

REPRESENTATIVE FOR PETITIONER: Baden Tax Management

REPRESENTATIVES FOR RESPONDENT: Raymond Lueken, Dubois County Assessor
Natalie Jenkins, Dubois County PTABOA
Greg Abell, Dubois County PTABOA
Del Steinhart, Bainbridge Township Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

KIMBALL INTERNATIONAL, INC.,	)	Petition Nos.:	19-018-04-1-7-00007
	)		19-018-04-1-7-00008
	)		19-018-04-1-7-00009
)		
Petitioner,	)	Personal Property Key Nos.:	218-97545-00
	)		218-97530-00
	)		218-97535-00
v.)		
	)	County:	Dubois
)		
BAINBRIDGE TOWNSHIP)		
ASSESSOR,	)	Township:	Bainbridge
)		
	)	Assessment Year:	2004
Respondent.)		

Appeal from the Final Determination of the
Dubois Property Tax Assessment Board of Appeals

December 30, 2005

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the facts and evidence presented in this case. The Board now enters its findings of fact and conclusions of law on the following issue: Should the Petitioner get an abnormal obsolescence adjustment for its tangible personal property?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Hearing Facts and Other Matters of Record

1. On May 13, 2004, flexcel, Inc., a division of Kimball International, Inc., timely filed business tangible personal property returns (Form 103) for the 2004 assessment date and claimed an adjustment for abnormal obsolescence.
2. On June 21, 2004, the Bainbridge Township Assessor issued Notices of Assessment/Change (Form 113/PP) notifying the Petitioner that the abnormal obsolescence adjustment was disallowed because "[a]fter discussing this claim for economic obsolescence with a Dept. of Local Government Finance Representative, it is this assessor's opinion that the obsolescence claimed is invalid according to the Indiana Code." They increased the business personal property assessed values.
3. Pursuant to Ind. Code § 6-1.1-15-1, the Petitioner filed three Form 130 petitions with the Dubois County Property Tax Assessment Board of Appeals (PTABOA) appealing Bainbridge Township's action. The Form 130 petitions were filed on August 3, 2004.
4. On September 1, 2004, the PTABOA held a hearing on the matter.
5. On September 15, 2004, the PTABOA issued a final determination upholding the township assessor's actions.
6. Pursuant to Ind. Code § 6-1.1-15-3, the Petitioner filed three Form 131 petitions seeking an administrative review. The Form 131 petitions were filed October 12, 2004.
7. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was held on August 11, 2005, before Rick Barter, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Ind. Code § 6-1.5-3-3.
8. The following persons were sworn and presented testimony at the hearing:
 - For the Petitioner – Todd Churchward, Baden Tax Management,
Kerry Wade, Baden Tax Management,
Mark P. Higgins, Kimball International/flexcel Inc.,
Paula Strahle, Kimball International/flexcel Inc.,
Charlotte A. Schepers, Kimball International/flexcel Inc.,
 - For the Respondent – Del Steinhart, Bainbridge Township Assessor,
Raymond Lueken, Dubois County Assessor,
Natalie Jenkins, Dubois County PTABOA,
Greg Abell, Dubois County PTABOA.

9. The following exhibits were presented:
 - Petitioner Exhibit 1 – Summary of contentions and regulations,
 - Petitioner Exhibit 2 – Computation summary of inutility penalty,
 - Petitioner Exhibit 3 – Copy of pages 99 through 104 from American Society of Appraisers (ASA) publication *Valuing Machinery and Equipment*,
 - Petitioner Exhibit 4 – Copy of 50 IAC 4.2-8-10 through 50 IAC 4.2-9-6
 - Respondent Exhibits – None.

10. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibits A1, A2, A3 – Form 131 petitions,¹
 - Board Exhibit B – Notice of Hearing for each petition,
 - Board Exhibit C – Hearing Sign In Sheet.

11. The subject property is tangible personal property that is located as follows:
 - a) Key Number 218-97545-00 is located at 1620 and 1650 Cherry Street in Jasper,
 - b) Key Number 218-97530-00 is located at 1037 East 15th Street in Jasper,
 - c) Key Number 218-97535-00 is located at 251 East 30th Street and 1180 East 16th Street in Jasper.

12. The ALJ did not conduct an on-site inspection of the subject property.

13. The assessed value determined by the PTABOA:

a) Key Number 218-97545-00	\$3,701,970,
b) Key Number 218-97530-00	\$4,059,050,
c) Key Number 218-97535-00	\$4,331,180.

14. The assessed value requested by the Petitioner:

a) Key Number 218-97545-00	\$2,946,420,
b) Key Number 218-97530-00	\$2,395,570,
c) Key Number 218-97535-00	\$3,103,750.

Jurisdictional Framework

15. This matter is governed by the provisions of Ind. Code § 6-1.1, Ind. Code § 6-1.5, and all other laws applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.

16. The Board is authorized to issue a final determination pursuant to Ind. Code § 6-1.5-5-5.

¹ Copies of the Form 103, Form 113/PP, Form 115, and Form 130 associated with each petition are included in the record. It is not clear whether these copies were attached as exhibits with the Form 131 or introduced separately.

Indiana's Personal Property Tax System

17. Except as otherwise provided by law, all tangible property within the jurisdiction of this state on an assessment date is subject to assessment and taxation. Ind. Code § 6-1.1-2-1.
18. All tangible property that is subject to assessment must be assessed on a just valuation basis and in a uniform and equal manner. Personal property that is subject to assessment and taxation must be assessed annually. Ind. Code § 6-1.1-2-2.
19. According to 50 IAC 4.2-1-1(h)(6), personal property includes all tangible property (other than real property) that is:
 - a) held for sale in the ordinary course of trade or business;
 - b) held, used, or consumed in connection with the production of income; or
 - c) held as an investment.
20. Indiana's personal property tax system is a self-assessment system. *See Paul Heuring Motors, Inc. v. State Bd. of Tax Comm'rs*, 620 N.E.2d 39, 41 (Ind. Tax Ct. 1993). Every person, including any firm, company, partnership, association, corporation, fiduciary, or individual owning, holding, possessing, or controlling personal property with a tax situs within the state on March 1 of any year is required to file a personal property tax return on or before May 15 of that year, unless an extension of time to file a return is obtained pursuant to section 3 of this rule. 50 IAC 4.2-2-2.

State Review and the Petitioner's Burden

21. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
22. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).

23. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. See *American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

Issue: Should Kimball International get an abnormal obsolescence adjustment for its tangible personal property?

Analysis

24. The Petitioner presented the following testimony and other evidence:
- A. The Cherry Street facility is a producer and supplier of high quality veneered and custom-cut high-pressure laminate (HPL) products for the company's office and hospitality furniture divisions, as well as other customers.
 - B. The 15th Street facility produces a variety of high-grade office furniture products.
 - C. The 16th Street and 30th Street facilities work together to produce a variety of high-grade hotel and motel furniture products.
 - D. During the last three years, there has been a substantial decline in the demand for the products from these facilities. This decline can be partially attributed to the general economic decline in the United States over this time. The magnitude and severity of the current decline is unprecedented in the industry. It has affected virtually every sector of the economy. As a result, businesses have reduced, postponed and eliminated capital spending for new equipment and related assets. Spending for office furnishings, especially luxury-type goods, is typically among the first items cut. Lower cost alternatives are likely to be selected.
 - E. The changes were unanticipated and unexpected. They could not have been foreseen by a reasonable businessperson. The unique and unexpected factors and circumstances (September 11, 2001, war and other world events) resulted in a dramatic decline in production and sales, both industry wide and for Kimball d/b/a flexcel. This situation led to a lowering of the value of the subject personal property as appropriately expressed in the abnormal obsolescence calculations.
 - F. This decline hit across the industry. Many facilities are closing or consolidating operations. Due to excess production capacity and under utilization of equipment, the value of equipment is impaired as the supply of existing equipment exceeds demand. The ability of such equipment to generate revenue is impaired by the lack of demand for the goods it produces. With these factors in place, the law of supply and demand causes a general decline in the value of equipment.

- G. According to reports in *Business and Institutional Furniture Manufacturers Association* (BIFMA), sales throughout the industry fell to just \$8.5 billion in 2003, a decrease of approximately 40%. From 2000 sales of \$13.3 billion, the BIFMA forecast for 2001 had been a 3% growth in sales, and a 5% growth for 2002, but the actual 2001 sales were \$10 billion and the 2002 sales were \$8.5 billion. *Higgins testimony*.
- H. This sales reduction led to growing unused capacity and the closure of several plants, including some in Dubois County. Competition has increased. There is significant mothballing of new and used furniture because the products do not bring a fair price on the market. *Higgins testimony*.
- I. Flexcel and Kimball saw steady growth of sales until the adverse affects caused by the events on September 11, 2001. A strong downturn in the sales of internet tech stocks, drops in construction spending, increased foreign competition and a decrease in professional employment negatively impacted corporate spending for the products produced by flexcel. *Higgins testimony*.
- J. At the 15th Street facility sales dropped from \$84 million for the fiscal year ending June 30, 2000, to just \$56 million for the fiscal year ending in 2003. Overall, flexcel and Kimball sales dropped 35% to 40% during the years 2001 to 2003. *Higgins testimony*.
- K. The utility and resulting value of equipment is maximized when it is producing at or near capacity. Operating significantly below capacity diminishes the value of the equipment. A lower utilization rate means a greater decline in value. The 2003 production estimates at the Cherry Street facility indicate it operated at 62% of capacity. The 15th Street facility operated at 40% capacity. The 16th and 30th Street facilities operated at 57% of capacity.
- L. Flexcel intends to reorganize the production capacity of the 16th and 30th Street facilities. The 16th Street plant will become a centralized shop for sample and product development and will provide services to other flexcel operations. The remaining capacity of the 16th Street facility will be absorbed by other production facilities. Production at the 30th Street facility will be closed and the building is for sale.
- M. Indiana's personal property regulations are very clear as to the causes of normal obsolescence. The causes of abnormal obsolescence are more ambiguous. If the cause of obsolescence falls outside of normal obsolescence as provided in 50 IAC 4.2-9-2, it must be considered abnormal obsolescence. The decline in value is not due to wear and tear, technological changes or passage of time. The situation as described is an example of an unforeseen change in market value as provided in 50 IAC 4.2-9-3.
- N. Indiana personal property regulations provide that abnormal obsolescence includes unforeseen change in market value. An unforeseen change in market value is an

example of external obsolescence. In discussing external obsolescence, the American Society of Appraisers (the ASA) publication *Valuing Machinery and Equipment* at 99, says in pertinent part:

Economic obsolescence (sometimes called “external obsolescence”) has been previously defined as the loss in value or usefulness of a property caused by factors external to the asset. These factors include 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; or similar factors.

- O. The ASA is a leading and widely recognized authority concerning appraisal concepts and methods. The ASA publication referenced above discusses in detail obsolescence concepts and methods as they apply to machinery and equipment. The ASA explains that an inutility penalty can measure the loss in value caused by the operation level of a plant or asset at significantly less than its rated design or capability when the condition is expected to exist for some time. This formula can analyze the productive capability of the equipment at the subject facilities. The inutility penalty applies to the original cost of the assets after adjusting for normal depreciation. *Petitioner Exhibit 3*.
- P. The percentage of capacity of the Cherry Street facility and the 15th Street facility is calculated by estimating the production capacity of facility, based on in-depth discussions with qualified plant personnel, and comparing the estimated production capacity to the actual production of the facility. The percentage of capacity for the facility is utilized in the ASA formula for inutility penalty to arrive at an abnormal obsolescence factor or percentage.
- Q. The production capacity of the Cherry Street facility was 20,080,000 square feet of product per year and the actual production for 2003 was 12,486,640 square feet, or 62% of capacity. Using the ASA formula, the factor is 21% or abnormal obsolescence of \$755,549.
- R. The production capacity of the 15th Street facility was 7,500,000 units per year. The actual 2003 production was 2,970,243 units, or 40% of capacity. Using the ASA formula, the resulting factor is 42% percent or abnormal obsolescence of \$1,663,480.
- S. The production capacity for the 16th Street and 30th Street facilities was based on historical sales data and the production capacity, at a minimum, was approximately \$78,000,000 in sales. The actual 2003 production was approximately \$45,000,000. Using the ASA formula for inutility, the resulting factor is 29% or abnormal obsolescence of \$1,227,438.

25. The applicable rules governing this issue are:

50 IAC 4.2-9-1 “Obsolescence” defined

“Obsolescence” means the reduction in value of business personal property that occurs through use, technological improvements, passage of time, changes in market values, and physical deterioration or destruction.

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 its occurrence. It is of 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 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, while the inventory (cyclamate) should be valued at the lower of cost or market as provided in 50 IAC 4.2-5-3 through 50 IAC 4.2-5-8.

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 person 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.

26. The evidence presented by the Petitioner shows that the subject property suffers from a loss in value due to external factors beyond the control of the Petitioner and quantifies that loss in value as a result of those factors. *Meridian*, 805 N.E.2d 475; *Clark*, 694

N.E.2d 1230. The Petitioner quantified the loss in value using a generally accepted method. This presentation is sufficient to make a prima facie case.

27. The burden shifted to the Respondent to present evidence to rebut or impeach the Petitioner's evidence. *American United Life*, 803 N.E.2d 276; *Meridian Towers*, 805 N.E.2d at 479.
28. The Respondent argued that simply because a plant is running below capacity does not require lowering the value. *Lueken testimony*. The Respondent also attempted to rebut the Petitioner's evidence by pointing out that the Petitioner was aware of the lower sales and lower production levels because the economic decline occurred prior to 2004. *Jenkins testimony*.
29. The Respondent failed to support its position with probative evidence. Similarly, the Respondent failed to rebut or impeach the Petitioner's case with probative evidence. The Respondent did not offer probative evidence to rebut the validity of the calculation used to quantify the loss in value or to rebut the data used in that calculation. The Respondent merely raised questions regarding the Petitioner's presentation, but did not present any evidence to the contrary or to disprove the Petitioner's evidence. *Meridian Towers*, 805 N.E.2d 1113, 1119.

Conclusion

30. The Petitioner made a prima facie case regarding its claim for abnormal obsolescence. The Respondent did not rebut or impeach that case. The Board finds in favor of the Petitioner. Accordingly, the assessed values will be as follows:
 - a) Key Number 218-97545-00 \$2,946,420,
 - b) Key Number 218-97530-00 \$2,395,570,
 - c) Key Number 218-97535-00 \$3,103,750.

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

Commissioner, Indiana Board of Tax Review

- 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. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.