

REPRESENTATIVE FOR PETITIONER:

Richard A. Goelz, CPA

REPRESENTATIVE FOR RESPONDENT:

Candy Wells, Vanderburgh County Assessor's Hearing Officer

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

AIR QUALITY SERVICES, LLC,)	Petition Nos.: 82-029-04-1-7-05445
)	82-029-05-1-7-05446
Petitioner,)	
)	Parcel No.: 11-04-00546 PP
)	
v.)	
)	Vanderburgh County
)	Pigeon Township
VANDERBURGH COUNTY ASSESSOR,)	
)	
Respondent.)	Assessment Years: 2004 and 2005

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

January 21, 2010

FINAL DETERMINATION

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

ISSUE

Whether the Petitioner was entitled to a tax exemption for personal property used for air pollution monitoring for tax years 2004 and 2005.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

1. The Petitioner initiated an assessment appeal to the Vanderburgh County PTABOA by written document dated November 20, 2006. The Petitioner received notice of the decision of the PTABOA through Form 115, Notification of Final Assessment Determinations, dated December 15, 2008.
2. The Petitioner initiated appeals to the Board for the 2004 and 2005 tax years by filing Form 131 petitions dated January 15, 2009.¹ The Petitioner opted to have these matters heard pursuant to the Board's Small Claims Procedures.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Administrative Law Judge Rick Barter held the Board's hearing in Evansville on August 26, 2009. He did not inspect the property.
4. The following persons were sworn and presented testimony at the hearing:
 - For the Petitioner – Richard A. Goelz, CPA,
Daniel L. Todd, President of Air Quality Services,
 - For the Respondent – Candy Wells, Vanderburgh County hearing officer,
Tiffany Collins, PTABOA administrative assistant,
Patricia Schnur, personal property deputy,
Nancy I. Locke, personal property deputy,
John Shelton, Tax Management Associates.
5. The parties submitted the following exhibits:
 - a. Petitioner Exhibit 1 – Copy of Indiana Code § 6-1.1-10-12,

¹ The Petitioner filed each appeal on a Form 131, Petition to the Indiana Board of Tax Review for Review of Assessment. In general, exemption appeals are brought on a Form 132, Petition to the Indiana Board of Tax Review for Review of Exemption. To the extent that the Petitioner's filing on a Form 131 can be seen as raising an argument that the assessed value of its personal property is over-stated, the Board notes that the Petitioner presented no valuation evidence in this case. It merely argued that it was entitled to an exemption pursuant to Indiana Code § 6-1.1-10-12.

Petitioner Exhibit 2 – Copy of Vectren’s tax declarations for 2004 and 2005,
Petitioner Exhibit 3 – A list of the Petitioner’s monitoring equipment,
Petitioner Exhibit 4 – Narrative of required testing,
Petitioner Exhibit 5 – Excerpt of the Petitioner’s Form 131 Petition,

- b. Respondent Exhibit 1 – Copy of the PTABOA hearing minutes.
6. The following items, in addition to the digital recording of the hearing, are part of the record of the proceedings:
- Board Exhibit A – Form 131 Petition,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Hearing sign-in sheet.
7. The subject property consists of portable air pollution monitoring equipment used by the Petitioner to test for air pollution at various industrial, manufacturing and power generating plants. *Goelz testimony*. The equipment is housed in the Petitioner’s facilities in Vanderburgh County, Pigeon Township, Evansville, Indiana, when not being used on a testing site. *Id.*
8. For 2004 the PTABOA determined the assessed value of the Petitioner’s personal property to be \$172,360. For 2005 the PTABOA determined the assessed value of the personal property to be \$169,860.
9. The Petitioner requested an assessed value of \$55,114 for 2005 and a value of \$55,076 for 2005. The Petitioner claimed the remaining personal property was exempt.

JURISDICTIONAL FRAMEWORK

10. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

11. 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).
12. 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. Wash. 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”).
13. 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.

BASIS OF EXEMPTION AND BURDEN

14. The general rule is that all property is subject to taxation. Ind. Code § 6-1-1-2-1. The General Assembly may exempt property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. Ind. Const., Art. 10, § 1. This provision is not self-enacting. The General Assembly must enact legislation granting an exemption.
15. All property receives protection, security, and services from the government, such as fire and police protection, and public schools. 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 a property owner would have paid to other parcels that are not exempt. *See generally, National Association of*

Miniature Enthusiasts v. State Board of Tax Commissioners, 671 N.E.2d 218 (Ind. Tax Ct. 1996).

16. Worthwhile activity or noble purpose alone is not enough. An exemption is justified because it helps accomplish some public purpose. *Miniature Enthusiasts*, 671 N.E.2d at 220 (citing *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*, 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990)).
17. The taxpayer seeking exemption bears the burden of proving that the property is entitled to the exemption by showing that the property falls specifically within the statutory authority for the exemption. *Indianapolis Osteopathic Hospital, Inc. v. Department of Local Government Finance*, 818 N.E.2d 1009 (Ind. Tax Ct. 2004); *Monarch Steel v. State Board of Tax Commissioners*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Association of Seventh Day Adventists v. State Board of Tax Commissioners*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

SUMMARY OF THE PETITIONER'S CASE

18. The Petitioner's representative argues that its personal property should be exempt under Indiana Code § 6-1.1-10-12 as stationary or unlicensed mobile air pollution control systems. *Petitioner Exhibit 1*
19. The Petitioner's Representative testified that, prior to 2004, the Petitioner believed the equipment in question was exempt and as a result did not list it on its personal property tax returns filed under Indiana's self-reporting personal property rules. *Goelz testimony*. According to Mr. Goelz, following an audit by Vanderburgh County that revealed the property in question had not been listed on previous returns, the Petitioner listed the property on its 2004 and 2005 returns. *Id.* Mr. Goelz admitted, however, that the Petitioner failed to file Form 103-P, Claim for Exemption of Air or Water Pollution Control Facilities as required by Indiana Code § 6-1.1-10-12. *Id.*; *Petitioner Exhibit 1*. Because the required form was not filed, Pigeon Township denied the exemption for both years. *Id.*

20. The Petitioner further contends that the Vanderburgh County PTABOA denied the exemption because the Petitioner is not involved in manufacturing or producing a product as required by the law and because it did not own the smokestacks being monitored. *Goelz argument.* Mr. Goelz argues, however, that its equipment is used to test emissions. *Id.* According to the Petitioner's president, the equipment verifies in-house emissions measurement systems. *Todd testimony.* Thus, Mr. Goelz argues, the property meets all the requirements of Indiana Code § 6-1.1-10-12. *Goelz argument.*
21. Finally, the Petitioner's representative argues that, regardless of whether Air Quality Services failed to file for an exemption on its equipment, its property meets the requirements of the code. *Goelz argument.* Therefore, the Petitioner's personal property is exempt. *Id.*

SUMMARY OF THE RESPONDENT'S CASE

22. The Respondent's representative contends that the Petitioner failed to follow statutory procedures to claim an exemption on its personal property. *Shelton argument.* According to Mr. Shelton, an exemption is a privilege that must be claimed and if it is not claimed, it is waived according to 50 IAC 4.2-11-10. *Id.* Thus, Mr. Shelton concludes, because the Petitioner did not timely file its Form 103-P to claim an exemption for 2004 and 2005, the Petitioner waived its right to that exemption. *Id.*
23. The Respondent's representative further argues that the Petitioner's equipment does not qualify for an exemption. *Schnur argument.* According to Ms. Schnur, Indiana Code § 6-1.1-10-12 requires that the owner of the air pollution monitoring equipment be involved in production or fabrication. *Id.* Because Air Quality Services merely offers on-site monitoring with its portable equipment and does not produce or fabricate any product, Ms. Schnur argues, the equipment does not qualify for exemption even if the Petitioner had timely filed for the exemption. *Id.*

ANALYSIS

24. Tax exemption statutes are strictly construed against the person claiming the exemption. *Trinity Episcopal Church v. State Bd. of Tax Comm'rs*, 694 N.E.2d 816, 818 (Ind. Tax Ct. 1998); *Sangralea Boys Fund, Inc. v. State Bd. of Tax Comm'rs*, 686 N.E.2d 954, 956 (Ind. Tax Ct. 1997). Nevertheless, exemption provisions are not to be construed so narrowly that the legislature's purpose is defeated or frustrated. *See id.* "The taxpayer bears the burden of proof in showing that it is entitled to the exemption it seeks." *Indianapolis Osteopathic Hospital, Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004).
25. The Petitioner claims that its personal property is exempt pursuant to Indiana Code § 6-1.1-10-12. That statute states in relevant part that personal property is exempt from property taxation if: "(1) it is part of a stationary or unlicensed mobile air pollution control system of a private manufacturing, fabricating, assembling, extracting, mining, processing, generating, refining or other industrial facility; (2) it is not primarily used in the production of property for sale; (3) it is employed predominantly in the operation of the air pollution control system; (4) the air pollution control system is designed and used for the improvement of public health and welfare by the prevention or elimination of air contamination caused by industrial waste or contaminants; (5) a sanitary treatment or elimination service for the waste or contaminants is not provided by public authorities; and (6) it is acquired for the purpose of complying with any state, local, or federal environmental quality statutes, regulations or standards." Ind. Code § 6-1.1-10-12.
26. Indiana Code § 6-1.1-10-13 provides specific instructions for obtaining that exemption. According to that statute, "The owner of personal property which is part of a stationary or unlicensed mobile air pollution control system who wishes to obtain the exemption provided in section 12 of this chapter shall claim the exemption on the owner's annual personal property return. On the return, the owner shall describe and state the assessed value of the property for which the exemption is claimed." Ind. Code § 6-1.1-10-13(a).

27. The Board need not reach the question of whether the Petitioner’s personal property is entitled to the exemption because the Petitioner, by its own admission, failed to apply for the exemption. Indiana Code § 6-1.1-11-3(b) states that an “owner of tangible property who wishes to obtain an exemption from property taxation shall file a certified application in duplicate with the auditor of the county in which the property that is the subject of the exemption is located. The application must be filed annually on or before May 15 on forms described by the department of local government finance.” Ind. Code § 6-1.1-11-3(b). For an exemption to be claimed on or in an application accompanying a personal property tax return, “the claim or application may be filed on or with a personal property tax return not more than thirty (30) days after the filing date for the personal property tax return, regardless of whether an extension of the filing date has been granted under IC 6-1.1-3-7.” Ind. Code § 6-1.1-11-3(g).
28. Here, not only did the Petitioner’s representative admit that the Petitioner did not file the required forms, it also admitted under oath that it failed to even report the air monitoring equipment on its personal property returns prior to 2004 because it believed the property was exempt.² This is contrary to the explicit requirements of Indiana Code § 6-1.1-10-13. *See Dav-Con, Inc. v. St. Bd. of Tax Comm’rs*, 644 N.E.2d 192 (Ind. Tax Ct. 1994) (The Tax Court held that the Petitioner’s exemption was properly denied and a 20% penalty properly applied where the Petitioner failed to identify the personal property on its return because it alleged the property was exempt).
29. Indiana Code § 6-1.1-11-1 states that an exemption “is a privilege which may be waived by a person who owns tangible property that would qualify for the exemption.” Ind. Code § 6-1.1-11-1. If a property owner fails to comply with the statutory procedures for obtaining an exemption, “the exemption is waived [and] the property is subject to taxation.” *Id.* Thus, as a result of the Petitioner’s failure to file for an exemption, the Petitioner’s personal property is subject to taxation. *See Kentron, Inc. v. St. Bd. of Tax*

² Indiana Code § 6-1.1-3-9(a) states that “In completing a personal property return for a year, a taxpayer shall make a complete disclosure of all information required by the department of local government finance that is related to the value, nature, or location of personal property: (1) that the taxpayer owned on the assessment date of that year; or (2) that the taxpayer held, possessed, or controlled on the assessment date of that year.” There is no exception for personal property the taxpayer believes is exempt.

Comm'rs, 572 N.E.2d 1366 (Ind. Tax Ct. 1991) (“Kentron was required to comply with the statutory procedures set forth in IC 6-1.1-10-31 and IC 6-1.1-11-1 to receive the exemption provided under IC 6-1.1-10-30(b). Failing to comply, Kentron has waived the exemption privilege as a matter of law.”).

30. The Petitioner failed to raise a prima facie case that its personal property was exempt for the 2004 and 2005 tax years. Where a taxpayer fails to provide probative evidence that an assessment should be changed, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

31. The Petitioner failed to raise a prima facie case that its personal property is entitled to an exemption. The Board finds in favor of the Respondent.

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

Chairman,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

- Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>.