

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

Petition #: 39-011-03-1-7-00003
Petitioner: Craig Buick, Pontiac, GMC, Toyota
Respondent: Madison Township Assessor (Jefferson County)
Parcel #: Personal Property
Assessment Year: 2003

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

Procedural History

1. Petitioner initiated an assessment appeal with the Jefferson County Property Tax Assessment Board of Appeals (PTABOA) by Form 130 dated January 26, 2004.
2. The PTABOA issued notice of its decision to Petitioner on April 1, 2004.
3. Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on Monday, May 3, 2004. May 1, 2004, was a Saturday. Therefore, the petition is timely filed. Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated September 3, 2004.
5. The Board held an administrative hearing on October 20, 2004, before the duly appointed Administrative Law Judge Paul Stultz.
6. Persons present and sworn as witnesses at hearing were:
 - a. For Petitioner — Richard Griffen, CPA, and David J. Craig, Owner,
 - b. For Respondent — Don Thompson, Madison Township 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 did not conduct an inspection of the property.
9. Assessed Value of the subject tangible business personal property as determined by the Jefferson County PTABOA is \$1,862,450.

10. Assessed Value requested by the Petitioner is \$1,551,750.

Issue

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

- a. Petitioner contends that the subject inventory qualifies for an inventory exemption in the amount of \$471,781 true tax value under Ind. Code § 6-1.1-10-30(a). *Griffen testimony.*
- b. Petitioner contends that Ind. Code § 6-1.1-10-30(a) defines a "nonresident" for purposes of this subsection as a taxpayer who places goods in the original package and into the stream of commerce outside of the State of Indiana. The Petitioner claims to meet this nonresident definition. *Griffen testimony.*
- c. The Petitioner contends that its open lot is a warehouse. *Griffen testimony.*

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

- a. The Respondent contends the Petitioner failed to prove that one could be both a resident and a nonresident simultaneously. *Board Exhibit A (115 attachment).*
- b. The Respondent contends a parking lot does not constitute a warehouse according to provisions of Ind. Code § 6-1.1-10-30. *Board Exhibit A (115 attachment).*
- c. The Respondent contends the Petitioner failed to provide adequate records to support the claim of exemption. *Board Exhibit A (115 attachment).*

Record

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

- a. The Petition (Board Exhibit A), and all subsequent pre-hearing and post-hearing submissions by either party,
- b. The tape recording of the hearing labeled BTR #5625,
- c. The exhibits —
Petitioner Exhibit 1 — Brief for the Petitioner'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 Ct.) 1988,
Petitioner Exhibit 3 — Report of shipments with destination identified,
Petitioner Exhibit 4 — Report of shipments with cost and origin identified,
Petitioner Exhibit 5 — Computation of exemption, and
- d. These Findings and Conclusions.

Analysis

14. The most applicable cases, statutes and rules:

- a) An interstate commerce exemption, like any other tax exemption, is strictly construed against the taxpayer and in favor of taxation, and the taxpayer bears the burden of proving that it is entitled to the exemption. *Edgcomb Metals Co. v. Dep't of Local Gov't Fin.*, 762 N.E.2d 259, 262 (Ind. Tax Ct. 2002). 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[.]” *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(a) states:

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.

See also, 50 IAC 4.2-12-3(b).
- c) Ind. Code § 6-1.1-10-30(d) states:

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.
- d) 50 IAC 4.2-12-5(a)(1) states:

For the purpose of substantiating the amount of their personal property which is exempt from property taxation under IC 6-1.1-10-29 (section 3(a) of this rule), IC 6-1.1-10-29.3 and IC 6-1.1-10-30(a) (section 3(b) of this rule), and IC 6-1.1-10-30(c) (section 3(d) of this rule), a taxpayer shall maintain records that reflect the specific type and amount of personal property claimed to be exempt so that the taxpayer's taxable personal property may be distinguished from their exempt personal property. In lieu of specific identification, the taxpayer may elect to establish the value of their exempt personal property by utilizing an allocation method whereby the exempt personal property is determined by dividing:

 - (A) the value of the taxpayer's property shipped from the in-state warehouse to out-of-state destinations during the twelve (12) month period ending with the assessment date; by

(B) the total value of all shipments of the taxpayer's property from the in-state warehouse during the same period of time, and applying this ratio to the taxpayer's total inventory of personal property that has been placed in the in-state warehouse, that is in the in-state warehouse as of the assessment date, and that meets the other requirements for exemption under IC 6-1.1-10-29, IC 6-1.1-10-29.3, IC 6-1.1-10-30(a), or IC 6-1.1-10-30(c).

15. Petitioner did not provide sufficient evidence to support its contentions. This conclusion was arrived at because:

- a) Petitioner claims an exemption pursuant to Ind. Code § 6-1.1-10-30(a), an interstate commerce exemption for property that originated out-of-state. *Board Exhibit A*. The statutes and regulations set forth several specific requirements for property to be exempt under this provision.

Owned by a Nonresident

- b) Ind. Code § 6-1.1-10-30(a) requires a nonresident to own the property. *See also*, 50 IAC 4.2-12-3. That section defines nonresident as “a taxpayer who places goods in the original package and into the stream of commerce from outside of the state of Indiana.” *Id.* Petitioner contends that residency is determined by where the property is placed in the stream of interstate commerce. *Griffen testimony*. For purposes of this appeal, the Board accepts that Petitioner meets this requirement.

Adequate Records

- c) Ind. Code § 6-1.1-10-30(a)(2) requires the owner to have adequate records to substantiate the amount of personal property that qualifies for the exemption. “Adequate records” is defined in 50 IAC 4.2-12-5(a). Pursuant to that regulation, a taxpayer may elect to utilize an allocation method in lieu of specific identification. The allocation method uses shipments to out-of-state destinations and the total shipments for the twelve (12) month period ending with the assessment date. 50 IAC 4.2-12-5(a)(1). Petitioner did not submit adequate records reflecting either the allocation method or specific identification. Petitioner used a random statistical sampling to develop its out-of-state sales percentage. *Griffen testimony; Pet'r Ex. 2, 3*. While random statistical sampling may be an acceptable auditing technique, it does not meet the adequate records requirement of 50 IAC 4.2-12-5(a)(1). Petitioner failed to prove entitlement to the exemption on this factor.

Shipped into Indiana and Placed in an In-State Warehouse

- d) The owner must also be able to show that the property has been shipped into Indiana and placed in a warehouse. Ind. Code § 6-1.1-10-30(a)(2). Petitioner provided evidence that some of its business personal property was acquired from out-of-state sources. While sufficient to prove the fact that some cars came from out-of-state, Petitioner failed to meet the adequate records requirement of Ind. Code § 6-1.1-10-30(a)(2) and 50 IAC 4.2-12-3(2) to document exactly what cars were in that category. See ¶ 15(c).

- e) Petitioner contends the new and used car lot, while not fitting the traditional definition of “warehouse,”¹ was nonetheless a warehouse for purposes of the interstate commerce exemption. Petitioner pointed out that the cars are stored on the premises and compared the lot to the storage of grain in piles on the ground or storage yards used by manufacturers of manufactured homes and recreational vehicles. *Pet’r Ex. 1 at 2, 3*. The Board finds no validity with those analogies. Petitioner is an automobile dealer with multiple storage locations, including new vehicle inventory, used vehicle inventory and repair parts inventory. It makes both wholesale and retail sales from each one. *Board Exhibit A, attachment to 130 Petition*. Petitioner did not prove how its allegedly exempt property was maintained separately from its general inventory. Petitioner failed to prove that the storage area is anything other than one where its new and used cars are kept and an area where customers can shop for vehicles. *Griffen testimony*. Petitioner failed to prove that the new and used car lot is different from any other retail operation such as a grocery store or a Wal-Mart where goods are on display. Petitioner failed to prove that the new and used car lot is a warehouse and not a retail setting. Petitioner failed to prove entitlement to the exemption on this factor.

For the Purpose of Transshipment to an Out-of-State Destination

- f) Ind. Code § 6-1.1-10-30(a)(2) and 50 IAC 4.2-12-3(2) state that the property must be placed in the warehouse “for the purpose of transshipment to an out-of-state destination.” Petitioner failed to prove that it kept the vehicles on the lot for the purpose of storage until an out-of-state purchaser was found. Sales to out-of-state customers or trades with out-of-state dealers could be expected as an incidental aspect of the type of business and the location near the Indiana-Kentucky border. Petitioner failed to prove entitlement to the exemption on this factor.

¹ Petitioner contends that a warehouse does not have to be a building, but a place where goods are stored. *Griffen argument*. The Board agrees that a warehouse does not have to be a building. A warehouse could be an open-air outdoor storage area.

Original Package

- g) The property must remain in its original package in the warehouse. Original package is defined in 50 IAC 4.2-12-5(d) as “the box, case, bale, skid, bundle, parcel, or aggregation thereof bound together and used by the seller, manufacturer, or packer for shipment.” Petitioner did not discuss the original package requirement. It is possible that this requirement is inapplicable to automobile sales because they are not packaged in the traditional sense of the term. In light of the Board’s conclusions on the other factors and the parties’ failure to present evidence on this point, the Board makes no determination regarding whether or not Petitioners would satisfy the original package requirement in this case.

Exempt under the Commerce Clause

- h) Petitioner failed to discuss whether the property qualifies as exempt under the Commerce Clause of the United States Constitution as required by Ind. Code § 6-1.1-10-30(d) and 50 IAC 4.2-12-4. The Board will not scour the record and to make Petitioner’s case. Litigants before the Board are required “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). Because Petitioner did not present evidence to prove that it is exempt under the Commerce Clause, the Board cannot find the property to be exempt.

Conclusion

- 16. For all the reasons set forth, 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 Respondent.

Final Determination

In accordance with the above findings and conclusions the Board now determines that Petitioner’s 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.