

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
) No. 90A-0048
ALCON REALTY CORPORATION N.V., NO.)
0961668, TAXPAYER, and AMALGAMATED)
MANAGEMENT AND PROPERTIES, INC., NO.)
1089096, ASSUMER AND/OR TRANSFEREE)

Appearances:

For Appellant: Barrye L. Wall
Attorney at Law

For Respondent: Karl F. Munz
Counsel

Counsel For the Board of Equalization: Craig R. Shaltes,
Tax Counsel III

OPINION ON PETITION FOR REHEARING

On May 4, 1994, we sustained the action of respondent Franchise Tax Board in denying the appellant's protest against a proposed assessment of additional franchise tax in the amount

of \$1,001,254 for the income year ended December 31, 1984. Our summary decision addressed the following two issues:

- (1) Whether the unreported income of appellant's installment note obligation was properly includible in the measure of appellant's franchise tax for the year in issue pursuant to Revenue and Taxation Code section 24672; and
- (2) If section 24672 does apply, what value should be placed upon the installment obligation.

We held that the income was includible pursuant to Revenue and Taxation Code section 24672, and that the appellant failed to prove that the value of the obligation was less than its face value.

Appellant timely filed a petition for rehearing pursuant to section 19048 of the Revenue and Taxation Code. The basis of appellant's petition is that this board erred in determining that the appellant failed to carry its burden of proving that the respondent's valuation of the note at face value was erroneous.

At the close of the oral hearing of this matter, held on August 13, 1992, we requested that the appellant present further evidence and documentation in regard to the alleged diminution of value of the note from its face value of \$11.7 million down to \$2.5 million, as argued by the appellant. Thereafter, appellant filed a "valuation report" prepared by the accounting firm of Coopers & Lybrand (Coopers Report), which report was dated September 14, 1992. The Coopers Report consisted of four typed pages and three other pages depicting the expenses, costs and revenue of the property sold in exchange for the subject note.

In our May 4, 1994, decision, we determined that the Coopers Report, which stated that the value of the subject note on December 31, 1984, was only \$470,000, was not enough to meet the appellant's burden of proof. This was because the Coopers Report itself stated that it was based upon information supplied by the appellant, and the report also stated that no attempt had been made to verify the facts upon which the valuation procedures were based.

The appellant has now submitted, along with its petition for rehearing, a detailed eight-page explanation from Coopers & Lybrand which goes into detail on how the Coopers Report was allegedly originally prepared. Along with the explanation, which was dated August 12, 1994, Coopers & Lybrand also attached numerous documents which it allegedly relied upon in drafting the Coopers Report in 1992. Further, the appellant has also submitted, with its petition for rehearing, another appraisal of the subject note, dated July 28, 1994, prepared by Kenneth Leventhal & Company (Leventhal Report). The Leventhal Report concluded that the note's value, as of December 31, 1984, was \$1,550,000.

Appellant argues that its petition should be granted, because the "explanation" letter (and attachments) filed along with the petition for rehearing merely serves to clarify this board's alleged "misreading" of, and "confusion" over the Coopers Report. In the Appeal of Wilson Development, Inc. (94-SBE-007), decided by this board on October 5, 1994, we set forth the grounds upon which a

petition for rehearing may be granted. Appellant contends that, under Wilson Development, the present situation may warrant the granting of a rehearing. Respondent, on the other hand, correctly argues that under Wilson Development, if the taxpayer is attempting to gain a rehearing by submitting “new” evidence which could have been submitted prior to our decision, the petition should be denied.

We are of the opinion that, based upon the documents originally submitted pursuant to our request, our decision was correct. Further, the recently filed detailed explanation of the Coopers Report, and its supporting documents, clearly could have been produced prior to our original decision.¹ As we stated in Wilson Development, when the evidence the appellant is now trying to submit with its petition for rehearing could have been submitted before our decision, but was not, our goal of achieving the correct result falls to the need to efficiently resolve matters before us. Since appellant has failed to demonstrate that the evidence it is now trying to submit could not have been produced prior to our decision, we will not consider said evidence in deciding whether or not to grant the petition for rehearing. Therefore, lacking any other grounds showing error in our prior decision, we must deny appellant's petition for rehearing.

¹ It goes without saying that the Leventhal Report is new evidence which will clearly fall within the rule stated in the Appeal of Wilson Development, Inc., supra, i.e., it could have been, and should have been, submitted prior to our decision.

ORDER

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 19334 of the Revenue and Taxation Code, that the petition of Alcon Realty Corporation N.V., No. 0961668, Taxpayer, and Amalgamated Management and Properties, Inc., No. 1089096, Assumer and/or Transferee, for rehearing of its appeal from the action of the Franchise Tax Board in denying its protest against a proposed assessment of additional franchise tax in the amount of \$1,001,254 for the income year ended December 31, 1984, be and the same is hereby denied, and that our order of May 4, 1994, be and the same is hereby affirmed.

Done at Sacramento, California, this 10th day of October, 1996, by the State Board of Equalization, with Board Members Mr. Klehs, Mr. Dronenburg, Mr. Andal, Mr. Sherman, and Mr. Halverson present.

Johan Klehs _____, Chairman

Ernest J. Dronenburg, Jr. _____, Member

Dean F. Andal _____, Member

_____, Member

Rex Halverson* _____, Member

*For Kathleen Connell, per Government Code section 7.9