
**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

HOPPER RADIO OF FLORIDA,)	Petition No.: 82-029-01-1-7-00020
INC.,)	
)	County: Vanderburgh
Petitioner,)	
)	Township: Pigeon
v.)	
)	
VANDERBURGH COUNTY)	Parcel No.: 11-07-18913
PROPERTY TAX ASSESSMENT)	
BOARD OF APPEALS,)	Assessment Year: 2001
)	
Respondent.)	
)	

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

March 26, 2004

ORDER OF DISMISSAL

The Petitioner, Hopper Radio of Florida, Inc. (Hopper), filed a Form 131 Petition for Review of Assessment on September 16, 2003 concerning certain personal property in Pigeon Township.

Hopper contends in pertinent part, “Our controller failed to file an exemption for the tax period in question ... We are not waving[sic] our exempt status and can prove that the entire inventory is eligible[sic] to be exempt. We have complied with the laws in Indiana.” (See Form 131 §II.)

The applicable rules governing inventory exemption 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

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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.

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.

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.”

Applicable case law:

If a taxpayer doesn't timely file an exemption claim, he waives the exemption. *Davcon, Inc. v. State Bd. of Tax Comm'rs*, 644 N.E.2d 192 (Ind. Tax 1994); *Kentron, Inc. v. State Bd. of Tax Comm'rs*, 572 N.E.2d 1366 (Ind. Tax 1991); *State Bd. of Tax Comm'rs v. Stanadyne, Inc.* 435 N.E.2d 278 (Ind. App. 1982).

Hopper admits that it did not file the exemption claim. The statute and case law clearly state that a taxpayer that fails to timely file an exemption claim waives that exemption. Regardless of whether the inventory would qualify for exemption, Hopper failed to follow the statutory procedure for obtaining an exemption. By failing to file, Hopper has waived the exemption and the property is subject to taxation. Ind. Code § 6-1.1-11-1; *Kentron*, 572 N.E.2d at 1374.

Further, Hopper did not timely file the appeal. Hopper did not file a Personal Property Return [Form 103]. The township assessor mailed a Form 113, Notice of Assessment, to Hopper on June 6, 2001. According to the township assessor, Hopper called on June 11, 2001 to discuss the Form 113. (See Form 130 § IV). Hopper contends that the first notification was in May 2002. (See Attachment to Form 115, Recommendation Memorandum Page 2). The Form 130

petition was filed on February 20, 2003. Ind. Code § 6-1.1-15-1 states that if the taxpayer does not agree with the action of the township assessor, the PTABOA will review the action if a petition is filed within forty-five (45) days of the notice. Assuming Hopper's first notice was in May 2002, Hopper had forty-five (45) days to file an appeal. The Form 130 was not filed until February 20, 2003, some nine months after the notice Hopper recognizes. Hopper failed to follow the statutory procedures to appeal the action of the township assessor by failing to file within forty-five days of the notice.

For the reasons stated herein, the Board hereby dismisses the above-referenced petition.

FAILURE TO FOLLOW STATUTORY PROCEDURE

The above referenced petition is hereby dismissed for failure of the Petitioner to follow statutory procedures for claiming an exemption and appealing the action of the township assessor.

So ORDERED this ____ day of March, 2004.

William M. Waltz, Commissioner
Indiana Board of Tax Review

Distribution:

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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.