

OHIO BOARD OF TAX APPEALS

National City Bank, Cleveland (n/k/a)	
National City Bank), c/o National City)	CASE NO. 2003-A-1328
Corporation,)	
)	(CORPORATION FRANCHISE
Appellant,)	TAX)
)	
vs.)	DECISION AND ORDER
)	
Thomas M. Zaino, Tax Commissioner of)	
Ohio,)	Affirmed on Appeal Dec. 6, 2006
)	Ohio Supreme Court
Appellee.)	

APPEARANCES: 111 Ohio St.3d 485, 2006-Ohio-6110

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Entered July 22, 2005

Ms. Margulies, Mr. Eberhart, and Mr. Dunlap concur.

This cause and matter came on to be considered by the Board of Tax Appeals upon a notice of appeal filed by the appellant (“National City”) from a final determination of the Tax Commissioner. In the determination, the commissioner considered appellant’s claims for refund, relating to corporate franchise tax years 1994-1998, and ultimately denied such claims. Specifically, the commissioner

determined that increases in the cash surrender values of the taxpayer's bank-owned life insurance (BOLI) contracts are not considered appreciation and therefore should not be excluded in computing the taxpayer's net worth subject to franchise tax.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to the board by the Tax Commissioner, the stipulation of facts¹ entered into by the parties, the testimony and evidence² offered at the hearing before this board, and the briefs of counsel.

In reviewing appellant's appeal, we first recognize the presumption that the findings of the Tax Commissioner are valid. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121. It is therefore incumbent upon a taxpayer challenging a finding of the Tax Commissioner to rebut that presumption and establish a right to the relief requested. *Belgrade Gardens v. Kosydar* (1974), 38 Ohio St.2d 135; *Midwest Transfer Co. v. Porterfield* (1968), 13 Ohio St.2d 138. Moreover, the taxpayer is assigned the burden of showing in what manner and to what extent the Tax Commissioner's determination is in error. *Federated Dept. Stores, Inc. v. Lindley* (1983), 5 Ohio St.3d 213.

The commissioner's final determination sets forth, in pertinent part, the underlying facts of the instant matter. Specifically:

¹ The parties have stipulated that the issues involved in the instant matter are representative of those in four other cases currently pending before this board. While the issues/cases were handled in a single final determination by the Tax Commissioner, they were appealed individually to this board. Thus, the parties have agreed that "the ultimate adjudication and disposition of the instant case *** shall control the outcome of" several companion cases, specifically, BTA Nos. 2003-A-1326, 2003-A-1327, 2003-A-1329, and 2003-A-1330.

² The parties have further acknowledged through a stipulation that copies of exhibits #1-18 have been substituted for those originally received into evidence by this board and hereinafter, such copies shall constitute the original exhibits for purposes of this board's record in this matter.

“*** The taxpayers are wholly owned subsidiaries of National City Corporation, hereinafter collectively referred to as the taxpayer, and are engaged in providing commercial banking services. The taxpayer contends that amounts shown on its certified balance sheet representing increases in the cash surrender values (CSV) of its bank-owned life insurance (BOLI) contracts are appreciation and therefore should be excluded in computing the net worth subject to the Ohio franchise tax for the years at issue. ***

“The taxpayer purchased whole life insurance on its employees, making one premium payment in the year of purchase. The taxpayer was the owner and beneficiary of each policy. The taxpayer received two benefits from each policy for as long as it was in effect: a death benefit distributed on the death of the covered employee, and a CSV for the individual employee covered under the policy. A policy could be terminated at any time before maturity or death of the covered employee, and the taxpayer would receive the CSV. If death of the insured occurred while the policy was in effect, the taxpayer received the death benefit (which is generally greater than CSV) stated in the policy. The CSV for the first year of the policy was stated in the contract, and it increased every year after purchase by the amount of interest accrued on the policy. A provision in the policy entitled ‘Interest on Cash Value’ provided the minimum rate of interest to be earned each year. In essence, the CSV feature of the policy is an investment tool and the death benefit is insurance. Each year the insurance carrier provided a statement detailing the CSV of all policies held by the taxpayer. The taxpayer utilized these statements in booking the aggregate CSV of all policies it held, and ultimately reporting this value on its annual financial statements. The taxpayer debits the CSV-BOLI account for increases in CSV and at the same time credits income. Entries are made to the same accounts to record an occurrence (death). On receipt of proceeds due to an occurrence, CSV-BOLI is credited and cash is debited. The taxpayer contends that these annual increases in CSV-BOLI, attributable to accrued interest not yet received through termination of the policies, are

‘appreciation’ and should be deducted in calculating net worth.” S.T. at 1-2.

Thus, National City purchased several BOLI policies from various insurance companies in order to insure the lives of some of its employees, with the bank as the beneficiary of the policies. H.R. at 15. National City made such purchases for several reasons, including as a means to fund employee retirement and benefit plans, to obtain federal tax benefits, and as an investment. H.R. at 16, 62-63. National City purchased the BOLI policies with payment of a single premium. H.R. at 23-24. Each policy has an investment component, with interest paid on the policy value at a rate established in the policy (with a guaranteed minimum rate) or dividends generated, and an insurance component, with the policy paying a death benefit. Ex. 10. National City has the right to receive the interest on the policies, or it can let it accumulate. Ex. 10; H.R. at 88. Cash value reports prepared by National City’s BOLI consultant indicate that increases to the CSV of the BOLI policies resulted from the interest earned on the policies. Ex. 8.

In its notice of appeal to this board, National City asserts the following specifications of error:

“1. The commissioner erred as a matter of law and fact in determining that the amount shown on the Taxpayer’s balance sheet representing an increase in the cash surrender value (‘CSV’) of its bank-owned life insurance contracts (‘BOLIs’) was not excludable in computing net worth for Ohio corporate franchise tax purposes. Section 5733.056(B)(4) of the Ohio Revised Code specifically indicates that ‘[g]oodwill, **appreciation**, and abandoned property’ are to be excluded in computing the net worth of a financial institution for Ohio corporate franchise tax

purposes. (Emphasis added.) Acknowledging the absence of a statutory definition of ‘appreciation,’ the Ohio Supreme Court has defined it as ‘an increase in value over some period of time.’ *Edwards Industries, Inc. v. Tracy* (1996), 75 Ohio St.3d 643, 645. The appreciation of the CSV of BOLIs clearly fits within this definition and, therefore, is excluded pursuant to R.C. 5733.056(A) from the net worth of a financial institution in computing its Ohio corporate franchise tax liability.

“2. The Commissioner’s Final Determination is erroneous insofar as it disallows a deduction for the appreciation of CSV of the BOLIs because the BOLIs have a minimum stated rate of return. To the contrary, the express language of R.C. 5733.056(B)(4) does not exclude from the deduction for appreciation assets for which there is a guaranteed minimum rate of return. The Commissioner is not free to interpret or expand a statute beyond the clear import of the language used. See, e.g., *Watson v. Tax Commission* (1939), 135 Ohio St. 377, paragraph one of the syllabus.

“3. The Commissioner’s Final Determination erroneously concludes that the Department of Taxation’s Information Release, Income Tax Audit Div. (Nov. 29, 1993) (the ‘Release’), allowing a deduction with respect to available-for-sale securities which are recorded at fair market value on taxpayers’ books pursuant to Statement of Financial Accounting Standards 115, does not also support a deduction for the appreciation of the CSV of the BOLIs. As with available-for-sale securities, the precise increase in CSV is based upon the conditions of the marketplace.

“4. The Commissioner’s Final Determination is erroneous insofar as it disallows a deduction for the appreciation of the CSV of the BOLIs. The appreciation of the CSV is analogous to the increase in an ‘investment in subsidiary’ account recorded on a taxpayer’s books using the equity method of accounting, a deduction for which was approved by the Ohio Supreme Court in *SHV North America Corp. v. Tracy* (1994), 70 Ohio St.3d 395.

“5. The Commissioner’s Final Determination contains or results from valuation, mathematical or other computational errors.” (Emphasis sic.)

At the outset of our consideration of this matter, we acknowledge that the Supreme Court adheres to the general proposition that statutes granting exclusions, exemptions, or deductions from taxation must be strictly construed. *Vought Industries, Inc. v. Tracy* (1995), 72 Ohio St.3d 261; *Mutual Holding Co. v. Limbach* (1990), 50 Ohio St.3d 102; *Beckwith v. Kosydar* (1977), 49 Ohio St.2d 278; *National Tube Co. v. Glander* (1952), 157 Ohio St. 407, paragraph two of the syllabus. “Exemption is the exception to the rule and statutes granting exemptions are strictly construed.” *Seven Hills Schools v. Kinney* (1986), 28 Ohio St.3d 186.

Ohio’s corporate franchise tax requires financial institutions to pay a tax measured by the book value of their capital, surplus, whether earned or unearned, undivided profits, and reserves. R.C. 5733.05(A). Specifically, herein, National City bases its request for a refund of such tax on the provisions of R.C. 5733.05(A)(4), which, during most of the tax years³ under consideration, provided an exclusion from the net worth calculation, in pertinent part, as follows:

“The annual corporation report determines the value of the issued and outstanding shares of stock of the taxpayer, which under division (A) or (B) of this section is the base or measure of the franchise tax liability. ***

“(A) The total value, as shown by the books of the company, of its capital, surplus, whether earned or unearned, undivided profits, and reserves, but exclusive of:

³ The provisions of R.C. 5733.05(A)(4) are now found at R.C. 5733.056(B)(4).

“***

“(4) Good will, appreciation, and abandoned property as set up in the annual report of the corporation, provided a certified balance sheet of the company is made available upon the request of the tax commissioner. ***”

Thus, the question for this board is whether National City properly treated the increases of the cash surrender values (CSV) of its bank-owned life insurance contracts (BOLIs) as appreciation that is excludable from the net worth calculation.

We begin our consideration of that issue with the concept of “appreciation” as used, but not defined, in R.C. 5733.05. The Supreme Court, however, has defined appreciation as “an increase in value over some period of time. *** For there to be an increase in value there must be a starting value against which the increase is measured. Appreciation is the difference between two values ***.” *Edwards Industries, Inc. v. Tracy* (1996), 74 Ohio St.3d 643, 645, 646. While the commissioner argues that the court narrowed the foregoing definition further to include the influence of the market on an asset’s appreciation, we disagree. The court acknowledged definitions from other sources that referenced “increase in exchangeable value” and “increase in the market value of an asset,” but it specifically stated that after its “review of R.C. 5733.05 and the definitions of appreciation set forth above,” it concluded “that ‘appreciation’ as used in R.C. 5733.05 is an increase in value over some period of time.” (Emphasis added.) No market references were included in the definition the court propounded, and, as such, we disagree with the commissioner’s interpretation of the court’s holding.

However, that being said, we agree with the commissioner that the interest and/or dividends earned by the BOLI policies according to their specific contract terms do not constitute “appreciation” as contemplated by R.C. 5733.05(A)(4).

First, we consider how the interest, dividends, or earnings are treated by the respective parties involved. Generally, in National City’s own financial reports, the insurance policies, and the BOLI consultant’s reports, terms like “interest,” “dividends,” and “earnings” are used to describe the increases to the CSV, which reflects an income-oriented treatment of the CSV. But further, we also consider the specific accounting treatment of these BOLI policies, by not only National City, but also National City’s BOLI consultant and the insurance companies from which the policies were purchased. The cash value reports prepared by National City’s BOLI consultant, based upon information received from the insurance companies, confirms that the increases to the cash value of the bank’s BOLI policies were the result of interest earned on the policies. Ex. 8; H.R. at 113-114. Specifically, the quarterly accounting entries included in the consultant’s report indicate that the monthly interest earnings on the BOLI policies are entered by debiting the CSV of life insurance and crediting other income. Ex. 8. National City’s own accounting policy for BOLIs also reflects that an increase in the CSV of the BOLI policies is reflected in their books by debiting Net-CSV-COLI [Corporate Owned Life Insurance] /BOLI and crediting Income-COLI/BOLI. Ex. 6 at 6. In addition, the monthly cost of insurance charge is an expense charged against the cash value of the policy. It is treated as an expense

taken from the cash value, not a reduction or depreciation in the market value of the policy.

Next, we consider what really happens when interest, dividends, or earnings are generated by these BOLI policies. Specifically, we consider that the CSV aspect of a BOLI policy is, in effect, an investment device, similar to other fixed interest securities. For example, under the Prudential life insurance policy, National City could elect to receive the dividends generated by the policy as cash, to reduce the premium payments, or to have the insurance company reinvest the amount. Ex. 10 at Tab Prudential 4/21/93 at 7. Such dividends are not an “appreciation” of the asset, i.e., the life insurance policy; the value of the underlying life insurance policy does not change. The dividends constitute an “appreciation” of the investment of the premiums paid by National City to purchase the asset from the insurance company. In other words, the CSV does not independently increase in value; the increase is from the accumulated interest and dividends paid by the insurance company. We note that even when a taxpayer chooses not to receive dividends or interest earned, as National City did herein, the dividends or interest do not then turn into the capital appreciation excluded by R.C. 5733.05(A)(4). We agree with the commissioner that “appreciation is intrinsic to the asset itself, income is a product of the asset.” *Swick v. Swick* (Minn. App. 1991), 467 N.W.2d 328, 331.

We have considered the taxpayer’s arguments and citations to various cases as supportive of its position, but we ultimately conclude that those cases are distinguishable from the instant facts. First, National City argues that since it has

prepared its books and records in accordance with generally accepted accounting principles (“GAAP”), and the commissioner has verified that to be true, then R.C. 5733.05(A) and *National Tube Co. v. Peck* (1953), 159 Ohio St. 98, and its progeny require that its franchise tax be calculated in accordance with its books and records. We do not find such citation dispositive of the issue at hand. As the commissioner stated in the final determination, “[t]he methods by which the taxpayer valued its assets and the values it reached are not in dispute; the present dispute is simply whether some portion of that value qualifies for the appreciation deduction.” S.T. at 5.

The taxpayer also cites to *SHV N. Am. Corp. v. Tracy* (1994), 70 Ohio St.3d 395, as supportive of its position that the commissioner is attempting to improperly disallow exempted asset appreciation. However, in *SHV*, the taxpayer owned all of the stock of six separate subsidiaries, with two of the subsidiaries increasing in value during the year in question and the remainder declining. The question before the court was whether the stock increases and decreases had to be netted in determining the overall value to exclude as “appreciation.” The court agreed with the taxpayer that it was not necessary, in determining its exclusion from franchise tax for appreciation, to net its stock increases with the stock decreases it experienced. This issue is clearly not before this board, as, in fact, there were only increases experienced by the CSV of the BOLI policies in question.

Further, in *Gray Horse, Inc. v. Limbach* (1993), 66 Ohio St.3d 631, the question before the court dealt with whether the taxpayer had kept its books, and from them, calculated its franchise tax “according to generally recognized and approved

accounting methods.” Contrary to the commissioner’s determination, the court found that the taxpayer had, in fact, properly kept its books, and, as such, the commissioner had incorrectly increased the value of the taxpayer’s shares beyond the value listed on its books. As stated earlier, in the instant matter, the commissioner has not argued about the methods used by the taxpayer in keeping its books; on the contrary, the commissioner has agreed that National City kept its books according to GAAP and that its balance sheet qualified as a certified balance sheet. S.T. at 2, 3. Here, the commissioner’s challenge does not go to whether the specific amount claimed as appreciation is correct or was computed correctly, but whether the type of items that make up the appreciation figure, conceptually, properly qualify as appreciation, as contemplated by the statute, i.e., R.C. 5733.05(A)(4).

Finally, in *Edwards*, supra, the court considered the concept of “instantaneous appreciation” and based its decision that there was no deductible appreciation of certain stock upon the fact that the appreciation of the stock had occurred before the stock was transferred to the new owner who was claiming it. Again, the commissioner did not argue that appreciation had not occurred, but that it had not occurred for the taxpayer claiming it.

Thus, considering the foregoing, we affirm the commissioner’s finding that National City’s exclusion of the appreciation of the CSV of its BOLIs when computing its net worth was not appropriate. Accordingly, this board finds that appellant has not overcome the presumption of validity of the Tax Commissioner’s determination. See *Hatchadorian v. Lindley* (1986), 21 Ohio St.3d 66. It is therefore

the decision and order of the Board of Tax Appeals that the decision of the Tax Commissioner must be and hereby is affirmed.

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[Cite as *Natl. City Bank v. Wilkins*, 111 Ohio St.3d 485, 2006-Ohio-6110.]

**NATIONAL CITY BANK, CLEVELAND, APPELLANT, v. WILKINS,
TAX COMMR., APPELLEE.**

**NATIONAL CITY BANK, NORTHWEST, APPELLANT, v. WILKINS,
TAX COMMR., APPELLEE.**

**NATIONAL CITY BANK, COLUMBUS, APPELLANT, v. WILKINS,
TAX COMMR., APPELLEE.**

**NATIONAL CITY BANK, NORTHEAST, APPELLANT, v. WILKINS,
TAX COMMR., APPELLEE.**

**NATIONAL CITY BANK, DAYTON, APPELLANT, v. WILKINS,
TAX COMMR., APPELLEE.**

[Cite as *Natl. City Bank v. Wilkins*, 111 Ohio St.3d 485, 2006-Ohio-6110.]

*Corporate franchise tax—R.C. 5733.056(B) and former R.C.5733.05(A)(4)—
“Appreciation” construed.*

(Nos. 2005-1562, 2005-1563, 2005-1564, 2005-1565, and 2005-1566—Submitted
June 20, 2006—Decided December 6, 2006.)

APPEALS from the Board of Tax Appeals, Nos. 2003-A-1326, 2003-A-1327,
2003-A-1328, 2003-A-1329, and 2003-A-1330.

O’DONNELL, J.

{¶ 1} The issue presented to us in this case concerns whether life-insurance policies owned by National City Bank appreciated when the insurance carriers declared a dividend or made an interest payment that National City chose to take in the form of additions to the cash surrender value of its policies. Pursuant to R.C. 5733.05(A)(4) as it existed during the years in question, “appreciation” is excluded from a financial institution’s taxable net worth for Ohio franchise-tax purposes. The bank contends that the interest and dividend

payments it received as additions to the cash surrender value of the policies should be treated as appreciation. While it is true that the policies increased in value, the increase did not result from appreciation of the asset, but rather from an outside source of revenue added to the value of the policy as issued. Hence, the increase did not result from the asset itself gaining value, and we conclude that the addition of interest and dividend payments did not amount to appreciation.

Facts

{¶ 2} The appellants in these five consolidated cases are five subsidiaries of National City Bank, referred to collectively as “National City.” During the years 1994 through 1998, National City owned several “bank-owned life insurance” (“BOLI”) policies. A BOLI policy is a whole-life insurance policy purchased and owned by a bank to insure the lives of its employees. When an insured employee dies, the bank receives the death benefit payable under the policy.

{¶ 3} Like other whole-life insurance policies, a BOLI policy has a cash surrender value, which is payable to the policy owner – the bank – if the policy is surrendered by the bank prior to the death of the insured person or persons. When a BOLI policy is purchased by a bank, the cash surrender value is roughly equal to the premium paid by the bank for the policy. National City paid the full premium for its BOLI policies at the time it purchased each policy.

{¶ 4} Some of the BOLI policies guaranteed that the bank would receive a minimum monthly interest payment on the cash surrender value of the policies. Other BOLI policies provided for National City to receive dividends on the cash surrender value of the policies. In each instance, National City decided to accept the interest or dividend payments on a BOLI policy in the form of additions to the cash surrender value of the policy, rather than receive those payments in cash.

{¶ 5} National City treated the initial cash surrender value of each of its BOLI policies as an asset in its accounting records and treated any increases in

that cash surrender value – attributable to the interest and dividend payments that National City received from the insurance companies – as increases in the value of its asset. This was done in accordance with generally accepted accounting principles. Accordingly, the cash surrender value of the bank’s BOLI policies increased each time an insurer declared a dividend or credited National City with an interest payment generated by a policy.

{¶ 6} Further, National City never surrendered any of its BOLI policies during the tax years in question and therefore never received any payment for the cash surrender value of those policies during those years. The only cash payments that National City received from the BOLI policies were death benefits that the insurance companies paid when an insured bank employee or former employee died.

{¶ 7} R.C. Chapter 5733 describes the corporate franchise tax that Ohio imposes on each corporation “for the privilege of exercising its franchise during the calendar year.” R.C. 5733.01(A). The tax is based on the “value of the issued and outstanding shares of stock” of the company. R.C. 5733.05.

{¶ 8} Pursuant to former R.C. 5733.05(A)(4) – a statutory provision applicable to financial institutions during most of the tax years at issue – “appreciation” was to be excluded when a bank or other corporation determined the value of its stock for franchise-tax purposes. 1993 Am.Sub.H.B. No. 152, 145 Ohio Laws, Part III, 4279-4280. The General Assembly has since amended the statute, and R.C. 5733.056(B), applicable to the tax year 1998, the last tax year at issue, now provides the same treatment of appreciation for financial institutions for franchise-tax purposes. R.C. 5733.05(A); 1997 Am.Sub.H.B. No. 215, 147 Ohio Laws, Part I, 1723, 1735-1736.

{¶ 9} The Tax Commissioner considered National City’s claim that the value added to the BOLI policies constituted appreciation and issued a final determination in 2003 rejecting the bank’s position. National City then

challenged that decision before the Board of Tax Appeals (“BTA”), which held a hearing on the matter in September 2004.

{¶ 10} The BTA affirmed the Tax Commissioner, concluding that “the interest and/or dividends earned by the BOLI policies according to their specific contract terms do not constitute ‘appreciation’ as contemplated by R.C. 5733.05(A)(4).” The BTA held that the cash surrender value of the BOLI policies “does not independently increase in value,” but instead “the increase is from the accumulated interest and dividends paid by the insurance company.” The interest and dividend payments “are not an ‘appreciation’ of the * * * life insurance policy,” because “the value of the underlying life insurance policy does not change,” the BTA explained. Appreciation, the BTA added, is a term that refers to an intrinsic increase in an asset, rather than income produced by that asset. The BTA therefore affirmed the Tax Commissioner’s decision to deny National City’s refund claim.

{¶ 11} National City has now appealed that decision to this court.

Standard of Review

{¶ 12} In reviewing a BTA decision, our standard of review is whether the decision is “reasonable and lawful.” R.C. 5717.04. The court “will not hesitate to reverse a BTA decision that is based on an incorrect legal conclusion.” *Gahanna-Jefferson Local School Dist. Bd. of Edn. v. Zaino* (2001), 93 Ohio St.3d 231, 232, 754 N.E.2d 789. But “[t]he BTA is responsible for determining factual issues and, if the record contains reliable and probative support for these BTA determinations,” this court will affirm them. *Am. Natl. Can Co. v. Tracy* (1995), 72 Ohio St.3d 150, 152, 648 N.E.2d 483.

{¶ 13} The burden of proof rests on the taxpayer “to show the manner and extent of the error in the Tax Commissioner’s final determination.” *Stds. Testing Laboratories, Inc. v. Zaino*, 100 Ohio St.3d 240, 2003-Ohio-5804, 797 N.E.2d 1278, ¶ 30. The Tax Commissioner’s findings “are presumptively valid, absent a

demonstration that those findings are clearly unreasonable or unlawful.” *Nusseibeh v. Zaino*, 98 Ohio St.3d 292, 2003-Ohio-855, 784 N.E.2d 93, ¶ 10.

Analysis

{¶ 14} The issue here concerns whether the increases in the cash surrender value of National City’s BOLI policies should be treated as appreciation as specified in R.C. 5733.05(A)(4) and 5733.056(B) during the tax years at issue. National City contends that the increases it recorded in the cash surrender value of its BOLI policies for the years 1994 through 1998 should be treated as appreciation, and therefore should not be included as part of the bank’s total book value for corporate franchise tax purposes. The commissioner, however, argues that the value of the policies did not appreciate for tax purposes, because the cash surrender value of the policies did not increase apart from the added value obtained from interest and dividend payments.

{¶ 15} As we noted ten years ago, “[t]here is no statutory definition of ‘appreciation.’ ” *Edwards Industries, Inc. v. Tracy* (1996), 74 Ohio St.3d 643, 645, 660 N.E.2d 1181. In that case, the court concluded that the term “appreciation” as used in former R.C. 5733.05 referred to “an increase in value over some period of time.” *Id.* We therefore gave the term “appreciation” its plain meaning. See *Black’s Law Dictionary* (8th Ed.2004) 111 (defining “appreciation” as “[a]n increase in an asset’s value, usu. because of inflation”).

{¶ 16} As stated by the BTA in its decision, the cash-surrender-value aspect of a BOLI policy “is, in effect, an investment device.” When the bank’s investment in its insurance policies generated interest or dividends, it asked the carriers to add those payments to the cash value of its policies, thereby adding to the base amount on which the next interest or dividend payment would be calculated. The cash surrender value did not appreciate; instead, it grew larger solely because additional interest or dividend payments were added to it over time. According to the testimony of a senior vice-president of National City, all

the increases in cash surrender value that the bank recorded for its BOLI policies came from interest or dividend payments from the insurance carrier.

{¶ 17} National City – in conformity with generally accepted accounting principles – recorded the interest and dividend payments as increases in the cash surrender value of its BOLI policies. Therefore, National City claims that it is entitled to treat the interest and dividend payments as appreciation because it did not record those payments in its books as interest or dividend income. Nonetheless, these payments represented an actual return on its investment in its insurance policies. The bank paid an up-front one-time premium for each BOLI policy and, in return, received dividends or regular interest payments, which the bank chose to add to the cash value of its policies, thereby boosting the principal amount on which its future interest or dividend payments would be calculated.

{¶ 18} The two cases on which National City principally relies do not support its claim that the cash surrender value of the policies appreciated when the bank reinvested its interest or dividend payments. In *Edwards Industries*, 74 Ohio St.3d 643, 660 N.E.2d 1181, we rejected the taxpayer’s claim that certain retained earnings should be treated as appreciation pursuant to former R.C. 5733.05(A)(4). And in *SHV N. Am. Corp. v. Tracy* (1994), 70 Ohio St.3d 395, 639 N.E.2d 64, we ruled that the depreciation of some corporate assets did not affect the calculation of appreciation for other corporate assets under former R.C. 5733.05(A)(4). Neither decision addressed the issue presented in this case, nor did either define “appreciation” in the fashion that National City requests us to do now.

{¶ 19} Rather, as the BTA determined, the cash surrender value of the BOLI policies “does not independently increase in value; the increase is from the accumulated interest and dividends paid by the insurance company.” Because the cash surrender value of the BOLI policies did not increase separately from the reinvested interest and dividend payments, that value did not appreciate, and

National City is not entitled to treat those payments as appreciation pursuant to R.C. 5733.056(B) and former R.C. 5733.05(A)(4) as it existed for the years in question.

Conclusion

{¶ 20} The conclusion of the BTA that the full cash surrender value of National City’s life-insurance policies – including any periodic increases in those values resulting from interest and dividend payments – should have been counted by the bank as part of its book value for corporate franchise-tax purposes during the tax years in question is both reasonable and lawful, and we therefore affirm that decision.

Decision affirmed.

MOYER, C.J., RESNICK, PFEIFER, LUNDBERG STRATTON and O’CONNOR JJ.,
concur.

LANZINGER, J., dissents.

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Jim Petro, Attorney General, and Barton A. Hubbard, Assistant Attorney
General, for appellee.
