

**BOARD OF TAX APPEALS**

**STATE OF LOUISIANA**

**TOYOTA MOTOR CREDIT  
CORPORATION,  
Petitioner**

**VS.**

**DOCKET NO. 9748D c/w  
9749D, 9750D**

**KIMBERLY L. ROBINSON, SECRETARY,  
DEPARTMENT OF REVENUE,  
STATE OF LOUISIANA,  
Respondent**

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**ORDER WITH WRITTEN REASONS**

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On October 7, 2020, this matter came before the Board for hearing on cross motions for summary judgment, with Judge Tony Graphia (ret.), Chairman, presiding, and Board Members Cade R. Cole and Francis J. “Jay” Lobrano, present. Present before the Board were William M. Backstrom, Jr., attorney for Toyota Motor Credit Corporation (“Petitioner” or “TMCC”), and Christopher K. Jones, attorney for Kimberly Robinson, Secretary, Department of Revenue, State of Louisiana (“Respondent” or “Department”). After the hearing, the Board took the matter under advisement. The Board now issues this Order in accordance with the written reasons attached herewith.

IT IS ORDERED AND DECREED that the *Motion for Summary Judgment* filed by Petitioner be GRANTED IN PART AND DENIED IN PART, and that the *Motion for Summary Judgment* filed by the Department be GRANTED IN PART AND DENIED IN PART.

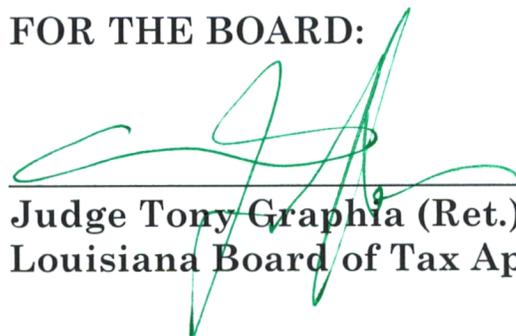
IT IS FURTHER ORDERED AND DECREED that on or before January 25, 2021, the parties shall submit a proposed Judgment conforming to the Written Reasons attached herewith and that this Judgment shall contain the correct dollar amounts in accordance with the Written Reasons attached herewith.

IT IS FURTHER ORDERED AND DECREED that if Petitioner and the Department cannot agree on the form of a proposed Judgment, then each party may submit a proposed Judgment together with a Memorandum in support thereof on or before January 25, 2021. The opposing party shall be permitted to file a Memorandum in response on or before February 5, 2021.

This is a non-final Order and does not constitute an appealable Judgment as contemplated by La. R.S. 47:1410 and La. R.S. 47:1434.

THUS DONE AND SIGNED at Baton Rouge, Louisiana on this 10<sup>th</sup> day of December, 2020.

**FOR THE BOARD:**



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**Judge Tony Graphia (Ret.), Chairman  
Louisiana Board of Tax Appeal**

**BOARD OF TAX APPEALS  
STATE OF LOUISIANA**

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**WRITTEN REASONS FOR ORDER**

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On October 7, 2020, this matter came before the Board for hearing on cross motions for summary judgment, with Judge Tony Graphia (ret.), Chairman, presiding, and Board Members Cade R. Cole and Francis J. “Jay” Lobrano, present. Present before the Board were William M. Backstrom, Jr., attorney for Toyota Motor Credit Corporation (“Petitioner”), and Christopher K. Jones, attorney for Kimberly Robinson, Secretary, Department of Revenue, State of Louisiana (“Department”). After the hearing, the Board took the matter under advisement. The Board now unanimously renders the attached Order for the following reasons, and upon presentation of a Judgment will render Judgment, in accordance with the following written reasons.

**FACTS**

These consolidated cases are appeals of refund denials under La. R.S. 47:1621(A); or, alternatively, Claims Against the State under La.

R.S. 47:1481 through 1486.<sup>1</sup> On June 17, 2015, Petitioner filed three refund claims for corporate franchise tax paid for the following tax periods and amounts:

- April 1, 2005 to March 31, 2006 (“2005 Tax Period”): \$1,047,592
- April 1, 2006 to March 31, 2007 (“2006 Tax Period”): \$1,134,393
- April 1, 2007 to March 31, 2008 (“2007 Tax Period”): \$1,000,931

The Department denied each claim in three separate denials issued on March 24, 2016. Petitioner filed the instant Petitions with the Board within 60 days as required under La. R.S. 47:1625(A)(1). The Department filed exceptions. The Board overruled the Exceptions and set the cases for hearing on the merits. As a result of agreement by the Petitioner and the Department to a stipulation of relevant facts, and in accordance with the joint motion of the parties, the Board converted the merits hearing into a hearing on cross motions for summary judgment and effectively<sup>2</sup> consolidated Docket Numbers 9748D, 9749D, and 9750D. The parties filed cross motions for summary judgment on July 28, 2020 which are now before the Board.

This is a franchise tax case. Petitioner does business in numerous states including Louisiana. The sole issue in this case is the proper method of apportionment of Petitioner’s franchise tax base to Louisiana

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<sup>1</sup> The Claims Against the State were raised and preserved in the event of a procedural bar to a refund action, but are mooted by the Board’s resolution of the refund claim.

<sup>2</sup> The parties did not file a formal written motion to consolidate, but filed a Joint Motion to Convert Hearing Date and a proposed Order captioned as “BTA Docket Nos.: 9748D, c/w 9749D, and 9750D.” The Board signed the proposed Order on June 1, 2020. Since that date, the cases have proceeded as though consolidated without objection from either party.

under La. R.S. 47:606. Specifically, the parties dispute whether (1) interest paid to the Petitioner on debt taking the form of “Retail Installment Contracts” (“RICs”) should be included in the numerator of Petitioner’s franchise tax sales ratio; and (2) whether the value of the RICs themselves should be included in the numerator of Petitioner’s franchise tax property ratio. The Department argues that both the interest from RICs generated in Louisiana and the value of the RICs themselves should be included in the numerator, while the Petitioner argues that they should not be included.

The facts are established by joint stipulation between the parties. A RIC is a finance agreement between a consumer who wants to purchase a motor vehicle on credit and a motor vehicle dealer. Petitioner is not a motor vehicle dealer. Petitioner is a financing institution that acquires, owns, and services RICs from dealers who sell vehicles to their customers on credit.<sup>3</sup>

Petitioner is a corporation organized under the laws of the State of California. Petitioner’s headquarters and commercial domicile are in Torrance, California, where Petitioner directs and manages all of its lines of business, including its acquisition and servicing of RICs, and where all management decisions are made and implemented. Petitioner also maintains its corporate books and records, as well as its corporate bank accounts, in Torrance, California. Except for activities that take place at Petitioner’s Dealer Sales and Services Offices

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<sup>3</sup> Petitioner is engaged in other lines of business not relevant to this case.

("DSSO") and Customer Service Centers ("CSC"), all of Petitioners back office services, such as finance, accounting, tax, human resources and legal, are performed at Petitioner's headquarters in Torrance, California.

Customers wishing to finance the purchase of a motor vehicle from a Louisiana Toyota/Lexus motor vehicle dealer must complete a credit application for approval from the dealer. Dealers in Louisiana electronically submit credit applications to Petitioner's Louisiana DSSO for review and ultimately to approve, counter, or decline the application.<sup>4</sup> The review is solely to determine the credit risk of the potential purchaser. If the Credit analyst approves the credit application, the dealer and the customer then negotiate the price, down payment, trade-in credit, finance terms, and other terms of the sale. Each RIC expressly identifies the motor vehicle dealer as the "Creditor (Seller)" and the applicant as the "Buyer," with the vehicle serving as the collateral.

Petitioner does not review, approve or disapprove any RIC prior to the execution of the RIC by the motor vehicle dealer and the Buyer. The dealer may sell RICs to other financing institutions. Likewise, Petitioner may choose not purchase RICs from dealers. During the tax periods at issue, Petitioner acquired approximately 85% of the offered RICs from the dealers. RICs are purchased for cash. Petitioner (a) retains and maintains the scanned electronic copies of all of the

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<sup>4</sup> This includes customers of a limited number of dealerships located in Mississippi.

acquired RICs and supporting documentation at one of Petitioner's three CSCs. Petitioner conducts all management activities and services, including but not limited to all finance, accounting, billing, and legal services, with respect to the acquired RICs from one of its CSCs. Petitioner's CSCs retail system are located and maintained outside of Louisiana. For the Louisiana RIC's at issue, Louisiana law controls how Petitioner can collect in the event of a default.

Petitioner paid Louisiana franchise tax for the years in question that was calculated with the inclusion of both the interest paid on the RICs by Louisiana customers and the value of the RICs generated in Louisiana in the numerator of Petitioner's sales ratio and property ratio, respectively. Petitioner later filed refund claims for those same years, claiming inclusion of those items in the numerator of each ratio was in error. For the reasons that follow, we find for the Department on the issue of inclusion of the interest income in the numerator of the sales factor ratio, and find in favor of the Petitioner on the issue of inclusion of the value of the RICs themselves in the numerator of the property factor ratio.

### **LOUISIANA FRANCHISE TAX AND APPORTIONMENT**

The Louisiana franchise tax is applicable to all Louisiana corporations and any foreign corporation doing business in Louisiana. The 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.<sup>5</sup> *La. R.S. 47:602(A)*. Generally, the "surplus and undivided profits" of a corporation are valued as reflected on the "books" of the corporation. *La. R.S. 47:605(A)*.

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 that portion of the franchise tax base applicable to Louisiana. 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 is 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
- (2) The ratio that the value of all of the taxpayer's property and assets situated or use in Louisiana bears to the value of all of its property and assets wherever situated or used.

**THE BOARD'S PRIOR DECISION IN *GMAC, INC. AND NUVELL CREDIT COMPANY, LLC V. BRIDGES***

The facts of the instant case are virtually identical to those in *GMAC, Inc. and Nuvel Credit Company, LLC v. Bridges*, BTA Docket

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<sup>5</sup> In 2005, *La. R.S. 47:602(A)* was amended to eliminate "borrowed capital" (long term debt) as a component of the tax base. The elimination was accomplished through phasing out the inclusion of certain long term debt over a period of 6 years.

Nos. 6998-7001, 7012, 7049, and 7220-21 (*La. Bd. Tax App. 2014*), 2014 WL 7642226, *not appealed*.<sup>6</sup> In that case, the taxpayers conducted their retail financing business by purchasing retail installment sales contracts from authorized GM dealerships. The contract between the dealerships and the purchaser required the purchaser to make a number of monthly payments to the dealership. Neither of the taxpayers was a party to the contracts at their inception. The dealerships then assigned some of the contracts to the taxpayers. The dealerships were not required to sell the contracts to the taxpayers, and sometimes sold the contracts to other buyers.

All of the taxpayers' activities associated in the acquisition of the contracts took place outside the state of Louisiana. When the dealership agreed to sell, and the taxpayers agreed to buy a contract, the contract was acquired by the taxpayers outside of Louisiana and the documentation was physically stored outside of Louisiana. When the taxpayers purchased a contract, it was "Booked" by the taxpayers into their computer systems. Subsequent to "Booking" the contract and all "servicing" of the contract was performed in Taxpayers' offices in Texas, Colorado, Michigan, or Arkansas. All payments made by the purchasers were sent to locations outside of Louisiana. Taxpayers' corporate level activities took place outside of Louisiana. All activities to securitize the contracts took place outside of Louisiana.

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<sup>6</sup> There is no difference in the applicable statutes or regulations.

For the years 1998-2006, GMAC and Nuvelly attributed the contracts that involved Louisiana sales in their Louisiana corporation franchise tax returns to Louisiana. Much like Petitioners in the instant case, GMAC and Nuvelly sought a refund, claiming that they should not have attributed the contracts (both in the sales factor and the property factor) to Louisiana, and this caused GMAC and Nuvelly to overpay their corporation franchise taxes for those years.

After a hearing on the matter, the Board ruled that interest paid to GMAC and Nuvelly on the contracts generated in Louisiana would be attributed to Louisiana for inclusion in the numerator of the sales factor ratio, but that the value of the contracts themselves would not be attributed to Louisiana and therefore excluded from the numerator of the property factor ratio. After careful consideration of the argument of counsel and the statutes, regulations and applicable jurisprudence, the Board adheres to its prior decision in *GMAC, supra*.

### *LAW*

A corporation is deemed to have employed in this state the portion of its taxable capital that is equal to the arithmetic average of two ratios. The first ratio is found in R.S. 47:606(A)(1) which states in part:

R.S. 47:606. Allocation of taxable capital

A. General allocation formula.

. . . .

- (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..." [emphasis supplied]

The second ratio is found in R.S. 47:606(A)(2) which states in part:

(2) The ratio that the value of all the Taxpayer's **property and assets situated in Louisiana or used in Louisiana** bears to the value of all of its property and assets wherever situated or used..." [emphasis added]

The corporation franchise tax issue in this case is whether the RICs and the income derived therefrom should be apportioned to Louisiana for the purposes of the "property and assets", "net sales", and "other revenue" factors referred to in the foregoing statutes.

### SALES FACTOR RATIO

La. R.S. 47:606(A)(1)(h) addresses interest on customers' notes and accounts and provides:

(h) Interest on customers' notes and accounts shall be attributed to the state in which such customers are located.

La. R.S. 47:606(A)(1)(i) addresses "other" interest and provides:

(i) Other interest and dividends shall be attributed to the state in which the securities or credits producing such revenue have their situs, which shall be at the business situs of such securities or credits, if they have been so used in connection with the taxpayer's business as to acquire a business situs, or, in the absence of such a business situs shall be at the commercial domicile of the corporation.

The Petitioner argues that the interest it receives on RICs generated in Louisiana are "other interest" as set forth in La. R.S. 47:606(A)(1)(i), and therefore are attributed to California on the basis that the RICs have a situs in California; or, alternatively, if the RICs have no business situs, then they are attributed to California since that is the commercial domicile of the Petitioner. The Department's position

is that the interest received by the Petitioner is “interest received on customers’ notes and accounts” and therefore should be attributed to Louisiana under La. R.S. 47:606A(1)(h) since the customers are located in Louisiana.<sup>7</sup> We agree with the Department on this issue.

The relevant regulation issued by the Department is LAC 61:I.306(A)(1)(f) and provides:

f. Interest on Customers’ Notes and Accounts

i. Interest on customers notes and accounts can generally be associated directly with the specific credit instrument or account upon which the interest is paid and shall be attributed to the state at which the goods were received by the purchaser or services rendered. Interest is construed to include all charges made for the extension of credit, such as finance charges and carrying charges.

ii. When the records of the taxpayer are not sufficiently detailed so as to enable direct attribution of the revenue, interest, as defined herein, shall be attributed to each state on the basis of a formula or formulas which give due consideration to credit sales in the various states, outstanding customer accounts and notes receivable, and variances in the rates of interest charged or permitted to be charged in each of the states where the taxpayer makes credit sales”

Neither La. R.S. 47:606(A)(1)(h) or LAC 61:I.306(A)(1)(f) requires that the interest paid on a customers’ note or account be paid by a customer of the **taxpayer** for the interest to be classified “interest on “customers’ notes and accounts”. Petitioner’s argument is based on the flawed premise that once a dealer assigns the RIC to the Petitioner, the

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<sup>7</sup> The Department alternatively argues that the Petitioner’s income from the RICs was revenue from services rendered under La. R.S. 47:606A(1)(f), and therefore attributed to the State where the services were rendered; i.e., Louisiana. We reject the argument on the basis that the payments made by the customers to the Petitioner pursuant to the RICs were interest as the RICs contained a stated

interest payment made by the customer is no longer “interest on customers’ notes or accounts” since the Petitioner did not sell the vehicle to the customer and are somehow transformed to “other interest” payments under La. R.S. 47:(A)(1)(i). However, nothing in the statute or the regulation requires that such interest be paid to the original seller of the goods or services in order for such interest to be classified as “interest on customers’ notes or accounts.”

It is axiomatic that the RIC’s generated in Louisiana from vehicle sales result in the overwhelming majority of the vehicle purchasers, the “customers”, would also have been located in Louisiana.<sup>8</sup> Thus, the interest is properly included in the numerator of Petitioner’s sales factor ratio in the calculation of the apportionment of Petitioner’s franchise tax base.

### **PROPERTY FACTOR RATIO**

La. R.S. 47:606(A)(2)(c) refers to “trade accounts and trade notes receivable” and provides:

(A)(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. In determining value, depreciation and depletion reserves must be deducted from the book values of the properties in question. The various classes of property and assets shown below shall be allocated within and without Louisiana on the bases indicated:

. . . . .

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interest rate and amortization schedule and clearly represented interest payments on an installment sales contract for the purchase of the vehicles by the customer.

<sup>8</sup> Even if a theoretically small number of non-Louisianans purchased vehicles in Louisiana, the Taxpayer made no claim and put forth no evidence to establish that it had actually paid prior franchise tax on an otherwise out of state customer.

(c) Trade accounts and trade notes receivable shall be allocated by reference to the transactions from which the receivables arose, on the basis of the location at which delivery was made in the case of sale of merchandise or the location at which the services were performed in case of charges for services rendered.

La. R.S. 47:606(A)(2)(e) is a catchall provision that sources notes and accounts “other than those notes and accounts described under (b) through (d)” as follows:

(e) notes and accounts other than those notes and accounts described under (b) through (d) above shall be allocated to the state in which they have their business situs, in the absence of a business situs, to the state in which is located the commercial domicile of the taxpayer.

The Department argues that the RICs are trade accounts/trade notes receivable as defined in La. R.S. 47:606(A)(2)(c) and thus have Louisiana as their situs since that is the location of the delivery of the merchandise (the vehicles) subject to the RICs by the dealer to the customers. The Petitioner’s position is that the RICs are not “trade accounts” or “trade notes receivable” since Petitioner was not the seller of the vehicles, and therefore for purposes of the property factor ratio, pursuant to La. R.S. 47:606(A)(2)(e), the value of the RICs is not allocated to Louisiana.

There is no requirement in La. R.S. 47:606(A)(2)(c) that the taxpayer be the seller of the goods or the one performing the services for an account or receivable to be a “trade” account or a “trade note receivable”. Without anything further, the analysis would be similar to that set forth above with respect to the allocation of the interest for

purposes of the sales factor ratio. The fact that a dealer assigned one or more RICs to the Petitioner subsequent to the sale of the vehicle to the customer would not itself transform a “trade account” or “trade note receivable” into a “note or account other than those notes and accounts described under (b) through (d)”. However, the Department’s regulation in LAC 61:I.306(A)(2)(c) specifically defines trade accounts and trade notes receivable with reference to sales of merchandise **by the taxpayer**, and provides:

- (c) Trade accounts and trade notes receivable are construed to mean only those accounts and notes receivable resulting from the sale of merchandise or the performance of services for customers in the regular course of business **of the taxpayer**. [emphasis provided]

The Department’s own regulation defines trade accounts as those generated in the regular course of business **of the taxpayer**. While the RICs may otherwise be classified as trade accounts in the hands of the dealer/seller, as per the Department’s own regulation,<sup>9</sup> once the

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<sup>9</sup> The Secretary is authorized to make regulations that shall be promulgated pursuant to the provisions of the Administrative Procedure Act and will have the full force and effect of law. La. R.S. 47:1511. Great effort goes into making and revising formally promulgated administrative rules. Multiple public notices are published and notice is provided to legislative oversight committees. La. R.S. 49:951-52. The relevant legislative oversight committees and the governor exercise control through their veto and oversight authority. La. R.S. 49:967-69. Following a months long process with detailed mechanisms for review, comment, and revision, the final rule is published and codified for the public. La. R.S. 49:953-954.1.

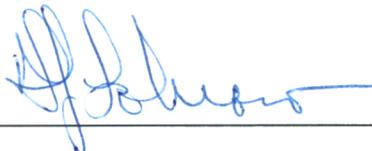
While a tax regulation cannot extend a taxing statute or directly conflict with law, when the Secretary goes through this exhaustive formal rule making process and codifies a rule the public can be expected to rely upon the Department’s own pronouncement of its own position on the issue. *Accord, UTELCOM, Inc. v. Bridges*, 2010-0654, p. 9 (La. App. 1 Cir. 9/12/11), 77 So.3d 39, 49, *writ denied*, 2011-2632 (La. 3/2/12), 83 So.3d 1046 and *Traigle v. PPG Industries, Inc.*, 332 So.2d 777, 782 (La. 1976).

dealer assigns a RIC to the Petitioner, it is no longer a “trade account” as defined in La. R.S. 47:606(A)(2)(c) since the Petitioner did not sell the merchandise/vehicle to “customers in the regular course of business **of the taxpayer**”.

The Louisiana Supreme Court has held that “the weight of opinion is to the effect that **administrative agencies are bound by their own rules**, at least by their own rules which are promulgated to affect the rights and liabilities of members of the public.” *Central Louisiana Elec. Co., Inc. v. Louisiana Public Service Commission*, 377 So.2d 1188 (La. 1979). Therefore, for purposes of the property factor ratio, the RIC is allocated as a “note and account other than those notes and accounts described in [La. R.S. 47:606(A)(2)] (b) through (d) above” and using the methodology set forth in La. R.S. 47:606(A)(2)(e), the RICs are attributed to California<sup>10</sup> under either the business situs test (the situs of the notes) or in the absence of a situs for the notes, the commercial domicile test, which in either case results in the value of the notes being sourced in California.

Baton Rouge, Louisiana, this 10<sup>th</sup> day of December, 2020.

**FOR THE BOARD:**



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**FRANCIS J. “JAY” LOBRANO**

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<sup>10</sup> While it is possible that a RIC could have the situs of the state where a CSC is domiciled; however, in this case there are also no CSC’s domiciled in Louisiana.

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