

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>JOHNSON CONTROLS, INC. d/b/a OPTIMA BATTERIES, INC. ,</p> <p>v.</p> <p>Respondent:</p> <p>ADAMS COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 52456</p>
<p>ORDER</p>	

This matter was heard by the Board of Assessment Appeals on August 31, 2011, Diane M. DeVries and James R. Meurer presiding. Petitioner was represented by Alan Poe, Esq. Respondent was represented by Nathan J. Lucero, Esq. Petitioner is protesting the 2009 actual value of the subject personal property.

Subject property is described as follows:

Miscellaneous Personal Property
Optima Batteries Inc.'s Manufacturing Facility
Adams County, Colorado
Adams County Schedule No. P0011752

The subject of this appeal consists of personal property owned by Johnson Controls, Inc. and located at the former Optima Batteries Inc.'s manufacturing facility in Adams County, Colorado. The personal property at issue consists of the machinery and equipment that was used to manufacture Optima batteries.

Petitioner's witness Mr. Chad Montgomery, a manager at Johnson Controls, Inc., testified that Optima batteries are uniquely-designed, high-end product that are sold to consumers for use in motor vehicles and other machinery. Unlike most other automotive batteries, Optima batteries consist of six spiral cells that are connected by a lead cast-on-strap and contained in a sealed case. Because of the unique design of Optima batteries, most of the machinery and equipment used to manufacture Optima batteries was designed and manufactured specifically for that use.

Mr. Montgomery further testified that in 2005 and 2006, demand for Optima batteries exceeded the production capacity of the facility in Adams County and was projected to increase substantially. As a result, Johnson Controls built a second facility in Mexico. That facility began operation in July of 2007 and was fully operational by late 2007. The capacity of the new facility was approximately 1.2 million batteries per year, which was approximately the same as the capacity of the Adams County facility.

According to Mr. Montgomery, the projected increase in the demand for Optima batteries did not materialize. By the middle of 2008, the actual and projected demand for Optima batteries remained at approximately 1.2 million batteries per year. At that time, the production capacity of the two facilities owned by Johnson Controls, Inc. was nearly double the actual and projected demand.

Mr. Montgomery further testified that in the second half of 2008, Johnson Controls Inc. concluded that market conditions and cost factors required the elimination of a portion of its production capacity. Accordingly, Johnson Controls Inc. decided to close the Adams County facility. Some of the machinery and equipment located in Adams County was designated to be relocated to the Mexico facility or other Johnson Controls Inc. facilities, and some of the machinery and equipment was determined to be of no future use and was therefore designated to be sold for scrap. The decision to close the Adams County facility and to scrap designated items of machinery and equipment was approved by Johnson Controls Inc. in October of 2008. The employees of the Adams County facility were officially informed on November 24, 2008 that the facility would be permanently closed effective January 26, 2009.

According to Mr. Montgomery, between November 24, 2008, and January 1, 2009, operations at the Adams County facility were in the process of winding down. Certain machinery and equipment were shipped to the Mexico facility and other machinery and equipment (the subject of this appeal) was shut down and reduced in anticipation of the ultimate closure of the facility.

Mr. Montgomery testified that production of Optima batteries at the Adams County facility in December of 2008 was less than 30% of production at the peak. By January 1, 2009, only two of several types of Optima batteries previously manufactured at the Adams County facility were being manufactured, and those products were being manufactured primarily to eliminate the remaining inventory of raw materials. As to operating machinery and equipment, Mr. Montgomery testified that by January 1, 2009, all of the casting operations had been shut down, all of the grid stamping operations had been shut down, two of the four lines had been shut down, three of the five winders had been shut down, three of the five ovens had been shut down, three of the five cast-on-strap machines had been shut down, half of the acid filling operation had been shut down, and one of the three heat seal and post bond lines had been shut down. In addition, the cooling chamber was running at 30% to 35% of its capacity, and the formation tables and rectifiers were operating at approximately 30% of their capacity.

To provide an opinion of the market value of the machinery and equipment as of January 1, 2009, Petitioner engaged Mr. Dennis Neilson, an appraiser with over 44 years of experience in appraisal and valuation of machinery and equipment. Mr. Neilson testified he concurred with the

replacement cost new less depreciation calculation of the Assessor's Office. However, Mr. Neilson concluded that there was additional economic obsolescence attributable to the scheduled plant closure in January of 2009, which affected the market value of the machinery and equipment as of January 1, 2009.

Based on this conclusion, Mr. Neilson adjusted the calculation for the machinery and equipment that had been designated by Johnson Controls Inc. as items to be sold for scrap, and for the machinery and equipment that was to be transferred to the Mexico facility or another Johnson Controls Inc. facility, or sold for a purpose other than scrap. With respect to the machinery and equipment that was not to be sold for scrap, Mr. Neilson determined that a reasonable estimate of the market value of that personal property as of January 1, 2009 was 20% of its replacement cost new. Therefore, Mr. Neilson opined that the impact of economic obsolescence on this machinery and equipment was \$3,869,521.00.

With respect to machinery and equipment that was to be sold for scrap, Mr. Neilson determined that a reasonable estimate of the market value of that machinery and equipment as of January 1, 2009 was 10% of its replacement cost new less depreciation. Therefore, Mr. Neilson opined that the impact of economic obsolescence on this machinery and equipment was \$10,614,282.00.

The calculation reflecting Mr. Nielson’s opinion of economic obsolescence and resulting value of the subject machinery and equipment is summarized in the following table:

Replacement Cost New Less Depreciation	\$19,833,810.00
Less Economic Obsolescence (Transferred Assets)	\$3,869,521.00
Less Economic Obsolescence (Scrapped Assets)	\$10,614,282.00
Indicated Market Value Before Rollback	\$5,350,007.00

The \$5,350,007.00 indicated market value as of January 1, 2009 was then rolled back to the June 30, 2008 valuation date by using a rollback factor of 97.15%, which resulted in an actual value of \$5,197,267.00 for the personal property. Accordingly, Petitioner is requesting an actual value of \$5,197,267.00 for the subject personal property for tax year 2009.

Petitioner and Respondent are fundamentally in agreement concerning the machinery and equipment addressed in this appeal. Similar to Petitioner, Respondent employed the cost approach to provide an opinion of market value for the machinery and equipment. Respondent’s witness, Mr. Loren Morrow with the Adams County Assessor’s Office, testified that every reasonable effort was made to accurately assess Johnson Controls Inc.’s personal property at its Adams County facility as of the assessment date.

Mr. Morrow testified that the value assigned to the machinery and equipment was based on the historical cost, trended to 2009 replacement cost by use of trending factors published by the Property Tax Administrator, and then depreciated by the use of “percent good” tables also published by the Administrator. Mr. Morrow further testified that it is undisputed that Johnson Controls Inc.’s Adams County facility subject assets were at the Adams County facility on the

assessment date, and that the resulting replacement cost new less depreciation reflected appropriate physical depreciation and appropriate functional and economic obsolescence.

Mr. Morrow testified that personal property is valued as of the assessment date and for the entire year regardless of any destruction, conveyance, relocation, or change in taxable status. Section 39-5-104.5, C.R.S. Mr. Morrow alleged that the destruction, conveyance, relocation, or change in taxable status to Johnson Controls Inc.'s 2009 assessed personal property occurred after the assessment date, and therefore Petitioner is liable for the taxes, as assessed by the Adams County, for the entire year. According to Mr. Morrow, the fact that Johnson Controls Inc. made a business decision to move their battery manufacturing business out of Adams County should not result in a discount in value for the personal property that was present and in use at the Adams County facility on the assessment date.

Respondent assigned a value of \$19,267,591.00 for the subject personal property for tax year 2009.

The major point of contention between Petitioner and Respondent was the consideration of additional functional or economic obsolescence for the equipment resulting from the scheduled closure of the manufacturing facility. Petitioner argues that since the subject machinery and equipment used to manufacture Optima batteries was designed and manufactured specifically for that use, additional economic obsolescence is warranted. Petitioner further argues that Respondent's assigned value reflected normal physical depreciation and typical functional obsolescence; however, it did not reflect any extraordinary physical depreciation, extraordinary functional obsolescence, or economic obsolescence resulting from the assets to be transferred or sold for scrap.

Respondent argues that the replacement cost new less depreciation reflected normal physical depreciation and typical functional and economic obsolescence which is appropriate for the subject personal property. Respondent further argues that Mr. Neilson did not measure the additional obsolescence in the marketplace and therefore did not comply with the property tax administrator's guidelines. Therefore, according to Respondent, Johnson Controls Inc.'s appraisal should not be considered as far as it does not comply with the guidelines for valuing personal property. Respondent argues that it is undisputed that Johnson Controls Inc.'s subject assets were at the Adams County facility on the assessment date and that Johnson Controls Inc.'s decision to move their battery manufacturing business out of Adams County should not result in a discount in value for the remaining personal property.

The Board acknowledges that the issue in this case is whether Petitioner established by a preponderance of the evidence that the actual value assigned by the Adams County Assessor's Office to the personal property owned by Johnson Controls Inc. was incorrect. *Bd. of Assessment Appeals v. Sampson*, 105 P.3d 198, 204 (Colo. 2005).

After careful consideration of the testimony and exhibits presented at the hearing, the Board concludes that Petitioner did not establish by a preponderance of the evidence that the subject personal property was incorrectly valued for tax year 2009. The Board concludes that the subject equipment and machinery were located at the Adams County facility and were in use as

of the assessment date, January 1, 2009. The Board further concludes that the testimony and appraisal report provided by Petitioner's witness did not provide sufficient credible market evidence, and was not based on any market-driven methodology to show that there is extraordinary physical depreciation, or extraordinary functional obsolescence, or any additional economic obsolescence applicable to the subject equipment and machinery.

The Board concurs with Respondent's assigned value of \$19,267,591.00 for the subject personal property for tax year 2009.

ORDER:

The petition is denied.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

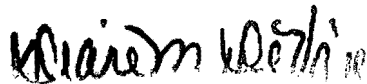
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S.

DATED and MAILED this 6th day of October, 2011.

BOARD OF ASSESSMENT APPEALS:

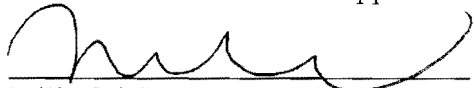


Diane DeVries



James R. Meurer

I hereby certify that this is a true
and correct copy of the decision of
the Board of Assessment Appeals.



Milla Crichton

