

REPRESENTATIVE FOR PETITIONER: Marilyn Meighen, Attorney

REPRESENTATIVE FOR RESPONDENT: Margaret Hoffman, Jefferson County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

JIM HADLEY CHEVROLET- CADILLAC, INC.,)	
)	Petition No.: 39-011-05-1-7-00021
)	
Petitioner,)	Jefferson County
)	
v.)	Madison Township
)	
)	Personal Property
MADISON TOWNSHIP ASSESSOR,)	
)	
Respondent.)	Assessment Year: 2005

Appeal from the Final Determination of
Jefferson County Board of Review

September 22, 2006

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the facts and evidence presented in this case. The Board now enters its findings of fact and conclusions of law.

Issue: Does any part of the Petitioner's personal property inventory of new and used vehicles qualify for tax exemption under Ind. Code § 6-1.1-10-29?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Procedural History

1. The Petitioner filed its 2005 Business Tangible Personal Property Return. *Pet'r Ex. 2; Resp't Ex. 4*. These documents include Form 104, Form 103-Long Form, Form 103-N, and Form 103-W. The Form 103-W claims that \$714,735 of inventory is exempt under Ind. Code § 6-1.1-10-29. None of these documents is signed, dated or file-marked. The record does not substantiate who might have executed them or when. Similarly, the record does not establish when they might have been filed. It does, however, indicate that an extension of time was granted until June 14. *Resp't Ex. 4*. The Respondent made no claim that the documents were untimely or that the exemption should be denied for that reason. While failure to execute these forms or timely file them would be problematic to the exemption claim, the Respondent did not argue that the exemption should be denied for that reason. Both parties apparently assumed that the Petitioner properly executed and timely filed the documents. In this case, the Board will not rest its determination on possible failures to properly execute or timely file the required forms.
2. The Respondent issued a Notice of Assessment Change (Form 113/PP) dated August 19, 2005, that disallowed exemption for 2005 business personal property. *Pet'r Ex. 3*.
3. The Petitioner sought review of the Respondent's change by filing a Form 130 Petition on October 3, 2005. The Jefferson County Property Tax Board of Appeals (PTABOA) issued its determination on January 3, 2006.¹

¹ Pages one and three of the Notification Of PTABOA Determination (Form 115) are part of Board Exhibit A as an attachment to the Petition For Review (Form 131). These same two pages are part of Petitioner Exhibit 4. Neither exhibit contains page two of the PTABOA determination and neither exhibit indicates what the PTABOA determination was. Nevertheless, from the testimony offered by both parties, it is clear that the PTABOA denied the exemption. The Form 115 states that notification of the PTABOA determination was mailed on December 30, 2005. As part of Exhibit 4, however, the Petitioner introduced a copy of the envelope for the notice that shows a postmark dated January 3, 2006. The timing of both the PTABOA determination and the filing of the Petition for Review is also explained in correspondence that is included as part of Board Exhibit A.. The postmarked envelope is sufficient to establish that the time for filing the Form 131 should be calculated from January 3, 2006. Thus, the Petitioner filed a timely Form 131 Petition For Review. Ind. Admin. Code tit. 52, r. 2-3-1 (2004).

4. On behalf of the Petitioner and pursuant to Ind. Code § 6-1.1-15-3, Frank Kelly filed a Form 131 Petition for Review of Assessment on January 31, 2006.

Facts and Matters of Record

5. Pursuant to Ind. Code § 6-1.1-15-4 (2005), Kay Schwade, the designated Administrative Law Judge (ALJ), held an administrative hearing in Madison on May 31, 2006.
6. The following persons were present and sworn as witnesses at the hearing:
 - For the Petitioner – Sheila Self, accounts manager,
 - Frank Kelly, tax representative,
 - For the Respondent – Margaret Hoffman, County Assessor,²
 - Linda Greene, PTABOA,
 - George Thomas, PTABOA,
 - Elbert Hinds, PTABOA.
7. The parties presented the following exhibits:
 - Petitioner Exhibit 1 – Copies of Ind. Code § 6-1.1-10-29, 50 IAC 4.2-12-5(c), and part of 50 IAC 4.2-5-2,
 - Petitioner Exhibit 2 – Petitioner's 2005 Business Tangible Personal Property Return, Form 103 Long with attachments,
 - Petitioner Exhibit 3 – Notice of Assessment/Change, Form 113/PP,
 - Petitioner Exhibit 4 – Notification of Final Assessment Determination, Form 115 (pages 1 and 3 only), with copy of envelope showing address and postmark,
 - Petitioner Exhibit 5 – Pre-delivery inspection checklists,
 - Petitioner Exhibit 6 – List of new and used vehicle sales,
 - Petitioner Exhibit 7 – Copy of *Indianapolis Fruit Co. v. Dep't. of State Revenue*, 691 N.E.2d 1379 (Ind. Tax Ct. 1998),

² The township assessor did not appear personally. No attorney or authorized tax representative appeared for the Respondent. At the hearing, the Jefferson County Assessor, Margaret Hoffman, stated that she was representing the Respondent. The record contains no written authority for that representation. Nevertheless, the parties have not raised this issue. Absent objection, the Board will consider the merits of the case that was presented.

Petitioner Exhibit 8 – Copy of *Rotation Products Corp. v. Dep't of State Revenue*, 690 N.E.2d 795 (Ind. Tax Ct. 1998),

Petitioner Exhibit 9 – Copy of *Mid-America Energy Resources, Inc. v. Ind. Dep't of State Revenue*, 681 N.E.2d 259 (Ind. Tax Ct. 1997),

Petitioner Exhibit 10 – Copy of *Harlan Sprague Dawley, Inc. v. Ind. Dep't of State Revenue*, 605 N.E.2d 1222 (Ind. Tax Ct. 1992),

Petitioner Exhibit 11 – Copy of *Ind. Dep't of Revenue v. Interstate Warehousing, Inc.*, 783 N.E.2d 248 (Ind. 2003),

Respondent Exhibit 1 – 2003 Final Determination for Craig Buick,

Respondent Exhibit 2 – 2004 Final Determination for Craig Buick,

Respondent Exhibit 3 – 2003 Final Determination for McCubbin Ford,

Respondent Exhibit 4 – Petitioner's Business Tangible Personal Property Return with attachments,

Respondent Exhibit 5 – Copy of Ind. Code § 6-1.1-10-29,

Respondent Exhibit 6 – Findings of Fact/Conclusions of Law for the 2003 Final Determination for Craig Buick,

Respondent Exhibit 7 – Findings of Fact/Conclusions of Law for the 2004 Final Determination for Craig Buick,

Respondent Exhibit 8 – Findings of Fact/Conclusions of Law for the 2003 Final Determination for McCubbin Ford.

8. The following additional items are part of the record of the proceedings:
 - Board Exhibit A – Form 131 petition with attachments,
 - Board Exhibit B – Notice of Hearing on Petition,
 - Board Exhibit C – Hearing sign in sheet.

9. The Petitioner is an automobile dealer. The tangible business personal property in question is new and used vehicle inventory located at 600 Clifty Drive in Madison.

10. The ALJ did not conduct an on-site inspection of the property.

11. The Petitioner claims that its new and used car inventory identified for out-of-state shipment qualifies for the personal property inventory exemption available to a manufacturer or processor under Ind. Code § 6-1.1-10-29(b)(2). The Petitioner claims to be a manufacturer or processor as defined by 50 IAC 4.2-12-5(c)(1)-(3) because performing a pre-delivery inspection on every new and used car requires the Petitioner to correct or repair any deficiency identified during the inspection, thereby making those vehicles more marketable.³
12. Pre-delivery inspection is one of the Petitioner's most important functions. Any items found not working must be repaired or corrected before the vehicle can be sold. General Motors requires the Petitioner to perform a pre-delivery inspection on every new vehicle. The inspection checks every item listed on the pre-delivery checklist, such as seatbelt operation and engine performance. The Petitioner must repair or correct those problems found during inspection. General Motors reimburses the Petitioner at the service department labor rates for all repairs or corrections made as a result of the pre-delivery inspection. *Self testimony; Pet'r Exhibit 5.*
13. The Petitioner must prepare all new cars for sale upon delivery. The preparation includes removing plastic coverings, putting in floor mats and mounting antenna. *Self testimony.*
14. Vehicles are more marketable if they are in working order. The Petitioner cannot sell vehicles that do not work properly. Checking the performance and operation of a vehicle facilitates sales. *Self testimony.*
15. The same process of performing inspections is followed for the Petitioner's used car inventory as well. *Self testimony.*
16. Ms. Self is the Petitioner's accounting office manager and has worked for the Petitioner for 15 years. *Self testimony.*

³ The Petitioner specifically argued that its claim is not based on Ind. Code § 6-1.1-10-30.

17. The total vehicle sales and the total sales of vehicles shipped to out-of-state destinations are stated on side 1 of the Form 103W and the new and used vehicle sales lists. *Self testimony; Pet'r Exhibits 2, 6.*
18. The sales lists were generated from records stored in the Petitioner's computer system. The totals on the sales list and on the Form 103-W are the Petitioner's total sales for 2004. *Self testimony.*
19. Alternatively, the Petitioner contends that even if the assessor properly denied the exemption, the additional inventory value is incorrect. The Form 115 did not include numbers, but the additional value should only be \$464,578 and the total assessed value should only be \$2,609,220 if the exemption is denied. *Kelly testimony.* The Form 113 notice shows that the township assessor increased the value to \$2,859,370 based on disallowing the warehouse exemption. *Pet'r Exhibit 3.*
20. The Respondent contends that the inventory does not qualify for tax exemption under Ind. Code § 6-1.1-10-29 because the Petitioner is not a manufacturer or processor.
21. The Petitioner's Form 103 identifies the Petitioner as a retail merchant, not a manufacturer or processor. *Hoffman testimony; Resp't Exhibit 4.*
22. The Form 103-W (for reporting exempt property) was not signed. *Hoffman testimony; Resp't Exhibit 4.*
23. Form 103-W states "IMPORTANT NOTE! MANUFACTURERS AND PROCESSORS WANTING TO CLAIM RAW MATERIAL, WORK-IN-PROCESS, FINISHED GOODS AND MANUFACTURING SUPPLIES UNDER IC 6-1.1-10-29(b)(2) AND IC 6-1.1-10-29.5(e) MUST USE SIDE 2 OF THIS FORM." The Petitioner, however, left side 2 blank. *Hoffman testimony; Resp't Exhibit 4.* The Form 103-W indicates that the exemption is claimed under Ind. Code § 6-1.1-10-29, but it does not indicate that the exemption is claimed under Ind. Code § 6-1.1-10-29(b)(2). (This form has thirteen boxes that specify various statutory bases for exemption.) *Resp' Exhibit 4.*

24. It would be normal for a retail merchant to use a checklist for its products. Performing inspections and then correcting or repairing problems does not constitute manufacturing or processing a finished product. *Hoffman testimony*.
25. The exemption provided by Ind. Code § 6-1.1-10-29 is for manufacturers or processors who use raw materials and change them into a new state or form. The Petitioner has not proved that it is a manufacturer or processor. *Hoffman testimony*.
26. Inventory exemption claims by other car dealers under Ind. Code § 6-1.1-10-30 have been denied. *Hoffman testimony; Resp't Exhibits 1, 2, 3, 6, 7, 8*.

Jurisdiction

27. The Indiana Board conducts an impartial review of all appeals concerning the assessed value of tangible property, property tax deductions, and property tax exemptions that are made from a determination by an assessing official or a county property tax assessment board of appeals under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15.

Basis of Exemption and Burden

28. The General Assembly may exempt any property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. IND. CONST., Art. 10 § 1. This provision, however, is not self-enacting. The General Assembly must enact legislation granting an exemption.
29. All property receives protection, security, and services such as fire protection, police protection, and public education. These governmental services carry with them a corresponding obligation of pecuniary support in the form of taxation. When property is exempt from taxation, the effect is to shift the amount of taxes it would have paid to other parcels that are not exempt. *See generally, Nat'l Assoc. of Miniature Enthusiasts v. State Bd. of Tax Comm'rs*, 671 N.E.2d 218, 220-221 (Ind. Tax Ct. 1996).

30. The taxpayer seeking exemption bears the burden of proving the property is entitled to the exemption by showing that the property is specifically within the statutory authority for the exemption. See *Monarch Steel v. State Bd. of Tax Comm'rs*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Assoc. of Seventh Day Adventists v. State Bd. of Tax Comm'rs*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987). Furthermore, exemptions must be strictly construed against the taxpayer and in favor of taxation. *Monarch Steel*, 611 N.E.2d at 713. 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. Dep't of State Rev.*, 605 N.E.2d 1222, 1225 (Ind. Tax Ct. 1992).

Analysis

31. The most applicable statute governing this claim provides:
- (a) As used in this section, "manufacturer" or "processor" means 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. The operation may be performed by hand, machinery, or a chemical process directed or controlled by an individual. The terms include a person that:
 - (1) dries or prepares grain for storage or delivery; or
 - (2) publishes books or other printed materials.
 - (b) Personal property owned by a manufacturer or processor is exempt from property taxation if the owner is able to show by adequate records that the property:
 - (1) is stored and remains in its original package in an in-state warehouse for the purpose of shipment, without further processing, to an out-of-state destination;
 - (2) is inventory (as defined in IC 6-1.1-3-11) that will be used in an operation or continuous series of operations to alter the personal property into a new or changed state or form and the resulting personal property will be shipped, or will be incorporated into personal property that will be shipped, to an out-of-state destination; or
 - (3) consists of books or other printed materials that are stored at an in-state commercial printer's facility for the purpose of shipment, without further processing, to an out-of-state destination.

Ind. Code § 6-1.1-10-29.

32. Prior to the Board's hearing, neither party focused on the specific requirements of exemption that are stated in 29(b)(2). At the hearing, the Petitioner correctly noted that this statute was amended recently to add the language in 29(b)(2) and based its case on that statute.⁴ The new provision in (b)(2) is clearly connected by the word "or" as a separate, alternative to either (b)(1) or (b)(3). Therefore, the Respondent's argument about whether or not the Petitioner's inventory "is stored and remains in its original package in an in-state warehouse for the purpose of shipment, without further processing, to an out-of-state destination" is irrelevant because that is not the basis for the Petitioner's claim.⁵ The Respondent's misdirection, however, appears to stem from the fact that the Petitioner failed to specify that it sought an exemption based on 29(b)(2) at several key points. The Form 103-W did not mark 29(b)(2) in the appropriate box and it did not have side 2 completed, even though the instructions state that a claim based on that statute must do so.⁶ The Petitioner's Form 130 petition merely references "activities qualify for the 103-W exemption" and does not mention 29(b)(2). Similarly, the Petitioner's Form 131 petition merely states, "Petitioner will present to support that the petitioner is qualified for the 103-W exemption." From the evidence presented in this case, there is no reason to believe that the township assessor, the county assessor, or the county PTABOA previously should have realized that the Petitioner claimed exemption based on 29(b)(2). Nevertheless, the Respondent did not claim that the exemption should be denied for that reason and the Board will not decide the case on that basis.

⁴ The amendment was contained in Public Law 192-2002(ss), Sec. 30 and was effective as of January 1, 2003. The prior version of this statute quoted by Ms. Hoffman during the hearing did not contain this provision. The older version has no relevance to this appeal for the 2005 assessment.

⁵ Similarly, the Petitioner's claim is not based on the exemption provided by Ind. Code § 6-1.1-10-30. Therefore, the Board's prior determinations that other car dealers do not qualify for that exemption have no probative value and the Respondent's argument based on those determinations is not relevant or persuasive.

⁶ The Respondent noted that Form 103-W was not signed and that side 2 of that form, which must be used for a 29(b)(2) exemption claim, was not completed. The Respondent is correct about both of those points. In fact, copies of the returns (including the Form 103-W) show that neither the 103-W nor the entire return are signed. *Pet'r Exhibit 2; Resp't Exhibit 4*. The evidence submitted in this case fails to establish that the Petitioner complied with Ind. Admin. Code tit. 50, r. 4.2-15-11(b), which requires signature: "It is important to understand two (2) basic features of personal property assessment returns that distinguish them from real property assessments: (1) self-assessment returns; and (2) signed by the taxpayer under the penalty of perjury that it is a true, correct, and complete return." The Respondent, however, did not claim the exemption should be denied for that reason. Furthermore, neither party provided arguments regarding the issue. Consequently, the Board will reserve its determination about the consequences of such failures for another day.

33. In this case, the most significant question is whether the Petitioner is a "manufacturer" or "processor." Ind. Code § 6-1.1-10-29. The statute defines such a person as one who "alter[s] the raw materials, goods, or other personal property into a new or changed state or form." The applicable regulation contains almost the same definition, and also defines "manufacture" and "process" 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.

Ind. Admin. Code tit. 50, r. 4.2-12-5(c).

34. The analysis of this question "demands a realistic and fact sensitive evaluation of the nature of the taxpayer's business." *Sony Music Entertainment, Inc. v. State Bd. of Tax Comm'rs*, 681 N.E.2d 800, 804-805 (Ind. Tax Ct. 1997).

35. ***In Sony***, Sony sold audio compact discs. Pursuant to an agreement, an Indiana manufacturer produced the actual discs and jewel cases, and Sony purchased liners and booklets that it supplied to the manufacturer. The manufacturer gave the following description of assembly:

Basically what happens is the jewel case comes in, and it's two pieces; it comes in without a tray in it. So we have automation which we load the jewel cases in. We have another slot for the back liners; we have a slot for the booklets, or the front liner, whatever's required. And then we have what we call the assembly machine there, and it will pick off a jewel case, it will insert a back liner, place the tray on top of the back liner, insert the booklet, place a disk onto the tray, close the jewel case up. It is then complete, and it goes down the line to the shrink-wrap machine. It goes through the shrink-wrap machine into the cartooning machine.

Id. at 804. Sony claimed the liners and booklets were simply being repackaged and they were exempt from property tax pursuant to Ind. Code § 6-1.1-10-29.3. The evidence established that the compact disc ensemble described above is "standard" in the audio industry. Where the activities brought together the final saleable product, they constituted "processing." Consequently, the liners and booklets were not exempt. *Id.* at 804-806.

36. With specific reference to Ind. Code § 6-1.1-10-29(a), the Tax Court noted that processing is concerned with the alteration of an article's state or form and refers to the preparation of a final saleable product. *Monarch Steel*, 611 N.E.2d at 714. Monarch was engaged in the business of buying and selling large quantities of steel. It claimed an interstate commerce exemption for its inventory. In some instances, Monarch made no changes to the steel before shipping it out of state. In some instances, it cut the steel into smaller pieces to facilitate shipment. Sometimes it cut the steel on a template according to customer specifications. The Tax Court noted that this is a fact sensitive issue. It determined that when Monarch cut steel to satisfy a customer's order, that action was processing to create a final saleable product. *Id.*
37. The activities described by the vehicle inspection sheets and by Ms. Self's testimony are not comparable to the activities described in *Sony* or *Monarch Steel*. Even though the Petitioner installs loose-shipped parts such as antenna, wheel covers, luggage rack, mirrors and floor mats, as well as inspects and corrects problems that may be detected concerning many of the vehicle components, it is not realistic to characterize those activities as transforming vehicles into a different form, state or thing. There is no evidence about how frequently the inspections find something that needs to be corrected or the extent of such corrections. The testimony that the Petitioner's actions were necessary to have a saleable product were nothing more than conclusory statements. They have no probative value. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Probative evidence does not establish that the Petitioner's relatively minor activities changed the vehicles into a final saleable product.

38. The Petitioner relies on several sales tax cases as support for its claim. Although the sales tax exemption statutes also reference similar terms such as "processing" and "manufacturing," the Petitioner failed to provide substantial justification for applying those cases. "[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis." *Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004). There are substantial differences between the sales tax statutes and regulations and those that apply to personal property exemption in this case. For example, the determination that Harlan Sprague Dawley's rat production could qualify for exemption was specifically tied to a substantially different regulation that listed impregnating as a processing operation. *Harlan Sprague Dawley*, 605 N.E.2d at 1229-1230. For another example, "repairing" is among the actions specifically included as production in Ind. Code 6-2.5-5-5.1, even though "[i]n general, repair activity is not within the ambit of the industrial exemptions." *Rotation Products Corp. v. Ind. Dep't of Revenue*, 690 N.E.2d 795, 801 (Ind. Tax Ct. 1998). Such differences leave the exemption cases cited by the Petitioner with little or no persuasive value in this case.
39. Nevertheless, if those cases have any persuasive value, they fail to support the Petitioner's claim. The Petitioner argues that a taxpayer must transform personal property into a "distinct marketable good" by performing an operation that places the personal property in a form, composition, or character different from when it was acquired. *See Ind. Dep't of Revenue v. Interstate Warehousing, Inc.*, 783 N.E.2d 248, 251-252 (Ind. 2003); *Harlan Sprague Dawley*, 605 N.E.2d at 1229. A processed product must be substantially different from the component materials used. *Indiana Dep't of Revenue v. Interstate Warehousing*, 783 N.E.2d 248, 252 (Ind. 2003)(requiring a distinct marketable product). The evidence does not prove that the Petitioner's actions do so. The product resulting from any changes made by the Petitioner retains its original state as a vehicle.
40. Production is defined broadly and focuses on the creation of a marketable good. *See Indianapolis Fruit Co. v. Dep't of State Revenue*, 691 N.E.2d 1379 (Ind. Tax Ct. 1998) (citing *Mid-America Energy Resources, Inc. v. Ind. Dep't of State Revenue*, 681 N.E.2d 259, 262 (Ind. Tax Ct. 1997)). The Petitioner is not creating a new and marketable good. *See Rotation Products*, 690 N.E.2d 795.

41. The evidence does not establish that putting the new or used vehicles in working order makes the Petitioner a manufacturer or processor. While the actions listed on the inspection sheets (*Pet'r Exhibit 5*) may be an important part of selling new and used vehicles, they do not constitute production because they have not changed the “form, composition, or character” of the vehicles. *See Indianapolis Fruit*, 691 N.E.2d at 1385. Although, the Petitioner may make changes to the new and used vehicles, not every change is manufacturing even though every change is the result of treatment, labor, and manipulation. *See Harlan Sprague*, 605 N.E.2d at 1225. The changes made by the Petitioner do not result in products that are substantially different from vehicles as the Petitioner acquired them. The things the Petitioner does do not change the vehicles into anything different. The vehicles are essentially the same product that existed before the pre-delivery inspection and the corresponding changes.
42. The Petitioner failed to establish that it is a manufacturer or processor whose personal property could qualify for property tax exemption under Ind. Code § 6-1.1-10-29. Therefore, the Respondent’s burden to support its position was not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Prods. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
43. It is possible that the amount of assessed value the township assessor added is incorrect. He increased the assessed value from \$2,144,640 to \$2,859,370 on the Form 113. *Pet'r Exhibit 3*. That amount is almost the same as the amount the Petitioner claimed to be exempt. The record, however, does not establish what change (if any) the PTABOA might have made. The Petitioner did not seek to amend its petition to add this additional issue. *See* Ind. Admin. Code tit. 52, r. 2-5-2. The Petitioner offered summary testimony about how the computation should be made if the exemption is denied. According to that testimony, the additional assessed value should be only \$464,578.⁷ This contention, however, was not previously stated as an issue. The Board was not presented with sufficient evidence or argument to make any determination about it. Therefore, the

⁷ The Petitioner attributes the difference to the 35% valuation adjustment on Schedule B, line 25, not being applied when the inventory was added back by the assessor. At the hearing, the Respondent acknowledged that this point might be correct, but it needed to be verified. The parties are encouraged to do so.

Board will not make a determination about the correct amount of assessed value in this case. *Id.* ("Only issues raised in the appeal petition or any approved amendments to the petition may be raised at the hearing.")

Final Determination

44. The exemption is denied.

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>>.