

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
Zenith National Insurance Corp.) No. 94A-0767
)
)

ORDER DENYING PETITION FOR REHEARING

Upon consideration of the petition filed February 3, 1998, by the Franchise Tax Board for a rehearing of appellant's appeal from the action of the Franchise Tax Board, we agree that our prior opinion dated January 8, 1998, is subject to clarification and we take this opportunity to do so.

As indicated in our opinion of January 8, 1998, interest expense shall be allocated between taxable and tax-exempt income in accordance with the principles set forth in Revenue Procedure 72-18. (Rev. Proc. 72-18, 1972-1 C.B. 740.) Acknowledging that the preferred stock portfolio in the instant case remained relatively stable in value until July of 1985, and consistent with the principles set forth in Revenue Procedure 72-18 it is clear that appellant maintained the same dominant purpose through June of 1985, and that appellant's allowable interest expense for the 1985 income year should be decreased in the manner proposed by both parties.

Regarding respondent's request that we modify the language at page four, paragraph three, line two, of the opinion to refer specifically to Internal Revenue Code section 265(a)(1), rather than to section 265(a), we express no opinion as to the merits of that suggestion, but choose not to amend our opinion in that regard.

Aside from the clarifications contained in this order, we are of the opinion that none of the grounds set forth in the petition for rehearing constitute cause for the granting thereof and,

accordingly, it is hereby ordered that the petition be and the same is hereby denied, and we direct that our order of January 8, 1998, be and the same is, hereby affirmed.

Done at Sacramento, California, this 25th day of June, 1998, by the State Board of Equalization, with Board Member Mr. Andal, Mr. Klehs, Mr. Dronenburg and Mr. Chiang* present, Ms. Mandel** not participating.

Dean F. Andal _____, Chairman

Johan Klehs _____, Member

Ernest J. Dronenburg, Jr., _____, Member

John Chiang* _____, Member

_____, Member

**For Kathleen Connell, per Government Code section 7.9.

*Acting Member, 4th District.

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