

REPRESENTATIVE FOR PETITIONER: Todd Churchward,
Baden Tax Management

PRO SE RESPONDENT: Janet Freels, Wabash Township Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

CTS Corporation Microelectronics,)	
)	Petition No.: 79-064-04-1-7-05003
Petitioner,)	
)	Tippecanoe County
v.)	Wabash Township
)	
Wabash Township Assessor,)	Personal Property
)	2004 Assessment
Respondent.)	

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

MAY 7, 2007

FINAL DETERMINATION

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

Issue

1. Should CTS Corporation Microelectronics have an abnormal obsolescence adjustment for part of its tangible personal property?

Hearing Facts and Other Matters of Record

2. The Petitioner ("CTS") filed its business tangible personal property return (Form 103) for 2004 reporting an assessed value of \$4,340,590. This value included a \$596,111 adjustment for abnormal obsolescence.
3. The Wabash Township Assessor ("Respondent") notified the Petitioner that the abnormal obsolescence claim was denied and increased the assessed value to \$4,936,700.
4. The Petitioner filed a Form 130 petition with the Tippecanoe County Property Tax Assessment Board of Appeals ("PTABOA") appealing the Respondent's action. The PTABOA held a hearing on the matter and issued its determination denying the abnormal obsolescence claim on June 28, 2005. The PTABOA also determined the assessed value is \$4,936,700.
5. On July 19, 2005, the Petitioner filed Form 131 seeking an administrative review by the Board. The Petitioner contends the assessed value should be \$4,340,590.
6. The designated Administrative Law Judge ("ALJ"), Paul Stultz, held a hearing in Lafayette on February 6, 2007. He did not conduct an on-site inspection of the subject property.
7. The following persons were sworn and presented testimony at the hearing:
 - For the Petitioner – Todd Churchward, Baden Tax Management,
 - For the Respondent – Janet Freels, Wabash Township Assessor,
Everett Davis, Department of Local Government Finance.
8. The Petitioner presented the following exhibits:
 - Petitioner's Exhibit 1 – Assertions and Responses,
 - Petitioner's Exhibit 2 – Form 131 with attachments,
 - Petitioner's Exhibit 3 – Form 115,
 - Petitioner's Exhibit 4 – Form 130,
 - Petitioner's Exhibit 5 – Power of Attorney,

Petitioner's Exhibit 6 – Obsolescence computations and supporting data,
Petitioner's Exhibit 7 – Excerpts from *Valuing Machinery and Equipment*,
an American Society of Appraisers publication,
Petitioner's Exhibit 8 – 2004 Final Determination for *Kimball International, Inc.*,
Petitioner's Exhibit 9 – 2004 Final Determination for *JOFCO, Inc.*

9. The Respondent presented the following exhibits:

Respondent's Exhibit 1 – Form 131,
Respondent's Exhibit 2 – Form 115,
Respondent's Exhibit 3 – Form 130,
Respondent's Exhibit 4 – Petitioner's response to PTABOA,
Respondent's Exhibit 5 – PTABOA Findings,
Respondent's Exhibit 6 – Personal property tax return,
Respondent's Exhibit 7 – Summary of testimony.

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

Board Exhibit A – Form 131,
Board Exhibit B – Notice of Hearing dated January 4, 2007,
Board Exhibit C – Hearing Sign In Sheet.

11. The subject property is depreciable business tangible personal property used in CTS's Chip and Wire Department located at 1201 Cumberland Avenue in West Lafayette.¹

12. The Petitioner presented the following evidence in support of its claim:

A. The Petitioner used the subject property to manufacture components for a secure global positioning system ("GPS") under a contract with a primary defense contractor. The Petitioner began production in late 2002. Full production was reached and maintained until the second half of 2003. *Churchward testimony; Pet'r Ex. 1.*

¹ The Petitioner provided a detailed list of the items that purportedly suffer abnormal obsolescence. The use of some items on the list, such as microscopes, wire shelves, conveyors, chairs, file cabinets, lockers and a desk probably requires no explanation. The function or use of many other items on the list, including the most costly items such as the bonders, the FCM II base with compact, and the ACM "micro" placement, remains unclear. The acquisition dates for this property range from 1964 through 2001, with the bulk of the dates being during the 1980's and 1990's. *Pet'r Ex. 6.*

- B. During the second half of 2003, "CTS was forced to exit production of this part suddenly when the customer pulled the business stating they added internal capacity and would be taking over primary production." *Pet'r Ex. 1*. The Petitioner continued very limited production until January 2004, but use of the equipment in production dropped from 144 hours per week to 12 hours per week. *Churchward testimony; Pet'r Ex. 1*.
- C. The subject property had been used previously for other purposes, but in 2002 and 2003, its primary use was to fulfill the contract for GPS components. The unexpected cancellation of the contract essentially ended the need for the subject property and effectively made it obsolete. *Churchward testimony; Pet'r Ex. 1*.
- D. The Petitioner could not secure business to maintain the subject property at this location. Therefore, the Petitioner shipped it to a sister facility. After determining the subject property could not be utilized at the sister facility, it was shipped to Singapore with the hope that an overseas market for it could be found. *Churchward testimony; Pet'r Ex. 1*.
- E. The chips and modules produced by the Petitioner under the contract are used exclusively in military avionics and by field personnel in defense applications. The Petitioner understood that the production of these components was to be a long-term business arrangement. The product was customer specific. There is no open market for it. The loss of this customer could not have been reasonably foreseen. *Churchward testimony; Pet't Ex. 1*.
- F. The value of the subject property was impaired when the customer cancelled production. This situation is an example of an unforeseen change in market value as provided by 50 IAC 4.2-9-3. The value of machinery and equipment is maximized when it is producing at or near its capacity. If the machinery and equipment is operating below capacity, the value of the machinery and equipment

is diminished. The lower the utilization rate, the greater the decline in value.
Churchward testimony; Pet'r Ex. 1.

- G. The abnormal obsolescence can be measured using the inutility penalty as described in the American Society of Appraisers publication *Valuing Machinery and Equipment*. The inutility penalty formula can be used to analyze the productive capability of the equipment. The inutility penalty percentage produces an abnormal obsolescence adjustment of \$596,111. *Churchward testimony; Pet'r Ex. 1, 6, 7.*
 - H. Calculating the abnormal obsolescence adjustment using the inutility penalty formula was presented and accepted by the Board in the 2004 Final Determination for *JOFCO, Inc.* and in the 2004 Final Determination for *Kimball International, Inc.* The fact pattern, technical analysis, and obsolescence quantification presented in the Petitioner's case are very similar to those presented in *JOFCO* and *Kimball*. *Churchward testimony; Pet'r Ex. 8, 9.*
13. The Respondent presented the following evidence in support of the assessment:
- A. It appears that much of the subject property is equipment that was there a long time before this particular project. It was adapted to make a particular product and could be adapted to make some other product. The fact that the Petitioner decided not to use it for some other product does not lead to abnormal obsolescence. If there was some equipment that was specific to this particular product, the Petitioner failed to identify it. *Davis testimony.*
 - B. The loss of business was not an unforeseen loss as required by 50 IAC 4.2-9-3. *Davis testimony.*
 - C. The inutility penalty percentage should not be taken from the true tax value of the subject property. The true tax value is determined using an accelerated method

with a 30% floor and the result is not a true depreciated value. The adjustment should be made to the cost less depreciation based on straight-line method. *Davis testimony.*

Analysis

14. All tangible property within the jurisdiction of this state on the assessment date of a year is subject to assessment and taxation for that year unless otherwise provided by law. Ind. Code § 6-1.1-2-1.
15. 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 is obtained. 50 IAC 4.2-2-2.
16. The most applicable rules governing this case 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.

50 IAC 4.2-4-8 Adjustment for obsolescence

(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.

17. Abnormal obsolescence occurs because of factors beyond the control of the taxpayer that could be not reasonably foreseen. 50 IAC 4.2-9-3; *Harbor Food Plaza, Inc. v. State Bd. of Tax Comm'rs*, 638 N.E.2d 898 (Ind. Tax Ct. 1994).
18. To make a case, the Petitioner must show abnormal obsolescence exists and quantify the loss in value it causes. *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1233 (Ind. Tax Ct. 1998).

19. Under a strict application of the term, the mere fact that the Petitioner found no use for the subject property does not mean the subject property suffered a loss in value warranting an adjustment for abnormal obsolescence. CTS failed to prove that the subject property had a decrease in value that can properly be attributed to abnormal obsolescence for several reasons.
20. Abnormal obsolescence requires unanticipated, unexpected factors over which the taxpayer has no control. The cause must be something that a reasonably prudent businessman could not reasonably foresee. 50 IAC 4.2-9-3. In this case, CTS attributed the cause to the loss of a single customer/contract that was not foreseeable. The Board, however, will not accept such a conclusory characterization. Conclusory statements do not qualify as probative evidence. *Whitley Prods. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). The Petitioner failed to present credible, probative evidence to substantiate the claim that its loss of business was unforeseeable.
21. Abnormal obsolescence can be based on changes in market values, exceptional changes in technology and catastrophic destruction. CTS did not specify one of those reasons, but merely relied on the loss of a contract to produce GPS components. Clearly, this claim is not based on catastrophic destruction. Similarly, there is no claim or probative evidence in this case indicating that the CTS facility somehow was tied to producing antiquated or outmoded GPS components. Apparently, CTS based this claim on changes in market values because it lost the contract. This fact, however, does not prove that the market for the product had decreased. The evidence merely establishes that the customer found another way to satisfy its need for the GPS component. The simple fact that CTS lost most (or all) of its business does not, by itself, prove the claim. The fact that the customer continued production by adding internal capacity and making the components itself also tends to show a lack of abnormal obsolescence. There could be any number of reasons that the customer made such a decision.
22. The Petitioner submitted a four-page list of various items to identify the property that purportedly suffers from abnormal obsolescence. *Pet'r Ex. 6*. Other than the list itself,

there is no explanation of the use of these items. Some of them, such as microscopes, wire shelves, conveyors, chairs, file cabinets, lockers and a desk have uses that appear to be obvious. Nothing in this case indicates that such items suffer from abnormal obsolescence. The uses of many other items on that list are not obvious, but the Petitioner provided no further details that might justify some basis for its claim.

23. Although the Petitioner attempted to prove it could find no other use for all this equipment, the weight of the evidence indicates otherwise. The acquisition dates for these items range from 1964 through 2001. The Petitioner established that it began production of the GPS components in late 2002. Therefore, most of this property could not be highly specialized equipment that lost its value simply because the Petitioner was no longer using it to make GPS components. If there was anything on the list that should be in that category, the Petitioner failed to prove it.
24. The Petitioner's reliance on the Board's decisions in *JOFCO* and *Kimball* is misplaced. The Petitioner claims that the fact patterns, technical analysis, and quantification found in those determinations are similar to the matter at hand. Therefore, according to the Petitioner, the inutility penalty formula can be used to measure abnormal obsolescence. Although the petitioners in both of those cases claimed abnormal obsolescence and employed the inutility penalty formula to quantify it (as the Petitioner proposes in this case), the similarities end there.
25. In making this kind of case, the first step must be to establish that some form of abnormal obsolescence exists. In both *JOFCO* and *Kimball*, the taxpayers produced high-end office furniture whose market was primarily in New York and along the East Coast. The taxpayers established that certain events during 2001 and 2002 had a sudden and dramatic impact on the taxpayers' furniture business and equipment used to manufacture that furniture. The facts presented in those cases established the existence of abnormal obsolescence. The taxpayers' losses were not tied to the loss of a single contract or specific customer. Rather, the *JOFCO* and *Kimball* losses resulted from a decline in the stock market, an economic recession, and terrorist attacks on September 11, 2001. Those

taxpayers demonstrated a pattern of declining sales of their products over a period beginning in 2001 through 2004. They also established that these events negatively impacted the general market for high-end office furniture.

26. The current case is not comparable. Unlike JOFCO and Kimball, the Petitioner tied its alleged loss of value to the cancellation of a single contract to produce GPS components. The Petitioner did not show that the overall market for that kind of product declined. There is no probative evidence that unforeseen changes in market values or technological changes have somehow rendered GPS systems obsolete. The Petitioner simply claimed it no longer has a use for the equipment used to produce GPS components because it lost the contract to produce them. The facts upon which the Petitioner relies are not comparable to the facts that established the existence of abnormal obsolescence in *JOFCO* and *Kimball*. More importantly, CTS's claim simply does not fit the definition of "abnormal obsolescence."

Summary of Final Determination

27. The Petitioner failed to make a prima facie case. The Respondent's burden to rebut was not triggered. The assessment should not be changed.

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

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. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.