

REPRESENTATIVES FOR PETITIONER: Kerry E. Wade, CPA, Baden, Gage & Schroeder, LLC

REPRESENTATIVES FOR RESPONDENT: Judith E. K. Dafforn and Mike Ternet on behalf of Allen County. Leisa M. Elzer-Patrick and Jacquelyn K. Mahlock on behalf of Washington Township.

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

| | | |
|--------------------------|---|-----------------------------------|
| FORT WAYNE CLUTCH, INC., |) | Petition No.: 02-073-98-3-7-50029 |
| |) | |
| Petitioner |) | County: Allen |
| |) | |
| v. |) | Township: Washington |
| |) | |
| ALLEN COUNTY BOARD OF |) | Personal Property |
| REVIEW and WASHINGTON |) | |
| TOWNSHIP ASSESSOR, |) | Assessment Year: 1998 |
| |) | |
| Respondents. |) | |
| |) | |

Appeal from the Final Determination of
Allen County Board of Review

January 3, 2003

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

Issues

1. The issues presented for consideration by the Board were:
ISSUE 1 – Whether the assessment should include an interstate commerce inventory exemption.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-3 Petitioner filed a Form 133 petitioning the Board to conduct an administrative review of the above petition. The Form 133 was filed on June 30, 1998. The determination of the Allen County Board of Review was issued on June 23, 1998.

Hearing Facts and Other Matters of Record

3. Fort Wayne Clutch, Inc. (Petitioner) is engaged in the business of joint and clutch sales, and is located at 2424 Goshen Road, Ft. Wayne Indiana (Washington Township, Allen County). The Petitioner filed a Business Tangible Personal Property Assessment Return (Form 103) for the 1998 assessment year on May 20, 1998. The assessed value originally reported by the Petitioner was \$79,570. The Washington Township Assessor denied the interstate commerce inventory exemption because the Form 103 was not timely filed, increasing the assessment to \$101,180. *Board Item A.*
4. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on January 10, 2002 before Joe Stanford, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.
5. The following persons were present at the hearing:

For the Petitioner:

Kerry E. Wade, CPA, Baden, Gage & Schroeder, LLC

For the Respondent:

Judith E. K. Dafforn, Allen County

Mike Ternet, Allen County

Leisa M. Elzer-Patrick, Washington Township

Jacquelyn K. Mahlock, Washington Township.

6. The following exhibits were presented:

For the Petitioner:

Exhibit 1 – *Property Taxes: Indiana’s Freeport Exemptions*, by Jeff Kelsey.

For the Respondent:

Exhibit 1 – Copy of 50 IAC 4.2-12-1.

Exhibit 2 – Petitioner’s Form 103

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

Board Item A – Subject Form 133 petition

Board Item B – Notice of Hearing on Petition

Jurisdictional Framework

8. 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.

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

Indiana's Personal Property Tax System

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

11. 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.

12. Indiana's personal property tax system 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 to file is obtained. See 50 IAC 4.2-2-2.

State Review and Petitioner's Burden

13. 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).

14. 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.]

15. 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.]
16. 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.]
17. 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).
18. 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 Issues

ISSUE 1: Whether the assessment should include an interstate commerce inventory exemption.

19. The Petitioner contends the exemption was property claimed based on an article by Jeff Kelsey entitled *Property Taxes: Indiana's Freeport Exemptions*.

20. The Respondent contends pursuant to 50 IAC 4.2-12-1, the exemption must be claimed on a timely filed return or the exemption is waived.

21. The applicable rule(s) governing this Issue 1 is (are):

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 good considered to be in interstate commerce. ...

50 IAC 4.2-12-1(d)

Waiver of exemption. An exemption is a privilege which 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, they waive the exemption. If the exemption is waived, the property is subject to taxation (IC 6-1.1-11-1). ...

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 return 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 any assessing official or board.

22. Evidence and testimony considered particularly relevant to this determination include the following:
- a. Petitioner presented an article by Jeff Kelsey entitled: *Property Taxes: Indiana's Freeport Exemptions*. Relying on this article, the Petitioner testified that a tax return is deemed to be "timely filed" if it is filed within 30 days of the due date. Since the Form 103, due on May 15, was actually filed on May 20, the return was timely filed for purposes of claiming an interstate inventory exemption.
 - b. Respondents testified that no extension of time to file the Form 103 was given by the Township. The Respondent contends pursuant to 50 IAC 4.2-12-1, the exemption must be claimed on a timely filed return or the exemption is waived.

Analysis of ISSUE 1

23. To be considered timely, a personal property tax return must be filed on or before May 15 of the assessment year in question. 50 IAC 4.2-2-2. A thirty (30) day extension may be granted, in writing, by the assessor with whom the return should be filed. 50 IAC 4.2-2-3. In cases where a thirty (30) day extension of time to file has been granted, a personal property tax return is considered timely if it is filed within 30 days of the statutory filing deadline.
24. In the case at bar, however, no extension of time to file was granted by the Township Assessor. Therefore, the Petitioner's Form 103, filed on May 20, 1998, cannot be considered timely.
25. 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." See also 50 IAC 4.2-12-1(d).
26. 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), *Ketron 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 192 (Ind. Tax 1994).

27. The statutes and case law are clear, a taxpayer who desires to claim an exemption must follow the statutory procedures. The Petitioner failed to claim the exemption on a timely filed return. A Petitioner who fails to comply with the statutory procedures waives the exemption. There is no change to the assessment.
28. The Petitioner's reliance upon the article by Jeff Kelsey is misplaced. "All persons are charged with the knowledge of the rights and remedies prescribed by statute." *Middleton Motors v. Department of Revenue* (1978), 269 Ind. 282, 285, 380 N.E. 2d 79, 81. In *Middleton*, a taxpayer relied on a statement from the deputy director of the Department of Revenue. The Supreme Court held: "the legislature enacts procedures and timetables which act as a precedent to the exercise of some right or remedy, those procedures cannot be circumvented by the unauthorized acts and statements of officers, agents or staff of the various departments of our state government." *Id.*
29. When all reporting requirements for claiming an exemption are met, but the exemption is disallowed, the amount disallowed is an interpretive difference, and is not subject to the omitted or undervalued personal property tax penalty. 50 IAC 4.2-2-10(d). In the case at bar, however, the return was not filed timely. Thus, reporting requirements were not met. Therefore, the exemption was waived and undervalued personal property tax penalty must be applied.

Summary of Final Determination

Determination of ISSUE 1: *Whether the assessment should include interstate commerce inventory exemption.*

30. There is no change in the assessment as a result of this issue. The undervalued personal property tax penalty must be applied.

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.