

REPRESENTATIVES FOR PETITIONER:
Dale Armbruster, True Tax Management

REPRESENTATIVE FOR RESPONDENT:
Susan McCarty, Chief Deputy County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Applied Extrusion)	
Technologies, Inc.,)	Petition No.: 84-012-06-1-7-00001
)	
Petitioner,)	Vigo County
)	Otter Creek Township
v.)	
)	
Vigo County Assessor,)	Personal Property
)	2006 Assessment
Respondent.)	

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

August 17, 2009

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters findings of fact and conclusions of law.

ISSUE

Should Applied Extrusion Technologies have an abnormal obsolescence adjustment for its tangible personal property?

HEARING FACTS AND OTHER MATTERS OF RECORD

1. The Petitioner, Applied Extrusion Technologies, Inc. (AET), filed a 2006 Business Tangible Personal Property Return (Form 103 with attachments) for the property at its Terre Haute plant. The Petitioner reported a true tax value (TTV) other than inventory of \$22,330,400. This value included a \$12,074,280 adjustment for abnormal obsolescence on manufacturing and production equipment that produces oriented polypropylene films, which are used primarily in consumer product labeling, flexible packaging, and overwrap applications.
2. On October 4, 2006, the Vigo County Assessor mailed a Notice of Assessment/Change (Form 113/PP) denying the abnormal obsolescence claim and increasing the TTV to \$34,404,680.¹
3. The Petitioner disputed the Assessor's change. On January 29, 2008, the Vigo County Property Tax Assessment Board of Appeals (PTABOA) issued a determination that upheld the change and denied the abnormal obsolescence adjustment.
4. On February 27, 2008, the Petitioner filed a Petition for Review of Assessment (Form 131) seeking an administrative review by the Board.
5. Administrative Law Judge Paul Stultz held the Board's hearing on the 131 Petition in Terre Haute on March 19, 2009.
6. Dale Armbruster, a certified tax representative, represented the Petitioner. Attorney Todd Lady also was present on behalf of the Petitioner. Rick Gordon, AET's Director of Manufacturing Services, testified on behalf of the Petitioner. Chief Deputy County Assessor Susan McCarty represented the Vigo County Assessor. Everett Davis from the Department of Local Government Finance testified on behalf of the Respondent.

¹ The Petitioner claimed a personal property investment deduction (PPID) that was approved and is not being contested. The TTV of \$34,404,680 is before the PPID of \$441,460. *See Pet'r Ex. 1(i)*.

7. The Petitioner presented the following exhibits:

- Petitioner Ex. 1 – Binder with summary of the case and sixteen exhibits,²
- Petitioner Ex. 1(a) – Company description and products,
- Petitioner Ex. 1(b) – Company description and products,
- Petitioner Ex. 1(c) – Pages 79-87 of Chemical Data, Monthly Petrochemical & Plastics Analysis, dated March 2007,
- Petitioner Ex. 1(d) – Pages 59-60 of Chemical Data, Monthly Petrochemical & Plastics Analysis, dated January 1996,
- Petitioner Ex. 1(e) – Pages 60-61 of Chemical Data, Monthly Petrochemical & Plastics Analysis, dated January 2002,
- Petitioner Ex. 1(f) – AET Financial Report for period ended September 30, 2006,
- Petitioner Ex. 1(g) – Press release about AET emerging from bankruptcy,
- Petitioner Ex. 1(h) – AET trend report – average selling prices,
- Petitioner Ex. 1(i) – 2006 Business Tangible Personal Property Tax Return including Form 103, Form 104, and Form 106,
- Petitioner Ex. 1(j) – Appraisal,
- Petitioner Ex. 1(k) – AET Financial Report for annual period ending September 30, 2005, and for quarterly period ending June 30, 2007,
- Petitioner Ex. 1(l) – Copies of 50 IAC 4.2-9-2, 4.2-9-3, and 4.2-9-4,
- Petitioner Ex. 1(m) – “Valuing Machinery and Equipment: The Fundamentals of Appraising Machinery and Technical Assets” page 70,
- Petitioner Ex. 1(n) – Obsolescence Calculations,
- Petitioner Ex. 1(o) – Computation of the percentage of abnormal obsolescence recognized in the appraisal,
- Petitioner Ex. 1(p) – Analysis of how obsolescence impacts taxes, Form 113/PP, Notice of Assessment Change, Letter from Rick Gordon to Gloria Donham dated November 3, 2006, regarding the Form 113/PP, Notice of Hearing, Press release about closure of facility in Covington, Virginia, Letter dated October 25, 2006, from BPX Films advising of its discontinuance of operations,
- Petitioner Ex. 2 – Letter from Plastics One to Rick Gordon dated February 21, 2008,
- Petitioner Ex. 3 – AET’s revised calculation for abnormal obsolescence, Copy of 50 IAC 4.2-4-8 (adjustment for obsolescence), Form 103, page 3,
- Petitioner Ex. 4 – Definition of economic obsolescence quoting *Valuing Machinery and Equipment*,
- Petitioner Ex. 5 – Response to Respondent’s Exhibit 6.

² The Petitioner introduced this binder with exhibits in it labeled 1 through 16. The Petitioner created unnecessary confusion in the record by also introducing different documents that it identified as exhibits 2 through 5. The Administrative Law Judge added labels to the exhibits in the binder, identifying them as Petitioner’s exhibits 1(a), 1(b), 1(c), etc. to distinguish the exhibits in the binder from the Petitioner’s other exhibits labeled 2 through 5.

8. The Respondent presented the following exhibits:
- Respondent Ex. 1 – Appraisal Narrative, page 1 of 4 only,
 - Respondent Ex. 2 – AET Appraisal Assumptions and Limiting Conditions,
 - Respondent Ex. 3 – Computation of the percentage of abnormal obsolescence recognized in the appraisal,
 - Respondent Ex. 4 – Computation to demonstrate that no abnormal obsolescence is indicated,
 - Respondent Ex. 5 – Copy of Petitioner’s Obsolescence Calculations,
 - Respondent Ex. 6 – Response to Petitioner’s Exhibit 2.
9. The following additional items are recognized as part of the record:
- Board Ex. A – 131 Petition with attachments,
 - Board Ex. B – Notice of Hearing,
 - Board Ex. C – Hearing Sign In Sheet,
 - Board Ex. D – Respondent’s Request for Additional Evidence,
 - Board Ex. E – Post-Hearing Submission Waiver.
10. The Board accepted Petitioner’s Exhibit 5 and Respondent’s Exhibit 6 after the hearing.

SUMMARY OF THE PETITIONER’S CASE

11. The Petitioner uses the subject property to manufacture and produce oriented polypropylene film (OPP). The Petitioner introduced an appraisal by Plastics One Appraisal Services (effective date for the Terre Haute location is May 11, 2005) that contains the following explanation about the product and the business:

Nature of the Business:

Applied Extrusion Technologies, Inc. (AET FILMS) is a leading developer and manufacturer of highly specialized plastic films used primarily in consumer product labeling, flexible packaging, health care and filtration applications. AET FILMS is the only worldwide film supplier using both Tenter and Tubular technologies to manufacture a wide array of Biaxially Oriented Polypropylene (OPP) films for the flexible packaging market. AET FILMS’ investment in highly efficient production equipment includes the world’s first 10 Meter OPP film production line started up in 1998. The company has three production sites in North America, located in Terre Haute, Indiana, Covington, Virginia, and Varennes, Canada. AET FILMS claims to have the broadest

production line in the industry and the largest capacity of any North American producer in the OPP film market.

Oriented polypropylene (OPP) films are used in a growing number of applications and markets and are increasingly replacing paper, foil, polyester, cellophane, as well as rigid structures for labels, packaging and overwrap. OPP films are used for a vast array of consumer products such as snack foods, candy, soft drinks, aerosol cans and bakery goods. These films are complex, usually multi-layered structures, which are developed to meet the exacting requirements of end-users, such as Coca-Cola, Pepsi-Cola, Frito-Lay, Hershey and Nabisco. OPP films offer thin material thickness and exceptionally high strength, superior printability, excellent graphic appeal and provide excellent protection from the effects of moisture and light and yield cost savings over other plastic products. These unique characteristics make them ideally suited for labeling and packaging applications.

Evaluation Considerations:

The values provided in this appraisal report are based on the machinery and equipment composition in its present location being offered on a Fair Market Value in Continued Use basis. The values in this appraisal report also take into consideration various applicable installation costs and plant support equipment necessary for all equipment and systems to function as complete operating facilities.

The useful life of typical plastic extrusion machinery and equipment is from 12 years (72,000 hours) to 15 years (90,000 hours) under normal maintenance conditions; however, machinery and equipment for OPP Film production is an exception. Because the initial capital cost and investment for buying and installing Biaxially Oriented or Tubular Balance Oriented Polypropylene Film Extrusion Lines and Systems is in the multi-million dollar category, it is essential to properly maintain and continually upgrade the technology for these Lines and Systems; therefore, they have an indefinite useful life which can be up to 40 years or longer. At AET Films, their major production Lines and Systems are continually being maintained, rebuilt and technologically upgraded. Therefore, it is the appraiser's opinion that all major plastic processing Lines and Systems at AET Films locations in Terre Haute ... currently have a remaining useful lifespan of from 10 to 40 years.

Pet'r Ex. 1j, Appraisal Narrative.

12. Based on the appraiser's visual inspection in May 2005, the Petitioner's equipment at the Terre Haute plant appears to be well maintained, technologically upgraded and in excellent operating condition. *Pet'r Ex. 1j, Appraisal Narrative.*
13. The Terre Haute facility is the Petitioner's primary production facility, accounting for 82% of sales volume in fiscal 2007. That percentage increased to 90% in fiscal 2008. *Pet'r Ex. 1 at 1.*
14. The Petitioner was one of the first producers in the world when it began manufacturing OPP in the mid 1990's. The company was very profitable in the first few years, but that situation has changed. In recent years, the Petitioner has experienced unforeseen economic factors that contributed to the abnormal obsolescence. *Pet'r Ex. 1 at 1, Armbruster testimony.*
15. Demand for OPP film has only increased an average of 6% a year. *Armbruster testimony.*
16. The raw materials, propylene and polypropylene resin, are both petroleum byproducts. The unforeseen increase in oil prices directly impacted the cost of materials. Polypropylene was around 41¢ per pound in 1996 and increased to 74¢ per pound in 2007. The cost of raw materials increased approximately 75%. *Pet'r Ex. 1 at 1; Ex. 1(c), 1(d), and 1(e).*
17. An unanticipated increase in foreign competition has prevented the Petitioner from passing that additional cost to customers. Increased competition has kept the average selling price consistent despite the spike in the costs of polypropylene. The average selling price of OPP in 2003 was \$1.10 and in 2006 it was \$1.29. That is an increase of only 19¢ in three years. The Petitioner and other companies that produce OPP are absorbing the increased costs of raw materials. Consequently, they are unable to maintain a profit. This situation has forced other manufacturers out of business in the United States. *Pet'r Ex. 1(h); Pet'r Ex. 1(p) at 6; Armbruster testimony.*

18. The Petitioner filed for Chapter 11 bankruptcy on December 1, 2004. It emerged from bankruptcy in 2005. The Virginia plant closed in 2008. Nevertheless, the Petitioner has maintained a marginal profit. *Armbruster testimony; Pet'r Ex. 1(g); Pet'r Ex. 1(p)*.
19. The Petitioner's 2006 Return, Form 103, line 64, reported a Total True Tax Value of \$34,404,680 before adjustment for Abnormal Obsolescence. There is no dispute about that amount. The dispute centers on the next line of the return—line 65—where the Petitioner claimed an Abnormal Obsolescence Adjustment of \$12,074,280 and the Respondent allowed nothing.³ *Armbruster testimony; Pet'r Ex. 1i*.
20. At the Board's hearing, the Petitioner presented a revised calculation for abnormal obsolescence on line 65 in the amount of \$12,149,567. According to the Petitioner, this calculation conforms to Example 2 found in 50 IAC 4.2-4-8 and is the correct method to determine abnormal obsolescence in the State of Indiana. *Pet'r Ex. 3; Armbruster argument*. Support for this calculation is a letter from Plastic One to Rick Gordon dated February 21, 2008, that purportedly establishes a scrap or salvage value for the subject property. That letter states:

Thank you for your recent letter and telephone conversation describing the current review of your 2006 Indiana Business Personal Property Assessment Return. The purpose of your contact with me is to request an opinion of the 'documented net realizable value (defined as 'scrap or salvage value of the affected item') for the assets that were identified by AET as 'qualifying for abnormal obsolescence adjustment'.

We understand that the assets are the 'Tangible Assets acquired prior to 3-1-2000 and these assets have an historical cost of \$80,498,556. We are familiar with these assets based on our prior appraisal work including the appraisal issued with an effective date of May 11, 2005.

As a firm that actively liquidates a wide variety of facilities in the Plastics Industry, it is our opinion that the scrap or salvage value of the identified equipment would not exceed \$12 million.

Pet'r Ex. 2.

³ The Petitioner explained its reasons for the adjustment and its calculation on Form 106, where the Petitioner's bankruptcy and the abnormal obsolescence were attributed to three factors: (1) increases of approximately 75% in the cost of materials; (2) level product demand; and (3) unanticipated foreign competition. *Pet'r Ex. 1i*.

21. Business personal property must be assessed according to the assessment regulations. The fact that the TTV determined according to the regulations does not match with market value is not significant. *Armbruster argument.*

SUMMARY OF THE RESPONDENT'S CASE

22. The Petitioner has not established that any abnormal obsolescence exists with the subject property or that there is any justification for a further reduction in the existing assessed value beyond the normal depreciation allowance. The Petitioner's appraisal establishes that the market value of the subject property is \$55,565,760.⁴ The current TTV of the property already is lower than its market value. *Davis testimony.*
23. The market value study (appraisal) is the best evidence of the value of the property. The appraisal determined the market value and it measured all forms of depreciation, including all types of obsolescence. There is nothing further to adjust for abnormal obsolescence. *Davis testimony; Resp't Ex. 6.*
24. The Petitioner is seeking to reduce the TTV of its equipment based on the scrap or salvage value of the assets, but has not provided any substantial basis for doing so. *Davis testimony, Resp't Ex. 6.*

ANALYSIS

25. For business personal property, "obsolescence" is the reduction in value that occurs through use, technological improvements, passage of time, changes in market values, and physical deterioration or destruction. 50 IAC 4.2-9-1. "Normal obsolescence" is the reduction in value that a reasonable, prudent businessperson would anticipate or expect when property is acquired and placed in service. It includes expected declining value through use, technological improvements, deterioration with the mere passage of time,

⁴ During Mr. Davis' testimony, Mr. Armbruster agreed the market value of the subject property is \$55,565,760.

and the general assumption that such property will have a minimum value at the end of its useful life. 50 IAC 4.2-9-2.

26. The most applicable rules about abnormal obsolescence are:

50 IAC 4.2-9-3 “Abnormal Obsolescence” defined

(a) “Abnormal obsolescence” means as *[sic.]* that obsolescence which 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 businessman prior to the occurrence. It is of a nonrecurring nature and includes unforeseen changes in market values, exceptional technological obsolescence, or destruction by catastrophe that has a direct effect upon the value of the personal property of the taxpayer at the tax situs in question on a going concern basis.

(b) Example of unforeseen change in market value: A government ban on the sale of a drug or chemical due to a new discovery or determination may cause that item or the production equipment used to produce it to be abnormally obsolete. A specific example of this would be cyclamate. In this case the equipment used to produce it may be eligible for abnormal obsolescence

50 IAC 4.2-9-4 Allowance of abnormal obsolescence claim

(a) Abnormal obsolescence should be recognized to the extent that the property qualifies for the adjustment and the taxpayer is able to substantiate the facts, circumstances, and amount of the claim in order to properly determine the true tax value of the subject property.

(b) A taxpayer wishing to claim an adjustment for abnormal obsolescence must provide documentation of the resulting valuation of the personal property at the tax situs in question on the assessment date on a going concern basis.

(c) The adjustment for abnormal obsolescence must be computed in accordance with this rule, and 50 IAC 4.2-4-8; 50 IAC 4.2-5-14; 50 IAC 4.2-8-10; or 50 IAC 4.2-10-4.

50 IAC 4.2-4-8 Adjustment for obsolescence

(a) A taxpayer may claim an adjustment for abnormal obsolescence as defined in 50 IAC 4.2-9-3, on business personal property provided that such taxpayer follows the procedures and meets the requirements

regarding an adjustment for abnormal obsolescence contained in 50 IAC 9. It includes the impairment of desirability and usefulness brought about by new inventions and improved processes for production, or the impairment of functional capacity or efficiency if the inadequacy or overadequacy cause a loss in value and have made the property incapable of continued use for a prolonged period during the assessment year.

(c) Eligibility. The term "abnormal obsolescence" will be strictly construed and be limited to a situation where unforeseen changes in market values, exceptional technological obsolescence, or destruction by catastrophe occurs, providing that such events have a direct effect upon the valuation of the depreciable personal property of the taxpayer on a going concern basis at the tax situs in question.

(d) Adjustment. *** If the property has been incapable of continued use for a prolonged period during the assessment year, for a reason identified as qualifying for abnormal obsolescence, it will be eligible for an adjustment to be computed as follows:

(2) If the cause of the impairment cannot be corrected, or the cost-to-cure the cause of abnormal obsolescence is in excess of its contribution to the value of the property, it shall be deemed to be incurable. The amount of adjustment therefore shall be based upon the scrap or salvage value of the affected item, and shall be limited to the true tax value before adjustment for abnormal obsolescence of the affected item itself.

27. The Petitioner's claim is tied to a different and more expanded definition taken from the American Society of Appraisers:

Economic Obsolescence ... is the loss in value or usefulness of a property caused by factors external to the property, such as increased cost of raw materials, labor, or utilities (without an offsetting increase in product price); reduced demand for the product; increased competition; environmental or other regulations; inflation or high interest rates; or similar factors.

Pet'r. Ex. 1m. This definition, however, is inconsistent with the requirement to strictly construe the term "abnormal obsolescence." This language is substantially different from Indiana's promulgated rules regarding business personal property. For example, it fails to mention that the causes must be unanticipated, unexpected, and unforeseen. It also

adds causes such as “increased cost of raw materials” and “increased competition” that are not included in the applicable rules. The Petitioner failed to present any meaningful argument or authority to resolve the differences. Furthermore, the Petitioner failed to establish that the American Society of Appraisers’ definition should be used to help determine this case.

28. Three Tax Court decisions do provide significant guidance about the eligibility requirements for the abnormal obsolescence adjustment. Those cases are *Don Medow 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). *Don Medow* and *Glass Wholesalers* were both cases about abnormal obsolescence on inventory. But the Tax Court said “[t]he abnormal obsolescence adjustment for depreciable business personal property has the same eligibility requirements as the adjustment for inventory. *** Therefore, the analysis is the same under each adjustment.” *Harbor Food*, 638 N.E.2d at 900. Furthermore, “[t]he abnormal obsolescence adjustment is strictly construed, 50 I.A.C. 4.2-4-8(c), and is available only for exceptional technological obsolescence or catastrophic destruction.” *Id.* at 901.
29. Federal treatment of the obsolescence deduction for federal tax purposes is helpful to clarify the meaning of “obsolescence.” *Don Medow*, 545 N.E.2d at 853. “Under federal law, obsolescence is the process of becoming obsolete, and obsolete means no longer in use.” *Id.* [citing *Bradley v. Comm’r of Internal Rev.*, 184 F.2d 860 (7th Cir. 1950)]. Obsolescence is intended to apply to property that is worn out, used up, or outmoded more quickly than standard depreciation allows. *Id.* [quoting *Southeastern Bldg. Corp. v. Comm’r of Internal Rev.*, 148 F.2d 879, 880(5th Cir. 1945)]. The unprofitable nature of a business is not a sufficient basis for allowing obsolescence. *Id.*
30. The dictionary definition of “obsolescence” refers to “the process of becoming or condition of being vestigial or nonfunctional. *** [Also] the decline in value of fixed assets due to invention of new and better processes or machines, changes in demand, in

design, or in the art, and other technical or legal changes but not ... physical deterioration.” *Don Medow*, 545 N.E.2d at 853 [citing *Webster’s Third New International Dictionary* at 1558 (1981 ed.)]. “Obsolescence denotes the end of a useful life or the total loss of value.” *Don Medow*, 545 N.E.2d at 854; *Glass Wholesalers*, 568 N.E.2d at 1121.

31. The Petitioner failed to establish that the subject property was incapable of continued use for a prolonged period during the assessment year, as required by 50 IAC 4.2-4-8(a). While the Petitioner established that its business is not nearly as profitable as it initially was ten or fifteen years ago, there is no evidence that the financial difficulties relate to outmoded or worn out production facilities that are at the end of their useful life. To the contrary, the appraisal states that, as of May 11, 2005, “the assets appear to be well maintained, continually technologically upgraded and in excellent operating condition...” And absolutely no probative evidence contradicts that description. The Petitioner failed to show any abnormal decline in the functionality or useful life of the subject property, which is almost state-of-the-art for producing OPP films, and which is still being used as the Petitioner’s primary production facility.
32. Furthermore, all the evidence indicates that OPP films are used in a growing number of packaging applications because they have a number of advantages. OPP film is not a product for which there is little or no demand. According to the Petitioner, the market for OPP film is “only” increasing by about 6% annually. The Petitioner’s financial difficulties clearly do not result from a lack of demand for the product.
33. Nothing about the subject property itself or the product demonstrates any aspect of abnormal obsolescence—especially where it was agreed that the market value of the subject property is \$55,565,760 and the TTV is only \$34,404,680.
34. The Petitioner focused on its financial difficulties caused by increased cost of raw materials (based on petroleum prices), increased competition, and a decrease of its market share without establishing how these things somehow make its OPP production machinery and equipment obsolete. Furthermore, the Petitioner failed to establish that

increased raw material costs and competition were reasonably unanticipated or unforeseen developments as required in 50 IAC 4.2-9-3. Conclusory statements about the Petitioner's failure to anticipate that increased competition would prevent passing along the increased raw material costs to customers do not constitute probative evidence for allowing abnormal obsolescence. *See Whitley Prods. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998) (stating that conclusory statements are not probative evidence).

35. Where the Petitioner fails to prove that there is any abnormal obsolescence associated with the subject property, the question of how to correctly measure abnormal obsolescence is irrelevant.

SUMMARY OF FINAL DETERMINATION

36. The Petitioner failed to prove that the business personal property at its Terre Haute plant suffers from abnormal obsolescence or that the TTV is anything other than \$34,404,680 as determined by the Vigo County Assessor and PTABOA.

FINAL DETERMINATION

In accordance with the above findings and conclusions, there will be no change in the assessment.

ISSUED: _____

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- 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>>