

REPRESENTATIVE FOR PETITIONER: Marilyn Meighen, Attorney

REPRESENTATIVE FOR RESPONDENT: Charles Todd, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

| | | |
|-----------------------------|---|-----------------------------------|
| Victory Chevrolet Cadillac, |) | Petition No.: 89-030-05-1-7-00003 |
| |) | |
| Petitioner, |) | Wayne County |
| |) | |
| v. |) | Wayne Township |
| |) | |
| Wayne Township Assessor, |) | Personal Property |
| |) | |
| Respondent. |) | 2005 Assessment |

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

October 18, 2006

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the facts and evidence presented in this case. The Board now enters its findings of fact and conclusions of law.

Issue: Does any part of the Petitioner’s personal property inventory qualify for property tax exemption under Ind. Code § 6-1.1-10-29?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Procedural History

1. The Petitioner filed its 2005 Business Tangible Personal Property Return. *Pet'r Ex. 3*. The return includes Form 104, Form 103-Long, Form 103-W, and Form 106. The Form 103-W claims that \$1,493,558 of inventory is exempt under Ind. Code § 6-1.1-10-29.
2. The Respondent issued a Notice of Assessment Change (Form 113/PP) dated May 25, 2005, disallowing the exemption. *Board Ex. A*.
3. The Petitioner sought review by filing a Form 130 Petition. The Wayne County Property Tax Board of Appeals (PTABOA) issued its determination on September 19, 2005.
4. The Petitioner filed a Form 131 Petition for Review of Assessment on October 19, 2005.

Hearing Facts and Other Matters of Record

5. On or about March 29, 2006, Charles K. Todd filed a written appearance for the Respondent. On or about July 22, 2006, Marilyn S. Meighen filed a written appearance for the Petitioner.
6. Administrative Law Judge Paul Stultz held the administrative hearing in Richmond on August 8, 2006.
7. The following persons were present and sworn as witnesses:
For the Petitioner: Robin Singer, assistant controller,
Mark Chmielewski, service manager,
For the Respondent: Joseph Kaiser, PTABOA member,
Richard Lee, PTABOA member,
Dan Williams, PTABOA member,

Marie Elstro, PTABOA member,
Michael Statzer, County Assessor,
Betty Smith, Wayne Township Assessor,
Judy Devers, Deputy Wayne Township Assessor.

8. The parties presented the following exhibits:

Petitioner Exhibit 1 – Copies of Ind. Code § 6-1.1-10-29, 50 IAC 4.2-12-5(c) (1)-(3), and 50 IAC 4.2-5-2(b),

Petitioner Exhibit 2 – Check lists for new and used vehicles,

Petitioner Exhibit 3 – Petitioner’s 2005 Business Personal Property Tax Return,

Petitioner Exhibit 4 – Lists of vehicle sales for new and used vehicles,

Petitioner Exhibit 5 – Copy of *Indianapolis Fruit Co. v. Dep’t of State Revenue*, 691 N.E.2d 1379 (Ind. Tax Ct. 1998),

Petitioner Exhibit 6 – Copy of *Harlan Sprague Dawley, Inc. v. Ind. Dep’t of State Revenue*, 605 N.E.2d 1222 (Ind. Tax Ct. 1992),

Petitioner Exhibit 7 – Copy of *Mid-America Energy Resources, Inc. v. Ind. Dep’t of State Revenue*, 681 N.E.2d 259 (Ind. Tax Ct. 1997),

Petitioner Exhibit 8 – Copy of *Rotation Products Corp. v. Dep’t of State Revenue*, 690 N.E.2d 795 (Ind. Tax Ct. 1998),

Respondent Exhibit 1 – 2003 Final Determination for McCubbin Ford,

Respondent Exhibit 2 – 2003 Final Determination for Craig Buick,

Respondent Exhibit 3 – 2003 Final Determination for Jordan Toyota Volvo Mitsubishi & Kia,

Respondent Exhibit 4 – 2003 Final Determination for Jordan Motors, Inc.

9. The following additional items are recognized as part of the record:

Board Exhibit A – Form 131 petition with attachments,

Board Exhibit B – Notice of Hearing on Petition,

Board Exhibit C – Hearing sign in sheet.

10. The Petitioner is an automobile dealer. Its new and used vehicle inventory is located at 4444 National Road East in Richmond.
11. The ALJ did not conduct an on-site inspection of the property.
12. The Petitioner claims that its new and used car inventory identified for out-of-state shipment qualifies for the exemption available to a manufacturer or processor under Ind. Code § 6-1.1-10-29(b)(2). The Petitioner claims to be a manufacturer or processor as defined by 50 IAC 4.2-12-5(c)(1)-(3) because performing a pre-delivery inspection on every new and used car requires the Petitioner to correct or repair any deficiency identified during the inspection, thereby making those vehicles more marketable.¹
13. General Motors requires the Petitioner to perform a detailed pre-delivery inspection of new vehicles. The pre-delivery inspection checks items such as interior and exterior damage, proper tire levels, proper fluid levels, and battery voltage. The Petitioner offered testimony that it must repair or correct any problems found during the inspection. Thus, a vehicle cannot be sold until the Petitioner has completed a pre-delivery inspection. *Chmielewski testimony.*
14. If the car is to be sold with a warranty, General Motors requires the Petitioner to perform the same type of inspection on a used car. The Petitioner offered testimony that used vehicles are not sellable without inspection and repair as needed. *Chmielewski testimony.*
15. The Petitioner presented lists of new and used vehicle sales showing Indiana and out-of-state sales for January through December. The total in-state sales figures and total out-of-state sales figures for both new and used vehicles match the numbers reported on the Form 130-W. *Singer testimony; Pet'r Ex. 4.*

¹ The Petitioner specifically argued that its claim is not based on Ind. Code § 6-1.1-10-30.

16. The Respondent contends that the Petitioner's actions do not change the vehicle into a new or changed state or form. The inspection is simply checking each vehicle to see if it is as it should appear for sale. If the Petitioner's argument were accepted, any business would be a processor. *Todd argument*.

Jurisdiction

17. The Indiana Board conducts an impartial review of all appeals concerning the assessed value of tangible property, property tax deductions, and property tax exemptions that are made from a determination by an assessing official or a county property tax assessment board of appeals under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15.

Basis of Exemption and Burden

18. The General Assembly may exempt any property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. IND. CONST., Art. 10 § 1. This provision, however, is not self-enacting. The General Assembly must enact legislation granting an exemption.
19. All property receives protection, security, and services such as fire protection, police protection, and public education. These governmental services carry with them a corresponding obligation of pecuniary support in the form of taxation. When property is exempt from taxation, the effect is to shift the amount of taxes it would have paid to other parcels that are not exempt. *See generally, Nat'l Assoc. of Miniature Enthusiasts v. State Bd. of Tax Comm'rs*, 671 N.E.2d 218, 220-221 (Ind. Tax Ct. 1996).
20. The taxpayer seeking exemption bears the burden of proving the property is entitled to the exemption by showing that the property is specifically within the statutory authority for the exemption. *See Monarch Steel v. State Bd. of Tax Comm'rs*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Assoc. of Seventh Day Adventists v. State Bd. of Tax*

Comm'rs, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987). Furthermore, exemptions must be strictly construed against the taxpayer and in favor of taxation. *Monarch Steel*, 611 N.E.2d at 713. The Board must, however, "give full effect to the legislature's intent and avoid construing [the exemption] 'so narrowly its application is defeated in cases rightly falling within its ambit.'" *Id.* (quoting *Harlan Sprague Dawley, Inc. v. Dep't of State Rev.*, 605 N.E.2d 1222, 1225 (Ind. Tax Ct. 1992).

Analysis

21. The most applicable statute governing this claim provides:

(a) As used in this section, "manufacturer" or "processor" means a person that performs an operation or continuous series of operations on raw materials, goods, or other personal property to alter the raw materials, goods or other personal property into a new or changed state or form. The operation may be performed by hand, machinery, or a chemical process directed or controlled by an individual. The terms include a person that:

- (1) dries or prepares grain for storage or delivery; or
- (2) publishes books or other printed materials.

(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:

- (1) is stored and remains in its original package in an in-state warehouse for the purpose of shipment, without further processing, to an out-of-state destination;
- (2) is inventory (as defined in IC 6-1.1-3-11) that will be used in an operation or continuous series of operations to alter the personal property into a new or changed state or form and the resulting personal property will be shipped, or will be incorporated into personal property that will be shipped, to an out-of-state destination; or
- (3) consists of books or other printed materials that are stored at an in-state commercial printer's facility for the purpose of shipment, without further processing, to an out-of-state destination.

Ind. Code § 6-1.1-10-29.

22. In this case, the most significant question is whether the Petitioner is a "manufacturer" or "processor." Ind. Code § 6-1.1-10-29. The statute defines such a person as one who "alter[s] the raw materials, goods, or other personal property into a new or changed state

or form." The applicable regulation contains almost the same definition, and also the following definitions:

(1) The word "manufacture" means the making of goods or wares by manual labor or by machinery, especially on a large scale. It includes nearly all such materials as have acquired changed conditions or new and specific combinations, whether from the direct action of the human hand, from chemical processes devised and directed by human skill, or by the employment of machinery.

(2) The word "process" means an act or continuous series of operations which has the effect of transforming or changing the subject matter into a different state or thing. A process can be accomplished by chemical action, by the operation or application of some element or power of nature, or the application of one (1) substance to another, irrespective of any machine or mechanical process.

Ind. Admin. Code tit. 50, r. 4.2-12-5(c).

23. The analysis of this issue "demands a realistic and fact sensitive evaluation of the nature of the taxpayer's business." *Sony Music Entertainment, Inc. v. State Bd. of Tax Comm'rs*, 681 N.E.2d 800, 804-805 (Ind. Tax Ct. 1997).

24. In *Sony*, the Petitioner sold audio compact discs. Pursuant to an agreement, an Indiana manufacturer produced the actual discs and jewel cases, and Sony purchased liners and booklets that it supplied to the manufacturer. The manufacturer gave the following description of assembly:

Basically what happens is the jewel case comes in, and it's two pieces; it comes in without a tray in it. So we have automation which we load the jewel cases in. We have another slot for the back liners; we have a slot for the booklets, or the front liner, whatever's required. And then we have what we call the assembly machine there, and it will pick off a jewel case, it will insert a back liner, place the tray on top of the back liner, insert the booklet, place a disk onto the tray, close the jewel case up. It is then complete, and it goes down the line to the shrink-wrap machine. It goes through the shrink-wrap machine into the cartooning machine.

Id. at 804. Sony claimed the liners and booklets were simply being repackaged and they were exempt from property tax pursuant to Ind. Code § 6-1.1-10-29.3. The evidence established that the compact disc ensemble described above is "standard" in the audio industry. Where the activities brought together the final saleable product, they

constituted "processing." Consequently, the liners and booklets were not exempt. *Id.* at 804-806.

25. With specific reference to Ind. Code § 6-1.1-10-29(a), the Tax Court noted that processing is concerned with the alteration of an article's state or form and refers to the preparation of a final saleable product. *Monarch Steel*, 611 N.E.2d at 714. Monarch was engaged in the business of buying and selling large quantities of steel. It claimed an interstate commerce exemption for its inventory. In some instances, Monarch made no changes to the steel before shipping it out of state. In some instances, it cut the steel into smaller pieces to facilitate shipment. Sometimes it cut the steel on a template according to customer specifications. The Tax Court noted that this is a fact sensitive issue. It determined that when Monarch cut steel to satisfy a customer's order, that action was processing to create a final saleable product. *Id.*
26. The activities described by the vehicle inspection sheets and by Mr. Chmielewski's testimony are not comparable to the activities described in *Sony* or *Monarch Steel*. Even though the Petitioner inspects and corrects problems that may be detected concerning many of the vehicle components, it is not realistic to characterize those activities as transforming vehicles into a different form, state or thing. There is no evidence about how frequently the inspections find something that needs to be corrected or the extent of such corrections. The testimony that the Petitioner's actions were necessary to have a saleable product were nothing more than conclusory statements. They have no probative value. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Probative evidence does not establish that the Petitioner's relatively minor activities changed the vehicles into a final saleable product.
27. The Petitioner relies on several sales tax cases as support for its claim. Although the sales tax exemption statutes also reference similar terms such as "processing" and "manufacturing," the Petitioner failed to provide substantial justification for applying those cases. "[I]t is the taxpayer's duty to walk the Indiana Board . . . through every

element of the analysis.” *Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004). The sales tax statutes and regulations are substantially different from those that apply to a personal property exemption. For example, the determination that Harlan Sprague Dawley's rat production could qualify for exemption was specifically tied to a regulation that listed impregnating as a processing operation. *Harlan Sprague Dawley*, 605 N.E.2d at 1229-1230. For another example, "repairing" is among the actions specifically included as production in Ind. Code 6-2.5-5-5.1, even though "[i]n general, repair activity is not within the ambit of the industrial exemptions." *Rotation Products Corp. v. Ind. Dep't of Revenue*, 690 N.E.2d 795, 801 (Ind. Tax Ct. 1998). Such differences leave the exemption cases cited by the Petitioner with little or no persuasive value in this case.

28. Nevertheless, if those cases have any persuasive value, they fail to support the Petitioner's claim. The Petitioner argues that a taxpayer must transform personal property into a “distinct marketable good” by performing an operation that places the personal property in a form, composition, or character different from when it was acquired. *See Ind. Dep't of Revenue v. Interstate Warehousing, Inc.*, 783 N.E.2d 248, 251-252 (Ind. 2003); *Harlan Sprague Dawley*, 605 N.E.2d at 1229. A processed product must be substantially different from the component materials used. *Interstate Warehousing*, 783 N.E.2d at 252 (requiring a distinct marketable product). The evidence does not prove that the Petitioner's actions do so. The product resulting from any changes made by the Petitioner retains its original state as a vehicle.
29. Production is defined broadly and focuses on the creation of a marketable good. *See Indianapolis Fruit Co. v. Dep't of State Revenue*, 691 N.E.2d 1379 (Ind. Tax Ct. 1998) (citing *Mid-America Energy Resources, Inc. v. Ind. Dep't of State Revenue*, 681 N.E.2d 259, 262 (Ind. Tax Ct. 1997)). The Petitioner is not creating a marketable good. *See Rotation Products*, 690 N.E.2d 795.
30. The evidence does not establish that putting new or used vehicles in working order makes the Petitioner a manufacturer or processor. While the actions listed on the inspection

sheets (*Pet'r Exhibit 2*) may be an important part of selling new and used vehicles, they do not constitute production because they have not changed the “form, composition, or character” of the vehicles. See *Indianapolis Fruit*, 691 N.E.2d at 1385. Although, the Petitioner may make changes to the new and used vehicles, not every change is manufacturing even though every change is the result of treatment, labor, and manipulation. See *Harlan Sprague*, 605 N.E.2d at 1225. The changes made by the Petitioner do not result in products that are substantially different from vehicles as the Petitioner acquired them. The things the Petitioner does do not change the vehicles into anything different. The vehicles are essentially the same product that existed before the pre-delivery inspection and the corresponding changes.

31. The Petitioner failed to establish that it is a manufacturer or processor whose personal property could qualify for property tax exemption under Ind. Code § 6-1.1-10-29. Therefore, the Respondent’s burden to support its position was not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Prods. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

Final Determination

32. The exemption is denied.

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

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. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.