

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition:** 80-010-05-1-7-00001  
**Petitioner:** Tribune Broadcasting Holdings, Inc.  
**Respondent:** Wildcat Township Assessor (Tipton County)  
**Parcel:** Personal Property  
**Assessment Year:** 2005

The Indiana Board of Tax Review (the Board) issues this determination in the above matter. The Board finds and concludes as follows:

**Procedural History**

1. The Petitioner timely filed a Form 103 – Business Tangible Personal Property Assessment Return (Form 103). On May 27, 2005, the Wildcat Township Assessor notified the Petitioner on a Form 113/PP Notice of Assessment/Change that it denied the abnormal obsolescence claimed on that return.
2. The Petitioner appealed to the Tipton County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated July 8, 2005.
3. The PTABOA issued notice of its decision on October 4, 2005, upholding the denial of an abnormal obsolescence adjustment.
4. The Petitioner appealed to the Board by filing a Form 131 with the county assessor on November 3, 2005. Petitioner elected small claims procedures.
5. The Board issued notice of hearing to the parties dated August 2, 2006.
6. The Board held an administrative hearing on September 7, 2006, before Administrative Law Judge Dalene McMillen (the ALJ).
7. Persons present and sworn as witnesses at the hearing:  
For Petitioner: Peter Salvesson, Bright Support Services LLC  
For Respondent: Marilyn Meighen, Meighen & Associates, P.C.  
Linda Altherr, Tipton County Assessor  
Don Gray, PTABOA Member  
Ronald Feters, PTABOA Member  
Edward O. Quear, PTABOA Member  
Virginia M. Baker, PTABOA Member

## Facts

8. The subject property is business tangible personal property. It is located at 2501 North Highway 213, Windfall, Indiana.
9. The ALJ did not conduct an on-site inspection of the property.
10. The PTABOA determined the total assessed value for the personal property is \$371,830.
11. The Petitioner claimed the total assessed value of the property should be \$277,230.

## Issue

12. Summary of Petitioner's contentions in support of an error in the assessment:
  - a. According to 50 IAC 4.2-2-10, abnormal obsolescence is a mandatory adjustment if the taxpayer is able to substantiate the facts, circumstances and the amount of the claim. *Salveson testimony; Petitioner Exhibit 10*. When the Petitioner filed the original Form 103 personal property return, it included an adjustment for abnormal obsolescence, but this adjustment was removed by the Wildcat Township Assessor by way of a Form 113/PP Notice of Assessment/Change on May 27, 2005. *Id.; Petitioner Exhibit 3*.
  - b. The federal government enacted the Telecommunications Act of 1996. It required the television broadcasting industry to make a transition to broadcasting by a digital signal, which is a more flexible and efficient technology that frees up valuable broadcast airwaves. *Salveson testimony*. For the benefit of the general public, the television broadcasting industry must maintain both analog and digital signals through the transition. *Id.; Petitioner Exhibit 6*. If the Petitioner failed to comply with the government mandate, it would lose its broadcasting license. *Id.*
  - c. Although the Petitioner was required to invest in duplicate broadcasting systems, the number of viewers in this market area did not increase. Therefore, the Petitioner did not receive any additional net revenues. *Salveson testimony; Petitioner Exhibit 10*.
  - d. The abnormal obsolescence adjustment is based on the contributory value of the digital system and the analog system together as one system servicing the market area. It is not two systems. *Salveson testimony*. For March 1, 2005, the digital equipment contributed 80% of the value of the system and the analog equipment contributed 20% of the value of the system. *Id.* The abnormal obsolescence adjustment for the digital system was \$22,816. (Cost of the digital system of \$203,781 less 56% depreciation equaled a true tax value of \$114,082. That true

tax value multiplied by the 80% allocation factor equaled an allocated value of \$91,266. The difference is an abnormal obsolescence adjustment of \$22,816 for the digital equipment.) *See Petitioner Exhibit 5.* The abnormal obsolescence adjustment for the analog system is \$71,780. (Cost of the analog system of \$211,090 less 43% depreciation equaled a true tax value of \$89,725. That true tax value multiplied by the 20% allocation factor equaled an allocated value of \$17,945. The difference is an abnormal obsolescence adjustment of \$71,780 for the analog equipment.) *Id.* The total abnormal obsolescence adjustment is \$94,596 (\$22,816 plus \$71,780) for March 1, 2005. *Id.*

13. Summary of Respondent's contentions in support of the assessment:

- a. According to 50 IAC 4.2-9-3, abnormal obsolescence requires unanticipated, unexpected circumstances that the taxpayer cannot control and that a prudent businessman could not foresee. These could be due to exceptional technological obsolescence or destruction by catastrophe. *Meighen testimony; Respondent Exhibit 1.* The Department of Local Government Finance (the DLGF) gave an example of technological obsolescence in 50 IAC 4.2-9-3(c): the invention of a new and more productive piece of equipment that can produce a better quality item that produces more efficiently at a lower cost of production, does not cause an older currently used asset to be considered abnormally obsolete. *Id.* Testimony established that the Petitioner is using the older analog system as well as the new digital system. *Meighen argument.*
- b. The Petitioner purchased both the analog system and digital system between March 2, 2002, and March 1, 2004. It did so after the federal government mandate in the Telecommunications Act of 1996. Therefore, the Petitioner was aware of the government mandate when it purchased both systems and placed them in service. *Meighen argument.* Any prudent businessperson would have considered that development when negotiating the price and purchasing the equipment. *Id.*
- c. It is inconceivable that the Petitioner would claim abnormal obsolescence on a new digital system that is highly efficient and more flexible. This system has a sharper high definition program and has interactive video data services. It also frees up broadcasting airwaves. *Meighen argument.*
- d. The Respondent submitted three Indiana Tax Court cases as support: *Don Meadow Motors, Inc. v. State Bd. of Tax Comm'rs*, 545 N.E.2d 851 (Ind. Tax Ct. 1989), *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116 (Ind. Tax Ct. 1991), and *Harbor Food Plaza, Inc. v. State Bd. of Tax Comm'rs*, 638 N.E.2d 898 (Ind. Tax Ct. 1994). *Petitioner Exhibits 2, 3, 4; Meighen testimony.* The Respondent argued that the Tax Court has consistently ruled that abnormal obsolescence will be strictly construed and be limited to situations where

unforeseen changes in value result from exceptional technological obsolescence or destruction by catastrophe, if such events have a direct effect on the value of the personal property. *Id.*<sup>1</sup>

- e. Prior to denial of the Petitioner’s claim for an abnormal obsolescence adjustment, county officials sought the opinion of the DLGF on this issue. *Meighen argument; Altherr testimony; Petitioner Exhibits 5, 6, 7.*

### **Record**

14. The official record for this matter is made up of the following:

- a. The Petition,
- b. The recording of the hearing labeled STB #5188 ,
- c. Exhibits:

Petitioner Exhibit 1 – Summary of Petitioner’s arguments,

Petitioner Exhibit 2 – Copy of a letter from Daniel A. O’Sullivan, Director of Finance to Betty Bunch, Wildcat Township Assessor,

Petitioner Exhibit 3 – Copy of a letter from Daniel O’Sullivan, Director of Finance to Linda Altherr, Tipton County Assessor,

Petitioner Exhibit 4 – Tribune Broadcasting Holdings, Inc. Form 103 – Business Tangible Personal Property Assessment Return,

Petitioner Exhibit 5 – Tribune Broadcasting Holdings, Inc. Form 106 – Schedule of Adjustments to Business Tangible Personal Property Return,

Petitioner Exhibit 6 – Overview of federally mandated switch: analog to digital television,

Petitioner Exhibit 7 – Relevant Indiana Administrative Codes; 50 IAC 4.2-1-1, 50 IAC 4.2-2-10, 50 IAC 4.2-9-3, 50 IAC 4.2-9-4 and 50 IAC 4.2-4-8,

Petitioner Exhibit 8 – Summaries of relevant Indiana case law,

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<sup>1</sup> Don Medow Motors claimed abnormal obsolescence due to excessive inventory due to overpricing, adverse publicity and consumer demand for larger vehicles. The Tax Court ruled the Petitioner had not shown these factors constituted exceptional technological obsolescence. Glass Wholesalers claimed abnormal obsolescence for exceptional technological caused by unforeseen change and deterioration of its inventory to scrap or salvage value. The Tax Court ruled the Petitioner had not shown that their inventory had changed in value or that the change was unforeseen and that any events supported that their inventory was rendered technologically obsolete. Harbor Food Plaza claimed abnormal obsolescence because equipment was old, poorly functioning and of antiquated design. The Tax Court ruled an abnormal obsolescence adjustment is available only if the “value of [a taxpayer’s] inventory has changed, the change in value was unforeseen, and the unforeseen change in value was the result of exceptional technological obsolescence or destruction by catastrophe.”

Petitioner Exhibit 9 – Marshall Valuation Service, Section 97, page 18  
“Depreciation – Fixtures and Equipment” dated  
March 2003,

Petitioner Exhibit 10 – Summary of Petitioner’s argument,

Petitioner Exhibit 11 – Power of Attorney dated August 28, 2006,

Respondent Exhibit 1 - Indiana Administrative Codes; 50 IAC 4.2-9, 50  
IAC 4.2-9-1, 50 IAC 4.2-9-3, 50 IAC 4.2-9-4, 50  
IAC 4.2-9-5, 50 IAC 4.2-9-6, 50 IAC 4.2-9-7 and  
50 IAC 4.2-4-8,

Respondent Exhibit 2 – *Don Medow Motors v. State Bd. of Tax Comm'rs*,  
545 N.E.2d 851 (Ind. Tax Ct. 1989),

Respondent Exhibit 3 – *Glass Wholesalers, Inc. v. State Bd. of Tax  
Comm'rs*, 568 N.E. 2d 1116 (Ind. Tax Ct. 1991),

Respondent Exhibit 4 – *Harbor Food Plaza, Inc. v. State Bd. of Tax  
Comm'rs*, 638 N.E. 2d 898 (Ind. Tax Ct. 1994),

Respondent Exhibit 5 – Correspondence between Steve McKinney and  
Peter Salveson,

Respondent Exhibit 6 – Correspondence from Steve McKinney to Linda  
Altherr, Tipton County Assessor,

Respondent Exhibit 7 – Correspondence from Steve McKinney to Phyllis  
Middleton and Linda Altherr,

Board Exhibit A – Form 131,

Board Exhibit B – Notice of Hearing,

Board Exhibit C – Hearing sign-in sheet.

d. These Findings and Conclusions.

### Analysis

15. The most applicable governing cases are:

- a. 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).
- b. 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”).

- c. 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.
16. The Petitioner failed to make a prima facie case. The Board reached this decision for the following reasons:
- a. The federal government enacted the Telecommunication Act of 1996. It required the Petitioner to make a transition from broadcasting with an analog system to broadcasting with a digital system, but also required maintaining an analog system for the benefit of the public. The Petitioner purchased its digital and analog equipment between March 2, 2002 and March 1, 2004. The duplicate broadcast systems did not increase the number of viewers. The Petitioner had additional cost without additional net revenues.
  - b. Clear and unambiguous statutory language is not subject to interpretation or construction. *Huntington Co. Comm. School Corp. v. State Bd. of Tax Comm'rs*, 757 N.E.2d 235, 240 (Ind. Tax Ct. 2001); *Zakutansky v. State Bd. of Tax Comm'rs*, 758 N.E.2d 103 (Ind. Tax Ct. 2001); *Joyce Sportswear Co. v. State Bd. of Tax Comm'rs*, 684 N.E.2d 1189, 1192 (Ind. Tax Ct. 1997). Such language cannot be construed in a manner that expands or limits its function. *Id.*
  - c. The plain language of 50 IAC 4.2-9-3(a) states, “abnormal obsolescence” occurs as a result of factors over which the taxpayer has no control and that could not reasonably be foreseen. The causes must be unanticipated and unexpected. The causes include exceptional technological changes or destruction by catastrophe.
  - d. Although the 1996 federal mandate was outside the taxpayer’s control, it should not have been unexpected or unforeseen when the Petitioner purchased the equipment and placed it in service several years later.
  - e. Even with the federal requirements to have both digital and analog technology, the Petitioner failed to prove that its equipment has suffered a loss in value from what the Petitioner paid for it because of those requirements. The digital equipment is up-to-date technology. The Petitioner failed to show that it fits within the definition of abnormal obsolescence. While the evidence might arguably support a finding that the analog equipment is obsolete to some degree, it is still being used. More importantly, the amount of the claim must be substantiated. 50 IAC 4.2-9-4. The Petitioner, however, failed to present probative evidence to support its calculations that purport to quantify the extent to

which any of the equipment experienced an actual loss in value. The conclusory testimony and computations that the Petitioner offered do not constitute probative evidence. *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

- f. The Petitioner failed to make a prima facie case that the county officials erred in the removal of the abnormal obsolescence adjustment.
- g. When a taxpayer fails to provide probative evidence supporting its position, Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

### **Conclusion**

17. The Board finds in favor of the Respondent.

### **Final Determination**

In accordance with the above findings and conclusions, the assessment will not be changed.

ISSUED: December 4, 2006

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Commissioner,  
Indiana Board of Tax Review

## IMPORTANT NOTICE

- 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](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>.