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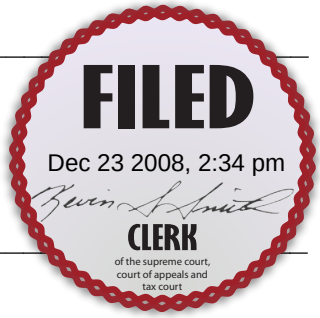

IN THE INDIANA TAX COURT

STUDEBAKER BUICK PONTIAC GMC, INC.,	)	
Petitioner,	)	
v.	)	Cause No. 49T10-0612-TA-105
WAYNE TOWNSHIP ASSESSOR (WAYNE COUNTY, INDIANA),	)	
Respondent.	)	

ON APPEAL FROM A FINAL DETERMINATION OF
THE INDIANA BOARD OF TAX REVIEW

NOT FOR PUBLICATION
December 23, 2008

FISHER, J.

Studebaker Buick Pontiac GMC, Inc. (SBPG) challenges the final determination of the Indiana Board of Tax Review (Indiana Board) valuing its personal property for the March 1, 2005 assessment date (period at issue). The issue for the Court to decide is whether the new and used vehicles that SBPG sold to out-of-state customers qualified for the interstate commerce exemption provided in Indiana Code § 6-1.1-10-29(b)(2).

FACTS AND PROCEDURAL HISTORY

SBPG, an automobile dealership located in Richmond, Indiana, sells new and used automobiles to customers within and without the State. SBPG acquires its inventory of new vehicles from General Motors (GM), an automobile manufacturer, and it obtains a portion of its inventory of used vehicles from customer "trade-ins."

For the period at issue, SBPG timely filed its business tangible personal property return, claiming an interstate commerce exemption on the new and used vehicles it sold to out-of-state customers. On or about May 25, 2005, the Wayne Township Assessor of Wayne County, Indiana (Assessor) issued a "Notice of Assessment Change" (Form 113/PP) to SBPG disallowing the exemption.

SBPG initially challenged the exemption denial with the Wayne County Property Tax Assessment Board of Appeals, and then with the Indiana Board on October 19, 2005. On August 8, 2006, the Indiana Board held a hearing on the matter. During the hearing, SBPG claimed that it was a "processor" for purposes of the interstate commerce exemption because its inspection of those vehicles, transformed them from unsalable vehicles into salable vehicles.

On October 19, 2006, the Indiana Board issued its final determination denying SBPG's request for the exemption. The Indiana Board concluded that SBPG's evidence did not demonstrate that it was a processor because its inspections did not transform unsalable vehicles into salable vehicles. (*See* Cert. Admin. R. at 21-25.)

On December 4, 2006, SBPG initiated this original tax appeal. The Court heard the parties' oral arguments on December 10, 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 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 2008). The party seeking to overturn the Indiana Board's final determination bears the burden of proving its invalidity. *Osolo Twp. Assessor v. Elkhart Maple Lane Assocs.*, 789 N.E.2d 109, 111 (Ind. Tax Ct. 2003).

DISCUSSION AND ANALYSIS

In Indiana, all tangible property is subject to taxation. *See* IND. CODE ANN. § 6-1.1-2-1 (West 2008). Nevertheless, the Indiana Constitution provides that the legislature may exempt certain categories of personal property from taxation. *See* IND. CONST. art. X, § 1(a). Pursuant to this grant of authority, the legislature enacted Indiana Code § 6-1.1-10-29(b) which, during the period at issue, exempted:

> [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 2005) (repealed 2008) (hereinafter, the interstate commerce exemption).[1] In turn, a "manufacturer" or a "processor" was defined as "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." *Id.* at (a).

On appeal, SBPG argues that the Indiana Board's final determination should be reversed because it erroneously concluded that its inspection activities did not constitute processing/production. (Pet'r Br. at 5, 13-14; Pet'r Reply Br. at 1-2.) More specifically, SBPG contends that the Indiana Board crafted a definition of production that was artificially narrow. (*See* Pet'r Reply Br. at 4-6.) According to SBPG, under Indiana law, the concept of production is broad and therefore "includes *all* activities that place products in their final, most marketable form." (Pet'r Reply Br. at 1, 4-6.) In turn, SBPG claims that its inspections of both new and used vehicles constituted the "final step" in GM's production process because GM would not allow it to sell the vehicles to customers until the inspections were performed. (*See* Pet'r Br. at 1, 10; Pet'r Reply Br. at 5.) SBPG maintains that the Indiana Board merely discounted the transformational effect of its inspections because there were no "eye-popping" results. (*See* Reply Br. at

[1] Prior to January 1, 2003, only finished inventory qualified for the interstate commerce exemption. *See* P.L. 192-2002(ss), § 30 (amended the statute by inserting the language in subsection (b)(2)) (eff. 1-1-2003). *See also Monarch Steel Co. v. State Bd. of Tax Comm'rs* (*Monarch V*), 699 N.E.2d 809, 811 (Ind. Tax Ct. 1998) (providing that "a taxpayer [was] entitled to the exemption only if the taxpayer [did] no processing of the inventory when it [was] in Indiana").

6.) Therefore, SBPG claims it demonstrated that the vehicles it sold to out-of-state customers qualified for the interstate commerce exemption. The Court, however, must disagree.

In Indiana, the concept of production for purposes of exemptions is, admittedly, broadly defined. *See, e.g., Indianapolis Fruit Co. v. Dep't of State Revenue*, 691 N.E.2d 1379, 1383-84 (Ind. Tax Ct. 1998) (explaining that at times "[a] finding that production is taking place will often lead to a taxpayer receiving an exemption for activity that, standing alone, [would] not constitute production").[2] Indeed, a taxpayer who seeks to demonstrate that it is a processor for purposes of the interstate commerce exemption is not required to show that its activities resulted in "eye-popping" transformations. *See, e.g., Monarch Steel Co. v. State Bd. of Tax Comm'rs* (*Monarch II*), 545 N.E.2d 1148, 1152-53 (Ind. Tax Ct. 1989) (where cutting a piece of steel into a smaller piece of steel per a customer's order constituted processing). Nevertheless, when a taxpayer claims, as SBPG has done here, that its activities constituted the last step in a vehicle's production process, it must have presented sufficient evidence demonstrating that the vehicles, subsequent to the inspections, differed from their original states or forms. *See* A.I.C. § 6-1.1-10-29(a)-(b). *See also Indianapolis Osteopathic Hosp., Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax. Ct. 2004) (providing that the taxpayer bears the burden of proving that it is entitled to the exemption that it seeks) (citation omitted), *review denied*.

During the administrative hearing, SBPG explained that its inspection activities

[2] Given that SBPG has primarily relied upon cases interpreting production/processing in the sales and use tax context, the Court, assumes (for argument's sake only) that those cases are applicable in this matter.

constituted the "final step" of GM's production process because GM provided it with checklists to facilitate these inspections, paid it to perform the inspections, periodically sent a representative to verify that the inspections were performed, and would not allow it to sell the vehicles until the inspections had been performed. (*See* Cert. Admin. R. at 52-53, 193-94, 203-08.) SBPG also explained that it followed those checklists when it performed the inspections, by *inter alia*, adjusting the vehicles' tire pressures, checking and occasionally adjusting their fluid levels, and repairing minor scratches or dents when detected. (*See* Cert. Admin. R. at 52-53, 195-202.)

SBPG's evidence demonstrates several things. First, it demonstrates that the inspections were designed to ensure that new vehicles with minor damages were not placed on the market pre-repair because doing so would affect GM's "competitive edge" in the automotive industry. Second, it demonstrates that SBPG inspected the vehicles to ensure that it did not receive a new vehicle that had sustained severe damage during the shipment process. Third, it demonstrates that SBPG inspected used vehicles in order to increase its profit margin by selling those vehicles with GM certified used car warranties. (*See* Cert. Admin. R. at 19.) Fourth, and most importantly, it demonstrates that these inspections were designed to ensure that SBPG returned new vehicles to their pre-shipment/original condition before selling them to customers. Stated differently, SBPG's evidence primarily demonstrates that it restored vehicles with minor damage to the same condition they were in prior to shipment from GM's final assembly plant.

The totality of SBPG's evidence demonstrates that the inspections were related to GM, in general, but it does not demonstrate that the inspections constituted the "final

step" in the vehicle's production process. *See, e.g., General Motors Corp. v. Indiana Dep't of State Revenue*, 578 N.E.2d 399, 404 (Ind. Tax Ct. 1991), (holding that GM's integrated production process concluded "upon the production of the most marketable finished product," i.e., a fully assembled automobile, given that it actually markets this product), *aff'd by* 599 N.E.2d 588 (Ind. 1992). When a taxpayer merely returns a good to its original state, production does not occur because it has not altered the good or created a distinct marketable product. *Cf., e.g., Mechanics Laundry & Supply, Inc. v. Indiana Dep't of State Revenue*, 650 N.E.2d 1223, 1229-30 (Ind. Tax Ct. 1995) (where the laundering of shirts did not constitute production because the shirts were only returned to their original form, i.e., clean shirts) *with Rotation Prods. Corp. v. Dep't of State Revenue*, 690 N.E.2d 795, 802-04 (Ind. Tax Ct. 1998) (where the remanufacturing of roller bearings constituted production because used roller bearings with little to no market value were transformed into marketable roller bearings).[3] Consequently, the Court cannot say that the Indiana Board's final determination was improper.

[3] SBPG also claimed that its inspection activities transformed unsalable vehicles into salable vehicles. (*See* Cert. Admin. R. at 238-42.) The Indiana Board, however, concluded that SBPG had not submitted sufficient evidence to support that claim. (*See* Cert. Admin. R. at 24 (providing that "[t]he testimony that [SBPG's] actions were necessary to have a saleable product was conclusory" and lacked probative value because it "does not establish that [SBPG's] relatively minor activities changed the vehicles into a final saleable product").) Thus, the Indiana Board either afforded little weight to that testimony or disregarded it in its entirety.

SBPG has not challenged this conclusion on appeal; instead, it has incorrectly argued that the Indiana Board "expressly accepted the facts presented by [its] evidence." (*See* Pet'r Reply Br. at 1, 3.) The Court, therefore, must conclude that SBPG failed to demonstrate that its vehicles were unsalable before it inspected them. *See, e.g., Davidson Indus. v. State Bd. of Tax Comm'rs,* 744 N.E.2d 1067, 1071 (Ind. Tax Ct. 2001) (stating that the Court will not make a taxpayer's case for it). *See also* Ind. Appellate Rule 46(A)(8)(a) (providing that the petitioner's brief shall state its contentions why the administrative agency committed reversible error and support those contentions with cogent reasoning and citations to authorities and statutes).

CONCLUSION

For the above stated reasons, the Indiana Board's final determination is affirmed.