

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

**Petition #:** 71-023-03-1-7-08078  
**Petitioner:** Gates Chevy World, Inc.  
**Respondent:** Penn Township Assessor (St. Joseph County)  
**Parcel #:** 163503310004 (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 St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) by written document.
2. The Petitioner received notice of the decision of the PTABOA on April 22, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on May 24, 2004. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated December 2, 2005.
5. The Board held an administrative hearing on February 23, 2006, before the duly appointed Administrative Law Judge (ALJ) Debra Eads.
6. Persons present and sworn in at hearing:
  - a) For Petitioner: Richard Griffen, CPA with Crowe, Chizek and Company
  - b) For Respondent: Kevin Klaybor, PTABOA Member  
Dennis Dillman, PTABOA Member  
Greg Bock, Penn Township Assessor

Terrance Wozniak appeared as the attorney for the Penn Township Assessor and the St. Joseph County PTABOA.

## Facts

7. The Petitioner is an automobile dealer. The business tangible personal property in question consists of the Petitioner's inventory of new and used cars.
8. The ALJ did not conduct an inspection of the property.
9. The PTABOA determined the assessed value of the subject personal property to be \$4,210,970.
10. The Petitioner requests an assessed value of \$3,819,040.

## Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
  - a) The Petitioner contends that it qualifies for an inventory exemption under Ind. Code § 6-1.1-10-30(a), and that the local PTABOA denied the exemption without explanation. The Petitioner contends that it qualifies as a "nonresident" for purposes of this subsection because it is a wholesaler and places property into the stream of interstate commerce. *Griffen testimony; Petitioner Exhibit 1.*
  - b) The Petitioner contends that its car lot meets the dictionary definition of a warehouse because it is "a place in which goods or merchandise are stored." *Griffen testimony.* According to the Petitioner, a warehouse does not have to be a building. *Id.* Petroleum and grain production, as well as other industries, use storage facilities that are not a traditional warehouse. *Id.* The Petitioner cites, *Gulf Stream Coach, Inc. v. State Bd. Of Tax Comm'rs*, 519 N.E.2d 238 (Ind. Tax Ct. 1988), in support of its position. *Griffen testimony; Petitioner Exhibit 1.*
  - c) The Petitioner contends that it maintains complete records that detail when each vehicle entered or exited each storage location. *Griffen testimony.* According to the Petitioner, the sales presented include dealer trades, which are wholesale sales to dealers inside or outside Indiana. *Id.* The Petitioner argues that dealer trade transactions are far more common than is generally known and are entirely different types of transactions than the sale of product directly to a consumer. *Id.*
12. Summary of Respondent's contentions in support of the assessment:
  - a) The Respondent contends that the Petitioner is not a warehouse; it is a retailer. *Wozniak argument.* According to the Respondent, the stream of commerce stops with the Petitioner because the product does not go onto another entity to complete it; it goes on to the ultimate consumer. *Id.*

- b) The Respondent contends that the case law cited by the Petitioner pertains to manufacturers that moved products into the stream of commerce, while the subject property sells directly to a consumer. *Wozniak argument*.
- c) The Respondent further argues that the testimony submitted regarding the subject exemption request is the same testimony that was presented regarding the Jordan Motors appeal (71-023-03-1-7-08276). *Wozniak argument*. In that determination, the Board found that the Petitioner failed to show that the property was entitled to the exemption that was being sought. *Id*.
- d) Finally, the Respondent contends that a “dealer trade” is not a significantly different transaction than a sale to a consumer. *Wozniak argument*. According to the Respondent, there is no difference between ordering a vehicle from the factory as compared to having one transferred from another dealership. *Id*. The Respondent argues that in a “dealer trade,” the transaction conducted by the subject taxpayer still represents the final transaction to a consumer or a transfer to another dealership. *Id*.

### **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 # 6201,
- c) Exhibits:

Petitioner Exhibit 1: Narrative of Petitioner testimony

Respondent submitted no written evidence.

Board Exhibit A: Form 131 Petition  
Board Exhibit B: Notice of Hearing  
Board Exhibit C: Hearing Sign in sheet

- d) These Findings and Conclusions.

### **Analysis**

14. The most applicable governing statutes and rules are:

- a) Petitioner has the burden to establish a prima facie case, proving that the current assessment is incorrect. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Board of Tax Commissioners*, 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 Township 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. The Petitioner failed to provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:

- a) The Petitioner seeks an exemption under the Indiana Code provision regarding property in original package in warehouse for transshipment. According to that statute, subject to the limitation that the exemption applies only to the extent that the property is exempt from taxation under the commerce clause of the Constitution of the United States, “personal property is exempt from taxation if (1) the property is owned by a nonresident of this state; (2) the owner is able to show by adequate records that the property has been shipped into this state and placed in its original package in a public or private warehouse for the purpose of transshipment to an out-of-state destination; and (3) the property remains in its original package and in the public or private warehouse.” Ind. Code § 6-1.1-10-30(a).
- b) An interstate commerce exemption, like any other tax exemption, is strictly construed against the taxpayer and in favor of taxation, and the taxpayer bears the burden of proving that it is entitled to the exemption. *Edgecomb Metals Co. v. Dep’t of Local Gov’t Fin.*, 762 N.E.2d 259,262 (Ind. Tax 2002) (internal citations omitted). This is so “because an exemption releases property from the obligation of bearing its share of the cost of government and serves to disturb the equality and distribution of the common burden of government upon all property[.]” *St. Mary’s Med. Ctr., Inc. v. State Bd. of Tax Comm’rs*, 534 N.E. 2d 277, 280 (Ind. Tax Ct. 1989), *aff’d*, 571 N.E. 2d 1247 (Ind. 1991).

*Owned by a Nonresident*

- c) Ind. Code § 6-1.1-10-30(a) requires the property be owned by a nonresident. Pursuant to that statute, “a nonresident is a taxpayer who places goods in the original package and into the stream of commerce from outside of the state of Indiana.” *Id.* In addition, 50 IAC 4.2-12-3, defines a nonresident as “a taxpayer who places goods in the original package and into the stream of commerce from outside the state of Indiana.” *Id.*

- d) The Petitioner is correct that the statutory definition of “nonresident” does not focus on a taxpayer’s principal place of business or state of incorporation. What the Petitioner ignores, however, is that Ind. Code § 6-1.1-10-30(a) requires that the purportedly exempt property be “owned by a nonresident.” Thus, the statute requires the owner of the property to be one and the same as the entity that placed the goods into their original package and into the stream of commerce from an out-of-state location. The Petitioner apparently contends that it owned the property for which it seeks an exemption. The Petitioner, however, offered no evidence that it, rather than an unrelated manufacturer, placed that property into the stream of commerce from outside of Indiana. The Petitioner therefore failed to establish the first element of Ind. Code § 6-1.1-10-30(a).
- e) Even under its own interpretation of the statute, the Petitioner would have been required to prove that the goods in question actually were placed into the stream of commerce from outside of Indiana. The Petitioner, however, offered no evidence regarding the goods in question or their point of origin.

#### *Adequate Records*

- d) Indiana Code § 6-1.1-10-30(a) also requires the taxpayer seeking an exemption to be able to show, “by adequate records,” that the purportedly exempt property has been shipped into Indiana and placed into a public or private warehouse for the purpose of transshipment to an out-of-state destination. Ind. Code § 6-1.1-10-30(a)(2). The statutory definition of “adequate records” allows a taxpayer to elect to substantiate the amount of property entitled to exemption by utilizing an allocation method in lieu of specifically identifying the exempt property. Ind. Code § 6-1.1-10-29.5(b). That allocation method allows the taxpayer to establish the amount of property entitled to an exemption by applying a ratio to the personal property contained in its in-state warehouse on the date of assessment. *Id.* The ratio reflects the value of personal property shipped from the taxpayer’s in-state warehouse to out of state locations during the twelve month period preceding the assessment date as a percentage of the total value of all personal property shipped from the in-state warehouse during that same period. *Id.*
- e) Here, the Petitioner submitted inventory records to the PTABOA that included specific out-of-state sales and dealer trades for the twelve month period before the assessment date. The Petitioner calculated that approximately 20% of the sales and dealer trades for the year previous to the assessment date were out-of-state and multiplied the March 1, 2003, inventory of new cars, \$4,479,405 by that percentage to arrive at \$893,413, the amount the Petitioner believes is exempt.

#### *Shipped Into Indiana and Placed in an Instate Warehouse*

- f) The owner must also be able to show that the property has been shipped into Indiana and placed in a warehouse. Ind. Code § 6-1.1-10-30(a)(2). The Petitioner did not provide any evidence as to the source of its business personal property; therefore the Petitioner has failed to meet the adequate records provision as to what portion of the subject property is obtained from out-of-state sources. *Id.*
- g) The Petitioner contends that its new and used car lot, while not fitting the traditional definition of “warehouse” is nonetheless a warehouse for purposes of the interstate commerce exemption. The petitioner argues that the automobiles are stored on the premises and compares its lot to the storage of grain in piles on the ground and the storage yards used by manufacturers of manufactured homes and recreational vehicles. *Petitioner Exhibit 1*. The Petitioner relies on *Gulf Stream Coach, Inc v. State Board of Tax Commissioners*, 519 N.E.2d 238 (Ind. Tax Ct. 1988) in support of the broadening of the definition of warehouse.
- h) The Board finds that *Gulf Stream* does not support the Petitioner’s argument. In *Gulf Stream*, the court stated that a manufacturer of manufactured homes and recreational vehicles housed completed homes in a parking lot. The Court made no finding, however, that the parking lot was a warehouse under Ind. Code § 6-1.1-10-30(a)(2). Furthermore, *Gulf Stream* was a manufacturer and the parking lot in *Gulf Stream* was to store onsite manufactured homes that had already been purchased and were waiting shipment. *Gulf Stream*, 519 N.E.2d at 239-240.
- i) Here, the Petitioner is an automobile dealer, and its car lot is a retail area where customers shop for vehicles. The car lot is no different than any other retail operation such as a grocery store or discount store. Customers go to the car lot to see the vehicles and shop for vehicles. The car lot is not a warehouse, but a retail setting. The Petitioner does not place vehicles on the lot for storage but for the purpose of displaying the goods and offering them for sale. The Board finds that the General Assembly would not have intended such a broad definition of the term “warehouse” without further explanation. Exemptions must be strictly construed against the taxpayer and in favor of taxation. *See e.g., Monarch Steel Co. v. State Bd. of Tax Comm'rs*, 611 N.E.2d 708, 713 (Ind. Tax Ct. 1993). Thus, the Board holds that Petitioner’s car lot is not a “warehouse” as contemplated by the exemption statute at issue.

*For the Purpose of Transshipment to an Out-of-State Destination*

- j) Ind. Code § 6-1.1-10-30(a)(2) and 50 IAC 4.2-12-3(2) state that the property must be placed in the warehouse “for the purpose of transshipment to an out-of-state destination.”
- k) Here, the Petitioner is an automobile dealer whose primary purpose for having the property is to display vehicles on a sales lot and sell vehicles in a retail setting. The Petitioner does not put the vehicles on the lot solely for the purpose of storage until an

out-of-state purchaser is found. Sales to out-of-state customers or trades with out-of-state dealers are an incidental effect of the type of business and the location near the Indiana-Michigan border. Any out-of-state shipments due to sales or dealer trades ultimately made by the Petitioner are secondary to its primary goal of selling the vehicles.

- l) The Board finds that the Petitioner did not place the automobiles in a warehouse for the “purpose of transshipment to an out-of-state destination” despite the fact that some out-of-state shipments occurred. Thus, the Petitioner failed to prove entitlement to the exemption on this factor.

*Property Must Remain in its Original Package*

- m) The third criterion requires the property remain in its original package and in the warehouse. Original package is defined in 50 IAC 4.2-12-5(d) as “the box, case, bale, skid, bundle, parcel, or aggregation thereof bound together and used by the seller, manufacturer, or packer for equipment.”
- n) Here, the Petitioner failed to present any testimony regarding the packaging in which the automobiles were shipped. It is possible that this requirement is inapplicable to automobile sales, if automobiles are not typically packaged in the traditional sense of the term, and the automobiles received by the Petitioner remained in whatever form of packaging in which they were received. Nonetheless, it was the Petitioner’s burden to establish the factual predicate for such a finding. Litigants before the Board are required 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 Petitioner, however, failed to meet that burden. The Petitioner presented no evidence concerning the packaging of the personal property for which it is claiming an exemption.

*Exempt from Taxation under the Commerce Clause of the United States Constitution*

- o) Petitioner failed to discuss whether the property qualifies as exempt under the Commerce Clause of the United States Constitution as required by Ind. Code § 6-1.1-10-30(d) and 50 IAC 4.2-12-5(d). The Board will not scour the record and make the Petitioner’s case for it. Again, the taxpayer was required 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). As the Petitioner did not present evidence to prove that it is exempt under the Commerce Clause, the Board cannot find the property to be exempt.

**Conclusion**

16. For all the above reasons set forth, the Petitioner failed to show the property in question qualifies for exemption pursuant to Ind. Code § 6-1.1-10-30(a). The Board finds in favor of the Respondent.

ISSUED: **May 25, 2006**

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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](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>>. 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 days of the date of this notice.**