STATE OF INDIANA
Board of Tax Commissioners
Appeals Division

HANSON COLD STORAGE COMPANY OF INDIANA,	)	On Appeal from the Assessment Division of the State Board of Tax Commissioners
Petitioner,	)	
v.	)	Review of Application for ERA Deduction Petition No. 79-031-99-4-9-10000
ASSESSMENT DIVISION of the STATE BOARD OF TAX COMMISSIONERS,	)	
Respondent.	)	

Findings of Fact and Conclusions of Law

The Appeals Division (Appeals Division) of the State Board of Tax Commissioners (State Board), having reviewed the facts and evidence, and having considered the issues, now makes the following findings of fact and conclusions of law.

Issue

Whether the refrigeration equipment claimed qualifies for the deduction from assessed valuation on new manufacturing equipment located in an approved economic revitalization area (ERA deduction) as defined in Ind. Code § 6-1.1-12.1-1(3)(B) and 50 IAC 10-1-6.

Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also, if appropriate, any conclusion of law made herein shall also be considered a finding of fact.

Background and Administrative Procedure

2. Hanson Cold Storage Company (Hanson or the Petitioner) filed a Form 322 ERA/PP Application for Deduction from Assessed Valuation for New Manufacturing Equipment Located in Economic Revitalization Area (ERA Application) on May 12, 1999. (Respondent Exhibit 1(d)). The ERA Application sought a deduction for refrigeration equipment, freezer panels and accessories, and refrigeration electrical for the March 1, 1999 assessment date. The amount of the deduction sought was $96,417 assessed value. (Respondent Exhibit 1(d)).

3. On November 2, 2000, the Assessment Division of the State Board of Tax Commissioners (Assessment Division) recommended Hanson's claim for ERA deduction be denied in its entirety. (Respondent Exhibit 1(c)).

4. Valu Tec, on behalf of Hanson, requested a review of the Assessment Division's recommendation regarding the deduction from assessed valuation for new manufacturing equipment located in an approved economic revitalization area. The letter of appeal was received on January 4, 2001.

5. A hearing was held on Tuesday, June 19, 2001, before Hearing Officer Betsy Brand. Scott M. Carlson, Valu Tec, represented the Petitioner. The Petitioner offered the testimony of Dr. Wilbert F. Stoecker, a retired professor from the University of Illinois. The Assessment Division was represented by: Brian Bucher, Assistant Director of Assessment Division; and Brenda Harris, ERA Specialist.

6. At the hearing, the letter of appeal was entered as evidence and labeled Board Exhibit A. The Notice of Hearing was entered as evidence and labeled Board Exhibit B. In addition, the following exhibits were submitted to the State Board:

Petitioner's Exhibit 1 – Copy of State Board definitions of manufacturer and processor.

Petitioner's Exhibit 2 – Excerpt from the American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE) Refrigeration Handbook.

Petitioner's Exhibit 3 – Excerpt from Industrial Refrigeration - Principles, Design and Applications.

Petitioner's Exhibit 4 – Site plan showing the floor plan of the Hanson facility.

Respondent's Exhibit 1 – Relevant documents:

a. Copy of letter extending filing deadline.
b. Copy of an envelope marked received, November 2, 2000.
c. Copy of the Recommendation dated November 2, 2000.
d. Copy of the Form 322 ERA/PP signed May 7, 1999 with attachment.
e. Copy of Form CF-1 signed May 7, 1999.
f. Copy of letter from Hanson dated November 15, 2000 with enclosures.

Respondent's Exhibit 2 – Copy of 50 IAC 10, Economic Revitalization Area Deduction.

Additional Findings Regarding Equipment

7. Hanson uses the claimed equipment in the freezing of various products including pork products, ice cream and bakery products. Hanson is considered to be a public warehouse, renting space in the facility to producers. (Dr. Stoecker testimony.)

8. Freezing brings about both physical and chemical changes to the products, which allows a longer shelf life. (Dr. Stoecker testimony.)

9. The Assessment Division maintains the administrative code identifies items that do not qualify for deduction. Warehouse racks, shelving, or other equipment used to store raw equipment or finished goods are identified as equipment that does not qualify for an ERA deduction. (Bucher testimony.)

10. The products stored at Hanson's could have been taken directly to market and sold as finished goods. (Bucher testimony.) A package of meat could be sent to Hanson's to be frozen or sent directly to a retail grocer for sale as unfrozen meat. (Dr. Stoecker testimony.)

Conclusions of Law

1. The Appeals Division is the proper body to hear an appeal of a property tax deduction pursuant to Ind. Code § 6-1.1-30-11(c).

2. The courts have long recognized that in the administrative review process, the State Board is clothed with quasi-judicial power and the actions of the State Board are judicial in nature. *Biggs v. Board of Commissioners of Lake County,* 7 Ind. App. 142, 34 N.E. 500 (1893). Thus, the State Board has the ability to decide the administrative appeal based upon the evidence presented.

3. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice,* § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128. *See also* Ind. Code § 4-21.5-2-4(a)(10) (Though the State Board is exempted from the Indiana Administrative Orders & Procedures Act, it is cited for the proposition that Indiana follows the customary common law rule regarding burden).

4. Taxpayers are required "to do something more than simply allege that an error exists in the assessment . . . " Whitley *Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1119 (Ind. Tax 1998).

5. Taxpayers are expected to make detailed factual presentations to the State Board regarding alleged errors in assessment. *Id.* "Allegations, unsupported by factual evidence, remain mere allegations." *Id* (citing *Herb v. State Board of Tax Commissioners,* 656 N.E. 2d. 890, 893 (Ind. Tax 1995)).

6. Where a taxpayer fails to submit evidence that is probative evidence of the error alleged, the State Board can properly refuse to consider the evidence. *Whitley, 704* N.E. 2d at 1119 (citing *Clark v. State Board of Tax Commissioners,* 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).

7. If the taxpayer is not required to meet his burden of proof at the State administrative level, then the State Board would be forced to make a case for the taxpayer. Requiring the State Board to make such a case contradicts established case law. *Phelps Dodge v. State Board of Tax Commissioners,* 705 N.E. 2d 1099 (Ind. Tax 1999); Whitley*, supra;* and *Clark, supra.*

8. Moreover, a waste of time and resources would inevitably occur if taxpayers could simply attack the State Board's methodology in a Tax Court appeal without first making a factual presentation to the State Board. *Whitley, supra.*

9. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence "sufficient to establish a given fact and which if not contradicted will remain sufficient." *Clark,* 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners,* 634 N.E. 2d 882, 887 (Ind. Tax 1994).

10. If the taxpayer fails to meet his burden of proof at the administrative level, the State Board does not have to support its decision with substantial evidence if that decision is challenged in court. *Whitley,* 704 N.E. 2d at 1116- 21.

ERA Deduction

11. The authority and responsibility to determine the amount of an ERA Deduction rests with the State Board. Ind. Code § 6-1.1-12.1-5.5(d).

12. "New manufacturing equipment" may qualify for a deduction from assessed valuation. Ind. Code § 6-1.1-12.1-4.5.

13. Ind. Code § 6-1.1-12.1-1(3)(B) defines "new manufacturing equipment" as personal property used in the direct production, manufacture . . . processing . . . of other tangible personal property.

14. 50 IAC 10-1-6 provides in pertinent part:

> (a) "Qualifying property" means tangible property used in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property.
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> (1) The phrase "production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing" is a comprehensive description of the various means of production and circumscribes all of the operations or processes by which a finished product is derived.
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> (2) The term "direct" within the phrase "used in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing, of other tangible personal property" means an essential or integral part of the operation or process that leads to the creation of other tangible personal property.
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> (b) Personal property will be qualifying property when it is used within the process that chronologically begins with the material handling equipment that carries or moves the raw material from its on-site storage location to the first machine or production step and ends with the material handling equipment that carries or moves the finished product from its final machine or production step to the in-plant finished good storage site.

15. "Other tangible personal property" is defined in 50 IAC 10-1-4(a) as goods or items of personal property that are the end product of the production process. A

processed end product must be substantially different from the component materials used.

16. The taxpayer must demonstrate with probative evidence that the property for which a deduction is claimed meets the statutory requirements for obtaining the deduction. *American Juice Co., Inc. v. State Board of Tax Commissioners,* 527 N.E. 2d 1169 (Ind. Tax 1988). While Indiana courts have held that tax levying statutes are to be construed against the state and in favor of the taxpayer, statutes authorizing property tax deductions have not been specifically addressed. However, statutes that remove otherwise taxable property from taxation are strictly construed against the taxpayer and in favor of the taxation of the property. *Harlan Sprague Dawley, Inc. v. Indiana Department of State Revenue,* 605 N.E.2d 1222, 1225 (Ind. Tax 1992); *Indiana Association of Seventh-Day Adventists v. State Board of Tax Commissioners,* 512 N.E.2d. 936 (Ind. Tax 1987). Because the ERA Deduction is not a tax levying statute, but excuses property that would otherwise be taxable from assessment, it is logical sense to construe the ERA Deduction in the same (strictly construed) manner.

17. Examples of personal property that will not be considered qualifying machinery and equipment include warehouse racks, shelving, or other equipment used to store either raw materials or finished goods. 50 IAC 10-1-6 (d)(5).

Conclusions Regarding the ERA deduction

18. The Assessment Division recommended denial of the deduction from assessed valuation sought by the Petitioner. The Assessment Division asserts that there is no substantial difference between the unfrozen products received by Hanson and the frozen products stored at Hanson. The Assessment Division also maintains that equipment used to store finished goods does not qualify for the deduction.

19. The Petitioner contends the subject equipment qualifies as tangible property used in the processing of other tangible personal property because there are

substantial physical and chemical changes that take place during freezing of the products stored in the Hanson facility.

20. The testimony of Dr. Wilbert F. Stoecker, an expert in the field of refrigeration, provides the primary argument in support of Hanson's contention. (Carlson testimony). The Assessment Division does not argue that some physical and chemical changes take place during freezing; nor do they question Dr. Stoecker's credentials. (Bucher testimony.)

21. The specific question before the Appeals Division is whether the equipment claimed is "... used in the **direct** production, manufacture, fabrication, assembly, extraction, mining, **processing**, refining, or finishing **of other tangible personal property** ... ." Ind. Code § 6-1.1-12.1-1(3)(B). (Emphasis added).

22. Based on the testimony of Dr. Stoecker, Hanson's process consists of cooling the product down to freezing temperature, the freezing process, and then refrigeration of the frozen product.

23. In order to qualify, the equipment must be an essential or integral part of the process that leads to the creation of other tangible personal property. 50 IAC 10-1-6(a)(2). Other tangible personal property is defined as the end product of the production process. The processed end product must be substantially different from the component materials used. 50 IAC 10-1-4(a).

24. The process at Hanson does not create other tangible personal property. The processed end product is not substantially different from the component materials used. In fact, the end product is the same as the beginning product, only frozen. Prepackaged pork and ice cream arrive at Hanson's facility. It is cooled, frozen and then refrigerated. The processed end product is the same prepackaged pork and ice cream that started the process. And while freezing does cause a change in the state of a product, it does not create **other tangible property** as required in 50 IAC10-1-6.

25. For all the reasons stated above, Hanson is not entitled to the ERA deduction.