

REPRESENTATIVES FOR PETITIONER:

F. Anthony Paganelli, Todd C. Lady, Taft Stettinius & Hollister LLP

REPRESENTATIVES FOR RESPONDENTS:

Philip Whistler, Mark Richards, Ice Miller LLP

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

AK Steel Corporation,)	Petition Number 74-006-08-1-7-00001
)	
Petitioner)	
)	
v.)	Spencer County
)	Grass Township
Spencer County Assessor and)	
Grass Township Assessor.)	
)	Personal Property
)	Assessment as of March 1, 2008
Respondents.)	

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

June 7, 2013

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

Introduction

Petitioner AK Steel Corporation (“AK Steel”) appeals from the Spencer County PTABOA with respect to assessment of AK Steel’s personal property located in Grass Township as of March 1, 2008. This appeal challenges the PTABOA’s affirmations (as documented on Forms 115) of the Respondents’ changes (documented on Forms 113/PP and 103-Long) to AK Steel’s self-assessment (documented on Forms 104 and 103-Long).

This appeal came before the Board for hearing on December 10, 2012. The Board considered witness testimony, exhibits and the arguments of counsel. The matter was taken under advisement. Subsequently, the Board received and considered post-hearing briefs from both sides. Having considered the evidence, the briefs and the oral arguments of counsel, the Board enters the following findings of fact, conclusions of law, and determination.

Findings of Fact

Stipulations of Fact by the Parties

As a threshold matter, the Board accepts and adopts the fact stipulations entered by the parties.

1. I/N Tek L.P. is a limited partnership whose interests are owned by entities owned by Nippon Steel Corporation (“Nippon Steel”) and ArcelorMittal USA, Inc. (“ArcelorMittal”).
2. I/N Tek L.P. conducts cold rolling and pickling processes at its facilities located in New Carlisle, Indiana.
3. IN Tek L.P. (or a predecessor in interest, both hereafter referred to as “I/N Tek”) utilized a “four-stand, six-high” continuous cold rolling system and a pickling line within the state of Indiana during 2008.
4. I/N Kote L.P. is a limited partnership whose interests are owned by entities owned by Nippon Steel and ArcelorMittal.
5. I/N Kote L.P. (or a predecessor in interest, both hereafter referred to as “I/N Kote”) conducted galvanizing processes related to steel production within the state of Indiana during 2008.

6. I/N Kote utilized one hot-dip galvanizing and one electrolytic galvanizing line to process steel within the state of Indiana during 2008.
7. During 2008, neither I/N Tek nor I/N Kote owned a blast furnace located in the state of Indiana, but each was at least 50% owned by an affiliate of an entity which produced steel by processing iron ore and other raw materials in a blast furnace located in the state of Indiana.
8. I/N Tek processed “hot rolls” of steel that originated from an affiliate located in Indiana that operated a blast furnace within Indiana during 2008.
9. I/N Kote processed steel that originated from an affiliate located in Indiana that operated a blast furnace within Indiana during 2008.
10. Steel Dynamics, Inc. owns and operates a steel mill containing an electric arc furnace in Butler, Indiana, which produces steel that is then finished and processed in a number of ways, including pickling, galvanizing, and cold rolling.
11. Steel Dynamics, Inc. operates finishing facilities at Butler, Indiana and at Jeffersonville, Indiana that produce pickled, cold rolled, galvanized, and painted flat-roll steel.
12. Neither Steel Dynamics, Inc. nor any of its subsidiaries or affiliates owned a blast furnace located in the state of Indiana, or any other state, during 2008.
13. Beta Steel Corp. owns and operates a steel mill located in Portage, Indiana, that produces steel in an electric arc furnace, including hot rolled coil steel.
14. Beta Steel Corp.’s Portage facility includes an electric arc furnace melt shop that produces continuous cast steel slabs, and a hot strip rolling mill for further processing of slabs into flat rolled steel products.

15. Neither Beta Steel Corp., nor any of its parents or affiliates, owned a blast furnace located within the state of Indiana, or any other state, during 2008.
16. Nucor Corporation (“Nucor”) operates a thin-slab cast steel mill in Crawfordsville, Indiana, which includes an electric arc furnace. The Nucor Crawfordsville facility includes cold rolling mills and galvanizing lines for further processing of hot rolled sheet, and produces hot and cold rolled coils, cold rolled high carbon steel coils, and galvanized coils.
17. Neither Nucor, nor any of its subsidiaries or affiliates, owned a blast furnace located in the state of Indiana, or any other state, during 2008.
18. CSN, LLC owns and operates a steel processing facility in Terre Haute, which includes a continuous pickle line, two-stand reversing cold mill, hot-dip galvanizing line, hydrogen batch annealing furnace, and a temper mill and coil slitter.
19. Neither CSN, LLC, nor any of its subsidiaries or affiliates, owned a blast furnace located in the state of Indiana, or any other state, during 2008.
20. I/N Tek and I/N Kote were entitled to elect to value their property located in St. Joseph County, Indiana, for the March 1, 2008 assessment date under the method provided in Ind. Code § 6-1.1-3-23 (“Pool No. 5 Method”).
21. Steel Dynamics, Inc., Beta Steel Corp., Nucor, and CSN, LLC were not entitled to elect to value their property at any of their Indiana facilities using the Pool No. 5 Method for the March 1, 2008 assessment date.

Evidence Submitted at December 2012 Hearing¹

22. AK Steel is a steel producer headquartered in suburban Cincinnati, Ohio. It is one of a handful of companies in the United States that are known as “integrated steelmakers.” (Petitioner’s Ex. 34)
23. An integrated steelmaker produces steel by combining the raw inputs of iron ore, coal, and limestone in a blast furnace to produce a liquid iron that is then cast into steel slabs using a basic oxygen furnace. (Petitioner’s Ex. 34; Tr. 53²)
24. AK Steel manufactures flat-rolled steels and tubular products in its plants located in Ohio, Pennsylvania, Kentucky, and Indiana. (Petitioner’s Ex. 34; Tr. 52)
25. AK Steel’s primary product is carbon steel, which is the result of integrated steel manufacturing using predominantly blast-furnace technology. (Petitioner’s Ex. 34)
These products are of a high quality and can be used for applications such as the exposed exterior of a car, which requires the application of high quality paint to the surface.
(Petitioner’s Ex. 34)

¹ At the start of this hearing the parties agreed to the admission of Petitioner’s Exhibits 1-37 and Respondents’ Exhibits 1-150, subject to later objections as to relevance and/or hearsay. Tr. 23-26. There were several such objections during the hearing, most or all of those were ruled upon during the course of the hearing. But after the hearing, the Petitioner filed a list of hearsay objections to Respondent Exhibits 23-36, 42-58, 74, 83, 100-102, 104, 106-111, 113, 115-128, 132 and 136. The Petitioner also filed a list of relevance objections to Respondent Exhibits 18, 23-40, 42-62, 74, 77, 79, 81, 83-84, 86-87, 89-91, 93-95, 98-128, 132, 134 and 136-142. Most of these objections were raised and ruled upon during the course of the hearing. And to the extent they were, the statements in this footnote are not intended to change or modify those rulings in any way. If any of the objections were not previously ruled upon, they are overruled. These exhibits are part of the record. We recognize that the Indiana Board’s role here is only a limited one. Because of the specific statutory definition of “integrated steel mill” in Ind. Code § 6-1.1-3-23(a)3, in our view much of the evidence the Respondents offered has little or no relevance to the constitutionality issues. The Respondent’s argument that the Rockport Works itself must be an “integrated steel mill” is not consistent with the plain meaning of the term—we agree with the Petitioner that Ind. Code § 6-1.1-3-23(a)3 defined “integrated steel mill” as an entity, not a place. Nevertheless, in this case we take an extremely broad view on relevance, primarily so the Tax Court will have the benefit of a fully developed record when it considers the constitutionality issue that is at the heart of this dispute.

² Pursuant to 52 IAC 2-6-5(c), AK Steel hired the Baynes Reporting Service to prepare a transcript of the December 10, 2012 hearing from ALJ Holaday’s official audio recording of that hearing, and thereafter submitted that transcript to the Board. All transcript references in this document are to that transcript.

26. Among its production facilities, AK Steel owns and operates blast furnaces and other steelmaking equipment at its Ashland Works facility in Ashland, Kentucky, and at its Middletown Works facility in Middletown, Ohio. (Petitioner's Ex. 34; Tr. 53)
27. At its Ashland Works, AK Steel uses blast furnaces and other equipment to produce semi-finished steel slabs that are transported to its Middletown Works for hot milling and further processing. (Petitioner's Ex. 34)
28. AK Steel's Middletown Works also uses blast furnaces and other equipment to produce semi-finished steel slabs. (Petitioner's Ex. 34)
29. These slabs, as well as slabs transported from Ashland Works, are processed in the Middletown Works' hot strip mill to produce hot rolled coils, also called "hot roll." (Petitioner's Ex. 34) The term "hot roll" describes coils of carbon steel that have been produced in a blast furnace and rolled into sheets of steel for, among other things, further processing in a cold-rolling mill. (Petitioner's Ex. 34)
30. Some of the hot rolled coils are further processed in Middletown Works' cold rolling mills and some are transported for processing in cold rolling mills of other AK Steel facilities. (Petitioner's Ex. 34)

AK Steel's Rockport Works

31. In the mid-1990s, AK Steel's ability to generate hot rolled coils exceeded its ability to cold roll them to meet customer demand, so the company began planning for the expansion of its cold-rolling facilities. (Petitioner's Ex. 34; Tr. 58, 65)
32. AK Steel engaged in a site selection process, during which it considered a number of candidate locations based on several factors, including the availability of suitable land,

- accessibility to rail lines, and economic development incentives being offered by the communities. (Petitioner's Ex. 34)
33. AK Steel ultimately chose a location in Spencer County near Rockport to construct its new facility. (Petitioner's Ex. 34)
 34. AK Steel's decision to locate its new facility at Rockport was influenced, in part, by personal property tax abatements offered to AK Steel by Spencer County. (Petitioner's Ex. 34)
 35. AK Steel's plant, known as Rockport Works, was completed and began production in 1998. (Petitioner's Ex. 34)
 36. Rockport Works is a 1.7 million square-foot plant located on a 1,700 acre site and consists of: (a) continuous cold-rolling mill, (b) a continuous hot-dip galvanizing and galvannealing line; (c) a continuous carbon and stainless steel pickling line; (d) a continuous stainless steel annealing and pickling line; (e) hydrogen annealing facilities; and (f) a temper mill. (Tr. 66, 76-88) AK Steel spent over \$1.1 billion dollars to equip this new facility. (Tr. 67, 74, 88)
 37. As of March 1, 2008, the adjusted cost of AK Steel's special integrated steel mill equipment (as defined in Ind. Code § 6-1.1-3-23) at Rockport Works was greater than 50% of the adjusted cost of its total property at Rockport Works. (Tr. 88-89, 131)
 38. As of March 1, 2008, the adjusted cost of AK Steel's special integrated steel mill equipment (as defined in Ind. Code § 6-1.1-3-23) at all locations was greater than 50% of the adjusted cost of its total property at all locations. (Tr. 89, 131)
 39. The principal raw product used in AK Steel's operations at Rockport Works is hot-rolled steel, also called "hot roll," typically originating (as described above) in the blast

furnaces at Ashland Works or Middletown Works, and then processed at the hot-strip mill at Middletown, before being transported to Rockport. (Petitioner's Ex. 34)³

40. "Hot roll" coils typically arrive at Rockport Works by rail from the Middletown Works, and are then offloaded for processing inside the Rockport Works facility. (Petitioner's Ex. 34)
41. The majority of the "hot roll" coils that arrive at Rockport Works are carbon steel that originates in one of the blast furnaces owned by AK Steel.
42. The "hot roll" coils that arrive at Rockport Works are subjected to a multi-step production process known as "cold rolling," which results in a finish-grade steel product that may be used for appliances, automobiles, and the like. (Petitioner's Ex. 34)
43. The first step in processing the coils at Rockport Works is to pass them through the continuous pickling lines. (Petitioner's Ex. 34) A pickling line is designed to clean steel coils of contaminants in order to further process the steel. The steel is uncoiled and sent through a series of hydrochloric acid baths that remove the oxides (*e.g.*, rust). (Petitioner's Ex. 34) The steel sheet is then rinsed and dried. (Petitioner's Ex. 34)
44. In the next step, the coils are processed through a five-stand continuous cold mill, which makes the steel thinner, smoother, and stronger by applying pressure rather than heat. (Petitioner's Ex. 34)
45. Stands of rolls in a cold mill are set very close together. (Petitioner's Ex. 34) Using tremendous physical pressure, sheets of steel are pressed from one-quarter inch thick to

³ In addition, the Rockport Works processes carbon steel and stainless steel made in an electric arc furnace, rather than in a blast furnace. Stainless steel is a chemically different product from carbon steel. It contains a higher percentage of elements such as chromium, nickel and manganese. It is substantially more expensive than carbon steel and is generally priced by the pound, not by the ton. The profit margins on stainless steel are generally higher than on carbon steel. Stainless steel is only produced in an electric arc furnace, never in a blast furnace. (Tr. 99, 159-160; Respondent's Ex. 3, 43) We agree with the Petitioner, however, that the Rockport Works capacity to also process product that did not originate in a blast furnace is not relevant to the statutory definitions and requirements.

less than one-eighth inch thick. (Petitioner's Ex. 34) During this process, the coil's length is more than doubled, much like a sheet of dough widens as it is rolled thin. (Petitioner's Ex. 34)

46. Next, the coils are run through either a hot-dip galvanizing and galvannealing process, or an annealing process. (Petitioner's Ex. 34) The galvanizing process creates zinc-based coatings on the cold-rolled steel. (Petitioner's Ex. 34) The galvannealing process is applied to coatings on hot-dipped galvanized steels in order to convert the coatings completely to zinc-iron alloys. (Petitioner's Ex. 34)
47. Alternatively, the coils may undergo an annealing process, after which they continue through a temper-rolling process as a final step. (Petitioner's Ex. 34) Annealing is a process in which a heat or thermal treatment is applied to the steel sheet at a designated temperature for a sufficient amount of time, and then the sheet is cooled. (Petitioner's Ex. 34)
48. The annealing process is designed to make a previously cold-rolled steel coil more suitable for forming and bending. (Petitioner's Ex. 34) A temper mill finishes a cold-rolled annealed sheet steel by improving the finish or texture to develop the required final mechanical properties. (Petitioner's Ex. 34)
49. The finished steel products are shipped from Rockport Works by rail or truck for a variety of uses, including delivery to outside processors for trim or for further processing; shipment directly to a customer, predominantly for automotive and appliance applications; shipment to a third-party that holds the product as just-in-time inventory for the automotive industry; or transfer back to another AK Steel facility for further processing. (Petitioner's Ex. 34)

AK Steel's Competition

50. AK Steel's products compete against the products of other foreign and domestic integrated steel manufacturers that also have facilities in Indiana. (Petitioner's Ex. 34)
51. In particular, AK Steel's products compete in the marketplace against the products sold by U.S. Steel, ArcelorMittal Steel, I/N Kote, and I/N Tek, including products produced at U.S. Steel's plant in Gary, Indiana, ArcelorMittal's plants in East Chicago, Indiana, and Burns Harbor, Indiana, I/N Kote's plant in New Carlisle, Indiana and I/N Tek's plant in New Carlisle, Indiana. (Petitioner's Ex. 34; Tr. 53-54, 89)
52. U.S. Steel, ArcelorMittal Steel, I/N Kote, and I/N Tek all are entitled to use Pool No. 5 to depreciate their steelmaking equipment. (Petitioner's Ex. 36)
53. AK Steel's blast furnaces at its Ashland Works and Middletown Works facilities are of the same general type and provide the same functions as the blast furnaces from which the steel processed at I/N Tek and I/N Kote originated. (Petitioner's Ex. 34; Tr. 55, 90-91, 202)
54. The principal differences between AK Steel's blast furnaces and those used by its competitors in Indiana are that AK Steel's blast furnaces are decades older than those used by US Steel and ArcelorMittal. (Tr. 57, 91-92)
55. I/N Tek and I/N Kote own no blast furnaces at their Indiana facilities, or anywhere else. (Petitioner's Ex. 36)
56. AK Steel's cold-rolling equipment at Rockport Works is substantially similar to the cold-rolling equipment used by its competitors in Indiana. (Petitioner's Ex. 34, Tr. 92-93, 200-01, 203-04)

57. The steelmaking equipment in use at Rockport Works bears a striking similarity to the cold rolling and pickling equipment in use at the I/N Tek and I/N Kote facilities located in New Carlisle, Indiana. (Tr. 93-94; 200-01, 206-07) For example, I/N Tek utilizes a “four-stand, six-high” continuous cold rolling system and a pickling line at its facility. (Petitioner’s Ex. 36)
58. Like AK Steel’s Rockport Works, I/N Tek performs cold rolling operations on “hot rolls” of steel that originated from another facility that operated a blast furnace. (Petitioner’s Ex. 36)
59. At its Rockport Works, AK Steel utilizes a “five-stand, four-high” continuous cold rolling system and a pickling line. (Petitioner’s Ex. 34)
60. I/N Kote conducts galvanizing processes related to steel production. (Petitioner’s Ex. 36)
61. At its Rockport Works, AK Steel also conducts galvanizing processes related to steel production. (Petitioner’s Ex. 34)
62. I/N Kote utilizes one hot-dip galvanizing and one electrolytic galvanizing line to process steel within the State of Indiana during 2008. (Petitioner’s Ex. 36)
63. At its Rockport Works, AK Steel utilized one hot-dip galvanizing and one electrolytic galvanizing line to process steel. (Petitioner’s Ex. 34)

The Enactment and Amendment of Pool No. 5

64. In 2003 the Legislature adopted P.L. 120-2003 enacting Ind. Code § 6-1.1-3-23, which established a valuation table, designated as "Pool No. 5," to be used by “integrated steel mills” in determining the true tax value of "special integrated steel mill equipment."

65. For purposes of the Pool No. 5 statute, “special integrated steel mill equipment” is defined as:

depreciable personal property, other than special tools and permanently retired depreciable personal property:

(A) that:

(i) is owned, leased, or used by an integrated steel mill or an entity that is at least fifty percent (50%) owned by an affiliate of an integrated steel mill; and

(ii) falls within Asset Class 33.4 as set forth in IRS Rev. Proc. 87-56, 1987-2, C.B. 647.

Ind. Code § 6-1.1-3-23(a)(7)

66. According to IRS Rev. Proc. 87-56, 1987-2, C.B. 647, Asset Class 33.4 includes:

assets used in the smelting, reduction, and refining of iron and steel from ore, pig, or scrap; the rolling, drawing and alloying of steel; the manufacture of nails, spikes, structural shapes, tubing, wire, and cable. Includes assets used by steel service centers, ferrous metal forges, and assets used in coke production, regardless of ownership. Also includes related land improvements and all special tools used in the above activities.

67. Pool No. 5 supplements valuation tables included in a regulation of the Department of Local Government Finance (the "DLGF") at 50 IAC 4.2-4-7, which provided four valuation tables, or "pools," for depreciable personal property depending on its useful life. Property that qualifies for valuation under Pool No. 5 also is not subject to the minimum value limitations of 50 IAC 4.2-4-9 (the “30% floor”). *See* IC 6-1.1-3-23(e).⁴

⁴ IC 6-1.1-3-23 was amended in 2011 by P.L. 220-2011 § 119 (eff. January 1, 2011). The amendment inserted prior non-codified language as a new subparagraph (a), and thereby sequentially altered the statute by causing existing subparagraph (a) to be renumbered as subparagraph (b), and so forth. In this document, citations are to the statute as it existed on March 1, 2008 (the assessment date in question).

68. As originally enacted, the Pool No. 5 Statute simply defined “integrated steel mill” as “a person that produces steel by processing iron ore and other raw materials in a blast furnace.”
69. AK Steel produces steel by processing iron ore and other raw materials in a blast furnace. Its personal property falls within Asset Class 33.4 as set forth in IRS Rev. Proc. 87-56. Therefore, AK Steel claimed the benefits of Pool No. 5 with respect to its personal property in Spencer County, Indiana beginning with the March 1, 2004 assessment.
70. Shortly after its enactment, legislative proposals to change the Pool No. 5 statute began. (Tr. 137)
71. House Bill 1584 (Sess. 2005) was introduced to add the words “in Indiana” to the statutory definition of an “integrated steel mill,” so that the amended statute would read as follows:

“[I]ntegrated steel mill” means a person that produces steel by processing iron ore and other raw materials in a blast furnace *in Indiana*.

(Petitioner’s Ex. 17, emphasis added). The efforts were successful and the change was included P.L. 228-2005. The change was retroactive to January 1, 2004—the exact day that the original Pool No. 5 statute went into effect.

72. That same year, P.L. 246-2005 § 59 further amended this definition (retroactively) to provide that a corporate subsidiary of an entity that owns a blast furnace within Indiana qualifies as an integrated steel mill. The resulting definition, as revised both by P.L. 228-2005 and P.L. 246-2005, is as follows:

“[I]ntegrated steel mill” means a person, including a subsidiary of a corporation, that produces steel by processing iron ore and other raw materials in a blast furnace in Indiana.

73. As a result of these two amendments, the statute presently provides that the taxpayer's blast furnace, or the blast-furnace of the taxpayer's parent corporation, must be physically located *in Indiana* before the taxpayer can qualify as an "integrated steel mill" permitted to claim the benefits of Pool No. 5 with respect to its integrated steel mill equipment.
74. The Fiscal Impact Statement prepared by the Indiana Legislative Services Agency Office of Fiscal and Management Analysis for H.B. 1584 states:

Under current law, an integrated steel mill is defined as a producer of steel by processing raw materials in a blast furnace. Beginning with taxes paid in CY 2005, this bill would require that the blast furnace be located in Indiana to meet the definition and in order for a taxpayer to use Pool 5 depreciation. There is currently at least one taxpayer, in Spencer County, that has its blast furnace in another state but used Pool 5 depreciation for its Indiana property.

(Petitioner's Ex. 18)

75. Identical language appears in the Fiscal Impact Statement prepared for S.B. 327 (Sess. 2005), the ultimate bill that became P.L. 228-2005. Similarly, the Indiana Economic Development Corporation's annual report to the General Assembly concerning the steel industry that year indicated that the "in Indiana" limitation only affects AK Steel:

On May 12, 2005, Senate Bill 327 was enacted. This bill, which has become Public Law 228-2005, restricts the property tax valuation provided in H.B. 1858 to equipment in integrated steel mills that produce steel "in a blast furnace in Indiana." (In contrast, H.B. 1858 covered all steel mills, regardless of whether they had an Indiana blast furnace.) The new law apparently applies to only one steel mill in Indiana: AK Steel's plant in Spencer County, which has its blast furnace out of state.

(Petitioner's Ex. 20)

AK Steel's 2008 Personal Property Tax Assessment

76. On September 12, 2008, AK Steel timely filed an amended Form 103, Business Personal Property Return, reporting the assessed value of its tangible personal property in Grass Township as of March 1, 2008 (the "Amended Return").
77. In the Amended Return, AK Steel reported the assessed value of its depreciable personal property at Rockport Works (the "Equipment") in Grass Township using the Pool No. 5 valuation schedule. AK Steel also filed a Form 103-ERA with the Amended Return in order to claim various abatement deductions.
78. County Assessor Sara J. Arnold responded to the Amended Return by issuing a Form 113/PP dated February 2, 2009, to AK Steel in which she rejected both AK Steel's use of Pool No. 5 and AK Steel's claimed tax abatement deductions.
79. AK Steel timely filed a Notice for Review to the PTABOA.
80. Prior to AK Steel's PTABOA hearing, on September 29, 2010, the Assessor issued a "supplemental" Form 113/PP, further increasing the assessed value of AK Steel's Grass township personal property.
81. The PTABOA conducted a hearing on AK Steel's appeals on October 11, 2010. On October 28, 2010, the PTABOA issued its final determination (Form 115) upholding the assessed value of AK Steel's tangible personal property as determined by the Assessor.
82. On December 9, 2010, AK Steel filed its Form 131 petition with the Indiana Board of Tax Review appealing the PTABOA's determination.
83. Pending the Board's review of AK Steel's 2008 Petition, the Assessor and AK Steel entered into a comprehensive settlement agreement (the "Settlement Agreement")

resolving, among other items, the personal property tax disputes between AK Steel and Spencer County for all years other than 2008. (See Petitioner's Ex. 36)

84. As part of the Settlement Agreement, the parties agreed for purposes of AK Steel's 2008 Grass Township appeal to stipulate that if AK Steel ultimately is determined not to be able to use Pool No. 5, the assessed value of AK Steel's Grass Township personal property is \$311,760,920, and its permitted abatement deduction is \$111,121,015. (Petitioner's Ex. 36)

Conclusions of Law

Is AK Steel's Personal Property "Integrated Steel Mill Equipment?"

1. Indiana Code § 6-1.1-3-23(b), the operative portion of the statute granting the benefits of Pool No. 5, provides in relevant part:

[A] taxpayer may elect to calculate the true tax value of the taxpayer's special integrated steel mill...equipment by multiplying the adjusted cost of that equipment by the percentage set forth in the following table..."
2. Indiana Code § 6-1.1-3-23(a)(7) specifically defines "special integrated steel mill equipment" as "depreciable personal property ... that is owned, leased, or used by an integrated steel mill or an entity that is at least fifty percent (50%) owned by an affiliate of an integrated steel mill; and falls within Asset Class 33.4 as set forth in IRS Rev. Proc. 87-56, 1987-2, C.B. 647."
3. The Respondents argue that AK Steel's equipment is not special integrated steel mill equipment and, therefore, that it should not be valued under Pool No. 5 because AK Steel's *Rockport Works facility* is not an "integrated steel mill." Even though the 2005 amendment to the Pool No. 5 statute requires only that an integrated steel mill have its

blast furnace in Indiana, the Respondents argue that only facilities with on-site blast furnaces are “integrated steel mills” for purposes of Pool No. 5. At the same time, however, they stipulated that the equipment in the I/N Tek and I/N Kote facilities in St. Joseph County may be valued using Pool No. 5. I/N Kote and I/N Tek both conduct the same finishing operations that are conducted at AK Steel’s Rockport Works and neither has a blast furnace located in Indiana. Indeed, neither of these facilities has a blast furnace at all. Each is partially owned by a separate legal entity that has its own blast furnace located in Indiana, but that blast furnace is at a facility located two counties away.

4. The Respondent’s argument on this point lacks merit. The statute clearly defines the term “integrated steel mill” in reference to the *owner* of property that qualifies for the benefits of Pool No. 5, not the *facility* where the equipment is located:

“integrated steel mill” means a *person, including a subsidiary of a corporation*, that produces steel by processing iron ore and other raw materials in a blast furnace in Indiana.

Ind. Code §6-1.1-3-23(a)(3) (emphasis added). Because this term is specifically defined by statute, the Respondent’s attempt to prove the meaning as a “term of art” used in the steel industry has very little, if any significance.

5. Further, only the Petitioner’s argument is consistent with the definition of “special integrated steel mill equipment” (the personal property whose assessment depends on the operation of the Pool No. 5 Statute) found elsewhere in the Pool No. 5 statute.
6. Reconciling the Respondent's definition of "integrated steel mill" with the definition of "integrated steelmaking equipment" is impossible because a facility cannot own, lease, or

use equipment and it cannot have an affiliate who can own at least half of such equipment.

7. Under the unambiguous language of the statute an “integrated steel mill” is a person or entity, such as AK Steel, and not a specific geographical place such as Rockport Works.
8. Evidence in the record supports this four-corners interpretation of the statute. For example, the Fiscal Impact Statement prepared by the Indiana Legislative Services Agency Office of Fiscal and Management Analysis for S.B. 327 (Sess. 2005), the ultimate bill that became P.L. 228-2005, discusses the then-pending bill as follows:

Under current law, an integrated steel mill is defined as a producer of steel by processing raw materials in a blast furnace. Beginning with taxes paid in CY 2005, this bill would require that the blast furnace be located in Indiana to meet the definition and in order for a taxpayer to use Pool 5 depreciation. There is currently at least one taxpayer, in Spencer County, that has its blast furnace in another state but used Pool 5 depreciation for its Indiana property.

9. The flaws in the Respondents’ reasoning are further evidenced by the fact that at least two steel finishing facilities located in Indiana—I/N Kote and I/N Tek—qualify for the benefits of Pool No. 5 even though both conduct the same finishing operations that are conducted at AK Steel’s Rockport Works and neither has a blast furnace located in Indiana. Indeed, neither of those facilities has a blast furnace at all. Each is partially owned by a separate legal entity with its own blast furnace located in Indiana, although that blast furnace is connected to and affiliated with another facility altogether.
10. AK Steel is “a person... that produces steel by processing iron ore and other raw materials in a blast furnace.” And it is uncontested that AK Steel’s personal property at Rockport Works meets the requirements of Ind. Code § 6-1.1-3-23(a)(7)(A)(ii).

11. Therefore, the personal property at issue is “special integrated steel mill equipment” that qualifies for the benefits of Pool No. 5, except for the “in Indiana” language added to the statute by the 2005 Amendment that AK Steel has challenged as unconstitutional.

*Is P.L. 228-2005, § 2, which amended Ind. Code § 6-1.1-3-23
 (“the Pool No. 5 Statute”) unconstitutional on either Federal or State grounds?*

12. AK Steel’s present appeal is a challenge to the constitutionality of P.L. 228-2005, § 2, which amended Ind. Code § 6-1.1-3-23 (“the Pool No. 5 Statute”) in 2005, retroactive to January 1, 2004.
13. In Indiana, to contest the constitutionality of a personal property tax statute, a taxpayer must first bring an action at the administrative level. *State v. Sproles*, 672 N.E.2d 1353, 1360-62 (Ind. 1996); *see also Felix v. Indiana Dept. of State Revenue*, 502 N.E.2d 119 (Ind. Ct. App. 1986); *Goldstein v. Indiana Dept. of Local Government Finance* 876 N.E.2d 391, 393-95 (Ind. Tax 2007).
14. Had AK Steel not appealed, it would have had no method to contest the constitutionality of the 2005 amendment. *See State Bd. of Tax Com'rs v. Montgomery*, 730 N.E.2d 680 (Ind. 2000) (“Even if the ground of complaint is the unconstitutionality of the statute, which may be beyond the agency's power to resolve, exhaustion may still be required because ‘administrative action may resolve the case on other grounds without confronting broader legal issues.’ *Sproles*, 672 N.E.2d at 1358.”).
15. Both AK Steel and the Respondent acknowledged that this Board’s limited grant of statutory authority to adjudicate property tax appeals prevents the Board from declaring a statute unconstitutional. More specifically, Ind. Code §6-1.5-4-1(a) confers limited authority on this Board to conduct an impartial review of all appeals concerning the

assessed valuation of tangible property, property tax deductions, property tax exemptions and property tax credits.

16. The Board's jurisdiction is limited to those areas specifically enumerated by statute, and "unless a grant of power and authority can be found in the statute it must be concluded that there is none." *Ind. Bell Tel. Co., Inc. v. Ind. Utility Reg. Comm'n*, 715 N.E.2d 351, 354 n.3 (Ind. 1999). In *State Board of Tax Comm's v. Montgomery*, 730 N.E.2d 680, 686 (Ind. 2000), the Indiana Supreme Court held that administrative agencies do not have the authority to decide constitutional challenges to statutes. *See also State v. Sproles*, 672 N.E.2d 1353 (Ind. 1996).
17. Therefore, the Indiana Board may not consider the merits of AK Steel's constitutional challenges. The Indiana Board is powerless to declare any statute unconstitutional. Rather, our statutory mandate (or lack thereof) compels us to affirm the decision of Spencer County PTABOA as to AK Steel's eligibility to claim the benefits of Pool No. 5, without further discussion of the merits of AK Steel's constitutional challenges.

What is the proper determination of AK Steel's Tax Abatement Deductions?

18. Because the Assessor agreed that AK Steel is entitled to its abatement deductions as claimed in the event that AK Steel is not entitled to the use of Pool No. 5 to depreciate its personal property located in Spencer County, and because this Board cannot reverse the PTABOA's determination that AK Steel is not entitled to the use of Pool No. 5, we therefore conclude that AK Steel is entitled to its abatement deductions in full as originally claimed for the March 1, 2008 assessment date.

Conclusion and Order

For all of the foregoing reasons, the Board enters this final determination. The Board AFFIRMS the decision of the Spencer County PTABOA that AK Steel is not entitled to use Pool No. 5 to depreciate its personal property located in Spencer County in connection with the 2008 assessment. The Board REVERSES the decision of the Spencer County PTABOA that AK Steel is not entitled to abatement deductions as claimed in its Forms 103 and 104 in connection with the 2008 assessment.

Chairman, Indiana Board of Tax Review

Member, Indiana Board of Tax Review

Member, Indiana Board of Tax Review