

REPRESENTATIVES FOR PETITIONER:

William Faulkner, Jesse Noneman, DuCharne, McMillen & Associates, Inc.

REPRESENTATIVE FOR RESPONDENT:

Susan McCarty, Chief Deputy Assessor, Vigo County Assessor's Office

INDIANA BOARD OF TAX REVIEW

Novelis Corporation,	)	Petition No.:	84-013-13-1-7-05628
)		
Petitioner,	)	Parcel No.:	84-00-00-027-928.000-013
)		
v.	)	County:	Vigo
)		
Vigo County Assessor,	)	Township:	Otter Creek
)		
Respondent.	)	Assessment Year:	2013

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

JANUARY 27, 2017

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

INTRODUCTION

1. The Vigo County Property Tax Assessment Board of Appeals ("PTABOA") acted beyond the deadline established by Ind. Code § 6-1.1-16-1(a)(2) when it changed Novelis Corporation's self-reported personal property assessment to deny the adjustment Novelis claimed for abnormal obsolescence. While that deadline only applies if Novelis' return

substantially complied with relevant statutes and regulations, substantial compliance refers to disclosure and reporting, not to whether a taxpayer is ultimately entitled to an exemption or adjustment. Because Novelis acted in good faith and fully reported the costs of its personal property, it substantially complied with the applicable statutes and regulations. Its self-reported assessment is therefore final.

PROCEDURAL HISTORY

2. This appeal involves personal property at Novelis' manufacturing facility. The facility is located at 5901 North 13th Street in Terre Haute.
3. On May 10, 2013, Novelis filed a business tangible personal property return reporting an assessment of [REDACTED]. That number included an adjustment of [REDACTED] to account for abnormal obsolescence. On July 2, 2013, the Vigo County Assessor issued a Form 113/pp notifying Novelis that she had disallowed the obsolescence adjustment.
4. Novelis responded by filing a Form 130 petition on July 23, 2013. On November 20, 2014, the PTABOA issued its Form 115 determination, upholding the Assessor's action and purporting to determine an assessment of [REDACTED]. Novelis then timely filed a Form 131 petition with the Board.
5. On October 31, 2016, our designated administrative law judge, Gary Ricks ("ALJ"), held a hearing. Neither he nor the Board inspected the property.
6. The following people were sworn as witnesses and testified: Chris Carrier, senior tax manager for Novelis; William Faulkner, director of property tax for DuCharme, McMillen & Associates; and Susan McCarty, chief deputy assessor for the Vigo County Assessor's office.
7. Novelis offered the following exhibits:
Petitioner Exhibit 1: "Indiana 2002 True Tax Value Tables,"
Petitioner Exhibit 2: "Michigan True Tax Value,"

- Petitioner Exhibit 3: Notice of Assessment/Change ("Form 113/PP"),
- Petitioner Exhibit 4: Letter to Vigo County Assessor from Jesse Noneman, Senior Tax Manager, DuCharme, McMillen & Associates, Inc. and Form 130 petition,
- Petitioner Exhibit 5: Form 115 determination,
- Petitioner Exhibit 6: Personal Property Demand Notice,
- Petitioner Exhibit 7: Written narrative from Chris Carrier.

8. The Assessor offered the following exhibits:

- Respondent Exhibit 1: Novelis' business tangible personal property assessment return,
- Respondent Exhibit 2: Form 113 PP,
- Respondent Exhibit 3: Form 115 determination,
- Respondent Exhibit 4: Portions of 50 IAC 4.2-9,
- Respondent Exhibit 5: Portions of 50 IAC 4.2-4,
- Respondent Exhibit 6: Novelis' production data 2006-2013,
- Respondent Exhibit 7: E-mails between Jesse Noneman, Susan McCarty, and Everett Davis,
- Respondent Exhibit 8: Indiana Code § 6-1.1-16,
- Respondent Exhibit 9: Portions of 50 IAC 4.2-3.1,
- Respondent Exhibit 10: Additional portions of 50 IAC 4.2-3.1,
- Respondent Exhibit 11: Entry in Indiana Administrative Code indicating that 50 IAC 4.3 is void.

9. The following items are also recognized as part of the record:

- Board Exhibit A: Form 131,
- Board Exhibit B: Hearing notice,
- Board Exhibit C: Hearing sign-in sheet,
- Board Exhibit D: Power of Attorney from Novelis to Ducharme, McMillen & Associates, Inc.

NOVELIS' CONTENTIONS

10. The deadline for the PTABOA to change Novelis' self-reported assessment was October 30, 2013. The PTABOA did not issue its determination until November 20, 2014—more than a year after that deadline. Contrary to what the Assessor argues, Novelis' return substantially complied with all reporting requirements. It did not omit any costs. While the Assessor objects to Novelis' claim for abnormal obsolescence, disagreement over a taxpayer's entitlement to abnormal obsolescence does not amount to a lack of substantial

compliance. Thus, the assessment Novelis reported on its return is final. *Carrier testimony.*

11. Regardless, Novelis argues that it was entitled to the disputed obsolescence adjustment. Novelis makes rolled aluminum products. The majority of the outputs from Novelis' facility are further processed by its customers into aluminum foil, one-use baking pans, and air-conditioner parts. Novelis pointed to several factors causing its equipment to suffer from abnormal obsolescence: (1) a steady decline in the overall market for container and household products; (2) increased competitiveness from an unanticipated influx of Chinese- and Russian-made products; and (3) a significant shortage of raw materials that slowed Novelis' operations. *Carrier testimony, Pet'r Ex. 7.*
12. In recent years, the Department of Local Government Finance ("DLGF") has reviewed abnormal obsolescence calculations that it felt did not create "apples to apples" comparisons of value. The DLGF was concerned that applying adjustments based on fair market value to assessments based on true tax value was creating a "double deduction." Thus, if a taxpayer wants to use fair market value to quantify an abnormal-obsolescence adjustment, it should first determine what the replacement cost of an asset with similar utility would be in today's dollars. Once the replacement cost is determined, all forms of depreciation should be considered. *Carrier testimony, Pet'r Ex. 7.*
13. Novelis used three sources to determine replacement cost new less depreciation ("RCNLD") for the property that it claimed suffered from abnormal obsolescence:¹ (1) tables from 50 IAC 4.3, which provided for significantly less depreciation than the current tables under 50 IAC 4.2; (2) depreciation rates from Michigan's personal property tax regulations, which Carrier believes account for anticipated forms of depreciation and obsolescence but not for unforeseen economic obsolescence; and (3) Indiana's 30% floor,

¹ Novelis did not claim an adjustment for all its personal property. It excluded ██████████ in cost for special tooling and ██████████ in cost for non-productive equipment, such as office equipment and warehousing equipment. *Carrier testimony; Pet'r Ex. 7.*

which does not account for nearly as much depreciation as Novelis would be entitled to if it were to apply Indiana's current depreciation pools without a floor. The average of the three methods yielded RCNLD of [REDACTED] *Carrier testimony, Pet'r Exs. 2, 7.*

14. To quantify obsolescence that was not accounted for in RCNLD, Carrier looked to what he viewed as the most immediately accessible indicator of whether an asset has lost "income generating ability"—comparing sales near the time of valuation to historical sales. According to "Appraising Machinery and Equipment," a publication of the American Society of Appraisers ("ASA"), an "inutility penalty" exists whenever a plant or asset is operating at less than its rated capability. The penalty "reduces the capital investment from rated capability to the actual operating levels" to "balance" the plant. *Carrier testimony, Pet'r Ex. 7.*
15. Sales at Novelis' facility decreased from [REDACTED] tons in fiscal year 2006 to [REDACTED] tons in fiscal year 2013. Carrier used the ASA's published formula² to calculate an inutility penalty of [REDACTED] which when applied to the RCNLD of [REDACTED] yielded a net value of [REDACTED]. Carrier then took the difference between that number and the true tax value of the obsolete property at the 30% floor [REDACTED] to arrive at an adjustment of [REDACTED]. *Carrier testimony, Pet'r Ex. 7.*³

THE ASSESSOR'S CONTENTIONS

16. The PTABOA correctly determined Novelis' personal property assessment. Novelis did not offer any evidence to justify a finding of abnormal obsolescence. The term "abnormal obsolescence" must be strictly construed and limited to situations where "unforeseen changes in market values, exceptional technological obsolescence, or

² Inutility, percent = $[1 - (\text{Capacity A})^n]$ where Capacity A = rated capacity, Capacity B = actual production, and n = "economies of scale factor." *Carrier testimony; Resp't Ex. 7.*

³ Novelis also argued that, on July 27, 2016, it received notice demanding payment of the disputed taxes together with penalties and interest. According to Novelis, payment of any taxes beyond those based on its self-reported assessment are not due until its appeal is fully resolved. *Carrier argument, Pet'r Ex. 7.* That issue is not properly before us, and we do not address it in our determination. In any case, our determination that Novelis' self-reported assessment is final may moot the issue.

destruction by catastrophe occurs" Novelis' own data shows that its production decline was anticipated and recurring. *McCarty argument (referencing 50 I.A.C. 4.2-4-8(c) and (d)); Resp't Exs. 6-7.*

17. Even if the property suffered from abnormal obsolescence, Novelis did not use an appropriate method to quantify that obsolescence. The DLGF's regulations provide two methods for quantifying abnormal obsolescence, depending on whether it is curable or incurable. Novelis' market-based adjustment does not comply with either method. If a taxpayer prefers to use market value concepts, it should do so throughout its entire analysis. Also, Novelis relied on a voided regulation (50 IAC 4.3) in quantifying its obsolescence adjustment. *McCarty argument (citing 50 I.A.C. 4.2-4-8(d)); Resp't Ex. 7.*
18. Contrary to Novelis' claims, the Assessor argues that the PTABOA did not miss its deadline to issue a determination changing Novelis' self-reported assessment. The deadlines under Ind. Code § 6-1.1-16-1 do not apply if a taxpayer fails to file a personal property return that substantially complies with Article 6.1 of the Indiana Code and the DLGF's regulations. Because (1) the market decrease on which Novelis based its obsolescence claim did not meet the DLGF's definition of abnormal obsolescence, and (2) Novelis did not follow the DLGF's rules for quantifying its adjustment, its return did not substantially comply with the DLGF's regulations. Under those circumstances, Ind. Code § 6-1.1-9-3 gave the PTABOA three years to change Novelis' self-reported assessment. *McCarty argument; Resp't Exs. 1, 7, 11.*

Analysis

19. Indiana's personal property tax system is a self-assessment system. With some exceptions that do not apply here, every person, owning, holding, possessing, or controlling depreciable personal property with an Indiana tax situs on the assessment date of a year must file a personal property tax return by May 15 of that year, unless an extension is granted. *See I.C. § 6-1.1-3-7; I.C. § 6-1.1-3-1.5; 50 IAC 4.2-2-2.*

20. Although local officials may change a taxpayer's self-reported assessment, they have relatively short deadlines to do so:

Sec. 1. (a) Except as provided in section 2 of this chapter, an assessing official or county property tax assessment board of appeals may not change the assessed value claimed by a taxpayer on a personal property return unless the assessing official or county property tax assessment board of appeals takes the action and gives the notice required by IC 6-1.1-3-20 within the following time periods:

- ...
(2) A county assessor or county property tax assessment board of appeals must make a change in the assessed value, including the final determination by the board of an assessment changed by an assessing official, and give the notice of the change on or before the later of:
- (A) October 30 of the year for which the assessment is made; or
 - (B) five (5) months from the date the personal property return is filed if the return is filed after the filing date for the personal property tax return.

I.C. § 6-1.1-16-1(a)(2) (emphasis added).⁴ Section 2 allows an assessor to seek review with the Board if a property tax assessment board of appeals fails to act within Section 1(a)(2)'s deadlines. See I.C. § 6-1.1-16-2(a). The Assessor did not do so.

21. The Indiana Tax Court has held that Ind. Code § 6-1.1-16-1(a)(2)'s plain language applies to a county property tax assessment board of appeals when, like here, it acts as a "quasi-adjudicator" in the appeals process. See *Washington Twp. Ass'r v. Verizon Data Services, Inc.*, 43 N.E.3d 697, 701-03 (Ind. Tax Ct. 2015). The Assessor does not argue otherwise. Nor does she claim that the PTABOA acted within that statute's deadline. Indeed, the PTABOA did not issue its determination until more than a year after the deadline had passed. Instead, the Assessor points to Ind. Code § 6-1.1-16-1(d), which creates an exception to the deadline where a taxpayer files a return that is fraudulent or that does not substantially comply with property tax statutes or regulations:

(d) This section does not apply if the taxpayer:

⁴ This is the current version of the statute. Subdivision (a)(2)(B) was amended in 2014. It previously referred to returns filed "after May 15 of the year for which the assessment is made." The amendment changed that language to "after the filing date for the personal property tax return." 2014 Ind. Acts 111, § 25. The PTABOA did not act timely under either version of the statute.

(1) fails to file a personal property return which substantially complies with this article and the regulations of the department of local government finance, or,
(2) files a fraudulent personal property return with the intent to evade property taxes.

I.C. § 6-1.1-16-1(d).

22. The Assessor does not allege that Novelis filed a fraudulent return. She instead argues that Novelis' return did not substantially comply with the DLGF's regulations. But she does not claim that the lack of compliance stems from Novelis failing to accurately report all of the cost of its personal property or otherwise omitting any information required by the DLGF as to the value, nature, or location of its property. *See* I.C. 6-1.1-3-9 (requiring taxpayers to certify the truth of the information on their returns and accompanying data and to completely disclose all information the DLGF requires related to the value, nature, or location of their property); *see also*, 50 IAC 4.2-2-4 (laying out disclosure requirements). Instead, she argues that (1) the market decrease Novelis identified does not meet the definition of abnormal obsolescence, and (2) Novelis did not follow the DLGF's regulations in quantifying its adjustment.
23. We disagree. Both the DLGF's regulations and the Tax Court's decision in *Lake Co. Assessor v. Amoco Sulfur Recovery Corp. et. al.*, 930 N.E.2d 1248, 1255 (Ind. Tax Ct. 2010) show that substantial compliance focuses on a taxpayer's disclosure and reporting, not on whether the taxpayer is ultimately entitled to the adjustment, deduction, or exemption it seeks.
24. In *Amoco Sulfur*, the taxpayer ("BP")⁵ claimed an exemption for the cost of equipment it believed was part of an air pollution control system ("APCS"). *Lake Co. Assessor v. Amoco Sulfur Recovery Corp.*, 930 N.E.2d 1248, 1249 (Ind. Tax Ct. 2010). BP reported the actual cost of all its depreciable personal property and then deducted the cost of the

⁵ There were multiple taxpayers, which the Tax Court referred to collectively as "BP."

APCS equipment in arriving at a total assessed value. After hiring an expert to help determine the propriety of BP's claimed exemption, the Lake County Assessor issued notice disallowing the exemption and raising the assessment. *Id.* at 1249-50. The notice was issued well past Ind. Code § 6-1.1-16-1(a)(2)'s deadline. The Board granted summary judgment to BP and ordered the assessments reduced to the amounts reported on its returns.

25. The Assessor sought judicial review, claiming that BP had failed to substantially comply with the APCS exemption statute and the DLGF's regulations. While the case was pending before the Tax Court, the DLGF intervened to express its interpretation of "substantial compliance." *Amoco Sulfur*, 930 N.E.2d at 1251. Citing to *Hamill v. City of Carmel*, 757 N.E.2d 162, 165 (Ind. Ct. App. 2001), the DLGF explained that "substantial compliance with [statutory and] regulatory requirements means compliance to the extent necessary to assure the reasonable objectives of the [statute and] regulation are met." *Id.* at 1252. Thus, the Tax Court examined whether BP's complete return package, which 50 IAC 4.2-2-10(d) defined as "the return form . . . and all necessary supplemental forms and supporting schedules which must be filed with the return," substantially undermined the objectives of the statutes and regulations related to claiming an APCS exemption. *Id.* at 1251-52 (quoting 50 IAC 4.2-2-10(d) (2004)).
26. The Court found Ind. Code § 6-1.1-37-7 and 50 IAC 4.2-2-10(d), both of which dealt with imposing penalties, helpful to its analysis because "they both emphasize the importance of the full disclosure and accurate reporting requirements and reveal what kind of taxpayer actions or reporting errors run afoul of those requirements." *Id.* at 1256 n.14. The regulation stated that "when the reporting requirements [are] met, but for some reason the exemption is not allowed, the amount disallowed is an interpretive difference and is not subject to the omitted or undervalued personal property tax penalty." *Id.* at

1255 (quoting 50 IAC 4.2-2-10(d)(1)) (emphasis in original).⁶ As the Court explained, "Indiana's personal property tax system is not designed to penalize those taxpayers who claim an exemption in error but have nonetheless complied with its recordation requirements." *Id.* at 1255-56. Thus, even assuming that BP's exemption claim was "in error," the Court held that the assessor did not show that BP's returns failed to comply either with the general reporting statutes and regulations or with the statutes addressing the APCS exemption. *Id.* at 1256.

27. Like BP, Novelis reported all of its cost. It then deducted the amount of its claimed obsolescence adjustment from the final assessed value of its property, just as BP excluded the value of its purportedly exempt property from its final assessment. While the Assessor argues that Novelis was not entitled to the adjustment and did not properly quantify its amount, those are interpretive differences. *See* 50 IAC 4.2-9-5.⁷ Those interpretive differences did not substantially undermine the objectives of the property tax statutes or the regulations related to claiming an abnormal-obsolescence adjustment. To the contrary, because Novelis disclosed the cost of its personal property, the Assessor was easily able to change the assessment when she disagreed with Novelis' obsolescence claim.

28. Following the Tax Court's decision in *Amoco Sulfur*, the DLGF promulgated a new rule, defining "Nonsubstantial compliance" as a tax return that:

- (1) omits five percent (5%) or more of the cost per books of the tangible personal property at the location in the taxing district for which a return is filed;
- (2) omits leased property and other nonowned personal property assessable under 50 IAC 4.2-2-4(b) where such omitted property exceeds

⁶ The DLGF amended 50 IAC 4.2-2-10 on February 26, 2010. Subsection (d) no longer includes the language the Tax Court cited. But 50 IAC 4.2-9-5, which deals with reporting abnormal obsolescence, contains very similar language.

⁷ "When the reporting requirements for an adjustment for abnormal obsolescence have been met (a full disclosure), but for some reason the adjustment is not allowed or the value is changed, the amount disallowed is considered to be an interpretive difference and is not subject to the undervalued personal property tax penalty as set forth in 50 IAC 4.2-2-10(d)." 50 IAC 4.2-9-5.

five percent (5%) of the total assessed value of all reported personal property; or
(3) is filed with the intent to evade personal property taxes or assessment.

50 IAC 4.2-1-1.1(j).⁸

29. This definition reinforces what the Tax Court held in *Amoco Sulfur*: substantial compliance focuses on disclosure and reporting rather than on whether a taxpayer is ultimately entitled to an exemption, deduction, or adjustment. As explained above, the Assessor does not allege that Novelis omitted any cost on its return or otherwise failed to fully disclose the value, nature, or location its personal property. To the contrary, both she and the PTABOA used Novelis' reported costs in changing the assessment.
30. Thus, Novelis' return substantially complied with relevant property tax statutes and regulations. Therefore, the PTABOA was required to issue any determination changing Novelis' self-reported assessment by October 30, 2013. Because the PTABOA failed to do so, Novelis' self-reported assessment of \$27,361,760 (rounded to the nearest \$10) is final. I.C. § 6-1.1-16-1(b).

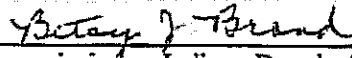
SUMMARY OF FINAL DETERMINATION

31. The PTABOA acted beyond Ind. Code § 6-1.1-16-1(a)(2)' deadline for changing Novelis' substantially compliant return. Novelis' self-reported assessment of \$27,361,760 is therefore final.

⁸ The DLGF's personal property regulations previously contained an almost identical definition. See 50 IAC 4.2-3-13(b) (1996) (repealed by Department of Local Government Finance; filed March 1, 2000, 7:53 a.m.; 23 IR 1616).

This Final Determination of the above captioned matter is issued the date first written above.


Chairman, 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 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 Code is available on the Internet at

<http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at

<http://www.in.gov/judiciary/rules/tax/index.html>.