

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

Petition #: 82-027-03-1-7-04066
Petitioner: D Patrick Motoplex
Respondent: Knight Township Assessor (Vanderburgh County)
Parcel #: 090920300 (Personal Property)
Assessment Year: 2003

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 Vanderburgh County Property Tax Assessment Board of Appeals (PTABOA) by written document.
2. The Petitioner received notice of the decision of the PTABOA on November 19, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 petition for review (“Form 131 Petition”) with the county assessor on December 20, 2004. The Petitioner elected to have this case heard under the Board’s small claims procedure.
4. The Board issued a notice of hearing to the parties dated January 25, 2005.
5. The Board held an administrative hearing on March 22, 2005, before the duly appointed Administrative Law Judge, Debra Eads.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Richard H. Griffen, CPA, Crowe Chizek & Co., LLC
 - b) For Respondent: Joe Gries, Knight Township Deputy Assessor
Candy Wells, Vanderburgh County Hearing Officer

Tiffany Carrier of the Vanderburgh County Assessor’s Office observed the hearing.

Facts

7. The Petitioner is an automobile dealer. The business tangible personal property in question consists of the Petitioner’s inventory of new and used vehicles.

8. The administrative law judge (“ALJ”) did not conduct an inspection of the property.
9. Assessed Value of the subject personal property as determined by the Vanderburgh County PTABOA: \$5,545,000.
10. Assessed Value requested by Petitioner on the Form 131 petition: \$4,316,610.

Issue

11. Summary of Petitioner’s contentions in support of alleged error in assessment:
 - a) The Vanderburgh County PTABOA improperly denied the exemption sought by the Petitioner. *Griffen argument.*
 - b) At the PTABOA hearing, the township cited to Ind. Code § 6-1.1-10-29 and argued that the exemption should be denied based on the fact that the Petitioner is not a manufacturer or processor. The Petitioner, however, claimed an exemption based on Ind. Code § 6-1.1-10-30(a) rather than Ind. Code § 6-1.1-10-29 as indicated by the township. *Griffen testimony.* The exemption provided in Ind. Code § 6-1.1-10-30(a) is not limited to inventories of a manufacturer or processor, but rather provides an exemption available to any “nonresident” taxpayer. *Griffen testimony.*
 - c) For purposes of Ind. Code § 6-1.1-10-30(a), “nonresident” status is determined by where the property is placed into the stream of interstate commerce, not by the taxpayer’s business location or state of legal formation. *Griffen testimony.*
 - d) The Board recently issued final determinations in the following cases, which involved issues similar to those presented in the case at bar: *Jordon Toyota, Volvo, Mitsubishi, Kia v. Penn Twp. Assessor*, Pet. No. 71-023-03-1-7-08074 (Ind. Bd. of Tax Review, January 13, 2005); *Jordan Motors, Inc. v. Penn Twp. Assessor*, Pet. No. 71-023-03-1-7-08076 (Ind. Bd. of Tax Review, January 13, 2005); *Craig Buick, Pontiac, GMC, Toyota v. Madison Twp. Assessor*, Pet. No. 39-011-03-1-7-00003 (Ind. Bd. of Tax Review, February 15, 2005); and *McCubbin Ford, Inc. v. Madison Twp. Assessor*, Pet. No. 39-011-03-1-7-00174 (Ind. Bd. of Tax Review, February 15, 2005). *Griffen argument; Pet’r Ex. 2.* In each case, the Board found that the taxpayer was a nonresident for purposes of the exemption provided in Ind. Code § 6-1.1-10-30(a), although it rejected the appeals on other grounds. *Griffen testimony; Pet’r Ex. 2.*
 - e) The Petitioner asserts that the Board’s prior determinations were erroneous in several respects. *Griffen argument.* The Petitioner contends that the Board erred in finding that the petitioners in those cases lacked adequate records. *Griffen Argument; Pet’r Ex. 1.* According to the Petitioner, detailed records of inventory were available but had not been requested by the assessor, PTABOA,

or Board. *Id.*; *Griffen testimony*. The Petitioner also claims that the Board erred in its assertion that a “relationship to a retail setting exempts the dealer’s storage area from qualification from [sic] this exemption [I.C. § 6-1.1-10-30(a)].” *Griffen Argument; Pet’r Ex. 1*. According to the Petitioner, the statute does not contemplate such a restriction. *Id.* Finally, the Petitioner contends that the Board erred in finding that I.C. § 6-1.1-10-30(d) required the petitioners to demonstrate that their inventory was entitled to an exemption under the Commerce Clause of the United States Constitution. *Id.* According to the Petitioner, the Indiana Supreme Court previously held that the language contained in Ind. Code § 6-1.1-10-30(d) amounts to nothing more than a restatement of a taxpayer’s rights under the Commerce Clause and therefore serves no purpose. *Id.*

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

- a) The exemption provided by Ind. Code § 6-1.1-10-30(a) applies only to the extent that the property in question is exempt under the Commerce Clause. *Gries argument*.
- b) Indiana Code § 6-1.1-10-30(a) defines “nonresident” as “a taxpayer who places goods in the original package and into the stream of commerce from outside the state of Indiana.” *Gries argument*. The Petitioner did not place the goods into the original package or into the stream of commerce. *Gries testimony*. Those functions were performed by the out-of-state manufacturer. *Id.* The Petitioner therefore does not fit the definition of a nonresident. *Gries argument*.
- c) Ind. Code § 6-1.1-10-30(a)(2) applies only to property held “for the purpose of transshipment to an out-of-state destination.” Consequently, the exemption was not intended to apply to a retailer or car lot. *Gries argument*.

Objection to Evidence Submitted by Petitioner

13. The Respondent objected to the admission of the Petitioner’s exhibits, because the Petitioner did not provide those exhibits to the Respondent in advance of the hearing. *Gries objection*.
14. The parties elected to contest this case under the Board’s procedures governing small claims. *See* 52 IAC 3. Those procedures are intended to make the administration of small claims “more efficient, informal, simple, and expeditious than those administered under 52 IAC 2.” 52 IAC 3-1-1(b).
15. The small claims rules provide that “the parties shall *make available* to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) days before the day of a small claims hearing.” 52 IAC 3-1-5(f) (emphasis added).

16. By contrast, the rules applicable to non-small claims proceedings state that a party to the appeal “shall provide” to the other parties: (1) copies of documentary evidence at least five (5) business days before the hearing; and (2) a list of witnesses and exhibits at least fifteen (15) business days before the hearing. 52 IAC 2-7-1(b).
17. The Board interprets the phrase “shall make available” contained in 52 IAC 3-1-5(f) to mean that the specified items must be provided to other parties if requested. The Board does not interpret that phrase to create an obligation to provide copies of documentary evidence to other parties independent of a request by one or more of those parties. This interpretation gives meaning to the difference between the language used in 52 IAC 3-1-5(f) and 52 IAC 2-7-1(b) and best reflects the principles underlying the more informal small claims procedures.
18. The Respondent acknowledged that it failed to request copies of the Petitioner’s exhibits prior to the hearing. Consequently, the Board overrules the Respondent’s objection.

Record

19. The official record for this matter is made up of the following:
 - a) The Petition
 - b) The tape recording of the hearing labeled BTR # 6178.
 - c) Exhibits¹:

Petitioner Exhibit 1: Narrative summary of testimony

Petitioner Exhibit 2: *Jordon Toyota, Volvo, Mitsubishi, Kia v. Penn Twp. Assessor*, Pet. No. 71-023-03-1-7-08074 (Ind. Bd. of Tax Review, January 13, 2005); *Jordan Motors, Inc. v. Penn Twp. Assessor*, Pet. No. 71-023-03-1-7-08076 (Ind. Bd. of Tax Review, January 13, 2005); *Craig Buick, Pontiac, GMC, Toyota v. Madison Twp. Assessor*, Pet. No. 39-011-03-1-7-00003 (Ind. Bd. of Tax Review, February 15, 2005); and *McCubbin Ford, Inc. v. Madison Twp. Assessor*, Pet. No. 39-011-03-1-7-00174 (Ind. Bd. of Tax Review, February 15, 2005)

Board Exhibit A: Subject Form 131 Petition

Board Exhibit B: Notice of Hearing

¹ The Board’s file contains a six (6) page document entitled “Minutes Vanderburgh County Board of Appeals September 3, 2004,” which apparently was forwarded by the Respondent and received by the Board on February 9, 2004. There is no indication that this document was served upon the Petitioner, and neither party offered the document into evidence. The document therefore is not part of the record in this case, and will not be relied upon by the Board in reaching its decision.

Board Exhibit C: Notice of County Assessor appearance as additional party

d) These Findings and Conclusions.

Analysis

20. The most applicable cases, statutes and rules:

a) Interstate commerce exemptions, like any 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.

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

- a) The 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. As set forth above, that statute enumerates several specific elements that a Petitioner must establish in order to prove its entitlement to such an exemption.

Owned by a Nonresident

- b) Indiana Code § 6-1.1-10-30(a) applies to property “owned by a nonresident.” The Petitioner contends that it met this requirement, because the statute defines residency by the location from which goods are placed into the stream of commerce rather than by the location of the taxpayer’s principal place of business or the state under whose laws the taxpayer was organized. *Griffen argument*. The Petitioner also points to prior decisions of the Board in which the Board assumed that car dealers with lots located in Indiana were nonresidents for purposes of Ind. Code § 6-1.1-10-30(a). *Id*; *Pet’r Exs. 1-2*.
- c) The Petitioner is correct that the statutory definition of “nonresident” does not focus on a taxpayer’s principal place of business or state of incorporation. What the Petitioner ignores, however, is that Ind. Code § 6-1.1-10-30(a) requires that the purportedly exempt property be “owned by a nonresident.” Thus, the statute requires the owner of the property to be one and 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, placed that property into the stream of commerce from outside of Indiana. The Petitioner therefore failed to establish the first element of Ind. Code § 6-1.1-10-30(a).
- d) Even under its own interpretation of the statute, the Petitioner would have been required to prove that the goods in question actually were placed into the stream of commerce from outside of Indiana. The Petitioner, however, offered no evidence regarding the goods in question or their point of origin.

Adequate Records

- e) Indiana Code § 6-1.1-10-30(a) also requires the taxpayer seeking an exemption to be able to show, “by adequate records,” that the purportedly exempt property has been shipped into Indiana and placed into a public or private warehouse for the purpose of transshipment to an out-of-state destination. I.C. § 6-1.1-10-30(a)(2). The statutory definition of “adequate records” allows a taxpayer to elect to substantiate the amount of property entitled to exemption by utilizing an allocation method in lieu of specifically identifying the exempt property. I.C. § 6-1.1-10-29.5(b). That allocation method allows the taxpayer to establish the

amount of property entitled to an exemption by applying a ratio to the personal property contained in its in-state warehouse on the date of assessment. *Id.* The ratio reflects the value of personal property shipped from the taxpayer's in-state warehouse to out of state locations during the twelve (12) month period preceding the assessment date as a percentage of the total value of all personal property shipped from the in-state warehouse during that same period. *Id.*

- f) The Petitioner claims that it maintains detailed records of all units moved through its storage locations and that those records identify the points at which the units entered interstate commerce and their shipping destinations. *Griffen testimony.* The Petitioner, however, did not offer those records into evidence. The Petitioner did not present any evidence to show either that any specific items were shipped into Indiana for purposes of transshipment or the total amount of personal property shipped to out-of-state destinations during the tax year in question. In fact, the Petitioner offered no evidence whatsoever to quantify the amount of the exemption it seeks.² While the Petitioner may have presented such information on its original or amended return, it did not offer those returns into evidence.
- g) The Petitioner appears to rely solely on the fact that neither the PTABOA nor the township requested its records. In making such a claim, the Petitioner disregards its burden of proving its entitlement to an exemption. *Edgcomb Metals Co. v. Dep't of Local Gov't Fin.*, 762 N.E.2d 259, 262 (Ind. Tax Ct. 2002); *see also, Monarch Steel Co., Inc. v. State Bd. of Tax Comm'rs*, 669 N.E.2d 199, 201 (Ind. Tax Ct. 1996) (“In order for Monarch to gain an exemption for an item of inventory, Monarch must affirmatively prove that the item falls within the requirements of a particular exemption provision. . . .”)

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

- h) The Petitioner also contends that I.C. § 6-1.1-10-30(a) does not expressly preclude inventory in a retail setting from entitlement to an exemption. *Griffen argument.* The Petitioner is correct that the statute does not speak in terms of whether the taxpayer seeking the exemption is a retailer. The statute, however, does require that the property for which an exemption is sought be placed in a public or private warehouse “for the purpose of transshipment to an out-of-state destination.” I.C. § 6-1.1-10-30(a)(2). Thus, regardless of whether the taxpayer generally engages in retail operations, it must show that it intended to transship the property to an out-of-state destination at the time such property was received and placed into its warehouse. The Petitioner failed to offer any evidence in that regard. In fact, as explained above, the Petitioner offered virtually no evidence either about the property for which it seeks an exemption or about its operations in general.

² The closest the Petitioner came to quantifying the value of the property it claims as exempt was to state in its Form 131 Petition that its business personal property should be assessed at \$4,316,610 as opposed to the current assessment of \$5,545,000. *See Board Ex. A.*

Original Package

- i) The property for which an exemption is sought pursuant to I.C. § 6-1.1-10-30(a) must remain in its original package while in the taxpayer's 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." The Petitioner did not discuss the original package requirement. It is possible that this requirement is inapplicable to automobile sales, if automobiles are not typically packaged in the traditional sense of the term, and the automobiles received by the Petitioner remained in whatever form of packaging in which they were received. Nonetheless, it was the Petitioner's burden to establish the factual predicate for such a finding. The Petitioner, however, failed to meet that burden. The Petitioner presented no evidence concerning the packaging of the personal property for which it is claiming an exemption.

Exempt under the Commerce Clause

- j) Finally, the Petitioner contends that I.C. § 6-1.1-10-30(d), which states that the exemption at issue "applies only to the extent that the property is exempt from taxation under the commerce clause of the Constitution of the United States" has very limited application. Consequently, argues the Petitioner, it is not required to demonstrate an entitlement to an exemption under the Commerce Clause separate and apart from establishing the elements of Ind. Code § 6-1.1-10-30(a). *Griffen argument.*
- k) While not addressing the precise issue at hand, decisions of the Indiana Supreme Court and Indiana Tax Court lend support to the Petitioner's position. *See State Bd. of Tax Comm'rs v. Carrier Corp.*, 266 Ind. 615, 365 N.E.2d 1385 (1977); *Kentron, Inc. v. State Bd. of Tax Comm'rs* 572 N.E.2d 1366, 1372 (Ind. Tax Ct. 1991). In *Carrier Corp.*, the Court addressed a regulation promulgated by the State Board of Tax Commissioners, which interpreted the predecessor to the exemption statute at issue in this case (Ind. Code § 6-1-24-5 (Burns 1971)). The regulation required the bill of lading on items for which an exemption was sought to specify the actual and ultimate destination of the item. *Carrier Corp.*, 365 N.E.2d at 1386. In rejecting the regulation, the Court stated: "[T]he Board would have us interpret the statute to say that the legislature intended for the taxpayer to have an exemption only when he would have had an exemption under the Commerce Clause of the United States Constitution. This interpretation would make the statute nothing more than a restatement of the rights of the taxpayer under the Commerce Clause. . . . The statute would therefore serve no purpose." *Id.* The Court also addressed language contained in the predecessor statute that is similar to the language now contained in Ind. Code § 6-1.1-10-30(d),³ stating: "If

³ The statute provided, in relevant part: "In construing this section, goods, wares and merchandise shall be exempt only to the extent they are exempt from ad valorem taxes under the commerce clause of Constitution of the United States." *Carrier Corp.*, 365 N.E.2d at 1386 (quoting I.C. § 6-1-24-5 (Burns 1971)).

Ind. Code § 6-1-24-5 (Burns 1971) is to have any meaning other than as a restatement of the rights of the taxpayer under the Commerce Clause, the last sentence of the statute could only be meant as a limiting provision. The exemption created is to be only from what the state could tax in the area of ad valorem taxation under the Commerce Clause of the United States Constitution, not from any other possible area of taxation.” *Id.* at 1388.

- 1) The Board need not decide this issue, however, given its findings that the Petitioner failed to establish its entitlement to an exemption under the elements set forth in Ind. Code § 6-1.1-10-30(a).

Conclusion

22. For all the reasons set forth above, the Petitioner failed to prove that 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 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. 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>>.