

**STATE OF INDIANA  
Board of Tax Review**

In the matter of the Petition for Review )  
of Assessment, Form 131 ) Petition No. : 54-030-95-1-4-00021

Parcel No. : 0231619700

Assessment Year: 1995

Petitioner: HC Industries  
Debbie Dillinger, Manager - Property Taxes  
3 Allegheny Ctr.  
Pittsburgh, PA 15212

**Findings of Fact and Conclusions of Law**

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

**Issues**

1. Whether the assessment failed to consider appropriate physical, functional, and economic (external) obsolescence factors in arriving at the true tax value.

## Findings of Fact

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also if appropriate, any conclusion of law made herein shall also be considered a finding of fact.
  
2. Pursuant to Ind. Code § 6-1.1-15-3, Robert S. Hersh, Manager – State Taxes on behalf of HC Industries (Petitioner), filed a Form 131 petition requesting a review by the State. The Form 131 was filed on December 20, 1996. The Montgomery County Board of Review's (County Board) Assessment Determination on the underlying Form 130 petition was dated December 2, 1996.
  
3. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on November 19, 2001, before Hearing Officer Joan L. Rennick. Testimony and exhibits were received into evidence. Deborah A. Dillinger, Manager - Property Taxes, Alcoa, represented the Petitioner. Peggy Hudson, Montgomery County Assessor, and Sue Sams, Union Township Assessor, represented the Respondent.
  
4. At the hearing, the subject Form 131 was made a part of the record and labeled Board Exhibit A. The Notice of Hearing on Petition is labeled Board Exhibit B. In addition, the following exhibits were submitted to the State Board:  
Petitioner's Exhibit 1 – Timeline of appeals/Issues/Identification (East Plant)  
Petitioner's Exhibit 2 – Map of interior product flow - Crawfordsville East Plant  
Petitioner's Exhibit 3 – Map of interior product flow - leased North Plant  
Petitioner's Exhibit 4 – Square footage (SF) comparisons between the North Plant and the Olive Branch Plant in Missouri  
Petitioner's Exhibit 5 (a through h) - Exterior photographs of the East Plant  
  
Respondent's Exhibit 1 – Property record card (PRC) of subject property and County Board's response

5. The subject property is located at 1602 Elmore, Crawfordsville, Union Township, Montgomery County.
6. The Hearing Officer did not view the subject property.
7. At the hearing, the parties agreed the year under appeal was 1995 and the Assessed Values of record were Land: \$5,570 and Improvements: \$624,030, for a Total Assessed Value of: \$629,600.

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8. The appeal under review is for the improvements only. Alcoa acquired HC Industries in 1989 along with the structures at the Crawfordsville location. Some adjustments were made after the County Board hearing, however the amount of functional obsolescence to be applied is in question.
9. The subject parcel is referred to as East Plant, which manufactures plastic twist-off closures for bottle caps. Currently all improvements at this facility are receiving 15% obsolescence depreciation along with physical depreciation ranging from 5% to 45%. The Petitioners are requesting 50% functional obsolescence to be applied.

**Functional Obsolescence Testimony**

10. The East Plant suffers from functional obsolescence due to: excessive material and product handling costs, irregular or inefficient floor plan, being landlocked, limited warehousing facilities, increased transportation costs, low ceiling heights in some areas, inadequate parking facilities, and inadequate truck loading and unloading space. *Dillinger testimony* & Petitioner's Exhibit 1.

11. A map of the product flow in the East Plant is compared to the product flow of a leased facility known as the North Plant (leased in 1995). The North Plant is a newer facility with a more efficient less congested product flow with a conveyor system above the machinery verses one that interweaves between the machines as in the East Plant. *Dillinger testimony & Petitioner's Exhibit 2 and 3.*
12. Ms. Dillinger submitted a comparison of the East Plant and a similar, newer and more efficient facility in Olive Branch, Missouri. The comparison looks at the square footages of the two (2) plants, their production capacities, and their production per SF. The conclusion drawn is if the East Plant was similarly situated to that in the Olive Branch facility, it would only need approximately 40,000 SF or half of its present capacity to be as efficient as the Olive Branch. This comparison of the facilities determines the need to apply 50% functional obsolescence to the East Plant. *Dillinger testimony & Petitioner's Exhibit 4.*
13. The movement of the product from the beginning of production to the time it's boxed for shipping, is done by pneumatic tubing. The production equipment could be placed anywhere in the plant and there would be little difference in production handling or time to produce. *Respondent's Exhibit 1.*
14. The County Board recognized the East Plant is landlocked fostering a situation where expansion is hindered, inadequate parking is created and requiring a need for off site warehousing. Because these issues were incurable, the County Board granted 15% obsolescence to all improvements at this facility. *Respondent's Exhibit 1.*
15. The purported inability to expand the East Plant because of being landlocked is in direct conflict to the comparison chart (Petitioner's Exhibit 4) presented by Ms. Dillinger. In Ms. Dillinger's scenario, a smaller facility would be more efficient. *Respondent's Exhibit 1.*

16. Manufacturing plants undergo a constant change. Areas that may be used today end up being used or refitted for another use at a later date. This is the case with this plant in 1996. *Respondent's Exhibit 1*.

### **Conclusions of Law**

1. The Petitioner is limited to the issues raised on the Form 130 petition filed with the Property Tax Assessment Board of Appeals (PTABOA) or issues that are raised as a result of the PTABOA's action on the Form 130 petition. 50 IAC 17-5-3. See also the Forms 130 and 131 petitions authorized under Ind. Code §§ 6-1.1-15-1, -2.1, and -4. In addition, Indiana courts have long recognized the principle of exhaustion of administrative remedies and have insisted that every designated administrative step of the review process be completed. *State v. Sproles*, 672 N.E. 2d 1353 (Ind. 1996); *County Board of Review of Assessments for Lake County v. Kranz* (1964), 224 Ind. 358, 66 N.E. 2d 896. Regarding the Form 130/131 process, the levels of review are clearly outlined by statute. First, the Form 130 petition is filed with the County and acted upon by the PTABOA. Ind. Code §§ 6-1.1-15-1 and -2.1. If the taxpayer, township assessor, or certain members of the PTABOA disagree with the PTABOA's decision on the Form 130, then a Form 131 petition may be filed with the State. Ind. Code § 6-1.1-15-3. Form 131 petitioners who raise new issues at the State level of appeal circumvent review of the issues by the PTABOA and, thus, do not follow the prescribed statutory scheme required by the statutes and case law. Once an appeal is filed with the State, however, the State has the discretion to address issues not raised on the Form 131 petition. *Joyce Sportswear Co. v. State Board of Tax Commissioners*, 684 N.E. 2d 1189, 1191 (Ind. Tax 1997). In this appeal, such discretion will not be exercised and the Petitioner is limited to the issues raised on the Form 131 petition filed with the State.
2. The State is the proper body to hear an appeal of the action of the County pursuant to Ind. Code § 6-1.1-15-3.

### **A. Indiana's Property Tax System**

3. Indiana's real estate property tax system is a mass assessment system. Like all other mass assessment systems, issues of time and cost preclude the use of assessment-quality evidence in every case.
4. The true tax value assessed against the property is not exclusively or necessarily identical to fair market value. *State Board of Tax Commissioners v. Town of St. John*, 702 N.E. 2d 1034, 1038 (Ind. 1998)(*Town of St. John V*).
5. The Property Taxation Clause of the Indiana Constitution, Ind. Const. Art. X, § 1 (a), requires the State to create a uniform, equal, and just system of assessment. The Clause does not create a personal, substantive right of uniformity and equality and does not require absolute and precise exactitude as to the uniformity and equality of each *individual* assessment. *Town of St. John V*, 702 N.E. 2d at 1039 – 40.
6. Individual taxpayers must have a reasonable opportunity to challenge their assessments. But the Property Taxation Clause does not mandate the consideration of whatever evidence of property wealth any given taxpayer deems relevant. *Id.* Rather, the proper inquiry in all tax appeals is “whether the system prescribed by statute and regulations was properly applied to individual assessments.” *Id.* at 1040. Only evidence relevant to this inquiry is pertinent to the State's decision.

### **B. Burden**

7. Ind. Code § 6-1.1-15-3 requires the State to review the actions of the PTABOA, but does not require the State to review the initial assessment or undertake reassessment of the property. The State has the ability to decide the administrative appeal based upon the evidence presented and to limit its review to the issues the taxpayer presents. *Whitley Products, Inc. v. State Board of Tax*

*Commissioners*, 704 N.E. 2d 1113, 1118 (Ind. Tax 1998) (citing *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E. 2d 765, 769 (Ind. Tax 1997)).

8. In reviewing the actions of the PTABOA, the State is entitled to presume that its actions are correct. “Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies.” *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome that presumption of correctness to prevail in the appeal.
9. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128. See also Ind. Code § 4-21.5-2-4(a)(10) (Though the State is exempted from the Indiana Administrative Orders & Procedures Act, it is cited for the proposition that Indiana follows the customary common law rule regarding burden).
10. Taxpayers are expected to make factual presentations to the State regarding alleged errors in assessment. *Whitley*, 704 N.E. 2d at 1119. These presentations should both outline the alleged errors and support the allegations with evidence. “Allegations, unsupported by factual evidence, remain mere allegations.” *Id* (citing *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d. 890, 893 (Ind. Tax 1995)). The State is not required to give weight to evidence that is not probative of the errors the taxpayer alleges. *Whitley*, 704 N.E. 2d at 1119 (citing *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230, 1239, n. 13 (Ind. Tax 1998)).
11. The taxpayer’s burden in the State’s administrative proceedings is two-fold: (1) the taxpayer must identify properties that are similarly situated to the contested

property, and (2) the taxpayer must establish disparate treatment between the contested property and other similarly situated properties. In this way, the taxpayer properly frames the inquiry as to “whether the system prescribed by statute and regulations was properly applied to individual assessments.” *Town of St. John V*, 702 N.E. 2d at 1040.

12. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer’s case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.
13. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence “sufficient to establish a given fact and which if not contradicted will remain sufficient.” *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).
14. In the event a taxpayer sustains his burden, the burden then shifts to the local taxing officials to rebut the taxpayer’s evidence and justify its decision with substantial evidence. 2 Charles H. Koch, Jr. at §5.1; 73 C.J.S. at § 128. See *Whitley*, 704 N.E. 2d at 1119 (The substantial evidence requirement for a taxpayer challenging a State Board determination at the Tax Court level is not “triggered” if the taxpayer does not present any probative evidence concerning the error raised. Accordingly, the Tax Court will not reverse the State’s final determination merely because the taxpayer demonstrates flaws in it).

### **C. Review of Assessments After *Town of St. John V***

15. Because true tax value is not necessarily identical to market value, any tax appeal that seeks a reduction in assessed value solely because the assessed



value assigned to the property does not equal the property's market value will fail.

16. Although the Courts have declared the cost tables and certain subjective elements of the State's regulations constitutionally infirm, the assessment and appeals process continue under the existing rules until a new property tax system is operative. *Town of St. John V*, 702 N.E. 2d at 1043; *Whitley*, 704 N.E. 2d at 1121.
17. *Town of St. John V* does not permit individuals to base individual claims about their individual properties on the equality and uniformity provisions of the Indiana Constitution. *Town of St. John*, 702 N.E. 2d at 1040.

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1. Definitions and Burden

18. Depreciation is an essential element in the cost approach to valuing property. Depreciation is the loss in value from any cause except depletion, and includes physical depreciation and functional and external (economic) obsolescence. *IAAO Property Assessment Valuation*, 153 & 154 (Second Edition, 1996); *Canal Square Limited Partnership v. State Board of Tax Commissioners*, 694 N.E. 2d 801, 806 (citing Am. Inst. of Real Estate Appraisers, *The Appraisal of Real Estate*, 321 (Tenth Edition, 1992)).
19. Depreciation is a concept in which an estimate must be predicated upon a comprehensive understanding of the nature, components, and theory of depreciation, as well as practical concepts for estimating the extent of it in improvements being valued. 50 IAC 2.2-10-7.

20. Depreciation is a market value concept and the true measure of depreciation is the effect on marketability and sales price. *IAAO Property Assessment Valuation* at 153. The definition of obsolescence in the Regulation, 50 IAC 2.2-10-7, is tied directly to that applied by professional appraisers under the cost approach. *Canal Square*, 694 N.E. 2d at 806. Accordingly, depreciation can be documented by using recognized appraisal techniques. *Id.*
21. Functional obsolescence means obsolescence caused by factors inherent in the property itself. 50 IAC 2.2-1-29. Functional Obsolescence is the loss resulting from changes in demand, design, and technology, and can take the form of deficiency, the need for modernization or superadequacy. *IAAO Property Assessment Valuation* at 154 & 155.
22. Economic obsolescence means obsolescence caused by factors extraneous to the property. 50 IAC 2.2-1-24. External or economic obsolescence is the loss of value resulting from factors external to the property. *IAAO Property Assessment Valuation* at 154.
23. Under the cost approach, there are five recognized methods used to measure depreciation, including obsolescence, namely: (1) the sales comparison method, (2) the capitalization of income method, (3) the economic age-life method, (4) the modified economic age-life method, and (5) the observed condition (breakdown) method. *IAAO Property Assessment Valuation* at 156.
24. The use of any singular technique or method identified above without the use of other approaches would be considered unethical and incomplete.
25. It is incumbent on the taxpayer to establish a link between the evidence and the loss of value due to obsolescence. After all, the taxpayer is the one who best knows his business and it is the taxpayer who seeks to have the assessed value of his property reduced. *Rotation Products Corp. v. Department of State Revenue*, 690 N.E. 2d 795, 798 (Ind. Tax 1998).

26. Regarding obsolescence, the taxpayer has a two-prong burden of proof: (1) the taxpayer has to prove that obsolescence exists, and (2) the taxpayer must quantify it. *Clark*, 694 N.E. 2d 1233.
27. It is the Petitioner's contention that additional functional obsolescence should be applied to the subject structure. The Petitioner requested the application of 50% functional obsolescence depreciation.
28. Ms. Dillinger's evidence for obsolescence consisted of the following:
  - a. Statements for the causes of obsolescence at the subject plant
  - b. A comparison to another facility (North Plant) in Crawfordsville
  - c. A comparison to another facility in Olive Branch, Missouri
29. Functional obsolescence is loss in value due to inability of the structure to perform adequately the function for which it is used, as of the appraisal date. Functional obsolescence results from changes in demand, design, and technology and can take three (3) forms:
  - a. Normal deficiency – absence of a component when the market demands it to be there (for example, no second bathroom)
  - b. Need for modernization – (for example, an outdated kitchen)
  - c. Superadequacy – an element more than adequate for its function (for example, overly high ceiling)

*IAAO Property Assessment Valuation*, 168 & 169.
30. Functional obsolescence is also classified as either *curable* or *incurable*, depending on whether the cost to cure is economically justified as of the appraisal date (Is the increased market value of the property, after curing the obsolescence, at least equal to the cost of the item if originally installed during construction?). *Curable functional obsolescence* is measured by the cost to cure the condition. *Incurable functional obsolescence* is a condition that decreases the utility of the property and is not feasible to cure as of the date of the

appraisal; it may be caused by a deficiency or a superadequacy. *IAAO Property Assessment Valuation*, 168.

## 2. Causes of obsolescence

31. “[I]n advocating for an obsolescence adjustment, a taxpayer must first provide the State Board with probative evidence sufficient to establish a prima facie case as to the causes of obsolescence.” *Champlin Realty Company v. State Board of Tax Commissioners*, 745 N.E. 2d 928, 932 (Ind. Tax 2001).
32. “Where there is no cause of obsolescence, there is not obsolescence to quantify.” *Id.*, citing *Lake County Trust v. State Board of Tax Commissioners*, 694 N.E. 2d 1253, 1257 (Ind. Tax 1998).
33. The identification of causes of obsolescence requires more than randomly naming factors. “Rather, the taxpayer must explain how the purported causes of obsolescence cause the subject improvements to suffer losses in value.” *Champlin*, 745 N.E. 2d at 936.
34. “Without a loss of value, there can be no economic obsolescence.” *Pedcor*, 715 N.E. 2d at 438.
35. “In the commercial context, a loss of value usually represents a decrease in the improvement’s income generating ability.” *Loveless Construction v. State Board of Tax Commissioners*, 695 N.E. 2d 1045, 1047 (Ind. Tax 1998). *See also Damon Corp. v. State Board of Tax Commissioners*, 738 N.E. 2d 1108, (Ind. Tax 2000).
36. The subject property is currently receiving an adjustment for obsolescence. The parties to this appeal are in agreement that obsolescence does exist, therefore, the Petitioner has met the first prong of the two-prong burden identified in conclusions of law ¶ 26.

### 3. Quantification of Obsolescence

37. The Petitioner must quantify the amount of obsolescence sought in order to meet its burden. Ms. Dillinger failed to make a detailed presentation as to what part of the overall request of 50% each deficiency represented. Ms. Dillinger also failed to explain if any of the causes were curable or incurable and failed to present any calculations showing the costs to cure or the loss in value.
38. Ms. Dillinger submitted into evidence two (2) comparisons of the subject plant for review: one (1) of the North Plant and the other of the Olive Branch Plant. In the first comparison, Ms. Dillinger testified the North Plant is a newer plant, leased in 1995, with a more efficient, less congested product flow (conveyor systems above machinery and not between machinery) and is the “preferred plant”.
39. Ms. Dillinger testified that the North Plant is the “preferred plant” but made no specific comparisons of the two plants. The production flow charts, presented by Ms. Dillinger (Petitioner’s Exhibits 2 & 3), do not by themselves explain inefficient movement of product or why a conveyor system above the machinery is better than a pneumatic tube system. Nor do they explain any of the other causes of obsolescence Ms. Dillinger pointed to. Mere references to photographs or regulations, without explanation, do not qualify as probative evidence. *Heart City Chrysler v. State Board of Tax Commissioners*, 714 N.E. 2d 329, 333 (Ind. Tax Ct. 1999).
40. In the second comparison, Ms. Dillinger compared the square footage, the production capacity, and the capacity per square foot of the East Plant to that of the Olive Branch plant. Based on this comparison Ms. Dillinger then determined the functional obsolescence should be 50% at the subject plant.
41. Several questions arise from this comparison. First, Ms. Dillinger did not present blueprints for either plant or an analysis of the physical characteristics, usage or equipment inventory of the two (2) plants. The only comparison presented is a

two (2)-line production per square foot comparison. There are no monthly production numbers submitted for either plant for review or to verify either plants production capacity.

42. The State notes that although calculations in support of obsolescence claims may be recognized or may be a valid method of calculation, the numbers/values set forth in them must also be valid and must be supported with additional documentation. Without such validation or supporting data, the State Board is under no obligation to give, and does not give, the calculations presented by the Petitioner any weight.
43. At the hearing, Ms. Dillinger admitted that the Olive Branch plant is newer than the East Plant, so does this mean there is a difference in production equipment? Is one plant more modernized than the other? The East Plant was acquired when Alcoa purchased HC Industries (1989) on the other hand the Olive Branch Plant was built five (5) years later to Alcoa's specifications.
44. Additionally, it cannot be determined from the evidence presented whether the Olive Branch Plant production per square foot included warehousing, as the East Plant numbers seem to do. Nor does the evidence reveal other factors relevant to the comparability of the two (2) plants such as whether a comparison should include only those areas attributed to manufacturing; whether the two (2) locations are affected by the same physical, economic, governmental and social factors; or if the plants run the same amount of shifts.
45. Included in Ms. Dillinger's comparisons of the plants, is a discussion on the fact that the East Plant is landlocked and expansion is impeded. One finds this statement curious when Ms. Dillinger later concluded that a smaller East Plant of 40,000 square feet would be as efficient as the Olive Branch Plant. What prevents the East Plant from being reconfigured to be this more efficient Olive Branch like plant?

46. As stated in Conclusions of Law ¶¶26, the taxpayer has a two-prong burden of proof: (1) the taxpayer has to prove that obsolescence exists, and (2) the taxpayer must quantify it. The parties agreed to the existence of obsolescence, however, they disagreed as to the amount of obsolescence to apply. At this juncture the Petitioner had the burden to quantify the amount of obsolescence they sort. The Petitioner failed to do so.
47. The taxpayer bears the burden of presenting a prima facie case in support of its position that obsolescence should be applied to the assessment. It is also not enough to declare a structure as “similarly situated” to the subject property and conclude the amount of obsolescence requested has been quantified without any detailed comparison of those properties.
48. Under the cost approach, the Petitioner can apply any of the five recognized methods to measure obsolescence. Ms. Dillinger failed to use any of those methods to quantify the amount of obsolescence requested.
49. For all the reasons set forth above, the State Board makes no changes in the assessment as a result of the obsolescence issue.

The above stated findings and conclusions are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this \_\_\_\_ day of \_\_\_\_\_, 2002.

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Chairman, Indiana Board of Tax Review