400.

It is our opinion that the agreement of O.E. Cook is evidenced in part by the letter rather than solely by the promissory note, and that he did not become indebted to Appellant but on the contrary only obligated himself to pay the note out of the first moneys which he collected from Bowman. He did not collect anything from Bowman and, therefore, did not become indebted to Appellant. The transaction between Appellant and O.E. Cook not having given rise to a debt, there was of course no basis for the deduction by Appellant in connection therewith of any amount as a bad debt.

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 order of Chas. J. **McColgan**, Franchise Tax Commissioner, in overruling the protest of Inyo Marble Company of California to his proposed assessment of additional tax in the amount of \$68.01 for the taxable year ended December 31, 1938, based upon the income of said company for the year ended December 31, 1937, pursuant to Chapter 13, Statutes of 1929, as amended, be and the same is hereby sustained.

Done at Sacramento, California, this 30th day of March, 1944, by the State Board of Equalization.

R. E. Collins, Chairman
Wm. G. Bonelli, Member
Geo. R. Reilly, Member
J. H. Quinn, Member

ATTEST: **Dixwell** L. Pierce, Secretary