

REPRESENTATIVE FOR PETITIONER: Todd Churchward, Baden Tax Management
Fort Wayne, Indiana

REPRESENTATIVES FOR RESPONDENT: Raymond Lucken, Dubois Co. Assessor
Natalie Jenkins, Dubois Co. PTABOA
Greg Abell, Dubois Co. PTABOA
Del Steinhart, Bainbridge Twp. Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

JOFCO INC.)	Petition No.: 19-018-04-1-7-00006
)	
Petitioner,)	Personal Property
)	
v.)	County: Dubois
)	
BAINBRIDGE TOWNSHIP ASSESSOR,)	Township: Bainbridge
DUBOIS COUNTY PROPERTY TAX)	
ASSESSMENT BOARD OF APPEALS,)	Assessment Year: 2004
)	
Respondents.)	

Appeal from the Final Determination of
Dubois Property Tax Assessment Board of Appeals

December 28, 2005

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the facts and evidence presented in this case. The Board now enters its findings of fact and conclusions of law on the following issue:
Should JOFCO get an abnormal obsolescence adjustment for its tangible personal property?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Hearing Facts and Other Matters of Record

1. JOFCO, Inc. (JOFCO, Petitioner), timely filed business tangible personal property returns (Form 103) for 2004. JOFCO reported an assessed value of \$1,756,413. This value included a \$534,450 adjustment for abnormal obsolescence.
2. On or about June 28, 2004, the Bainbridge Township Assessor (Assessor) mailed a Notice of Assessment/Change (Form 113/PP) to JOFCO denying the abnormal obsolescence claims, and increasing the business personal property assessment to \$2,375,180.
3. Pursuant to Ind. Code § 6-1.1-15-1, JOFCO filed a Form 130 petition to the Dubois County Property Tax Assessment Board of Appeals (PTABOA) appealing Bainbridge Township's action. JOFCO filed the Form 130 on July 19, 2004. This petition changed the amount of abnormal obsolescence to \$615,401.
4. At the hearing, the Petitioner stated that it changed the amount of abnormal obsolescence from the original request because sales data for 2004 had been finalized between the filing of the Form 103 and the filing of the Form 130.
5. On Sept. 1, 2004, the PTABOA held a hearing on the matter. On Sept. 15, 2004, it issued a determination that denied the abnormal obsolescence adjustment. The assessed value was unchanged.
6. Pursuant to Ind. Code § 6-1.1-15-3, JOFCO then filed a Form 131 petition, seeking further review and an assessed value of \$1,759,779. The Form 131 petition was filed timely September 24, 2004. It requested abnormal obsolescence in the amount of \$615,401. This amount is identical to the amount requested on the Form 130, but is more than claimed on the Form 103.

7. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was held on August 11, 2005, in Jasper, Indiana. Rick Barter, the duly designated Administrative Law Judge (the ALJ) authorized by the Board under Ind. Code § 6-1.5-3-3, presided at the hearing.
8. The following persons were sworn and presented testimony at the hearing:
 - Todd Churchward, Baden Tax Management,
 - Greg Hochgesang, JOFCO, Inc.,
 - Del Steinhart, Bainbridge Township Assessor,
 - Raymond Lueken, Dubois County Assessor,
 - Natalie Jenkins, Dubois County PTABOA,
 - Greg Abell, Dubois County PTABOA.
9. The following exhibits were presented by the Petitioner:
 - Petitioner's Exhibit 1 – Summary of contentions and regulations,
 - Petitioner's Exhibit 2 – Computation summary of Inutility Penalty ,
 - Petitioner's Exhibit 3 – Copy of pages 99 through 104 from American Society of Appraisers (ASA) publication Valuing Machinery and Equipment,
 - Petitioner's Exhibit 4 – Copy of 50 IAC 4.2-8-10 through 50 IAC 4.2-9-6.
10. The Respondent did not present any documentary evidence at the hearing.
11. The following items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibit A – The Petition, witness list with summary of testimony and exhibits to be submitted by Petitioner,
 - Board Exhibit B – Notice of Hearing dated July 8, 2005.The following items are not marked as exhibits, but are recognized as part of the record:
 - Hearing Sign In Sheet,
 - Order To Correct Record,
 - Notice Of Assessment/Change, Form 113/PP,
 - Business Tangible Personal Property Assessment Return, Form 103-Long Form.
12. The subject property is tangible personal property located at 402 E. 13th Street in Jasper.
13. The ALJ did not conduct an on-site inspection of the subject property.

14. The PTABOA determined the assessed value of the personal property was \$2,375,180 for 2004.
15. The Petitioner contends the assessed value of the personal property should be \$1,759,779.

Jurisdictional Framework

16. This matter is governed by the provisions of Ind. Code § 6-1.1, Ind. Code § 6-1.5, and all other laws applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.
17. The Board is authorized to issue a final determination pursuant to Ind. Code § 6-1.5-5-5.

Indiana's Personal Property Tax System

18. Except as otherwise provided by law, all tangible property within the jurisdiction of this state on the assessment date of a year is subject to assessment and taxation for that year. Ind. Code § 6-1.1-2-1.
19. All tangible property that is subject to assessment shall be assessed on a just valuation basis and in a uniform and equal manner. Personal property that is subject to assessment and taxation shall be assessed annually. Ind. Code § 6-1.1-2-2.
20. According to 50 IAC 4.2-1-1 (h) (6), personal property includes all tangible property (other than real property) that is:
 - a. held for sale in the ordinary course of trade or business;
 - b. held, used, or consumed in connection with the production of income; or
 - c. held as an investment.

21. Indiana's personal property tax system is a self-assessment system. *See Paul Heuring Motors, Inc. v. State Bd. of Tax Comm'rs*, 620 N.E.2d 39, 41 (Ind. Tax Ct. 1993). Every person, including any firm, company, partnership, association, corporation, fiduciary, or individual owning, holding, possessing, or controlling personal property with a tax situs within the state on March 1 of any year is required to file a personal property tax return on or before May 15 of that year, unless an extension of time to file a return is obtained pursuant to section 3 of this rule. 50 IAC 4.2-2-2.

State Review and the Petitioner's Burden

22. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals 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).
23. 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 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”).
24. 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.

Issue: Should JOFCO get an abnormal obsolescence adjustment for its tangible personal property?

Analysis

25. The Petitioner presented the following testimony and other evidence:

- A. The Petitioner is a manufacturer of high-quality, high-cost office furniture whose largest concentration of business has been on the U.S. East Coast, primarily in New York and Washington, and historically in the financial district of New York City. During the period of 2001 and 2002, a series of events occurred that had a sudden and dramatic impact on the Petitioner's business and manufacturing equipment used in the business. These events were unanticipated, unexpected, and could not have reasonably been foreseen prior to their occurrence. Those events included a substantial decline in the stock market, a significant economic recession, the September 11, 2001, terrorist attacks, and the loss of a major contract with the U.S. government.
- B. These events resulted in a sharp decrease in sales, from \$37.6 million in fiscal 2001 to \$25.2 million in fiscal 2002. Sales continued to decline to under \$22 million in fiscal 2004. This represents a decrease in sales of over 40 percent.
- C. Expensive office furniture is among the first expenses to be halted when companies encounter difficult economic conditions. The economic recession that began just after 2000 quickly impacted the Petitioner's sales among its historic customers, especially those in the brokerages and other financial institutions in New York.
- D. After the September 11, 2001, terrorist attacks in New York and Washington, the devastation to the financial district resulted in an almost total elimination of Petitioner's business in New York. One of the most significant blows was the loss of a multi-million dollar account. In addition, Petitioner lost a U.S. government account that historically had been between \$3 million and \$5 million in sales per year.

- E. The loss of customers from time to time is to be expected. Nevertheless, a prudent businessperson could not have reasonably anticipated either these particular events or the magnitude of these losses. As a result of the dramatic decline in demand for Petitioner's products and the resultant shrinking utilization of production machinery and equipment, an abnormal obsolescence adjustment was calculated and claimed on line 65, page 2, of Petitioner's Form 103 Personal Property Tax Return.
- F. Assets used in a manufacturing operation are acquired for their utility. The utility and resulting value of such equipment is maximized when it is producing at or near capacity. If the equipment is operating significantly below capacity, the equipment has diminished value. Prior to the economic situation described above, the Petitioner was a \$40 million company with plans to expand to \$50 million. It constructed a million-dollar expansion. The Petitioner had employed about 500 people on two shifts at two plants in Jasper, but that number shrank to about 250 people on a single shift. The 13th Street plant was essentially mothballed. With the exception of an office, all operations moved to the plant on the south end of Jasper. These changes resulted in the loss of a tremendous amount of capacity.
- G. This situation has hit across the industry. As a result, many facilities are closing or consolidating operations. Due to excess production capacity and under utilization of equipment, the value of equipment is impaired as the supply of existing equipment exceeds demand. The ability of such equipment to generate revenue is impaired by the lack of demand for the goods it produces. With these factors in place, the law of supply and demand causes a general decline in the value of equipment.
- H. These unforeseen changes had a severe and immediate effect on the value of the assets at these facilities. They were unanticipated and unexpected. They could not have been foreseen by a reasonable businessman. The Petitioner's sales dropped by more than 40%. The situation at JOFCO meets the requirements for abnormal obsolescence as described in 50 IAC 4.2-9-3.

- I. Indiana's personal property regulations are clear about the causes of normal obsolescence. The causes of abnormal obsolescence, however, are ambiguous. If the cause of obsolescence falls outside of normal obsolescence as provided in 50 IAC 4.2-9-2, it must be considered abnormal obsolescence. The decline at issue for the Petitioner is not due to wear and tear, technological changes or passage of time. The situation as described is an example of an unforeseen change in market value as provided in 50 IAC 4.2-9-3.
- J. Indiana personal property regulations provide that abnormal obsolescence includes unforeseen change in market value. An unforeseen change in market value is an example of external obsolescence. In discussing external obsolescence, the American Society of Appraisers (ASA) publication *Valuing Machinery and Equipment*, says in pertinent part:

Economic obsolescence (sometimes called "external obsolescence") has been previously defined as the loss in value or usefulness of a property caused by factors external to the asset. These factors include increased cost of raw materials, labor or utilities (without an offsetting increase in product price); reduced demand for the product; increased competition; environmental or other regulations; or similar factors.

Pet'r Ex. 3 at 99.

- K. The ASA is a leading and widely recognized authority concerning appraisal concepts and methods. Its publication discusses in detail obsolescence concepts and methods as they apply to machinery and equipment. Concerning the quantification of economic obsolescence, the ASA states:

Whenever the operating level of a plant or an asset is significantly less than its rated design or capability, and the condition is expected to exist for some time, the asset is less valuable than it would be otherwise. An *inutility penalty* can be used to measure the loss in value from this form of economic obsolescence.

The inutility penalty can be applied to the original cost of the assets after adjusting for normal depreciation. *Pet'r Ex 3*

- L. The production capacity in terms of units is difficult to measure due to the wide variety of products manufactured. Use of sales data provides a reasonable alternative.

Sales over the last five years was as follows:

2000	\$37,556,081
2001	\$37,620,363
2002	\$25,212,390
2003	\$21,837,851
2004	\$21,994,999.

- M. Based on historical sales data, capacity was approximately \$37.6 million. Actual production for fiscal 2004 was approximately \$22 million (58% of capacity). Use of the inutility formula results in an obsolescence factor of 27.52%, which applies to the true tax value of the assets. The resulting abnormal obsolescence amount is \$615,401.

26. The Respondent presented no exhibits and little oral testimony in regard to this issue:
- A. Greg Abell, a PTABOA member, asked if Petitioner had sought an appraisal of the subject property. The Petitioner responded they did not.
 - B. Abell testified that the obsolescence formula used by Petitioner is based on market value.
 - C. Abell concluded his testimony by stating: "We had no uniform interpretation of the statute or the code and we decided to refer it to somebody of higher authority." *Abell testimony*

27. The applicable rules governing this issue are:

50 IAC 4.2-9-1 "Obsolescence" defined

"Obsolescence" means the reduction in value of business personal property that occurs through use, technological improvements, passage of time, changes in market values, and physical deterioration or destruction.

50 IAC 4.2-9-3 “Abnormal Obsolescence” defined

(a) “Abnormal obsolescence” means as [*sic*] that obsolescence which occurs as a result of factors over which the taxpayer has no control and is unanticipated, unexpected, and cannot reasonably be foreseen by a prudent businessman prior to its occurrence. It is of nonrecurring nature and includes unforeseen changes in market values, exceptional technological obsolescence, or destruction by catastrophe that has a direct effect upon the value of personal property of the taxpayer at the tax situs in question on a going concern basis.

(b) Example of unforeseen change in market value: A government ban on the sale of a drug or chemical due to a new discovery or determination may cause that item or the production equipment used to produce it to be abnormally obsolete. A specific example of this would be cyclamate. In this case, the equipment used to produce it may be eligible for abnormal obsolescence, while the inventory (cyclamate) should be valued at the lower of cost or market as provided in 50 IAC 4.2-5-3 through 50 IAC 4.2-5-8.

50 IAC 4.2-9-4 Allowance of abnormal obsolescence claim

(a) Abnormal obsolescence should be recognized to the extent that the property qualifies for the adjustment and the taxpayer is able to substantiate the facts, circumstances, and amount of the claim in order to properly determine the true tax value of the subject property.

(b) A taxpayer wishing to claim an adjustment for abnormal obsolescence must provide documentation of the resulting valuation of the person property at the tax situs in question on the assessment date on a going concern basis.

(c) The adjustment for abnormal obsolescence must be computed in accordance with this rule, and 50 IAC 4.2-4-8; 50 IAC 4.2-5-14; 50 IAC 4.2-8-10; or 50 IAC 4.2-10-4.

28. The Petitioner must show that abnormal obsolescence exists and it must quantify a loss in value. *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1233 (Ind. Tax Ct. 1998).

29. The economic reversal and the terrorist acts of September 11, 2001, and its aftermath, complicated an already wavering economy. The Petitioner presented evidence of a dramatic decrease in sales and the resultant slowing of production, both nationwide and at the Jasper facility, as a result of unforeseen events. The Petitioner’s evidence shows that its sales declined from over \$37 million in 2000 and 2001 to \$25 million in 2002, then to under \$23 million in 2004.

30. The Petitioner presented a prima facie case for the first prong of the obsolescence test. Then the Petitioner met the second prong of the test with a quantification of the decrease in value of its personal property.
31. The Petitioner established the inutility penalty formula. This method is described by the ASA as an accepted method of reflecting a loss in value caused by a decrease in the use of manufacturing equipment. Accordingly, the Petitioner offered a generally recognized appraisal method to compute the abnormal obsolescence and provided support for that method. The Petitioner provided probative evidence in support of its claim. The Petitioner has established a quantification of obsolescence.
32. The Petitioner presented a prima facie case showing that there is an error and what the correct assessment should be. The burden shifted to the Respondent to rebut the Petitioner's case.
33. The Respondent, however, offered no probative evidence. While the Respondents had a few questions for Petitioner, the relevance of those questions was not established. For example, the Respondent asked if the Petitioner had an appraisal to "back-up" the quantification. The Respondent did not present any probative evidence indicating the Petitioner's method was in error. Irrelevant questions and conclusory statements do not support Respondent's position and they do not rebut Petitioner's case. *See American United Life*, 803 N.E.2d at 282.
34. Respondent cannot prevail by raising some questions about Petitioner's evidence, but offering no probative evidence to the contrary or to disprove Petitioner's evidence. *See Meridian Towers*, 805 N.E.2d at 478.
35. Finally, the Respondents stated that they did not have any evidence to present because this case is a matter of "interpretation of code" and they felt it best to defer to someone of "higher authority." This statement indicates that the Respondent failed to grasp its proper

role in these proceedings. The record fails to establish what "interpretation of code" the Respondent might have. It was the Respondent's obligation to do so. If there is some interpretation that would support the current assessment, the Board will not be the one to supply it because the Board must conduct an impartial review of all appeals. Ind. Code § 6-1.5-4-1(a).

36. Because the Petitioner made a prima facie case, the Respondent must support the assessment and/or rebut the Petitioner's case. The Respondent failed to do so. The Respondent did not present any probative evidence to rebut that case or provide a basis for the changes that were made to the Petitioner's tax return.

Conclusion

39. Petitioner made as prima facie case. Respondent did not rebut that case. The assessment is changed to \$1,759,779.

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

Commissioner, Indiana Board of Tax Review

- 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. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.