BOARD OF TAX APPEALS
STATE OF LOUISIANA

BOYD GAMING CORPORATION **PETITIONER**	**DOCKET NO. 9616D**

VERSUS

LOUISIANA DEPARTMENT OF
REVENUE, STATE OF LOUISIANA
RESPONDENT

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ORDER WITH WRITTEN REASONS

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Before this Board is the Petitioner, Boyd Gaming Corporation ("Boyd" or "Petitioner") seeking a refund of corporate franchise taxes for the periods 2008, 2009 and 2010 from the Secretary, Louisiana Department of Revenue and Taxation (the "Secretary" or "Department"). This Board heard a trial on the merits on July 9, 2018. Participating in the trial were: Sean T. McLaughlin and Jaye A. Calhoun, attorneys for the Petitioner, and Russel J. Stutes, Jr. and Shelley Bouillion, attorneys for the Secretary. After the hearing, the case was taken under advisement, and both parties ordered to submit post hearing memoranda. After due consideration, the Board now unanimously issues the following ORDER with written reasons.

Boyd is engaged in the gaming industry, owning and operating through its numerous subsidiaries and affiliates casinos and horse racing facilities throughout the nation. Boyd is domiciled in Nevada. Boyd directly owns two Louisiana subsidiaries, Boyd Kenner, Inc. ("Boyd Kenner") and Boyd Louisiana Racing, Inc. ("BLR"). Boyd Kenner in turn owns Treasure Chest, LLC, which owns and operates the Treasure Chest Casino in Kenner, Louisiana. BLR owns Boyd's Racing, LLC, which owns and operates a pari-mutuel race track and casino ("Delta Downs") in Vinton, Louisiana. For the years in question, Boyd filed its Louisiana corporate income and franchise tax return as a nonresident (Form CFIT 620) and reported and paid franchise taxes as shown on the returns. Subsequent to the filing of the returns, Boyd filed a claim for refund with the Department for a portion of the franchise tax it paid for each of the years 2008, 2009, and 2010. The Department denied Boyd's claim for refund, which resulted in Boyd's timely filing the instant appeal with this Board.

There are four substantive issues for the Board's consideration. These issues are:

> (1) *Concentrator Account*: Whether cash deposits held by Boyd for its affiliates are indebtedness due and owing by Boyd to its affiliates which should be included in Boyd's Louisiana franchise tax base?;
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> (2) *Equity Pickup*: Whether the increase/decrease in Boyd's surplus and undivided profits as reflected on its financial statements attributable to the increase/decrease in book value of its subsidiaries and affiliates reported under the equity method of accounting results in a like increase/decrease in Boyd's franchise tax base?;
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> (3) *Proper Factor*: Whether revenue resulting from the increase or decrease of the book value of a subsidiary resulting from the application of the equity method of accounting is properly included as "revenue" for purposes of La. R.S. 47:606(A)(1)?; and
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> (4) *Support Fees:* Whether support fee revenue generated by Boyd resulting from services rendered to its subsidiaries and affiliates is included in its sales factor ratio for purposes of the allocation of franchise tax pursuant to La. R.S. 47:606(A)(1)?

BRIEF SUMMARY OF THE RELEVANT FRANCHISE TAX LAW

The Louisiana franchise tax is applicable to all Louisiana corporations. During the relevant tax year, the franchise tax is imposed on a corporation's franchise tax base, consisting of the corporation's (1) capital stock; (2) surplus and undivided profits (otherwise known as a corporation's "retained earnings"); and (3) a portion of a corporation's long term debt[1]. *La. R.S. 47:602(A).* Generally, the

[1] In 2005, La. R.S. 47:602(A) was amended to eliminate "borrowed capital" (long term debt) as a component of the franchise tax base. The elimination was accomplished through a phasing out of the inclusion of certain long term debt over a period of 6 years. For the tax periods at issue (2008-2010), borrowed capital remained a component of the franchise tax base, albeit at

"surplus and undivided profits" of a corporation are valued as reflected on the "books" of the corporation. *La. R.S. 47:605(A).* "Borrowed capital" is defined as "all indebtedness of a corporation, subject to the provisions of this Chapter, excluding indebtedness classified as capital stock, surplus and undivided profits under the provisions of R.S. 47:605.1, maturing more than one year from the date incurred, or which is not paid within one year from the date incurred regardless of maturity date." *La. R.S. 47:603(A)(1).*

With respect to a foreign corporation qualified to do business in this state, or a domestic corporation having multi-state operations, it is necessary to apportion the franchise tax base to determine the franchise tax base applicable to Louisiana operations. Louisiana employs a two factor apportionment formula to determine the Louisiana franchise tax based on (1) sales made in Louisiana versus all sales and (2) property located in Louisiana versus all property. Specifically, La. R.S. 47:606(A) provides that once 100% of a corporation's franchise tax base in calculated, the portion of that franchise tax base allocable to Louisiana is the average of:

> (1) The ratio that the net sales made to customers in the regular course of business and other revenue attributable to Louisiana bears to the total net sales made to customers in the regular course of business and other revenue; and
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> (2) the ratio that the value of all of the taxpayer's property and assets situated or used in Louisiana bears to the value of all of its property and assets wherever situated or used.

Issues 1 and 2 identified above are issues related to the amount of the franchise tax base. Issues 3 and 4 above are issues concerning the allocation of Boyd's franchise tax base to Louisiana.

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reduced amounts.

ISSUE 1 - CONCENTRATOR ACCOUNT

The first issue is whether funds held by Boyd in certain accounts it describes as "concentrator" accounts constitute (a) debt as defined by La. R.S. 47:603(A)(1) and thus properly included in Boyd's franchise tax base, as the Department argues; or (b) simply funds held by Boyd as agent for each of its affiliates; i.e., funds that are property of another and thus not properly included in Boyd's franchise tax base, as Boyd argues. By way of background, Boyd owns and operates casinos and gaming facilities in seven states. As established by the testimony of Cindy Huddleston, Boyd's Vice President of Tax, Boyd maintains a bank account referred to by Ms. Huddleston as a "concentrator" account. Each day, cash is swept from the accounts of Boyd's subsidiaries and affiliates into this "concentrator" account. Likewise, to the extent that a subsidiary or affiliate of Boyd needs cash for any purpose, cash will be transferred from Boyd's "concentrator" account to such subsidiary or affiliate.

Ms. Huddleston's testimony also established that Boyd maintained a separate accounting of each affiliates' "balance" in the concentrator account, with such amounts recorded as "due to" and "due from" affiliates, depending on whether there was a cash transfer to the "concentrator" account or from the "concentrator" account. Ms. Huddleston further testified that the only entity with direct and immediate control of funds in the "concentrator" account was Boyd. Ms. Huddleston further testified that Boyd had the ability to access the funds in the "concentrator" account for any purpose, including its own business needs and the business needs of any of its affiliates, regardless of whether such affiliate had a "positive" balance in the accounting book entry for that affiliate.

The Department argues that the funds held in the "concentrator" account constitute debt ("borrowed capital" as defined is La. R.S. 47:603), and therefore the value of those accounts should be included in Boyd's franchise tax base. Boyd argues that the funds in the "concentrator" account are neither debt nor borrowed capital, and therefore should not be included in the franchise tax base because the funds represent nothing more than assets belonging to Boyd's affiliates. Boyd argues that the funds are "held" by Boyd in some kind of agency relationship for the convenience of its affiliates. As an additional argument, Boyd argues that the amounts held in the concentrator account constitute a "deposit" as defined in La. R.S. 47:603(B)(2), akin to a deposit made by a customer to a vendor to secure payment for goods purchased.

La. R.S. 47:603(A)(1) provides in relevant part:

> With respect to amounts owed by a taxpayer corporation <u>to an affiliate</u>, **all real and actual indebtedness**, regardless of age, and which in fact represent capital **substantially used to finance or carry on the taxpayer's business, shall be borrowed capital.**

Thus, unlike debt to unrelated third parties, the maturity of debt due to affiliates is irrelevant to the analysis of whether to include that debt in a corporation's franchise tax base. In this case, it is undisputed that the funds held by Boyd were attributable to "affiliates" and therefore maturity and payment terms are not an issue.

We find that Boyd failed to show that the funds in the concentrator account were not debt. The testimony established that there was no legal restriction on Boyd's use of the funds for its own business operations, or to use the funds of one affiliate to fund the business operations of another affiliate. There was no evidence that the funds of each affiliate were segregated (either physically segregated or "legally" segregated by agreement). No laws, regulations, or even contractual limitations on Boyd's use of the funds in the concentrator account exist in the present case, this makes Boyd's situation different from the examples and analogies it offered.

We are also not persuaded by Boyd's alternative argument that the funds held by Boyd in the concentrator accounts are "[a]dvances, credits or sums of money voluntarily left on deposit with the taxpayer" as set forth in La. R.S. 47:603(B)(2). That statute presumes a relationship between the taxpayer and the depositor other than simple affiliate status, such as a vendor-vendee relationship. In addition, La. R.S. 47:603(B)(2) requires that funds be segregated by the taxpayer and "not otherwise used in the conduct of its business." The record is clear that the funds in the concentrator account were used in the conduct of Boyd's business.

We therefore find that the amounts held by Boyd in the concentrator accounts are properly included in Boyd's franchise tax base.

ISSUE 2 – EQUITY PICKUP: IS THERE A LIMITATION ON THE USE OF THE EQUITY METHOD OF ACCOUNTING?

The Department argues that for franchise tax purposes, Boyd cannot reduce the value of its investment in one or more of Boyd's subsidiaries below their original cost under the equity method of accounting. This issue is resolved by properly interpreting the meaning of the term "surplus and undivided profits" for purposes of calculating Boyd's franchise tax base.

La. R.S. 47:605(A) (in effect for the years in question) provides in relevant part:

> §605. Surplus and undivided profits
>
> A. Determination of value. For the purpose of ascertaining the tax imposed in this Chapter, surplus and undivided profits shall be deemed to have such value as is reflected on the books of the corporation, subject to examination and revision by the collector from the information contained in the report filed by the corporation as hereinafter provided and from any other information obtained by the collector; but in no event shall such revision reflect the value of any

> asset in excess of the cost thereof to the taxpayer at the time of acquisition; in the case of an acquisition which qualifies as a tax free exchange under R.S. 47:131, 132, 133, 135, 136, 137, and 138, cost to the taxpayer at the time of acquisition shall be deemed to be the basis of such property determined under R.S. 47:146, 148, and 152; provided that in no event shall such value be less than is shown on the books of the taxpaying corporation.

It is undisputed that Boyd uses the equity method of accounting for financial accounting purposes, and under Generally Accepted Accounting Principles, is required to do so.[2] Under the older cost method of accounting, the "value" of a subsidiary is reported on a corporation's financial statements at its original cost, and thus remains fixed until a subsequent sale or other recognition event. However, under the equity method of accounting, the value of a subsidiary typically fluctuates, with the parent corporation "picking up" its proportionate share of the subsidiary's own increase/decrease in book value, hence the term "equity pickup." Thus, for example, under the equity method of accounting, if Corporation P acquires 100% of the shares of Corporation S in an all cash transaction for $100,000, Corporation P initially records the value of Corporation S on its books at $100,000. If during the year of purchase, Corporation S earns $50,000 of income that it retains at the end of the year, Corporation P will adjust the value of the shares in Corporation S from $100,000 to $150,000. For purposes of computing Louisiana's franchise tax base, Corporation P's "surplus and undivided profits" will necessarily include the $150,000 value of Corporation S (as opposed to the original $100,000 cost of the shares) as "reflected in the books" of Corporation P.

The equity method of accounting was recognized by our courts in *McNamara v. Arkansas-Louisiana Gas Co.,* 441 So. 2d 446 (La. App. 2d Cir. 1983). In that case, the taxpayer argued that because it was required to use the equity method of

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[2] See Financial Accounting Standard Board ASC 323-10

accounting for financial accounting purposes but did not voluntarily choose to do so, the taxpayer should remain free to use the cost method of accounting for Louisiana franchise tax purposes. The taxpayer also argued that the use of the equity method of accounting for franchise tax purposes resulted in an unfair "double counting" of the franchise tax base since the taxpayer's subsidiaries, also Louisiana corporations, included the retained earnings in the calculation of the subsidiaries' own tax base. The court rejected these arguments, and properly held that under the statute as adopted by the Legislature, the method of accounting used by a taxpayer in "keeping its books" serves as the basis for computation of a corporation's franchise tax base for purposes calculating Louisiana's franchise tax.

La. Admin Code 61:I.305(A)(2) provides:

> Entries to the books of any corporation to record the decrease in value of any investment through the use of equity accounting will be allowed as a reduction in taxable surplus and its related asset account for property factor purposes. This is only in those cases in which all investments are recorded under the principles of equity accounting, **and such reductions in the value of any particular investment below cost thereof to the taxpayer will not be allowed. The exception is in those instances in which the taxpayer can show that such reduction is in the nature of a bona fide valuation adjustment based on the fair value of the investment. In no case will a reduction below zero value be recognized.** Corresponding adjustments shall in all instances be made to the value of assets for property factor purposes.

The Department argues that its regulation prohibits the reduction of a parent company's investment in a subsidiary below cost under the equity method of accounting. Thus, under the Department's theory, in cases where the equity method requires a reduction in the value of shares in a subsidiary company below original cost, the taxpayer nonetheless is prohibited from reducing the value of the investment below original cost, and in effect sets a floor on the value of the investment for franchise tax purposes. Boyd argues that the Department is misinterpreting its own regulation, and even if the Department is reading the regulation correctly, the regulation exceeds the scope of the taxing statute and is thus invalid.

We agree with Boyd that there is no limitation or floor on the use of the equity method for purposes of determining value in the statutory calculation of the franchise tax base. La. R.S. 47:605(A) requires that the value of a corporation's "surplus and undivided profits" have such value as is reflected on its books. In *McNamara v. Arkansas-Louisiana Gas Co.*, *supra*, the court recognized that a particular method of accounting was not subject to interpretation or challenge in determining the amount of a corporation's surplus and undivided profits. The regulation at issue can be read to import principles that are not based on the applicable statutory regime.

However, even the face of the regulation itself allows bona fide adjustments (not below zero). Boyd is a publicly traded company, its books are subject to public accounting standards, SEC regulations, and GAAP compliance. The Board finds that the Equity Pickup adjustments were bona fide valuation adjustments that reasonably reflected the fair value of Boyd's investments in its subsidiaries (and the adjustments were not below zero). Therefore, the regulation itself would not prohibit Boyd's method of calculation.

3. PROPER FACTOR: DOES THE WRITE UP OF AN INVESTMENT UNDER THE EQUITY METHOD OF ACCOUNTING CONSTITUTE INCOME FOR PURPOSES OF LOUISIANA'S FRANCHISE TAX ALLOCATION STATUTE?

Income Inclusion in Sales Factor Ratio

Boyd argues that for purposes of the franchise tax allocation statute, the increase in value of its subsidiaries resulting from the use of the equity method constitutes "other revenue" under La. R.S. 47:606(A)(1), and therefore this "equity pick up" revenue from its subsidiaries should be included in both the numerator and denominator of the "sales factor" ratio[3] of the equation to determine the percentage of Boyd's franchise tax base properly allocable to Louisiana.[4] Boyd further argues that pursuant to La. Admin. Code 61:I.306(A)(1)(j)(iii) the "equity pick up" revenue should be allocated within and without Louisiana on the same basis that an unincorporated association would allocate (such as a partnership or a limited liability company); i.e., on the basis of the partnership's capital employed in Louisiana.

The Department argues that "equity pick up" revenue is not included as "net sales made in the regular course of business and other revenue" as set forth in La. R.S. 47:606(A)(1), and is therefore not included in either the numerator or denominator of the sales factor ratio set forth in the that statute. The Department further argues that various sections found throughout La. R.S. 47:606(A)(1) define "sales" or "customers," and that the "equity pick up" revenue does not fit within this implied definition of a "sale" or "revenue attributable to Louisiana."

The Department further cites La. R.S. 47:606(A)(1)(k) to argue that inter-company items are governed by La. 47:606(B), which, according to the Department's interpretation, does not include undistributed "equity pick up" revenue. The Department's position is that only dividends that are distributed and paid to a parent corporation can be included as "revenue" pursuant to La. R.S. 47:606(a)(1)(k).

As a matter of statutory interpretation, we find that La. R.S. 47:606(B) is not a separate and independent provision from La. R.S. 47:605(A)(1), but rather is incorporated by reference through the operation of La. R.S. 47:(606)(A)(1)(k). Thus, as set forth in La. R.S. 47:606(B), and as incorporated by La. R.S.

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[3] The sales factor ratio is set forth in La. R.S. 47:606(A)(1).

[4] There is no dispute regarding the second part of the equation - the property factor ratio found in La. R.S. 47:606(A)(2).

47:606(A)(1)(k), "investments in, advances to, or **revenues from** a parent or subsidiary" are included in the term "revenues" set forth in La. R.S. 47:606(A)(1).

Further, nothing in La. R.S. 47:605(A)(1), 47:606(A)(1)(k), or La. R.S. 47:606(B) requires that a subsidiary make an actual cash payment to its parent for an inter-company transaction to fall within the ambit of "revenue" for purposes of La. R.S. 47:606(B) and 606(A)(1). To hold otherwise would result in the inequity of requiring Boyd to include in a franchise tax base the increased value of its investments in subsidiaries --resulting from the application of the equity method of accounting, but then disregard the same revenue reported on Boyd's books and records generated by that resulting increase in subsidiary value in calculating the sales factor ratio under La. R.S. 47:606(A)(1)(a).

Sourcing of "Equity Pick Up" Revenue

Having determined that the "equity pick up" revenue is "revenue" for purposes of La. R.S. 47:606(A)(1)(a), there is apparent disagreement between the Department and Boyd as to the proper method to determine the source of that income for purposes of La. R.S. 47:606(A)(1)(a); i.e., how do you calculate what percentage of the "equity pick up" revenue is to be included in the numerator of the sales factor ratio as Louisiana source income? In its arguments against inclusion of the "equity pick up" income as revenue under La. R.S. 47:605(A)(1), the Department makes the statement that "inter-company items must be allocated to Louisiana under La. R.S. 47:606(B) on the basis of the percentage of capital employed in Louisiana by the parent corporation." Boyd argues that La. R.S. 47:606(B) does not apply and instead analogizes "equity pick up income" to undistributed partnership income, and thus argues that the sourcing rules applicable to undistributed partnership income under La. Admin. Code 61:I.306(A)(1)(j)(iii) apply by analogy to undistributed "equity pick up" income.

La. R.S. 47:606(B) provides in part:

> For the purpose of allocation, investments in, advances to, or **revenues from** a parent or subsidiary corporation shall be allocated to Louisiana on the basis of the percentage of capital employed in Louisiana for corporation franchise tax purposes by the parent or subsidiary corporation. . . . . [emphasis added].

The Department erroneously argues that the allocation should be based on the percentage of capital employed in Louisiana for corporation franchise tax purposes by the **parent** corporation. Contrary to the Department's interpretation, we interpret La. R.S. 47:606(B) to allocate the revenue to Louisiana on the basis of the percentage of capital employed in Louisiana for corporation franchise tax purposes by the **subsidiary** corporation. Our interpretation is supported by the jurisprudence analyzing La. R.S. 47:606(B).[5]

Boyd argues that La. 47:606(B) does not apply to its "equity pick up" income, but instead the sourcing method falls under the catch all provisions of La. Admin. Code 61:I.306(A)(1)(j) and ultimately La. Admin. Code 61:I.306(A)(1)(j)(iii). Boyd takes the position that La. 47:606(B) only applies to transactions involving the sale of "goods and services" between related entities. Boyd offers no support for this interpretation. In *Arkansas Fuel Oil Corp. v. Fontenot,* 72 So. 2d 465 (La. 1954), the Court applied La. R.S. 47:606(B) in the context of a parent corporation's receipt of a dividend from its subsidiary. We think both dividend income and "equity pick up" income from a subsidiary to its parent is encompassed by the terms "revenues from a parent or subsidiary corporation" as used in La. R.S. 47:606(B).

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[5] See, e.g., *Arkansas Fuel Oil Corp. v. Fontenot*, 72 So. 2d 465, 471 (La. 1954) ("investments in, advances to, or revenues from a subsidiary corporation shall be allocated to Louisiana as "taxable capital" of the parent corporation on the basis of the percentage of capital employed in Louisiana for corporation franchise tax purposes by the subsidiary corporation.

4. SUPPORT FEES: WHETHER SUPPORT FEE REVENUE GENERATED BY BOYD RESULTING FROM SERVICES RENDERED TO ITS SUBSIDIARIES AND AFFILIATES IS INCLUDED IN ITS SALES FACTOR RATIO FOR PURPOSES OF THE ALLOCATAION OF FRANCHISE TAX PURSUANT TO LA. 47:606(A)(1)?

Boyd provides management and support services to its affiliates and charges the affiliates for those services. Ms. Huddleston testified that the support service fee is a combination of a flat fee plus an hourly amount (per hour worked) per covered employee in Louisiana. The support fees are adjusted annually. The various "back office" services provided by Boyd included information services, central purchasing services, design services, accounting services, legal services, human resource services, and risk management services. The testimony established that it was Boyd's employees that actually provided these services--not third party contractors. As established by the invoices and other documentation submitted by Boyd at trial, the monthly fee remained the same month to month regardless of the actual services provided.

Ms. Huddleston testified that only the flat fee charges from Boyd to its affiliates were included in its calculation of the sales factor ratio under La. R.S. 47:606(A)(1). Any hourly rate fees were <u>not</u> included in its calculation. It is Boyd's argument that because the fee did not vary from month to month, the payment of those fees could not have been a pure expense recovery, and thus the fees earned by Boyd was properly included in revenue for purposes of computing the ratio under La. R.S. 47:606(A)(1).

The Department argues that the fees paid to Boyd by its affiliates are a reimbursement of expenses properly allocable to its affiliates but reimbursed by Boyd. While nothing in the statutes remove expense reimbursement from "revenue," the Department argues that its regulation provides that Boyd must establish the profit margin for the fee, or that the support service fee constitutes a cost reimbursement to Boyd that is not included in revenue for purposes of computing the ratio under La. R.S. 47:606(A)(1).

In utilizing the term "sales" and "revenue," La. R.S. 47:606(A)(1) does not include any pure cost reimbursement. For accounting purposes, if a parent corporation pays the expense of a subsidiary corporation and is subsequently reimbursed for that expense, the transaction would be properly recorded as a loan to the subsidiary followed by a repayment of that loan. Clearly, the repayment of the loan would not be included in the "revenue" of the parent corporation. For the years at issue, the regulations provide:

> ii. Revenue derived from services, other than from transportation, or telephone, telecommunications, and similar services, shall be attributed to the state in which the services are rendered. Services are rendered where they are received by the customer.
>
> iii. In any case in which it can be shown that charges for services constitute a pure recovery of the cost of performing the services and do not include a reasonable rate of profit, amounts received in reimbursement of such costs shall not be construed to be revenues received and shall be omitted from both the numerator and denominator of the attribution ratio.

La. Admin. Code 61:1.306(A)(1)(d)(ii) and (iii)

The default position would be to include all service revenue; the only revenue excluded is where "it can be shown" that "charges for services constitute a pure recovery of the cost." A logical reading of the regulation would require the party seeking to establish that the service revenue should be excluded would show such charges are in fact a pure cost recovery. The Department argues that the taxpayer always has the burden of proof of establishing inclusion or exclusion of support services in every circumstance, and that the failure to prove a reverse negative triggers an implicit application of the converse position. However, the regulation, on its face, does not include this directive.

In any event, we find that the evidence here shows that these items were not pure cost recoveries. The services were actually rendered by Boyd to its affiliates, the flat fee charge clearly established that the fees charged were not a dollar for dollar cost reimbursement for Boyd's cost in rendering the services. It would have been nearly impossible and certainly unreasonable for Boyd's to establish the actual profit margin on its charges. The same amount was charged irrespective of the amount or cost of actual services provided. We therefore find for Boyd on this issue and rule that the support service ratio was properly included in the calculation of the sales factor ratio under La. R.S. 47:606(A)(1).

CONCLUSION

In sum, we hold as follows:

> (1) The cash deposits held by Boyd for its affiliates are indebtedness from Boyd to its affiliates and thus included in Boyd's Louisiana franchise tax base;
>
> (2) The increase/decrease in Boyd's surplus and undivided profits as reflected on its financial statements attributable to the increase/decrease in book value of its subsidiaries and affiliates as reported under the equity method of accounting does result in a like increase/decrease in Boyd's franchise tax base;
>
> (3) Revenue resulting from the increase or decrease of the book value of a subsidiary resulting from the application of the equity method of accounting is properly included as "revenue" for purposes of La. R.S. 47:606(A)(1); and
>
> (4) Support fee revenue generated by Boyd resulting from flat fee services rendered to its subsidiaries and affiliates is included as revenue in its sales factor ratio for purposes of the allocation of franchise tax pursuant to La. R.S. 47:606(A)(1).

Accordingly,

IT IS ORDERED AND DECREED that the parties submit a proposed

Judgment that properly calculates the tax, penalty and interest based on these written reasons within forty-five days, and if the parties cannot agree they shall submit separate proposed Judgments and Memoranda in support with calculations.

Baton Rouge, Louisiana, this 12 day of ~~October~~ December, 2018. Joe Stevenson

For the Board:

Francis J. Lobrano

Francis J. "Jay" Lobrano
BY: Judge Tony Graphia (Ret.) Chairman by
(signed by request)