

# 1997 DEVELOPMENTS IN INDIANA TAXATION

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## INTRODUCTION

Both the 110th Indiana General Assembly and the Indiana Tax Court contributed to the 1997 changes and clarifications to all of the major and many of the minor Indiana tax laws. This Article highlights the more interesting 1997 developments for the period of October 1, 1996 through September 30, 1997.<sup>1</sup>

## I. GENERAL ASSEMBLY LEGISLATION

There were hundreds of 1997 legislative changes which impacted Indiana taxation, many of which had a direct effect on both broad and narrow segments of Indiana residents. Many of the changes were attempts to fine-tune existing laws, but significant policy changes surfaced in the following major areas: state offices and administration; income tax; sales and use tax; property tax; and death taxes.

The general assembly enacted into law three bills which had an impact on state offices and administration. The first of these allows a person that holds a beer wholesaler permit, liquor wholesaler permit, or wine wholesaler permit to qualify for the benefits of an enterprise zone.<sup>2</sup> This law also allows a person who holds an alcoholic beverage permit and who receives at least 60% of the person's annual revenue from retail food sales to qualify for the benefits of an enterprise zone.<sup>3</sup> Second, the general assembly enacted legislation which provides that individuals may establish individual development accounts and can deposit up to \$300 of their own funds to the account with a match from the State of Indiana equal to another \$900 per year.<sup>4</sup> Further, interest earned on the account is exempt from taxation as is any money deposited by the state and withdrawn to be used for: costs of higher education; accredited licensed training program; purchase of a residence; or, starting a business.<sup>5</sup> Finally, House Bill 1784<sup>6</sup> clarifies that letters of findings issued by ISDR are to be printed in the Indiana Register.<sup>7</sup>

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1. The following abbreviations are frequently used in this Article: Indiana Department of State Revenue (IDSR) and Indiana State Board of Tax Commissioners (ISBTC). Also, the Indiana General Assembly is referred to as "general assembly."

2. IND. CODE § 4-4-6.1-1.7 (Supp. 1997) (retroactive to July 1, 1995).

3. *Id.*

4. *Id.* § 4-4-28-9, -12 (effective July 1, 1997).

5. *Id.* § 4-4-28-14, -16 (effective July 1, 1997).

6. H.R. 1784, 110th Leg., 1st Reg. Sess. § 1 (Ind. 1997) (effective Jan. 1, 1998).

7. IND. CODE §§ 4-22-7-7, 6-8.1-3-3.5 (Supp. 1997).

In the area of income taxation, the general assembly enacted into law two bills which contain five key provisions.<sup>8</sup> The first provision clarifies the definition of receipts to include a limited liability company that is not itself a taxpayer as defined in section 6-2.1-1-16(27) of the Indiana Code.<sup>9</sup> Second, for gross income tax purposes, the general assembly included limited liability companies in the definition of taxpayer, but excluded those that have only a single member and are disregarded as entities for federal income tax purposes.<sup>10</sup> The third provision clarifies the definition of membership fees for not-for-profit organizations so that fees charged for use of golf, tennis, swimming, or other athletic facilities are not subject to gross income tax.<sup>11</sup> Fourth, the general assembly provided that after December 31, 1997, payments of estimated gross income tax will be made by electronic funds transfer<sup>12</sup> if the current year's quarterly estimated liability or the preceding year's average quarterly liability exceeds \$10,000<sup>13</sup> rather than \$20,000 as in the past. Also, the quarterly corporate payment dates established in 1994 were made permanent.<sup>14</sup> Fifth, the changed legislation provides that the quarterly remittance of gross income tax on the sales of real estate which is remitted by the county treasurer to the IDSR shall be made by electronic funds transfer<sup>15</sup> if the average monthly amount due for the preceding year exceeded \$10,000.<sup>16</sup>

In the area of sales and use taxation, the general assembly enacted into law three bills which contain eight key provisions.<sup>17</sup> The first of these provides that when an individual wants to title a vehicle, the individual must present documentation sufficient to rebut the presumption that the price was the average price for that vehicle as determined in a used vehicle buying guide and to establish the actual selling price of the vehicle.<sup>18</sup> Second, the general assembly provided an exemption from the sales tax for prescription drug and insulin drug samples and the packaging and literature for drug samples.<sup>19</sup> The third change provides a sales tax exemption for the lease or purchase of any rail transportation equipment, as well as spare, replacement, and rebuilding parts or accessories,

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8. H.R. 1784, 110th Leg., 1st Reg. Sess. §§ 3, 4, 7 (Ind. 1997); S. 6, 110th Leg., 1st Spec. Sess. § 50 (Ind. 1997).

9. IND. CODE § 6-2.1-1-10 (effective July 1, 1997).

10. *Id.* § 6-2.1-1-16 (retroactive to July 1, 1993).

11. *Id.* § 6-2.1-3-21 (effective May 13, 1997).

12. Personal or overnight courier delivery of payment by cashier's or certified check or money order is also acceptable.

13. IND. CODE § 6-2.1-5-1.1 (Supp. 1997) (effective July 1, 1997).

14. *Id.*

15. Personal or overnight courier delivery of payment by cashier's or certified check or money order is also acceptable.

16. IND. CODE § 6-2.1-8-5 (Supp. 1997) (effective July 1, 1997).

17. H.R. 1784, 110th Leg., 1st Reg. Sess. §§ 8-9, 11-12 (Ind. 1997); H.R. 1829, 110th Leg., 1st Reg. Sess. §§ 1-3 (Ind. 1997); S. 5, 110th Leg., 1st Spec. Sess. §§ 37-38 (Ind. 1997).

18. IND. CODE § 6-2.1-3-6 (effective Jan. 1, 1998).

19. *Id.* § 6-2.5-5-19.5 (retroactive to Jan. 1, 1997).

components, materials, or supplies, including lubricants and fuels, for rail transportation equipment.<sup>20</sup> It also provides that the IDSR shall cancel and shall no longer issue proposed assessments against any person for sales or use tax on rail transportation equipment.<sup>21</sup> Fourth, the general assembly deleted archaic language that phased in the sales tax exemption for pollution control equipment.<sup>22</sup> The fifth modification provides that if an education service center sells qualified computer equipment to parents or guardians of students enrolled in grades one through twelve, the computer equipment sold will be exempt from the sales tax.<sup>23</sup> Sixth, the general assembly provided that the value of an owned vehicle is exempt from the sales tax in a vehicle lease transaction when the vehicle is exchanged for a like kind vehicle.<sup>24</sup> Seventh, one key provision lowers the threshold amount requiring remittance of sales tax by electronic funds transfer<sup>25</sup> from \$20,000 to \$10,000.<sup>26</sup> Eighth, the general assembly deleted archaic language that describes the phase in of the collection allowance for the sales tax.<sup>27</sup>

In the area of adjusted gross income tax, the general assembly enacted into law five bills which contain ten key provisions.<sup>28</sup> The first provision increases the deduction for certain dependent children of a taxpayer from \$1000 to \$1500 for the years 1997 through 2000.<sup>29</sup> Second, the general assembly changed all references to the Internal Revenue Code to refer to it as it was in effect on January 1, 1997.<sup>30</sup>

Third, the general assembly provided that the Indiana source income of professional sports team members who are nonresidents be determined in accordance with section 6-3-2-2.7 of the Indiana Code.<sup>31</sup> Fourth, the general assembly allocated the income of nonresident professional athletes based on their duty days in the taxable year.<sup>32</sup> The provision excludes signing bonuses meeting certain conditions from the allocation factor.<sup>33</sup> It uses total salaries and

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20. *Id.* § 6-2.5-5-27.5 (effective May 8, 1997).

21. H.R. 1829, 110th Leg., 1st Reg. Sess. § 3 (Ind. 1997) (effective May 8, 1997).

22. IND. CODE § 6-2.5-5-30 (Supp. 1997) (effective Jan. 1, 1998).

23. *Id.* § 6-2.5-5-38.1 (effective July 1, 1997).

24. *Id.* § 6-2.5-5-38.2 (effective July 1, 1997).

25. Personal or overnight courier delivery of payment by cashier's or certified check or money order is also acceptable.

26. IND. CODE § 6-2.5-6-1(f) (Supp. 1997) (effective Jan. 1, 1998).

27. *Id.* § 6-2.5-6-10(b) (effective Jan. 1, 1998).

28. H.R. 1777, 110th Leg., 1st Reg. Sess. §§ 2-3 (Ind. 1997); H.R. 1781, 110th Leg., 1st Reg. Sess. §§ 2-3 (Ind. 1997); H.R. 1784, 110th Leg., 1st Reg. Sess. §§ 15-16 (Ind. 1997); S. 6, 110th Leg., 110th Leg., 1st Spec. Sess. § 51 (Ind. 1997); S. 170, 110th Leg., 1st Reg. Sess. §§ 1-3 (Ind. 1997).

29. IND. CODE § 6-3-1-3.5(a) (retroactive to Jan. 1, 1997).

30. *Id.* § 6-3-1-11 (retroactive to Jan. 1, 1997).

31. *Id.* § 6-3-2-2 (effective Jan. 1, 1998).

32. *Id.* § 6-3-2-2.7 (effective Jan. 1, 1998).

33. *Id.* § 6-3-2-2.7(a)(1)(B), (a)(6).

performance bonuses times a duty day allocation fraction in which the numerator is the number of Indiana duty days<sup>34</sup> and the denominator is the number of total duty days in a taxable year.<sup>35</sup> The law also provides for the establishment of a method so a team may file a composite return on behalf of all players and staff required to file.<sup>36</sup> In the fifth change, the general assembly provided that a team member that is covered by a composite return filed in accordance with section 6-3-2-2.7 of the Indiana Code is not required to file an individual return.<sup>37</sup>

Sixth, the general assembly provided that if a taxpayer takes a federal deduction from adjusted gross income for a medical care savings account, then the taxpayer is prohibited from taking an additional Indiana exemption for a medical care savings account.<sup>38</sup> The seventh change provides an earned income tax deduction for taxpayers with dependent children.<sup>39</sup> The deduction is allowed if 80% of the taxpayer's total income is earned income and the taxpayer has at least one dependent child and total Indiana income of less than \$12,000.<sup>40</sup> The allowed deduction is \$12,000 minus the taxpayer's total Indiana income.<sup>41</sup> The provisions also require that a husband and wife file a joint or separate return consistent with the federal income tax return(s) they file.<sup>42</sup> The deduction is permitted for taxable years 1997 through 2000 only.<sup>43</sup>

Eighth, the general assembly provided that after December 31, 1997, the threshold amount for requiring that quarterly adjusted gross income tax payments by corporations be remitted by electronic funds transfer<sup>44</sup> was lowered from \$20,000 to \$10,000.<sup>45</sup> The change also provides that the quarterly payment dates established in 1994 are permanent.<sup>46</sup> Ninth, the general assembly also lowered the threshold amount which requires monthly employer withholding of employee taxes to be remitted by electronic funds transfer<sup>47</sup> from \$20,000 to \$10,000.<sup>48</sup> Tenth, the general assembly enacted legislation which requires river boat operators to withhold from winnings Indiana adjusted gross income tax whenever

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34. *Id.* § 6-3-2-2.7(a)(2).

35. *Id.* § 6-3-2-2.7(b).

36. *Id.* § 6-3-2-2.7(d)(2).

37. *Id.* § 6-3-4-1 (effective Jan. 1, 1998).

38. *Id.* § 6-3-2-18(g) (effective Jan. 1, 1998).

39. *Id.* § 6-3-2.5-1 (retroactive to Jan. 1, 1997).

40. *Id.* § 6-3-2.5-6.

41. *Id.* § 6-3-2.5-7.

42. *Id.* § 6-3-2.5-8.

43. *Id.* § 6-3-2.5-1.

44. Personal or overnight courier delivery of payment by cashier's or certified check or money order is also acceptable.

45. IND. CODE § 6-3-4-4.1 (Supp. 1997) (effective July 1, 1997).

46. *Id.*

47. Personal or overnight courier delivery of payment by cashier's or certified check or money order is also acceptable.

48. IND. CODE § 6-3-4-8.1(d) (Supp. 1997) (effective Jan. 1, 1998).

the operator is required to withhold from federal income tax.<sup>49</sup>

In the area of tax credits, the general assembly enacted into law five bills which contain eleven key provisions.<sup>50</sup> The first of these provisions increases the maximum value of neighborhood assistance credits from \$1.5 million to \$2.5 million per fiscal year.<sup>51</sup> Second, the general assembly provided that the computer donation tax credit shall be \$100 instead of the current \$125.<sup>52</sup> The third provision permits education service centers to sell computers to the parents or guardians of school children enrolled in computer education programs, if the computer will be used by the child for educational purposes.<sup>53</sup> Fourth, the general assembly removed the prohibition against the service center selling a computer for more than \$500 and added a provision allowing the service center to include a reasonable allowance for operating overhead with the center's operating expenses in purchasing, inspecting, testing, and refurbishing the computer equipment when calculating the resale price.<sup>54</sup> Fifth, the general assembly deleted the requirement that when the board of education performs an annual review of the program, the review report include the board's recommendation regarding the continuation of the program and tax credits.<sup>55</sup>

Sixth, the general assembly defined a taxpayer for purposes of the historic preservation tax credit as an individual, corporation, S corporation, partnership, limited liability company, limited liability partnership, nonprofit organization, or joint venture.<sup>56</sup> Seventh, the general assembly clarified that a pass through entity is eligible for the historic preservation tax credit by eliminating the county-size restriction.<sup>57</sup> The eighth provision removes the requirement that a facility must have 2000 square feet on the ground floor, eliminates a requirement for prior approval from the division of historic preservation, and requires the expenditure to exceed \$10,000 instead of \$5000.<sup>58</sup> Ninth, the general assembly increased the maximum credit for fiscal year 1998 and fiscal year 1999 to \$750,000.<sup>59</sup> This amount reverts to \$450,000 for years beginning after June 30, 1999.<sup>60</sup>

Tenth, the general assembly provided an individual development account tax

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49. *Id.* § 6-3-4-8.2 (effective Jan. 1, 1998).

50. H.R. 1425, 110th Leg., 1st Reg. Sess. § 2 (Ind. 1997); H.R. 1570, 110th Leg., 1st Reg. Sess. § 1 (Ind. 1997); H.R. 1633, 110th Leg., 1st Reg. Sess. §§ 2-5 (Ind. 1997); H.R. 1777, 110th Leg., 1st Reg. Sess. § 1 (Ind. 1997); S. 375, 110th Leg., 1st Reg. Sess. §§ 2-5 (Ind. 1997).

51. IND. CODE § 6-3.1-9-5(a) (effective July 1, 1997).

52. *Id.* § 6-3.1-15-8 (effective July 1, 1997).

53. *Id.* § 6-3.1-15-12 (effective July 1, 1997).

54. *Id.* § 6-3.1-15-13 (effective July 1, 1997).

55. *Id.* § 6-3.1-15-17 (effective July 1, 1997).

56. *Id.* § 6-3.1-16-6.1 (effective July 1, 1997).

57. *Id.* § 6-3.1-16-7.5 (effective July 1, 1997).

58. *Id.* § 6-3.1-16-8 (effective July 1, 1997).

59. *Id.* § 6-3.1-16-14 (effective July 1, 1997).

60. *Id.*

credit.<sup>61</sup> The credit is equal to 50% of the contribution if it is not less than \$1000 and not more than \$50,000.<sup>62</sup> The provision provides that the credit applies to pass through entities.<sup>63</sup> A contribution that will result in a tax credit must be pre-approved by the IDSR.<sup>64</sup> Upon notification of approval, the taxpayer has thirty days to make the contribution.<sup>65</sup> The credit is limited to \$500,000 in any state fiscal year.<sup>66</sup> Eleventh, the general assembly increased the homestead credit to 10% for years 1998 through 2001.<sup>67</sup> After 2001, the credit decreases to 4%.<sup>68</sup>

In the area of property tax, the general assembly enacted into law a single bill which affects procedures for the collection of Indiana property taxes.<sup>69</sup> The modifications include an imposition of sole liability for the property taxes on the owner of real property that is held, possessed, controlled, or occupied by another person.<sup>70</sup> They also eliminate the property tax payment responsibility of a person who holds, possesses, controls, or occupies, but does not own the real property, unless the person is liable for the taxes pursuant to a lease or contract recorded with the county recorder before January 1, 1998.<sup>71</sup> Also, an owner of real property that has an improvement or appurtenance which is assessed as real property and is owned, held, possessed, controlled, or occupied by a person other than the landowner, is jointly liable for the taxes on the improvement or appurtenance with the person holding, possessing, controlling, or occupying it.<sup>72</sup> The changes further require that real property and any improvement or appurtenance on the real property held, possessed, controlled, or occupied by a person other than the real property owner must be listed and assessed as a single unit, unless the improvement or appurtenance is held, possessed, controlled, or occupied pursuant to a lease or contract recorded with the county recorder before January 1, 1998. The modifications also allow an owner to require that several contiguous parcels in the same taxing district be combined into a single parcel for property tax purposes;<sup>73</sup> require the consolidation of contiguous parcels when an improvement is located on or significantly affects the parcels;<sup>74</sup> and, require an owner to pay or otherwise satisfy all property taxes that are due and owing before transferring an interest in real property that consists of a parcel subdivided

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61. *Id.* § 6-3.1-18 (effective Jan. 1, 1998).

62. *Id.* § 6-3.1-18-6.

63. *Id.* § 6-3.1-18-7.

64. *Id.* § 6-3.1-18-9.

65. *Id.*

66. *Id.* § 6-3.1-18-10.

67. *Id.* § 6-1.1-20.9-2(d) (effective Jan. 1, 1998).

68. *Id.*

69. H.R. 1487, 110th Leg., 1st Reg. Sess. (Ind. 1997).

70. IND. CODE § 6-1.1-2-4(a) (Supp. 1997) (effective Jan. 1, 1998).

71. *Id.*

72. *Id.* § 6-1.1-2-4(b) (effective Jan. 1, 1998).

73. *Id.* § 6-1.1-5-16 (effective July 1, 1997).

74. *Id.*

from a larger parcel or a parcel that is created from several existing parcels.<sup>75</sup>

In the area of local option taxes, the general assembly enacted into law three bills which contain eight key provisions.<sup>76</sup> The first of these provisions permits a county having a population between 107,000 and 108,000, Laporte County, to adopt an increase in the County Economic Development Income Tax (CEDIT) in the same year that the county decreases the County Adjusted Gross Income Tax (CADIT) if the CEDIT rate plus the CAGIT rate is less than the CAGIT rate in effect before the adoption of an ordinance decreasing the CAGIT rate.<sup>77</sup> Second, the general assembly also permitted Laporte County to adopt CEDIT if it reduced its CAGIT rate in 1997.<sup>78</sup> Third, the general assembly made a technical change in CAGIT in cross referencing back to adjusted gross income tax definitions.<sup>79</sup> Fourth, the general assembly required that members of an income tax council must vote on any ordinance to change the County Option Income Tax (COIT), instead of the presumption that if a member does not vote, then it is considered a no vote.<sup>80</sup> Fifth, the general assembly provided that an ordinance to rescind COIT in a county must be adopted by April 1 of the year instead of June 1 as previously required.<sup>81</sup> Sixth, the general assembly made a technical change in COIT in cross referencing back to adjusted gross income tax definitions.<sup>82</sup> Seventh, the general assembly provided that an ordinance to rescind CEDIT in a county must be approved by April 1 of the year instead of June 1 as previously required.<sup>83</sup> Eighth, the general assembly made a technical change in CEDIT in cross referencing back to the adjusted gross income tax definitions.<sup>84</sup>

In the area of inheritance and estate tax, the general assembly enacted into law one bill which contains three key provisions.<sup>85</sup> The first of these provides that the first \$100,000 transferred to a Class A transferee is exempt from the inheritance tax.<sup>86</sup> Second, the general assembly required the IDSR to prescribe an affidavit that may be used to state that no inheritance tax is due after applying the exemptions under this article.<sup>87</sup> Third, the general assembly provided that each year a portion of remitted Indiana estate tax shall be distributed to each

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75. *Id.* § 6-1.1-5-5.5 (effective July 1, 1997).

76. H.R. 1542, 110th Leg., 1st Reg. Sess. §§ 13, 40 (Ind. 1997); H.R. 1777, 110th Leg., 1st Reg. Sess. §§ 4-6 (Ind. 1997); H.R. 1784, 110th Leg., 1st Reg. Sess. §§ 17-19 (Ind. 1997).

77. IND. CODE § 6-3.5-1.1-3.1(f) (effective May 13, 1997).

78. H.R. 1542, 110th Leg., 1st Reg. Sess. § 4 (Ind. 1997) (effective May 13, 1997).

79. IND. CODE § 6-3.5-1.1-18 (retroactive to Jan. 1, 1997).

80. *Id.* § 6-3.5-6-5 (effective Jan. 1, 1998).

81. *Id.* § 6-3.5-6-12(b) (retroactive to Jan. 1, 1997).

82. *Id.* § 6-3.5-6-22 (retroactive to Jan. 1, 1997).

83. *Id.* § 6-3.5-7-7 (effective Jan. 1, 1998).

84. *Id.* § 6-3.5-7-18 (retroactive to Jan. 1, 1997).

85. S. 9, 110th Leg., 1st Reg. Sess. (Ind. 1997).

86. IND. CODE § 6-4.1-3-10 (Supp. 1997) (effective July 1, 1997, for decedents who die after June 30, 1997).

87. *Id.* § 6-4.1-3-12.5 (effective July 1, 1997).

county.<sup>88</sup> To determine the amount each county is to receive the IDSR is to determine the average inheritance tax retained by each county for each fiscal year for fiscal years beginning July 1, 1990 through June 30, 1997, excluding the lowest and highest year from the average calculation.<sup>89</sup> The average minus the amount retained by the county in the immediately preceding fiscal year shall be distributed to the county by August 15.<sup>90</sup>

## II. INFORMATION REGARDING INDIANA DEATH TAXES AND INDIANA PROBATE PROCESS

### A. *Indiana Inheritance Tax*

There is no Indiana inheritance tax on the value of property received by a surviving spouse from the surviving spouse's deceased spouse,<sup>91</sup> nor on property transferred by a decedent to a qualified charitable organization.<sup>92</sup> All other transferees are taxed as follows:<sup>93</sup>

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88. *Id.* § 6-4.1-3-12.5(b) (effective July 1, 1997).

89. *Id.* § 6-4.1-11-6(c) (effective July 1, 1997).

90. *Id.* § 6-4.1-11-6.

91. *Id.* § 6-4.1-3-7.

92. *Id.* § 6-4.1-3-1.

93. *See id.* §§ 6-4.1-3-10 to -12, 6-4.1-5-1.



## Class A Beneficiaries

Relationship To Decedent	Exempt Amount
Each lineal ancestor and descendant of the decedent transferor	100,000

Value			+	Tax	
From	To	Amount		Percent	Value Over
0	25,000	0	+	1	0
25,000	50,000	250	+	2	25,000
50,000	200,000	750	+	3	50,000
200,000	300,000	5,250	+	4	200,000
300,000	500,000	9,250	+	5	300,000
500,000	700,000	19,250	+	6	500,000
700,000	1,000,000	31,250	+	7	700,000
1,000,000	1,500,000	52,250	+	8	1,000,000
1,500,000	Unlimited	92,250	+	10	1,500,000

## Class B Beneficiaries

Relationship To Decedent	Exempt Amount
Each brother and sister of decedent transferor	500
Each descendant of a brother or sister of decedent transferor	500
Each spouse, widow, or widower of decedent transferor's children	500

Value				Tax	
From	To	Amount	+	Percent	Value Over
0	100,000	0	+	7	0
100,000	500,000	7,000	+	10	100,000
500,000	1,000,000	47,000	+	12	500,000
1,000,000	Unlimited	107,000	+	15	1,000,000

## Class C Beneficiaries

Relationship To Decedent	Exempt Amount
Each individual not referred to above	100

Value				Tax	
From	To	Amount	+	Percent	Value Over
0	100,000	0	+	10	0
100,000	1,000,000	10,000	+	15	100,000
1,000,000	unlimited	145,000	+	20	1,000,000

### *B. Indiana Estate Tax*

If the inheritance tax computed above is less than the amount of the state death tax credit for federal estate tax, as computed under Internal Revenue Code section 2011, then the State of Indiana imposes an estate tax equal to the difference.<sup>94</sup>

### *C. Indiana Generation Skipping Transfer Tax*

The Indiana generation skipping transfer tax absorbs some or all of the federal credit for any generation skipping transfer tax which is paid to states.<sup>95</sup>

### *D. Indiana Probate*

The survivor's allowance is \$15,000.<sup>96</sup>

The amount for qualifying as a small estate is \$25,000.<sup>97</sup>

In the area of tax on financial institutions, the general assembly enacted into law one bill which contain two key provisions.<sup>98</sup> The first of these provisions clarifies the add back for financial institutions' tax for recovery of a bad debt that was previously deducted from income.<sup>99</sup> Second, the general assembly lowered the threshold amount of financial institution tax liability per quarter, which requires remittance via electronic funds transfer<sup>100</sup> from \$20,000 to \$10,000.<sup>101</sup>

In the area of motor fuel and vehicle excise tax, the general assembly enacted into law three bills which contain twenty-five key provisions.<sup>102</sup> The first of these provides that if the average or the estimated monthly remittance for gasoline tax exceeds \$10,000, then the remittance<sup>103</sup> must be made by electronic funds transfer.<sup>104</sup> Second, the general assembly required that special fuel suppliers remit 100% of the tax remitted for the month preceding the previous calendar month, or 95% of the prior month's actual liability, by the fifteenth of the month.<sup>105</sup> Also, the provision requires any additional remittance by the

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94. *Id.* § 6-4.1-11-2.

95. *See id.* § 6-4.1-11.5-8.

96. *Id.* § 29-1-4-1.

97. *Id.* § 29-1-8-1.

98. H.R. 1784, 110th Leg., 1st Reg. Sess. (Ind. 1997).

99. IND. CODE § 6-5.5-1-2 (Supp. 1997).

100. Personal or overnight courier delivery of payment by cashier's or certified check or money order are also acceptable.

101. IND. CODE § 6-5.5-6-3(c) (Supp. 1997) (effective Jan. 1, 1998).

102. H.R. 1784, 110th Leg., 1st Reg. Sess. §§ 22-23 (Ind. 1997); H.R. 1785, 110th Leg., 1st Reg. Sess. §§ 1-21 (Ind. 1997); H.R. 1811, 110th Leg., 1st Reg. Sess. § 1 (Ind. 1997); S. 4, 110th Leg., 1st Spec. Sess. § 1 (Ind. 1997).

103. Personal or overnight courier delivery of payment by cashier's or certified check or money order are also acceptable.

104. IND. CODE § 6-6-1.1-502(b) (Supp. 1997) (effective Jan. 1, 1998).

105. *Id.* § 6-6-2.5-35 (effective Jan. 1, 1998).

twentieth of the month when the monthly reports are due.<sup>106</sup> Third, the general assembly clarified the reporting requirements for special fuel suppliers and importers regarding the amount of special fuel tax due on a monthly basis.<sup>107</sup> Fourth, the general assembly added importers and blenders to the suppliers as entities that are subject to penalty provisions for failure to properly report and remit special fuel tax.<sup>108</sup> Fifth, the general assembly added the definitions of “establishing a base,” “inventory aircraft,” and “established place of business” to the aircraft excise tax and registration chapter.<sup>109</sup> Sixth, the general assembly clarified that a person is required to register an aircraft within thirty-one days after the purchase date, or within sixty days of establishing a base in Indiana.<sup>110</sup> Seventh, the general assembly clarified that a nonresident who owns an aircraft and establishes a base in Indiana is required to register the aircraft in Indiana.<sup>111</sup> Eighth, the general assembly deleted the requirement that a duplicate certificate of registration for an aircraft have the word “duplicate” printed or stamped on the registration.<sup>112</sup> Ninth, the general assembly deleted the provision that voids a certificate of registration fifteen days after the sale or transfer of an aircraft.<sup>113</sup> This change also provides that a person shall pay the sales or use tax on an aircraft at the time the aircraft is registered or within thirty-one days of the date of purchase, unless the purchaser provides proof to the IDSR that the tax has already been paid.<sup>114</sup> Tenth, the general assembly clarified that a nonresident is not exempt from registration and excise tax once the nonresident establishes a base for the aircraft in Indiana and required a nonresident to file with the IDSR, within thirty-one days of purchase, proof that the aircraft is based and registered in another state.<sup>115</sup> It also adds a university or college supported in part by state funds to the entities that are exempt from the aircraft excise tax.<sup>116</sup> Eleventh, the general assembly deleted current dealer registration certificate requirements.<sup>117</sup> Twelfth, the general assembly imposed new requirements for an aircraft dealer to be registered with the IDSR.<sup>118</sup> The twenty-five dollar registration fee remains the same.<sup>119</sup> Thirteenth, the general assembly established December 15 as the annual renewal date for an aircraft dealer registration certificate.<sup>120</sup> Also, the

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106. *Id.*

107. *Id.* § 6-6-2.5-56.5 (effective Jan. 1, 1998).

108. *Id.* § 6-6-2.5-63 (effective Jan. 1, 1998).

109. *Id.* § 6-6-6.5-1 (effective Jan. 1, 1998).

110. *Id.* § 6-6-6.5-2 (effective Jan. 1, 1998).

111. *Id.* § 6-6-6.5-3 (effective Jan. 1, 1998).

112. *Id.* § 6-6-6.5-7 (effective Jan. 1, 1998).

113. *Id.* § 6-6-6.5-8 (effective Jan. 1, 1998).

114. *Id.*

115. *Id.* § 6-6-6.5-9 (effective Jan. 1, 1998).

116. *Id.*

117. *Id.* § 6-6-6.5-10 (effective Jan. 1, 1998).

118. *Id.* § 6-6-6.5-10.1 (effective Jan. 1, 1998).

119. *Id.*

120. *Id.* § 6-6-6.5-10.2 (effective Jan. 1, 1998).

IDSR may request additional information at the time of renewal if a dealer has changed its address or significantly altered its facilities.<sup>121</sup> Finally, this change allows the IDSR to revoke a dealer's certificate for noncompliance with tax statutes, rules, and requirements of the IDSR.<sup>122</sup> Fourteenth, the general assembly permitted the IDSR to revoke an aircraft dealer's license if it is determined that the dealer is not a bona fide aircraft dealer.<sup>123</sup> Also, the change provides that the dealer may appeal the revocation.<sup>124</sup> Fifteenth, the general assembly required that a seller notify the IDSR when an aircraft is sold within five days of the date of the sale.<sup>125</sup> Sixteenth, the general assembly provided notification procedures for the aircraft excise tax once the IDSR is notified of the transfer.<sup>126</sup> Seventeenth, the general assembly provided that a dealer may not use aircraft in inventory for anything else other than for demonstration flights unless the dealer charges the fair market value rental.<sup>127</sup> Eighteenth, the general assembly clarified the reporting requirements of a dealer for purposes of the aircraft excise tax, and establishes the last day of February as the due date.<sup>128</sup> Nineteenth, the general assembly established the priority of any partial payment that is received.<sup>129</sup> The payment is applied against the registration fee and then against any penalty or interest that is owed.<sup>130</sup> Twentieth, the general assembly deleted registration dates<sup>131</sup> which had been replaced in section 17 of House Bill 1785.<sup>132</sup> Twenty-first, the general assembly provided a penalty if the owner of the aircraft does not pay the sales tax when it is due.<sup>133</sup> Twenty-second, the general assembly required the IDSR to distribute an excise tax report that includes aircraft identification, owner information, and excise tax payment to each county treasurer, which must indicate the county where the aircraft is normally kept when not in operation.<sup>134</sup> Twenty-third, the general assembly deleted archaic language that phased in the tax rate per ton for hazardous waste disposal.<sup>135</sup> Twenty-fourth, the general assembly permitted Marion County to adopt a supplemental auto rental excise tax on the rental of passenger motor vehicles and trucks in the county for a period of less than thirty days.<sup>136</sup> The

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121. *Id.*

122. *Id.*

123. *Id.* § 6-6-6.5-10.3 (effective Jan. 1, 1998).

124. *Id.*

125. *Id.* § 6-6-6.5-10.4 (effective Jan. 1, 1998).

126. *Id.* § 6-6-6.5-10.5 (effective Jan. 1, 1998).

127. *Id.* § 6-6-6.5-10.6 (effective Jan. 1, 1998).

128. *Id.* § 6-6-6.5-10.7 (effective Jan. 1, 1998).

129. *Id.* § 6-6-6.5-14 (effective Jan. 1, 1998).

130. *Id.*

131. *Id.* § 6-6-6.5-15 (effective Jan. 1, 1998).

132. H.R. 1785, 110th Leg., 1st Reg. Sess. § 19 (Ind. 1997) (effective Jan. 1, 1998).

133. IND. CODE § 6-6-6.5-19 (Supp. 1997) (effective Jan. 1, 1998).

134. *Id.* § 6-6-6.5-21 (effective Jan. 1, 1998).

135. *Id.* § 6-6-6.6-2 (effective Jan. 1, 1998).

136. *Id.* § 6-6-9.7 (effective June 4, 1997).

rental rate is 2% of the gross retail income received by the retail merchant for the rental.<sup>137</sup> Temporary leases of vehicles as the result of automobile insurance reimbursements are exempt from the tax.<sup>138</sup> Vehicles rented as part of a funeral service are exempt from the tax.<sup>139</sup> Revenue from the tax is paid to the capital improvement board of managers.<sup>140</sup> Twenty-fifth, the general assembly provided that the IDSR may not make a distribution to a county of the "emergency planning" and "right to know" fund until the IDSR receives notice from the emergency response commission that a county has complied with section 13-25-1-6(b) of the Indiana Code.<sup>141</sup>

In the area of tax administration, the general assembly enacted into law one bill which contain four key provisions.<sup>142</sup> The first of these provides that a taxpayer can review a letter of findings before it is published in the Indiana Register to sanitize it for information that is considered a trade secret or otherwise confidential in the taxpayer's view.<sup>143</sup> Second, the general assembly allowed the commissioner to settle a tax dispute before it is filed in tax court if there is doubt as to the constitutionality of the tax, the right to impose the tax, the correct amount due, the collectibility of the tax, or a question of whether the person was a resident of Indiana.<sup>144</sup> Third, the general assembly extended the period in which the IDSR may issue a proposed assessment if a taxpayer's federal income tax liability is adjusted due to an assessment of a federal deficiency or the filing of an amended tax return.<sup>145</sup> The provision also provides that the period is extended to six months after the date the taxpayer files notice of the modification.<sup>146</sup> Fourth, the general assembly provided that an excess tax payment that is not credited against current or future tax liabilities within ninety days, accrues interest from the later of the day the tax payment was due or the day the tax was paid.<sup>147</sup>

In the area of innkeeper taxes and other local taxes, the general assembly enacted five bills which contain thirty-one key provisions.<sup>148</sup> The first of these provided that sales tax exemptions flow through to the St. Joseph County Innkeeper's Tax.<sup>149</sup> Second, the general assembly provided that sales tax

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137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.* § 6-6-10-7 (effective July 1, 1997).

142. H.R. 1784, 110th Leg., 1st Reg. Sess. §§ 24-27 (Ind. 1997).

143. IND. CODE § 6-8.1-3-3.5 (effective July 1, 1997).

144. *Id.* § 6-8.1-3-17 (effective Jan. 1, 1998).

145. *Id.* § 6-8.1-5-2 (effective Jan. 1, 1998).

146. *Id.*

147. *Id.* § 6-8.1-9-2 (effective Jan. 1, 1998).

148. H.R. 1501, 110th Leg., 1st Reg. Sess. § 1 (Ind. 1997); H.R. 1784, 110th Leg., 1st Reg. Sess. § 28 (Ind. 1997); S. 4, 110th Leg., 1st Spec. Sess. §§ 2-6 (Ind. 1997); S. 200, 110th Leg., 1st Reg. Sess. §§ 1-3 (Ind. 1997); S. 234, 110th Leg., 1st Reg. Sess. §§ 1-22 (Ind. 1997).

149. IND. CODE § 6-9-1-5 (effective July 1, 1997).

exemptions flow through to the Lake County Innkeeper's Tax.<sup>150</sup> Third, the general assembly provided that sales tax exemptions flow through to the Vanderburgh County Innkeeper's Tax.<sup>151</sup> Fourth, the general assembly provided that sales tax exemptions flow through to the Floyd/Clark County Innkeeper's Tax.<sup>152</sup> Fifth, the general assembly provided that sales tax exemptions flow through to the Monroe County Innkeeper's Tax.<sup>153</sup> Sixth, the general assembly provided that sales tax exemptions flow through to the Knox County Innkeeper's Tax.<sup>154</sup> Seventh, the general assembly provided that sales tax exemptions flow through to the LaPorte County Innkeeper's Tax.<sup>155</sup> Eighth, the general assembly provided that sales tax exemptions flow through to the Tippecanoe County Innkeeper's Tax.<sup>156</sup> Ninth, the general assembly provided that sales tax exemptions flow through to the Marion County Innkeeper's Tax.<sup>157</sup> Tenth, the general assembly allowed Marion County to increase the innkeeper's tax from 5% to 6% with the increase dedicated to the payment of obligations to expand the convention center.<sup>158</sup> Eleventh, the general assembly provided that sales tax exemptions flow through to the Allen County Innkeeper's Tax.<sup>159</sup> Twelfth, the general assembly provided that sales tax exemptions flow through to the Wayne County Innkeeper's Tax.<sup>160</sup> Thirteenth, the general assembly allowed White County to impose an innkeeper's tax at a rate up to 3% of gross retail income derived from lodging.<sup>161</sup> Revenue from the tax is to be deposited in a lake enhancement fund for use in enhancing lakes located in the county, and for silt trap maintenance.<sup>162</sup>

Fourteenth, the general assembly provided that sales tax exemptions flow through to the White County Innkeeper's Tax.<sup>163</sup> Fifteenth, the general assembly provided that sales tax exemptions flow through to the Vigo County Innkeeper's Tax.<sup>164</sup> Sixteenth, the general assembly provided that Marion County admissions tax does not apply to events sponsored by an educational institution or an association representing an educational institution, an event sponsored by a religious organization, or an event sponsored by a charitable organization.<sup>165</sup>

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150. *Id.* § 6-9-2-1 (effective July 1, 1997).

151. *Id.* § 6-9-2.5-6 (effective July 1, 1997).

152. *Id.* § 6-9-3-4 (effective July 1, 1997).

153. *Id.* § 6-9-4-6 (effective July 1, 1997).

154. *Id.* § 6-9-5-6 (effective July 1, 1997).

155. *Id.*

156. *Id.* § 6-9-7-6 (effective July 1, 1997).

157. *Id.* § 6-9-8-2 (effective July 1, 1997).

158. *Id.* § 6-9-8-3 (effective June 4, 1997).

159. *Id.* § 6-9-9-2 (effective July 1, 1997).

160. *Id.* § 6-9-10-6 (effective July 1, 1997).

161. *Id.* § 6-9-10.5 (effective May 12, 1997).

162. *Id.*

163. *Id.* § 6-9-10.5-6 (effective May 13, 1997).

164. *Id.* § 6-9-11-6 (effective July 1, 1997).

165. *Id.* § 6-9-13-1 (effective June 4, 1997).

Seventeenth, the general assembly expanded the admissions tax to include any event and not just a professional sporting event held in a facility operated by the Capital Improvements Board of Marion County.<sup>166</sup> Eighteenth, the general assembly provided that sales tax exemptions flow through to the Brown County Innkeeper's Tax.<sup>167</sup> Nineteenth, the general assembly provided that sales tax exemptions flow through to the Jefferson County Innkeeper's Tax.<sup>168</sup> Twentieth, the general assembly increased the size of the Howard County convention and tourism commission from five to seven members.<sup>169</sup>

Twenty-first, the general assembly permitted Howard County to use its innkeeper's tax funds for the acquisition, construction, improvement, maintenance, financing, or refinancing of land, facilities, or equipment for conventions, trade shows, visitors, or special events.<sup>170</sup> Twenty-second, the general assembly permitted Howard County to increase its Innkeeper's Tax from 4% to 5% until June 30, 2007, whereupon it reverts back to 4%.<sup>171</sup> Twenty-third, the general assembly provided that sales tax exemptions flow through to the Howard County Innkeeper's Tax.<sup>172</sup> Twenty-fourth, the general assembly provided that sales tax exemptions flow through to the Madison County Innkeeper's Tax.<sup>173</sup> Twenty-fifth, the general assembly provided that sales tax exemptions flow through to the Uniform County Innkeeper's Tax.<sup>174</sup> Twenty-sixth, the general assembly expanded the usage of the Uniform County Innkeeper's Tax to include expenses for tourism which will include expenditures for advertising, promotional activities, trade shows, special events, and recreation.<sup>175</sup> Twenty-seventh, the general assembly made it a requirement that the county executive create a commission to promote conventions, visitors, and tourism in a county.<sup>176</sup> Twenty-eighth, the general assembly further clarified that the Uniform Innkeeper's Tax funds can be used to promote tourism in the county.<sup>177</sup> Twenty-ninth, the general assembly provided that sales tax exemptions flow through to the Elkhart County Innkeeper's Tax.<sup>178</sup> Thirtieth, the general assembly established the Hendricks County Admission Tax Fund for deposit of the Admissions Tax.<sup>179</sup> The revenue will be used to fund private

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166. *Id.* § 6-9-13-1, -2 (effective June 4, 1997).

167. *Id.* § 6-9-14-6 (effective July 1, 1997).

168. *Id.* § 6-9-15-6 (effective July 1, 1997).

169. *Id.* § 6-9-16-2 (effective July 1, 1997).

170. *Id.* § 6-9-16-3 (effective May 6, 1997).

171. *Id.* § 6-9-16-6 (effective July 1, 1997).

172. *Id.*

173. *Id.* § 6-19-17-3 (effective July 1, 1997).

174. *Id.* § 6-9-18-3 (effective July 1, 1997).

175. *Id.* § 6-9-18-4 (effective July 1, 1997).

176. *Id.* § 6-9-18-5 (effective July 1, 1997).

177. *Id.* § 6-9-18-6 (effective July 1, 1997).

178. *Id.* § 6-9-19-3 (effective July 1, 1997).

179. *Id.* § 6-9-28-7 (effective July 1, 1997).



enterprise economic development projects.<sup>180</sup> Thirty-first, the general assembly allowed Marion County to impose a Capital Improvement Board Revenue Replacement Supplemental Tax to replace revenue that is lost from the withdrawal of a contract providing an entity the right to name a facility owned by the Capital Improvement Board that displaces workers.<sup>181</sup> The Supplemental Tax may be imposed on the Innkeepers Tax, the Admissions Tax, or the Supplemental Auto Rental Excise Tax.<sup>182</sup> The change also permits the Marion County treasurer to collect the tax at the maximum tax rate of 1%.<sup>183</sup>

In the area of motor carriers and vehicle registration, the general assembly enacted into law two bills which contain six key provisions.<sup>184</sup> The first of these provides that intrastate motor carriers not operating under authority issued by the U.S. Department of Transportation are required to register with the IDSR, and display a certification number issued by the IDSR.<sup>185</sup> Second, the general assembly allowed the IDSR to stagger the issuing of registration permits for vehicles subject to the International Registration Plan.<sup>186</sup> Third, the general assembly specified that the IDSR may issue temporary trip permits for tractor-trailers.<sup>187</sup> Fourth, the general assembly permitted the IDSR to issue hunter's permits to a common carrier that contracts with an owner/operator of a tractor-trailer so that when the owner/operator ceases working for the common carrier, if the registration was in the name of the common carrier, the owner may have a hunter's permit transferred to the owner, and the owner may move the tractor-trailer within Indiana for thirty days to look for employment without first registering the tractor-trailer.<sup>188</sup> Fifth, in a noncode provision, the general assembly allowed the IDSR to issue a temporary registration for a tractor-trailer when all communication with a person seeking the temporary registration has been done by telephone and fax machine.<sup>189</sup> Sixth, the general assembly provided that a vehicle longer than eighty-five feet or wider than ten feet six inches may not be operated at a speed greater than forty-five miles per hour.<sup>190</sup> Current length and width requirements are eighty feet and eight feet six inches, respectfully.<sup>191</sup>

In the area of other relevant laws, the general assembly enacted into law five

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180. *Id.*

181. *Id.* § 6-9-31-2 (effective July 1, 1997).

182. *Id.*

183. *Id.*

184. H.R. 1846, 110th Leg., 1st Reg. Sess. §§ 1-2 (Ind. 1997); H.R. 1929, 110th Leg., 1st Reg. Sess. §§ 3, 6, 8, 15 (Ind. 1997).

185. IND. CODE § 8-2.1-24-18 (effective July 1, 1997).

186. *Id.* § 9-18-2-7 (effective July 1, 1997).

187. *Id.* § 9-11-7-2 (effective July 1, 1997).

188. *Id.* § 9-18-7-6 (effective Jan. 1, 1998).

189. H.R. 1929, 110th Leg., 1st Reg. Sess. § 15 (Ind. 1997) (effective July 1, 1997).

190. IND. CODE § 9-21-5-5 (Supp. 1997) (effective July 1, 1997).

191. *Id.*

bills which contain seven key provisions.<sup>192</sup> The first of these provides that if a voter registration form is returned to the IDSR, the IDSR is required to forward the affidavit to the county voter registration office of the county of the taxpayer that sent the affidavit to the IDSR.<sup>193</sup> Second, the general assembly required the Child Support Bureau to enter into an agreement with the IDSR to operate a data match system with each financial institution doing business in the state.<sup>194</sup> The provision also requires each financial institution doing business in the state to provide the IDSR with information on noncustodial parents that have an account with the financial institution and are delinquent.<sup>195</sup> The provision also permits the financial institution to submit the information to the IDSR and for the IDSR to furnish the list of noncustodial parents to the financial institution.<sup>196</sup> When the IDSR determines there is a match, the IDSR is required to notify the individual, the financial institution, and the bureau of the intent to encumber against the account and that the individual has twenty days to protest the child custody lien.<sup>197</sup> A lien issued under this provision will be in effect for 120 days.<sup>198</sup> The matches are required to be performed on a quarterly basis.<sup>199</sup> The bureau shall reimburse the IDSR for the actual costs incurred.<sup>200</sup> Third, the general assembly provided that the commissioner or his or her designee is a member of the Underground Storage Tank Financial Assurance Board.<sup>201</sup> Fourth, the general assembly increased the gasoline inspection fee from four cents to forty cents per fifty gallons.<sup>202</sup> Fifth, the general assembly created a Professional Sports Development Area (PSDA) in Marion County. This permits the Metropolitan Development Commission to establish a PSDA and, as part of it, a facility where any professional sports team engages in training or where a professional sporting event is held.<sup>203</sup> The provision requires the commission to submit the resolution to the Budget Committee for approval.<sup>204</sup> Upon approval of the Budget Committee, sales and use taxes, individual income taxes, county option income taxes, and food and beverage taxes generated from within the area will be allocated to the area.<sup>205</sup> In addition, all salary, wages and bonuses paid to a

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192. S. 3, 110th Leg., 1st Spec. Sess. §§ 19-20 (Ind. 1997); S. 13, 110th Leg., 1st Spec. Sess. § 22 (Ind. 1997); S. 359, 110th Leg., 1st Reg. Sess. § 4 (Ind. 1997); H.R. 1633, 110th Leg., 1st Reg. Sess. § 11 (Ind. 1997); H.R. 1844, 110th Leg., 1st Reg. Sess. § 71 (Ind. 1997).

193. IND. CODE § 3-7-23-3 (effective May 13, 1997).

194. *Id.* § 12-17-2-33.1 (effective July 1, 1997).

195. *Id.*

196. *Id.*

197. *Id.*

198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.* § 13-23-11-2 (effective May 13, 1997).

202. *Id.*

203. *Id.* § 36-7-31 (effective June 4, 1997).

204. *Id.*

205. *Id.*

professional athlete for services taxable in Indiana and earned in the tax area shall be allocated to Indiana if the athlete is a member of a team that plays the majority of its events in the area.<sup>206</sup> The total amount of state revenue captured by the tax area may not exceed \$5 million per year.<sup>207</sup> The commission is required to notify the IDSR annually who the employers are in the tax area, and the street names and range of street numbers in the tax area.<sup>208</sup> The IDSR is required to distribute all the money in the fund to the Capital Improvement Board monthly.<sup>209</sup> Sixth, the general assembly permitted any city or county to create a PSDA similar to the one described above.<sup>210</sup> This provision caps the amount of revenue that can be designated annually to five dollars per resident of the city or county.<sup>211</sup> Seventh, in a noncode provision, the general assembly provided that the historic preservation tax credit applies to pass through entities for any claims filed after December 31, 1993.<sup>212</sup>

Finally, the general assembly, in a noncode provision, enacted into law one bill which contains one key provision which repealed eleven code sections and two noncode sections.<sup>213</sup> The code sections which were repealed are as follows: section 4-32-13-5 of the Indiana Code, concerning the commissioner hiring an independent firm to do a security study of the IDSR in regard to charity gaming; section 6-2.1-3-17, concerning joint venture and pool income being subject to the gross income tax; section 6-2.1-7-6, concerning interrogatories required by a township assessor; section 6-2.1-8-3, concerning changes in interpretation of law already contained in section 6-8.1, which applies to all listed taxes; section 6-2.1-8-8, concerning interrogatories required by a township assessor; sections 6-2.1-8-9 and 6-2.1-8-10, both concerning cites to laws and rules adopted prior to the recodification; sections 6-2.5-10-3 and 6-2.5-10-4, concerning cites to laws prior to the recodification; section 6-3-5-2, which set the dates for reciprocity with other states for the individual adjusted gross income tax at June 30, 1962; section 6-3-8-3, which set the effective date for the supplemental net income tax at January 1, 1972; section 6-3.1-3, which provided for the credit for donations of high technology equipment to schools (this credit only applied to donations made before January 1, 1986); and section 6-3.5-3, which provided for the occupation income tax later declared unconstitutional by the supreme court.

The two noncode provisions which were repealed are section 6-2.1-5-1 of the Indiana Code, concerning quarterly estimated gross income tax payment dates, and section 6-3-4-4, concerning quarterly estimated adjusted gross income tax payment dates.<sup>214</sup>

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206. *Id.*

207. *Id.*

208. *Id.*

209. *Id.*

210. *Id.* § 36-7-31.3-1 (effective June 4, 1997).

211. *Id.*

212. H.R. 1633, 110th Leg., 1st Reg. Sess. § 11 (Ind. 1997) (effective May 13, 1997).

213. H.R. 1784, 110th Leg., 1st Reg. Sess. § 31 (Ind. 1997) (effective May 13, 1997).

214. S. 6, 110th Leg., 1st Spec. Sess. § 95 (Ind. 1997) (effective July 1, 1997).

## II. INDIANA TAX COURT OPINIONS AND DECISIONS

A. *Indiana Income Taxes—Indiana Gross Income Tax (IGIT)*

1. *Cooper Industries, Inc. v. Indiana Department of State Revenue*.<sup>215</sup>—In this case, the petitioners were a group of corporations operating as a unitary business. During 1988, the common parent of the group filed the parent's federal income tax return on a consolidated basis. For purposes of Indiana income taxes, however, the parent and those member corporations with ties to Indiana used the combined reporting method. Also, during 1988, the parent sold two subsidiaries and, as required by federal regulations, included the "excess loss account" income associated with those entities in the parent's federal consolidated taxable income.<sup>216</sup> Inasmuch as the Indiana adjusted gross income tax computation begins with the taxpayer's federal taxable income, the IDSR decided that Cooper Industries ("Cooper") was required to include the excess loss account income in its Indiana adjusted gross income, and Cooper challenged that determination in the Indiana Tax Court. The court held that "excess loss account income from a consolidated federal return does not constitute income for the purposes of a combined Indiana return."<sup>217</sup>

Beginning in 1985 and continuing through 1988, Cooper filed its Indiana income tax returns on a combined basis, joined by the Affiliates, the Rig Companies, and approximately thirty other related companies. The combined reporting method was an alternative to Indiana's standard three-factor apportionment scheme. By this method, a group of corporations operating as a unitary business could aggregate their earnings before apportionment.<sup>218</sup> The Indiana Code stated that "[i]f the allocation and apportionment provisions of [article 3] do not fairly represent the taxpayer's income derived from sources within the state of Indiana, the taxpayer may petition for or the [IDSR] may require . . . the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income,"<sup>219</sup> including the "combined" filing method.<sup>220</sup> The Code merely defined a "combined income tax return" as "any income tax return on which one (1) or more taxpayers report income, deductions, and credits on a combined basis with one (1) or more entities."<sup>221</sup> At the time when Cooper was filing on a combined basis in Indiana, Cooper was filing on a consolidated basis for federal tax purposes. Indiana also

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215. 673 N.E.2d 1209 (Ind. T.C. 1996).

216. *Id.* at 1210-11.

217. *Id.* at 1209-10 (The citations to the federal regulations are to the federal regulations that were in existence during 1988.).

218. *Id.* at 1210.

219. IND. CODE § 6-3-2-2(l)(4) (Supp. 1997).

220. *Id.* § 6-3-2-2(p), (q).

221. *Id.* § 6-3-1-28 (1993).

permitted qualified taxpayers to file consolidated returns.<sup>222</sup>

The IDSR conceded, however, that Cooper did not make an election to file a consolidated return in Indiana under section 6-3-4-14 of the Indiana Code for any of the taxable years 1982 through 1988. The Internal Revenue Code permitted affiliated domestic corporations satisfying certain rules of common ownership to calculate income and tax liability as a single entity.<sup>223</sup> For example, a parent corporation and its subsidiary constituted an affiliated group where the parent owned at least 80% of the total voting power and at least 80% of the total value of the stock of the subsidiary.<sup>224</sup> Using this method, Cooper was able to deduct the net operating losses generated by the Rig Companies from Cooper's federal taxable income during the years at issue.<sup>225</sup>

In order to accurately reflect this tax benefit, however, Cooper was required simultaneously to reduce the bases in the subsidiaries in the amount of losses which were claimed as deductions by Cooper.<sup>226</sup> Eventually, the bases were reduced to zero and Cooper was then required to record the losses in what are termed "excess loss accounts."<sup>227</sup> Pursuant to Treasury Regulation § 1.1502-19(a)(1), when Cooper sold the Rig Companies in 1988, the amounts in the associated excess loss accounts were included in Cooper's federal taxable income for that year. The treatment accorded net operating losses was designed to prevent the taxpayer from reaping unjustified tax benefits.

As stated above, the sole issue presented was whether Cooper's excess loss accounts constituted adjusted gross income to Cooper for the purpose of Coopers' 1988 Indiana adjusted gross income taxes.<sup>228</sup> The petitioners challenged their liability under both the Indiana adjusted gross income tax<sup>229</sup> and the Indiana supplemental net income tax.<sup>230</sup> However, because the tax base for the Indiana supplemental net income tax was defined in terms of Indiana adjusted gross income,<sup>231</sup> the court determined that an analysis of the provisions of the Indiana adjusted gross income tax was determinative in this case.<sup>232</sup> The court stated that the Indiana Code provided that "the term 'adjusted gross income' shall mean . . . [i]n the case of corporations, the same as 'taxable income' as defined in Section 63 of the Internal Revenue Code," subject to four adjustments which

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222. *Id.* § 6-3-4-14(a); IND. ADMIN. CODE tit. 45, rr. 3.1-1-110 to -112 (1988).

223. I.R.C. § 1501 (1994).

224. *Id.* § 1504(a).

225. *Cooper Indus.*, 673 N.E.2d at 1210; *see also* Treas. Reg. §§ 1.1502-2, -21 (1994). The regulations governing consolidated returns were amended effective January 1, 1995. T.D. 8560, 59 Fed. Reg. 41666 (1994).

226. Treas. Reg. § 1.1502-32 (1994).

227. *Id.* § 1.1502-32(e).

228. *Cooper Indus.*, 673 N.E.2d at 1211-12.

229. IND. CODE §§ 6-3-1 to 6-3-7 (1993 & Supp. 1997).

230. *Id.* §§ 6-3-8-1 to -6 (1993).

231. *Id.* § 6-3-8-2(b).

232. *Cooper Indus.*, 673 N.E.2d at 1212-16.

were not applicable in this case.<sup>233</sup> Therefore, the court stated this definition to be plain and unambiguous in that Indiana adjusted gross income begins with federal taxable income as defined by section 63 of the Internal Revenue Code, not as reported by the taxpayer.<sup>234</sup>

Thus, the court stated that “the issue is not what number appears on line 28 of a taxpayer’s federal income tax form 1120 but whether a particular item of income was included in taxable income pursuant to I.R.C. § 63.”<sup>235</sup> Section 63(a) defines “taxable income” as “gross income minus the deductions allowed by this chapter (other than the standard deduction),”<sup>236</sup> and under section 61, “gross income” includes “income derived from business” and “[g]ains derived from dealings in property.”<sup>237</sup> The court stated that the provisions relating to excess loss accounts do not appear in the same chapter of the Internal Revenue Code as taxable income under section 63. The court also observed that the regulations governing consolidated returns provided that excess loss account income is not includable in income by virtue of section 63 and that section 1503(a) makes clear that the regulations under section 1502 govern the computation of the tax.<sup>238</sup> Further, the court recognized that the subsection stated: “In any case in which a consolidated return is made or is required to be made, the tax shall be determined, computed, assessed, collected, and adjusted in accordance with the regulations under section 1502 prescribed before the last day prescribed by law for filing of such return.”<sup>239</sup>

In order to determine a taxpayer’s “consolidated taxable income” under the regulations, each member of the consolidated group must first calculate its “separate taxable income.”<sup>240</sup> This figure for each member “is computed in accordance with the provisions of the Code covering the determinations of taxable income of separate corporations,” subject to sixteen adjustments.<sup>241</sup> Among these adjustments is the addition of any income from excess loss accounts.<sup>242</sup> Thus, the court concluded that the excess loss account income is not includable in federal taxable income pursuant to section 63 of the Internal Revenue Code but rather “becomes income only as an adjustment to ‘separate taxable income’ under Treas. Reg. § 1.1502-12(f).”<sup>243</sup> Thus, the excess loss account income is not includable in “taxable income.” The court further determined that “such amounts are not included in adjusted gross income under

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233. *Id.* at 1212.

234. *Id.* at 1213.

235. *Id.*

236. I.R.C. § 63 (1994).

237. *Id.* § 61.

238. *Cooper Indus.*, 673 N.E.2d at 1214.

239. *Id.* at 1214 n.13.

240. Treas. Reg. § 1.1502-11(a) (1994).

241. *Id.* § 1.1502-12.

242. *Id.* § 1.1502-12(f).

243. *Cooper Indus.*, 673 N.E.2d at 1215.

Ind. Code Ann. § 6-3-1-3.5(b),”<sup>244</sup> nor in net income for the purposes of section 6-3-8-2(b) of the Indiana Code.

2. *Sherwin-Williams Co. v. Indiana Department of State Revenue*.<sup>245</sup>—In this case, the IDSR denied Sherwin-Williams Company’s claim for refund of supplemental corporate net income taxes and adjusted gross income taxes for the years 1985 and 1986.<sup>246</sup> Indiana imposed an income tax on every corporation’s adjusted gross income derived from sources within Indiana.<sup>247</sup> In cases in which a corporation derives business income from sources both within and outside Indiana, the “adjusted gross income derived from sources within the state of Indiana” was determined by an apportionment formula.<sup>248</sup> Indiana adopted a standard form apportionment method which multiplied the business income derived from sources both within and outside Indiana by a fraction, the numerator of which was the property factor plus the payroll factor plus the sales factor, and the denominator of which was three.<sup>249</sup>

Sherwin-Williams was an Ohio Corporation qualified to conduct business in Indiana. Its principal business consisted of manufacturing and selling paint and related products. However, as part of its normal business activities, Sherwin-Williams regularly invested its working capital in a variety of securities. The management activities related to these investments were conducted in Ohio at Sherwin-Williams’ worldwide headquarters. Sherwin-Williams treated the interest income generated as a result of the investment activities as non-business income and allocated the interest income to Ohio. On October 30, 1989, the IDSR assessed Sherwin-Williams with additional tax and interest for the tax years 1985 and 1986 based on its determination that the interest income constituted business income subject to apportionment. Sherwin-Williams conceded that the interest income was generated as an integral part of its unitary business which should have been treated as business income. However, on December 20, 1989, Sherwin-Williams filed a protest claiming that the denominator of the sales factor should be increased to include the gross proceeds generated by its investment activity.<sup>250</sup> The Indiana adjusted gross income tax issue in this case was whether the denominator of Sherwin-Williams’ sales factor should include the principal or capital element of investments which Sherwin-Williams made outside of Indiana.<sup>251</sup> “The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the taxable year, and the denominator of which is the total sales of the taxpayer everywhere during the taxable year.”<sup>252</sup> “Sales” were defined as “all gross

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244. *Id.*

245. 673 N.E.2d 849 (Ind. T.C. 1996).

246. *Id.* at 850.

247. *Id.* at 851; *see also* IND. CODE § 6-3-2-1(b) (1993).

248. *Id.* (citing IND. CODE § 6-3-2-2).

249. *Id.* (citing IND. CODE § 6-3-2-2(b)).

250. *Id.* at 850.

251. *Id.* at 851.

252. *Id.* (quoting IND. CODE § 6-3-2-2(e)).

receipts of the taxpayer not allocated under IC 6-3-2-2(g) through IC 6-3-2-2(k).<sup>253</sup> Sections 6-3-2-2(g)-(k) dealt with rents and royalties, capital gains and losses, interest, dividends, and patent or copyright royalties. The regulations further defined “sales” as “any business income of a corporate taxpayer . . . regardless of its actual source.”<sup>254</sup>

Thus, the question arose as to how the term “gross receipts” should be defined for the purpose of the denominator of the sales factor.<sup>255</sup> The IDSR considered only the interest earned on the investment securities to be gross receipts.<sup>256</sup> Sherwin-Williams argued that gross receipts equals the amount received on the sale, which includes both the interest earned and the principal.<sup>257</sup> The IDSR responded that inclusion of the principal amount in the denominator “distorts the apportionment formula by giving extra weight to out of state sales.”<sup>258</sup> The IDSR contended that there is great potential for abuse because Sherwin-Williams could use the same principal many times as it re-invests in short-term securities, rolling over the principal of the previously sold investment. Weighing both arguments, the court held that “‘gross receipts’ for the purpose of the sales factor includes only the interest income, and not the rolled over capital or return of principal, realized from the sale of investment securities.”<sup>259</sup>

3. *Farm Credit Services of Mid-America v. Indiana Department of State Revenue*.<sup>260</sup>—In *Farm Credit Services*, the petitioner was a member of the Farm Credit System, a nationwide network of cooperative, borrower-owned banks and local lending associations providing affordable credit to farmers and ranchers.<sup>261</sup> The Farm Credit System was designed to “furnish farmers and ranchers with a stable source of credit while at the same time encouraging them to participate in the ‘management, control, and ownership’ of the system.”<sup>262</sup> Petitioner Mid-American was one of hundreds of local lending associations chartered by the Farm Credit Administration and operating in the Farm Credit System.<sup>263</sup> The Farm Credit Administration formally chartered petitioner as an Agricultural Credit Association (“ACA”) in March 1989, stating that Mid-America “is an institution of the Farm Credit System and a federally chartered instrumentality.”<sup>264</sup> Nevertheless, the IDSR imposed Indiana’s gross income tax on Mid-America for 1989, as well as the franchise tax for 1990 through 1992.<sup>265</sup>

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253. *Id.* (quoting IND. CODE § 6-3-1-24).

254. *Id.* (quoting IND. ADMIN. CODE tit. 45, r. 3.1-1-34 (1984)).

255. *Id.*

256. *Id.*

257. *Id.*

258. *Id.*

259. *Id.* at 853.

260. 677 N.E.2d 645 (Ind. T.C. 1997).

261. *Id.*; see also 12 U.S.C.A. § 2001 (1994).

262. *Farm Credit Servs.*, 677 N.E.2d at 645.

263. *Id.*

264. *Id.* at 646.

265. *Id.* (citing IND. CODE ANN. §§ 6-2.1-2-2, 6-5.5-2-1 (West 1989)).



The issue presented in this case was whether Mid-America, as an ACA, was an instrumentality of the federal government.<sup>266</sup> The court recognized that such a service constitutes an important governmental function which has been recognized since the 1940s and that an ACA is subject to federal supervision and regulation from its creation to its termination. Congress authorized the creation of ACAs through the merger of PCAs and FLBAs with the provisos that all such mergers are approved by the Farm Credit Administration, and that the Farm Credit Administration charters the newly formed entities. The court further recognized that the federal government played an intimate role in the activities of ACAs because the statute directs the Farm Credit Administration to formulate and issue regulations regarding “the manner in which the powers and obligations of the associations that form the merged association are consolidated and, to the extent necessary, reconciled in the merged association.”<sup>267</sup> The types of loans ACAs were allowed to make, the types of borrowers who are allowed to receive loans, and the geographic territories ACAs were allowed to serve were regulated by the Farm Credit Administration. In addition, the Farm Credit Administration was empowered to modify or revoke an ACA’s charter once granted. In fact, an ACA could not even terminate its own existence without complying with various procedural requirements and receiving approval from the Farm Credit Administration Board.<sup>268</sup> Thus, ACAs were subject to precisely the sort of cradle-to-grave regulation that typifies federal instrumentalities. The court found that the statutory scheme for the Farm Credit System did not evidence an intent on the part of Congress that ACAs be treated as private entities for the purpose of state taxation and that ACAs have the attributes of federal instrumentalities in that they performed an important governmental function and are subject to extensive regulatory supervision by the federal government.<sup>269</sup> Therefore, the court held that Farm Credit, as an ACA, was a federal instrumentality and was immune from the Indiana taxes at issue in this case.<sup>270</sup>

4. *Jefferson Smurfit Corp. v. Indiana Department of State Revenue*.<sup>271</sup>—In *Jefferson Smurfit*, Smurfit provided a custom packaging service for manufacturers and other customers. In some cases, Smurfit provided the packaging materials at a cost to itself, and in other cases, the materials were provided by the customers. The product to be packaged was provided by the manufacturer or customer, whether or not the packaging material was to be supplied by Smurfit. The majority of Smurfit’s receipts were derived from the packaging of various products which are included with other products sold by the manufacturers (e.g., the toy prize in a box of cereal). Smurfit also packaged goods to be sold by Smurfit’s customers directly (e.g., packages of trading cards and chewing gum). Smurfit’s other sales consisted of the packaging of products

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266. *Id.* at 647.

267. *Id.* at 650 (quoting 12 U.S.C. § 2279c-1(a)(2) (1994); 12 C.F.R. § 611.1122 (1996)).

268. *Id.*

269. *Id.*

270. *Id.* at 651.

271. 681 N.E.2d 806 (Ind. T.C. 1997).

which were either to be distributed by manufacturers in sales promotions or resold as “trial size” products (e.g., small samples of shampoo or detergent).<sup>272</sup>

The IDSR treated the first two types of sales as industrial processing, allowing such sales to be subject to lower “wholesale sales” rate of income tax. The third type was to be subjected to a higher rate of tax, but only in those instances when the IDSR found that there was no subsequent sale of the products by Smurfit’s customers.<sup>273</sup> Crucial to the court’s holding in this case was the language used in section 6-2.1-2-1(c)(1)(D) of the Indiana Code which was amended and its form changed in 1985. The nature of these changes were such that the court determined that it was necessary to treat the taxes for 1984 (before the amendments) separately from 1985 and 1986.<sup>274</sup> However, the dispute of taxable year of 1984 is not addressed in this Article.

The issue presented for 1985 and 1986 was whether section 6-2.1-2-1(c)(1)(D) of the Indiana Code, which defined receipts from industrial processing and servicing as wholesale sales, contained a resale requirement.<sup>275</sup> This court held that it did not and that such an expansive interpretation would require a rewriting of the statute.<sup>276</sup> The court reasoned that the reference to resale applied only to a specific type of industrial processing—enameling and plating—an activity that had been isolated into its own subpart.<sup>277</sup> The IDSR argued that the resale requirement should be construed to apply not only to that paragraph, but to (D) generally, stressing that paragraph (ii) uses the same “servicing or processing” language that is contained in section (D).<sup>278</sup> However, the court stated that section 6-2.1-2-1(c)(1)(D) of the Indiana Code is unambiguous after the 1985 amendments and that Smurfit had no resale requirement for 1985 and 1986.<sup>279</sup> Smurfit, therefore, was entitled to a refund for the amount of tax erroneously paid for 1985 and 1986.<sup>280</sup>

5. *Thomas v. Indiana Department of State Revenue*.<sup>281</sup>—Thomas filed an individual Indiana resident income tax return for 1992, listing Thomas’ address as 5509 Washington Avenue in Evansville, Indiana.<sup>282</sup> The substantive issue in this case involved the simple issue of the relationship between the Indiana adjusted gross income tax law and the income tax law of Washington, D.C., specifically, whether a payment of income taxes to Washington, D.C. could be credited against an Indiana resident’s adjusted gross income tax return.<sup>283</sup> With

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272. *Id.* at 807.

273. *Id.*

274. *Id.*

275. *Id.* at 810.

276. *Id.*

277. *Id.*

278. *Id.*

279. *Id.* at 811.

280. *Id.*

281. 675 N.E.2d 362 (Ind. T.C. 1997).

282. *Id.* at 365.

283. *Id.* at 364-65.

respect to the substantive tax law issue, the court agreed with the department which reasoned “that no credit was due because Washington, D.C. is a reverse credit jurisdiction, meaning that Indiana residents pay Indiana tax on income earned in the District of Columbia but receive a credit in the District for Indiana tax paid.”<sup>284</sup> The court further determined that even if Thomas were claiming a credit (against the Indiana adjusted gross income tax) for a payment of a federal income tax, Indiana does not provide a credit for federal taxes paid against Indiana taxes owed.<sup>285</sup>

Thomas appealed the IDSR’s assessment and moved for summary judgment with respect to the substantive law and with respect to several procedural issues. First, because the IDSR misplaced Thomas’ Indiana adjusted gross income tax return and had to reconstruct Thomas’ Indiana adjusted gross income, Thomas argued that the IDSR had to produce the original return.<sup>286</sup> In answer to this, the court held that a “court may permit the use of secondary evidence to prove the contents of a writing when the original is lost or has been destroyed, unless the proponent lost or destroyed the document in bad faith.”<sup>287</sup> The court further observed that because there was no dispute as to the accuracy of the secondary evidence and no indication that the document was lost purposely, the evidence should be admitted.<sup>288</sup>

Second, Thomas stated that the IDSR violated his due process and statutory rights when the IDSR issued a warrant without responding to his written protests and without holding a hearing.<sup>289</sup> With respect to this, the court stated that the statutory scheme clearly contemplated that the IDSR address any taxpayer protest before issuing a tax warrant or attempting to secure a judgment lien against a taxpayer.<sup>290</sup> The court noted that the demand for payment must be made through the tax warrant and judgment lien mechanisms outlined in section 6-8.1-8-2 of the Indiana Code.<sup>291</sup> However, the court determined that the IDSR’s failure to follow the statutory procedures was a harmless error, because before the IDSR attempted to levy on Thomas’s property, the IDSR granted Thomas’ request for a hearing on the assessment and Thomas did not allege a deprivation of Thomas’ rights as a result of the delay.<sup>292</sup>

Third, Thomas alleged that the tax warrant was invalid because the warrant was computer generated and unsigned, and that Article 1, Section 11 of the Indiana Constitution required such “warrants” to be supported by oath and affirmation and be signed.<sup>293</sup> However, the court observed that an IDSR tax

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284. *Id.* at 365.

285. *Id.* at 366 (citing IND. CODE ANN. § 6-3-3 (West 1989)).

286. *Id.* at 365.

287. *Id.* (citing IND. EVID. R. 1004).

288. *Id.* at 366 (citing *Lopez v. State*, 527 N.E.2d 1119, 1125 (Ind. 1988)).

289. *Id.*

290. *Id.*

291. *Id.*

292. *Id.* at 367.

293. *Id.*

warrant is not the sort of “warrant” referred to in the Constitution, because an IDSR tax warrant does not authorize state officers to enter upon a taxpayer’s land or to seize a person’s property; instead, a tax warrant merely triggers the process for establishing a judgment lien against a taxpayer’s property. However, a tax lien might involve an intrusion of the sort contemplated by the framers and ratifiers of Article 1, Section 11.<sup>294</sup>

Fourth, Thomas alleged that the State of Indiana did not have the authority to levy the Indiana adjusted gross income tax on sources of income earned outside Indiana.<sup>295</sup> However, the court observed that a state “may tax all the income of its residents, even income earned outside the taxing jurisdiction.”<sup>296</sup> The court also observed that if a state chooses to grant a credit to residents for taxes paid in other jurisdictions, it should not be mistaken for a lack of authority to levy on such proceeds.<sup>297</sup> Therefore, the court held that “Indiana has the authority to tax the out-of-state income of its residents” under the Indiana adjusted gross income tax.<sup>298</sup>

Fifth, Thomas challenged the definition of the term “income” under the Indiana tax laws, which definition is the one used under the federal tax laws on which the Indiana adjusted gross income was based, by stating the federal income tax law was not broad enough to encompass the income involved in this case.<sup>299</sup> However, the court determined that such income was clearly taxable under the federal income tax law and noted the Indiana General Assembly intended to adopt a broad definition of the term “income” when the Indiana General Assembly enacted the adjusted gross income tax law which clearly and unambiguously included annuity payments in the definition of adjusted gross income.<sup>300</sup>

Sixth, Thomas claimed that he was exempt from Indiana adjusted gross income tax because Thomas was not a resident of this state as the term “state” was defined in the Indiana Code.<sup>301</sup> The Indiana Code defined a “state” as “any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.”<sup>302</sup> However, the court observed that in *Richey v. Indiana Department of State Revenue*,<sup>303</sup> this court addressed a “substantially similar claim and held that the phrase ‘United States’ does refer to the fifty states

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294. *Id.*

295. *Id.*

296. *Id.* (quoting *Oklahoma Tax Comm’n v. Chickasaw Nation*, 515 U.S. 450 (1995)).

297. *Id.* at 368; *see also* 2 J. HELLERSTEIN & W. HELLERSTEIN, *STATE TAXATION* § 20.04 (Supp. 1993)).

298. *Thomas*, 675 N.E.2d at 368.

299. *Id.*

300. *Id.* at 368-69.

301. *Id.* at 369.

302. *Id.* (citing IND. CODE § 6-3-1-25 (West 1989)).

303. 634 N.E.2d 1375 (Ind. T.C. 1994).

of the union.”<sup>304</sup> Next, the court determined that Thomas was an Indiana resident for the purpose of the Indiana adjusted gross income tax.<sup>305</sup>

Finally, Thomas alleged that Indiana’s income taxing scheme should be declared “void for vagueness” because the law fails to properly define the terms “income” and “state.”<sup>306</sup> However, the court determined that the adjusted gross income tax statute, regulations, and IDSR bulletins “more than adequately define the proceeds subject to taxation.”<sup>307</sup> Therefore, the court found that there was no issue of material fact and determined that the IDSR was entitled to judgment as a matter of law.<sup>308</sup>

*B. Indiana Procedures for Tax Administration—Indiana State Board of Tax Commissioners*

1. *Indiana Sugars, Inc. v. State Board of Tax Commissioners.*<sup>309</sup>—Indiana Sugars was a corporation primarily engaged in the manufacturing and converting of granulated sugar into powdered or liquid sugar. Sugars’ facilities are located in Lake County, Indiana within a statutorily designated “enterprise zone.”<sup>310</sup> Indiana allowed a property tax credit for “enterprise zone inventory,” which was essentially inventory located within an enterprise zone on the assessment date.<sup>311</sup> The taxpayer had to file a Form EZ-1 with the county auditor for the county where the property was located and with the ISBTC. This had to be done between March 1 and May 15 in order to receive the tax credit on the next year’s property tax return.<sup>312</sup> Filing could be extended until June 14. Sugars obtained an extension until the June 14 deadline. Sugars’ accountant testified that he delivered a completed EZ-1 form to Sugars on or about June 8, 1993. Sugars’ controller testified that due to a previous late filing of the EZ tax credit, the controller followed a lengthy series of procedures designed to prevent a similar occurrence. Among the steps the accountant took was to personally review the form, have the form signed by corporate officers, personally check the addresses and postage on the envelopes, and personally deposit the envelopes in the United States Mail, First Class. The controller testified before the ISBTC that the controller did each of these things on or before June 14, 1993—including personally mailing the EZ-1 form at the post office. However, the EZ-1 form was never received by the Lake County Auditor. Sugars’ credit was denied due to the failure to timely file an EZ-1 form.<sup>313</sup>

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304. *Thomas*, 675 N.E.2d at 359 (quoting *Richey*, 634 N.E.2d at 376-77).

305. *Id.*

306. *Id.*

307. *Id.*

308. *Id.*

309. 683 N.E.2d 1383 (Ind. T.C. 1997).

310. *Id.* at 1384.

311. *Id.* (citing IND. CODE ANN. § 6-1.1-20.8-1 (West 1989)).

312. *Id.* (citing IND. CODE ANN. § 6-1.1-20.8-2 (West 1989) (amended 1996)).

313. *Id.*

Upon learning that its EZ-1 credit for 1993 had been denied, Sugars filed for review by the Lake County Board of Review.<sup>314</sup> Sugars provided the County Board of Review with a copy of the EZ-1 form for 1993. On March 7, 1995, the Board of Review denied Sugars protest because the Board of Review had no record of an EZ-1 form being filed by Sugars prior to the filing deadline. On March 22, 1995, Sugars appealed to the ISBTC, but the credit was denied by the ISBTC on February 22, 1996, on the ground that Sugars had not timely filed an EZ-1 form. Sugars then filed Sugars' original appeal in the court, protesting the denial of the credit, and raising the issues of: whether an application for an EZ tax credit is considered filed if the application is placed in the U.S. Mail with First Class postage; and, what evidence is necessary to prove timely mailing.<sup>315</sup> In addressing these issues, the court stated that "final determinations by the [ISBTC] are only reversed by this Court when the decision is unsupported by substantial evidence, is arbitrary or capricious, constitutes an abuse of discretion, or exceeds statutory authority."<sup>316</sup> Further, the court stated that until such time as statutes are enacted or regulations are promulgated requiring more, mailing forms to the ISBTC via First Class U.S. Mail constitutes filing. The court stated that "the sworn testimony of a witness constitutes sufficient evidence to prove timely mailing . . . Sugars' controller testified under oath that he personally placed the application in the mail . . . this testimony constitutes direct testimony of one with personal knowledge and is reasonable evidence of mailing."<sup>317</sup> Therefore, the court found that Sugars application was filed in a timely manner and that mailing via First Class U.S. Mail is an acceptable method of filing. Further, the court held that Sugars presented sufficient evidence of a timely filing. Thus, the court determined that the ISBTC's decision was not supported by substantial evidence, was an abuse of the ISBTC's discretion and was arbitrary and capricious. Therefore, the court reversed the ISBTC's final determination and remanded the case to the ISBTC for further action consistent with the opinion.<sup>318</sup>

2. *Boshart v. State Board of Tax Commissioners*.<sup>319</sup>—In *Boshart*, the petitioners appealed a final determination of the ISBTC after the ISBTC refused to issue subpoenas pursuant to Indiana Trial Rule 28(F), for a hearing concerning a Goshen Community Schools construction project.<sup>320</sup> The petitioners contended that due to this failure, Boshart could not adequately prepare for the hearing.<sup>321</sup> The petitioners remonstrated against the project following the procedures of section 6-1.1-20-3.2 of the Indiana Code. The petition process concluded, and, shortly thereafter, the Elkhart County Auditor announced that the project had

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314. *Id.*

315. *Id.* at 1385.

316. *Id.*

317. *Id.* at 1387.

318. *Id.*

319. 672 N.E.2d 499 (Ind. T.C. 1996).

320. *Id.*

321. *Id.*

more signatures for it than against it, and as required by section 6-1.1-19-8 of the Indiana Code, the Goshen Community Schools petitioned the ISBTC for approval of the proposed lease rental agreement in connection with the construction project.<sup>322</sup> The ISBTC referred the petition to the Property Tax Control Board (Control Board) for the latter's recommendation per section 6-1.1-19-8(b) of the Indiana Code.<sup>323</sup>

Before the Control Board's hearing, certain petitioners expressed their concerns regarding the availability of documents relating to the lease. Goshen Community Schools refused to produce certain documents on the basis that the records were exempt from inspection under section 5-14-3-4 of the Indiana Code. The petitioners, pursuant to Indiana Trial Rule 28(F), asked the ISBTC to issue subpoenas duces tecum and schedule the depositions of several school officials and independent contractors.<sup>324</sup> The ISBTC declined to issue the subpoenas. Therefore, the petitioners filed suit against the ISBTC in the county circuit court in order to stay the Control Board hearing pending discovery. The circuit court dismissed the suit after a hearing, and, the next day, the Control Board held its hearing. Counsel for the petitioners again argued that the petitioners had been denied documents by Goshen Community Schools. The Control Board recommended approval of the lease agreement, and ultimately, the ISBTC approved the lease rental agreement.<sup>325</sup>

The petitioners then filed an original tax appeal in this court and filed a motion for judgment on the pleadings under Indiana Trial Rule 12(C). The court stated that the petitioners' case should have ended under section 6-1.1-20-3.2(7) of the Indiana Code when the Elkhart County Auditor's office announced that the project had more signatures for the project than against the project.<sup>326</sup> However,

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322. *Id.* at 500 (citing IND. CODE ANN. § 6-1.1-19-8 (West Supp. 1996)).

323. *Id.* (citing IND. CODE ANN. § 6-1.1-19-8(b) (West Supp. 1996)).

324. *Id.* (citing IND. T.R. 28(F)). Trial Rule 28(F) states in pertinent part:

Discovery Proceedings Before Administrative Agencies. Whenever an adjudicatory hearing, including any hearing in any proceeding subject to judicial review, is held by or before an administrative agency, any party to that adjudicatory hearing shall be entitled to use the discovery provisions of Rules 26 through 37 of the Indiana Rules of Trial Procedure. Such discovery may include any relevant matter in the custody and control of the administrative agency.

T.R. 28 (F).

325. *Boshart*, 672 N.E.2d at 500.

326. *Id.* at 501. The statute provided, in part:

After a political subdivision has gone through the petition and remonstrance process set forth in this section, the political subdivision is not required to follow any other remonstrance or objection procedures under any other law relating to bonds or leases designed to protect owners of real property within the political subdivision from the imposition of property taxes to pay debt service or lease rentals. However, the political subdivision must still receive the approval of the [ISBTC] required by . . . IC 6-1.1-19-8.

IND. CODE § 6.1.1-20-3.2(7) (1993).

the court observed that the petitioners had their chance to stop the project but failed to convince a sufficient number of their neighbors of the wisdom of their position. Thus, the court could find no legal basis for the petitioners' assumption that they were parties to the process once the votes had been counted against them. Therefore, assuming that the hearing before the ISBTC, acting through the Control Board, was an "adjudicatory hearing," the petitioners are not parties to the adjudicatory hearing and were not entitled to invoke Indiana Trial Rule 28(F).<sup>327</sup>

3. *St. Joseph County v. State Board of Tax Commissioners*.<sup>328</sup>—This case commenced when several suits were filed by inmates and former inmates of the St. Joseph County Jail complaining of overcrowding, substandard conditions, and various violations of U.S. Constitutional rights, particularly those protected by the Fourteenth Amendment.<sup>329</sup> These suits were consolidated into one class action litigation by the United States District Court for the Northern District of Indiana, South Bend Division.<sup>330</sup> The judgment of the district court required the County to begin construction on a new jail with minimum capacity of 600 inmates on or before December 31, 1996.<sup>331</sup>

The County sought ISBTC's approval for its planned construction, financing, and lease agreement. Several persons objecting to the jail project petitioned the ISBTC pursuant to section 36-1-10-14 of the Indiana Code. This petition resulted in a hearing conducted on November 26, 1996. The ISBTC found that the jail project was "necessary, wise, cost efficient, reasonable in size, and designed to allow for cost-effective expansion in the future, but conditioned its approval of the jail project on the County's obtaining consent for the project through the petition-remonstrance procedures"<sup>332</sup> of section 6-1.1-20-3.2 of the Indiana Code. Eventually, the County filed an original tax appeal with the court seeking reversal of the ISBTC's final determination. The County sought a lease agreement and bond financing from the St. Joseph County Jail Building Corporation. Therefore, petition-remonstrance proceedings would be necessary if the project were a "controlled project." A "controlled project" is any project, "financed by bonds or a lease, except for the following: . . . (5) A project that is required by a court order holding that federal law mandates the project."<sup>333</sup> The sole issue presented to the court was whether the jail project fit within the exception provided in subsection (5) ("the Exception").<sup>334</sup>

The three basic elements that must be shown to fit within the exception are:

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327. *Boshart*, 672 N.E.2d at 501.

328. 683 N.E.2d 1379 (Ind. T.C. 1997).

329. *Id.* at 1380.

330. *Id.*

331. *Id.*

332. *Id.* at 1381. Any "controlled project" using property taxes to pay a debt service or lease rental is required to go through a petition- remonstrance process. *See* IND. CODE § 6-1.1-20-3.2 (Supp. 1997).

333. IND. CODE § 6-1.1-20-1.1.

334. *St. Joseph County*, 683 N.E.2d at 1381.



“(1) a court order; (2) requires the project; and (3) holds that federal law mandates the project.”<sup>335</sup> The court determined that the County satisfied each portion of this test, and determined that the construction of a new jail was not a “controlled project” and did not require petition-remonstrance proceedings.<sup>336</sup>

*C. Indiana Property Taxes—Business Personal Property Tax (INVENTORY)*

1. *Colwell/General, Inc. v. Indiana State Board of Tax Commissioners*.<sup>337</sup>—Colwell was a Minnesota corporation with operations in Indiana. Colwell manufactured color sample cards and other color merchandising tools for the paint industry. Paint manufacturers and sellers contracted with Colwell to provide color coded strips, cards, and brochures featuring the various shades of Colwell’s paints. The sample cards were placed on display racks with the paints to aid customers in choosing colors of paint. Three of Colwell’s four paint sample products were “Pick-n-Pull inventory.” These products got their name from the way in which the products were prepared for sale. After their production, the cards were separated into groups of ten to fifteen identical cards and packaged in small plastic wrappers. The wrapped card packages were then stored in boxes or cartons in a company warehouse. When a customer made an order, Colwell employees pulled the requested samples from the storage cartons and shipped the samples to the customer. Colwell’s fourth product, “OD Unopened Cartons,” also consisted of paint sample strips and cards, but this product was packaged for final shipment at the manufacturing line.<sup>338</sup>

For the purposes of the March 1, 1994 property tax assessment, Colwell claimed “that its entire inventory of color sample strips was exempt under the interstate commerce exemption.”<sup>339</sup> The hearing officer granted the exemption with regards to the OD Unopened Cartons items, but denied the exemption for the Pick-n-Pull inventory.<sup>340</sup> The ISBTC accepted the hearing officer’s recommendations. In addition to Colwell’s paint sample products, Colwell marketed a color code system known as “ColorCurve”, which was a method of identifying color numerically as opposed to visually. Colwell’s inventory of ColorCurve products consists of color atlases which mapped out the system for manufacturers and swatch books with removable samples for designers and architects. Except for a de minimus amount, Colwell manufactured its entire ColorCurve inventory from 1987 to 1989 at a total cost of approximately \$1.5 million. Sales did not match expectations. Colwell presented evidence to show that at the current rate of sale, it would take from 20 to 100 years to sell these products. After several consecutive years of poor sales and after consultation with its professional accountants, Colwell determined in 1995 to write down the

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335. *Id.*

336. *Id.* at 1381-83.

337. 680 N.E.2d 892 (Ind. T.C. 1997).

338. *Id.* at 893.

339. *Id.* at 893-94.

340. *Id.* at 894.

value of the inventory. Colwell's accountants determined that the inventory had an estimated realizable value of only \$835,320. Despite the poor sales and Colwell's decision to write down the value of its ColorCurve inventory, at no point did Colwell offer these products for sale below cost. Colwell stated that Colwell did not lower its prices below cost because the demand for the product appeared to be relatively inelastic.<sup>341</sup> After a hearing on the matter, the ISBTC issued its final determination rejecting the write-down. The ISBTC finally assessed Colwell's entire inventory, including the ColorCurve products, at \$4,068,960, adding an \$850 penalty.<sup>342</sup>

Both before the ISBTC and the court, Colwell claimed that Colwell's Pick-n-Pull inventory was exempt from personal property tax under the interstate commerce exemption provided in section 6-1.1-10-29 of the Indiana Code for two reasons. First, Colwell contended that the items comprising Colwell's Pick-n-Pull inventory were exempt under subsection 6-1.1-10-29(b).<sup>343</sup> Colwell argued that "the 'original packages' for the Pick-n-Pull items were the polyethylene wrappers holding ten to fifteen sample paint cards."<sup>344</sup> Under this view, the original packaging for the Pick-n-Pull inventory is never disturbed. Thus, Colwell contended that these items were stored and remained in their original packages for the purpose of shipment to an out-of-state destination.<sup>345</sup> The court disagreed with Colwell and observed that the applicable regulations define "original package" as "the box, case, bale, skid, bundle, parcel, or aggregation thereof bound together and used by the seller, manufacturer, or packer for shipment."<sup>346</sup>

The court reasoned that "Colwell does not use the plastic wrappers for shipping its products within the meaning of the regulation."<sup>347</sup> The court stated that the issue is not whether the packets could be used for shipping the taxpayer's products, but rather, whether the packets are in fact used for that purpose. Therefore, the court concluded that Colwell was not entitled to an interstate commerce exemption under subsection 29(b).<sup>348</sup>

Colwell next argued that even if Colwell's Pick-n-Pull inventory was not exempt because the products did not remain in their original packages, the items were exempt under section 6-1.1-10-29(c) of the Indiana Code, because the products' value would be impaired if the products were stored in the products' original packages.<sup>349</sup> The dispute centered on Colwell's claim that the value of the Pick-n-Pull inventory would be impaired if the inventory was stored in its original packaging. In support of Colwell's contention, Colwell presented

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341. *Id.*

342. *Id.* at 895.

343. *Id.*

344. *Id.*

345. *Id.*

346. *Id.* (quoting IND. ADMIN. CODE tit. 50, r. 4.2-12-5(d) (1992)).

347. *Id.*

348. *Id.* at 896.

349. *Id.*

evidence that its Pick-n-Pull method of marketing was substantially more cost effective than prepackaging its products. Testimony indicated that in 1982 and 1983, Colwell sold prepackaged color sample strips to Home Depot stores which asked Colwell to discontinue the practice because more than half of the cards were going unused. Further testimony presented by Colwell's witness revealed that prepackaging Colwell's inventory of paint samples rendered it "unsellable." In addition, Colwell submitted an affidavit from an executive of Ace Hardware, Inc., in which an executive stated that "[i]f Colwell/General would offer Ace [Hardware] prepackaged [display replacement strip packages] prior to an actual store's order, Ace [Hardware] would not be willing to pay the same price that it pays now for the product because much of the order would be wasted" and stated that Ace Hardware "would pay a lesser price."<sup>350</sup>

However, the court held that Colwell's evidence failed to demonstrate the sort of impairment contemplated by the general assembly when it enacted subsection 29(c)(2). Colwell contended that the general assembly intended to exempt two distinct categories of goods: one set that would be physically damaged if stored in original packaging; and another that, although not adversely affected in a physical sense by such storage, could be marketed more profitably if not stored in original packaging. In this case, it is more likely that the general assembly intended the notions of damage to the goods and the impairment of their value as synonymous descriptions rather than distinct or alternative categories. The court held that subsection (c)(2) required a "showing that the goods themselves would be damaged or impaired in a physical way by storing them in their original packages."<sup>351</sup>

Were this court to read subsection (c)(2) as Colwell suggests, the subsection itself would be rendered practically meaningless. The court reasoned that it would be operative only in the unlikely event that a taxpayer chose to store its goods in original packages despite the fact that method of operation was not cost effective. The court further noted that inasmuch as Colwell "failed to adduce any evidence that its sample paint strips would have been damaged or impaired in this way, it is not entitled to an exemption on this claim."<sup>352</sup>

With respect to the ColorCurve inventory, Colwell argued that the ISBTC should have permitted Colwell to write down the value of its inventory to the lower of cost or market for the purposes of Indiana property tax since Colwell reduced the recorded value of the inventory for internal accounting purposes. In support of this claim, Colwell pointed to the fact that sales of the ColorCurve inventory have been dismal. In fact, evidence showed that Colwell will probably still be trying to sell this inventory well into the 21st century. A letter from its accountants was also submitted stating that because of its poor sales performance, generally accepted accounting principles required the company to discount the value of those products.<sup>353</sup> In its final determination, the ISBTC

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350. *Id.* at 897.

351. *Id.*

352. *Id.*

353. *Id.* at 898.

denied Colwell's write-down on the grounds that Colwell failed to produce sufficient objective evidence that its goods should be valued below cost. The ISBTC explained: "Regardless of whose definition one uses [to define market value], the plain fact is that there must be some evidence that the market value of the inventory is less than its cost. . . ."<sup>354</sup> The letter from the accounting firm and the testimony concerning the deterioration of the colors may be believable, but it was Colwell's responsibility to provide evidence to the ISBTC to show that the amount of ColorCurve inventory write-down was proper. "The clear focus of the ISBTC's determination was that 'Colwell failed to provide any basis to explain the calculation of the \$650,000 write-down.'"<sup>355</sup> The court agreed with the ISBTC.

On proper proof, the ISBTC would have permitted Colwell to value inventory at "the lower of cost or market."<sup>356</sup> The regulations required that taxpayers value inventory at the cost of the goods "as recorded on the regular books and records of the taxpayer," and "[i]f a taxpayer uses the lower of cost or market for valuing inventory for book accounting purposes, this method is allowable for Indiana property tax purposes."<sup>357</sup> Establishing that its inventory has probably lost value is, however, only half the battle for the taxpayer. The taxpayer must also prove by objective evidence that the value of the goods is less than its cost. In this case, the court stated that Colwell failed to introduce any evidence explaining its proposed \$650,000 write-down.<sup>358</sup> It also observed that the letter from Colwell's accountants simply stated "without explanation or documentation that the 'estimated realizable value' of the inventory as of the end of 1993 was \$620,000, and an additional \$30,000 was subtracted from the inventory's value for January and February 1994."<sup>359</sup> This, according to the court, fell short of the objective evidence required to support such a write-down.<sup>360</sup> A general showing of a decrease in value is not sufficient.

2. *Sony Music Entertainment, Inc. v. Indiana State Board of Tax Commissioners*.<sup>361</sup>—Sony Music was a Delaware corporation with its principal place of business in New York. Sony Music manufactured audio compact discs and sold them at wholesale across the nation. Because Sony Music's manufacturing facilities did not have sufficient capacity to meet the demand for Sony Music's products, Sony Music entered into an agreement with Digital Audio Disc Corporation ("DADC") to produce additional discs. DADC has its principal facilities in Indiana. Both Sony Music and DADC were subsidiaries of Sony Corporation of America. The compact discs at issue were designed to be sold in plastic jewel cases with front and back liners which were analogous to

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354. *Id.*

355. *Id.* at 898-99.

356. *Id.* at 899 (citing IND. ADMIN. CODE tit. 50, r. 4.2-5-3 (1992)).

357. *Id.*

358. *Id.*

359. *Id.*

360. *Id.*

361. 681 N.E.2d 800 (Ind. T.C. 1997).

album covers, featuring various designs, graphics, and pictures. The discs often came with short booklets containing promotional information, lyrics, or other information. Once a disc was placed in a tray in a jewel case with the appropriate liner and booklet, either the case was shrink wrapped alone or the case was placed in a longbox, and the case and longbox were shrink wrapped together. Longboxes were printed cardboard sleeves that are folded and glued around the jewel cases in order to make them compatible with the old record album displays in retail shops. Under the agreement between DADC and Sony Music, DADC produced the actual discs as well as most of the plastic trays and jewel cases. Sony Music supplied the booklets, liners, and longboxes (collectively, the “artwork”). Sony Music purchased the artwork from out-of-state suppliers, and all of the design and production work on the pieces was completed outside Indiana. DADC was responsible for preparing the discs for sale by placing the artwork in the jewel cases with the discs and putting many of the cases in longboxes. DADC would then pack twenty-five to thirty-five fully assembled compact discs into cardboard boxes for shipment to locations throughout the United States.<sup>362</sup>

In March 1993, Sony Music had close to \$4 million in artwork stored in DADC’s Indiana warehouse. More than 52% of the pieces were booklets and liners; over 47% were longboxes; and the remainder contained miscellaneous items. When Sony Music filed its 1993 business personal property tax return for this property, Sony Music claimed an exemption for 98.6% of these items under section 6-1.1-10-29.3 of the Indiana Code on the grounds that these items were ready for transshipment out of state, except for repackaging. During the twelve months preceding March of 1993, Sony Music shipped slightly more than \$45 million in merchandise from DADC, 98.12% of which was shipped out of state.<sup>363</sup>

After performing an audit, a hearing officer for the ISBTC found that “the artwork was not merely being stored for transshipment, but rather the booklets, liners, and longboxes constituted ‘raw materials’ that had to be assembled with the compact discs to form a saleable good.”<sup>364</sup> Thus, the officer concluded that the inventory of artwork was not exempt under section 6-1.1-10-29.3 of the Indiana Code and the officer recommended an assessment of \$804,530 but later increased that figure to \$844,760.<sup>365</sup> After a hearing, the ISBTC affirmed this assessment and Sony Music timely filed notice of intent to appeal, claiming the exemption from Indiana’s personal property tax under section 6-1.1-10-29.3 of the Indiana Code.<sup>366</sup>

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362. *Id.* at 800-01.

363. *Id.* at 801.

364. *Id.*

365. *Id.*

366. *Id.* The applicable Indiana statute provided:

Personal property shipped into Indiana is exempt from property taxation if the owner or possessor is able to show by adequate records that the property:

(1) is stored in an in-state warehouse for the purpose of transshipment

Based on these facts, the court stated the issue as whether DADC's assembling of the discs, jewel cases, artwork, and longboxes constitutes more than "repackaging." Sony Music argued that the artwork is exempt by the plain meaning of the statute and pointed out that Webster's Dictionary defines "repackage" in part as "to package again or anew."<sup>367</sup> After examining variations of the term "packaging", the court stated that in order to come within the scope of the statutory exemption, the goods in question must be stored in their original packages for the purpose of shipment or transshipment out of state and the term "original package" refers to the container in which the goods are shipped to or placed in the storage facility.<sup>368</sup> The applicable regulations define the term "original package" as "the box, case, bale, skid, bundle, parcel, or aggregation thereof bound together and used by the seller, manufacturer, or packer for shipment."<sup>369</sup> Based on these provisions, the court concluded that if Sony Music had shipped the goods into Indiana and did no more than "repackage" the goods for transshipment out of state, Sony Music would have been entitled to the exemption. But for this purpose, the term "repackage" must refer to repackaging in the sense of transferring to a different container for the purpose of transshipment and not in the sense of combining different parts or components of a product for sale.<sup>370</sup>

The court observed that the distinction between packaging for shipment and packaging for sale is central to the analysis under the interstate commerce exemptions of Indiana's property tax. The court determined that Sony Music's activities were "designed, not to facilitate transshipment, but to bring together the separate components of Sony Music's final saleable product, a shrink-wrapped or boxed compact disc, complete with promotional booklet and liners."<sup>371</sup> Specifically, the court determined that DADC did more than prepare Sony Music's compact discs and artwork for transshipment since DADC assembled the goods for sale to Sony Music's ultimate customers, which activities are processing activities and not merely repackaging activities under section 6-1.1-10-29.3 of the Indiana Code. Therefore, the court held that Sony Music was not entitled to an interstate commerce exemption from the Indiana property tax.<sup>372</sup>

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to an out-of-state destination; and

(2) is ready for transshipment without additional manufacturing or processing, except repackaging.

IND. CODE § 6-1.1-10-29.3 (1996).

367. *Id.* at 802 (citing WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1923 (1981)).

368. *Id.* at 803.

369. *Id.* (quoting IND. ADMIN. CODE tit. 50, r. 4.2-12-5(d) (1992)).

370. *Id.*

371. *Id.* at 804.

372. *Id.* at 805-06.

*D. Indiana Property Taxes—Real Property Taxes*

1. *Boehm v. Town of St. John*.<sup>373</sup>—*Boehm* was an appeal by the ISBTC from the decision of the Indiana Tax Court holding that the Indiana Constitution requires a system of property assessment and taxation based on market value and that, because Indiana's statutory system of taxation valued real property on a basis other than market value, the system was unconstitutional.<sup>374</sup> The Indiana Supreme Court reversed that conclusion and remanded to the Indiana Tax Court the taxpayers' other claims which the Indiana Tax Court did not address.<sup>375</sup> The case arose from the consolidation of several original tax appeals by the petitioners-appellants in the Indiana Tax Court challenging the past and future methods by which Indiana assesses the value of real property for taxation purposes.<sup>376</sup>

Asserting multiple issues, the taxpayers contended that the then current system resulted in a non-uniform, unequal, unjust and discriminatory valuation and assessment of Indiana real property in violation of article 1, section 23 and article 10, section 1 of the Indiana Constitution and of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.<sup>377</sup> The taxpayers requested the following relief from the Indiana Tax Court:

- (1) declare Indiana Code Section 6-1.1-31-6(c) unconstitutional if interpreted to prevent the [ISBTC] from adopting market value or a uniform percentage thereof as the standard of value of real property; (2) require the [ISBTC] to adopt a system of assessment that treats equally and uniformly persons who are similarly situated in terms of the fair market value of the real property they own; and (3) review and equalize the assessments and valuations within St. John and the other townships in Indiana.<sup>378</sup>

The Indiana Tax Court addressed only the following issue, finding it to be dispositive: "Whether Art. 10, § 1 of the Indiana Constitution requires that all real property assessments be based on market value."<sup>379</sup> The Indiana Supreme observed that article 10, section 1 of the Indiana Constitution provides, in pertinent part, "The General Assembly shall provide, by law, for a uniform and equal rate of property assessment and taxation and shall prescribe regulations to secure a just valuation for taxation of all property, both real and personal."<sup>380</sup>

The Indiana Tax Court held that "uniform and equal" mandates "each

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373. 675 N.E.2d 318 (Ind. 1996).

374. *Id.* at 319 (citing *Town of St. John v. State Bd. of Tax Comm'rs*, 665 N.E.2d 965 (Ind. T.C. 1996)).

375. *Id.*

376. *Id.* at 319-20.

377. *Id.* at 320.

378. *Id.*

379. *Id.* (quoting *Town of St. John*, 665 N.E.2d at 966).

380. *Id.* (quoting IND. CONST. art. 10, § 1(a)).

taxpayer's property wealth bear its proportion of the overall property tax burden,"<sup>381</sup> "that 'just value' means fair market value,"<sup>382</sup> and that the general assembly and the ISBTC must implement market value and "bring the state's system of real property taxation into compliance with Article 10, § 1 of the Indiana Constitution" by March 1, 1998.<sup>383</sup> After looking to the intent of the framer's of the Indiana Constitution, the Indiana Supreme Court agreed that the purpose and intent of article 10, section 1, was to require uniform and equal assessment and taxation and just valuation, and that such assessments and taxation are subject to judicial review. The Indiana Supreme Court also observed that perfect uniformity in the method of assessment was not required; rather the Indiana Constitution required a just valuation of all property, so that the burdens may be distributed with uniformity, and the function of implementing this requirement was a legislative one. The Indiana Supreme Court noted that the rate must be uniform and equal, but that the Indiana Constitution authorized the general assembly to allow a variety of methods to secure just valuation. Therefore, the Indiana Supreme Court affirmed the Indiana Tax Court's finding that the general assembly must provide a uniform and equal rate of property assessment and taxation based on property wealth. However, the Indiana Supreme Court overruled the Indiana Tax Court's finding that the Indiana Constitution requires an exclusive, comprehensive, absolute, and precise market value system.<sup>384</sup>

Chief Justice Shepard, dissenting, observed that the submissions by the parties indicated that only three methods were recognized for valuing real property: reproduction cost, comparison of sales, and income capitalization. The Chief Justice also observed that the majority's holding—that the Indiana Constitution did not require market value assessment, but only "uniform and equal" assessment and taxation—raised the question of uniform and equal with respect to what.<sup>385</sup>

2. *Bender v. Indiana State Board of Tax Commissioners*.<sup>386</sup>—In *Bender*, the petitioner owned real property in Indiana which consisted of four units, side-by-side, each sharing a common wall with an adjoining unit. Such property is commonly referred to as a "row-type dwellings." For the purpose of the 1989 general reassessment,<sup>387</sup> the property was assessed under the Residential Pricing Schedule with an adjustment for a row-type dwelling. In June of 1992, Bender filed Form 133 Petition for Correction of Errors, in which Bender alleged that the General Commercial Residential Pricing Schedule should have been employed instead of the residential schedule because the units were leased and not owned by the occupants. Bender justified the use of Form 133 on the grounds that this

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381. *Id.* (quoting *Town of St. John*, 665 N.E.2d at 970).

382. *Id.* (quoting *Town of St. John*, 665 N.E.2d at 973).

383. *Id.* (quoting *Town of St. John*, 665 N.E.2d at 975).

384. *Id.*

385. *Id.* at 328-29.

386. 676 N.E.2d 1113 (Ind. T.C. 1997).

387. *Id.* (citing IND. CODE ANN. § 6-1.1-4-4(a) (1989)).



was a “mathematical error.” The County Board of Review denied Bender’s Form 133 Petition and Bender timely appealed the denial to the ISBTC. The ISBTC rejected Bender’s petition and issued a final assessment determination in October of 1995, setting the assessed value for Bender’s real property at \$55,000. One month later, Bender filed an original tax appeal in the court challenging the ISBTC’s final determination.<sup>388</sup>

Prior to January 1994, a taxpayer could challenge a ISBTC determination in one of three ways:

- (1) within thirty days of a general reassessment, a taxpayer could file a Form 130/131 Petition for Review of Assessment challenging both subjective and objective errors;
- (2) by March 31st of years in which a general reassessment was not done, a taxpayer could challenge subjective and objective errors through a Form 134 Petition for Reassessment; or
- (3) at any time, a taxpayer could file a Form 133 Petition for Correction of Errors challenging only objective errors in the assessment.<sup>389</sup>

The *Bender* court observed that a taxpayer challenging a property assessment bears the responsibility of using the appropriate method, and where an improper avenue is pursued, the ISBTC’s determination will be upheld.<sup>390</sup> The petition at issue in this case was the Form 133 Petition for Correction of Errors, which was governed by section 6-1.1-15-12 of the Indiana Code. This statute states: “[A] county auditor shall correct errors which are discovered in the tax duplicate for any one (1) or more of the following reasons: . . . (7) There was a mathematical error in computing the taxes or penalties on the taxes.”<sup>391</sup> Therefore, the court determined that the “only errors subject to correction by Form 133 are those which can be corrected without resort to subjective judgment.”<sup>392</sup> Thus, the issue was whether an alleged error in choosing one pricing schedule over another constitutes an objective, mathematical error for the purposes of section 6-1.1-15-12(a)(7) of the Indiana Code and Form 133.

Bender claimed that he rented out the units at issue as apartments for commercial purposes rather than using them as residences and that under the applicable regulations, the property was classified on the basis of its “predominant current use”<sup>393</sup> and that apartments are assigned an assessment value under the General Commercial Residential Pricing Schedule.<sup>394</sup> Additionally, Bender claimed, that since this error (of choosing the wrong classification for Bender’s property) resulted in an inflated tax assessment, the

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388. *Id.*

389. *Id.* at 1114 (citing *Williams Indus. v. State Bd. of Tax Comm’rs*, 648 N.E.2d 713 (Ind. T.C. 1995); *Reams v. State Bd. of Tax Comm’rs*, 620 N.E.2d 758 (Ind. T.C. 1993)).

390. *Id.* (citing *Williams*, 648 N.E.2d at 718; *Reams*, 620 N.E.2d at 761).

391. *Id.* (citing IND. CODE ANN. § 6-1.1-15-12(a) (1989)) (emphasis omitted).

392. *Id.* (citations omitted).

393. *Id.* at 1115 (citing IND. ADMIN. CODE tit. 50, r. 2.1-4-2(b) (1992)).

394. *Id.* at 1115-16 (citing IND. ADMIN. CODE tit. 50, rr. 2.1-4-4, 2.1-4-7(c) (1992)).

error constituted a mathematical error. However, the court disagreed, stating that the choice between pricing schedules is not merely a mathematical question and that the choice between pricing schedules is not objective since the selection involves a judgment on the part of the assessor. The court determined that the assessor must use the assessor's judgment in determining which schedule to use and such decision is not a decision automatically mandated by a straightforward finding of fact.<sup>395</sup> Thus, the court held Form 133 was not the appropriate petition with which to challenge the County Board of Review's decision.<sup>396</sup>

3. *Corey v. State Board of Tax Commissioners*.<sup>397</sup>—In this case, the petitioners (Coreys) owned 23.72 acres of land and improvements in Montgomery County, Indiana. In addition to Coreys' home, the property included an outbuilding, a swimming pool, and a tennis court. Coreys' property was reassessed and a hearing on the reassessment was held in September 1994. Coreys claimed that after Coreys built the house, there was a hog operation built across the highway from them and there was no way in which Coreys could utilize the Corey property as intended because on certain days the stench coming from the hog operation prevented Coreys from enjoying their property. The Coreys could not entertain outdoors, hang laundry outside to dry, use the tennis court or swimming pool, or leave the windows open. Two jars, which Coreys stated contained air samples taken in Coreys' front yard, were presented to the hearing officer as evidence in support of this claim. At the conclusion of the hearing, the hearing officer drove to Coreys' residence to view the property. The hearing officer took measurements and inspected the property, but he detected no odor during the one and a half hours he spent at Coreys' home. After leaving the property, the hearing officer drove close to the hog facility. He did not get out of his car or go onto the facility property, but he did not smell any odor. This was the hearing officer's only visit to Coreys' property and to the hog facility. Coreys contended that their residence had been assessed at the wrong grade—B+1 instead of C+1 (comparable homes in the area were graded C+1).<sup>398</sup>

The court observed that regulations were clear that building grade determinations require "careful consideration and sound judgment on the part of the assessor"<sup>399</sup> and that the assessor was to make adjustments "to account for variations in the quality of materials, workmanship, and design."<sup>400</sup> The hearing officer identified particular features which he observed from the outside (because the Coreys would not allow him to go inside the house) that supported his determination of a B+1 grade. These included architectural elements, roof lines, windows, brick and woodwork. Coreys did not dispute this testimony. Thus, the court held that in such circumstances taxpayers have no legitimate complaint that some other features might justify a lower grade, because taxpayers may not claim

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395. *Id.* at 1116.

396. *Id.*

397. 674 N.E.2d 1062 (Ind. T.C. 1997).

398. *Id.* at 1064.

399. *Id.* (quoting IND. ADMIN. CODE tit. 50, r 2.1-4-3(f) (1992) (now repealed)).

400. *Id.* at 1064-65 (quoting IND. ADMIN. CODE tit. 50, r 2.1-4-3(f) (1992) (now repealed)).

error in an assessment due to their own actions.<sup>401</sup>

However, with respect to the desirability rating of the house, Coreys asserted that the ISBTC, in their assessment of the Coreys' residential property, did not properly consider the negative effect that a nearby hog facility had on their neighborhood. The court observed that under the ISBTC's regulations, neighborhood desirability constitutes "a composite judgment of the overall desirability based on the condition of agreeable living and the extent of residential benefits arising from the location of the dwelling."<sup>402</sup> Accordingly, the court stated: (1) an evaluation of neighborhood desirability looks beyond the improvement itself to external features of the property's location that may affect its value; (2) the rating level describes the balance between desirable and undesirable factors in the improvement's location; and (3) Coreys bear the burden of proving that the neighborhood desirability rating is incorrect.<sup>403</sup> The court found that Coreys met this burden. Coreys provided the hearing officer with two jars, redolent with swine, which jars remained unopened, but a witness for the ISBTC conceded at trial that the jars would have smelled bad had they been opened. In meeting their burden of proof, Coreys placed the burden of going forward on the ISBTC to show that the determination was correct. Thus, the only evidence before the court (the Coreys' evidence) was inconsistent with the "average" neighborhood desirability rating. Therefore, the court held that in the absence of evidence contradicting Coreys' claim, the ISBTC's rating is arbitrary and capricious and unsupported by substantial evidence.<sup>404</sup>

#### *E. Indiana Sales And Use Taxes*

1. *J & J Vending, Inc. v. Indiana Department of State Revenue.*<sup>405</sup>—J & J Vending, Inc. (J & J) was an Indiana corporation in the business of selling food through vending machines. J & J stocked its machines with food items and then deployed the machines on the property of other entities and businesses. J & J did not sell food on or near J & J's own property. J & J employees visited the machines to empty the cash boxes, restock food, and service the machines. Consequently, Indiana sales tax was not collected separately from the purchase price of the food. Instead, J & J charged a composite price for each item of food sold and paid the Indiana sales tax from the vending machines' gross receipts. J & J filed claims for refund of certain Indiana sales taxes, which claims were denied by the IDSR. Therefore, J & J appealed the IDSR's denials.<sup>406</sup>

The court first reviewed the basic provisions of the Indiana sales tax law,

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401. *Id.* at 1065 (citing *State Bd. of Tax Comm'rs v. South Shore Marina*, 422 N.E.2d 723, 730 (Ind. Ct. App. 1981)).

402. *Id.* (quoting IND. ADMIN. CODE tit. 50, r 2.1-3-3(m) (1992) (now repealed)).

403. *Id.* at 1065-66 (citing *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890, 893 (Ind. T.C. 1995)).

404. *Id.* at 1066.

405. 673 N.E.2d 1203 (Ind. T.C. 1996).

406. *Id.* at 1205.

including the following provision which allowed exemptions from the Indiana sales taxes for food for human consumption.<sup>407</sup> The term “food for human consumption” does not include certain food items and transactions, which remain subject to taxation.<sup>408</sup> J & J did not dispute that as a retail merchant, it had to collect sales tax on its sales.<sup>409</sup> J & J claimed that it was entitled to the exemption available to other merchants for sales of “food for human consumption” under the provisions of section 6-2.5-5-20(b) of the Indiana Code. The two issues presented to the court were (1) whether items sold through vending machines were subject to Indiana’s gross retail tax; and, (2) whether the Indiana gross retail tax, as applied to vending machine operators, violated the Equal Privileges or Immunities clause of the Indiana Constitution or the Equal Protection clause of the federal Constitution.

With respect to the first issue, the court stated that the plain language of the

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407. “Food for human consumption” included:

- (1) Cereals and cereal products;
- (2) Milk and milk products, including ice cream;
- (3) Meat and meat products;
- (4) Fish and fish products;
- (5) Eggs and egg products;
- (6) Vegetables and vegetable products;
- (7) Fruit and fruit products, including fruit juices;
- (8) Sugar, sugar substitutes, and sugar products;
- (9) Coffee and coffee substitutes;
- (10) Tea, cocoa, and cocoa products;
- (11) Spices, condiments, extracts, and salt;
- (12) Oleomargarine; and
- (13) Natural spring water.

*Id.* (citing IND. CODE ANN. § 6-2.5-5-20(b)).

408. Food items that *remain* subject to taxation include:

- (1) Candy, confectionery, and chewing gum;
- (2) Alcoholic beverages;
- (3) Cocktail mixes;
- (4) Soft drinks, sodas, and other similar beverages;
- (5) Medicines, tonics, vitamins, and other dietary supplements;
- (6) Water (except natural spring water), mineral water, carbonated water, and ice;
- (7) Pet food;
- (8) Food furnished, prepared, or served for consumption at a location, or on equipment, provided by the retail merchant;
- (9) Meals served by a retail merchant off the merchant’s premises;
- (10) Food sold by a retail merchant who ordinarily bags, wraps, or packages the food for immediate consumption on or near the merchant’s premises, including food sold on a “take out” or “to go” basis; and
- (11) *Food sold through a vending machine or by a street vendor.*

*Id.* at 1205-06 (citing IND. CODE ANN. § 6-2.5-5-20(c)).

409. *Id.* at 1206 (citing IND. CODE ANN. §§ 6-2.5-2-1, 6-2.5-4-1 (West 1989)).

statute shows that vending machine sales are not exempt from the Indiana sales tax, because “food sold through a vending machine” is specifically excluded from the definition of “food for human consumption.”<sup>410</sup> With respect to the issue involving the Equal Privileges or Immunities clause of the Indiana Constitution and the Equal Protection clause of the federal Constitution, the court observed that the Indiana Constitution states: “The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens.”<sup>411</sup> Then, the court stated that there was a two-step analysis in determining the constitutionality of a statute granting unequal privileges or immunities.<sup>412</sup> The court stated that, “[f]irst, the disparate treatment ‘must be reasonably related to inherent characteristics which distinguish the unequally treated classes.’ Second, those similarly situated must be given the same preferential treatment—uniformly and equally.”<sup>413</sup>

Under this two-step process, the court first determined whether the exclusion of vending machine sales from the exemption is reasonably related to their distinctive characteristics, and the court stated that the exclusion was reasonably related to these distinctive characteristics.<sup>414</sup> The court observed that the general assembly decided to exempt only staple items purchased while grocery shopping, which tends to involve the purchase of a variety of foods to be prepared at home and consumed as part of meals over an extended period of time, so as to help less fortunate individuals who are less likely to spend their limited resources dining out or on single-portion purchases.<sup>415</sup> The court also observed that taxing single-serving portions does not add to the regressivity of the sales tax, and exempting such items would unnecessarily decrease the revenue obtained from such a tax.<sup>416</sup> Because vending machine sales commonly involved isolated purchases of single-serving, prepackaged items, most often for immediate consumption, the general assembly excluded vending machine sales from the exemption.<sup>417</sup>

The court then examined whether the vending sales classification was being utilized consistently. The court concluded that vending machines are in a class separate from convenience and grocery stores.<sup>418</sup> Furthermore, the IDSR’s stated policy is to tax even staple food items sold in convenience and grocery stores “if they are sold in small quantities and, therefore, are prepared for immediate consumption.”<sup>419</sup> With respect to the Equal Protection clause of the United States Constitution, this clause provides that no state shall “deny to any person

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410. *Id.* (citing IND. CODE ANN. § 6-2.5-5-20(c)(11)).

411. *Id.* at 1207 (quoting IND. CONST. art. 1, § 23).

412. *Id.* (citing *Collins v. Day*, 644 N.E.2d 72, 78-80 (Ind. 1994)).

413. *Id.* (quoting *Collins*, 644 N.E.2d at 80).

414. *Id.*

415. *Id.* at 1207-08.

416. *Id.* at 1208.

417. *Id.*

418. *Id.*

419. *Id.* at 1208 n.3 (quoting IND. ADMIN. CODE tit. 45, § 2.2-5-39 (1992)).

within its jurisdiction the equal protection of the laws.”<sup>420</sup> The court added that this provision “does not forbid classifications. It simply keeps governmental decisionmakers from treating differently persons who are in all relevant respects alike.”<sup>421</sup> For these reasons, the court concluded that the separate classification and treatment of vending machine sales is rationally related to legitimate policies supporting the exemption statute and that J & J had not been treated differently from other vending machine operators. Therefore, there was no violation of J & J’s federal equal protection guarantees and J & J Vending was denied an Indiana sales tax refund.<sup>422</sup>

2. *In Mid-America Energy Resources, Inc. v. Indiana Department of State Revenue.*<sup>423</sup>—In this case, the petitioner (“MAER”) is an Indiana corporation providing air conditioning to downtown Indianapolis businesses, such as the RCA (Hoosier) Dome, IUPUI facilities, Indiana Government Center, and Indianapolis Star/News building. MAER was the sister company of Indianapolis Power and Light Company with IPALCO enterprises being the common parent company.<sup>424</sup>

MAER operated a central processing plant where city water is chilled to forty degrees Fahrenheit using steam turbine driven chiller compressors, a refrigerant condenser, an expansion valve, and an evaporator. The water was then chemically treated to prevent corrosion, deposition, and microbiological growth. The chilled and treated water was distributed to customers through an underground distribution system. MAER’s customers used the chilled water to cool and condition the air in their buildings. Once the water was fifty-two degrees Fahrenheit, it is returned to MAER through the same underground distribution system. Upon receiving the warmed and used water, MAER re-treated and re-chilled the water to be sent back out to customers. MAER charged its customers based on the quantity of water delivered to the customer, as well as the temperature differences in the water that is returned. This relationship was converted to “ton hours” and is the basis for the consumption charge paid by the consumer. If the consumer did not return the same quantity of water that was delivered, a “lost water charge” was incurred. MAER is a registered retail merchant that collected sales tax on the sales made to non-exempt customers and remitted such monies to the IDSR.<sup>425</sup>

During the tax years 1990, 1991, and 1992, MAER purchased equipment and consumables for its business but paid no sales and use tax. MAER believed it was exempt from such taxation under the equipment exemption,<sup>426</sup> the

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420. *Id.* at 1208 (quoting U.S. CONST. amend XIV, § 1).

421. *Id.* (quoting *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992)).

422. *Id.*

423. 681 N.E.2d 259 (Ind. T.C. 1997).

424. *Id.* at 260.

425. *Id.*

426. *Id.* at 261 (citing IND. CODE ANN. § 6-2.5-5-3 (West Supp. 1996)).

consumption exemption,<sup>427</sup> or as a utility.<sup>428</sup> In December 1993, the IDSR notified MAER that MAER owed retail sales tax plus interest for the tax years 1990, 1991, and 1992, totaling \$702,664.04. MAER protested the assessment in February 1994. A hearing was held, and the IDSR issued a Letter of Findings eight months later, denying MAER's challenge. MAER filed a rehearing request one month later which request was granted, but the second Letter of Findings also provided no relief.

MAER filed this original tax appeal one month later to set aside the IDSR's final determination. Indiana imposed an excise tax on tangible personal property stored, used, or consumed in Indiana.<sup>429</sup> Several exemptions from the use tax were available to taxpayers,<sup>430</sup> including what are collectively known as the industrial exemptions.<sup>431</sup>

With respect to the equipment exemption, MAER did not pay sales tax on the equipment it purchased to operate its chilling and treatment facility because MAER believed it was exempt.<sup>432</sup> The IDSR denied MAER the exemption because it found that MAER was providing a cooling service. The IDSR argued that MAER's chilling of water did not significantly change the water, and thus no "production" or "processing" occurred and no "other tangible personal property" was produced. The court disagreed observing that the equipment exemption provided: "Transactions involving manufacturing machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for his direct use in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property."<sup>433</sup> To qualify for this exemption, taxpayers had to meet two requirements. First, the taxpayer had to acquire the property for the taxpayer's direct use. Second, the taxpayer had to use that property in direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property. These two tests compose what is referred to as the double direct standard.<sup>434</sup>

The parties contested whether MAER's operation constituted "direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property."<sup>435</sup> The court observed that the equipment exemption required taxpayers to show that the taxpayers are

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427. *Id.* (citing IND. CODE ANN. 6-2.5-5-1).

428. *Id.* (citing IND. CODE ANN. §§ 6-2.5-4-5, 6-2.5-5-12).

429. *Id.* (citing IND. CODE ANN. § 6-2.5-3-2 (West Supp. 1996)).

430. *Id.* (citing IND. CODE ANN. §§ 6-2.5-5-1 to -33 (West Supp. 1989)).

431. *Id.* (citing *Harlan Sprague Dawley v. Indiana Dep't of State Revenue*, 605 N.E.2d 1222, 1224 (Ind. T.C. 1992)).

432. *Id.*

433. *Id.* at 262 (quoting IND. CODE ANN. § 6-2.5-5-3 (no year given)).

434. *Id.* (citing *Department of State Revenue v. Cave Stone, Inc.*, 457 N.E.2d 520, 525 (Ind. 1983)).

435. *Id.* (quoting IND. CODE ANN. § 6-2.5-5-3).

engaged in “production.”<sup>436</sup> “Production” can occur through manufacturing, processing, or the other activities which are listed in the exemption,<sup>437</sup> but that it does not matter whether the taxpayer’s operation fits within a particular category, such as processing or manufacturing.<sup>438</sup> The court stated that the term “production” is defined broadly in this context and focuses on the creation of a marketable good.<sup>439</sup> The court determined that MAER is engaged in the “direct production” of “other tangible personal property.” The court observed that in order to cool water to forty degrees, MAER used steam-driven turbine chillers to remove heat, a form of energy, from the water. This process created a significant change in the properties of water. The chilled water was then pumped through a primary chiller loop where the chilled water was chemically treated to prevent corrosion, deposition, and microbiological growth. MAER processed ordinary water into water capable of cooling and conditioning air in buildings. MAER’s 40 degree water had utility and properties that the water previously lacked. Thus, the court reasoned, the city water did not retain its original state once the water was chilled and treated. The court then concluded that MAER’s operation created a new and marketable good, or in the language of the statute, produces “other tangible personal property.”<sup>440</sup>

With respect to the consumption exemption, MAER also claimed an exemption for the water treatment chemicals and steam service which MAER purchased. The consumption exemption provided:

Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for his direct consumption as a material to be consumed in the direct production of other tangible personal property in his business of manufacturing, processing, refining, repairing, mining, agriculture, horticulture, floriculture, or arboriculture. This exemption included transactions involving acquisitions of tangible personal property used in commercial printing as described in IC 6- 2.1-2-4.<sup>441</sup>

As one of the three industrial exemptions, the consumption exemption was treated, in most respects, identically to the equipment exemption.<sup>442</sup> The court found that MAER consumed the chemicals and steam service in the “direct production” of “other tangible personal property,” and, therefore, is entitled to the consumption exemption.<sup>443</sup> With respect to MAER’s alternative claims, the

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436. *Id.* (citing *Mechanics Laundry & Supply, Inc. v. Indiana Dep’t of State Revenue*, 650 N.E.2d 1223, 1228 (Ind. T.C. 1995)).

437. *Id.* (citing *Cave Stone*, 457 N.E.2d at 524).

438. *Id.* (citing *Harlan Sprague*, 605 N.E.2d at 1226).

439. *Id.* (citing *Mechanics Laundry*, 650 N.E.2d at 1229; *Harlan Sprague*, 605 N.E.2d at 1228).

440. *Id.* at 263.

441. *Id.* (quoting IND. CODE ANN. § 6-2.5-5-5.1(b)).

442. *Id.* (citing *Harlan Sprague*, 605 N.E.2d at 1227).

443. *Id.* at 264.



court did not fully address MAER's alternative arguments (i.e., that MAER operated as a non-regulated public utility entitled to the utility exemption)<sup>444</sup> and that MAER constituted a public utility for purposes of section 6-2.5-4-5 or section 6-2.5-5-12 of the Indiana Code. The court concluded that MAER acquired equipment and consumables for direct use in MAER's operations and that MAER's chemical treatment and chilling of water constituted "direct production" of "other tangible personal property" for purposes of the industrial exemptions. The court held that MAER was entitled to claim an exemption from sales and use taxes under both the equipment exemption,<sup>445</sup> and the consumption exemption.<sup>446</sup>

*F. Indiana Property Taxes—Business Real Property*

1. *Componx, Inc. v. Indiana State Board of Tax Commissioners*.<sup>447</sup>—The petitioner ("Componx") owned a building which was valued for the March 1, 1993 assessment under the GCI-Light Warehouse model, but was not given the type of "kit" building adjustment described in Bulletins 91-8 and 92-1. Componx disagreed with this assessment and appealed by filing a Form 131 Petition for Review with the Washington County Board of Review. Componx's main claim was that the building should have been classified as an economy "kit" building and should have received the reduction in base rate. The County denied the petition and Componx subsequently appealed to the ISBTC, which also denied the petition for the "kit" adjustment because Componx's building had slight variations from the basic "kit" building.<sup>448</sup>

Componx claimed that although Componx's building varied somewhat from the classic "kit" model, these slight variations in design were not enough to completely disqualify Componx from receiving the reduction. Instead, Componx argued that the modifications could be accounted for by an increase in grade factor. The court also observed that due to the fact that not all pre-engineered "kit" buildings are eligible for the 50% reduction in base rate, the ISBTC issued Instructional Bulletins 91-8 and 92-1 in order to give assessors guidance as to which buildings should receive the reduction and to outline in detail the different variations of "kit" buildings and which deviations from the basic "kit" model can cause buildings to be disqualified from the 50% reduction in base rate.<sup>449</sup> The court further observed that by comparing the features of the Componx building with those which are listed in the Bulletin, Componx demonstrated that the ISBTC's decision to deny the adjustment was unsupported by substantial evidence.<sup>450</sup>

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444. *Id.* (citing IND. CODE ANN. § 6-2.5-5-12).

445. *Id.* (citing IND. CODE ANN. § 6-2.5-5-3).

446. *Id.* (citing IND. CODE ANN. § 6-2.5-5.5.1).

447. 683 N.E.2d 1372 (Ind. T.C. 1997).

448. *Id.* at 1373-74.

449. *Id.* at 1374.

450. *Id.*

For example, the ISBTC's main justification for disallowing the "kit" adjustment for Componx's building rested on the fact that the thickness of the hard steel used in the support system was 3/16 of an inch and that such thickness in hard steel was substantial enough to disqualify the building from receiving the reduction in base rate.<sup>451</sup> However, undisputed testimony at trial by the taxpayer's witness revealed that 3/16 is actually very lightweight. Further, testimony demonstrated that the building possessed even more characteristics that are indicative of the type of building that qualifies for the 50% adjustment and no evidence which offered by the ISBTC to the contrary. Therefore, the court concluded that by meeting its burden of proof, Componx placed the burden of going forward to show that the determination was correct on the ISBTC.<sup>452</sup> The ISBTC argued that because Componx's building displayed a few additional features, the ISBTC could completely disallow the exemption. However, the court determined that the slight additions to the basic "kit" model could be accounted for by simply raising the grade factor.<sup>453</sup> This could be done since none of the variations affect the actual structure of the building. Therefore, the court reversed the ISBTC's decision.<sup>454</sup>

2. *Joyce Sportswear Co. v. State Board of Tax Commissioners*.<sup>455</sup>—Joyce Sportswear Co. ("Joyce") appealed a final determination of the ISBTC which increased the March 1, 1989 assessment for property which Joyce owned. The following three issues were before the court: (1) whether the Lake County Board of Review's assessment of Joyce's property was invalid; (2) whether the ISBTC had the authority in a taxpayer-initiated petition to assess property more than three years prior to its final determination; and, (3) what was the effect of Joyce's motion to withdraw its petition for review during the pendency of proceedings before the ISBTC.<sup>456</sup>

Joyce was a manufacturer of women's apparel which manufacturing facilities were located in Indiana. In 1990, the township assessor assessed the facility and valued the land and the improvements at \$233,970. In March, 1990, Joyce appealed this assessment to the County Board of Review. In April, 1992, the County Board of Review issued its decision. For the tax years 1989 and 1990, the County Board of Review concurred with the original findings of the township assessor, but for the tax year 1991, the County Board of Review increased the total assessment from \$233,970 to \$236,570. One month later, Joyce appealed to the ISBTC. Ultimately, an ISBTC hearing officer heard the case in September 1995, more than three years after Joyce filed its petition for review with the ISBTC. One month later in October, 1995, the hearing officer notified Joyce that the hearing officer would recommend an increase in the assessment to a supervisor. On August 16, 1996, the ISBTC issued its final determination,

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451. *Id.*

452. *Id.* at 1375 (citing *Corey*, 674 N.E.2d at 1066).

453. *Id.*

454. *Id.*

455. 684 N.E.2d 1189 (Ind. T.C. 1997).

456. *Id.* at 1190.

assessing the total value of the property at \$318,260 as of March 1, 1989. Joyce filed an appeal with this court, arguing that because the County Board of Review assessed its property differently for different years, the County Board of Review's assessment was invalid and void. The ISBTC argued that the County Board of Review had this authority and that the ISBTC had the authority to issue a final determination with respect to all of the tax years in question. Under section 6-1.1-15-3(a) of the Indiana Code, a taxpayer could file a petition for review of a County Board of Review assessment with the ISBTC.<sup>457</sup> However, when the taxpayer did so, the ISBTC was free to "assess the property in question, correcting any errors which may have been made."<sup>458</sup> The court determined that the ISBTC may not cure a failure on the part of lower taxation authorities to comply with the statutory prerequisites to a valid assessment by way of its ability to correct any assessment error in taxpayer-initiated petitions. The court reasoned that the ISBTC's power under section 6-1.1-15-4 was limited to correcting errors in the assessment process itself and any other rule would allow the ISBTC to validate an otherwise invalid assessment and circumvent the statutory protections afforded taxpayers.<sup>459</sup>

Because the ISBTC made its final determination pursuant to section 6-1.1-15-4, the court examined whether the County Board of Review's assessment was valid. Joyce challenged the "jurisdiction" of the County Board of Review to assess different values for different years in between general assessments.<sup>460</sup> The assessment of Joyce's property was properly before the County Board of Review. The County Boards of Review and the township assessors have the authority to reassess property at different values for the interim years between general assessments. The statutory prerequisites for the County Board of Review's ability to assess Joyce's property had been satisfied (i.e., Joyce filed a petition for review triggering the County Board of Review's ability to assess its property).<sup>461</sup> Therefore, the court held that the County Board of Review's assessment of Joyce's property was not invalid, and any error in the assessment was correctable by the ISBTC.<sup>462</sup>

Joyce next argued that the ISBTC may only assess its property for the three years prior to the ISBTC's final determination. The ISBTC argued that the three-year limitation applicable to its power to assess property *sua sponte* did not apply where the ISBTC assesses property in the course of taxpayer-initiated petitions. The court reasoned that when it is faced with a question of statutory interpretation, it first looks to the plain language of the statute.<sup>463</sup> It recognized that where the language is unambiguous, the court has no power to construe the

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457. *Id.* at 1191.

458. *Id.* (quoting IND. CODE ANN. § 6-1.1-15-4(a) (West 1996)).

459. *Id.* at 1192.

460. *Id.* (citing IND. CODE ANN. § 6-1.1-4-25, -30 (West Supp. 1996)).

461. *Id.* (citing IND. CODE ANN. § 6-1.1-15- 2.1(b) (West Supp. 1996)).

462. *Id.*

463. *Id.*

statute for the purpose of limiting or extending its operation.<sup>464</sup> The court found that by its own terms, section 6-1.1-9-4(a) did not apply to proceedings under section 6-1.1-15-4. On its face, section 6-1.1-9-4(a) was found not to apply to proceedings under section 6-1.1-14-10. However, it is made applicable by section 6-1.1-14-11. The general assembly in plain and unambiguous terms has limited the reach of this statute. The court refused to extend it. The ISBTC could properly assess Joyce's property as of March 1, 1989.<sup>465</sup>

Lastly, Joyce argued that it may withdraw its petition to the ISBTC as of right, thereby ending the case.<sup>466</sup> According to Joyce, this right was grounded both in Indiana Trial Rule 41(A)<sup>467</sup> and the common law procedural device known as the retraxit. The court looked to the Indiana Trial Rules and cases construing them for guidance in determining whether Joyce could withdraw its petition as of right.

The court observed that in hearings before the ISBTC, responsive pleadings are not required. This case therefore presented the issue of the operation of Rule 41(A) by analogy in a situation where no responsive pleading was required. According to Joyce, only a responsive pleading by the ISBTC would have foreclosed its right to withdraw its petition. In its memorandum, Joyce stated that "absent a counterpetition, a voluntary dismissal is available anytime prior to judgment" in a marriage dissolution proceeding.<sup>468</sup> The court concluded after analyzing case law if the ISBTC can demonstrate either substantial expense or legal prejudice, Joyce's petition to withdraw was properly denied.<sup>469</sup> At the time Joyce moved to withdraw its petition, the proceeding was in an advanced stage. Two evidentiary hearings had been held, and the hearing officer had decided on a recommendation (subject to Joyce's right to present further evidence).<sup>470</sup>

From a procedural standpoint, most of the work had been completed. To

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464. *Id.* (citing *Cooper Indus., Inc. v. Department of State Revenue*, 673 N.E.2d 1209, 1211 (Ind. T.C. 1996)). Section 6-1.1-9-4(a) of the Indiana Code states, "Real property may be assessed, or its assessed value increased, for a prior year under this chapter only if the notice required by section 1 of this chapter is given within three (3) years after the assessment date for that prior year."

465. *Id.*

466. *Id.*

467. IND. TR. R. 41(A) provides:

(A) Voluntary Dismissal: Effect Thereof.

(1) By Plaintiff—By Stipulation. Subject to contrary provisions of these rules or of any statute, an action may be dismissed by the plaintiff without order of court:

(a) by filing a notice of dismissal at any time at any time before service by adverse party of an answer or of a motion for summary judgment, whichever first occurs. . . .

468. *Joyce Sportswear*, 684 N.E.2d at 1193 n.5.

469. *Id.*

470. *Id.* at 1193 & n.7 (citing *Castello v. State Bd. of Tax Comm'rs*, 638 N.E.2d 1362, 1364 (Ind. T.C. 1994) (noting that a taxpayer has a right to present additional evidence where ISBTC raises new issues on petition to review)).

allow Joyce to withdraw would waste a substantial amount of time and effort. This constitutes a substantial expense. Therefore, a voluntary withdrawal as of right was inappropriate, and the ISBTC was well within its power to deny it. Taxpayers in Joyce's situation are on notice that a petition for review may ultimately result in an increase in assessment. It is a risk that taxpayers may weigh in decisions to petition the ISBTC for review.<sup>471</sup> The court concluded that in this particular case, to allow Joyce to withdraw its petition as of right would foreclose the ISBTC from ever reassessing Joyce's property for the tax years in question.<sup>472</sup> The original assessment date was well over three years ago. Therefore, the only avenue for the ISBTC to reassess Joyce's property is by way of Joyce's petition. Had the petition been dismissed, the ISBTC would have suffered legal prejudice, i.e., the inability to arrive at the correct assessment of Joyce's property for the tax years in question. As a result, Joyce was not entitled to withdraw its petition as of right.

Joyce also contended that a common law procedural device known as retraxit can be used in proceedings before the ISBTC and that the device allows a withdrawal of its petition as of right.<sup>473</sup> The court ruled that, assuming that the retraxit may be used in proceedings before the ISBTC, it will examine whether the retraxit allows Joyce to withdraw its petition as of right.<sup>474</sup> The ISBTC's ability to assess Joyce's property is a legal right conferred by statute and is triggered by Joyce's filing of a petition. The question, then, is whether Joyce could prejudice that right by the use of the retraxit. Because the retraxit is a kind of voluntary dismissal, the court looked to whether voluntary dismissals could prejudice the legal rights of the adverse party. In Indiana, one party's voluntary dismissal of the action did not carry with it the adversary's counterclaim without the adversary's consent.<sup>475</sup> A counterclaim is a legal right analogous to the ISBTC's statutory right to assess the property in this case. Because the retraxit may not be used to prejudice counterclaims, the court concluded that it also may not be used to prejudice statutory rights triggered by the filing of a petition for review.<sup>476</sup>

Consequently, the court held that the retraxit, even if applicable to proceedings before the ISBTC, may not be used to prejudice the ISBTC's right to assess Joyce's property.<sup>477</sup> At common law, the retraxit was a device by which the party using it renounced that party's rights concerning the action. It could not

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471. *Id.* at 1194 (citing *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890, 894 n.4 (Ind. T.C. 1995); *Castello*, 638 N.E.2d at 1365; *Wirth v. State Bd. of Tax Comm'rs*, 613 N.E.2d 874, 879 (Ind. T.C. 1993)).

472. *Id.*

473. *Id.* (citing *Ilagan v. McAbee*, 634 N.E.2d 827 (Ind. Ct. App. 1994)).

474. *Id.* at 1194-95.

475. *Id.* at 1195 (citing *Judd v. Gray*, 59 N.E. 849, 850-51 (1901); *Egolf v. Bryant*, 63 Ind. 365 (1878); *Nicodemus v. Simons*, 23 N.E. 521, 523 (1890) (retraxit by one plaintiff cannot result in prejudice to a co-plaintiff)).

476. *Id.*

477. *Id.*

be used, absent consent by the other party, to extinguish the vested rights of the other party. In this case, the court found that the ISBTC, due to Joyce's filing of its petition, had a vested right to assess Joyce's property thereby arriving at its view of the correct assessment for the tax years in question. To allow Joyce to unilaterally withdraw its petition would prejudice that right. The court concluded that ISBTC properly denied Joyce's motion.<sup>478</sup>

In *State Board of Tax Commissioners v. Two Market Square Associates Limited Partnership*,<sup>479</sup> the initial petitioners in the Indiana Tax Court were Two Market Square Associates Limited Partnership, Duke Realty Investments, Inc., The Equitable Life Assurance Society of the United States, and W.R.C. Properties, Inc. all of whom owned parcels of land and improvements, including one or more parking lots on the land, in the Park 100 Industrial Complex located in Pike Township, Indiana.<sup>480</sup> For both the 1989 and 1990 assessments of these properties, the Pike Township Assessor classified each entire parcel of land as primary commercial/industrial land and the petitioners challenged the assessments before the Marion County Board of Review by alleging that portions of the parcels should have been classified as undeveloped commercial/industrial land. The Marion County Board of Review refused to reclassify the portions of property from primary to undeveloped. Thereafter, each of the petitioners sought administrative review of the assessments before the ISBTC. After administrative hearings, each petitioner amended the administrative pleadings to assert that not only should portions of its property be reclassified as undeveloped, but also, that the paved parking areas should be reclassified from primary to secondary land as well. The ISBTC decided to reclassify the portions of the primary land as undeveloped, but determined that the petitioners' paved parking areas were properly assessed as primary commercial/industrial land. The petitioners then initiated original tax appeals challenging the valuation of their respective properties for the 1989 and 1990 assessment dates. The Indiana Tax Court consolidated the four appeals under one cause number and granted summary judgment in favor of the petitioners, stating that the issue before the Indiana Tax Court was whether the ISBTC erred in classifying the petitioners' paved parking areas as primary commercial/industrial land under title 50, section 2.1-4-2(f) of the Indiana Administrative Code.<sup>481</sup> With respect to this issue, the Indiana Tax Court determined that the administrative code required all commercial/industrial land used for parking to be classified as secondary, because of the wording of the ISBTC's regulations.<sup>482</sup> The Indiana Supreme Court granted a petition for review. In reviewing the case, the Indiana Supreme Court observed that the ISBTC was responsible to promulgate rules governing real property assessments

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478. *Id.*

479. 679 N.E.2d 882 (Ind. 1997).

480. *Id.* at 883.

481. *Id.* at 884 (citing *Two Market Square v. State Bd. of Tax Comm'rs*, 656 N.E.2d 308, 309 (Ind. T.C. 1995)).

482. *Id.*

in the State of Indiana<sup>483</sup> and that these rules explained to assessors and other interested persons how different types of property should be assessed. The Indiana Supreme Court also observed that a general reassessment, effective in 1979, required the reassessment of all real property in Indiana and that a comprehensive set of ISBTC regulations contained in title 50, sections 2-1-1 to 2-13-5<sup>484</sup> governed all real property assessments between the 1979 general reassessment and the 1989 general reassessment. The Indiana Supreme Court stated title 50, section 2-2-6 of the Indiana Administrative Code guided assessors in assigning a land “type” code to a particular parcel of land between the 1979 and 1989 reassessments.<sup>485</sup>

The 1989 and 1990 assessments were governed by a revised set of rules.<sup>486</sup>

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483. *Id.* (citing IND. CODE §§ 6-1.1-31-1 to -9 (1993)).

484. *Id.* (citing IND. ADMIN. CODE tit. 50, rr. 2-1-1 to 2-13-5 (1979 ed., repealed 1989)).

485. It was promulgated as follows:

TYPE refers to a one digit code denoting the classification of the parcel, or portion thereof, according to its use.

In entering acreage or square footage, the following type codes apply:

Enter 1 PRIMARY IND/COMM SITE to indicate that portion of the land utilized as the primary building site or plant site, *including primary parking and yard storage*.

Enter 2 SECONDARY IND/COMM SITE to indicate that portion of the land utilized for uses which are “secondary” to the primary use and, therefore, require individual treatment. Use Subcodes . . .

(21) *to indicate that the secondary use is parking*; generally applicable to industrial operations.

(22) *to indicate that the secondary use is yard storage*, referring to that portion of the land predominantly utilized for material and/or product storage; generally applicable to industrial operations.

(23) *to indicate the secondary use as a dump area*, referring to that portion of the land predominantly utilized for refuse; generally applicable to industrial operations.

Enter 3 UNDEVELOPED to indicate that portion of land which is unused but which is capable of being used.

*Id.* at 884-85 (quoting IND. ADMIN. CODE tit. 50, r 2-2-6 (1979 (emphasis added))).

486. The regulation contained in IND. ADMIN. CODE tit. 50, r 2-2-6 (“1989 version”) was updated and promulgated as follows:

“LAND TYPE” refers to a code that denotes the classification of all or part of the parcel according to its use.

The following codes apply to the entry of acreage or square footage:

In April of 1989 the State Board issued Reassessment Bulletin RO-33 ("RO-33") which provided in part:

The State Board of Tax Commissioners has defined that the primary building or plant site would be land utilized as follows:

- 1) The portion of land located under the buildings.
- 2) *The portion of the land used for primary parking areas.*
- 3) The portion of land used as roadways.
- 4) The portion of land used as primary yard storage.<sup>487</sup>

The Indiana Supreme Court observed that a comparison of the 1979 version with the 1989 version revealed that the 1989 version did not include the specific language indicating that primary site "includ[es] primary parking and yard storage."<sup>488</sup> However, RO-33 clarified that ambiguity. Therefore, the Indiana Supreme Court concluded that the issue before the Indiana Supreme Court was whether, under title 50, section 2-1-4-2 of the Indiana Administrative Code, paved parking areas could be assessed in 1989 and 1990 as secondary only (as the Indiana Tax Court had concluded) or as either primary or secondary (as the ISBTC contended).<sup>489</sup>

In examining the applicable regulations, the Indiana Supreme Court determined that there was nothing in the administrative code which required that parking be classified only as secondary.<sup>490</sup> The court observed that the ISBTC promulgated the section of the administrative code and interpreted the regulation to permit land used for parking to be treated as primary or secondary depending

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Enter "1" to indicate "PRIMARY IND/COMM SITE" which is the portion of the land utilized as the primary building site or plant site.

Enter "2" to indicate "SECONDARY IND/COMM SITE," which is the portion of the land utilized for uses which are secondary to the primary use and, therefore, require individual treatment. Use the following subcodes, which generally apply to industrial operations:

"21" to indicate that the secondary use is parking

"22" to indicate that the secondary use is yard storage, referring to that portion of the land predominantly utilized for material or product storage

"23" to indicate the secondary use as a dump area, referring to that portion of the land predominantly utilized for refuse

Enter "3" to indicate "UNDEVELOPED", which is the portion of land that is usable but is unused.

*Two Market Square*, 679 N.E.2d at 885.

487. *Id.*

488. *Id.*

489. *Id.*

490. *Id.* at 886.



upon its use. Further, the ISBTC's interpretation of the administrative code section was evidenced by the following: (1) ISBTC's promulgation of Reassessment Bulletin RO- 33 explaining that "primary building site," included the portions of land used for parking; (2) during the 1989 and 1990 assessments, the ISBTC approved the classification of parking areas as primary commercial land in the appropriate cases; and, (3) the 1992 version of the assessment rules included "regularly used parking areas" as an example of primary commercial or industrial land.<sup>491</sup> Thus, the Indiana Supreme Court concluded that the ISBTC's interpretation of the administrative code was not inconsistent with the regulation itself, and in an attempt to give the words and phrases of the regulation their plain and ordinary meaning, the Indiana Supreme Court construed the statute to permit the classification of parking land as either primary or secondary.<sup>492</sup> The Indiana Supreme Court also construed the relevant provision of the regulation as an explanation to local assessment officials that they should enter subcode 21 on the property record card when the secondary commercial use is parking.<sup>493</sup> Finally, the Indiana Supreme Court ordered that summary judgment be entered in favor of the State Board of Tax Commissioners.<sup>494</sup>

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491. *Id.* (citing IND. ADMIN. CODE tit. 50, r 2.2-4-1(18) (1992)).

492. *Id.*

493. *Id.*

494. *Id.* at 886-87.