

REPRESENTATIVES FOR PETITIONER: Shaheen G. Khan, Vice-President of SKF Steel, Shahnaz S. Khan

REPRESENTATIVES FOR RESPONDENT: Shirley LeFever, Porter County Assessor, Lindy Wilson, Deputy County Assessor, John R. Scott, Portage Township Assessor, Kathryn L. Cochran, Deputy Township Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

SKF STEEL, INC.)	
)	
Petitioner)	Petition No.: 64-016-01-1-7-00021
)	County: Porter
v.)	Township: Portage
)	Property Parcel No.: Personal property
Porter County Property Tax)	Assessment Year: 2001
Assessment Board of Appeals and)	
Portage Township Assessor)	
)	
Respondent)	
)	

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

November 7, 2002

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

Procedural History

1. Pursuant to Ind. Code § 6-1.1-15-3, on January 30, 2002, Shaheen Khan, on behalf of SKF Steel, Inc., filed a Form 131 on behalf of SKF Steel, Inc. (the Petitioner), petitioning the Board to conduct an administrative review of the above petition.
2. The Form 131 Petition arose out of a determination of the PTABOA on Form 115 that was issued on January 3, 2002. Petitioner filed the Form 130 Petition with the Proter County Assessor on November 26, 2001. In a letter dated November 27, 2001, the Porter County PTABOA notified Petitioner that its 130 Petitioner was defective. Petitioner did not respond to or correct this notice of defect.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on August 14, 2002 at the Porter County Administration Center, Valparaiso, IN before Ellen Yuhan, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.
4. The following persons were present at the hearing:

For the Petitioner: Shaheen G. Khan, Vice-President of SKF Steel, and Shahnaz S. Khan

For the Respondent: Shirley LaFever, Porter County Assessor, Lindy Wilson, Deputy County Assessor, John R. Scott, Portage Township Assessor, and Kathryn L. Cochran, Deputy Township Assessor.
5. The following persons were sworn in as witnesses:

For the Petitioner: Shaheen G. Khan, Vice-President of SKF Steel, and Shahnaz S. Khan .

For the Respondent: Shirley LaFever, Porter County Assessor, Lindy Wilson, Deputy County Assessor, John R. Scott, Portage Township Assessor, and Kathryn L. Cochran, Deputy Township Assessor.

6. The following exhibits were presented:

For the Petitioner: None

For the Respondent:

Respondent's Exhibit 1-Township's response to the petition (Township exhibit)

Respondent's Exhibit 2- Form 115 and Form 138 (County exhibit).

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

Board Exhibit A- Form 131 petition

Board Exhibit B- Notice of hearing.

8. The personal property is inventory located at 725 George Nelson Drive, Portage, Portage Township, Porter County. The assessed value for 2001 is \$55,920.

9. The issues presented for consideration by the Board were:

1. Whether the personal property should be tax exempt.

2. Whether the inventory was valued at an excessive amount.

Jurisdictional Framework

10. 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.
11. The Board is authorized to issue this final determination pursuant to Ind. Code § 6-1.1-15-3.

Indiana's Property Tax System

12. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.
13. 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.

14. Indiana's personal property 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 is obtained. See 50 IAC 4.2-2-2

State Review and Petitioner's Burden

15. 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).

16. 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.]
17. 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.]
18. 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.]
19. 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).
20. 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 Issues

ISSUE 1: *Whether the personal property should be tax exempt.*

20. The Petitioner contends the personal property at issue is inventory held for shipment. Petitioner concedes that the personal property forms were filed late and states that the late filing was because he was out of the country and his accountant was unable to complete them because of a serious illness in the family.
21. The Respondent contends the taxpayer failed to file in a timely fashion and is therefore not eligible for exemption on inventory.
22. The applicable rules governing this Issue are:
50 IAC 4.2-2-2
Every person, including any firm, company, partnership, association, corporation, fiduciary or individual owning, holding, possessing, or controlling personal property with a tax situs within the state 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 a return is obtained pursuant to section 3 of this rule.

50 IAC 4.2-12-1(a)

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.

Ind. Code § 6-1.1-11-1

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.”

50 IAC 4.2-12-1(e)

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.

23. Evidence and testimony considered particularly relevant to this determination include the following:
- (a) The Form 103 was not filed by May 15, 2001 .
 - (b) The township assessor received the Form 103 on June 18, 2001 and no extension had been granted.
 - (c) The Form 130 petition was not timely filed.

Analysis of the Issues

ISSUE 1: *Whether the personal property should be tax exempt.*

24. The Petitioner failed to timely file a personal property tax return for the March 1, 2001 assessment date. In filing the appeal, the Petitioner admitted that the Form 103 was filed

late. 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).

25. If a taxpayer doesn't timely file an exemption claim, he waives the exemption. *Davcon, Inc. v. State Board of Tax Commissioners*, 644 N.E. 2d 192 (Ind. Tax 1994); *Kentron, Inc. v. State Board of Tax Commissioners*, 572 N.E. 2d 1166 (Ind. Tax 1991).
26. The Petitioner has failed to meet his burden. 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. No change is made to the assessment as a result of this issue.

ISSUE 2: Whether the inventory was valued at an excessive amount.

27. No testimony or evidence was presented regarding this issue.

Summary of Final Determination

Determination of ISSUE 1 : Whether the personal property is tax exempt.

28. The Petitioner has failed to meet his burden. No change is made as a result.

Determination of ISSUE 2: Whether the inventory was valued at an excessive amount.

29. No testimony or evidence was presented regarding this issue. No change is made as a result.

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.