

REPRESENTATIVE FOR PETITIONER:
Rex Hume, Uzelac & Associates

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

National Material Limited)	Petition No.: 45-024-02-1-7-00006
Partnership)	
Petitioner,)	
)	Personal Property
v.)	
)	
North Township Assessor)	County: Lake
)	Township: North
)	
Respondent.)	Assessment Year: 2002

Appeal from the Final Determination of the
Lake County Property Tax Assessment Board of Appeals

January 2, 2008

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:

ISSUES

1. The issues presented for consideration by the Board are whether the Lake County Property Tax Assessment Board of Appeals (PTABOA) timely issued a determination on the subject appeal and whether the Petitioner is entitled to abnormal obsolescence on the personal property.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

2. After receiving an extension of time to file, National Material Limited Partnership (National) timely filed a 2002 business personal property return (Form 103) with the North Township Assessor on June 11, 2002. National reported an assessed value of \$5,377,212 which included an adjustment for abnormal obsolescence in the amount of \$2,606,301.
3. On September 13, 2002, the North Township Assessor issued a Form 113 denying a portion of the abnormal obsolescence and increasing the Petitioner's personal property assessment to \$6,751,720.
4. Pursuant to Ind. Code § 6-1.1-15-1, on October 28, 2002, National filed a Form 130 petition to the Lake County Property Tax Assessment Board of Appeals (PTABOA) appealing the assessor's action.
5. On September 17, 2003, the Lake County PTABOA held a hearing on the matter. On July 14, 2004, the PTABOA issued a determination denying the Petitioner's abnormal obsolescence adjustment.
6. Pursuant to Ind. Code § 6-1.1-15-3, National filed a Form 131 Petition for Review of Assessment on August 13, 2004, petitioning the Board to conduct an administrative review of the above petition.

HEARING FACTS AND OTHER MATTERS OF RECORD

7. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Ellen Yuhan, held a hearing on October 10, 2007, in Crown Point, Indiana.

8. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Rex Hume, tax representative, Uzelac & Associates,
Daniel J. Howell, controller, National Material Limited
Partnership,
Vytas Ambutus, attorney, National Material Limited Partnership,
Glen R. Gray, president, Gray Machinery Company,

For the Respondent:

Nanci Smolen, clerical supervisor of personal property for North
Township.

9. The Petitioner submitted the following exhibits:

Petitioner Exhibit 1 – Petitioner’s summary of contentions and regulations,

Petitioner Exhibit 2 – Indiana Code § 6-1.1-16, Notice: Time
Requirements,

Petitioner Exhibit 3 – Brief prepared by Vytas Ambutus, concerning
failure of the PTABOA to timely act,

Petitioner Exhibit 4 – Form 103, Business Tangible Personal Property
Assessment Return, and Form 106, Schedule of
Adjustments for March 21, 2002, filed on June 11,
2002,

Petitioner Exhibit 5 – Form 115, Notification of Final Assessment
Determination by Lake County PTABOA dated
July 14, 2004,

Petitioner Exhibit 6 – 50 IAC 4.3-9.3, Abnormal obsolescence defined and
50 IAC 4.3-9-4, Allowance,

Petitioner Exhibit 7 – Personal property appraisal report prepared by Glen
R. Gray, CEA, Gray Machinery Company,

Petitioner Exhibit 8 – Production Statistics Report,

Petitioner Exhibit 9 – Equipment Aging Schedule,

Petitioner Exhibit 10 – *Meridian Towers East & West*, Cause No. 49T10-
0206-TA-58, December 23, 2003, Indiana Tax
Court,

Petitioner Exhibit 11 – *Heart City Chrysler*, Cause No. 49T10-9701-TA-
00020, June 24, 1999, Indiana Tax Court,

Petitioner Exhibit 12 – *Jofco, Inc.*, Petition No. 19-018-04-1-7-00006,
December 28, 2005, Indiana Board of Tax Review,

Petitioner Exhibit 13 – *Kimball International, Inc.*, Petition No. 19-018-04-1-7-00007, December 30, 2005, Indiana Board of Tax Review,

Petitioner Exhibit 14 – *American Eagle Airlines, Inc.*, Petition No. 02-059-02-1-7-00032, April 6, 2004, Indiana Board of Tax Review,

Petitioner Exhibit 15 – “Valuing Machinery and Equipment”: The Fundamentals of Appraising Machinery and Technical Assets, Second Edition, American Society of Appraisers,

Petitioner Exhibit 16 – Abnormal obsolescence approved March 1, 2002, National Materials Limited Partnership.

10. The Respondent did not submit any exhibits.
11. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibit A – The 132 Petition,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Order Regarding Pre-hearing Briefs,
 - Board Exhibit D – Hearing sign in sheet.
12. The subject property is production equipment located at 4506 Cline Avenue, East Chicago, Indiana.
13. The ALJ did not conduct an on-site inspection of the subject property.
14. For 2002, the Lake County PTABOA assessed the personal property for \$6,751,720. The Petitioner contends the property should be \$5,377,210.

JURISDICTIONAL FRAMEWORK

15. The Indiana Board conducts an impartial review of all appeals from a determination by an assessing official or a county property tax assessment board

of appeals under any law if they concern assessed value of tangible property, deductions, or exemptions. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15.

INDIANA’S PERSONAL PROPERTY TAX SYSTEM

16. According to 50 IAC 4.2-1-1(h)(6), personal property includes all tangible property “that is (a) held for sale in the ordinary course of business; (b) held, used, or consumed in connection with the production of income; or (c) held as an investment.”
17. 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.

ADMINISTRATIVE REVIEW AND THE PETITIONER’S BURDEN

21. A Petitioner seeking review of a determination of an assessing official 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).
22. 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.*

Wash. 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”).

23. 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.

PARTIES’ CONTENTIONS

24. The Petitioner contends that it filed its Form 103 personal property return on June 11, 2002. *Petitioner Exhibits 3 and 4; Howell testimony*. According to the Petitioner, the Lake County PTABOA is required by statute to issue a final determination on or before five months from the date a personal property return was filed if the return is filed after May 15 of the year for which the assessment is made. *Petitioner Exhibit 3; Ambutas argument*. Thus, the Petitioner argues, the statutes required the Lake County PTABOA to issue notice on or before November 11, 2002. *Petitioner Exhibit 5*.

25. The county property tax assessment board of appeals did not issue its determination denying the Petitioner’s abnormal obsolescence adjustment until July 14, 2004. *Petitioner Exhibits 2 and 3; Ambutas argument; Hume testimony*. The Petitioner argues that, because the PTABOA failed to change the assessed value and give notice within the statutory time frame, the assessed value National claimed on its personal property tax return is final. *Id.*

26. The Petitioner further contends that it is entitled to the abnormal obsolescence that it claimed on its property tax return because of a decline in the use of the machinery. *Hume testimony; Howell testimony*. According to the Petitioner, the

township has already acquiesced in the existence of obsolescence by allowing some of the Petitioner's adjustment for obsolescence. *Id.* Thus, the Petitioner argues, it need only prove the amount of the obsolescence and need not prove the existence of obsolescence. *Id.*

27. Finally, the Petitioner argues that abnormal obsolescence is measured by common appraisal practices. *Hume testimony.* Here, the Petitioner contends, its appraisal values the amount of obsolescence using the sales approach.¹ *Id.; Petitioner Exhibit 7.*
28. The Respondent contends that there is no obsolescence as long as the equipment is still being used. *Smolen testimony.* Further, the Respondent contends that it responded timely to make a change in the Petitioner's reported value. *Id.*

ANALYSIS

29. Indiana Code § 6-1.1-16-1(a) states, that “a county assessor or county property tax assessment board of appeals must make a change in the assessed value, including the final determination by the board of an assessment changed by a township or county assessing official, or county property tax assessment board of appeals, and give the notice of change on or before the latter of (A) October 30 of the year for which the assessment is made; or (B) five (5) months from the date the personal property return is filed if the return is filed after May 15 of the year for which the assessment is made.” Ind. Code § 6-1.1-16-1(a)(2). If the assessing official, county assessor, or the county property tax assessment board of appeals fails to change an assessment and give notice of the change within the time prescribed by statute, the assessed value claimed by the taxpayer on the personal property return is final. Ind. Code § 6-1.1-16-1(b).

¹The appraisal values machinery and equipment at \$1,340,000. It is not clear from the Petitioner's argument how the appraisal supports its business personal property value of \$5,377,212 or its adjustment for abnormal obsolescence in the amount of \$2,606,301.

30. Here, the Petitioner filed its Form 103 personal property return on June 11, 2002. On September 13, 2002, the North Township Assessor issued a Form 113 denying a portion of the abnormal obsolescence and increasing the Petitioner's personal property assessment. The Petitioner appealed and the PTABOA issued a final determination on July 14, 2004. The Respondent presented no argument that the PTABOA determination was timely. Thus, while the township met its statutory timelines in changing the Petitioner's personal property assessment, the PTABOA did not.
31. The Lake County PTABOA failed to issue its final determination within the five month period allowed by statute to change a personal property assessment. Therefore, pursuant to Indiana Code § 6-1.1-16-1(b), the amount claimed by National on its personal property tax return is final.
32. In finding for the Petitioner on the timeliness issue, the Board determines that there is no need to address the issue of abnormal obsolescence.

CONCLUSION

33. The Board finds for the Petitioner. The assessment is changed to \$5,377, 212.

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

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at

<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>