

REPRESENTATIVES FOR PETITIONER:

Joe C. Biles

REPRESENTATIVES FOR RESPONDENT:

Michigan Township:
Terry D. Beckinger
Phyllis Schuster

LaPorte County:
Carol L. McDaniel
Amy Riehle

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

EXXONMOBIL CORPORATION,)	Petition No.: 46-021-98-3-7-00001
)	46-021-98-3-7-00001A
Petitioner)	
)	County: LaPorte
v.)	
)	Township: Michigan
MICHIGAN TOWNSHIP)	
ASSESSOR, LAPORTE COUNTY)	Personal Property
)	
Respondent)	Assessment Year: 1998
)	

Appeal from the Final Determination of
LaPorte County Property Tax Assessment Board of Appeals

March 7, 2003

FINAL DETERMINATION

The Indiana Board of Tax Review assumed jurisdiction of this matter as the successor entity to the State Board of Tax Commissioners, and the Appeals Division of the State Board of Tax Commissioners. For convenience of reference, each entity is without distinction hereafter referred to as the "Board".

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

Issues

1. The issue presented for consideration by the Board was:
Whether the Petitioner is entitled to an interstate commerce inventory exemption.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-12 ExxonMobil Corporation filed a Form 133, Petition For Correction of an Error, petitioning the Board to conduct an administrative review of the above petition. The Form 133 was filed with the Board on August 23, 2002. The determination of the PTABOA was issued on August 6, 2002 (Board Ex. A). A second, identical Form 133 was filed with the Board on November 25, 2002 (Id). In these Findings, the Board will consider the two petitions, numbered 46-021-98-3-7-00001 and 46-021-98-3-7-00001A respectively, to be the same petition.

Hearing Facts and Other Matters of Record

3. Prior to the hearing, both parties complied with all requirements set forth concerning the exchange of discovery, including the exchange of a list of witnesses and exhibits at least fifteen (15) days before the hearing, and an exchange of evidence and summary of witness testimony at least five (5) days before the hearing (Biles and Riehle testimony).
4. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on January 16, 2003 in LaPorte, Indiana before Joseph Stanford, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.

5. The following persons were present at the hearing:

For the Petitioner:

Joe C. Biles

For the Respondent:

Terry D. Beckinger

Phyllis Schuster

Carol L. McDaniel

Amy Riehle

6. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner:

Joe C. Biles

For the Respondent:

Terry D. Beckinger

Phyllis Schuster

Carol L. McDaniel

Amy Riehle

7. The following exhibits were presented:

For the Petitioner:

Petitioner's Ex. 1 – A “brief” containing the following evidence:

(A) Timeline of actions leading up to this appeal;

(B) Refund calculations;

(C) 1998 Business Personal Property Return filed to Center Township;

(D) Form 103-N;

(E) Form 113/PP;

(F) Payment of tax bill to Center Township;

(G) Payment receipt to Michigan Township;

(H) Form 130;

- (I) Form 133 and Form 17T;
- (J) Refund check from Center Township;
- (K) Notice of Denial;
- (L) Petition to Indiana Board of Tax Review;
- (M) Notice of hearing;
- (N) Ind. Code § 6-1.1-10-30;
- (O) Ind. Code § 6-1.1-15-12;
- (P) Summary of *Dalton Foundries v. State Board of Tax Commissioners*, 653, N.E. 2d 548 (Ind. Tax 1995).

For the Respondent:

Respondent's Ex. 1 – Personal property card for Petitioner.

8. The following additional items are officially recognized as part of the record of proceedings:

Board Ex. A – Form 133 petition and attachments.

Board Ex. B – Hearing notice.

Jurisdictional Framework

9. This matter is governed by the provisions of Ind. Code § 6-1.1-15, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.
10. The Board is authorized to issue this final determination pursuant to Indiana Code § 6-1.1-15-3.

Indiana's Personal Property Tax System

11. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.

12. Personal property includes all tangible property (other than real property) which is being:
 - (A) held in the ordinary course of a trade or business;
 - (B) held, used, or consumed in connection with the production of income; or
 - (C) held as an investment.

See Ind. Code § 6-1.1-1-11.

13. Indiana's personal property tax system is a self-assessment system. Every person, including any firm, company, partnership, association, corporation, fiduciary, or individual owning, holding, possessing, or controlling personal property with a tax situs within Indiana on March 1 of any year is required to file a personal property tax return on or before May 15 of that year unless an extension of time to file is obtained. See 50 IAC 4.2-2-2.

State Review and Petitioner's Burden

14. The State does not undertake to reassess property, or to make the case for the petitioner. The State decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998).
15. The petitioner must submit 'probative evidence' that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E. 2d 1230 (Ind. Tax 1998). ['Probative evidence' is evidence that serves to prove or disprove a fact.]
16. The petitioner has a burden to present more than just 'de minimis' evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Bd. of Tax Comm'rs*, 715 N.E. 2d 1018 (Ind. Tax 1999). ['De minimis' means only a minimal amount.]

17. The petitioner must sufficiently explain the connection between the evidence and petitioner's assertions in order for it to be considered material to the facts. 'Conclusory statements' are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E. 2d 329 (Ind. Tax 1999). ['Conclusory statements' are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
18. Essentially, the petitioner must do two things: (1) prove that the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. See *State Bd. of Tax Comm'rs v. Indianapolis Racquet Club, Inc.*, 743 N.E.2d 247, 253 (Ind., 2001), and *Blackbird Farms Apartments, LP v. DLGF* 765 N.E.2d 711 (Ind. Tax, 2002).
19. The State will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a 'prima facie case' and, by a 'preponderance of the evidence' proven, both the alleged error(s) in the assessment, and specifically what assessment is correct. See *Clark v. State Bd. of Tax Comm'rs*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 689 N.E. 2d 765 (Ind. Tax 1997). [A 'prima facie case' is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the State (as the fact-finder) to conclude that the petitioner's position is correct. The petitioner has proven his position by a 'preponderance of the evidence' when the petitioner's evidence is sufficiently persuasive to convince the State that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner's position.]

Discussion of the Issue

Whether the Petitioner is entitled to an interstate commerce inventory exemption

20. The Petitioner contends that it is entitled to correct an error and claim an interstate commerce exemption on inventory.

21. The Respondent contends that the Petitioner's Business Personal Property Return was not filed timely with the proper township assessor, therefore the Petitioner has waived the exemption.

22. The applicable rules governing this issue are:

Ind. Code § 6-1.1-3-7

...a taxpayer shall, on or before the filing date of each year, file a personal property return with the assessor of each township in which the taxpayer's personal property is subject to assessment.

50 IAC 4.2-2-1

A personal property tax return must be filed in each taxing district where property has a tax situs subject to the qualifications contained in this article.

50 IAC 4.2-12-1(b)

A person who is required to file a personal property return, has personal property in a warehouse or foreign trade zone on the assessment date of any year, and wishes to claim the exemption provided, shall report on their personal property return, in the manner prescribed by the state board, the value of the property for which the exemption is claimed.

Ind. Code § 6-1.1-11-1 and 50 IAC 4.2-12-1(c)

An exemption is a privilege which may be waived by a person who owns tangible property that would qualify for the exemption. If the owner does not comply with the statutory procedures for obtaining an exemption, they waive the exemption. If the exemption is waived, the property is subject to taxation.

23. Evidence and testimony considered particularly relevant to this determination include the following:

- A. Inventory owned by the Petitioner is located in a warehouse owned by Fast-Pak, Inc. Approximately 90% of this inventory is shipped to out-of-state destinations (Pet. Ex. 1(A), Biles testimony).
- B. Prior to the March 1, 1998 assessment date, Fast-Pak, Inc. moved the location of its warehouse, and the Petitioner's inventory, from Center Township to Michigan Township in LaPorte County (Id).
- C. The Petitioner erroneously filed a 1998 Business Tangible Personal Property Return in Center Township. The Petitioner claimed an inventory exemption on this return. The Petitioner did not file a personal property return in Michigan Township (Id).
- D. Fast-Pak, Inc. filed an Information Return of Not Owned Personal Property (Form 103-N) in Michigan Township, disclosing the existence of the Petitioner's inventory. The Form 103-N filed by Fast-Pak disclosed inventory with a cost of \$1,545,263 located at 411 Fairfield, Michigan City, IN. (Id).
- E. The former Michigan Township Assessor, Nick Landers, sent a Notice of Assessment to the Petitioner, placing an assessment of \$515,090 on the inventory based on one-third of the amount disclosed by Fast-Pak, Inc. The Petitioner was not given credit for an inventory exemption (Id).
- F. The tax bill from Center Township was paid and later refunded. The tax bill from Michigan Township was sent to the wrong location, and not received by the Petitioner's property tax department until May 4, 2000. The bill, including all penalties that applied, was then paid (Id).

Analysis of this Issue

- 24. The disagreement in the case at bar is not whether the inventory in question actually qualifies for exemption, but whether the Petitioner has fulfilled the filing requirements established by statute to obtain the exemption.
- 25. The requirements set forth for obtaining an interstate commerce inventory exemption are strict, but clear. A petitioner must first follow the requirements for filing the personal property return. As stated above, this includes timely filing a personal property return in

the taxing district where the property is located, and reporting the full cost of the property and claiming an exemption on the personal property return.

26. The Petitioner understands that it failed to meet these requirements. ExxonMobil filed its 1998 personal property return in the wrong township. It did not file a personal property return, and therefore did not report property and claim an exemption, in the taxing district where the property in question was located.
27. ExxonMobil's proposed remedy for this oversight was to file a Petition for Correction of an Error (Form 133), arguing that Ind. Code § 6-1.1-15-12(a)(8) allows for correction of an error of omission by any state or county officer that results in the taxpayer not receiving credit for an exemption or deduction permitted by law. ExxonMobil argues that this section, as well as the Tax Court's holding in *Dalton Foundries v. State Board of Tax Commissioners*, 653 N.E. 2d 548 (Ind. Tax 1995), allow for the correction of its own error in the filing of its personal property return.
28. ExxonMobil's argument is incorrect. The "error of omission" is explained in 50 IAC 4.2-3-12(g)(3) which says, the Form 133 applies if the exemption was wholly or partially approved, but there was an omission by an officer which resulted in the taxpayer not being given credit. The error ExxonMobil wishes to correct is its own error, not that of a state or county officer. Thus, Ind. Code § 6-1.1-15-12(a)(8) is not applicable.
29. Moreover, Ind. Code § 6-1.1-11-1 and 50 IAC 4.2-12-1(c) clearly state that when a taxpayer does not comply with the procedures for obtaining an exemption, the taxpayer waives the exemption. If the exemption is waived, the property is subject to taxation.
30. The Petitioner failed to timely file a personal property return and claim an exemption with the Michigan township assessor. If a taxpayer fails to follow the procedures to claim an exemption, the taxpayer waives the exemption. *Dav-Con, Inc. v. State Board of Tax Commissioners*, 644 N.E. 2d 192 (Ind. Tax 1994); *Kentron v. State Board of Tax Commissioners*, 572 N.E. 2d 1366 (Ind. Tax 1991).

31. The Petitioner failed to properly and timely file a personal property tax return with the Michigan Township Assessor. In filing the appeal, the Petitioner admitted that the Form 103 was filed with the wrong township. Taxpayers cannot claim an error due to their own actions. *Corey V. State Board of Tax Commissioners*, 674 N.E. 2d 1062 (Ind. Tax 1997).
32. The statutes and case law are clear concerning this issue. A taxpayer who desires to claim an exemption must precisely follow the statutory procedures. A taxpayer who fails to comply with the statutory procedures waives the exemption.

Summary of Final Determination

33. For the reasons set forth above, the Form 133 petition is denied. ExxonMobil is not entitled to an interstate commerce inventory exemption in Michigan Township, LaPorte County, for the March 1, 1998 assessment date. There is no change in the assessment as a result of this issue.

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

Chairman, 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.