

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

Petition #: 71-023-03-1-7-08074
Petitioner: Jordan Toyota, Volvo, Mitsubishi, Kia
Respondent: Penn Township Assessor (St. Joseph County)
Parcel #: 16-35151-6092 (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 St. Joseph County Property Tax Assessment Board of Appeals (“PTABOA”) by written document.
2. The Petitioner received notice of the decision of the PTABOA on April 22, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on May 22, 2004. Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated September 7, 2004.
5. The Board held an administrative hearing on November 4, 2004, before the duly appointed Administrative Law Judge Joseph Stanford.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Richard H. Griffen, CPA, Crowe Chizek & Co., LLC
 - b) For Respondent: Terrance F. Wozniak, St. Joseph Deputy County Attorney (not sworn in)
Greg Bock, Penn Township Assessor
Ross A. Portolese, St. Joseph County PTABOA member
Ralph J. Wolfe, St. Joseph County PTABOA member
Dennis J. Dillman, St. Joseph County PTABOA member (not sworn in)
Kevin S. Klaybor, President, St. Joseph County PTABOA (not sworn in)

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 business tangible personal property as determined by the St. Joseph County PTABOA: \$3,819,040.
10. Assessed Value requested by Petitioner on amended return filing: \$2,754,770.
11. Amount of exemption claimed by Petitioner: \$1,448,856. *Petitioner Exhibit 1.*

Issue

12. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) Petitioner contends that it qualifies for inventory exemption under Ind. Code § 6-1.1-10-30(a), and that the local PTABOA denied the exemption without explanation. Petitioner contends that it qualifies as a "nonresident" for purposes of this subsection because it is a wholesaler and places property into the stream of interstate commerce. *Griffen testimony; Petitioner Exhibit 1.*
 - b) Petitioner contends that its new and used car lot meets the dictionary definition of a "warehouse" because it is "a place in which goods or merchandise are stored." A warehouse does not have to be a building. Petitioner cites case law, *Gulf Stream Coach, Inc. v. State Board of Tax Commissioners*, 519 N.E.2d 238 (Ind. Tax 1988), in support of its position. *Griffen testimony; Petitioner Exhibit 1.*
 - c) Petitioner utilized random sampling of sales to compute an out-of-state sales percentage for the period of March 2002 through February 2003. *Griffen testimony; Petitioner Exhibit 3.* Sales counted in the out-of-state sales calculation include retail sales to customers that live outside of Indiana, and trades to other dealers that are located outside of Indiana. *Griffen testimony; Petitioner Exhibit 3.*
13. Summary of Respondent's contentions in support of the assessment:
 - a) Respondent contends that Ind. Code § 6-1.1-10-30(a) provides exemption for manufacturers and wholesalers only. *Wozniak testimony.* Respondent does not agree that the Petitioner is either a manufacturer or a wholesaler. *Id.*
 - b) Respondent contends that case law cited by the Petitioner is not relevant. *Wozniak argument.*

Record

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

- a) The Petition, and all subsequent pre-hearing, and post-hearing submissions by either party.
- b) The tape recording of the hearing labeled BTR #5821.
- c) Exhibits:
 - Petitioner Exhibit 1: Brief in support of taxpayer's position
 - Petitioner Exhibit 2: Schedule of sampled transactions used in establishing exempt percentage
 - Petitioner Exhibit 3: Computation summary for exemption applied and correction of exemption
- d) These Findings and Conclusions.

Analysis

15. The most applicable governing statutes and rules are:

- 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) (internal citations omitted). This is so "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); 50 IAC 4.2-12-3(b)**
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.

- c) **Ind. Code § 6-1.1-10-30(d); 50 IAC 4.2-12-4**
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)**
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).

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

- a) The Petitioner has claimed an exemption pursuant to Ind. Code § 6-1.1-10-30(a), an interstate commerce exemption for property that originated out-of-state. 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 the property be owned by a nonresident. *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.* The Petitioner contends and the Board agrees 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 Instate 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 is acquired from out-of-state sources. While sufficient to prove the fact that some property comes from out-of-state, Petitioner has 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). *See ¶ 16(c), supra*.
- e) Petitioner contends the new and used car lot, while not fitting the traditional definition of “warehouse,”¹ is nonetheless a warehouse for purposes of the interstate commerce exemption. Petitioner points out that the automobiles are stored on the premises and compares the lot to the storage of grain in piles on the ground and the storage yards used by manufacturers of manufactured homes and recreational vehicles. *Pet’r Ex. 1 at 2, 3*. The Board disagrees with this analogy. Petitioner is an automobile dealer, and its new and used car lot is a retail area where customers shop for vehicles. *Griffen testimony*. The new and used car lot is no different than any other retail operation such as a grocery store or a Wal-Mart. Customers go to the new and used car lot to see the vehicles on display and shop for vehicles. The customers can walk around the car lot, sit in the vehicles, and even test-drive the vehicles. The new and used car lot is not a warehouse, but a retail setting. Petitioner does not place the vehicles on the lot for storage – the purpose of the lot is to display the goods and offer them for sale. 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 is an automobile dealer whose primary purpose for having the property shipped to Indiana is to display vehicles on a sales lot and sell

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, and could be an open-air outdoor storage area.

vehicles in a retail setting. Petitioner does not put the vehicles on the lot solely for the purpose of storage until an out-of-state purchaser is found. Sales to out-of-state customers or trades with out-of-state dealers are an incidental effect of the type of business and the location near the Indiana-Michigan border. The Board finds that any out-of-state shipments due to sales or dealer trades ultimately made by the Petitioner are secondary to its primary goal of selling the vehicles. Petitioner failed to prove entitlement to the exemption on this factor.

Stored and Remains in its Original Package

- g) The third criterion requires the property remain in its original package and 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.” The Petitioner did not discuss the original package requirement. It is possible that this requirement is inapplicable to automobile sales, as they are not packaged in the traditional sense of the term. In light of the Board’s conclusions on the other factors, the Board declines to determine at this time whether an automobile must be in its “original package” under 50 IAC 4.2-12-5(d).

Exempt from Taxation under the Commerce Clause of the United States Constitution

- 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 make the Petitioner’s case for it. Litigants before the Board are required “to walk the Indiana Board . . . through every element of the analysis.” *Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004). As 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

17. 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.