

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition #: 39-010-04-1-7-00031
Petitioner: Craig Buick, Pontiac, GMC, & Toyota
Respondent: Madison Township Assessor (Jefferson County)
Parcel #: Personal Property
Assessment Year: 2004

The Indiana Board of Tax Review (the Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioner initiated an assessment appeal with the Jefferson County Property Tax Assessment Board of Appeals (the PTABOA) by Form 130 dated July 7, 2004.
2. The PTABOA issued notice of its decision to the Petitioner on September 30, 2004.
3. The Petitioner appealed to the Board by filing a Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment (“Form 131 petition”) with the Jefferson County Assessor on October 28, 2004. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated August 11, 2005.
5. The Board held an administrative hearing on November 2, 2005, before the duly appointed Administrative Law Judge Jennifer Bippus.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: David J. Craig, Owner
 - b) For Respondent: Don Thompson, Madison Township Assessor
Margaret Hoffman, Jefferson County Assessor

Facts

7. The Petitioner is an automobile dealer. The business tangible personal property in question consists of Petitioner’s inventory of new and used vehicles located at 258 Clifty Drive, Madison, Indiana.

8. The Administrative Law Judge (“ALJ”) did not conduct an inspection of the property.
9. The Jefferson County PTABOA determined that the assessed value of the subject tangible business personal property is \$2,156,160.
10. The Petitioner requests an assessed value of \$1,765,313. The Petitioner claims that \$610,307 of inventory is exempt from taxation.

Issue

11. Summary of the Petitioner’s contentions in support of alleged error in assessment:

- a) The Petitioner’s inventory qualifies for an exemption under Ind. Code § 6-1.1-1-10-30(a), and the local PTABOA denied the exemption without sufficient reason. *Craig argument; Pet’r Ex. 1.*
- b) The PTABOA denied the Petitioner’s claimed exemption because it determined that the Petitioner could not be both a resident and nonresident simultaneously, that the Petitioner’s storage lot was not a “warehouse,” and that the Petitioner failed to provide “adequate records” to support its claim of exemption. *Id.*
- c) The Petitioner is a nonresident according to Ind. Code § 6-1.1-1-10-30(a). *Id.* Under that section, whether an entity qualifies as a nonresident is determined based upon where the property in question is placed into the stream of interstate commerce rather than upon the domicile of the entity seeking the exemption. *See id.* Thus, a company organized under the laws of Indiana and located in Indiana can be a non-resident for purposes of the exemption statute, provided that the property for which it seeks an exemption was placed in the stream of commerce from outside of Indiana. *Id.*
- d) The Petitioner’s new and used car lots meet the definition of a warehouse because the Petitioner uses the lots to store goods and merchandise. A warehouse does not have to be a building. *Id.*; Ind. Code § 6-1.1-10-40-5; *Gulf Stream Coach, Inc. v. State Bd. of Tax Comm’rs*, 519 N.E.2d 238 (Ind. Tax 1988).
- e) The Petitioner submitted adequate records to support its claimed exemption. Those records detail all shipments and sales to compute an out-of-state sales percentage for the tax year in question. *Craig testimony; Pet’r Exs. 1, 3-5.*

12. Summary of Respondent’s contentions in support of the assessment:

- a) The Board denied a similar appeal from the same taxpayer for a previous year. *Thompson testimony.* The facts of both cases are exactly the same. *Id.*

Record

13. The official record for this matter is made up of the following:

- a) The Petition.
- b) The tape recording of the hearing labeled BTR #6172.
- c) Exhibits:

Petitioner Exhibit 1: Brief in support of taxpayer's position,

Petitioner Exhibit 2: Copy of *Gulf Stream Coach, Inc. v. State Bd. of Tax Comm'rs*, 519 N.E.2d 238 (Ind. Tax 1988)

Petitioner Exhibit 3: Detailed report of shipments with destination identified

Petitioner Exhibit 4: Detailed report of shipments with cost and origin identified

Petitioner Exhibit 5: Computation of exemption

Respondent Exhibits: The Respondent did not present any exhibits

Board Exhibit A: Form 131 Petition

Board Exhibit B: Hearing Notice

Board Exhibit C: Sign-in Sheet

- d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases, statutes, and rules are:

- a) A petitioner seeking review of a determination of an assessing official 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).
- b) 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. Washington 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”).
- c) 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.

15. The Petitioner failed to support its contention that it is entitled to an exemption. The Board reaches this conclusion because:

a) The Petitioner bases its claim for exemption on Ind. Code § 6-1.1-10-30(a), dealing with property involved in interstate commerce. Interstate commerce exemptions, like other tax exemptions, are strictly construed against the taxpayer and in favor of taxation. *Edgcomb Metals Co. v. Dep't of Local Gov't Fin.*, 762 N.E.2d 259, 262 (Ind. Tax Ct. 2002). The taxpayer bears the burden of proving that it is entitled to the exemption. *Id.* This requirement is justified "because an exemption releases property from the obligation of bearing its share of the cost of government and serves to disturb the equality and distribution of the common burden of government upon all property[.]" *Id.* (quoting *St. Mary's Med. Ctr., Inc. v. State Bd. of Tax Comm'rs*, 534 N.E.2d 277, 280 (Ind. Tax Ct. 1989), *aff'd*, 571 N.E.2d 1247 (Ind. 1991)).

b) Ind. Code § 6-1.1-10-30 states, in relevant part:

(a) Subject to the limitation contained in subsection (d) of this section, personal property is exempt from taxation if:

(1) the property is owned by a nonresident of this state;

(2) the owner is able to show by adequate records that the property has been shipped into this state and placed in its original package in a public or private warehouse for the purpose of transshipment to an out-of-state destination; and

(3) the property remains in its original package and in the public or private warehouse.

For purposes of this subsection, a nonresident is a taxpayer who places goods in the original package and into the stream of commerce from outside of the State of Indiana.

* * * * *

(d) An exemption provided by this section applies only to the extent that the property is exempt from taxation under the commerce clause of the Constitution of the United States.

c) The Petitioner failed to establish the following three essential elements of a claim under Ind. Code § 6-1.1-10-30(a): (1) that the purportedly exempt property was owned by a nonresident; (2) that the property was placed in its

original package in a warehouse for purposes of transshipment; and (3) that the property remained in its original package while in the warehouse.

Property Must be Owned by a Nonresident

- d) The Petitioner contends that it is nonresident for purposes of Ind. Code § 6-1.1-10-30(a), because the term “nonresident” is defined by where the purportedly exempt property is placed in the stream of commerce rather than by the domicile of the taxpayer claiming the exemption.
- e) The Petitioner is correct that a corporation domiciled in Indiana can be a nonresident for purposes of Ind. Code § 6-1.1-10-30(a), where the corporation places property in its original packaging into the stream of commerce from outside of Indiana. What the Petitioner ignores, however, is that pursuant subsection (1) of that statute, the property must be “owned by a nonresident.” Thus, the statute requires the *owner* of the property to be the same as the entity that placed the goods into their original package and into the stream of commerce from an out-of-state location. The Petitioner apparently contends that it owned the property for which it seeks an exemption. The Petitioner, however, offered no evidence that it, rather than an unrelated manufacturer, dealer or wholesaler, placed that property into the stream of commerce from outside of Indiana. The Petitioner therefore failed to establish the first element of its claim under Ind. Code § 6-1.1-10-30(a).¹

Property Must be Placed in an In-State Warehouse for the Purpose of Transshipment

- f) The Petitioner also claims that the PTABOA improperly denied its exemption request when it found that the Petitioner did not place the property at issue in a warehouse. The Petitioner contends that the Board must construe term “warehouse” broadly to include storage areas other than buildings. *See Pet’r Ex. 1*. The Petitioner further contends that it presented “adequate records” to demonstrate the percentage of its total inventory of vehicles that pass through its warehouse facility to out-of-state locations. *Craig testimony; Pet’r Exs. 3-5*.
- g) The Petitioner is correct that the term “warehouse” includes storage areas other than buildings. While not specifically defined in the exemption statute, the administrative rule governing inventory subject to assessment defines the term “warehouse” as, “[a]n area, enclosure, building, or structure, public or private, maintained for the storage of inventory or other tangible property.” Ind. Admin. Code tit. 50, r. 4.2-5-2. Thus, a portion of a car lot, if used for storing inventory, can be a warehouse for purposes of Ind. Code § 6-1.1-10-30(a).

¹ The Petitioner also filed an appeal from the PTABOA’s denial of an interstate commerce exemption for 2003. In its Final Determination, Findings and Conclusions (“Final Determination”), the Board accepted the Petitioner’s contention that it met the “nonresident” requirement of Ind. Code § 6-1.1-10-30(a) “for purposes of this appeal.” *Craig Buick, Pontiac, GMC & Toyota v. Madison Township Assessor*, Pet. No. 39-011-03-1-7-00003, slip op. at ¶ 15(b) (Ind. Bd. of Tax Review, February 15, 2005). It was not necessary for the Board to address fully the Petitioner’s contention as to its “nonresident” status in that case, because the Board found for the Respondent on other grounds. *See id.* at ¶¶ (d)-(h).

- h) It is not enough, however, simply to show that purportedly exempt property has been placed in a warehouse. A taxpayer claiming an interstate commerce exemption under Ind. Code § 6-1.1-10-30(a) must also demonstrate through adequate records that the property was placed in the warehouse “for the purpose of transshipment to an out-of-state destination.” While the Petitioner presented records to substantiate the percentage of its vehicles that ultimately went to out-of-state destinations, the Petitioner did not present any evidence to show that it intended to transship those vehicles to out of state locations at the time it placed them in its warehouse.

Property Must Remain in its Original Package

- i) Finally, the Petitioner failed to present any evidence to show that the inventory in question remained in its original package while in the Petitioner’s warehouse. *See* I.C. § 6-1.1-10-30(c); *see also*, 50 IAC 4.2-12-5(d) (defining the term “original package” as “the box, case, bale, skid, bundle, parcel, or aggregation thereof bound together and used by the seller, manufacturer, or packer for shipment”). The Petitioner presented no evidence concerning the packaging of the purportedly exempt property. It is at least possible that automobiles are not packaged for shipping in the same manner as other tangible property. It was the Petitioner’s burden, however, to establish that fact. The Petitioner failed to do so.
- j) Based on the foregoing, the Petitioner failed to establish a prima facie case of entitlement to an exemption under Ind. Code § 6-1.1-10-30(a).

Conclusion

16. The Petitioner failed to show the property in question qualifies for exemption pursuant to Ind. Code § 6-1.1-10-30(a). The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that Petitioner’s personal property is not entitled to exemption under Ind. Code § 6-1.1-10-30(a).

ISSUED: _____

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 Court 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/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.