

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

Petition #: 20-007-03-1-7-00001
Petitioner: Maple Leaf Farms, Inc.
Respondent: Clinton Township Assessor (Elkhart County)
Parcel #: 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 Elkhart County Property Tax Assessment Board of Appeals (the PTABOA) by written document.
2. The Petitioner received notice of the decision of the PTABOA on September 23, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on October 27, 2004. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated March 7, 2006.
5. The Board held an administrative hearing on June 20, 2006, before the duly appointed Administrative Law Judge (the ALJ) Debra Eads.
6. Persons present and sworn in at hearing:

For Petitioner: Lynne Glass, Assistant Corporate Controller for Petitioner.

For Respondent: Nancy Cook, Elkhart County First Deputy Assessor,
Dana Hunt, Elkhart County Deputy Assessor.

Facts

7. The subject property is personal property in the form of breeder and grower ducks at various locations throughout Clinton Township.
8. The ALJ did not conduct an on-site visit of the property.

9. The PTABOA determined the assessed value of the subject property to be \$132,990.
10. The Petitioners requested an assessment of \$ 1,600 for the property.

Issue

11. Summary of Petitioner's contentions in support of an error in the assessment:
 - a. The Petitioner testified that it produces ducks for human consumption. *Glass testimony; Pet'r Ex. 1 at 2.* According to the Petitioner, the process starts with breeder ducks producing eggs and continues through the hatching of the eggs, raising the ducks to market weight, slaughtering the ducks and processing the slaughtered ducks for sale. *Id.* Although those activities occur at a variety of locations, the Petitioner contends that the inventory remains the Petitioner's property from the beginning of the process until the final sale. *Id.*
 - b. The Petitioner argues that Ind. Code § 6-1.1-10-29 provides an exemption for the inventory of a manufacturer or processor that is shipped to an out-of-state destination. *Glass argument; Pet'r Ex. 1 at 3.* According to the Petitioner, prior to 2003, that exemption was limited to finished goods of a producer or manufacturer that were packaged and ready for shipment in interstate commerce. *Id.* Given the limited definition of a "manufacturer or processor" set forth in Ind. Code § 6-1.1-10-29(a), the Petitioner contends, the raising of crops, livestock and other produce did not qualify for an exemption, because those processes are natural and are not sufficiently controlled by the farmer. *Id.* Consequently, the typical farmer did not meet the statutory definition of a "manufacturer or processor." *Id.* According to the Petitioner, farmers that engaged in activities such as drying grain and slaughtering and packaging ducks for market, however, did qualify as manufacturers or processors under the statute. *Id.* Thus, the Petitioner concludes, processors like the Petitioner traditionally have claimed an exemption for finished inventory of processed ducks awaiting shipment out of state. *Id.*
 - c. Effective January 1, 2003, however, the Petitioner argues, the Indiana General Assembly amended Ind. Code § 6-1.1-10-29 to add a new class of inventory that qualifies for an interstate commerce exemption – inventory that will be used in an operation or a continuous series of operations to alter the personal property into a new or changed state. *See Acts 2002, P.L. 192-2002, sec. 30; Ind. Code § 6-1.1-10-29(b)(2).* According to the Petitioner, this exception does not require the operations that alter the property to be conducted by a "manufacturer or processor." *Glass testimony; Pet'r Ex. 1 at 3.* Moreover, the Petitioner contends, the subject property meets the definitions of "inventory" set forth in Ind. Code § 6-1.1-3-11 and 50 IAC 4.2-1-1(h), which include references to "commodities from farms," "work in process," and "raw materials." *Id.* In fact, the Petitioner alleges, the headings on schedules B and B-1 of Form 102 also classify those items as "inventory." Furthermore, according to the Petitioner, the Department of Local Government Finance (DLGF) recently determined that milk cows are "inventory" for property tax

purposes, even though they are depreciable property for state and federal income tax purposes. *Pet'r Ex. 1 at 4.*

- d. The Petitioner testified that it filed a Form 102 Farmer's Tangible Personal Property Return (Form 102 return) instead of a Form 103 Business Tangible Personal Property Return (Form 103 return). According to the Petitioner, the Form 102 return includes standard "commodity values" for valuation of crop produce, livestock, and poultry, whereas the Form 103 return includes provisions for reporting such items as special tools, industrial pollution control equipment, and other items more commonly used by manufacturers, processors, distributors, retailers, and other businesses. *Pet'r Ex. 1 at 4.* Thus, the Petitioner argues, it chose to file Form 102 returns because the commodity pricing included on that form better facilitated the Petitioner's reporting of its duck inventory. *Glass testimony.* The Petitioner argues that it is not precluded from claiming an interstate commerce exemption simply because it claimed its exemptions on a Form 102 returns rather than on Form 103 returns. *Glass argument; Pet'r Ex. 1 at 6.* According to the Petitioner, the exemption provided by Ind. Code § 6-1.1-10-29 is not limited to a specific form. *Id.* Thus, the Petitioner concludes, it properly filed amended Form 102 returns, and is entitled to the exemption claimed therein. *Pet'r Ex. 1 at 6.*

12. Summary of Respondent's contentions in support of the assessment:

- a. The Respondent contends that the Petitioner did not properly claim an exemption. *Cook argument.* According to the Respondent, the exemptions provided pursuant to Ind. Code § 6-1.1-10-29 are available only to taxpayers that file a Form 103 return. *Id.* Neither the tax forms themselves nor the relevant statutes provide for an exemption for taxpayers filing a Form 102 return. *Id.*
- b. The Respondent further contends that it properly denied the exemption. *Cook testimony; Resp't Ex. 1.* According to the Respondent, John Toumey, Elkhart County DLGF field representative, recommended that the Petitioner's amended returns and claims for exemption be denied. *Id.*
- c. Finally, the Respondent argues that Elkhart County did not eliminate the inventory tax for the 2003 tax year pursuant to Ind. Code § 6-1.1-12-41. *Cook testimony.*

Record

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

- a. The Petition,
- b. The tape recording of the hearing labeled BTR # 6243,
- c. Exhibits:

Petitioner Exhibit 1 - Inventory exemption for ducks memo,
Petitioner Exhibit 2 - Form 130.

Respondent Exhibit 1 – Letter from DLGF,
Respondent Exhibit 2 – Form 102.

Board Exhibit A - Form 130 petition,
Board Exhibit B - Notice of Hearing,
Board Exhibit C – Authorization for County to represent Township,
Board Exhibit D – Hearing Sign in sheet.

d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:
- a. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm’rs.*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
 - b. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
 - c. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. Before the Board addresses the merits of the Petitioner’s exemption claims, the Board must address the procedural issue raised during the hearing. Specifically, the Board must determine whether the Petitioner’s use of Form 102 returns, as opposed to Form 103 returns, is fatal to its exemption claims.
- a. The Respondent contends that the Petitioner’s exemption claim was properly denied because the Petitioner made its claims on amended Form 102 returns rather than on Form 103 returns.
 - b. Ind. Code § 6-1.1-10-29 describes the types of property owned by a manufacturer or processor that are entitled to an exemption. The statute does not prescribe specific

- forms to be used in claiming an exemption. Ind. Code § 6-1.1-3-9, however, requires a taxpayer make a complete disclosure of all information required by the DLGF related to the value, nature, or location of personal property owned, held, possessed, or controlled by the taxpayer on the assessment date of each year.
- c. The DLGF has promulgated an administrative rule governing the procedures for claiming interstate commerce exemptions, including the exemptions set forth in Ind. Code § 6-1-1-10-29. *See* Ind. Admin. Code tit. 50 r. 4.2-12. Thus, the DLGF requires that taxpayers annually report the value of property claimed to be exempt on their business tangible personal property returns. 50 IAC 4.2-12-1(a). More specifically, the value of inventory reported on Form 103, Schedule B, lines 6 and 10, must include any inventory claimed to be exempt, and the taxpayer must claim its exemption on line 19 of that form. 50 IAC 4.2-12-1(c). The taxpayer must support its exemption claim on an attached Form 103-W, which the DLGF has prescribed “as the form on which to claim an interstate . . . exemption.” 50 IAC 4.2-12-1(d); *see also* 50 IAC 4.2-2-9(b).
 - d. Thus, although 50 IAC 4.2-12-1(c) specifies that taxpayers are to report the value of the property claimed to be exempt on line 19 of Form 103, the operative form for claiming an exemption is Form 103-W. The Petitioner filed a Form 103-W with regard to its exemption claim. The Petitioner filed an amended personal property return within the statutory time period and conditions. *Pet’r Ex. 1 at 6*. The Petitioner therefore substantially complied with the administrative procedural requirements for claiming an exemption.
 - e. The Respondent, however, relies on the fact that John Toumey, a field representative of the DLGF, recommended rejecting the Petitioner’s claim. In support of this position, the Respondent presented a copy of an email from Mr. Toumey to a group of assessors, including the Elkhart County Assessor. In his e-mail, Mr. Toumey expressed a belief that Form 103-W exemptions are not properly reportable on Form 102 returns, and he recommended that the Respondents change the assessments reported on the Petitioner’s amended Form 102 returns back to the value originally reported (without the claimed exemption). *Resp’t Ex. 1*.
 - f. Our Supreme Court has directed all courts of this State to “give great weight” to an administrative agency’s interpretation of a statute when (1) the interpreting agency is charged with the duty of enforcing the statute being interpreted, and (2) the interpretation is not inconsistent with the statute itself. *See, e.g., LTV Steel Co. v. Griffin*, 730 N.E.2d 1251, 1257 (Ind. 2000); *State Bd. of Registration for Professional Engineers v. Eberenz*, 723 N.E.2d 422 (Ind. 2000); *State Bd. of Tax Comm’rs v. Two Market Square Assoc. Ltd. Partnership*, 679 N.E.2d 882 (Ind. 1997); *Indiana Dep’t of State Revenue v. Bulkmatic Transport Co.*, 648 N.E.2d 1156, 1158 (Ind. 1995). The Board therefore gives weight to the DLGF’s interpretation both of statutes relating to the procedures for claiming exemptions and of its own administrative rules.

- g. Mr. Toumey’s e-mail, however, does not purport to interpret any specific statute or administrative rule. *Resp’t Ex. 1*. In fact, Mr. Toumey’s e-mail contains no citation to authority whatsoever. *Id.* Moreover, the e-mail does not purport to be an official interpretation of the DLGF. There are specific vehicles for the DLGF to issue such interpretations. *See* 50 IAC 4.2-1-5 (indicating that the DLGF may issue instructional bulletins to instruct taxing officials of their duties and provide administrative forms to be used by taxpayers). An e-mail from a field representative is not such a vehicle. Consequently, the Board gives no weight to Mr. Toumey’s e-mail in deciding whether the Petitioner’s use of Form 102 returns instead of Form 103 returns rendered its exemption claims invalid.
 - h. Based on the foregoing, the Board finds that the Petitioner sufficiently complied with the necessary procedural requirements to set forth a claim of exemption pursuant to Ind. Code § 6-1.1-10-29.
16. Turning to the merits, the Petitioner failed to provide sufficient evidence to support its exemption claim. The Board reached this decision for the following reasons:
- a. The Petitioner claims that it is entitled to interstate commerce exemptions under Ind. Code § 6-1.1-10-29. That statute provides, in relevant part:
 - (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
 - (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; or
 - (2) is inventory (as defined in IC 6-1.1-3-11) that will be used in an operation or a 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. . . .
- Ind. Code § 6-1.1-10-29(a)-(b).
- b. The Petitioner contends that it is a fully integrated producer of ducks for human consumption. The process starts with breeder ducks producing fertile eggs, proceeds

- through the hatching of the eggs, the raising of the ducks, slaughter and processing for sale. *Glass testimony; Pet'r Ex. 1 at 2.* According to the Petitioner, the slaughtering of the ducks and processing them for sale for human consumption alters the ducks into a changed state or form and therefore constitutes processing. *Id.* Thus, the Petitioner contends that it qualifies as a “manufacturer or processor” within the meaning of Ind. Code § 6-1.1-10-29(a).
- c. The Board agrees that the process of preparing a duck for sale as ground meat, for example, might alter the state or form of the duck sufficiently to qualify as manufacturing or processing within the meaning of Ind. Code § 6-1.1-10-29(a). The Board need not decide that question, however, because the Petitioner’s claims fail on grounds independent of the question of whether it qualifies as a manufacturer or processor
 - d. The Petitioner bases its claims on its characterization of the subject property as inventory that will be used in an operation or a continuous series of operations to alter the property into a new or changed state or form. In order establish its entitlement to an exemption on those grounds, the Petitioner must first prove that the subject property qualifies as “inventory,” as that term is defined in Ind. Code § 6-1.1-3-11. With the exception of that portion of the property comprised of ducks awaiting slaughter and processing at the Petitioner’s plant in Milford, however, the subject property does not meet the statutory definition of “inventory”.
 - e. Ind. Code § 6-1.1-3-11 defines “inventory” as “(1) materials held for processing or for use in production; (2) finished or partially finished goods of a manufacturer or processor; and (3) property held for sale in the ordinary course of trade or business.” Ind. Code 6-1.1-3-11(a). The Petitioner does not specify under which of the three subsections it contends that the subject property qualifies as inventory. The Petitioner’s own evidence, however, clearly eliminates subsections (2) and (3). As to the former, the property taxation statutes do not define term “finished or partially finished goods.” That term, however, cannot reasonably be read to include ducks to which the Petitioner has not yet begun to apply the processes that the Petitioner contends alter the state or form of those ducks. As to the latter, the Petitioner does not claim to sell its ducks prior to processing; thus, the ducks cannot be considered to be held for sale in the ordinary course of business.¹
 - f. Subsection (1) of Ind. Code § 6-1.1-3-11 admittedly presents a closer question. Nonetheless, while the Petitioner submitted evidence that it intends to process many of its ducks for sale for human consumption at some point in time, the ducks not awaiting slaughter at the Petitioner’s plant in Milford are sufficiently removed from that eventuality such that they cannot reasonably be viewed as being “held for

¹ This reasoning is equally applicable to the Petitioner’s reliance on the fact that 50 IAC 4.2-1-1(m)(1) and 50 IAC 4.2-5-1 both include “commodities from farms” within the definition of “inventory.” The reference to farm commodities, however, is provided by the DLGF as an example of inventory comprised of “goods awaiting sale.” 50 IAC 4.2-1-1(m); 50 IAC 4.2-5-1(b)(1)(C). Even if the Petitioner’s pre-processed ducks may be considered farm commodities, they are not “awaiting sale.”

processing.” In fact, there is no guarantee that any individual duck will actually be slaughtered and processed for human consumption. Presumably, ducks die, become infected or otherwise become unfit for slaughter and processing for human consumption at various points during the growing process. Absent clearer direction from the legislature, the Board will not interpret the definition of “inventory” in such a broad manner as urged by the Petitioner. *See e.g., Monarch Steel Co. v. State Bd. of Tax Comm’rs*, 611 N.E.2d 708, 713 (Ind. Tax. Ct. 1993). The same reasoning applies with regard to the Petitioner’s claims that the ducks constitute “raw materials” or “work in process” under the definition of inventory set forth in 50 IAC 4.2-1-1(m)(1) and 50 IAC 4.2-5-1.

- g. Consequently, even if the Petitioner qualifies as a “manufacturer or processor,” only the ducks held for slaughter and processing at the Petitioner’s Milford plant would be entitled to an exemption under Ind. Code § 6-1.1-10-29(b)(2). The Petitioner, however, did not provide any evidence from which to quantify the value of those ducks as opposed to the remainder of the ducks, eggs and other property it seeks to exempt. Thus, the Petitioner failed to prove its entitlement to an exemption.
- h. Based on the foregoing, the Petitioner failed to establish a prima facie case of error in assessment.

Conclusion

- 17. The Petitioner failed to make a prima facie case. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: September 18, 2006

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>.