

**OHIO BOARD OF TAX APPEALS**

Progressive Plastics, Inc., )  
 )  
 Appellant, ) (CASE NO. 2006-M-1043  
 ) (PERSONAL PROPERTY TAX)  
 )  
 vs. )  
 ) (DECISION AND ORDER  
 )  
 William W. Wilkins, )  
 Tax Commissioner of Ohio, ) **Affirmed on Appeal April 30, 2009**  
 ) **Cuyahoga County Court of Appeals # 91614**  
 )  
 Appellee. ) **2009-Ohio-2033**

APPEARANCES:

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Entered May 13, 2008

Ms. Margulies, Mr. Eberhart, and Mr. Dunlap concur.

This cause and matter comes to be considered by the Board of Tax Appeals upon a notice of appeal filed on August 11, 2006. Appellant challenges a final determination of the Tax Commissioner, appellee, dated June 22, 2006 wherein the Tax Commissioner denied certain claims made through a petition for

reassessment. The Tax Commissioner's final determination is incorporated herein. The tax year in issue is 2003.

Appellant, Progressive Plastics, Inc. ("Progressive"), claims that the Tax Commissioner's final determination had the effect of unreasonably and unlawfully increasing its personal property tax liability and cites the following as error: the Tax Commissioner increased the listed value of Progressive's inventory; the Tax Commissioner denied an exemption from taxation for certain items Progressive claims qualify as dies; and, finally, the Tax Commissioner included the value of property that had been removed from service prior to the tax year in issue.

Progressive is a manufacturer of plastic bottles used in several industries, including pharmaceuticals, housewares, cosmetics, and food and beverage. S.T. at 278. An examination of Progressive's personal property tax returns for years 2002 and 2003 revealed a "LIFO Reserve Account" that did not appear to have been included in the reported inventory values. As a result, an audit assignment was issued.

Through that audit, the Tax Commissioner's agent concluded that Progressive employed the "Last-In, First-Out" ("LIFO") method of reporting inventory for accounting and federal income tax purposes. This reporting method results in a higher cost of goods sold and thereby reduces Progressive's net income for tax purposes. The agent concluded that a different method of inventory accounting, the "First-In, First-Out" ("FIFO") method more accurately valued Progressive's

inventory for personal property tax purposes. The agent arrived at value by adding Progressive's "LIFO Reserve Account" to the reported inventory values.

The Tax Commissioner's agent also identified two additional issues through the audit. Certain property used in the manufacturing process had been excluded from taxation under the theory that the property met the definition of dies. The Tax Commissioner's agent concluded that the property did not so qualify. Finally, Progressive had excluded the value of certain computer software programs. The Tax Commissioner's agent concluded that the exclusion was in error. Progressive challenged the agent's findings through the Tax Commissioner's review process. Dissatisfied with the Tax Commissioner's affirmance of his auditor's findings, Progressive filed an appeal with this board.

The matter is considered upon the notice of appeal and the statutory transcripts certified by the Tax Commissioner. In lieu of hearing, the parties, by joint stipulation, submitted the discovery deposition of Tax Commissioner Agent Richard E. Shank and former Tax Commissioner Agent Douglas Basista. The parties also provided legal argument to assist the board.

As a general rule, the findings of the Tax Commissioner are presumed to be valid. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121. The taxpayer challenging a finding of the Tax Commissioner must rebut the presumption and establish a right to the relief requested. *Hatchadorian v. Lindley* (1986), 21 Ohio St.3d 66; *Belgrade Gardens v. Kosydar* (1974), 38 Ohio St.2d 135; *Midwest Transfer*

*Co. v. Porterfield* (1968), 13 Ohio St.2d 138. Moreover, the taxpayer is assigned the burden of showing in what manner and to what extent the Tax Commissioner's determination is in error. *Kern v. Tracy* (1995), 72 Ohio St.3d 347; *Federated Dept. Stores, Inc. v. Lindley* (1983), 5 Ohio St.3d 213. Where no competent and probative evidence is developed to this board by the appellant to show that the Tax Commissioner's findings are incorrect, then the Board of Tax Appeals must affirm the Tax Commissioner's findings. *Kern, supra*; *Kroger Co. v. Limbach* (1990), 53 Ohio St.3d 245; *Alcan Aluminum Corp., supra*.

The board now considers Progressive's specifications of error.

#### Inventory Valuation

Progressive first asserts that it was error on the part of the Tax Commissioner to revalue its inventory under the FIFO method. For the tax year in issue, Progressive employed the LIFO method of reporting inventory for accounting and federal income tax purposes. This reporting method presumes that the last items purchased are the first sold. Presumably, the last items purchased will be more expensive than the first items purchased. For example, if a manufacturer purchases a raw material which is increasing in cost, the cost to purchase/manufacture an item in which the raw material is a component is higher when the later supply of the raw material is used. This higher "cost of goods sold" results in a lower net income, as the cost of goods sold is subtracted from sales price to calculate net income.

As opposed to the LIFO method described above, FIFO contemplates that the first inventory purchased or manufactured is the first sold. If a manufacturer uses the first purchase of a particular raw material to determine its costs, then the cost to manufacture the item is lower (resulting in a higher net income), but the more expensive raw material remains in inventory. For personal property tax purposes, the value of the inventory on hand is the critical inquiry. R.C. 5711.16 reads in pertinent part:

“A person who purchases, receives or holds personal property for the purpose of adding to its value by manufacturing, refining, rectifying or combining different materials with a view of making a gain or profit by so doing is a manufacturer. When such person is required to return a statement of the amount of his personal property used in business he shall include the average value, estimated as provided in this section, of all articles purchased, received or otherwise held for the purpose of being used, in whole or in part, in manufacturing \*\*\*, which he has had on hand during the year ending on the day such property is listed for taxation annually, \*\*\*.

“The average value of such property shall be ascertained by taking the value of all property subject to be listed on the average basis, owned by such manufacturer on the last business day of each month the manufacturer was engaged in business during the year, adding the monthly values together and dividing the result by the number of months the manufacturer was engaged in such business during the year. The result shall be the average value to be listed.”

R.C. 5711.18 provides a definition for value:

“\*\*\* In the case of personal property used in business, the book value thereof less book depreciation at such time shall be listed, and such depreciated book value shall be taken as the true value of such property, unless the assessor

finds that such depreciated book value is greater or less than the then true value of such property in money.”

The true value of such property is further determined with regard to personal property as the price to be paid by a willing buyer and a willing seller, neither acting out of compulsion or duress. *Grabler Manufacturing Co. v. Kosydar* (1975), 43 Ohio St.2d 75.

It is clear from the record that the Tax Commissioner believes the FIFO method of valuing inventory most closely approximates the true value of the inventory on hand as of tax listing day. The agent’s remarks indicate that Progressive’s inventory accounting was the original reason for the audit assignment. S.T. at 278. The deposition of Douglas Basista confirms that he was instructed to research the method of inventory valuation. Douglas Basista Deposition, at 21. Progressive argues that when a manufacturer’s books and records are kept in accordance with generally accepted accounting principles, the Tax Commissioner must have a reason for opting for another method of valuing inventory, and that reason must be based upon something more than instruction to his agents. Progressive claims that the Tax Commissioner was required to make a finding that its book value did not accurately capture the value of its inventory. Without such a finding, Progressive argues, its inventory valuation must be accepted.

The Tax Commissioner counters that the courts have found the LIFO method of accounting to yield unrealistic values for inventory. The Tax

Commissioner then relies on the general obligation of a taxpayer when challenging a determination of the Tax Commissioner, arguing that Progressive failed in its burden.

Both parties cite case law that each side believes strengthens its respective position. Progressive relies most heavily upon *Dick Masheter Ford, Inc. v. Lindley* (Nov. 4, 1986), Franklin App. Nos. 86 AP-435-438, unreported. Like in the present matter, the Tax Commissioner's agent in the cited appeal amended the taxpayer's personal property tax reported by adding a LIFO reserve account to the taxpayer's reported inventory values. The appellate court ultimately concluded that the add-back did not accurately value the taxpayer's inventory. However, that conclusion was drawn from testimony presented before this board. Progressive offers that case in support of its proposition that the Tax Commissioner must accept the books and records of a taxpayer unless he makes a reviewable finding that the books and records do not accurately capture value. However, the facts of that case suggest the opposite. The first assignment of error in *Dick Masheter Ford, Inc.* provides:

“The Board of Tax Appeals erred in failing to rule that the ‘true value’ of appellant’s inventory for purposes of taxation under R.C. Chapter 5711 was equivalent to the book value derived by the last-in-first-out (‘LIFO’) accounting method.” *Id.* at 2.

The court later explained, “The first assignment of error in essence suggests that Dick Masheter Ford, Inc. supplied the accurate figures for inventory in its original returns.” *Id.* However, the court eventually found that this board did not err in refusing to accept the original computations purportedly based upon the LIFO theory:

“After carefully reviewing all of the above evidence, the court cannot help but note that by Dick Masheter Ford, Inc.’s, own admission, its personal property tax returns do not properly reflect inventory figures on a month-to-month basis. The more detailed computation conducted by the controller for the tax years 1979 and 1980 reflects a significant difference from the original reported figures. Thus the Board of Tax Appeals did not err in refusing to accept appellant’s computation purported to be based upon a pure LIFO theory.” Id. at 8.

Progressive now asks this board to do what was rejected in the cited case – accept its return as accurate because it is equivalent to the book value derived by the LIFO accounting method. We do not find *Dick Masheter Ford, Inc.* offers support for its claim.

The Ohio Supreme Court has also held to the contrary. In *Champion Spark Plug Co. v. Lindley* (1983), 6 Ohio St.3d 56, the property owner had reported inventory values for a wholly owned subsidiary under the LIFO method, as such method was the manner in which it reported the inventory values on the books and records of the corporation. The Tax Commissioner revalued the inventory using the FIFO method of valuation. The taxpayer argued its books and records were prima facie evidence of value. The court disposed of this argument by referring to R.C. 5711.21, which provides that when assessing taxable property at its true value, the assessor must be guided by “the statements contained in the taxpayer’s return *and* such other rules and evidence as will enable the assessor to arrive at such true value.” Again, the taxpayer was required to provide evidence as to why its method of valuing

inventory more accurately captured true value than the method required by the Tax Commissioner.

Thus, we find Progressive's claim that its report must be taken as the true value if the book value is based upon generally accepted accounting principles is not supported by either statute or case law. The Tax Commissioner, as the assessor, may conclude from the taxpayer's return *and* other rules and evidence that another method of inventory valuation more accurately captures value. In this case, the Tax Commissioner concluded that the FIFO method of valuation was a better indicator of value. To calculate that value, the Tax Commissioner employed Progressive's books and records and included its own "LIFO Reserve" account. If Progressive believes the Tax Commissioner's assessment does not accurately capture the true value of its property, it is required to challenge the value as assessed. *Dick Masheter Ford, Inc.*, *supra*; *Champion Spark Plug Co.*, *supra*. The case of *R.H. Macy Co., Inc. v. Schneider* (1964), 176 Ohio St. 94, clearly explains the process:

"The law does not require the owner of personal property used in business to adopt any particular method of accounting in determining the book value of his inventory. For the purpose of the operation of its business, appellant may, in determining book value, adopt any sound and generally recognized method of accounting it chooses. Paragraph five of the syllabus of *National Tube Co. v. Peck, Tax Commr.*, 159 Ohio St., 98. *However, such determination of book value by the taxpayer, although it shall be taken as the true value of such property at the time of listing, is subject to the tax assessor's finding that such depreciated book value is greater or less than the then true value of such property in money.*" *Id.* at 96. (Emphasis added.)

Progressive does not rest solely upon its argument that its books and records control. Progressive also claims that it submitted evidence to the Tax Commissioner demonstrating that the LIFO method most accurately reflects the true value of its inventory. That “evidence” consists of an affidavit of Rome P. Busa, Jr., the chief operating officer and chief financial officer of Progressive. Through that affidavit Mr. Busa avers to the movement of product in the warehouse. Mr. Busa avers<sup>1</sup>:

“6. Progressive Plastics’ inventory is stored in the warehouse in approximately 200 separate rows, with each row containing separately packaged inventory extending some 20 feet from floor to ceiling.

“7. As new products are manufactured, the new products are added to Progressive Plastics’ inventory already stored in the warehouse. The new inventory is placed in front of, on top of, or beside the inventory that is already stored in the warehouse.

“8. As a practical matter, as a customer purchase order is required to be filled, employees of Progressive Plastics may periodically draw upon the items of inventory that are most readily accessible to the employee.

“9. In addition to the impracticality of ensuring that the specific items of inventory used to fill purchase orders of customers are the oldest bottles produced, customer

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<sup>1</sup> Affidavits, submitted in lieu of testimony at hearing, preclude cross-examination of the affiant. However, once such affidavits are received into evidence, they may be considered by a reviewing tribunal as other evidence. *Oakbrook Realty Corp. v. Blout* (1988), 48 Ohio App. 3d 69; *In re Rea* (1989), 61 Ohio Misc. 2d 732, 740-742. Nevertheless, the consideration of affidavits presented to the Tax Commissioner and submitted to this board as a part of the statutory transcript are not automatically accorded evidentiary weight. See *Am. District Telegraph Co. v. Porterfield* (1968), 15 Ohio St.2d 92 (holding the Board of Tax Appeals did not unreasonably or unlawfully exclude evidence in the form of affidavits because there was no opportunity for cross-examination); *Painter v. Zaino* (Sept. 1, 2000), BTA No. 2000-K-81, unreported (holding the mere fact that an affidavit is included within a statutory transcript fails to bolster its evidentiary value on appeal).

requests often dictate that a purchase order be filled with newly manufactured bottles.

“10. Based upon my years of experience with Progressive Plastics and my intimate knowledge of the manufacturing, distribution, sales and storage of Progressive Plastics products, I unequivocally state that the true value of Progressive Plastics inventory is not based exclusively on the FIFO valuation method.” S.T., at 262.

The affidavit presented provides this board with no corroborating evidence of value.

In *Howard Paper Mills, Inc. v. Lindley* (July 23, 1979), BTA No. 1978-E-128, unreported, the board had before it a challenge of the Tax Commissioner’s assessment of a paper manufacturer’s inventory. The paper manufacturer employed the LIFO method on its books and records, but the Tax Commissioner assessed under the FIFO method. The board noted that the only evidence the taxpayer offered to establish the true value of its inventory was the fact that it used LIFO for income tax and financial statement purposes. The board held:

“Although the appellant tries to place the burden on the Tax Commissioner to show that FIFO inventory method values reflect true value, the burden of proof is upon the taxpayer. In the personal property tax case of *Higbee v. Evatt*, 140 Ohio St. 325 (1942), the Supreme Court at page 332 stated:

“But the burden is upon a taxpayer to prove his right to a deduction and he is not entitled to the full amount of deduction claimed merely because no evidence is adduced contra his claim. On the record presented there was a question of fact to decide.” *Id.* at 12. (Emphasis added.)

The board's determination was affirmed by the Montgomery County Court of Appeals in *Howard Paper Mills, Inc. v. Lindley* (Jan. 14, 1980), Montgomery App. No. CA 6522, unreported:

“The first question is whether the affirmance of the Commissioner's determination of the true value of taxpayer's inventory was reasonable.

“As appears in the decision of the Board and in the notice of appeal to this court the issue is not one of the weight of the of the [sic] evidence but whether there was error in ruling that the LIFO (last in-first out) book value of the taxpayer's inventory, as reflected on the books of the taxpayer was not the true value and in ruling that the FIFO (first in-first out) book value was the true value.

“In the golden days of stable prices there was little, if any difference between the cost or value of the first and the last items entered into an inventory. With inflation or depression the disparity between the cost of the individual items changes according to the date acquired; however, their true value as of the date of an inventory may be and usually is somewhat different. There is no situation more common than the repeated markings on staples on the shelf of a grocery store indicating that the price on the same item has been increased several times before it left the shelf. While this example of a retail outlet is inappropriate, the principle is the same.

“With constant increases in dollar value brought on by inflation the LIFO method of estimating the value of inventories became a popular accounting method of estimating the value of the inventory because the higher cost reduced taxes on income and left the lower cost first-in theoretically still in the inventory, thereby reducing personal property taxes indefinitely. FIFO and LIFO are accounting theories and practices. *Neither method is a substitute for an expensive physical appraisal and inventory of actual value, regardless of the time of acquisition.* Property taxes are levied upon true value and

not upon estimated book value determined by a choice of an accounting practice preferred by the taxpayer.

“Major business operations select one of several accounting methods to value inventories. Some conduct an actual physical inventory, on a cost, retail or market price adjusted to the business. At times an actual independent appraisal of value is made. Another method reduces the retail price by the percentage of the mark up as in *R.H. Macy Co., Inc. vs. Schneider*, 176 Ohio St. 94. As recognized in the *Macy* case, the LIFO method gives rise to an unrealistic picture of the inventory value. p. 97. Of the choice of methods involved in the instant case the FIFO comes closer to actual business practice of moving the older inventory first than does LIFO, which if accurately followed would never move the older items until the inventory was completely exhausted.

“We agree with the Board that where the evidence indicates that the LIFO method was used as the choice of the taxpayer in determining the value of the inventory, the FIFO alternative is more accurate and more closely approximates the actual true value.

“However, it is not necessary that this court approve any particular method to be used. It is sufficient here to determine that in this case the decision to use the FIFO method was not arbitrary or unreasonable and was not outside the discretion of the Tax Commissioner.” *Id.* at 2-4. (Emphasis added.)

Without some evidence that the inventory is more accurately valued in accordance with the method proposed by Progressive, this board cannot find that Progressive met its burden in this claim of presenting competent and probative evidence of an error.

#### Extrusion Heads and Screws

Progressive claims that the value carried on its books and records attributable to extrusion heads and screws should be exempt from personal property

tax as the heads and screws qualify as dies. Progressive claims that the extrusion screws and heads are an integral part of the extrusion blow molding process and qualify for the exemption found in R.C. 5701.03(A).

Progressive's claim is dependent upon an understanding of the extrusion blow molding process. The following manufacturing process is gleaned from the statutory transcript. Generally, three major molding processes are used to produce a bottle: extrusion, injection, and stretch. All three methods begin with polymer pellets being placed into a hopper. The pellets then enter piping where the pellets are melted and pushed by use of an extrusion screw. Extrusion screws are not fixed within the piping, but are able to be changed based upon the product being manufactured. As the pellets are heated and pushed, the pellets melt and become viscous. When reaching the proper temperature and viscosity, a metered amount of material is forced through the end of the piping, becoming an unmolded piece of plastic called a parison. The parison is then surrounded by two sides of a form. The top is pinched and air is forced into the parison to create a cavity while the outside is formed by the molds. Once cooled, the bottle is removed from the molds and the process begins again.

R.C. 5701.03(A) provides:

“As used in Title LVII [57] of the Revised Code:

“(A) ‘Personal property’ includes every tangible thing that is the subject of ownership, whether animate or inanimate, \*\*\*. ‘Personal property’ does not include \*\*\* patterns, jigs, dies, or drawings that are held for use and not for sale in the ordinary course of business, except to the extent that

the value of the \*\*\*, patterns, jigs, dies, or drawings is included in the valuation of inventory produced for sale.”

Progressive claims that the extrusion heads and screws meet the R.C. 5701.03(A) exemption as dies. Progressive describes an extrusion head as “the apparatus in which plastic resin pellets are melted through the application of heat and pressure.” Appellant’s brief at 24. Progressive describes extrusion screws as “three (3) foot to seven (7) foot cylinders of specialty tool steel with screw heads. The extrusion screw is inserted through a hole in the blow-molding machine and the screw is turned by the blow-molding machine’s motor. Id. at 24. The extrusion screws work on the resin and control flow.

In *A. Schulman, Inc. v. Levin* 116 Ohio St 3d 105, 2007-Ohio-5585, the court reviewed case law in which dies have been described:

“The court has variously described dies as (1) devices that “through applied force, impose their shape” on an object under production, *Timken Co. v. Lindley* (1985), 17 Ohio St.3d 85, 87, 17 OBR 208, 477 N.E.2d 1121, quoting the BTA, (2) “piece[s] of equipment or tooling that [are] capable of forming or creating a part, either by pressure or molding techniques,” *Gen. Motors Corp. v. Kosydar* (1974), 37 Ohio St.2d 138, 139, 66 O.O.2d 304, 310 N.E.2d 154, (3) devices that ‘form the desired metal, rubber or plastic part when pressure is applied by mechanical or hydraulic presses,’ id., (4) parts with ‘specially designed surfaces’ in a machine whose ‘sole purpose and use is to imprint or impress specially designed irregularities \* \* \* upon material placed in the machine,’ *Am. Book Co. v. Porterfield* (1969), 18 Ohio St. 2d 49, 53, 47 O.O.2d 164, 247 N.E.2d 290, and (5) special devices ‘which by their nature are capable of only special uses’ for impressing, shaping, or forming something, *Colonial Foundry Co. v. Peck* (1952), 158 Ohio St. 296, 301, 49

O.O. 132, 109 N.E.2d 11. Similarly, the BTA has defined a die as ‘a metallic appliance which, by means of pressure used in connection therewith, serves to give a desired shape or form to some softer material.’ *Cambridge Glass Co. v. Evatt* (1940), 19 O.O. 162, 164.” Id. at ¶9.

The definitions all describe devices which take some action upon the final product by impression or force. Progressive argues that the extrusion heads and screws accomplish the same purpose of shaping or forming through the exertion of force and therefore should be granted exemption.

We first note that this board has no testimony whatsoever on the use and/or purpose of the extrusion heads and screws in issue in this appeal. The items are described by the Tax Commissioner in his final determination and by Progressive in its petition for reassessment where it provided a general description of the blow molding process and included some pictures of extrusion heads and screws. Therefore, our understanding of these devices is gleaned from the limited record.

In *A. Schulman* the court concluded that the barrel and screw devices that simply pushed a product to the point at which it was forced through a die attached to the end of the barrel did not qualify for exemption under R.C 5701.03(A). The court explained that the barrel and screw devices had no specially designed surfaces and would stay the same even if the end fittings, or dies, would be changed to vary the size for a particular customer.

It is this finding, Progressive argues, that distinguishes the holding in *A. Schulman* from the present case. Progressive argues that its extruder heads and

screws *are* product specific and must be changed when the ultimate product changes. The record contains pictures of both extrusion heads and screws. S.T. at 36-42. The record also contains an “extrusion head analysis.” Progressive suggests that for the 14 extrusion blow molding machines in use during a one-year period, 293 different molds were used. Those 293 different molds required 326 head changes. S.T. at 35. Thus, Progressive argues, the extrusion heads and screws are product specific and qualify as dies.

This board disagrees. In *A. Schulman*, the court focused on whether the screws and barrels in issue participated in imposing a shape to the ultimate product manufactured. The court answered that question in the negative. The same holds true here. While there may be an additional obligation to change the extrusion heads and screws based upon the makeup of the mixture ultimately forced through, the actual imposing of a shape is done by a mold. S.T. at 25-34. The extrusion heads and screws work together to create the usable material necessary to form a mold, but do not participate in the formation process.

#### Computer Software

The final issue Progressive identifies is the inclusion of the cost of certain human resource software. Progressive’s original report identified the software as non-taxable application software. S.T., at 549. In *Andrew Jergens Co. v. Wilkins*, 109 Ohio St.3d 396, 2006-Ohio-2708, the Supreme Court held that “canned” or “off-the-shelf” software programs constitute tangible personal property which is subject to

personal property tax. Progressive conceded the taxability of application software before the Tax Commissioner, but, Progressive argued that the particular program identified as “FAS# 001181 – HR Software” has not been in use since 2000 when the software was replaced by the ABRA Human Resource Software. The ABRA Human Resource Software was originally excluded, but assessed by the Tax Commissioner as a part of the present assessment. S.T. at 281.

The Tax Commissioner refused to remove the software costs from the personal property assessment, as he found that the software was not written off Progressive’s books until September 2004. The Tax Commissioner then recognized that Ohio Adm. Code 5703-3-22 permits personalty that is held for disposal and rendered functionally inoperative to be valued at scrap value. However, the Tax Commissioner found:

“[A]lthough petitioner wrote that it purportedly purchased new software in the year 2000, it has not shown that it quit using the software at issue on that date.

“On the December 31, 2002 listing date at issue, the petitioner’s books included the software at issue as an asset. Thus the petitioner had not adjusted its books and financial records to reflect the reduction in the value of its software that it is seeking for tax purposes. The petitioner is asking the Department to ignore its asset values in its financial records, and make an adjustment that it had not made on its own books as of the December 31, 2002 listing date. It is well settled that a company is bound by its books and records. See *Rickenbacker Holding Corp v. Tracy* (Apr. 12, 1993), BTA No. 91-Z-709, unreported. The burden is on the taxpayer to show that its book value does not accurately reflect true value. *Gahanna Heights, Inc. v. Porterfield* (1968), 15 Ohio St.2d 189. In the instant

case, the petitioner has not shown that its books were incorrect.” S.T. at 5.

Progressive, by way of brief, argues that its failure to remove the costs of the abandoned software was understandable to the extent that the costs were believed to be excluded from personal property taxation. Indeed, the taxation of canned/customized software was not settled until the court’s determination in *Andrew Jergens*. See Tax Commissioner’s Information Release 2004-01, issued February 14, 2004. Progressive’s personal property tax report clearly lists two human resource software packages, one purchased in November 1994 and one purchased in January 2000. S.T. at 549. Thus, Progressive’s claim is supported by its tax return. The board concludes that the Tax Commissioner had sufficient evidence that the software program had been removed from use as of the end of 2003. Thus the cost of the software should be removed from the assessment.

Considering the record in these matters, the statutes, and case law, it is the order of the Board of Tax Appeals that Tax Commissioner’s final determination is modified in accordance with the determination herein.