

ATTORNEYS FOR PETITIONER:
LARRY J. STROBLE
RANDAL J. KALTENMARK
ZIAADDIN MOLLABASHY
BARNES & THORNBURG LLP
Indianapolis, IN

ATTORNEYS FOR RESPONDENTS:
STEVE CARTER
ATTORNEY GENERAL OF INDIANA
DAWN D. CUMMINGS
DEPUTY ATTORNEY GENERAL
Indianapolis, IN

**IN THE
INDIANA TAX COURT**

PERDUE FARMS, INC.,)	
)	
Petitioner,)	
)	
v.)	Cause No. 49T10-0607-TA-65
)	
BOONE TOWNSHIP ASSESSOR,)	
CASS TOWNSHIP ASSESSOR,)	
COLUMBIA TOWNSHIP ASSESSOR,)	
FERDINAND TOWNSHIP ASSESSOR,)	
HALL TOWNSHIP ASSESSOR,)	
HARBISON TOWNSHIP ASSESSOR, AND)	
MARION TOWNSHIP ASSESSOR of)	
DUBOIS COUNTY,)	
DUBOIS COUNTY ASSESSOR,)	
and DUBOIS COUNTY PROPERTY TAX)	
ASSESSMENT BOARD OF APPEALS,)	
)	
Respondents.)	

ON APPEAL FROM THIRTEEN FINAL DETERMINATIONS OF
THE INDIANA BOARD OF TAX REVIEW

NOT FOR PUBLICATION
June 29, 2007

FISHER, J.

Perdue Farms, Inc. (Perdue) appeals from thirteen final determinations of the Indiana Board of Tax Review (Indiana Board) valuing its personal property for the 2003

tax year (the year at issue). The issue for the Court to decide is whether Perdue's turkeys qualified for the interstate commerce inventory exemption under Indiana Code § 6-1.1-10-29(b)(2).

FACTS AND PROCEDURAL HISTORY

Perdue, a Maryland corporation, operates a turkey production business in Indiana. Perdue's operations begin at its breeder facility in Lebanon, Indiana where approximately 65,000 hens lay 12,500,000 eggs annually. Perdue then ships the eggs to its hatchery in Vincennes, Indiana where approximately 9,500,000 poults (baby turkeys) are hatched. Perdue subsequently ships some of the poults to independently-owned growing facilities in Dubois County, Indiana where contract farmers raise the poults to maturity. Once the turkeys reach a target weight, Perdue ships the turkeys to its processing plant in Washington, Indiana where they are slaughtered, processed, packaged, and shipped to in-state or out-of-state retail customers or to Perdue's out-of-state processing plants. During the year at issue, Perdue shipped 94% of the resulting product (i.e., turkey meat) out-of-state.

On or about May 15, 2003, Perdue timely filed personal property tax returns with each of the following township assessors in Dubois County: the Boone Township Assessor, the Cass Township Assessor, the Columbia Township Assessor, the Ferdinand Township Assessor, the Hall Township Assessor, the Harbison Township Assessor, and the Marion Township Assessor (collectively, the Assessors). Perdue subsequently filed amended personal property tax returns with each of the Assessors seeking an interstate commerce inventory exemption for 94% of the turkeys located at each of the Dubois County growing facilities. Each of Perdue's requests for the

exemption were denied, first by the appropriate township assessor and then by the Dubois County Property Tax Assessment Board of Appeals (PTABOA).

On February 17, 2004, Perdue appealed to the Indiana Board. On May 25, 2006, after conducting a hearing, the Indiana Board issued thirteen final determinations denying each of Perdue's requests for an exemption. Specifically, the Indiana Board determined that although Perdue was a processor when operating its processing plant, the turkeys located at each of the Dubois County growing facilities were not the inventory of the processing plant because Perdue's "turkey raising operations [were] separate and distinct from its turkey processing operations."¹ (See Cert. Admin. R. at 312-15 (footnote added).)

On July 7, 2006, Perdue initiated this original tax appeal. The Court heard the parties' oral arguments on April 9, 2007. Additional facts will be supplied as necessary.

STANDARD OF REVIEW

This Court gives great deference to final determinations of the Indiana Board when it acts within the scope of its authority. See *College Corner, L.P. v. Dep't of Local Gov't Fin.*, 840 N.E.2d 905, 907 (Ind. Tax Ct. 2006). Consequently, the Court will reverse a final determination of the Indiana Board only if it is:

- (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- (2) contrary to constitutional right, power, privilege, or immunity;
- (3) in excess of statutory jurisdiction, authority, or

¹ In other words, the Indiana Board concluded that Perdue was a processor entitled to an exemption on its turkeys once they arrived at its processing plant. Before that, however, Perdue was merely a farmer that was not entitled to exemption on its turkeys.

limitations, or short of statutory jurisdiction, authority, or limitations;

- (4) without observance of procedure required by law; or
- (5) unsupported by substantial or reliable evidence.

IND. CODE ANN. § 33-26-6-6(e)(1) - (5) (West 2007).

The taxpayer bears the burden of proving that it is entitled to the exemption it seeks. *Edgcomb Metals Co. v. Dep't of Local Gov't Fin.*, 762 N.E.2d 259, 262 (Ind. Tax Ct. 2002). Indeed, because exemptions release property from the obligation of bearing its fair share of the cost of government and disturb the equality and distribution of the common burden of government upon all property, they are strictly construed against the taxpayer and in favor of the State. *Id.* (internal quotation and citation omitted). Nonetheless, the Court will not read an exemption "so narrowly its application is defeated in cases rightly falling within its ambit." *Id.* (citation omitted).

DISCUSSION AND ANALYSIS

In Indiana, all tangible property is subject to taxation. See IND. CODE ANN. § 6-1.1-2-1 (West 2007). Nevertheless, the Indiana Constitution provides that the legislature may exempt certain categories of personal property from taxation. See IND. CONST. art. X, § 1(a)(2). Pursuant to this grant of authority, the legislature enacted Indiana Code § 6-1.1-10-29(b) that, during the year at issue, provided an interstate commerce inventory exemption on:

[p]ersonal property owned by a manufacturer or processor . . . if the owner is able to show by adequate records that the property . . . 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 ANN. § 6-1.1-10-29(b)(2) (West 2003).² In turn, Indiana Code § 6-1.1-3-11 defined “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 ANN. § 6-1.1-3-11(a) (West 2003).

In its appeal to this Court, Perdue asserts that the Indiana Board improperly denied it an exemption on its turkeys while they were located at the Dubois County growing facilities. More specifically, Perdue contends that the turkeys qualified for the exemption because it owns them as inventory and will subsequently process them at its Washington processing plant. (See Pet’r Br. at 20-23.)

The Assessors, on the other hand, maintain that Perdue’s turkeys did not qualify for the exemption. More specifically, the Assessors contend that because the turkeys were located at agricultural sites (i.e., the growing facilities) and reported on farming tangible personal property tax returns, they are “farming inventory.” (See Resp’ts Br. at 18-20.) In turn, the Assessors assert that Perdue’s turkeys are taxable because Indiana Code § 6-1.1-10-29 does not specifically exempt “farming inventory” from taxation. (See Resp’ts Br. at 20.) The Assessors, however, are incorrect.

The plain language of Indiana Code § 6-1.1-10-29(b)(2) exempts inventory, as defined by Indiana Code § 6-1.1-3-11, owned by a manufacturer or processor that *will*

² Prior to January 1, 2003, only finished inventory qualified for an exemption under Indiana Code § 6-1.1-10-29. See *Monarch Steel Co. v. State Bd. of Tax Comm’rs*, 699 N.E.2d 809, 811 (Ind. Tax Ct. 1998) (explaining that “inventory that [was] located in Indiana [was exempted from taxation] if that inventory [was] in Indiana merely to be packaged or [was] simply in transit to a final destination and [was] kept in its original package”) (footnote omitted).

be used in manufacturing or processing operations. See A.I.C. § 6-1.1-10-29(b)(2) (emphasis added). Moreover, the plain language of Indiana Code § 6-1.1-3-11(a) does not indicate that personal property loses its status as inventory merely because it is not located at the processing or manufacturing site. See A.I.C. § 6-1.1-3-11. Rather, Indiana Code § 6-1.1-3-11 requires only that inventory be “*held* for processing or for use in production[.]” See *id.* (emphasis added).

Perdue’s evidence clearly established that it owned and held its turkeys for the sole purpose of processing them into meat. Perdue also established that it subsequently processed, packaged, and shipped 94% of that turkey meat out-of-state. (See Cert. Admin. R. at 1044-46.) Thus, the turkeys located at the Dubois County growing facilities were inventory (i.e., raw materials held for future processing); *otherwise, Perdue would have nothing to process.* Therefore, Perdue’s evidence overwhelmingly established that its turkeys qualified for the interstate commerce inventory exemption provided under Indiana Code § 6-1.1-10-29(b)(2).³

CONCLUSION

Given that the Indiana Board’s final determinations were not in accordance with the law and consequently were unsupported by substantial evidence, the Court REVERSES each of the Indiana Board’s final determinations. The Court hereby REMANDS this matter to the Indiana Board to instruct the appropriate local assessing officials to grant the exemption on 94% of Perdue’s turkeys located at each of the Dubois County growing facilities.

³ The Court notes that Perdue alternatively argues that the Indiana Board erred when it determined that its turkey raising activities did not constitute processing for purposes of Indiana Code § 6-1.1-10-29(a). Given the Court’s holding today, however, the Court need not address this issue.