
**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

Accra Pac, Inc.,	)	Petition No.:	20-025-98-3-7-00029
	)		20-025-99-3-7-00009
Petitioner	)		20-025-00-3-7-00005
)		
v.	)	County:	Elkhart
	)	Township:	Concord
Concord Township Assessor,	)	Parcel No.:	Personal Property
)		
Respondent	)	Assessment Years:	1998, 1999, 2000

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

March 3, 2003

FINAL DETERMINATION

The Indiana Board of Tax Review assumed jurisdiction of this matter as the successor entity to the State Board of Tax Commissioners, and the Appeals Division of the State Board of Tax Commissioners. For convenience of reference, each entity is without distinction hereafter referred to as the "Board".

The Board having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Issue

1. The issue considered by the Board was:

Whether the errors described by the Petitioner are correctable on a Form 133 petition.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-3, the Petitioner filed Form 133 petitions petitioning the Board to conduct an administrative review of the above petitions. The Form 133 petitions were filed on August 24, 2001. The determination of the PTABOA was issued on August 1, 2001.

Matters of Record

3. The errors described on the Form 133 petitions are: (1) whether the Petitioner is entitled to an adjustment for obsolescence, and (2) whether the Petitioner is entitled to an adjustment for inventory located in an enterprise zone. Petition number 20-025-98-3-7-00029 lists only the first error(obsolescence). The remaining two petitions list both of the above errors.
4. On November 13, 2001, the Board sent the Petitioner a Notice of Defect. The Notice of Defect cited two reasons for the defect. The first was that a Form 133 is only available for errors that can be corrected without resort to subjective judgment, and the determination and qualification of abnormal obsolescence requires subjective judgment. The second was that the Form 133 was not the proper procedure for appealing the denial of the enterprise zone tax credit.
5. On December 12, 2001, the Petitioner responded to the Notice of Defect with a letter.
6. On December 17, 2001, the Board sent the Petitioner a second Notice of Defect for petition numbers 20-025-00-3-7-00005 and 20-025-99-3-7-00009. This Notice requested specific information in order to determine whether the Petitioner had properly and timely appealed the enterprise zone tax credit.

7. The Petitioner responded with a letter dated January 14, 2002. In the letter, the Petitioner stated that they were unable to provide the requested documents and requested to withdraw the issue of the enterprise zone tax credit. The Petitioner stated that they intend to pursue the issue of abnormal obsolescence.
8. The following items are officially recognized as part of the record of proceedings:
 - [A] Form 133 petitions with attachments
 - [B] Notice of Defect dated November 13, 2001
 - [C] Response to Notice of Defect received on December 12, 2001
 - [D] 2nd Notice of Defect dated December 17, 2001
 - [E] Response to 2nd Notice of Defect dated January 14, 2001

Jurisdictional Framework

9. This matter is governed by the provisions of Ind. Code § 6-1.1-15, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.
10. The Board is authorized to issue this final determination pursuant to Ind. Code § 6-1.1-15-3.

Discussion of Issues

ISSUE: *Whether the errors described by the Petitioner are correctable on a Form 133 petition*

11. The Petitioner withdrew the issue of the enterprise zone tax credit. The remaining issue is whether an adjustment for abnormal obsolescence is an error correctable on a Form 133.
12. The Board notified the Petitioner that the Form 133 petition was defective because the error described was not correctable on a Form 133. The Notice of Defect stated that a Form 133 is available only for errors that can be corrected without resort to subjective

judgment. The determination and quantification of abnormal obsolescence requires subjective judgment.

13. In response to the Notice of Defect, the Petitioner “maintains that the errors regarding abnormal obsolescence should be objectively corrected under Indiana code, which can be accomplished without resort to subjective judgment.” The Petitioner lists the following reasons for requesting a review:

- A) Indiana Code gives the right to Accra Pac, Inc. to receive such a refund because of the fact that there was a mathematical error in the computation of the assessment due to an error of omission regarding credit for deduction permitted by law. (IC 6-1.1-26-1).
- B) Accra Pac, Inc. has fulfilled the requirement to qualify for such a refund by filing the proper forms with the proper authorities within the prescribed timelines.
- C) Indiana Code specifically mandates that the tax authority accepts the adjustment. By law, Accra Pac, Inc. may file for the adjustment subsequent to the original filing. The mandatory adjustments for depreciable assets include abnormal obsolescence.
- D) Specific Accra Pac, Inc. personal property qualifies for an abnormal obsolescence adjustment due to 1) unforeseen changes in market values and 2) governmental action, both of which are factors that qualify Accra Pac, Inc.’s personal property for eligibility for this deduction. The unforeseen change in market value is the result of a change in consumer preference for aerosol products. This change in market values also is in part the result of governmental action to restrict the use of fluorocarbons as propellants in aerosol products. Other governmental action involved the failure of the City of Elkhart to issue a Certificate of Occupancy to Accra Pac, Inc. for newly acquired manufacturing facility, which had a direct effect upon the value of the depreciable personal property of Accra Pac. Inc.
- E) The calculation of the abnormal obsolescence adjustment was made in accordance with Indiana Code (50 IAC 4.2-8-10 and 50 IAC 4.2-5-14). A

detailed calculation of equipment utilization is attached. In the calculation, the capacity of the equipment is per the original equipment manufacturer.

See Petitioner letter received on December 12, 2001 and labeled as Item C.

14. The applicable rules and case law governing this Issue are:

Ind. Code § 6-1.1-15-12

(a) Subject to the limitations contained in subsections (c) and (d), a county auditor shall correct errors which are discovered in the tax duplicate for any one (1) or more of the following reasons:

- (1) The description of the real property was in error.
- (2) The assessment was against the wrong person.
- (3) Taxes on the same property were charged more than one (1) time in the same year.
- (4) There was a mathematical error in computing the taxes or penalties on the taxes.
- (5) There was an error in carrying delinquent taxes forward from one (1) tax duplicate to another.
- (6) The taxes, as a matter of law, were illegal.
- (7) There was a mathematical error in computing an assessment.
- (8) Through an error of omission by any state or county officer the taxpayer was not given credit for an exemption or deduction permitted by law.

Bender v. State Board of Tax Commissioners, 676 N.E. 2d 1113, (Ind. Tax 1997)

Reams v. State Board of Tax Commissioners, 620 N.E. 2d 758, (Ind. Tax 1993)

Hatcher v. State Board of Tax Commissioners, 561 N.E. 2d 852, (Ind. Tax 1990)

Analysis of ISSUE

15. The Petitioner gives five (5) reasons for requesting the review (see ¶ 15). These reasons include that there was a mathematical error in computation of the assessment, abnormal obsolescence is a mandatory adjustment, and the Petitioners own determination that the property qualifies for the adjustment.
16. In *Hatcher*, the Tax Court found that the legislative intent of Ind. Code § 6-1.1-15-12(a)(7) was to limit mathematical errors to those “involving the incorrect use of numbers in determining the assessment” and “errors which can be corrected accurately,

with precision, and with rigorous exactness.” *Hatcher* at 854. The error described by the Petitioner is not a math error which falls within these limitations.

17. Abnormal obsolescence is an mandatory adjustment pursuant to 50 IAC 4.2-2-10(d)(3) However, it is an adjustment that requires subjective judgment. Therefore, it is not an adjustment (or error) that can be made via a Form 133 petition. The Tax Court has held that Ind. Code § 6-1.1-12-15(a) provides an avenue for correcting objective errors in an assessment, not errors in subjective judgment. Therefore, “the only errors subject to correction by Form 133 are those which can be corrected without resort to subjective judgment.” *Hatcher* at 857.
18. Prior Tax Court rulings support the Board’s position. “The Court upheld the State Board’s final denial of the Form 133 petition because the assessor’s determination required consideration of obsolescence, a factor involving the assessor’s subjective judgment.” *Bender* at 1115 citing *Hatcher*.

Summary of Final Determination

Determination of ISSUE: *Whether the errors described by the Petitioner are correctable on a Form 133 petition*

19. The Petitioner withdrew the issue of the enterprise zone tax credit.
20. Abnormal obsolescence is not an adjustment correctable on a Form 133 petition.

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

Chairman, 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.