

REPRESENTATIVES FOR PETITIONER: Deloitte & Touche LLP
Indianapolis, Indiana

REPRESENTATIVES FOR RESPONDENT: Mark E. GiaQuinta
Haller & Colvin

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

AMERICAN EAGLE AIRLINES, INC.,)	Petition No.: 02-059-02-1-7-00032
)	
Petitioner)	County: Allen
)	
v.)	Township: Pleasant
)	
PLEASANT TOWNSHIP ASSESSOR)	Personal Property
)	
Respondent)	Assessment Year: 2002
)	

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

April 6, 2004

FINAL DETERMINATION

The Indiana Board of Tax Review (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 presented for consideration by the Board was:
Whether 29% abnormal obsolescence should be applied to the fleet of commercial aircraft owned by American Eagle.

Procedural History

2. On May 15, 2002, American Eagle Airlines, Inc. (American Eagle) timely filed a business tangible personal property return (Form 103) for the March 1, 2002 assessment date. The assessed value reported on the original Form 103, after a minor correction by the Township Assessor, was \$9,568,120.
3. On November 6, 2002, American Eagle filed an amended Form 103, correcting certain errors in the depreciable asset pooling schedule, and claiming abnormal obsolescence on its fleet of aircraft. The assessed value reported on the amended Form 103 was \$6,829,340.
4. On November 26, 2002, the Pleasant Township Assessor mailed a Notice of Assessment/Change (Form 113/PP) to American Eagle denying the abnormal obsolescence claim, and increasing the business personal property assessment back to \$9,568,120. On the Form 113/PP, the Pleasant Township Assessor stated that “[i]t is unclear whether the event described by the taxpayer fits within the definition of abnormal obsolescence...”
5. Pursuant to Ind. Code § 6-1.1-15-1, American Eagle filed a Form 130 petition to the Allen County Property Tax Assessment Board of Appeals (PTABOA) appealing Pleasant Township’s action. The Form 130 petition was filed on January 3, 2003.

6. On March 21, 2003, the PTABOA held a hearing on the matter. On June 24, 2003, the PTABOA issued a final determination in which 11.5% abnormal obsolescence was applied to American Eagle's fleet of commercial aircraft. The assessed value was lowered to \$8,468,100.
7. Pursuant to Ind. Code § 6-1.1-15-3, American Eagle then filed a Form 131 petition, petitioning the Board to conduct an administrative review of the above petition. The Form 131 petition was filed on July 23, 2003.

Hearing Facts and Other Matters of Record

8. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on November 17, 2003, in Fort Wayne, Indiana before Joseph Stanford, the duly designated Administrative Law Judge authorized by the Board under Ind. Code § 6-1.5-5-2.

9. The following persons were present at the hearing:

For the Petitioner:

Kevin Chestnut, Deloitte & Touche LLP

Al Schwarz, Deloitte & Touche LLP

Joe Glennon, Deloitte & Touche LLP

Shawn Pittman, Deloitte & Touche LLP

For the Respondent:

Mark. E. GiaQuinta, Haller & Colvin, Pleasant Township Attorney

John D. Henry, Pleasant Township Assessor

Kimberly Klerner, PTABOA

Tracey Maravoiv, Personal Property Deputy

F. John Rogers, PTABOA Attorney

Pat Love, Allen County Assessor

10. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner:

Kevin Chestnut, Deloitte & Touche LLP
Al Schwarz, Deloitte & Touche LLP
Joe Glennon, Deloitte & Touche LLP
Shawn Pittman, Deloitte & Touche LLP

For the Respondent:

John D. Henry, Pleasant Township Assessor
Kimberly Klerner, PTABOA
Tracey Maravoiv, Personal Property Deputy
F. John Rogers, PTABOA Attorney

11. The following exhibits were presented:

For the Petitioner (attached to Form 131 petition):

Petitioner's Ex. 1 – Brief in support of abnormal obsolescence claim.

Petitioner's Ex. 2 – American Eagle Economic Analysis.

Petitioner's Ex. 3 – Selected airline first quarter key statistics; calculation of abnormal obsolescence.

Petitioner's Ex. 4 – Form 130 petition and attachments.

Petitioner's Ex. 5 – Amended Form 103 and attachments.

Petitioner's Ex. 6 – Form 113/PP.

For the Respondent:

None submitted at the hearing

12. The following additional items are officially recognized as part of the record of proceedings:

Board Ex. A – Form 131 petition with attachments.

Board Ex. B – Hearing notice.

Board Ex. C – Respondent's list of witnesses and exhibits.

13. Pursuant to Ind. Code § 6-1.1-15-4(1)(1), the parties must exchange a list of witnesses and exhibits at least fifteen (15) days before the hearing date, and must exchange evidence and a summary of witness testimony at least five (5) days before the hearing date. Neither party wholly complied with these requirements. Both parties, however, elected to waive the requirements of Ind. Code § 6-1.1-15-4(1)(1) unless specific objections were made. No specific objections were made concerning any testimony or evidence submitted at the hearing.
14. On December 23, 2003, the Respondent submitted a Post Hearing Brief. On February 4, 2004, the Petitioner submitted a Post Hearing Reply Brief. The post hearing briefs were not requested by the Administrative Law Judge. Neither party expressed an interest in submitting a post hearing brief at the hearing. No briefing schedule or deadlines were established. Therefore, the post hearing briefs were given no consideration in the determination of this case.
15. The personal property in question is located at Fort Wayne International Airport, Fort Wayne, Allen County, Pleasant Township. The Administrative Law Judge did not view the property.

Jurisdictional Framework

16. This matter is governed by the provisions of Ind. Code §§ 6-1.1, 6-1.5 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.
17. The Board is authorized to issue this final determination pursuant to Ind. Code § 6-1.5-5-5.

Indiana's Personal Property Tax System

18. Personal property includes all tangible property (other than real property) which is being:
 - (A) held in the ordinary course of a trade or business;

- (B) held, used, or consumed in connection with the production of income; or
- (C) held as an investment.

See Ind. Code § 6-1.1-1-11.

19. Indiana's personal property tax system is a self-assessment system. Every firm, company, partnership, association, corporation, fiduciary, or individual owning, possessing, or controlling personal property with a tax situs within Indiana must file the appropriate return reporting such property in each taxing district where property is located or held on the assessment date. See Ind. Code § 6-1.1-1-10.

State Review and Petitioner's Burden

20. The Board does not undertake to reassess property, or to make the case for the petitioner. The Board decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998).
21. The petitioner must submit 'probative evidence' that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E. 2d 890 (Ind. Tax 1995). ['Probative evidence' is evidence that serves to prove or disprove a fact.]
22. The petitioner has a burden to present more than just 'de minimis' evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Bd. of Tax Comm'rs*, 715 N.E. 2d 1018 (Ind. Tax 1999). ['De minimis' means only a minimal amount.]
23. The petitioner must sufficiently explain the connection between the evidence and petitioner's assertions in order for it to be considered material to the facts. 'Conclusory statements' are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E. 2d 329 (Ind. Tax 1999). ['Conclusory

statements' are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]

24. Essentially, the petitioner must do two things: (1) prove that the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. See *State Bd. of Tax Comm'rs v. Indianapolis Racquet Club, Inc.*, 743 N.E.2d 247, 253 (Ind., 2001), and *Blackbird Farms Apartments, LP v. DLGF* 765 N.E.2d 711 (Ind. Tax, 2002).
25. The Board will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a 'prima facie case' and, by a 'preponderance of the evidence' proven, both the alleged error(s) in the assessment, and specifically what assessment is correct. See *Clark v. State Bd. of Tax Comm'rs*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 689 N.E. 2d 765 (Ind. Tax 1997). [A 'prima facie case' is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the Board (as the fact-finder) to conclude that the petitioner's position is correct. The petitioner has proven his position by a 'preponderance of the evidence' when the petitioner's evidence is sufficiently persuasive to convince the Board that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner's position.]

Discussion of Issue

Whether 29% obsolescence should be applied to the fleet of commercial aircraft owned by American Eagle

26. The Petitioner contends that its fleet of commercial aircraft should receive 29% abnormal obsolescence.
27. The Respondent contends that, while abnormal obsolescence does exist, only 11.5% should be applied.

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

50 IAC 4.3-9-3 “Abnormal obsolescence” defined

(a) “Abnormal obsolescence” means obsolescence that occurs as a result of factors over which the taxpayer has no control and is unanticipated, unexpected, and cannot reasonably be foreseen by a prudent businessperson before the occurrence. It is of nonrecurring nature and includes unforeseen changes in market values and exceptional technological innovations that have a direct effect upon the value of the personal property. Any abnormal obsolescence that affects the personal property must be considered separately since it has not been accounted for in normal obsolescence or physical deterioration. Abnormal obsolescence is calculated using different methodologies depending upon the type of inutility it represents. There are numerous methodologies and, as a general rule, common appraisal concepts and methods may be used to determine abnormal obsolescence. However, any method used must qualify and quantify any abnormal obsolescence claimed. The invention of newer, more productive personal property that produces a better quality item, utilizes state of the art technology, or produces more efficiently at a lower cost of production, does not cause an older, currently used asset to be abnormally obsolete unless the change was unanticipated, unexpected, or could not have reasonably been foreseen by a prudent business person.

(b) An example of unforeseen change in market value (external obsolescence) is a government ban on the sale of a drug or chemical that may cause that item or the production equipment used to produce it to be abnormally obsolete. In this case, the equipment used to produce it may be eligible for abnormal obsolescence, while the inventory should be valued at lower of cost or market as provided in this article and will not be entitled to abnormal obsolescence.

50 IAC 4.3-9-4 Allowance of abnormal obsolescence claim

(a) Abnormal obsolescence should be recognized to the extent that the taxpayer can demonstrate that the property qualifies for abnormal obsolescence and can quantify the amount. This must be done through a presentation of the facts, circumstances, and methodology used in calculating the amount of the abnormal obsolescence.

50 IAC 4.3-10-2 Commercial airlines; allocation and true tax value

(a) As used on this rule, “commercial airline” means an airline with regularly scheduled flights and routes authorized and approved by the federal aviation administration.

(b) The fleet of the commercial airline is aircraft that the taxpayer owns, holds, possesses, or controls that is used and operated in interstate commerce.

(c) Commercial airlines are required to report the total value and type of aircraft operating in this state.

(d) An allocation must be made for each type of aircraft operated. The allocation factor for each type of aircraft is computed by dividing the total amount of ground time in the taxing district of each type of aircraft for the preceding twelve (12) months by the total ground time of each type of aircraft operated for the same period.

(e) The true tax value of each type of aircraft is determined by multiplying the percentages as computed in subsection (d) times the tentative true tax value of each type of aircraft computed in accordance with section 1 of this rule.

Clark v. State Board of Tax Commissioners, 694 N.E.2d 1230 (Ind. Tax 1998)

Regarding obsolescence, the taxpayer has a two-prong burden of proof: (1) the taxpayer had to prove that obsolescence exists, and (2) the taxpayer must quantify it.

29. Evidence and testimony considered particularly relevant to this determination include the following:
- A. Due to the events of September 11, 2001, the federal government grounded all commercial aircraft for approximately three days.
 - B. The Petitioner's abnormal obsolescence claim is based on the events of September 11, 2001. *Glennon testimony.*
 - C. In the couple months that followed the terrorist acts, airlines had to reduce capacity by parking planes in the Mojave Desert, decreasing routes, and reducing tickets prices to persuade consumers to fly again. *Glennon testimony.*
 - D. Deloitte & Touche prepared an Economic Analysis to attempt to quantify the amount of abnormal obsolescence. *Petitioner's Ex. 2.*
 - E. Based on previous years, Deloitte & Touche projected that American Eagle's net operating income (NOI) for 2002 should have been \$120,993,891. American Eagle actually suffered a net operating loss of \$111,179,978 in 2001. *Glennon testimony; Petitioner's Ex. 2 at 2.*
 - F. Based on the NOI projection alone, the total obsolescence is quantified by Deloitte & Touche at 66%. Most other states have granted this amount of obsolescence to the airline industry. *Glennon testimony; Petitioner's Ex. 2 at 5.*
 - G. The Petitioner's contention that 29% abnormal obsolescence should be applied is based on a calculation in which three components are added together: capacity reduction (20%), incremental inutility (-7%), and decrease in airfare (16%). *Schwarz testimony; Petitioner's Ex. 3 at 2.*
 - H. The capacity reduction is due to the grounding of planes. The capacity reduction was published in public sources. *Schwartz testimony.*
 - I. The inutility percentage is based on an analysis of revenue per passenger (RPM) and available seat miles (ASM). *Schwarz testimony; Petitioner's Ex. 3 at 3.* Inutility is a standard engineering calculation that can be used to estimate the cost of downsizing equipment. *Petitioner's Ex. 1 at 5.*

- J. The decrease in airfare is measured using the revenue per passenger mile (RPM). This calculation represents an additional economic penalty because there are fewer passenger per aircraft and the average ticket costs less. *Petitioner's Ex. 1 at 6.*
- K. American Eagle's abnormal obsolescence percentage falls within the industry average computed by Deloitte & Touche. *Glennon and Schwarz testimony; Petitioner's Ex. 3 at 2.*
- L. American Eagle allocated its aircraft to report at Fort Wayne International Airport based on total percentage of ground time at that airport multiplied by the total true tax value of the entire fleet, pursuant to 50 IAC 4.3-10-2. Therefore, abnormal obsolescence was calculated based on the entire fleet, rather than calculated separately for each location. *Glennon testimony.*
- M. The Respondent questioned the Petitioner about sales of planes. The Petitioner responded that no aircraft sales were provided as evidence because very few aircraft have actually been sold recently. *Glennon and Schwarz testimony.*
- N. An economic downturn started in the last quarter of 2000. The Respondent questioned how much of the loss is due to the economic downturn versus the events of September 11. *Henry testimony.*
- O. The abnormal obsolescence percentage determined by the PTABOA was based on a comparison of 2001 and 2002 passenger boardings at Fort Wayne International Airport. The PTABOA found that boardings decreased by 11.5% during that time period according to information from the Airport Authority and provided by the Petitioner subsequent to the PTABOA hearing. *Maravoiv and Chestnut testimony.*

Analysis of this ISSUE

- 30. The Petitioner's burden of proof in this case is two-fold. First, it must show that abnormal obsolescence exists based on the set of circumstances presented. Second, it must quantify a loss in value based directly upon those circumstances. *50 IAC 4.3-9-4; Clark, 694 N.E. 2d 1230, 1233.*

31. Abnormal obsolescence is obsolescence that occurs as a result of factors over which the taxpayer has no control and is unanticipated, unexpected, and cannot reasonably be foreseen. *See* 50 IAC 4.3-9-3. The terrorist acts of September 11, 2001, followed by the federal government's temporary stoppage of all commercial air travel, were not under the Petitioner's control, were of nonrecurring nature, and could not have been foreseen by a prudent businessperson. By applying 11.5% abnormal obsolescence to American Eagle's fleet of aircraft, the Respondent acknowledges the presence of abnormal obsolescence. Thus, the Petitioner has met the first prong of its two-pronged burden of proof.
32. The second prong of the Petitioner's burden is to quantify the amount of abnormal obsolescence. American Eagle claims that 29% abnormal obsolescence should be applied.
33. Abnormal obsolescence is calculated using different methodologies depending upon the type of inutility it represents. There are numerous methodologies and, as a general rule, common appraisal concepts and methods may be used to determine abnormal obsolescence. However, any method used must qualify and quantify any abnormal obsolescence claimed. *See* 50 IAC 4.3-9-3(a).
34. The Petitioner's claim of 29% abnormal obsolescence was calculated by adding together three factors, or percentages: capacity reduction (20%), incremental inutility (-7%), and decrease in airfare (16%).
35. The Petitioner has offered a method to compute the abnormal obsolescence and provided support for that method. The Petitioner provided relevant evidence in support of its argument and has established a prima facie case.
36. The Respondent must rebut the Petitioner's method and evidence. While the Respondent did have a few questions for the Petitioner, the Respondent submitted no evidence to rebut or discount the Petitioner's methodology. Instead, the Respondent attempted to defend its own methodology, implying that the Respondent's methodology is better and should be applied.

37. The Respondent's calculation is based on the decrease in the number of boardings at the Fort Wayne airport during the applicable time frame.
38. The Board must evaluate all of the evidence presented to determine which methodology is best supported by the preponderance of all evidence.
39. After evaluating all of the evidence, the Board finds the Petitioner's methodology to be the most persuasive.
40. The Petitioner's methodology takes into consideration the reduced capacity, decreased routes, and the reduced ticket prices. The Petitioner has attempted to tie the effects of the September 11, 2001 terrorist acts to its calculation. The Respondent's methodology considers only the decrease in boardings at the Fort Wayne airport.
41. The Petitioner's method is more appropriate pursuant to 50 IAC 4.3-9-4 which requires the amount of abnormal obsolescence to be calculated through a presentation of facts, circumstances, and methodology.
42. Consequently, the Board finds in favor of the Petitioner, and grants 29% abnormal obsolescence.

Other – Post Hearing Briefs

43. The parties may file, or the board may request briefs. Briefs must be filed within the time limits set by the administrative law judge. In the case at hand, neither party expressed an interest in submitting a brief, therefore the administrative law judge did not prepare a briefing schedule. The Board must issue its determinations within the time frames found in Ind. Code § 6-1.1-15-4, which is one of the reasons behind the time limits set by the administrative law judge for briefing. If a party fails to timely file a brief, the Board may exclude the brief from consideration. In order for the Board to be able to process and issue its determinations within the required time frames, the Board must be aware of a

party's intent to submit a brief and be able to set the time limits for submission of the brief. If a party wishes to submit a post hearing brief, the party should request the administrative law judge set up a briefing schedule at the hearing.

Summary of Final Determination

44. For the reasons set forth, the Board finds in favor of the Petitioner and grants abnormal obsolescence of 29% for the March 1, 2002 assessment date. There is a change in the assessment.

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

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.