

REPRESENTATIVES FOR PETITIONER:
Larry J. Stroble, Barnes & Thornburg LLP
Kevin D. Chestnut, Deloitte Tax LLP

REPRESENTATIVE FOR RESPONDENTS:
Marilyn S. Meighen, Meighen & Associates PC

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Perdue Farms, Inc.,	)	Petition Nos.:	19-002-03-1-7-00001
	)		19-002-03-1-7-00002
Petitioner,	)		19-003-03-1-7-00003
	)		19-004-03-1-7-00001
v.	)		19-005-03-1-7-00001
	)		19-006-03-1-7-00002
Boone Township Assessor,	)		19-006-03-1-7-00003
Cass Township Assessor,	)		19-011-03-1-7-00001
Columbia Township Assessor,	)		19-011-03-1-7-00002
Ferdinand Twp. Assessor,	)		19-011-03-1-7-00003
Hall Township Assessor,	)		19-019-03-1-7-00001
Harbison Twp. Assessor,	)		19-020-03-1-7-00003
Marion Township Assessor,	)		19-020-03-1-7-00004
	)	Parcel Nos.:	PP 2020341500; PP 2030534000;
Respondents.	)		PP 2190410000; PP 2050414000;
	)		PP 2060250000; PP 2110473000;
	)		PP 2190410000; PP 2200496500;
	)	County:	Dubois
	)	Townships:	Boone, Cass, Columbia,
	)		Ferdinand, Hall, Harbison,
	)		and Marion
	)	Property:	Personal
	)	Assessment Year:	2003

Appeal from the Final Determination of
Dubois Property Tax Assessment Board of Appeals

May 25, 2006

FINAL DETERMINATION

The Indiana Board of Tax Review (the Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The issue presented for consideration by the Board was whether the Petitioner is entitled to an interstate commerce tax exemption for 94% of its personal property inventory of turkeys in Dubois County on March 1, 2003.

PROCEDURAL HISTORY

2. Perdue representatives timely filed 2003 personal property returns with the Boone, Cass, Columbia, Ferdinand, Hall, Harbison and Marion Township Assessors (the Township Assessors) on or about May 15, 2003.¹ On November 12, 2003, Perdue filed amended Forms 102 and 104 for Property on which Perdue claimed interstate commerce exemptions on a Form 103-W with respect to its turkeys located at the Contractors' facilities in Dubois County, claiming 94% tax exemption under Ind. Code § 6-1.1-10-29 and HEA 1814.
3. In early December of 2003, the township assessors in each of the seven townships issued Form 113/PP Notices of Assessment/Change (By an Assessing Official) on the personal property turkeys, denying the exemption claimed.
4. On December 18, 2003, Perdue representatives timely filed Form 130 Petitions to the Property Tax Assessment Board of Appeals for Review of Assessment by Dubois County. The PTABOA held hearings on these petitions on January 14, 2004, and, on January 23, 2004, the PTABOA issued Form 115 Notifications of Final Assessment Determination denying the exemptions.

¹ The Respondents in this matter are various township assessors in Dubois County, Indiana (referred to together herein as either the "Respondents" or the "Township Assessors"). The current township assessors are Rader Hoffman, Boone Township Assessor, Kenneth O. Fark, Cass Township Assessor, Lorrie G. Smock, Columbia Township Assessor, David M. Kemper, Ferdinand Township Assessor, Allen Thewes, Hall Township Assessor, Marvin Eisenhut, Harbison Township Assessor, and Darlene R. Wible, Marion Township Assessor. Stipulation at 3.

5. Pursuant to Ind. Code § 6-1.1-15-1, representatives for Perdue filed Form 131 Petitions for Review of Assessment, petitioning the Board to conduct an administrative review of the above petitions. The Form 131s were filed on February 17, 2004.

HEARING FACTS AND OTHER MATTERS OF RECORD

6. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, Rick Barter, the duly designated Administrative Law Judge (the ALJ) authorized by the Board under Ind. Code § 6-1.5-3-3, and Commissioner Terry G. Duga held a hearing on January 23, 2006, in Jasper, Indiana.

7. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Kevin D. Chestnut, Deloitte Tax
Thomas Schaffer, Perdue Farms
Mark Reynolds, Perdue Farms
Steve Newton, Perdue Farms

For the Respondents:

Raymond Lueken, Dubois County Assessor

8. The following exhibits were presented jointly by the Petitioner and Respondents:

Joint Exhibits 1-78 – A binder of First Stipulation of Facts including an introduction and index, signature page, Attachment A (a list of contract farmers, the personal property on the premises of each and the related IBTR petition number), and copies of all forms filed with the townships, county and state that the parties attest are the true and correct copies.

9. The following exhibits were presented by the Petitioner:

Petitioner Exhibit 79 – An Indiana outline map noting five areas of Perdue turkey growing operations.
Petitioner Exhibit 80 – A copy of Perdue Farms standard Indiana Turkey Growing Agreement.
Petitioner Exhibit 81 – An example of a Perdue Farms poultry school course.

Petitioner Exhibit 82 – Brief of Perdue Farms Inc. submitted March 9, 2006.
Petitioner Exhibit 83 – Proposed Finds of Fact and Conclusions of Law of Perdue Farms Inc., submitted March 9, 2006.
Petitioner Exhibit 84 – Transcript of Hearing filed March 9, 2006.

10. The following exhibits were presented by the Respondents:
 - Respondents Exhibit 1 – Assessors’ Brief filed March 8, 2006.
 - Respondents Exhibit 2 – Assessors’ Proposed Findings of Fact filed March 8, 2006.

11. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibits A – The Petitions.
 - Board Exhibits B – Attachment A.
 - Board Exhibits C – Notices of Hearing dated November 22, 2005.
 - Board Exhibits D – Hearing Sign-In Sheet.
 - Board Exhibits E – Notice of County Assessor Representation.
 - Board Exhibits F – Notices of Appearance from Respondents filed November 23, 2004.
 - Board Exhibits G – Notices of Appearance of Perdue Farms filed December 7, 2005.

12. The personal property at issue in this matter is the Petitioner’s live turkeys located at Ed Fuhrman Farms in Jasper, Indiana, PP 202-03415-00; located with Kevin and Diane Wertman in Holland, Indiana, PP 203-05340-00; located at the Jerry Knies Farm, Jasper, Indiana, PP 204-02504-00 and PP 219-04100-00; located at Patrick Fromme Farms, Ferdinand, Indiana, PP 205-04140-00; located at Senninger Farms, Hall, Indiana, PP 206-02500-00; located at the Leroy Schepers Farm, Celetine, Indiana, PP 206-02500-00; located at Hostetter Farms, Jasper, Indiana, PP 211-04730-00; located at Danhafer Farms, Dubois, Indiana, PP 220-04965-00; and located with Stephen Sanders, Jasper, Indiana PP 220-04965-00. *See Attachment A.*

13. The ALJ did not conduct an on-site inspection of the personal property at issue in this matter.

14. For 2003, the PTABOA determined the assessed value of the personal property to be \$37,110 for the personal property at issue in Petition No. 19-002-03-1-7-00001; \$32,970 for the personal property at issue in Petition No. 19-002-03-1-7-00002; \$74,410 for the personal property at issue in Petition No. 19-003-03-1-7-00003; \$129,380 for the personal property at issue in Petition No. 19-004-03-1-7-00001; \$85,230 for the personal property at issue in Petition No. 19-005-03-1-7-00001; \$20,270 for the personal property at issue in Petition No. 19-006-03-1-7-00002; \$68,100 for the personal property at issue in Petition No. 19-006-03-1-7-00003; \$29,560 for the personal property at issue in Petition No. 19-011-03-1-7-00001; \$56,870 for the personal property at issue in Petition No. 19-011-03-1-7-00002; \$60,620 for the personal property at issue in Petition No. 19-011-03-1-7-00003; \$35,560 for the personal property at issue in Petition No. 19-019-03-1-7-00001; \$72,270 for the personal property at issue in Petition No. 19-020-03-1-7-00003; and \$88,510 for the personal property at issue in Petition No. 19-020-03-1-7-00004. *First Stipulation of Facts (the Stipulation), p. 5.*

15. For 2003, the Petitioner contends the assessed value of the property should be \$5,450 for the personal property at issue in Petition No. 19-002-03-1-7-00001; \$3,140 for the personal property at issue in Petition No. 19-002-03-1-7-00002; \$6,520 for the personal property at issue in Petition No. 19-003-03-1-7-00003; \$11,280 for the personal property at issue in Petition No. 19-004-03-1-7-00001; \$5,920 for the personal property at issue in Petition No. 19-005-03-1-7-00001; \$1,670 for the personal property at issue in Petition No. 19-006-03-1-7-00002; \$4,770 for the personal property at issue in Petition No. 19-006-03-1-7-00003; \$2,970 for the personal property at issue in Petition No. 19-011-03-1-7-00001; \$4,580 for the personal property at issue in Petition No. 19-011-03-1-7-00002; \$4,410 for the personal property at issue in Petition No. 19-011-03-1-7-00003; \$3,950 for the personal property at issue in Petition No. 19-019-03-1-7-00001; \$5,260 for the personal property at issue in Petition No. 19-020-03-1-7-00003; and \$7,860 for the personal property at issue in Petition No. 19-020-03-1-7-00004. *Stipulation, p. 5.*

JURISDICTIONAL FRAMEWORK

16. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

17. A Petitioner seeking review of a determination of a county Property Tax Assessment Board of Appeals has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
18. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
19. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

CONTENTIONS

20. The Petitioner contends that it is entitled to an interstate commerce tax exemption for 94% of its personal property inventory of turkeys in Dubois County on March 1, 2003. *Stroble argument.* According to the Petitioner, its turkey growing operations in Indiana are part of a vertically integrated process that fulfills the requirements under Indiana law as a manufacturing or processing operation, and therefore qualifies for an exemption on personal property used in the process in 2003. *Id.* Further, the Petitioner contends it is entitled to an exemption in the amount of the percentage of its processed product that was shipped out of Indiana in 2002, or 94%. *Id.*
21. The Respondents contend that the Indiana personal property statutes provide an exemption on personal property only for that property in Indiana involved in the manufacturing process with the intent to ship the product out of state. *Meighen argument.* The Respondents argue that the Perdue turkey process is not manufacturing and does not fulfill the intention of the legislature which enacted the law to encourage manufacturing and to prevent tax pyramiding. *Id.* According to the Respondents, the Legislature did not specifically mention agriculture in relation to or as part of the manufacturing process. *Id.* Therefore, the Respondents argue, the Petitioner does not qualify for the exemption. *Id.*

PETITIONER

22. The Petitioner's witness testified that the property under appeal (the Property) is Perdue-owned turkeys that were being raised at facilities operated by farmers under contractual arrangements with Perdue. On March 1, 2003, thirteen such contractors had facilities in Dubois County, including Ed Fuhrman & Son Turkey Farm (Boone Township); Fuhrman Farms (Boone Township); Kevin and Diane Wertman (Cass Township); Quinn, Danhafer, Rasche, Fischer and Heckl operations (Columbia Township); Patrick Fromme Farms (Ferdinand Township); Jerry Kneis (Hall Township); Leroy Schepers (Hall Township); Senninger Farms (Hall Township); Danhafer Farms (Harbinson Township);

Stephen Sanders (Harbison Township); Kneis Poultry (Marion Township); Eugene Goodman (Marion Township); and Hostetter Farms (Marion Township). *Stipulation at 2.*²

23. On November 12, 2003, Perdue filed with the Township Assessors amended Forms 102 and 104 for the Property in which Perdue claimed interstate commerce exemptions with respect to its turkeys located at the Contractors' facilities in Dubois County (the Amended Returns). The parties agree that the Petitioner computed the interstate commerce exemptions that Perdue alleges it is entitled to by multiplying the true tax value of the turkeys by the ratio of out-of-state shipments to total shipments reported on Form 103-W. *Stipulation at 4.* According to the Petitioner, that ratio was 94% for the twelve months preceding March 1, 2003. *Schaffer testimony.* The total assessed value of property reported in Perdue's Amended Returns was \$67,780 compared to \$790,850 as reported in the original returns. *Stipulation at 5.* The Respondents issued notices denying the exemptions claimed by Perdue, and Perdue appealed to the Dubois County Property Tax Assessment Board of Appeals (the PTABOA). *Id. at 5-6.* After a hearing, the PTABOA upheld the determinations of the Respondents and denied Perdue's interstate commerce exemption. *Id. at 7-8.* Perdue appealed the PTABOA's decision to the Indiana Board of Tax Review. *Id. at 8-9.*
24. Perdue contends it owns and operates a fully integrated turkey production business in the State of Indiana. *Schaffer testimony.* According to the Petitioner, turkey production is a multi-step process. *Id.* Perdue's breeder operation is located in Lebanon, Indiana. *Id.* The hatching operation is in Vincennes, Indiana. *Id.* The feed mill and processing/manufacturing plant are located in Washington, Indiana. *Id.* Perdue also engages several independent contractors who raise live turkeys under arrangements with Perdue. *Id.; Petitioner Exhibit 79.* Perdue's *Exhibit 81* is a diagram depicting the steps and the interrelationship of these production steps.

² The Board notes that the names of the Contractors differed in various attachments to pleadings but concludes that a definitive determination of the identity of the Contractors is unnecessary to the resolution of this matter.

25. The Petitioner's witness testified that the production process begins at Perdue's breeder facility in Lebanon. *Schaffer testimony*. According to the Petitioner, approximately 65,000 hens per week lay eggs, producing on average 12,500,000 hatching eggs per year. *Id.* Eggs are sorted, washed, disinfected and placed in holding rooms for transport to Perdue's hatchery facility in Vincennes. *Id.* The Petitioner's witness testified that eggs are shipped five days a week from the breeder operation to the hatchery. *Id.*
26. The second step in the production process occurs at Perdue's Vincennes hatchery which, according to the Petitioner's witness, produces approximately 9,500,000 poults annually. *Schaffer testimony*. Upon arrival at the hatchery, eggs are put in a cold storage room for 5 to 7 days. *Id.* The Petitioner's witness testified that between 250,000 to 300,000 eggs are set in cold storage weekly. *Id.* Afterwards, they are placed in incubators for 25 days for embryonic development. *Id.* Then, according to the Petitioner, the eggs are transferred to baskets and hatched as poults. *Id.* After hatching, the poults' beaks and toes are trimmed, and they are vaccinated. *Id.* The Petitioner's witness testified, Poults are hatched four days a week and sent to the growing facilities the same day that they are hatched. *Id.*
27. The third step in the production process occurs at the growing facilities. *Schaffer testimony*. According to the Petitioner, Perdue contracts with the owners of 180 growing facilities located in Indiana and Illinois, including the thirteen Dubois County Contractors. *Id.* Perdue contends it owns the poults while at the growing facilities, but the farmers own the facilities themselves. *Id.*; *Petitioner Exhibit 80*. The Petitioner's witness testified that this arrangement allows Perdue to save on capital costs and decreases the possibility of disease outbreaks among flocks because flocks are dispersed across a wider geographic area than they would be on a single farm. *Id.*
28. The Petitioner's witness testified that the facilities are constructed according to Perdue's specifications, and Perdue typically functions as the general contractor for construction. *Schaffer testimony*. In addition, the Petitioner's witness testified, Perdue employs its own supervisors, veterinarians, and nutritionists, all of whom work closely with the turkey

flocks while at the Contractor locations. *Schaffer testimony*. Flock supervisors visit growing facilities once a week or more often to provide guidance to the Contractors, to ensure medication is properly administered, and to prepare reports as to conditions at the growing facilities. *Id.* Further, Perdue's veterinarians prescribe medicine provided by Perdue, if necessary, and Perdue's nutritionists implement Perdue's computerized feed program. *Id.*; *Petitioner Exhibit 80*.

29. The Petitioner's witness testified that Perdue has its own feed-producing facility located near Washington, Indiana, where 2,000,000 bushels of wheat and 6,000,000 bushels of corn are used each year to manufacture 7,500 tons of fresh feed each week for Perdue's breeder and commercial flocks. *Schaffer testimony*. The feed is comprised of 60-70% corn, 20% soybean mill, and other by-products. *Id.* The Petitioner argues that Perdue makes the decision of the type of feed to deliver to the growing facilities and when to deliver it. *Id.* According to the Petitioner, flocks are fed differently, and each bird is fed 14 different types of feed during its lifetime, each type involving 70 pounds of feed per bird. *Id.* Thus, as part of its maturation process before slaughter at Perdue's manufacturing plant in Washington, Indiana, the Petitioner's witness testified, each bird is fed hundreds of pounds of Perdue's feed over the period that they are at the growing facilities. *Id.*
30. According to the Petitioner's witness, Perdue provides the Contractors with extensive instructions and training by way of written literature, educational seminars, and guidance by flock supervisors concerning the criteria of Perdue's turkey growing program. *Schaffer testimony; Petitioner Exhibit 80*. Included in the program are standards for such things as proper feeding techniques, ventilation, sanitation, equipment height, and mortality pickup. *Id.* The Petitioner's witness testified that the Contractors are contractually required to cooperate with the flock supervisor, to keep records as directed by Perdue, to notify Perdue regarding any disease, to avoid contact with non-Perdue poultry farms, to keep no other poultry, fowl, or swine on the Contractors' premises, to follow best management practices outlined by Perdue, and to use Perdue-supplied feed only for Perdue birds. *Id.*

31. Perdue contends that its turkey poults arrive at the growing facilities as unmarketable products. *Schaffer testimony*. According to the Petitioner, the poults are without feathers and weigh 75 grams. *Id.* During the first ten days after their arrival, the poults are confined to 40-foot diameter rings for extra warmth. *Id.* Thereafter, they are weaned on automated equipment, and a carefully-planned feeding program is undertaken to raise the birds to a level of maturity that allows them to become marketable. *Id.* The Petitioner's witness testified that male turkeys, *toms*, are raised for 136 days to 40 pounds, and female turkeys, *heavy hens*, are raised for 120 days to 24 pounds. *Id.* The Petitioner argues that the turkeys leave the Contractors' farms in a state in which they can be slaughtered and sold as a marketable product. *Id.*

32. The fourth step in the integrated production process takes place at Perdue's manufacturing plant in Washington, Indiana. *Schaffer testimony*. According to the Petitioner, each growing facility makes four to five shipments a year of mature turkeys to the processing plant. *Id.* Following evisceration, the birds go through a three-hour chilling process from 100 degrees to roughly 50 to 55 degrees internal body temperature. *Id.* The product is then taken from the chiller, de-boned, and separated between white and dark meat. *Id.* The Petitioner's witness testified that twenty million tons of various types of ground turkey are produced annually at Perdue's Washington plant. *Id.*

33. The Petitioner argues that Perdue's Washington, Indiana, plant produces products ready for shipment to customers, most of whom are located outside Indiana. *Schaffer testimony*. According to the Petitioner, the character of the products differs depending on the specification of the customer and may be distributed in raw, smoked, or cooked form. *Id.* Retail products are primarily in the form of whole birds, breast, or tray-packed items. *Id.* The Petitioner argues that only six percent of the Washington plant's products are distributed to Indiana customers as retail products. *Id.* The plant also produces products that are shipped to other Perdue plants outside Indiana for further processing. *Id.* The meat is packaged in 2000-pound bulk containers and transported for further processing to

Perdue's processing plants in Bridgewater, Virginia, Monterey, Tennessee, or Concord, North Carolina. *Id.*

34. Perdue contends it owns the egg-laying hens, the stud males, the eggs, and the live turkeys through the entire integrated production process and sells the final marketable products to customers. *Stroble argument*. At each stage of production, the Petitioner's witness testified, the turkeys are recorded on the company's books and records as inventory. *Reynolds testimony*. Further, according to the Petitioner, the recorded amount of inventory includes any overhead involved in getting the turkeys to their final state as finished products. *Id.*
35. The Petitioner contends that Perdue's production operations, beginning with breeder operations and continuing through the processing plant, are a continuous integrated production process. *Schaffer testimony*. Perdue further alleges that the raising of turkeys at the Contractors' growing facilities is an integral part of this continuous integrated production process by which finished marketable products are created. *Id.* The vertically-integrated production process is synchronized for maximum production. *Id.* According to the Petitioner, any material disruption at one facility would ripple throughout the integrated production process substantially hindering the efficiency of operations at the other facilities. *Id.* Consequently, the entire production process would be thrown in disarray. *Id.* Thus, the Petitioner claims, a disruption or interruption of operations at the breeder facility would quickly interfere with the supplying of eggs to the hatching facility in Vincennes. *Id.* A disruption there would interfere with the supply of turkeys to the contract farmers. *Id.* Similarly, a problem at the Contractor farms would disrupt the supply of mature turkeys to the processing facility. *Id.*
36. The Petitioner contends that Ind. Code § 6-1.1-10-29 provides an exemption from property taxes for property owned by a manufacturer or processor if the property is held for shipment in interstate commerce. *Stroble argument*. According to the Petitioner, Perdue's live turkey inventory held as part of its vertically integrated, continuous

production process met the requirements necessary to qualify for the interstate commerce exemption as it was amended effective for the March 1, 2003, assessment date. *Id.*

37. The Petitioner argues that “inventory” is materials held for processing or for use in production, finished or partially finished goods of a manufacturer or processor, and property held for sale in the ordinary course of trade or business pursuant to Ind. Code § 6-1.1-3-11(a). *Stroble argument.* The Petitioner also contends that the regulations of the Department of Local Government Finance (the DLGF) recognize that the term “inventory” includes commodities from farms in 50 IAC 4.2-5-1(b)(1). *Id.* The Petitioner’s witness testified that Perdue’s turkeys at the growing facilities were valued and reported as inventory on the DLGF’s prescribed forms. *Joint Exhibits 1-26.* Thus, the Petitioner argues, there is no dispute that Perdue’s turkeys were a form of inventory. *Stroble argument.*
38. Further, according to Ind. Code § 6-1.1-10-29(a), the Petitioner argues a “‘manufacturer’ or ‘processor’” is “a person that performs an operation or continuous series of operations on raw materials, goods, or other personal property to alter the raw materials, goods, or other personal property into a new or changed state or form.” *Stroble argument.* Perdue contends it was clearly a manufacturer or processor under this definition because at different steps of the process, Perdue’s inventory can be in the form of an egg, a poult, or ground turkey meat. *Id.* Thus, according to the Petitioner, the Property evolves through a series of stages as its form is changed into marketable products that are edible by consumers.³ Further, the Petitioner contends it is a “processor” within a dictionary definition of the word. A “processor” is “one that processes agricultural products, foods, or similar products.” The relevant definition of “process” is “to prepare for market, manufacture, or other commercial use by subjecting to some process” Webster’s Third New International Dictionary (1993). *See also Monarch Steel Co., Inc. v. Indiana State Board of Tax Comm’rs*, 545 N.E.2d 1148, 1152 (Ind. Tax Ct. 1989) (“Webster’s dictionary defines processing as ‘to subject to a particular method, system, or technique

³ The fact that Perdue supplies hundreds of pounds of feed to each bird over the course of its life, the Petitioner argues, is just one example of the way in which its operations contribute to the change in form of the birds and the production of a final marketable product. *Stroble argument.*

of preparation, handling, or other treatment designed to effect a particular result: put through a special process as (1) to prepare for market, manufacture, or other commercial use by subjecting to some process . . .”).

39. Perdue contends a similar issue exists in the sales tax area with respect to whether the raising of animals should be recognized as part of the production process. *Stroble argument*. According to the Petitioner, the sales tax exemptions at Ind. Code § 6-2.5-5-3 through Ind. Code § 6-2.5-5-6 apply to property used directly in the manufacturing, processing, or production process. *Id.* Such property qualifies only if it is part of an “integrated series of operations which places tangible personal property in a form, composition, or character different from that in which it was acquired.” *Id.* Thus, the Petitioner argues, the sales tax exemption requirements are analogous to those in the property tax exemptions for work in process or raw materials held for shipment in interstate commerce. *Id.*
40. In connection with the sales tax exemption, the Petitioner argues, the Indiana Department of Revenue has recognized that operations such as impregnating and slaughtering of animals are included within the exemption in 45 IAC 2.2-5-10(k), sales of manufacturing machinery, tools and equipment to be directly used in processing or refining tangible personal property. *Stroble argument*. In addition, the Petitioner argues, the Indiana Tax Court has recognized that animal breeding and raising operations constitute manufacturing or processing within the meaning of the sales tax exemptions in *Harlan Sprague Dawley, Inc. v. Indiana Dep’t. of State Revenue*, 605 N.E.2d 1222 (Ind. Tax Ct. 1992). *Id.* In that case, according to the Petitioner, the Court held that a taxpayer that bred and raised laboratory rats for sale qualified under the exemption. *Id.* Thus, the Court viewed the taxpayer’s operations as “constituting a process which was ‘continuous and indivisible,’” quoting *Indiana Dep’t of State Revenue v. Cave Stone, Inc.*, 457 N.E.2d 520 (Ind. 1983) and the rat breeding operations, including raising rats to maturity, as part of that process. *Id.*

41. The Petitioner also analogizes the Interstate Commerce Exemption to Ind. Code § 6-2.5-5-1, that provides a sales tax exemption for tangible personal property acquired for direct use in the direct production of food and food ingredients or commodities for sale. *Stroble argument*. According to the Petitioner, the Department of Revenue's regulation at 45 IAC 2.2-5-1(b)(2)⁴ recognizes that livestock or other animals raised for food consumption are exempt because they are part of the integrated agricultural production operations.
42. In addition, the Petitioner contends that the fact that the turkeys were held at the Contractor's growing facilities on the assessment date does not affect the conclusion that the turkeys qualified for the interstate commerce exemption. *Stroble argument*. First, according to the Petitioner, the activities at the growing facilities were part of Perdue's integrated and continuous production process. *Id.* The growing facilities are integral to that process, and if some widespread natural disaster had occurred, such as disease or quarantine, Perdue's entire synchronized production operations would have been seriously disrupted. *Id.*
43. Further, the Petitioner argues, the conduct of the operations makes it clear that the activities at the growing facilities are an integral part of Perdue's production process. *Stroble argument*. According to the Petitioner, Perdue owned the poults while at the growing facilities. *Schaffer testimony*. The Contractors carried out their daily activities under the close direction of Perdue supervisors who visited the facilities once or more a week and monitored the operations. *Id.* The facilities themselves were designed according to Perdue's specifications and built by Perdue as general contractor. *Id.* Perdue provided extensive instruction and training to the Contractors regarding the growing process through written manuals and periodic meetings and training sessions. Perdue set the standards for raising the turkeys. *Id.* Perdue also had veterinarians who prescribed medicine necessary for the flock's health, and Perdue supplied the medicine. *Id.* A Perdue nutritionist determined the feed to be given to the turkeys, and Perdue supplied all the feed. *Id.* The Petitioner's witness testified that fourteen types of feed are

⁴ The regulation states that "baby chicks, ducklings, geese, turkey poults, hatching eggs, pigs, hogs, lambs, sheep, livestock, calves, and cows are exempt from taxes, provided that they are directly used by the farmer in the direct production of food or agricultural commodities for sale." 46 IAC 2.2-5-1(b)(2).

provided at different stages of a flock's maturation, amounting to hundreds of pounds of feed for each turkey. *Id.*

44. Alternatively, the Petitioner argues, if the activities at the growing facilities are not considered part of Perdue's production process, it would still qualify for the exemption because the statute does not require that Perdue itself perform the manufacturing or processing operations on the inventory as long as it separately meets the definition of a manufacturer or processor. *Stroble argument.* Ind. Code § 6-1.1-10-29(b)(2) provides that an exemption is available to a taxpayer who is a manufacturer or processor and owns inventory that "will be used in an operation or a continuous series of operations to alter the personal property into a new or changed state or form" According to the Petitioner, the statute does not state that the taxpayer must be the one that actually performs the particular operations in order to qualify specific inventory for the exemption as long as the owner is a manufacturer or processor based on separate property. *Id.*
45. The Petitioner alleges that this issue was considered by the Tax Court in *Monarch Steel Co., Inc.*, 545 N.E.2d 1148. *Stroble argument.* In the *Monarch* case, the taxpayer was a manufacturer or processor that owned inventory on the assessment date on which it did not perform any manufacturing or processing. *Id.* The Court held that the plain language of the statute still provided an exemption to the inventory in question:

The statute provides that the processor must "own" the property; it does not require that the processor must "process" the property. Under the Board's interpretation, the word "own" is interpreted as meaningless and is completely ignored. If the legislature had intended otherwise, it would have used the following language, "Personal property processed by a manufacturer or processor . . ." The legislature did not use this language. "Barring an expressed differing legislative intent, words in statutes are given their plain, ordinary, usual meaning." *Indiana Dep't of State Revenue v. Cable Brazil, Inc.*, 177 Ind. App. at 460, 380 N.E.2d at 561. The plain meaning of the word "own" does not include the term "process." Therefore the Board's finding that Monarch had to process all property for which it claimed an exemption under IC 6-1.1-10-29 is unreasonable and does not comport with the legislative intent.

545 N.E.2d at 1153. Thus, Petitioner contends, as long as (1) Perdue is a manufacturer or processor and (2) its turkey inventory is used in some manufacturing or processing

operation on the assessment date (even if not conducted by Perdue), the inventory still would qualify for the exemption under Ind. Code § 6-1.1-10-29(b)(2). *Stroble argument*.

46. Finally, the Petitioner argues, Perdue’s live turkey inventory qualifies for the interstate commerce exemption as a form of work in process inventory⁵ because it is part of the integrated, continuous production process by which the final marketable product is produced and/or raw materials held for subsequent use in that production process. *Stroble argument*. According to the Petitioner, the exemption in Ind. Code § 6-1.1-10-29(b)(2) applies to inventory that “will be used” in a production process. *Id.* Further, “raw materials” are defined as “[g]oods which will be used in either the Indiana manufacturing process or in any other manner by the taxpayer, either directly or indirectly.” 50 IAC 4.2-1-1(m)(2)(C).⁶ Thus, the Petitioner contends, not only does the exemption include work in process, it includes raw materials. *Id.* The Petitioner contends that DLGF’s forms also recognize the availability of the exemption for raw materials. *Id.*
47. The Petitioner argues that raw materials represent property which is held for use in the production process but has not yet entered that process. *Stroble argument*. Thus, to the extent that Perdue’s live turkey inventory are found to have not yet entered the production process, the Petitioner contends that the inventory represented a form of raw materials. *Id.* According to the Petitioner, the turkeys were property owned by Perdue on the assessment date which was intended for use, and ultimately would be used, in Perdue’s Indiana processing plant. *Id.* The owner of the raw materials inventory, the Petitioner contends, is liable for the taxes on the materials unless the liability has been

⁵ “Work in process” is defined as “[g]oods or commodities which are in the course of production at the Indiana location, i.e. items needing further processing to be considered finished or ready for shipment.” 50 IAC 4.2-1-1(m)(1)(B).

⁶ The term “goods” is defined very broadly by Ind. Code § 26-1-2-105(1) in the Uniform Commercial Code: ‘Goods’ means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale, other than the money in which the price is to be paid, investment securities (IC 26-1-8.1), and things in action. ‘Goods’ also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (IC 26-1-2-107). The dictionary definition is similarly broad: “Tangible or moveable personal property, esp. articles of trade or items of merchandise” Black’s Law Dictionary (8th Ed.).

placed on the warehouse owner by contract pursuant to Ind. Code § 6-1.1-2-3(a). *Id.* Thus, according to the Petitioner, the availability of the Interstate Commerce Exemption must be judged on the basis of the owner's intended use of the raw materials when they are eventually moved into the production process. *Id.* Consequently, even if the turkeys had not been part of the Perdue production process while at the growing facilities, the Petitioner argues, the turkeys would still have qualified for exemption as raw materials owned for the purpose of processing at Perdue's Washington plant. *Id.*

RESPONDENTS

48. The Respondents contend that these administrative appeals raise the question of whether agricultural pursuits such as raising turkeys fall within the purview of "manufacturing" under Ind. Code § 6-1.1-10-29. *Meighen argument.* According to the Respondents, Perdue is not a "manufacturer" and is not entitled to an exemption because: (1) Perdue is the party claiming an exemption and exemption provisions must be construed against the exemption and in favor of taxation; (2) Agricultural pursuits, such as raising turkeys, are not "manufacturing" because farmers do not "manufacture" baby turkeys or other animals, they raise them; (3) these appeals do not require interpretation of whether agriculture and raising animals for food constitute manufacturing because the General Assembly has been clear when it intended to include agriculture or raising animals for food in an exemption; and (4) as a matter of equal treatment and fundamental fairness, farmers should not have to pay personal property tax on their animals while corporate enterprises do not. *Id.*
49. According to the Respondents, Perdue claims exemption under Ind. Code § 6-1.1-10-29. *Meighen argument.* By regulation, the Respondents argue, 50 IAC 4.2-12-5(c)(1) – (3), "manufacturer" and "processor" are defined as follows:
- (1) The word "manufacture" means the making of goods or wares by manual labor or by machinery, especially on a large scale. It includes nearly all such materials as have acquired changed conditions or new and specific combinations, whether from the direct action of the human hand,

from chemical processes devised and directed by human skill, or by the employment of machinery.

(2) The word “process” means an act or continuous series of operations which has the effect of transforming or changing the subject matter into a different state or thing. A process can be accomplished by chemical action, by the operation or application of some element or power of nature, or the application of one (1) substance to another, irrespective of any machine or mechanical process.

(3) Therefore, “manufacturer” or “processor” means one who performs an operation or continuous series of operations which begin with raw materials and who processes the materials into a new or changed form either by hand, by machinery, or by chemical process directed or controlled by human power.

The Respondents contend that one does not speak of manufacturing eggs and turkeys, but of hatching and raising them. *Meighen argument*. The Respondents argue that the inapplicability of the term “manufacturing” to farming activities is no less when a farmer has hundreds of turkeys instead of a dozen. *Id.* According to the Respondents, the activities are no different when the farmer becomes a corporation and the Board should find that Perdue is a corporate farmer, and should deny Perdue’s claim for manufacturing exemption for turkeys. *Id.*

50. The Respondents argue that “agriculture” is the science or art of cultivating the soil, harvesting crops, and raising livestock, and in varying degrees the preparation and marketing of the resulting products. *Meighen argument; Merriam-Webster Dictionary (2005)*. “Agriculture” is also defined as the science or art of the production of plants and animals useful to man. *Id.; Webster’s Third New International Dictionary (1976)*. “Farm” is defined as a plot of land devoted to raising animals and especially domestic animals. *Merriam-Webster, supra*. “Manufacturing,” however, is not susceptible of a definition that is exact and all-embracing. *Harlan Sprague Dawley v. Indiana Department of State Revenue*, 605 N.E. 2d 1222, 1225 (Ind. Tax Ct. 1992). The Respondents argue that manufacturing implies a change, but not every change is manufacturing. *Meighen argument*. Every change in an article is the result of treatment, labor, and manipulation, but something more is required. There must be a transformation

of the original article into an article of substantially different character in order for the business to be considered a manufacturer or producer. 605 N.E.2d at 1225; 50 IAC 4.2-12-5(c)(1) – (3).

51. The Respondents contend that Perdue’s activities, as well as those of the contract farmers, fit squarely within the commonly understood meaning of agriculture and farming. *Meighen argument.* According to the Respondents, the manufacturing exemption is meant to apply only to manufacturing. *Id.* Raising turkeys ultimately for the consumer market is farming or agriculture, not manufacturing. *Id.* Thus, the Respondents argue, the manufacturing exemption should not be read so broadly as to include farming within its ambit. *Id.*

52. The Respondents contend that the Indiana legislature makes distinctions between agriculture and manufacturing. *Meighen argument.* According to the Respondents, Indiana courts have not decided this issue, but the Indiana General Assembly recognizes agriculture and raising animals for food as activities separate and distinct from manufacturing for sales and use tax purposes. *Id.* The Respondents argue that this legislative distinction shows that the manufacturing exemption statute at issue herein does not include agricultural pursuits. *Id.* For example, the Respondents noted, Indiana imposes sales tax on retail transactions at Ind. Code § 6-2.5-2-1. *Id.* Indiana also imposes a use tax on the storage, use or consumption of personal property in Indiana at Ind. Code § 6-2.5-3-2. Exemption is provided for sales and use taxes under Ind. Code § 6-2.5-5. Transactions involving animals, feed, seed, plants, and the like are exempt if the person acquires such items for direct use in the direct production of food and food ingredients under Ind. Code § 6-2.5-5-1. Also, transactions involving agricultural machinery, tools, and equipment are exempt if the person acquires such items for direct use in the direct production of agricultural commodities under Ind. Code § 6-2.5-5-2. Transactions involving manufacturing machinery, tools and equipment are exempt if the person acquires such items for direct use in the direct production, manufacture, fabrication, assembly, or processing of other property. Ind. Code § 6-2.5-5-3. Transactions involving personal property are exempt if the person acquires personal

property for the direct consumption in the direct production of other personal property in the person's business of manufacturing, processing, refining, repairing, agriculture, horticulture, floriculture, or arboriculture. Ind. Code § 6-2.5-5-5.1.

53. According to the Respondents, these statutes and Ind. Code § 6-1.1-10-29 all deal with the same subject matter, revenue-generating taxes and exemption. *Meighen argument*. Thus, the Respondents allege, the statutes should be read in *pari materia* and construed together so as to produce a harmonious system. *Mechanics Laundry & Supply, Inc. v. Indiana Department of State Revenue*, 650 N.E. 2d 1223, 1232 (Ind. Tax Ct. 1995). The Respondents argue that when the tax code is read together, the General Assembly does not consider agriculture and raising animals to be manufacturing or processing. *Meighen argument*. Also, the Respondents contend, when construing a statute it is just as important to recognize what the statute does not say as it is to recognize what it does say. *Blackmon v. Duckworth*, 675 N.E. 2d 349, 352 (Ind. Ct. App. 1996). When the General Assembly wanted to exempt agricultural pursuits and animal raising from Indiana taxation, it clearly said so by using the word “agriculture” or the phrase “animals used for food production” in the exemption statute as in Ind. Code §§ 6-2.5-5-1, -2, -3 & -5.1. *Meighen argument*. When the General Assembly did not want to exempt such agricultural activities from Indiana taxation, it did not as in the statute at issue here, Ind. Code § 6-1.1-10-29. *Id.* According to the Respondents, this is not a matter of interpretation as to whether agriculture is manufacturing, this is simply the clear language of the Indiana tax code. *Id.*
54. The Respondents argue that case law from other jurisdictions provide another basis for the Board denying exemption to Perdue – particularly when read against the backdrop that if any real doubt exists as to the propriety of an exemption, that doubt must be resolved in favor of taxation. *Meighen argument*.
55. The Respondents first cite to the Virginia Supreme Court, that held that buying, killing, cleaning, and selling poultry was not manufacturing in *Grady Prentice, Trading as Prentice Poultry Plant v. City of Richmond*, 90 S.E. 2d 839 (Va. 1956). *Meighen*

argument. In *Grady Prentice*, Prentice Poultry bought, killed, cleaned and chilled poultry. It then sold and delivered the poultry to various wholesalers. Prentice Poultry claimed exemption from a city revenue license tax levied against wholesale merchants. The tax contained an exemption for manufacturers who sold their manufactured goods. Prentice Poultry Plant argued that its activities of killing, preparing the poultry for the consumer market, and then selling the poultry was manufacturing. The Virginia Supreme Court disagreed and held that Prentice Poultry Plant was not engaged in manufacturing because there was no change or transformation of live poultry into an article of substantially different character. *Grady Prentice*, 90 S.E.2d at 844 (Slaughtering poultry, picking, and cleaning does not constitute such change as is essential to manufacturing).

56. Similarly, the Respondents cite to the Supreme Court of Arizona that held that a commercial feedlot operator using sophisticated operations to produce steers for market was a livestock raiser and not a manufacturer for purposes of tax exemption in *McElhaney Cattle Company v. Smith*, 645 P. 2d 801 (Ariz. 1982), *rehearing denied*. *Meighen argument.* In that case, McElhaney purchased range calves and castrated them so that they would not produce undesirable cuts of meat. McElhaney also provided hormone treatments and fed them highly technical diets prepared using elaborate and sophisticated equipment to produce desirable cuts of meat. McElhaney claimed exemption under a statute exempting manufacturers from tax. The manufacturing exemption exempted the inventory of a manufacturer principally engaged in the fabrication, production and manufacture of articles for use. McElhaney claimed that raising cattle was “just component parts of an integrated operation” and that the “primary or principal end and aim of that integrated process is the wholesaling of the finished steers.” *McElhaney*, 645 P. 2d at 807. The Court rejected McElhaney’s argument holding, “The essential point dispositive of this issue is that the taxpayers are not manufactures . . . It strains the common meaning of the words beyond limit to label a cattle raiser as a manufacturer . . . The purpose of the manufacturer’s exemption was to encourage industrial development . . . There is nothing . . . which suggests any intention . . . to include agricultural pursuits or cattle raising within the meaning of the term ‘manufacturer’.” *McElhaney*, 645 P. 2d at 807.

57. According to the Respondents, the Court of Appeals of Maryland rejected a similar claim of Perdue's that it was a manufacturer for purposes of tax exemption in *Perdue, Inc. v. State Dept. of Assessment and Taxation*, 286 A. 2d 165 (Md. Ct. App. 1972). *Meighen argument*. In the *Perdue* case, Perdue was engaged in the business of breeding and raising chickens for sale to processing plants. Perdue hatched the eggs and then sent the chicks to contract growing farmers. Title in the chicks remained with Perdue. After the chickens reached a certain maturity they were sold to processing plants. Perdue claimed exemption on the hatchery operations. After reviewing the exemption statute and the commonly understood meaning of manufacturing, the Court found that the determinative factor of manufacturing is much like Indiana's; namely whether a product has gone through a substantial transformation in form and use from its original state. Denying Perdue's claim, the Court held that eggs and chickens are not separate and distinct from each other, and that to the average person an egg is hatched it is not manufactured. *Perdue*, 286 A. 2d at 170.⁷
58. Finally, the Respondents cite to the United States Supreme Court which held that chickens retain their substantial identity through the killing, dressing, freezing processes and, thus, such activities were not "manufacturing" under the Interstate Commerce Act in *East Texas Motor Freight Lines, Inc. v. Frozen Food Express*, 351 U.S. 49, 76 S. Ct. 574, 100 L.Ed. 917 (1956). *Meighen argument*. In that case, Frozen Food Express transported fresh and frozen meat and poultry by motor carrier. Motor vehicles carrying livestock or agricultural commodities were required to obtain certificates of convenience under the Interstate Commerce Act, § 204(c) of Part II. Manufactured products were exempt from this certificate requirement. Holding that the term "manufacture" requires a transformation into a new and different article, the Court held, "A chicken that has been dressed and killed is still a chicken. Removal of its feathers and entrails has made it ready for market. But we cannot conclude that this processing which merely makes the

⁷ The Respondents note, however, that Perdue's processing plant was considered manufacturing and entitled to exemption in Maryland. *Perdue Foods, Inc. v. State Department of Assessments and Taxation*, 288 A. 2d 170 (Md. App. 1972).

chicken marketable turns it into a ‘manufactured’ commodity.” *East Texas Motor Freight*, 351 U.S. at 54.

59. The Respondents further contend that Indiana courts have not decided whether raising and killing poultry constitutes “manufacturing.” *Meighen argument*. The Respondents distinguish the *Harlan Sprague Dawley* case cited by the Petitioner.⁸ *Id.* According to the Respondents, *Harlan Sprague Dawley* should not be viewed as controlling the Board’s decision in *Perdue* for three reasons. First, *Perdue* is faced with the legislative distinction between agriculture and manufacturing in these appeals. *Meighen argument*. *Harlan Sprague* was not because rats raised for biomedical research could not be considered animals for food as required by Ind. Code § 6-2.5-5-1, or as agriculture as required by Ind. Code § 6-2.5-5-2. *Id.* Second, according to the Respondents, a key element in finding exemption for *Harlan Sprague* was the intention of the legislature to promote industrial growth, but this element is lacking in the appeals at hand. *Id.* The Respondents argue that the statutory goal is not to encourage all business in Indiana but only that portion of industry represented by manufacturing corporations. *Id.* The Tax Court also emphasized the “evils” of tax pyramiding which the industrial exemptions were designed to prevent. *Id.* According to the Respondents, the Supreme Court believes that value judgments as to whether a particular tax scheme constitutes pyramiding or is evil are best left to the legislative arena. *Interstate Warehousing, Inc.*, 783 N.E. 2d at 251 n. 2. Further, the Respondents argue, in the property tax area, there is always a recognized and accepted pyramiding of sorts. *Meighen argument*. All commercial and industrial properties pay property tax on land and improvements yet no one suggests that property taxes should not be levied because the tax will be passed along

⁸ In that case, the Tax Court held that breeding and raising rats for sale to medical research facilities was “manufacturing” and thus entitled to exemption from Indiana sales and use tax. *Harlan Sprague* bred and raised biomedical research rats that were required to be free from all viruses and other germs and diseases. *Harlan Sprague*’s procedures were intricate and required great care, skill, and attention to create contaminant free rats. *Harlan Sprague*’s building and equipment were specially designed to create a protected environment where temperature, humidity, and ventilation were controlled. *Harlan Sprague Dawley*, 605 N.E. 2d at 1223. The rats had sterile bedding and a pasteurized diet. *Id.* Employees had to go through a sterilization process and wore sterile surgical masks, gowns, and shoes, and had to take lunch breaks in a sealed environment. *Id.* *Harlan Sprague* rats were genetically different from rats that occur in nature. *Harlan Sprague* bred rats of particularized strains with particularized characteristics, i.e., one strain was used solely in blood pressure testing and another bred exclusively for use in AIDS testing. *Id.* at 1224.

to the consumer. *Id.* Third, Harlan Sprague's procedures were intricate and required great care, skill, and attention so as to create genetically different and contaminant free rats. *Id.* The Respondents argue that, in Perdue's appeals, the record is devoid of such skill, attention, and genetically different turkeys. *Id.*

60. The Respondents also contend it is not fair and equal for farmers to pay property taxes on livestock when corporate enterprises do not. *Meighen argument.* According to the Respondents, Perdue employees and contract farmers do the same work for the same purpose as do hundreds of other farmers throughout the State. *Id.*
61. The Respondents argue that there is nothing in the language of the property tax manufacturing exemption statute that indicates that the General Assembly intended to include farming as manufacturing. *Meighen argument.* According to the Respondents, there is, however, language in other sections of the tax code indicating that the General Assembly does not view farming as manufacturing. *Id.* The Respondents allege that, while corporations are entitled to tax benefits that accrue through legitimate statutory exemption, those exemptions must be strictly construed. *Id.* According to the Respondents, the Petitioner has shown no good reason for such a liberal construction of the word "manufacturing" to include this corporate farmer while excluding farmers who raise and butcher hogs, chickens, cows, and turkeys throughout the State. *Id.* The work of the family farmer is the same and their product is used in the same way as Perdue's. *Id.* The Respondents contend that the inescapable conclusion is that Perdue is simply a corporate farmer. *Id.*
62. Finally, the Respondents contend that when a taxpayer has to write in numbers and amounts at the very bottom of one form to claim an exemption from another, the exemption was not meant to be. *Meighen argument.* To claim this exemption, Perdue had to write in by hand the amount of exemption claimed at the bottom of the Form 102 (Farmer's Tangible Personal Property Assessment Return) after line 55. *Id.* According to the Respondents, this reflects the inapplicability of the exemption to these turkeys. *Id.*; *Joint Exs. 2, 4, 6, 8, 10, 12, 14, 16, 18, 20, 24 and 26.*

ANALYSIS

63. The taxpayer bears the burden of proving that it is entitled to an exemption from taxation. *St. Mary's Med. Ctr. of Evansville, Inc. v. State Bd. of Tax Comm'rs*, 534 N.E.2d 277, 281 (Ind. Tax Ct. 1989), *aff'd.*, 571 N.E.2d 1247 (Ind. 1991). Further, exemptions must be strictly construed against the taxpayer and in favor of taxation. *Monarch Steel Co. v. State Bd. of Tax Comm'rs*, 611 N.E.2d 708, 713 (Ind. Tax Ct. 1993). The Board must, however, “give full effect to the legislature’s intent and avoid construing [the exemption] ‘so narrowly its application is defeated in cases rightly falling within its ambit.’” *Id.* (quoting *Harlan Sprague Dawley, Inc. v. Department of State Revenue*, 605 N.E.2d 1222, 1225 (Ind. Tax Ct. 1992)).
64. Here, the Petitioner seeks an Interstate Commerce Exemption pursuant to Ind. Code § 6-1.1-10-29. The parties essentially agree to the facts relating to Perdue’s operations. *See First Stipulation of Facts*. In fact, the Respondents presented no factual evidence at hearing. The only issue under contention is whether Petitioner’s turkey growing procedures qualify Perdue as a “manufacturer” or “processor” as identified in Indiana code, and therefore make the Petitioner eligible for the interstate commerce exemption on its personal property turkeys. Pursuant to Ind. Code § 6-1.1-10-29(a), a “‘manufacturer’ or ‘processor’” is “a person that performs an operation or continuous series of operations on raw materials, goods, or other personal property to alter the raw materials, goods, or other personal property into a new or changed state or form.”
65. The Petitioner argues that its entire turkey production from the laying and fertilizing of the eggs, through hatching, raising, slaughtering turkeys and turning the resultant turkey product into its various forms, constitutes a vertically integrated process that fulfills the requirements laid down by the General Assembly to encourage and benefit “manufacturers” and “processors” who ultimately ship their goods out of state. The Petitioner contends that the definition of “process” in the regulations allows the “power

of nature” to be a process.⁹ According to the Petitioner, the fact that Perdue supplies hundreds of pounds of feed to each bird over the course of its life is just one example of the way in which its operations contribute to the change in form of the birds and the production of a final marketable product.

66. The Respondents argue that the Indiana legislature makes distinctions between agriculture and manufacturing in its language in various codes, and states that the Indiana General Assembly “recognizes agriculture and raising animals for food as activities separate and distinct from manufacturing for sales and tax use purposes.” According to the Respondents, when the tax code is read together, the General Assembly does not consider agriculture and raising animals to be manufacturing or processing.¹⁰ The Respondents further cite several cases from other jurisdictions that have rejected agricultural activities such as raising cattle and breeding and raising chickens from manufacturing or processing classifications for exemption purposes.

⁹ 50 IAC 4.2-12-5(c)(1) defines “process” as “an act or continuous series of operations which has the effect of transforming or changing the subject matter into a different state or thing. A process can be accomplished by chemical action, by the operation or application of some element **or power of nature**, or the application of one (1) substance to another, irrespective of any machine or mechanical process.” (emphasis added).

¹⁰ For example, the Respondents noted, Indiana imposes sales tax on retail transactions at Ind. Code § 6-2.5-2-1. Indiana also imposes a use tax on the storage, use or consumption of personal property in Indiana at Ind. Code § 6-2.5-3-2. Exemption is provided for sales and use taxes under Ind. Code § 6-2.5-5. Transactions involving animals, feed, seed, plants, and the like are exempt if the person acquires such items for direct use in the direct production of food and food ingredients under Ind. Code § 6-2.5-5-1. Also, transactions involving agricultural machinery, tools, and equipment are exempt if the person acquires such items for direct use in the direct production of agricultural commodities under Ind. Code § 6-2.5-5-2. Transactions involving manufacturing machinery, tools and equipment are exempt if the person acquires such items for direct use in the direct production, manufacture, fabrication, assembly, or processing of other property. Ind. Code § 6-2.5-5-3. Transactions involving personal property are exempt if the person acquires personal property for the direct consumption in the direct production of other personal property in the person’s business of manufacturing, processing, refining, repairing, agriculture, horticulture, floriculture, or arboriculture. Ind. Code § 6-2.5-5-5.1.

67. Exemptions must be strictly construed against the taxpayer and in favor of taxation. *Monarch Steel Co. v. State Bd. of Tax Comm'rs*, 611 N.E.2d 708, 713 (Ind. Tax Ct. 1993). Thus, the Board finds that the “power of nature” contemplated in the regulations requires more than allowing a natural process to occur.¹¹ While a process can be accomplished by the power of nature, it still requires the “effect of transforming or changing the subject matter into a different state or thing.” 50 IAC 4.2-12-5(c)(1). This interpretation is supported by the statute at issue here, Ind. Code § 6-1.1-10-29, which states that a “processor” is “a person that performs an operation or continuous series of operations on raw materials, goods, or other personal property to alter the raw materials, goods, or other personal property into a new or changed state or form.” According to that statute, “[t]he operation may be performed by hand, machinery, or a chemical process directed or controlled by an individual.” *Id.*
68. The Petitioner argues that providing food and medicine for its inventory of turkeys resulting in those turkeys gaining 24-40 pounds and growing feathers is processing. The Board cannot agree with this interpretation of the definition. While every change in an article is the result of treatment, labor, and manipulation, change alone is not enough. Something more is required. “A new and different article must emerge, having a distinctive name character or use.” *Harlan Sprague Dawley*, 605 N.E.2d 1222, 1225 (Ind. Tax Ct. 1992) (quoting *Anheuser-Busch Brewing Ass’n v. United States*, 207 U.S. 556, 28 S.Ct. 204, 52 L.Ed. at 338 (1908)). See also *Indiana Creosoting Co. v. McNutt*, 5 N.E.2d 310, 314 (Ind. 1936). Thus, the Board holds that turkeys gaining weight and growing feathers or the hatching of an egg, although a “change” in form, are not such a

¹¹ In a sales and use tax case, *Indianapolis Fruit Co. v. Department of State Revenue*, 691 N.E.2d 1379, 1381-5 (Ind. Tax Ct. 1998), the Tax Court allowed an exemption for banana ripening equipment because the taxpayer actively ripened the bananas by introducing ethylene gas into the banana ripening booth. The Court held that the taxpayer was engaged in production because the taxpayer had physically and chemically transformed the bananas into a marketable good. Tomatoes, however, ripened without the addition of ethylene gas and, therefore, the Court found that the tomato ripening process did not constitute production because the taxpayer did not trigger the ripening process, but allowed it to occur. We find this case similarly instructive in that Perdue does not trigger the maturation process of its turkeys, but simply allows them to mature. Thus, feeding its poults and providing veterinary medicine, when necessary, is insufficient to consider Perdue’s growing facilities to be processing.

change as to constitute processing.¹² Further, we agree with the Respondents, if the General Assembly intended animal raising activities such as occurs at Perdue’s growing facilities to be manufacturing or processing, the Legislature would have made clear in its exemption provisions that raising poultry or livestock constitutes manufacturing or processing.

69. The Petitioner contends that it qualifies for the interstate commerce exemption under the Indiana Tax Court’s ruling in *Harlan Sprague Dawley*, 605 N.E.2d 1222. According to the Petitioner, the Court in *Harlan Sprague Dawley* held that a taxpayer that bred and raised laboratory rats for sale qualified under the exemption clause of the sales tax laws, recognizing that animal breeding and raising operations constitute manufacturing or processing within the meaning of the sales tax exemptions. The Court viewed the taxpayer’s operations as “constituting a process which was ‘continuous and indivisible,’” quoting *Indiana Dep’t of State Revenue v. Cave Stone, Inc.* 457 N.E.2d 520 (Ind. 1983). The Petitioner argues that, while the product differs – rats and turkeys – the analysis is the same.

70. Respondents also cite *Harlan Sprague Dawley* and note that while that case also deals with animals and manufacturing, and that the Court held that breeding and raising rats for sale to medical research facilities was “manufacturing” and entitled to exemption from Indiana sales and use tax, the process used by the Petitioner in *Harlan Sprague Dawley* differed in its complexity and should not be considered for three reasons. First, the Respondents contend, Perdue is faced with the legislative distinction between agriculture and manufacturing and the Petitioner in *Harlan Sprague Dawley* was not. Second, a key element in the finding was the intention of the legislature to promote industrial growth, which is lacking in the case at hand because the statutory goal is not to encourage all businesses in Indiana but only that portion of industry represented by manufacturing corporations. Finally, the procedures in *Harlan Sprague Dawley* were far more intricate

¹² See, e.g., *Perdue, Inc. v. State Dept. of Assessment and Taxation*, 286 A. 2d 165, 170 (Md. Ct. App. 1972). (eggs and chickens are not separate and distinct from each other, and that to the average person an egg is hatched, it is not manufactured.)

and required greater skill than the procedures adopted by Perdue for use in its growing facilities.

71. The Board finds that the Petitioner's turkey breeding and raising operations are distinguishable from the laboratory rats bred and raised in *Harlan Sprague Dawley*. In *Harlan Sprague Dawley*, the Petitioner, through selective breeding and specialized techniques for raising the rat colonies, produced rats that "are genetically different from their naturally occurring relatives." 605 N.E.2d at 1223. No such evidence was presented here. The Petitioner has presented no evidence that its mature turkeys are somehow different than turkeys raised on a farm or turkeys that mature naturally. Further, in *Harlan Sprague Dawley*, the Petitioner's specialized breeding environment required filtered air, constant temperatures, specific hours of light and darkness and a hermetically sealed environment so that specimens remain free from viruses and other pathogens. *Id.* Here, the Petitioner's witness testified that during the first ten days after their arrival, poults are confined to 40-foot diameter rings for extra warmth. Thereafter, they are weaned on automated equipment, and a feeding program is undertaken to raise the birds. Although we can envision a process of raising animals that has become so specialized or mechanized that it has become virtually an assembly-line process, the evidence presented does not show that Perdue's turkeys are bred, hatched and raised in such a specialized or mechanized environment as to alter poultry raising operations to the level of manufacturing. Thus, if the Petitioner were to sell its mature turkeys for slaughter, the Board would not find that it is a "processor" as contemplated by the General Assembly for purposes of the Interstate Commerce Exemption.

72. Here, the evidence shows that the Petitioner's operations do not end at the completion of the growing process, however, but continue to a processing plant where the turkeys are slaughtered, packaged and prepared for market. Perdue produces whole birds, breast, or tray-packed items that are in raw, smoked, or cooked form. The Petitioner also packages turkey meat in 2,000 pound bulk containers for further processing at Perdue's out of state processing plants. The Board finds that the Petitioner's process of slaughtering turkeys, quartering the turkeys or grinding turkey meat into ground turkey, and packaging the

meat for sale or for shipment is “processing” as intended by Ind. Code § 6-1.1-10-29(a). *See Monarch Steel Co., Inc. v. Indiana State Board of Tax Comm’rs*, 545 N.E.2d 1148, 1152 (Ind. Tax Ct. 1989) (“Webster’s dictionary defines processing as ‘to subject to a particular method, system, or technique of preparation, handling, or other treatment designed to effect a particular result: put through a special process as (1) to prepare for market, manufacture, or other commercial use by subjecting to some process . . .’”). *See also* Webster’s Third New International Dictionary (1993) (“one that processes agricultural products, foods, or similar products”); and 45 IAC 2.2-5-10 (slaughtering animals is among “the types of operations which constitute processing” in the Department of Revenue’s industrial exemptions).¹³

73. The Petitioner hatches, raises, and ultimately slaughters turkeys to produce packaged whole turkeys, turkey breast or ground turkey. The Petitioner’s witness testified the Petitioner’s personal property changes from an egg to a poult to an adult turkey to turkey meat. According to the Petitioner, it is not a food product until its final stage which results from a series of changes. Perdue argues that its operations are “integrated” and that breeding, hatching eggs and raising turkeys are all “continuous operations” leading to its ultimate processing. Thus, the Petitioner argues, its entire “production process is continuous and indivisible.”
74. The Board holds, however, that vertical integration is not sufficient to transform Perdue’s agricultural activities into its processing operations. Companies vertically integrate for

¹³ Although the Department of Revenue’s provisions relating to sales and use tax exemptions differ from the statutes governing personal property tax in both language and intent, the Department of Revenue’s definitions, nonetheless, provide some guidance to the Board in its interpretation of similar terms. The Department of Revenue defines “Processing or refining” as “the performance by a business of an integrated series of operations which places tangible personal property in a form, composition, or character different from that in which it was acquired. The change in form, composition, or character must be a substantial change. Operations such as distilling, brewing, pasteurizing, electroplating, galvanizing, anodizing, impregnating, cooking, heat treating, and slaughtering of animals for meal or meal products are illustrative of the types of operations which constitute processing or refining.” 45 IAC 2.2-5-10(k). *See also*, Ind. Code § 6-2.5-5-1 which provides a sales tax exemption for tangible personal property acquired for direct use in the direct production of food and food ingredients or commodities for sale; and 45 IAC 2.2-5-1(b)(2) which recognizes that livestock or other animals raised for food consumption are exempt because they are part of the integrated agricultural production operations.

many reasons including to reach economies of scale, for purposes of quality control, and to ensure adequate supply, among others. That Perdue has chosen to vertically integrate does not make its entire operation one “continuous” or “indivisible” production process.

75. To adopt the Petitioner’s argument would abrogate the distinction between agricultural pursuits and manufacturing. For example if a cereal manufacturer were to contract with a farmer for grain, and by contract, the cereal manufacturer owned the growing crops and resulting corn or wheat while the crops were grown by the contract farmer, under the Petitioner’s analysis, the seed, the crops, and the resulting corn or wheat would be exempt as raw materials because, at some point, the corn and wheat would ultimately be shipped to a facility to be ground and processed into some form of flake or pop. This cannot be the result the General Assembly intended when it adopted Ind. Code § 6-1.1-10-29. This conclusion is further supported by the existing statutory framework wherein the General Assembly clearly delineates between agriculture and manufacturing or processing. For example, in the sales and use tax provisions, the Legislature includes two identical statutes – one for agricultural pursuits and one for production. *See, e.g.*, Ind. Code § 6-2.5-5-2, agricultural machinery, tools, and equipment are exempt if the person acquires such items for direct use in the direct production of agricultural commodities; and compare Ind. Code § 6-2.5-5-3, manufacturing machinery, tools and equipment are exempt if the person acquires such items for direct use in the direct production, manufacture, fabrication, assembly, or processing of other property. An additional factor supporting a finding that the eggs and poults at the Petitioner’s hatchery or growing facilities are not raw materials for Perdue’s later processing, is that not every egg or poult is processed into turkey meat products. Eggs fail to hatch. Chicks die and turkeys fail to thrive sufficiently to warrant shipment for processing at Perdue’s processing facility in Washington, Indiana. Not everything that enters the Contractors’ growing facilities comes out as a marketable product.
76. The Petitioner’s turkey raising operations are separate and distinct from its turkey processing operations. We do not find them to be “continuous” or “indivisible.” Therefore, the eggs and poults being raised at Perdue’s growing facilities are not

inventory or raw materials for its Washington processing plant. Absent more clear direction from the Legislature, the Board declines to interpret the terms “inventory” or “raw materials” in such a broad manner. *See e.g., Monarch Steel Co. v. State Bd. of Tax Comm'rs*, 611 N.E.2d 708, 713 (Ind. Tax Ct. 1993) (exemptions must be strictly construed against the taxpayer and in favor of taxation).

SUMMARY OF FINAL DETERMINATION

77. The Petitioner failed to raise a prima facie case that its operations at the Contractors’ facilities are processing as recognized by Indiana Code. Further, the Board holds that the poultts raised at the Contractors’ facilities are not “inventory” or “raw materials” for Perdue’s processing operations. Therefore, the Board finds in favor of the Respondent and denies the exemption sought by the Petitioner.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- Appeal Rights -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at <http://www.in.gov/judiciary/rules/trialproc/index.html>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>.