

REPRESENTATIVES FOR PETITIONER:

Larry J. Stroble, Barnes & Thornburg

REPRESENTATIVE FOR RESPONDENT:

Tara Acton, Decatur Township Assessor's Office

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

AMERICAN AIRLINES, INC.,	)	Petition Nos.: 49-901-02-1-7-00011
and AMERICAN EAGLE	)	49-901-02-1-7-00012
AIRLINES, INC. <sup>1</sup>	)	
	)	
Petitioners,	)	County: Marion
	)	
v.	)	Township: Wayne
	)	
WAYNE TOWNSHIP	)	Personal Property
ASSESSOR,	)	
	)	
Respondent.	)	Assessment Year: 2002
	)	

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

**March 21, 2007**

**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:

<sup>1</sup> On October 3, 2006, counsel for the Petitioners, American Airlines, Inc., and American Eagle Airlines, Inc., requested that the hearings be consolidated pursuant to 52 IAC 2-6-7. The Motion contends that the Petitioners are both subsidiaries of AMR Corporation, the property is all located within the same township, and the Petitions raise the same legal and factual issues. The Board granted the Petitioners' request.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### Issue

1. The issue presented for consideration by the Board is whether American Airlines, Inc., and American Eagle Airlines, Inc., experienced abnormal obsolescence for 2002 as a result of the September 11, 2001, terrorist attacks.

### Procedural History

2. On May 15, 2002, American Airlines, Inc. (American Airlines), and American Eagle Airlines, Inc. (American Eagle), (together the Petitioners), filed business tangible personal property returns (Form 103s) for the March 1, 2002, assessment date. The assessed values reported on the original Form 103s were \$12,222,364 for American Airlines and \$9,427,055 for American Eagle.
3. On November 8, 2002, the Petitioners filed amended Form 103s, correcting certain errors in the depreciable asset pooling schedule and claiming abnormal obsolescence on their fleets. The assessed values reported on the amended Form 103s were \$7,944,540 for American Airlines and \$4,449,860 for American Eagle.
4. On November 15, 2002, the Wayne Township Assessor mailed Notices of Assessment Change (Form 113/PP) to the Petitioners denying the abnormal obsolescence claim and increasing the business personal property assessments to \$12,204,830 American Airlines and \$6,267,150 for American Eagle.
5. Pursuant to Ind. Code § 6-1.1-15-1, on December 27, 2002, the Petitioners filed Form 130 petitions to the Marion County Property Tax Assessment Board of Appeals (the PTABOA) appealing the Wayne Township Assessor's actions.
6. On March 20, 2003, the PTABOA held a hearing on the matters. On October 31, 2003, the PTABOA issued final determinations in which the application for abnormal

obsolescence was denied on the basis that the Petitioners received aid from the federal government in mitigation of the market effect caused by the events of September 11, 2001.

7. Pursuant to Ind. Code § 6-1.1-15-3, on November 26, 2003, the Petitioners filed Form 131 petitions, petitioning the Board to conduct administrative reviews of the above petitions.

### **Hearing Facts and Other Matters of Record**

8. Pursuant to Ind. Code § 6-1.1-15-4, a hearing was held on October 4, 2006, in Indianapolis, Indiana before Carol Comer, the duly designated Administrative Law Judge (the ALJ) authorized by the Board under Ind. Code § 6-1.5-5-2.

9. The following persons were sworn as witnesses at the hearing:

For the Petitioner:

Kevin Chestnut, Deloitte & Touche LLP  
Joe Glennon, Deloitte & Touche LLP  
Tara Williams, American Airlines

For the Respondent:

Tara Acton, Decatur Township Assessor's Office<sup>2</sup>  
Victoria Voris, Wayne Township Assessor's Office  
Stephanie Robbins, Wayne Township Assessor's Office

10. The following exhibits were presented:

For the Petitioner:

Petitioner Exhibit 1 – Copy of a cover letter from Kevin Chestnut to the Wayne Township Assessor forwarding the Petitioners' amended 2002 Business Personal Property Assessment Returns,  
Petitioner Exhibit 2 – Copy of the amended personal property returns filed by American Airlines  
Petitioner Exhibit 3 – Copy of the amended personal property returns filed by American Eagle,

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<sup>2</sup> Ms. Acton was formerly with the Wayne Township Assessors Office.

Petitioner Exhibit 4 – Copy of the Form 113 issued by Wayne Township denying the abnormal obsolescence claim by American Airlines,  
Petitioner Exhibit 5 – Copy of Form 113 issued by Wayne Township denying the abnormal obsolescence claim by American Eagle,  
Petitioner Exhibit 6 – Copy of American Airlines’ Form 130 petition,  
Petitioner Exhibit 7 – Copy of American Eagle’s Form 130 petition,  
Petitioner Exhibit 8 – Copy of the PTABOA’s Form 115 for American Airlines,  
Petitioner Exhibit 9 – Copy of the PTABOA’s Form 115 for American Eagle,  
Petitioner Exhibit 10 – Copy of American Airlines’ Form 131 petition,  
Petitioner Exhibit 11 – Copy of American Eagle’s Form 131 petition,  
Petitioner Exhibit 12 – Hearing notice for American Airlines,  
Petitioner Exhibit 13 – Hearing notice for American Eagle,  
Petitioner Exhibit 14 – Petitioners’ brief,  
Petitioner Exhibit 15 – AMR Corp. Economic Analysis prepared by Deloitte & Touche, LLP,<sup>3</sup>  
Petitioner Exhibit 16 – American Eagle Economic Analysis prepared by Deloitte & Touche, LLP,  
Petitioner Exhibit 17 – Selected Airline First Quarter Key Statistics,  
Petitioner Exhibit 18 – Excerpts from *Appraising Machinery and Equipment*,  
Petitioner Exhibit 19 – Copy of the Board’s final determination for the American Eagle appeal in Allen County,  
Petitioner Exhibit 20 – Article entitled “Assessing the Impact of the September 11<sup>th</sup> Terrorist Attacks on U.S. Airlines Demand.”

For the Respondent:

Respondent Exhibit 1A & 1B – Petitioner’s Business Tangible Personal Property Forms,  
Respondent Exhibit 2A & 2B – Form 130 petitions,  
Respondent Exhibit 3A & 3B – PTABOA findings, Form 115s  
Respondent Exhibit 4A & 4B – Form 131 petitions,  
Respondent Exhibit 5 – Copies of 50 IAC 4.3-9-2 and other excerpts from 50 IAC 4.3,  
Respondent Exhibit 6 – Newspaper, business journal and internet articles, articles from Petitioner’s website,<sup>4</sup>  
Respondent Exhibit 7 – Definition of “abnormal” and copy of Petitioners’ Selected Airline First Quarter Key Statistics with sections highlighted

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<sup>3</sup> During the hearing it was determined that this exhibit was mislabeled and should be labeled *American Airlines Economic Analysis*.

<sup>4</sup> The Petitioners objected to the admission of the newspaper articles by the Respondent as hearsay evidence. Pursuant to the Board’s Rules, however, hearsay evidence is admissible. *See* 52 IAC 2-7-3 (Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. If not objected to, the hearsay evidence may form the basis for a determination. However, if the evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, the resulting determination may not be based solely upon the hearsay evidence.) The ALJ, therefore, allowed the admission of the articles into the record.

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

Board Exhibit A – Form 131 petitions with attachments,  
Board Exhibit B – Notices of Hearings, dated July 14, 2006,  
Board Exhibit C – Respondent’s list of witnesses and exhibits,  
Board Exhibit D – Transcript of hearing prepared by Laurie M. Morgan RPR,  
Notary Public/Stenographic Reporter

The ALJ further took judicial notice of the Air Transportation Safety and System Stabilization Act passed by the 107<sup>th</sup> Congress of the United States of America.

12. At the hearing, the Petitioners’ counsel requested to submit proposed findings of fact and conclusions of law. The Respondent agreed to do the same. The parties were given thirty days to submit such evidence. Both parties timely filed their proposed findings of fact and conclusions of law.
13. The personal property at issue is the Petitioners’ fleet of aircraft having ground time at Indianapolis International Airport, Indianapolis, Wayne Township, in Marion County, Indiana.
14. The ALJ did not conduct an on-site inspection of the property.

#### **JURISDICTIONAL FRAMEWORK**

15. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

## ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

16. A Petitioner seeking review of a determination of a 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).
17. 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. Wash. 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”).
18. 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.

## PARTIES' CONTENTIONS

19. The Petitioners contend that their fleet of commercial aircraft should receive abnormal obsolescence depreciation as a result of the September 11, 2001, terrorist attacks. *Stroble argument*.
20. Summary of Petitioners' contentions in support of an error in the assessments:
  - A. The Petitioners' witness, Tara Williams, testified that on September 11, 2001, terrorists hijacked two American Airlines planes. *Williams testimony*. One plane was flown into the Pentagon and the other plane hit one of the World Trade Center Towers. *Id.* As a result of the attacks, the Federal Aviation Administration (FAA) prohibited flights in the U.S. and to the U. S. from

September 11 to September 13, 2001. *Id.* According to Ms. Williams, this “ground stop” order affected scheduled flights of the airlines for some period of time after September 13<sup>th</sup>. *Id.*

- B. The Petitioners argue that they experienced significant impact from the terrorist attacks resulting from a steep fall off in demand of air travel related to fears of future terrorist attacks and government laws that continued into 2002. *Williams testimony.* Ms. Williams testified that in 2002 there was a reduction of revenue passenger miles which is a standard way of measuring demand.<sup>5</sup> *Id.* In addition, ticket prices were reduced in 2002 to increase demand after the events of September 11<sup>th</sup>. *Id.* According to Ms. Williams, the reduction in ticket prices affects the profitability of an airline. *Id.*
- C. Ms. Williams testified that, as a result of the terrorist attacks, there was a 20% reduction in the Petitioners’ capacity. *Williams testimony.* According to Ms. Williams, as a result of the reduction in capacity, the Petitioners parked aircraft in the Mojave Desert in California and in Roswell, New Mexico as of March 1, 2002.<sup>6</sup> *Williams testimony.* The Petitioners argue that the amount of aircraft that had to be parked was a unique situation that was not typical of normal economic downturn. *Id.*
- D. The Petitioners admit that the Air Transportation Safety and System Stabilization Act provided some compensation to airlines for direct loss as a result of September 11<sup>th</sup>. *Williams testimony.* According to Ms. Williams, the U.S. Government allocated five billion dollars to domestic air carriers to cover direct losses related to the terrorist attacks and the “ground stop” order issued by the FAA, in addition to incremental losses incurred from September 11 to December

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<sup>5</sup> A revenue passenger mile is calculated as a paying passenger times the miles flown on any segment flight they take.

<sup>6</sup> The Petitioners’ witness testified that although the aircraft parked in New Mexico and California were counted as part of the Petitioners’ fleet, they were not counted in the calculation to determine the ground time allocation factor. *Glennon testimony.* Thus, the Petitioners contend, the grounded aircraft were taxed and the Petitioners allocated a percentage of the grounded aircraft’s value to Marion County proportionate to the amount of time that the aircraft that remained in service were on the ground in Indianapolis. *Id.*

31, 2001. *Id.* Ms. Williams testified that the Petitioners received \$856 million. *Id.* The Petitioners, however, argue that the losses suffered by the Petitioners in 2001 as a result of September 11<sup>th</sup>, were greater than \$856 million. *Id.* More importantly, the \$5 billion in aid was not to compensate the air carriers for any decline in business or loss of value of assets in 2002. *Id.*

- E. The Petitioners contend that the September 11, 2001, terrorist attacks were unanticipated, unexpected and not reasonably foreseeable. *Stroble argument; Williams testimony.* Thus, the Petitioners argue, they are entitled to an adjustment for abnormal obsolescence. *Id.* In response to the Respondent's case, the Petitioners contend that nothing in the Board's or the Department of Local Government Finance's (the DLGF) regulations require that an event affect only one taxpayer or industry to be "abnormal." *Stroble argument.*
- F. The Petitioners filed amended business personal property returns for 2002 to claim abnormal obsolescence. *Chestnut testimony; Petitioner Exhibits 2 & 3.* The Petitioner's witness, Kevin Chestnut, testified that he quantified the loss attributed to abnormal obsolescence to be \$4,260,298 for American Airlines and \$1,817,284.65 for American Eagle. *Id.* According to Mr. Chestnut, the adjustment equates to 35% abnormal obsolescence for American Airlines and 29% abnormal obsolescence for American Eagle. *Id.*
- G. The Petitioner's expert witness, Joe Glennon, testified that the percentages of abnormal obsolescence determined for the Petitioners are based upon a calculation in which the Petitioners' capacity reduction, inutility percentage and decrease in airfare are summed. *Glennon testimony; Petitioner Exhibit 17, app. B and Petitioner Exhibit 18.* According to Mr. Glennon, capacity reduction is due to the cancellation of routes and the parking of the aircraft in the Mojave Desert and in New Mexico. *Glennon testimony.* The inutility percentage is based on the analysis of revenue passenger miles (RPM) and available seat miles (ASM) and the decrease in airfare is measured using RPMs. *Id.* Mr. Glennon testified that the capacity reduction was 20% for both American Airlines and American Eagle.



*Id.* The inutility percentage for American Airlines was 9% and for American Eagle it was -7%. *Id.* Finally, Mr. Glennon testified, American Airlines experienced a 7% decrease in airfare and American Eagle experienced a 16% decrease in airfare. *Id.* The Petitioners argue that they ensured that abnormal obsolescence related to the terrorist attacks was the only obsolescence captured in these calculations by using three-year averages. *Id.* In addition, the Petitioners' witness testified that the impact of the terrorist attacks had an equal effect on the class of aircraft that served Indianapolis as it did on the other classes of aircraft that the Petitioners own. *Williams testimony.*

- H. The Petitioners argue that its obsolescence adjustment is supported by the reduction in their net operating income. According to the Petitioners' witness, Joe Glennon, the projected net operating income (NOI) for 2002 should have been \$1,200,000,000 for American Airlines and \$120,993,891 for American Eagle. *Glennon testimony; Petitioner Exhibits 15 & 16.* Based on NOI projections alone, the total obsolescence in 2002 was 65% for American Airlines and 66% for American Eagle Airlines. *Id.* The Petitioners argue that these percentages reflect both the effects of September 11<sup>th</sup> as well as effects attributable to the economic cycle and show that abnormal obsolescence is only a portion of the total obsolescence. *Id.*
- I. The Petitioners further argue that in 2002, American Eagle appealed the decision of the Allen County PTABOA regarding its claim for abnormal obsolescence in 2002 for its personal property located in Allen County. *Stroble argument.* In that decision, the Board ruled on April 6, 2004, that American Eagle suffered abnormal obsolescence as a result of the terrorist attacks of September 11, 2001, and approved a judgment of 29% obsolescence for the March 1, 2002, assessment date. *Id.* The Petitioners argue that the evidence presented in the hearing and the amount of obsolescence claimed in Allen County was exactly the same as that which is being requested in American Eagle's Petition here. *Id.*

- J. Finally, in its rebuttal argument, the Petitioners contend that the Township failed to prepare its own analysis or economic study. *Stroble argument*. Nor did the Respondent attempt to quantify a different obsolescence percentage. *Id.* Thus, the Petitioners conclude, the Respondent failed to rebut the Petitioners' case. *Id.*
21. The Respondent contends that because the entire airline industry was affected by the events of September 11<sup>th</sup>, the event was not "abnormal" and the Petitioners were not entitled to an abnormal obsolescence adjustment for March 1, 2002. *Acton testimony*.
22. Summary of Respondent's contention in support of the assessment:
- A. The Respondent contends that abnormal obsolescence should not be granted if it affects more than one person in an industry or if it affects several other industries as well. *Acton testimony*. The Respondent argues that the September 11, 2001, terrorist attacks were not "abnormal" because every airline in the industry was affected in the same manner for the March 1, 2002, assessment date. *Id.* According to the Respondent, the Petitioners were not singled out. *Voris testimony*. Nor were they the only ones experiencing a loss. *Id.*
- B. The Respondent further contends that an economic turndown was already occurring in the airline industry prior to the events of September 11th. *Acton testimony; Robbins testimony; Respondent Exhibit 6*. According to the Respondent, American Airlines had already cut its capacity and had sold thirteen planes. *Acton testimony*. In support of this contention, the Respondent submitted an Internet article reporting statements made by Don Carty, AMR's Chairman and Chief Executive Officer, indicating that "[w]ith a weak economy and fuel prices still relatively high, we and the rest of the industry were experiencing a very difficult financial quarter even before the September 11 attacks." *Id.*; *Respondent Exhibit 6*. Thus, the Respondent concludes, the obsolescence was not abnormal. *Acton testimony*.

- C. The Respondent also argues that American Airlines requested an abnormal obsolescence adjustment based on AMR's financial situation rather than based on the finances of American Airlines individually.<sup>7</sup> *Acton testimony*. Further, the Respondent contends that the calculations were based on all of the planes in the Petitioners' fleets including those airplanes sitting in the desert. *Id.* Finally, the Respondent contends that the Petitioners' analysis was not based on the ground time in Indianapolis. *Id.* According to the Respondent, the point of the Form 1031 from is to allocate a percentage of the assessed value to Indianapolis. *Id.* Thus, the Respondent concludes, the Petitioners failed to submit any analysis to show how the specific planes that fly into Indianapolis are entitled to an abnormal obsolescence adjustment. *Id.*
- D. In addition, the Respondent argues that another tax break was put in place by Congress that allowed companies to carry back 2001 and 2002 net operating losses for five years rather than for two years as was previously approved. *Acton testimony*. The Respondent contends that the Petitioners failed to state whether they took advantage of the five year tax break, which would have cured the obsolescence that occurred related to the September 11<sup>th</sup> attacks. *Id.*
- E. Finally, the Respondent argues that the Board's determination regarding the value of American Eagle's personal property in Allen County should not carry any weight in the case before the Board. *Robbins testimony*. According to the Respondent, this case relates to the Petitioners' personal property located in Wayne Township, Marion County and not the Petitioners' personal property in Allen County. *Id.* Moreover, in the Allen County appeal, the Respondent argues, Allen County agreed with American Eagle that obsolescence existed but disagreed with the amount of obsolescence American Eagle sought. *Acton testimony*. Here, the Respondent contends, it does not agree that the Petitioners are entitled to any abnormal obsolescence. *Id.*

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<sup>7</sup> The Petitioners contend that Exhibit 15 was labeled "AMR Corp. Economic Analysis" in error and that the abnormal obsolescence calculation was based on American Airlines' operations. *Stroble argument*.

## ANALYSIS

23. 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. Indiana’s personal property tax system is a self-assessment system. “Every person, including any firm, company, partnership, association, corporation, fiduciary, or individual owning, holding, possessing, or controlling personal property with a tax situs within Indiana 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 is obtained.” *See* 50 IAC 4.2-2-2.
24. Commercial airlines are “required to report the total value of the fleet of aircraft operating in this state.” 50 IAC 4.2-10-2. An “allocation factor for each type of aircraft is computed by dividing the total amount of ground time of each type of aircraft for the preceding twelve (12) months in the taxing district by the total ground time of each type of aircraft operated in the system.” *Id.* An airline is assessed for personal property based on the value of each type of aircraft multiplied by the allocation factor. *Id.*
25. Abnormal obsolescence “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 prior to the occurrence.” 50 IAC. 4.2-9-3. An airline may claim an adjustment for abnormal obsolescence on its personal property “provided that the taxpayer follows the procedures and meets the requirements regarding an adjustment for abnormal obsolescence contained in 50 IAC 4.2-9.” 50 IAC 4.2-10-4(a). Abnormal obsolescence is “strictly construed and limited to a situation where unforeseen changes in market values, exceptional technological obsolescence[, or] where destruction by a catastrophe occurs providing that such events have a direct effect upon the valuation of the property at the tax situs in the state of Indiana.” 50 IAC 4.2-10-4(c).
26. For a Petitioner to show that he is entitled to receive an adjustment for obsolescence, the taxpayer must both identify the causes of obsolescence he believes is present and also

quantify the amount of obsolescence he believes should be applied to its property. *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1241 (Ind. Tax Ct. 1998). Obsolescence may be quantified using generally recognized appraisal principles. *See, e.g., Hometowne Assoc., L.P. v. Maley*, 839 N.E.2d 269, 277 (Ind. Tax Ct. 2005).

27. Further, a Petitioner must present probative evidence that the causes of obsolescence identified by the Petitioner are resulting in an actual loss in value to its property. *See Miller Structures, Inc. v. State Bd. of Tax Comm'rs*, 748 N.E.2d 943, 954 (Ind. Tax Ct. 2001). “In the commercial context, a loss of value usually represents a decrease in the improvement’s income generating ability.” *Loveless Construction Co. v. State Bd. of Tax Comm’rs*, 695 N.E.2d 1045, 1047 (Ind. Tax Ct. 1998).
28. Finally, the Petitioner’s quantification of the amount of obsolescence must be converted into a percentage reduction and applied against the structure’s overall value. *See Clark*, 694 N.E.2d at 1238. It is not sufficient for a Petitioner to merely identify random factors that may cause the property to be entitled to an obsolescence adjustment. The Petitioner must explain how those purported causes of obsolescence cause the property to suffer an actual loss in value. *See Champlin Realty Co. v. State Bd. of Tax Comm'rs*, 745 N.E.2d 928, 936 (Ind. Tax Ct. 2001), *review denied*.
29. The terrorist attacks that occurred on September 11, 2001, were unprecedented. The attacks and the resulting government action stopping all commercial air travel, were not under the Petitioner’s control, were of a nonrecurring nature, and could not have been reasonably foreseen by a prudent businessperson. Further, the Petitioners have shown that the terrorist attacks and the related governmental responses have negatively impacted the value of their aircraft in Indiana by decreasing demand and lowering ticket prices. Thus, the Petitioners met the first prong of their burden.
30. The Petitioners also quantified the amount of abnormal obsolescence to be 35% for American Airlines and 29% for American Eagle. *Stroble argument*. The Petitioners’ witness testified that the abnormal obsolescence factors were calculated by summing the capacity reduction, incremental inutility and decrease in airfare that the Petitioners

experienced as a result of the terrorist attacks. Mr. Glennon further testified that he used common appraisal and valuation techniques to quantify the abnormal obsolescence. Thus, the Petitioners have offered a method to compute the abnormal obsolescence and provided support for that method. The Petitioners, therefore, have established a prima facie case.

31. 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); *Canal Square Ltd. Partnership v. State Board of Tax Commissioners*, 694 N.E.2d 801, 804 (Ind. Tax Ct. 1998). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003).
32. Here, the Respondent contends that to properly evaluate the Petitioners' claim for abnormal obsolescence, it would have needed a breakdown of the planes that were used in the Petitioners' 103I forms. We note, however, that the Respondent failed to request any such information from the Petitioners prior to hearing pursuant to the Board's discovery rules. *See* 52 IAC 2-8-3. Further, contending that there "may have been" an error in the Petitioners' filings is insufficient to rebut the Petitioners' case. The Respondent also disagreed with the Petitioners' calculations and methodology in determining the amount of obsolescence being sought. The Respondent, however, failed to present any analysis of its own in rebuttal. *See Meridian Towers*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003) (asking open-ended questions without offering evidence to rebut the validity of taxpayer calculations was insufficient to rebut taxpayer's prima facie case).
33. The Respondent also contends that the terrorist attacks cannot be "abnormal" because every airline in the industry was affected in the same manner for the March 1, 2002, assessment date. *Acton testimony*. The Respondent claims that abnormal obsolescence should not be granted if it affects more than one person in an industry for the same reason or if it affects several other industries as well. *Id.* The Respondent, however, was unable to cite any statute or regulation that would not allow for the application of abnormal

obsolescence if an event affects an entire industry or several industries for the same reasons. Nor do we believe such an interpretation of the regulations is warranted. In fact, the personal property regulations in effect at the time of the assessment, 50 IAC 4.3-9-3, provides examples of abnormal obsolescence including the adverse affect of the development of compact disk technology on the vinyl record industry. 50 IAC 4.3-9-3(c) (voided as of January 1, 2003). Thus, it is clear that a taxpayer can qualify for abnormal obsolescence for losses resulting from an event that negatively impacts an entire industry, providing that it is unanticipated, unexpected, and not reasonably foreseen.

34. Finally, the Respondent contends that the abnormal obsolescence claimed by the Petitioners was caused, in part, by an economic downturn that occurred prior to the terrorist attacks and that any loss the Petitioners incurred as a result of September 11<sup>th</sup> was compensated by the federal government. The Respondent, however, only presented Internet print-outs and newspaper articles in support of its contentions. Hearsay evidence is admissible but, if objected to, hearsay may not be the sole basis of a final determination. 52 IAC 2-7-3. The Petitioners objected to the hearsay evidence and the Respondent presented no further evidence. Thus, the Respondent's contentions are unsupported. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995). Moreover, the Petitioners' witness testified that the \$5 billion in aid was not to compensate the air carriers for losses or declines in business in 2002. *Williams testimony*. Further, while the Petitioners received \$856 million in aid for 2001, the losses suffered by the Petitioners in 2001 as a result of September 11<sup>th</sup>, were greater than that amount. *Id.* In addition, the Petitioners' expert, Mr. Glennon, testified that he ensured that abnormal obsolescence related to the terrorist attacks was the only obsolescence captured in his calculations by using three-year averages. *Id.* Thus, the weight of the evidence supports the Petitioners' obsolescence request.

## SUMMARY OF FINAL DETERMINATION

34. For the reasons set forth above, the Board finds in favor of the Petitioners and grants abnormal obsolescence of 35% for American Airlines and 29% for American Eagle as of the March 1, 2002, assessment date.

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

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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. 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](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>.