

**STATE OF INDIANA  
Board of Tax Review**

IRON OUT, INC.	)	On Appeal from the Allen County Property
	)	Tax Assessment Board of Appeals
	)	
Petitioner,	)	
	)	Petitions for Correction of an Error, Form 133
v.	)	
	)	Petition Nos. 02-073-96-3-7-50039
ALLEN COUNTY PROPERTY TAX	)	02-073-97-3-7-50040
ASSESSMENT BOARD OF APPEALS	)	
And WASHINGTON TOWNSHIP	)	Personal Property
ASSESSOR	)	
	)	
Respondents.	)	

**Findings of Fact and Conclusions of Law**

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State, having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

**Issue**

Whether Iron Out, Inc. is entitled to an interstate commerce inventory exemption for the 1996 and 1997 assessment years.

## 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.
  
2. Pursuant to Ind. Code § 6-1.1-15-12, Iron Out Inc. (Petitioner) filed two (2) Petitions for Correction of an Error (Form 133) requesting a correction by the State, for the 1996 and 1997 tax years. The petitions were filed to the State on July 20, 1998. The County Board of Review (County Board) issued its Final Determinations on July 2, 1998.
  
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on both petitions on January 10, 2002 before Hearing Officer Joseph Stanford. Testimony and exhibits were received into evidence. Burt Brunner, CPA, represented the Petitioner. Mike Ternet represented Allen County. Leisa M. Elser-Patrick, Jacqueline K. Mahlock, and F. John Rogers represented Washington Township.
  
4. At the hearing, the subject Form 133 petition was made part of the record and labeled Board Ex. A. The Notice of Hearing on Petition was labeled Board Ex. B. In addition, the following exhibits were submitted to the State:

Respondent's Ex. 1 – Original 1996 Business Tangible Personal Property Tax Return, Form 103, filed May 15, 1996.

Respondent's Ex. 2 – Original 1997 Business Tangible Personal Property Tax Return, Form 103, filed May 15, 1997.

Respondent's Ex. 3 – A copy of 50 IAC 4.2-12-1.

Respondent's Ex. 4 – A copy of a portion of 50 IAC 4.2-2-10.

Respondent's Ex. 5 – Petition for Correction of an Error for 1996 tax year.

Respondent's Ex. 6 – Petition for Correction of an Error for 1997 tax year.

Respondent's Ex. 7 – A copy of Ind. Code § 6-1.1-3-7.5.

5. The Respondents requested an opportunity to submit a post-hearing brief concerning the issue at hand. As a result, the Hearing Officer invited both parties to submit briefs within 30 days of the hearing date. A brief submitted by F. John Rogers on behalf of Allen County, received on February 4, 2002, is labeled Respondent's Ex. 8. The Petitioner did not submit a post-hearing brief.
6. The Petitioner, Iron Out, Inc., is a manufacturer and wholesaler of specialty cleaners. *Respondent's Ex. 1.*
7. The Petitioner timely filed Business Tangible Personal Property Returns (Form 103) for both the 1996 and 1997 assessment years. *Respondent's Ex. 1 and 2.* The Petitioner did not claim interstate commerce inventory exemptions on these originally filed returns.
8. The Petitioner then filed Petitions for Correction of an Error (Form 133), along with "amended" property tax returns, attempting to claim interstate commerce inventory exemptions for 1996 and 1997. These petitions were originally filed with the Allen County Auditor on June 30, 1998.
9. The Respondents, Allen County and Washington Township, both argue that both statute and case law require that exemptions be claimed on an original, timely filed return, or the exemption is forever waived.

### **Conclusions of Law**

1. The Petitioner is limited to the issues raised on the Form 133 petition filed with the State Ind. Code § 6-1.1-15-12. See also the Form 133 petition. Once an appeal is filed with the State, however, the State has the discretion to address issues not raised on the Form 133 petition. *Joyce Sportswear Co. v. State Board of Tax Commissioners*, 684 N.E. 2d 1189, 1191 (Ind. Tax 1997). In this appeal, such discretion will not be exercised and the Petitioner is limited to the issues raised on the Form 133 petition filed with the State.

2. The State is the proper body to hear an appeal of the action of the County pursuant to Ind. Code § 6-1.1-15-3.

### **A. Burden**

3. Ind. Code § 6-1.1-15-3 requires the State to review the actions of the PTABOA, but does not require the State to review the initial assessment or undertake reassessment of the property. The State has the ability to decide the administrative appeal based upon the evidence presented and to limit its review to the issues the taxpayer presents. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113, 1118 (Ind. Tax 1998) (citing *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E. 2d 765, 769 (Ind. Tax 1997)).
4. In reviewing the actions of the PTABOA, the State is entitled to presume that its actions are correct. “Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies.” *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome that presumption of correctness to prevail in the appeal.
5. 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.
6. Taxpayers are expected to make factual presentations to the State regarding alleged errors in assessment. *Whitley*, 704 N.E. 2d at 1119. These presentations should both outline the alleged errors and support the allegations with evidence. “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)). The State is not required to give weight to evidence that is not probative of the errors the taxpayer alleges. *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. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer’s case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.
8. 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).
9. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer’s evidence and justify its decision with substantial evidence. 2 Charles H. Koch, Jr. at §5.1; 73 C.J.S. at § 128. See *Whitley*, 704 N.E. 2d at 1119 (The substantial evidence requirement for a taxpayer challenging a State Board determination at the Tax Court level is not “triggered” if the taxpayer does not present any probative evidence concerning the error raised. Accordingly, the Tax Court will not reverse the State’s final determination even though the taxpayer demonstrates flaws in it).

**B. Conclusions Regarding the Claim for the Interstate Commerce Inventory Exemption**

10. The general provisions for Deductions, Exemptions and Credits for Inventory are found 50 IAC 4.2-12-1(a) which states in part:

The property must be reported and claimed exempt annually on the business tangible personal property return in a timely manner. There are four (4) sections within the statutes and this article that contain the eligibility requirements for the exemption of goods considered to be in interstate commerce.

11. Pursuant to Ind. Code § 6-1.1-10-29 (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 is stored and remains in its original package in an in-state warehouse for the purpose shipment to an out-of-state destination.

12. 50 IAC 4.2-12-1(e) states:

These exemptions will be permitted to taxpayers who timely file and show the amount of their claim for exemption on the proper line of the prescribed returns forms, provided the taxpayer is able to document all of the evidence required in subsection (a), or sections 9, 10, and 11, when required to do so by an assessing official or board.

12. Ind. Code § 6-1.1-11-1 provides that an “[e]xemption is a privilege that 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, he waived the exemption. If the exemption is waived, the property is subject to taxation.”

13. Taxpayers are required to show the amount of their exemption claim on the proper line of an original, timely filed return. 50 IAC 4.2-12-1(e), 50 IAC 4.2-15-11(d)(1). If a taxpayer fails to claim an exemption in this manner, the taxpayer forever waives his right to that exemption. 50 IAC 4.2-15-11(d)(1), *State Board of Tax Commissioners v. Stanadyne, Inc.* 435 N.E. 2d 278 (Ind. App. 1982), *Kentron v. State Board of Tax Commissioners* 572 N.E. 2d 1366 (Ind. Tax 1991), *Dav-Con, Inc. v. State Board of Tax Commissioners* 644 N.E. 2d (Ind. Tax 1994).

14. The statutes and case law are clear, a taxpayer who desires to claim an exemption must follow the statutory procedures. A petitioner who fails to comply with the statutory procedures waives the exemption. There is no change to the assessment.

The above stated findings and conclusions are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this \_\_\_\_ day of \_\_\_\_\_, 2002.

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Chairman, Indiana Board of Tax Review