RECENT DEVELOPMENTS IN INDIANA'S TAX CASE LAW: SURVEY 2022

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INTRODUCTION

This Article surveys the tax decisions issued by the Indiana Supreme Court ("Supreme Court") and the Indiana Tax Court ("Tax Court") from December 1, 2021 to October 31, 2022. During this period, the Tax Court issued twelve published opinions—eleven concerning real property tax and one concerning income tax.[1] The Supreme Court did not issue any tax-related opinions during this period. The Article also discusses the Indiana General Assembly's repeal of a property tax statute that overrides a 2021 Supreme Court tax decision and a 2022 Tax Court decision that relied on it.

I. INDIANA TAX COURT DECISIONS

A. Real Property Tax

1. Matthew A. Schiffler v. Marion County Assessor.[2]—The issue before the Tax Court was whether the Indiana Board of Tax Review ("IBTR") erroneously used a combination of the 1%, 2%, and 3% property tax caps when it calculated the 2019 real property tax liability of a residential property and its improvements.[3]

Matthew Schiffler (Schiffler) owned residential real property in Indianapolis, Indiana, located in Marion County.[4] The property consisted of 2.56 acres on which sat a house with an attached garage, a detached carriage house, and a detached two-car garage.[5] For the 2019 residential real property tax year, the Marion County Assessor computed Schiffler's property tax liability differently for each building, applying a 1% property tax cap to the assessed value of the house with the attached garage, a 2% property tax cap to the assessed value of the

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1. *See Indiana Appellate Decisions—Tax Court*, https://public.courts.in.gov/decisions?c=9550 [https://perma.cc/3U27-GYU9] (last visited Nov. 9, 2022).

2. 184 N.E.3d 726 (Ind. T.C.), *trans. denied*, 195 N.E.3d 856 (Ind. 2022). On March 25, 2022, the Assessor filed with the Indiana Supreme Court its *Notice of Intent to Petition for Review*. *See* Petition for Review, Schiffler v. Marion Cnty. Assessor, 195 N.E.3d 856 (Ind. June 22, 2022) (No. 21T-TA-00014). On September 22, 2022, the Indiana Supreme Court denied the request for review. *See* Order Denying Petition for Review, Schiffler v. Marion Cnty. Assessor, 195 N.E.3d 856 (Ind. Sept. 22, 2022) (No. 21T-TA-00014).

3. *Schiffler*, 184 N.E.3d 726.

4. *Id.* at 726-27.

5. *Id.* at 726.

detached carriage house, and a 3% property tax cap to the assessed value of the detached garage.[6] The Indiana General Assembly implemented the so-called caps to limit a taxpayer's property tax liability to a certain percentage of his or her property's gross assessed value.[7] These tax caps comport with the Indiana Constitution, which provides that any tax liability on a principal place of residence and its curtilage is limited to—or capped at—1% of its gross assessed value.[8] The percentage of the gross assessed value of a residential property is further reduced by Indiana's standard homestead deduction, which removes from taxation the first $45,000 of a homestead's assessed value.[9]

Schiffler objected to the Assessor's method of computing his property's residential real property tax liability.[10] He argued that the 1% property tax cap also applied to the assessed value of the detached carriage house and garage.[11] Both detached improvements to his real property, Schiffler asserted, qualified for the 1% property tax cap because they were the homestead's curtilage eligible per the Indiana Constitution for the homestead deduction.[12] Schiffler challenged the Assessor's real property tax computation to the Marion County Property Tax Assessment Board of Appeals ("PTABOA"), which denied his appeal, and then he appealed to the IBTR.[13]

The IBTR also rejected Schiffler's argument and denied his appeal.[14] It held that, because the Indiana General Assembly, not the Indiana Constitution, had established tax caps, the task at hand was to determine if Schiffler's property qualified for a homestead deduction under Indiana's homestead deduction statute, "not whether it [met] the constitutional definition of curtilage."[15] Though the IBTR agreed that Schiffler used the detached carriage house and garage as extensions of his home, they did not qualify for the standard deduction because they were not, as mandated by the homestead deduction statute, attached to the home.[16] Because the statute did not define the word "attached," the IBTR interpreted the term using what it believed to be its commonplace meaning.[17] The word "attached" as used in the homestead deduction statute meant, according to the IBTR, that a garage or other residential property structures are structurally

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6. *Id.* at 726-27.

7. *Id.* at 728-29 (citing IND. CODE §§ 6-1.1-20.6-0.3 to -13 (2022) ("governing the application of those property tax caps")).

8. *Id.* at 728; *see also* IND. CONST. ART. X, § 1(f).

9. *Schiffler*, 184 N.E.3d at 728; *see also* IND. CODE § 6-1.1-12-37 (governing Indiana's standard homestead deduction).

10. *Schiffler*, 184 N.E.3d at 729.

11. *Id.*

12. *Id.*

13. *Id.* at 426-27.

14. *Id.* at 427.

15. *Id.*

16. *Id.*

17. *Id.*

connected to the home via a shared roof or wall.[18] The deduction statute's attachment requirement does not include a garage or other residential property structures that merely share a driveway or utilities with a home.[19] Schiffler appealed the IBTR's decision to the Indiana Tax Court.[20]

Before the Tax Court, the Assessor argued that "the application of the standard homestead deduction '[was] simple': it applies to 'one house, one garage, and one acre of land.'"[21] The Tax Court rejected this argument.[22] Indiana's homestead deduction applies to a property owner's dwelling in Indiana.[23] The court said, however, the Assessor's argument mistakenly conflated the terms "dwelling" and "house."[24] A "dwelling" includes the attached property improvements surrounding the house such as a garage, deck or patio, gazebo, or other yard structures.[25] The deduction statute does not limit the number of improvements that qualify as constituting part of a dwelling.[26] Instead, the statute premises an improvement's qualifying as part of a dwelling on how the individual uses it.[27] In other words, the Tax Court defined the word "attached" as used in the homestead deduction statute to mean both an improvement structurally connected to a home (i.e., the traditional meaning) and a structurally unconnected improvement used as an extension of the home (i.e., the newly revised meaning).[28] Because the IBTR determined that Schiffler used the detached carriage house and garage as extensions of his home, they were part of his dwelling and therefore eligible for the standard homestead deduction and the 1% property tax cap.[29]

The Assessor argued that permitting Schiffler to receive the homestead deduction for his detached carriage house and garage violated the "principal place of residence" verbiage contained in both the Indiana Constitution and the Indiana Code and the phrase's interpretation as meaning "one place."[30] Schiffler would be getting the homestead deduction on "multiple places," the Assessor asserted, if his detached carriage house and garage were both eligible.[31] The Tax Court rejected this argument.[32] It noted that it had repeatedly interpreted the phrase "principal place of residence" as a person's true, fixed, permanent home to which

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18. *Id.*
19. *Id.*
20. *Id.*
21. *Id.* at 729; *see also* IND. CODE § 6-1.1-12-37.
22. *Schiffler*, 184 N.E.3d at 729.
23. *Id.*
24. *Id.*
25. *Id.* at 728; *see also* IND. CODE § 6.1-1-12-37(m).
26. *Schiffler*, 184 N.E.3d at 729.
27. *Id.* at 729-30.
28. *See id.*
29. *Id.* at 730.
30. *Id.*
31. *Id.*
32. *Id.*

he or she intends to return after an absence.[33] The permanency of one's home has nothing to do with the number of improvements comprising it.[34] Accordingly, the Tax Court reversed the IBTR's decision, deeming it contrary to Indiana law, and remanded the matter back to the IBTR for further proceedings consistent with the court's ruling.[35]

2. Ingredion, Inc. v. Marion County Assessor.[36]—The first issue before the Tax Court was whether the IBTR erroneously determined that, because the taxpayer's property tax return failed to "'substantially comply' with the property tax statutes and regulations," the three-year rather than the five-month statute of limitations applied and made the Assessor's audit assessment timely filed.[37] The second issue was whether the IBTR erroneously refused to order the Assessor to use the overpayment of taxes in one tax year to offset the underpayment of taxes in two other tax years.[38]

Ingredion, Incorporated (Ingredion) maintained its tangible personal property at its manufacturing facility in Indianapolis, Indiana, which is in Marion County.[39] Ingredion timely filed its Indiana Business Tangible Personal Property Assessment Returns for tax years 2011 through 2013.[40] The Marion County Assessor (Assessor) informed Ingredion that it had initiated an audit of those tax years and requested documents from it to reconcile the company's reported values of its tangible property with its financial records.[41] "During the course of the audit, Ingredion discovered that its former personal property tax preparation firm had incorrectly reported the costs of its assets by 'using the original installed (aka "historical") cost basis, rather than its federal tax cost basis.'"[42] Ingredion informed the Assessor of this via a written report that compared the "personal property costs reported on its Indiana returns to [the] costs reported on its federal

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33. *Id.*

34. *Id.*

35. *Id.* at 731.

36. 184 N.E.3d 731 (Ind. T.C.), *trans. denied*, 197 N.E.3d 822 (Ind. 2022). On March 28, 2022, the Assessor filed its *Notice of Intent to Petition for Review*. *See* Notice of Intent to Petition for Review, Ingredion, Inc. v. Marion Cnty. Assessor, 197 N.E.3d 822 (Ind. March 28, 2022) (20T-TA-00006). On October 24, 2022, the Supreme Court denied the petition for review, though Chief Justice Loretta H. Rush and Justice Derek R. Molter voted to grant transfer. *See* Order Denying Petition for Review, Ingredion, Inc. v. Marion Cnty. Assessor, 197 N.E.3d 822 (Ind. Oct. 24, 2022) (20T-TA-00006). The next Tax Court decision discussed in this survey Article is this one's companion case—also titled *Ingredion, Inc. v. Marion County Assessor*, 184 N.E.3d. 739 (Ind. T.C. 2022). It involves the IBTR's denial of Ingredion's claim for a tax refund related to its assertion that it overpaid its 2011 tangible personal property tax.

37. *Id.* at 732.

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

depreciation schedules."[43] The comparison demonstrated that, after correcting its reporting errors, Ingredion owed additional personal property taxes for 2012 and 2013 but had overpaid for 2011.[44] The Assessor issued Ingredion two Forms 113/PP (Notice of Assessment/Change by an Assessing Official)[45] and a letter summarizing its audit findings for tax years 2012 and 2013.[46] Neither the two Forms 113/PP nor the Assessor's letter discussed the 2011 overpayment.[47]

Ingredion challenged the assessment to the Marion County PTABOA, which upheld it, and then to the IBTR, which ruled the same.[48] Ingredion challenged the IBTR's decision to the Tax Court.[49] Ingredion asserted two arguments. First, it argued that the Assessor's 2012 and 2013 audit assessments were untimely because they were submitted outside the applicable statute of limitations.[50] Taxpayers, it pointed out, are "required to file a personal property tax return each year."[51] "[A] taxpayer [must] make a complete disclosure of all information required by the department of local government finance (DLGF) that is related to the value, nature, or location of [the] personal property."[52] After giving proper notice to the taxpayer, a township assessor, county assessor, or county property tax assessment board of appeals may initiate an audit and "assess omitted or undervalued personal property or increase a taxpayer's personal property assessment."[53] The Assessor must serve the assessment on the taxpayer within three years of the date the taxpayer filed the applicable personal property tax return (hereinafter referred to as the "Three-Year Limitation").[54]

There exists, though, a circumstance in which the Assessor has a much shorter period in which to audit a taxpayer and assess an underpayment, one in which the assessment must be served before the later of: (a) October 30 of the year for which the assessment is made, or (b) five months from the date the taxpayer filed the personal property return (hereinafter referred to as the "Five-Month Limitation").[55] This Five-Month Limitation overrides the Three-Year Limitation if the taxpayer had filed a personal property return that "substantially complied" with the property tax statutes and the DLGF's regulations.[56] In other words, if the taxpayer filed a personal property return that substantially complied

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43. *Id.*

44. *Id.*

45. *See Notice of Assessment/Change by an Assessing Official*—Form 113/PP (State Form 21521 R12/10-19), *accessible at*: https://forms.in.gov/Download.aspx?id=4819.

46. *Ingredion*, 184 N.E.3d at 732.

47. *Id.*

48. *Id.* at 732-33.

49. *Id.* at 733.

50. *Id.* at 732.

51. *Id.* at 733.

52. *Id.* at 733-34 (quoting IND. CODE § 6-1.1-3-9(a) (2011)) (alterations in original).

53. *Id.* at 734 (citing IND. CODE § 6-1.1-9-3(a)).

54. *Id.*

55. *Id.* (citing IND. CODE § 6-1.1-16-1(a)(2)).

56. *Id.* (citing IND. CODE § 6-1.1-16-1(d)).

with the property tax statutes and the DLGF's regulations, the Assessor must serve the assessment on the taxpayer within five months. Accordingly, the controlling statute of limitations turns on whether the taxpayer's return substantially complies with the property tax statutes and the DLGF's regulations.

Despite the significance of the phrase "substantially complies," the Indiana Code does not define it.[57] In 2010, the Tax Court dealt with this in *Lake County Assessor v. Amoco Sulfur Recovery Corp*.[58] In *Amoco*, the DLGF argued that substantial compliance with tax statutes and regulations means "compliance to the extent necessary to assure the reasonable objectives of the [statute and] regulation are met."[59] "The [Tax] Court adopted the [DLGF's] definition and held that Amoco's returns substantially complied because they did not 'substantially undermine[] the objectives of th[e property tax] statutes and regulations.'"[60] While *Amoco* was pending before the Tax Court, the DLGF promulgated a clear rule regarding substantial compliance.[61] Rather than positively defining substantial compliance, the DLGF defined it negatively with a definition of "nonsubstantial compliance." The DLGF's regulation provided that "nonsubstantial compliance" means a tax return:

> (1) omits five percent (5%) or more of the cost per books of the tangible personal property at the location in the taxing district for which a return is filed;
> (2) omits leased property and other nonowned personal property assessable under 50 IAC 4.2-2-4(b) where such omitted property exceeds five percent (5%) of the total assessed value of all reported personal property; or
> (3) is filed with the intent to evade personal property taxes or assessment.[62]

When the IBTR determined if Ingredion failed to file a personal property tax substantially complying with the property tax statutes and the DLGF's regulations, it relied on the definition of substantial compliance the Tax Court had adopted in *Amoco* rather than the definition of nonsubstantial compliance the DLGF adopted in its regulation.[63] Ingredion argued that the IBTR relied on the wrong definition because, since the DLGF's regulation followed *Amoco* and the tax year at issue in that case, and that Ingredion's tax years in question came after the DLGF's promulgation of its regulation, the regulation superseded *Amoco,* and it, not *Amoco*, controlled the IBTR's decision regarding Ingredion's tax return.[64]

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57. *Id.*
58. 930 N.E.2d 1248 (Ind. T.C. 2010).
59. *Ingredion*, 184 N.E.3d at 734 (citing *Amoco*, 930 N.E.2d at 1251) (alteration in original).
60. *Id.* (citing *Amoco*, 930 N.E.2d at 1251-52, 57) (alterations in original).
61. *Id.*
62. *Id.* at 735 (citing 50 I.A.C. 4.2-1-1.1(j)).
63. *Id.*
64. *Id.*

The IBTR's failure to rely on the correct definition, Ingredion argued, meant the IBTR's determination regarding the substantiality compliance of its return with the tax statutes and regulations was faulty and, therefore, invalid.[65] The IBTR's reliance on the wrong definition invalidated its ultimate determination regarding the appliable statute of limitations—that is, the IBTR erroneously determined that the Three-Year Limitation applied; the Five-Month Limitation was the correct one.[66] Because the Assessor issued its 2012 and 2013 assessments against Ingredion outside the applicable five-month period, they were untimely and, therefore, void.[67] In addition, Ingredion argued that its tax returns satisfied the regulation's definition of substantial compliance because they did not exceed its threshold for non-substantial compliance.[68] Ingredion asserted a second argument to the Tax Court. It argued that the IBTR erroneously refused to order the Assessor to use the overpayment of personal property taxes in the tax year 2011 to offset any underpayment of personal property taxes in tax years 2012 and 2013.[69]

The Tax Court disagreed with Ingredion's first argument and rejected it, holding that the IBTR in fact relied on the correct definition of substantial compliance—that is, the definition adopted by the court in *Amoco*.[70] The Tax Court, however, continued. The statute governing the Five-Month Limitation uses the phrase "substantially complies" as the pivot point between whether the Five-Month Limitation or the Three-Year Limitation defines the period in which the Assessor can issue a personal property tax assessment against the taxpayer.[71] The statute does not use the phrase "nonsubstantial compliance" as presented in and defined by the DLGF's regulation.[72] Because the meaning of the statutory phrase "substantially complies," not the meaning of its opposite, "nonsubstantial compliance," was at issue, the Tax Court held, the court's definition of substantial

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65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.* Ingredion's alternative argument that its tax returns satisfied the DLGF's regulation is questionable. According to the Tax Court's opinion, the IBTR ruled that Ingredion's 2012 return accurately reported only 1.6% of its properties' costs, and its 2013 return accurately reported only 2.2% of its properties' costs. *See id.* at 733. If the IBTR's factual findings were accurate, they mean that Ingredion omitted 98.4% of its 2012 properties' costs and 97.8% of its 2013 properties' costs. According to the DLGF's regulation defining a tax return's "nonsubstantial compliance," a return is nonsubstantial if it omits 5% or more of the taxpayer's property's costs. *Id.* at 735. Pursuant to the IBTR's findings, Ingredion's property cost omissions far exceeded the regulation's threshold percentage, thereby making both the 2012 and 2013 returns nonsubstantial. The Tax Court never addressed Ingredion's argument that its personal property tax returns satisfied the DLGF's regulation; the court concluded that the regulation served no role in resolving the dispute between the parties. *Id.* at 737.

69. *Id.*

70. *Id.* at 736-37.

71. *Id.* at 734.

72. *Id.* at 736.

compliance adopted in *Amoco* applied, not the one in the regulation.[73] Accordingly, the Tax Court held that the IBTR "did not abuse its discretion by applying the Court's definition of the term 'substantially complies' in *Amoco* rather than a definition implied by the definition of its negative in the [DLGF] regulation."[74]

The Tax Court's rejection of Ingredion's first argument and conclusion that the IBTR used the correct definition of substantial compliance did not, though, end the case. The court's further analysis led to a ruling favoring Ingredion.[75] The Tax Court raised and addressed *sua sponte* a separate legal question, one the opinion suggests was not raised by the parties or presented by them to the court. The question was whether Ingredion's 2012 and 2013 personal property tax returns substantially complied because they did not substantially undermine the objectives of the personal property tax statutes and regulations.[76] The IBTR had concluded that Ingredion's returns failed to substantially comply with the personal property tax statutes and regulations because the IBTR equated accuracy with substantial compliance.[77] It held that Ingredion's filing almost wholly inaccurate tax returns equated to failing to substantially comply with the tax laws.[78] The Tax Court disagreed with this, holding that a return's accuracy plays no role in determining if it substantially complies with the tax laws.[79]

The court explained that Indiana personal property tax law requires a taxpayer to make a complete disclosure of all information required by the DLGF relating to the value, nature, or location of his or her personal property in a personal property tax return.[80] As long as a taxpayer's return meets one of these three requirements, it substantially complies with the property tax laws.[81] The court found that Ingredion's 2012 and 2013 personal property tax returns did disclose the *value* of its personal property despite providing a significantly inaccurate cost basis for all the properties.[82] Ingredion failed to disclose the *nature* of all its personal properties.[83] Though Ingredion described in detail its air and water pollution control systems, it did not describe the nature of its other personal properties. Furthermore, it failed to contradict the Assessor's assertion that it omitted various outdoor lighting, process electrical, process piping, foundations, and dock equipment.[84] The court concluded that Ingredion's returns

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73. *Id.*

74. *Id.* at 737.

75. *Id.* at 739.

76. *Id.* at 737-39.

77. *Id.*

78. *Id.*

79. *Id.* at 738-39

80. *Id.* at 737-38 (citing IND. CODE § 6-1.1-3-9(a)).

81. *Id.* at 738 ("While taxpayers are only required to meet one of the three statutory objectives . . . .").

82. *Id.*

83. *Id.*

84. *Id.*

disclosed the *locations* of all its personal properties.[85] Because the company was required to meet only one of the three statutory requirements, and it did so, its returns did not substantially undermine the tax law's objectives and, therefore, substantially complied with the property tax statutes and the Department's regulations.[86] This meant that the Five-Month Limitation applied, and the Assessor untimely issued its tax assessments outside the applicable statute of limitations.[87]

Using its analysis of Ingredion's first argument, and its *sua sponte* analysis of the IBTR's conclusion regarding the substantial compliance of Ingredion's tax returns, the Tax Court quickly disposed of Ingredion's second argument.[88] It held that, because there were no timely, and therefore valid, tax assessments for the underpayment of personal property taxes for tax years 2012 and 2013, there was no tax underpayment to offset with a tax overpayment for tax year 2011.[89] Put simply, there were no assessments to offset.[90] The Tax Court concluded by reversing the IBTR's decision and ordering it to instruct the Assessor to reinstate the values reported by Ingredion on its returns for the 2012 and 2013 tax years.[91]

3. Ingredion, Inc. v. Marion County Assessor.[92]—The issue before the Tax Court was whether the IBTR erroneously denied the taxpayer's claim for refund for tangible personal property tax it had allegedly overpaid for the 2011 tax year.[93]

As explained in the preceding summary of the companion case, during an audit by the Marion County Assessor of the tangible personal property taxes paid by Ingredion, Incorporated for tax years 2011 through 2013, Ingredion discovered that its former personal property tax return preparer had incorrectly reported the value of its assets by using the historical value (i.e., the cost at installation) rather than the federal tax assessment.[94] Ingredion sent a letter to the Assessor saying it had overpaid the property taxes for 2011.[95] The Assessor assessed Ingredion with an underpayment of taxes for tax years 2012 and 2013 but offered no audit findings regarding the alleged overpayment for 2011.[96] After receiving the assessment, Ingredion filed a refund claim seeking the amount it had allegedly

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85. *Id.*

86. *Id.* at 738-39.

87. *Id.* at 739.

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. 184 N.E.3d 739 (Ind. T.C.), *trans. denied*, 197 N.E.3d 822 (Ind. 2022). This is a companion case to the case discussed in the previous section, *Ingredion, Inc. v. Marion County Assessor*, 184 N.E.3d 731 (Ind. T.C. 2022). For a summary of Ingredion's Petition for Review and the supreme court's denial, see note 36.

93. *Id.* at 740.

94. *Id.*

95. *Id.*

96. *Id.*

overpaid for 2011.[97] The Marion County PTABOA denied the claim for refund, and Ingredion challenged the decision before the IBTR.[98]

Indiana tax law provides two distinct methods of correcting errors in a personal property tax return. One, taxpayers can effect the change by filing an amended return correcting the error.[99] The taxpayer must file the amended return within twelve months after the due date of the original return or, if an extension was granted, within twelve months after the extension date.[100] Two, the Assessor can effect the change.[101] If the Assessor audits a taxpayer's personal property returns and discovers an error indicating that the taxpayer overreported and overpaid, the Assessor must correct the error via an assessment and either refund the taxes or credit them against other taxes due.[102]

Before the IBTR, Ingredion argued that the Assessor, contra Indiana property tax law, failed to correct the error and either refund the 2011 overpaid tax or credit it against other taxes due.[103] The Assessor countered that Indiana property tax law did not entitle Ingredion to "an automatic refund with no qualifications or limitations."[104] Indiana tax law mandates two statutory time limits that, after their expiration, prevented the Assessor from correcting a tax return error via assessment on his own initiative and, as a consequence, paying a refund of overpaid tax to Ingredion or crediting the overpayment against other taxes Ingredion owed.[105] The first time limit statute mandates that if a tax return fails to "substantially comply" with the tax statutes and government regulations, the Assessor must serve the assessment within three years of the date he or she filed the applicable personal property tax return (hereinafter referred to as the "Three-Year Limitation").[106] The second time limit (hereinafter referred to as the "Five-Month Limitation") overrides the Three-Year Limitation if the taxpayer filed a personal property return that "substantially complie[d]" with the property tax statutes and the DLGF's regulations.[107] In this case, the Assessor must serve the assessment on the taxpayer before the later of: (a) October 30 of the year for which the assessment is made, or (b) five months from the date the taxpayer filed their personal property return.[108]

The Assessor argued to the IBTR that the expiration of the Three-Year Limitation prevented its making any positive or negative changes to Ingredion's

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97. *Id.*
98. *Id.* at 741.
99. *Id.* at 742 (citing IND. CODE § 6-1.1-3-7.5(a), (c)).
100. *Id.*
101. *Id.* (citing IND. CODE § 6-1.1-9-10(a))
102. *Id.* (citing IND. CODE § 6-1.1-9-10(a))
103. *Id.*
104. *Id.*
105. *Id.* (citing IND. CODE §§ 6-1.1-9-3(a), -16-1(a)(2)).
106. *Id.* at 742-43 (citing IND. CODE § 6-1.1-9-3(a)).
107. *Id.* at 743 (citing IND. CODE § 6-1.1-16-1(a)(2)).
108. *Id.*

2011 tax return.[109] For Ingredion to initiate its refund for 2011, Indiana law required that it file an amended return within twelve months after the due date of the original return.[110] Ingredion had, however, failed to do so.[111] Therefore, it was not due a refund for 2011.

The IBTR agreed with the Assessor, ruling in its favor.[112] The IBTR also held that the Indiana General Assembly could not have intended that an Assessor's initiation of an audit effected a waiver of the twelve-month filing deadline for amended returns.[113] To correct an error in its 2011 tax return and receive a refund for an overpaid tax, said the IBTR, it would have had to timely file an amended return.[114]

Ingredion challenged the IBTR's decision to the Tax Court without achieving a more congenial result.[115] The Tax Court agreed with the IBTR's reasoning on all but one point.[116] Rather than the Three-Year Limitation prohibiting the Assessor from making any positive or negative changes to Ingredion's 2011 tax return, the Five-Month Limitation did so.[117] The question of which limitation applied to the Assessor's audit of Ingredion's intangible personal tax returns for the 2011 through 2013 tax years was at issue in the companion case to this one and is the subject of the preceding case summary.[118] Accordingly, the Tax Court affirmed the IBTR's decision and denied Ingredion's claim for refund for the 2011 taxes it had allegedly overpaid.[119]

4. Riley-Roberts Park, LP v. O'Connor.[120]—The issues before the Tax Court were whether the IBTR properly determined that the Marion County PTABOA had the authority to revoke a taxpayer's 2010 charitable-purpose exemption and if the taxpayer made material misrepresentations in its exemption application.[121]

"In May of 1999, Riley-Roberts Park, LP (Riley-Roberts) was formed as an Indiana limited partnership. . . . to invest in real property and to provide low-income housing 'through the construction, renovation, rehabilitation, operation

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109. *Id*. at 741.
110. *Id*. at 742.
111. *Id*. at 741.
112. *Id*. at 743.
113. *Id*. at 741.
114. *Id.*
115. *Id.*
116. *Id*. at 743.
117. *Id.*
118. *Id.*
119. *Id*. at 744.
120. 186 N.E.3d 162 (Ind. T.C.), *trans. denied*, 195 N.E.3d 858 (Ind. 2022). On April 18, 2022, the Marion County Assessor filed its *Notice of Intent to Petition for Review*. *See* Notice of Intent to Petition for Review, Riley-Roberts Park, LP v. O'Connor, 195 N.E.3d 858 (Ind. Apr. 18, 2022) (No. 21T-TA-00024). On September 22, 2022, the Indiana Supreme Court denied transfer. *See* Order Denying Petition for Review, Riley-Roberts Park, LP v. O'Connor, 195 N.E.3d 858 (Ind. Sept. 22, 2022) (No. 21T-TA-00024).
121. *Riley-Roberts*, 186 N.E.3d at 168.

. . . and leasing' of an apartment complex."[122] In November 1999, Riley-Roberts purchased from a former limited partner at a nominal price of $10.00 a seven-story, mixed-use development called The Davlan, located in downtown Indianapolis, Indiana, in Marion County.[123] The previous owner, an out-of-state one, had operated The Davlan as a project-based, subsidized apartment complex under the Department of Housing and Urban Development (HUD).[124]

At the time of The Davlan's purchase, it was vacant, boarded up, and in a state of disrepair, thereby requiring Riley-Roberts to renovate it.[125] When Riley-Roberts completed the renovations, "the first floor of [The Davlan] had approximately 13,000 square feet of retail space," while the "other six floors contained a mix of 50 one- and two-bedroom apartments."[126] "Riley-Roberts charged market rent for 14 of the units and below-market rent for the remaining 36 units."[127] "During the 2010 to 2016 tax years, the retail space was leased to various for-profit businesses and the below-market apartments were occupied by individuals with annual incomes at or below 60% of the . . . median income for Marion County."[128] "On May 15, 2006, Riley-Roberts filed its first 'Application for Property Tax Exemption' ('Form 136'), seeking a charitable-purposes exemption on 100% of The Davlan for the 2006 tax year."[129] The Marion County PTABOA determined that The Davlan qualified for only a 54% exemption because it rented fourteen of the fifty units at market rates and rented the retail space to for-profit businesses.[130]

In May 2008, "Riley-Roberts filed an exemption application for the 2008 tax year again seeking a 100% exemption for The Davlan."[131] The PTABOA again determined that the property qualified for only a 54% exemption.[132] In January 2011, the Marion County Assessor requested that Riley-Roberts complete a worksheet explaining the services The Davlan provided its tenants.[133] The Assessor also invited Riley-Roberts to attend a hearing before the PTABOA, at which the PTABOA would determine the appropriate exemption based on all the information provided.[134] In March 2011, a month after the hearing in February, the PTABOA revoked Riley-Roberts's 2010 charitable-purposes exemption.[135] The revocation stated the following:

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122. *Id.* at 164.
123. *Id.* at 164-65.
124. *Id.* at 165.
125. *Id.*
126. *Id.*
127. *Id.*
128. *Id.*
129. *Id.*
130. *Id.*
131. *Id.* at 166.
132. *Id.*
133. *Id.*
134. *Id.*
135. *Id.* at 167.

> Exemption Disallowed. 54% was granted in 2008. Many units are rented out at market rate and space is leased to for[-]profit businesses. Have not provided any information which would show that the property provides a benefit to the public sufficient to justify the loss of tax revenue. Further, applicant receives a [HUD] subsidy in the form of Section 8.[136]

In April 2011, Riley-Roberts challenged the PTABOA's revocation with the IBTR, asserting "that the PTABOA lacked the statutory authority to revoke its 2010 exemption."[137] Over the next 10 years, the parties litigated this issue with the IBTR, as well as the question of whether Riley-Roberts used The Davlan predominately for charitable purposes during the 2010 through 2016 tax years.[138] In September 2020, the IBTR conducted a hearing at which Riley-Roberts again asserted that neither the Assessor nor the PTABOA had the statutory authority to revoke its 2010 exemption.[139] Riley-Roberts also argued that the PTABOA's "revocation process violated its rights to both due process and equal privileges and immunities."[140] Lastly, Riley-Roberts claimed that, if 54% of The Davlan was used for charitable purposes, the property was predominantly used for charitable purposes during all the tax years at issue.[141]

The Assessor countered, arguing that the PTABOA's review and subsequent revocation of Riley-Roberts's 2010 charitable-purposes exemption were authorized by Indiana law.[142] It also argued that Riley-Roberts waived its constitutional arguments by failing to raise them earlier before the PTABOA and that none of Riley-Roberts's evidence showed that Riley-Roberts used The Davlan predominantly for charitable purposes during any of the tax years at issue.[143] In May 2021, the IBTR issued its final determination upholding the PTABOA's revocation of Riley-Roberts's charitable exemption.[144] The IBTR held that: (1) Indiana law "authorized the PTABOA to revoke Riley-Roberts's 2010 charitable-purposes exemption;[145] (2) Riley-Roberts waived its constitutional claims because it failed to support them with sufficient evidence and 'cogent' argument;" (c) the evidence presented to the IBTR did not demonstrate that Riley-Roberts used The Davlan predominantly for charitable purposes during the tax years at issue; and (d) Riley-Roberts made material misrepresentations of fact in its 2006 and 2008 exemption applications, therefore receiving those year's charitable exemptions based on "falsehoods."[146] In June

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136. *Id.*
137. *Id.*
138. *Id.*
139. *Id.*
140. *Id.*
141. *Id.*
142. *Id.* at 168 (citing IND. CODE ch. 11).
143. *Id.*
144. *Id.*
145. *Id.* (citing IND. CODE chs. 11, 13).
146. *Id.*

2021, Riley-Roberts challenged the IBTR's decision before the Indiana Tax Court.[147]

The IBTR had based its determination that the PTABOA had the authority to deny Riley-Roberts' charitable exemption on three separate sections in chapter 6-1.1-11 of Indiana's property tax code and three separate sections in chapter 6-1.1-13.[148] The Tax Court held that "Ind. Code section 6-1.1-11-3.5 provide[d] the application process and procedures for a not-for-profit corporation to acquire or retain a property tax exemption for its property."[149] The court concluded that this provision did not apply to Riley-Roberts because it was a for-profit business, not a not-for-profit one.[150] The Tax Court considered *sua sponte* Indiana Code section 6-1.1-11-3(a), the counterpart to Indiana Code section 6-1.1-11-3.5, which contained the application procedures a for-profit entity such as Riley-Roberts uses to acquire or retain a property tax exemption.[151] The court concluded that this statute did "not confer any authority to [the PTABOA] to review or revoke an existing charitable purposes exemption."[152]

The Tax Court further explained that Indiana Code section 6-1.1-11-4 specified only the circumstances under which an exemption application need not be filed.[153] The court concluded that "[n]othing within the plain terms of this statute expresses or implies that the PTABOA has authority to revoke, disallow, or suspend a charitable purposes exemption."[154]

Finally, with regard to third section referenced in chapter 11, Indiana Code section 6-1.1-11-7, the Tax Court said that it did "give[] a county PTABAO only the power to approve or disapprove an exemption application."[155] The key word in the statute, however, said the court, was "application."[156] This statutory provision did not, therefore, confer any authority to the PTABOA to review or revoke Riley-Roberts' 2010 charitable-purposes exemption; this was because: (a) "there [wa]s no evidence that Riley-Roberts filed an exemption application for the 2010 tax year" that the PTABAO could approve or disapprove.[157] The worksheet prepared by Riley-Roberts at the PTABOA's request did not constitute an exemption application because the evidence before the IBTR failed to demonstrate that it was prescribed by the DLGF.[158] Further, Riley-Roberts was not required to file an exemption application for 2010 because it had done so in 2008, it received a 54% charitable-purposes exemption for that year, and its

147. *Id.*
148. *Id.* at 169, 173-74 (citing IND. CODE §§ 6-1.1-11-3.5, -4, -7; 6-1.1-13-2 to -4).
149. *Id.* at 169-70.
150. *Id.* at 170.
151. *Id.*
152. *Id.* (citing Southlake Ind., LLC v. Lake Cnty. Assessor, 174 N.E.3d 177, 179 (Ind. 2021)).
153. *Id.* at 170-71.
154. *Id.* at 172.
155. *Id.*
156. *Id.* at 173.
157. *Id.*
158. *Id.* at 173.

"ownership, occupancy, and use of the property had not changed since" then.[159] Accordingly, the Tax Court concluded that the plain language of Indiana Code section 6-1.1-11-7, like that in the other two chapter 11 statutes, gave the PTABOA no authority to revoke Riley-Roberts's 2010 exemption.[160]

The Tax Court interpreted the three sections in chapter 13 as authorizing a county PTABOA "to make specific changes to 'tangible property assessments'" performed during the preceding assessment.[161] In other words, these three sections "authorize[d] a county PTABOA to correct errors on the assessment rolls that [wer]e related to the names of persons, descriptions of tangible property, and assessed values of tangible property" but did not give a PTABOA the authority to review or revoke charitable exemptions.[162] The Tax Court reasoned that, while a "property tax exemption affects the tax liability of a taxpayer, it does not alter an assessment (i.e., the assessed value) of the taxpayer's property."[163] The court said the evidence before the IBTR did not demonstrate that the assessment roll needed to be corrected because the roll contained erroneous names of persons associated with The Davlan, an erroneous description of The Davlan, or a mistaken assessed value for The Davlan.[164] Accordingly, the Tax Court concluded that the plain language of the three sections in chapter 13 did not give the PTABOA the authority to revoke Riley-Roberts's 2010 exemption.[165]

The last issue before the Tax Court was whether the IBTR properly determined that Riley-Roberts had made material misrepresentations in its 2006 and 2008 exemption applications.[166] The IBTR held that Riley-Robert intentionally failed to fully disclose the property's other commercial and market residential uses in an attempt to acquire a 100% charitable tax exemption.[167] Before the Tax Court, the Assessor asserted that Riley-Roberts' failure to file an accurate exemption application prevented it from having clean hands and that, for this reason, "equity require[d] the Court to affirm the [IBTR's] final determination."[168]

The Tax Court rejected the IBTR's finding that Riley-Roberts engaged in a material misrepresentation.[169] The court said that "accurate facts must have been supplied for the PTABOA to have granted a 54% exemption instead of a 100% exemption."[170] The court also said the Assessor had waived the equity argument

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159. *Id.*
160. *Id.*
161. *Id.* at 173-74.
162. *Id.* at 174.
163. *ID.* (CITING IND. CODE § 6-1.1-11-9(a)).
164. *Id.*
165. *Id.*
166. *Id.*
167. *Id.* at 175.
168. *Id.*
169. *Id.*
170. *Id.*

by not raising it before the PTABOA.[171] The Tax Court concluded that "both the [IBTR's] and Assessor's harangues about Riley-Roberts's alleged misdeeds constitute cinema, unsupported by evidence in the record, which, in a judicial context, are indistinguishable from gross incivility."[172] Accordingly, the Tax Court reversed the IBTR's decision.[173]

5. Michael Daugherty v. Benton County Assessor, Kelly Balensiefer.[174]—The issues before the Tax Court were whether the IBTR properly denied the appeal of the assessed value of a taxpayer's racetrack and whether the IBTR's telephonic hearing violated the Americans with Disabilities Act (ADA).[175]

In 2020, Daugherty Real Estate Holdings, LLC owned a racetrack in Boswell, Indiana, which is in Benton County.[176] The Benton County Assessor assessed the racetrack "at $457,900 ($393,000 for land and $64,900 for improvements)."[177] The LLC's owner and president, Michael Daugherty, challenged the assessment to the Benton County PTABOA, arguing that the per-acre value of the land was assessed as greater than that of comparable lands in the county.[178] The PTABOA reduced the racetrack's assessment to $315,200.[179] Still dissatisfied with the assessment, Daugherty sought relief from the IBTR.[180]

Due to COVID-19 restrictions imposed by Indiana Governor Eric Holcomb, the IBTR informed the parties that it would conduct its hearing telephonically and scheduled it for a date in November 2020.[181] As instructed by the IBTR, the parties submitted their evidence electronically and exchanged it between themselves.[182] Pursuant to the Assessor's request for a continuance, the IBTR rescheduled the telephonic hearing for a date in January 2021.[183] At the hearing's scheduled date and time, Daugherty failed to call in to the hearing.[184] The IBTR issued Daugherty a notice to show cause why it should not dismiss his appeal for his failure to appear at the telephonic hearing.[185] Daugherty responded that he had not received notice of the hearing's rescheduled date and time.[186] The IBTR rescheduled the telephonic hearing for a date in May 2021.[187] Before this date,

171. *Id.*
172. *Id.* at 175-76.
173. *Id.* at 176.
174. 186 N.E.3d 176 (Ind. T.C. 2022).
175. *Id.* at 177, 179.
176. *Id.* at 177.
177. *ID.*
178. *Id.*
179. *Id.*
180. *Id.*
181. *Id.*
182. *Id.*
183. *Id.*
184. *Id.*
185. *Id.* at 178.
186. *Id.*
187. *Id.*

Daugherty electronically submitted additional evidence to the IBTR and the Assessor.[188]

On the May hearing date, Daugherty again failed to call in to the hearing.[189] The IBTR again issued him a notice to show cause why it should not dismiss his appeal for his failure to appear.[190] Daugherty responded that unexpected circumstances involving his mother's health had prevented his seeking a continuance of the May hearing.[191] The IBTR, though, issued a final determination denying Daugherty's appeal.[192] The IBTR said that, because Daugherty failed to call into the hearing, he failed to offer any evidence or argument supporting his claim that the Assessor used an erroneous land value to assess his racetrack.[193] Because the IBTR is not obligated to argue Daugherty's case for him, it denied his appeal.[194]

Daugherty challenged the IBTR's denial to the Indiana Tax Court, asserting that: (1) the PTABOA used inaccurate and prejudicial evidence to determine the racetrack's assessed value, (2) the PTABOA had a conflict of interest associated with the comparable properties it used to determine the racetrack's assessed value, and (3) the IBTR improperly dismissed his appeal without a hearing.[195] As the initiating appellant, Daugherty filed in a timely manner with the Tax Court the certified administrative record of the proceedings before the IBTR.[196] He did not, however, file the mandated written brief with the court arguing his claim that the IBTR had erred in dismissing his appeal.[197] Despite this omission, the Assessor filed its appellee's brief.[198] Daugherty replied to it, saying only the following:

> The telephonic administrative hearing provided no TTY or TDD option which violates the Americans with Disabilities Act (ADA) of 1990. No in person meeting was offered. This administrative hearing was invalid due to violating said ADA Act of 1990.[199]

The Tax Court summarized the issues before it. First, Daugherty argued that the IBTR erroneously dismissed his appeal because it failed to conduct a hearing.[200] Second, Daugherty argued the IBTR's hearing violated the ADA.[201] The Tax Court rejected Daugherty's first argument. Pursuant to the IBTR

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188. *Id.*
189. *Id.*
190. *Id.*
191. *Id.*
192. *Id.*
193. *Id.*
194. *Id.*
195. *Id.*
196. *Id.* (citing Ind. Tax Court Rule 3(G)).
197. *Id.*
198. *Id.*
199. *Id.* at 179.
200. *Id.*
201. *Id.*

regulation in effect during the two hearings' scheduled dates, the failure of an appellant to appear was a proper basis for dismissing an appeal.[202] The court noted that, after Daugherty missed the first hearing, the IBTR scheduled a second, giving him a second chance to appear.[203] The Tax Court held that, "[w]hen Daugherty did not appear at the rescheduled hearing either, it was within the [IBTR's] discretion to dismiss his appeal."[204]

The Tax Court also rejected Daugherty's second issue. The court agreed that the ADA mandated that the IBTR make reasonable accommodations permitting a disabled person to receive a public entity's services or to participate in its programs.[205] The Tax Court noted, however, that the certified administrative record of the proceedings before the IBTR provided no evidence that Daugherty informed the Assessor, the PTABOA, or the IBTR that he was disabled or requested accommodation from any of them.[206] Therefore, the court said that Daugherty failed to establish a violation of the ADA.[207] Accordingly, because the Tax Court rejected both issues raised by Daugherty, it affirmed the IBTR's dismissal of his appeal.[208]

6. Marion County Assessor v. College Park Club, Inc.[209]—The issue before the Tax Court was whether the IBTR properly granted real property a common-area tax exemption for two tax years.[210]

College Park Club, Inc. ("College Park") was a "not-for-profit homeowners' association for the residential subdivision of College Park Estates, located in Indianapolis, Indiana."[211] Within that community, it owned a vacant, six-acre lot known as the Colby Green Area.[212] College Park had purchased the lot from the Jewish Federation of Greater Indianapolis, Inc. ("Jewish Federation").[213] When the Jewish Federation owned the lot, it was exempt from property taxes.[214]

In September 2016, the Marion County Assessor sent a letter to College Park stating that, due to the new ownership, "the previously granted property tax exemption would be suspended until College Park provided an affidavit" identifying the lot's new owners and explaining how the property would continue to satisfy exemption requirements.[215] In October 2016, College Park responded to the Assessor's letter via email, providing various documents establishing that

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202. *Id.* (citing 52 IND. ADMIN. CODE 4-9-4).
203. *Id.*
204. *Id.* (citing 52 IND. ADMIN. CODE 4-9-4).
205. *Id.* at 180 (citing 42 U.S.C. §§ 12101(b), 12132; 28 C.F.R. § 35.130(b)(7)).
206. *Id.*
207. *Id.*
208. *Id.*
209. 186 N.E.3d 1214 (Ind. T.C. 2022).
210. *Id.* at 1215-16.
211. *Id.* at 1216.
212. *Id.*
213. *Id.*
214. *Id.*
215. *Id.* (citing IND. CODE § 6-1.1-11-4).

the Colby Green Area qualified for a common-area property tax exemption.[216] In 2017, the Assessor informed College Park that, in order for the Colby Green Area to qualify for the common-area property tax exemption, College Park must re-plat the lot with the phrase "Common Area" appearing on the recorded document.[217] College Park complied with the Assessor's instructions and, in December 2017, recorded the re-platted Colby Green Area with the county clerk.[218]

The Assessor informed College Park that the Colby Green Area received the common-area property tax exemption for the 2018 tax year and the years thereafter, but not for the 2016 and 2017 tax years.[219] College Park challenged the Assessor's decision, filing two Forms 130 *Notices to Initiate an Appeal*.[220] The Marion County PTABOA failed to address the appeals in a timely manner, and College Park took its challenges to the IBTR.[221]

In June 2020, the IBTR issued its final determination, holding that the Marion County PTABOA erred when it failed to grant the Colby Green Area a common-area property tax exemption for the 2016 and 2017 tax years.[222] The IBTR explained that, under Indiana law, once a taxpayer notifies an assessor of a recorded common-area property, the assessor must respond within thirty days.[223] The IBTR determined that College Park provided the required notification, but the Assessor failed to respond in a timely manner.[224] Accordingly, under Indiana law, the Colby Green Area was an exempt common area by default in both the 2016 and 2017 tax years.[225] The Assessor challenged the IBTR's decision to the Tax Court.[226]

The Assessor first argued that the Colby Green Area was not entitled to a common-area exemption by operation of law under Indiana Code section 6-1.1-10-37.5(g) because College Park's October 2016 email failed to satisfy the statutory requirements for notice under section 6-1.1-10-37.5(a) and (d); it provided only a conclusory assertion that the property met all the requirements of common area property tax exemption and therefore did not clearly inform the Assessor that the easements and covenants had been recorded.[227] College Park's email, the Assessor argued, was inadequate notice under Indiana Code section 6-1.1-10-37.5(d) and therefore failed to trigger the Assessor's duty to send a written statement under section 6-1.1-10-37.5(f).[228] The Tax Court rejected this argument.

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216. *Id.*; *see also* IND. CODE § 6-1.1-10-37.5.
217. *Marion Cnty. Assessor*, 186 N.E.3d at 1216.
218. *Id.*
219. *Id.* at 1216-17.
220. *Id.* at 1217.
221. *Id.*
222. *Id.*
223. *Id.* (citing IND. CODE § 6-1.1-10-37.5(f)).
224. *Id.*
225. *Id.* (citing IND. CODE § 6-1.1-10-37.5(g)).
226. *Id.*
227. *Id.* at 1219.
228. *Id.*

The Court said that the 2016 email was adequate notice under Indiana Code section 6-1.1-10-37.5(d) because it met all the statute's requirements.[229] That is, the email explicitly stated and served as notice that College Park "was seeking the common-area property exemption for the Colby Green Area" and that the property satisfied all the statutory requirements including the "requirement that the area's property restrictions were recorded."[230] The Tax Court concluded that the email satisfied the notice requirements under section 6-1.1-10-37.5(d).[231]

The email triggered the Assessor's duty to send a written statement to College Park not later than thirty (30) days after receiving the email, informing it of its decision.[232] Instead, after receiving College Park's email, the Assessor determined that the Colby Green Area was not eligible for the common-area property tax exemption for 2016 and 2017 but failed to inform College Park of its decision within the statutorily mandated period or provide the chance to "establish that the area met the" common area requirements.[233] Therefore, the Tax Court held, the IBTR properly determined that the Assessor failed to meet the requirements of Indiana Code section 6-1.1-10-37.5(f) and that the IBTR properly deemed the Colby Green Area "an exempt common area by operation of [section] 6-1.1-10-37.5(g)."[234]

The Assessor asserted a second argument, accusing the IBTR of abusing its discretion when it failed to consider the Assessor's September2016 letter, which preceded College Park's October 2016 email, as the written statement that satisfied its duty to send a written statement under Indiana Code section 6-1.1-10-37.5(f).[235] The Tax Court rejected this argument, holding that the plain language of section 6-1.1-10-37.5(f) stated that, after receiving a property owner's notice under section 6-1.1-10-37.5(d), the county assessor should determine whether the property qualified as a common area and then provide the taxpayer a written notice explaining its decision.[236] The Tax Court said it was difficult to comprehend how the Assessor could believe its September 23, 2016 letter constituted the written statement required by section 6-1.1-10-37.5(f) when it preceded College Park's October 2016 email.[237] The Tax Court held, in conclusion, that the IBTR properly granted a common-area property exemption to the Colby Green Area for the 2016 and 2017 tax years.[238]

7. Chevrolet of Columbus, Inc. v. Bartholomew County Assessor.[239]—In *Chevrolet*, the issue before the Tax Court was whether the IBTR properly

229. *Id*. at 1219-20.
230. *Id*. (quoting § 6-1.1-10-37.5(d)).
231. *Id*. at 1220.
232. *Id*. (citing § 6-1.1-10-37.5(f)).
233. *Id*.
234. *Id*.
235. *Id*. at 1220-21.
236. *Id*. at 1221.
237. *Id*.
238. *Id*. at 1221-22.
239. 187 N.E.3d 349 (Ind. T.C. 2022).

determined that a taxpayer filed its appeals for a correction of errors for the 2016 through 2018 property tax years in an untimely manner.[240]

In July 2015, Chevrolet of Columbus, Inc. (Chevrolet) purchased a 4.05-acre parcel of vacant land in Columbus, Indiana, where it built a sales and service facility.[241] For property tax years 2016 through 2018, the Bartholomew County Assessor (Assessor) classified as "primary land" the 115,000 square feet of property on which the facility stood.[242] The Assessor classified the remaining "61,418 square feet as usable undeveloped land . . . held for future development."[243] "[T]he Assessor assigned Chevrolet's property an assessed value of $1,734,600 for the 2016 tax year, $3,257,100 for [2017], and $3,417,300 for [2018].[244]

Chevrolet filed three appeals seeking on September 3, 2019, to "correct 'a clerical, mathematical, or typographical' error in its land assessments for the 2016 through 2018 tax years. On January 7, 2020, the Bartholomew County Property Tax Assessment Board of Appeals ('PTABOA') conducted a hearing on the three of Chevrolet's appeals" and, a week later, denied them all.[245] On February 18, 2020, Chevrolet challenged the PTABOA's decisions before the IBTR and elected to have the appeals resolved via the IBTR small claims procedures.[246] In March 2021, the IBTR conducted a hearing on the appeals, at which Chevrolet argued that the Assessor had incorrectly assessed Chevrolet's property for all three tax years at issue.[247]

Chevrolet asserted that Bartholomew County had issued a land order that applied to the 2016 through 2018 property tax years.[248] A land order provided the base rates to be applied to the land in each of the townships throughout a county.[249] "Chevrolet claimed . . . that, for the 2016 through 2018 tax years, the county's land order established that primary land was to be assessed at $10 per square foot and usable undeveloped land at $3 per square foot."[250] Contrary to this land order, the Assessor had assessed Chevrolet's primary land at $13 per square foot in 2016 and 2017, and at $15 per square foot in 2018.[251] The Assessor also improperly assessed Chevrolet's usable, undeveloped land at $3.90 per

240. *Id.* at 349.
241. *Id.*
242. *Id.*
243. *Id.* at 349-50.
244. *Id.* at 350.
245. *Id.* (citation omitted).
246. *Id.*
247. *Id.*
248. *Id.*
249. *Id.* at 350 n.1 (citing REAL PROPERTY ASSESSMENT GUIDELINES FOR 2011, Bk. 1, Ch. 2 (incorporated by reference at 50 IND. ADMIN. CODE 2.4-1-2(c) (2020))); IND. CODE § 6-1.1-4-13.6 (2016)).
250. *Id.* 350.
251. *Id.*

square foot in 2016 and 2017 and at $4.50 per square foot in 2018.[252] Chevrolet introduced into evidence before the IBTR multiple documents supporting its position.[253] Chevrolet explained that a simple mathematical calculation would fix the Assessor's error—that is, multiplying the square footage of primary land (i.e., 115,000) by the correct base rate of $10 and multiplying the square footage of its usable undeveloped land (i.e., 61,418) by the correct base rate of $3.[254]

The Assessor responded to Chevrolet's arguments, asserting that it did, in fact, use the actual base rates to value Chevrolet's land for the years at issue, and Chevrolet's evidence "did not show otherwise."[255] Confusingly, the Assessor presented several property-record cards to demonstrate that, from the 2012 to 2016 tax years, she applied a base rate of $13 per square foot to all the primary land in Chevrolet's property's neighborhood and a base rate of $3.90 per square foot to all usable, undeveloped land.[256] The Assessor's evidentiary presentation appeared to corroborate Chevrolet's position.[257] In addition, the Assessor claimed that Chevrolet's appeals were untimely because the business "challenged the assessed value of its property, a purely subjective issue that was not proper for the" appeal procedure Chevrolet had used—that is, the correction of error appeal process.[258] Finally, the Assessor requested that Chevrolet's 2016 assessment be increased from $1,734,500 to $1,763,130 to reflect the land's 2015 purchase price of $1,763,130.[259]

In June 2021, the IBTR ruled in the Assessor's favor, dismissing Chevrolet's appeal as having been untimely filed.[260] The IBTR held "that 'Chevrolet's request for relief plainly show[ed] that it was disputing [its land's] assessed value[s]' despite the fact that it 'checked the box indicating that it was alleging a clerical, mathematical, or typographical mistake.'"[261] Therefore, "Chevrolet was required to file its appeals within the 45-day statutory deadline for challenging a property's assessed value, not the three-year deadline applicable for challenging objective math errors."[262] The IBTR ordered Chevrolet's "land assessments to remain unchanged."[263] Chevrolet challenged the IBTR's decision to the Tax Court.[264]

Chevrolet first asserted that the Tax Court must reverse the IBTR's final determination because, in *Muir Woods Section One Ass'n v. O'Connor*, the Indiana Supreme Court had held that the misapplication "of a base rate discount

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252. *Id.*
253. *Id.*
254. *Id.*
255. *Id.*
256. *Id.*
257. *See id.*
258. *Id.* at 351.
259. *Id.* at 349, 351.
260. *Id.* at 351.
261. *Id.*
262. *Id.*
263. *Id.*
264. *Id.*

in a county land order was an objective error, not a subjective error regarding a property's assessed value[,]" and a taxpayer has three years after the taxes were first due to challenge an objective error.[265] Having done this, Chevrolet had filed in a timely manner its objective claim that the Assessor applied the wrong base rate in its property tax assessment.[266]

The Tax Court agreed with Chevrolet that *Muir Woods* controlled the case's outcome. The Tax Court held that "[i]n this case, similar to the appeal in *Muir Woods*, Chevrolet's three appeals present questions about the objective application of an already-determined base rate prescribed by a land order."[267] Therefore, the errors raised in Chevrolet's appeals challenged the objective application of a predetermined base rate—that is, the challenge asked the objective question of whether or not the Assessor applied the correct base rates from Bartholomew County's land order.[268] Accordingly, the Tax Court reversed the IBTR's decision, remanded the case back to the IBTR, and ordered it to determine whether the Assessor applied the proper base rate to Chevrolet's 2016 through 2018 land assessments.[269] The Tax Court also ordered the IBTR to "address the alleged 2016 underassessment based exclusively on the evidence already included in the certified administrative record."[270]

8. Bushmann, LLC v. Bartholomew County Assessor.[271]—In *Bushman*, the issue before the Tax Court was whether the IBTR properly determined that the taxpayer filed its property tax appeal in an untimely manner because the appeal raised subjective errors, thereby subjecting it to the forty-five-day filing deadline, rather than, as the taxpayer believed, raised objective errors, thereby subjecting it to the three-year deadline.[272]

During the 2016 through 2018 tax years, Bushmann, LLC (Bushmann) owned a 61,855 square foot parcel in Columbus, Indiana, which is in Bartholomew County.[273] Situated on the land was a convenience store and gas station.[274] In both 2016 and 2017, the Bartholomew County Assessor assigned the property a total assessed value of $1,266,500 ($804,100 for land and $462,400 for improvements).[275] In 2018, the Assessor increased the property's assessment

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265. *Id.* at 352 (citing Muir Woods Section One Ass'n, v. O'Conner, 172 N.E.3d 1205 (Ind. 2021)); IND. CODE § 6-1.1-15-1.1(b).

266. *See id.*

267. *Id.* at 353.

268. *Id.*

269. *Id.* at 354.

270. *Id.* The Tax Court's opinion does not discuss in detail the issue regarding an underassessment. The Court referred to it in passing when it noted that "[t]he Assessor also requested that Chevrolet's 2016 assessment be increased from $1,734,500 to $1,763,130 to reflect its 2015 purchase price." *Id.* at 351.

271. 187 N.E.3d 355 (Ind. T.C. 2022).

272. *Id.* at 355-59.

273. *Id.* at 355.

274. *Id.*

275. *Id.*

to $1,472,500 ($999,000 for land and $473,500 for improvements).[276]

Bushmann challenged the 2016 through 2018 assessments and filed three appeals "seeking to correct '[a] clerical, mathematical, or typographical mistake.'"[277] After conducting a hearing, the Bartholomew County Property PTABOA denied the appeals.[278] Bushmann challenged this to the IBTR, asserting that the 2016 through 2018 assessments were incorrect because the Assessor had failed to apply the base rate mandated by the county's land order.[279] Bushmann argued "that the county's land order established that its land was to be assessed at $10 per square foot for all three years."[280] Instead, the Assessor assessed Bushmann's land at $13 per square foot in 2016 and 2017 and at $19 per square foot in 2018.[281] Bushmann argued that the mathematical error could be corrected via simple multiplication—that is, multiply its land's square footage (i.e., 61,855) by the correct base rate (i.e., $10) to equal an assessment of $618,600 for each tax year at issue.[282]

The Assessor responded, arguing that it used the correct base rate to assess Bushmann's land for all three years.[283] The Assessor asserted that the land order contained a proposed base rate rather than the actual one, which the Assessor applied during the tax years at issue.[284] The Assessor also argued that Bushmann filed the "wrong type of appeals" due to the subjective nature of the complaint—"whether the correct base rate was used to value its land."[285] Because the company's challenges raised only subjective errors regarding the valuation of its land, its challenges were subject to a deadline of forty-five-day days rather than three years.[286] Since Bushmann failed to file any of its challenges within the forty-five days, the filings were tardy and, therefore, invalid.[287]

The IBTR ruled in the assessor's favor. The IBTR held that, though Bushmann "'checked the box indicating that it was alleging a clerical, mathematical, or typographical mistake,' it was 'fundamentally challenging the assessed value of its property,'" which was an inherently subjective issue.[288] Therefore, Bushman's challenge was subject to the earlier rather than later filing

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276. *Id.*

277. *Id.* at 356 (alteration in original).

278. *Id.*

279. *Id.*

280. *Id.*

281. *Id.*

282. *Id.*

283. *Id.*

284. *Id.*

285. *Id.*

286. *Id.* at 356-57 ("Bushmann should have filed its appeals within the 45-day statutory deadline for challenging its property's assessed value, not the extended three-year deadline applicable for challenging math errors.").

287. *Id.* at 356.

288. *Id.*

deadline, and the company had failed to comply with it.[289] Bushmann challenged the IBTR's decision to the Tax Court.[290]

Before the Tax Court, Bushmann asserted *Muir Woods v. O'Connor*[291] established that the misapplication "of a base rate discount in a county land order was an objective error, not a subjective error regarding a property's assessed value."[292] Therefore, appeals raising objective orders are subject to the three-year filing deadline.[293] Because Bushmann had filed its appeals within that three-year period, it filed them in a timely manner.[294] The Tax Court agreed, holding that Bushmann's case was similar to *Muir Woods*.[295] The Court concluded that the issues raised in Bushmann's appeal regarding the application of the correct base rate were objective, not subjective.[296] Accordingly, the three-year filing deadline applied to Bushmann's appeals.[297] Bushmann had timely filed its appeals, and the IBTR erroneously determined the company's appeals were tardy.[298] The Tax Court also held that Bushmann had indisputably used the correct form, the revised Form 130.[299] Accordingly, the Court reversed the IBTR's decision, remanded the case back to the IBTR, and ordered the board to determine whether the Assessor applied the proper base rate to Bushmann's assessments in the tax years at issue using only the evidence already included in the certified administrative record.[300]

9. David A. & Nichelle L. Gertz v. Porter County Assessor.[301]—The issue before the Tax Court was whether the IBTR properly required a county assessor to reclassify the taxpayers' property as agricultural land, reassess the land as tillable, and apply a 2% tax cap to the land for only one tax year.[302]

In July 2003, David A. and Nichelle L. Gertz ("the Gertzes") purchased a 4,106 square foot single-family residence on eleven acres of land in Hebron,

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289. *Id.* at 356-57.

290. *Id.* at 357.

291. 172 N.E.3d 1205 (Ind. 2021).

292. *Bushmann*, 187 N.E.3d at 358 (Ind. T.C. 2022).

293. *Id.* at 356-58.

294. *Id.* at 358.

295. *Id.*

296. *Id.*

297. *Id.* at 357-59.

298. *Id.* at 360.

299. *Id.* at 359-60. "In 2017, the [Indiana General Assembly] passed Senate Enrolled Act No. 386, which revised the property assessment appeal process by (1) repealing Indiana Code § 6-1.1-15-1 that required the use of the former Form 130 to challenge subjective errors in assessments, (2) repealing Indiana Code § 6-1.1-15-12 that required the use of a Form 133 to challenge objective errors in assessments, (3) adopting Indiana Code § 6-1.1-15-1.1 that required the use of a single form to challenge subjective and objective errors in assessments (i.e., the revised Form 130), and (4) adding a three-year statute of limitations for filing a correction of error appeal." *Id.* at 359.

300. *Id.* at 360.

301. 187 N.E.3d 978 (Ind. Tax Ct. 2022).

302. *Id.* at 979.

Indiana, which is in Porter County.[303] The Gertzes used part of the property for beekeeping and allowed local farmers to cut and bale hay on their land.[304] After their purchase, the Porter County Assessor valued and assessed one acre of the Gertzes' land as a residential homesite and, eight years after the purchase, assessed 10.094 acres as agricultural land.[305] The Assessor classified and valued a portion of the agricultural land as tillable land[306] and at least five acres as agricultural excess acreage.[307] From 2003 through 2011, the Gertzes' land assessments ranged from $29,400 to $43,000.[308] In 2012, relying on guidance it received from the DLGF, the Assessor reclassified and assessed the Gertzes' 10.094-acre tract as residential rather than agricultural land.[309] The Assessor mailed the Gertzes a Form 11 notifying them that the assessed value of their land had increased from $43,000 to $121,900.[310] The Gertzes did not appeal this reassessment.[311]

The reclassification of the Gertzes' property created a substantial increase in their annual tax payment.[312] Their neighbors said their properties had not suffered a similar increase.[313] Given no satisfactory explanation for the increase by the Assessor, the Gertzes appealed their 2013, 2017, and 2018 assessments.[314] The parties resolved these appeals by agreement and the assessments were reduced to be consistent with "comparable property data or certain appraisal data."[315] In 2019, the Assessor again assigned the Gertzes' property an assessed value that they believed was too high (i.e., $422,600—$107,400 for land and $315,200 for improvements).[316] The Gertzes challenged the assessed value before the Porter County PTABOA, which reduced the assessment to $387,600 ($107,400 for land and $280,200 for improvements).[317] Unhappy with this result, the Gertzes sought relief from the IBTR.[318]

Before the IBTR, the Assessor had the "burden of proving the assessment

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303. *Id.*

304. *Id.*

305. *Id.*

306. Tillable land is "land used for cropland or pasture that has no impediments to routine tillage." *Gertz*, 187 N.E.3d at 979 n.3 (citing REAL PROPERTY ASSESSMENT GUIDELINES FOR 2022 - VERSION A, Bk. 1 at 103).

307. *Id.* at 979.

308. *Id.* at 979-80.

309. *Id.* at 980.

310. *Id.*

311. *Id.*

312. *Id.*

313. *Id.*

314. *See id.* at 980. The opinion provided no explanation regarding why the Gertzes did not challenge the years between 2013 and 2017.

315. *Id.*

316. *Id.*

317. *Id.*

318. *Id.*

was correct because the Gertzes had successfully appealed in 2018, and the 2019 assessment was higher than the property's final 2018 value."[319] "[T]he Assessor presented an appraisal report that estimated the Gertzes' property value as $380,000 as of January 1, 2019, using the sales comparison approach."[320] The Assessor also explained that the Gertzes' land should not be assessed as agricultural land because they had not complied with the county's requirement "to produce either (1) a signed statement from the farmer that farmed their land; (2) their [U.S. Department of Agriculture] farm number; (3) a copy of a cash farm lease; or (4) copies of their tax returns."[321] The Gertzes counterargued that their 10.094 acres should be classified as agricultural tillable land and valued as such because the land "had been used for agricultural purposes since [they] purchased [it] in 2003."[322] They asserted that they had "always had local farmers cut and bale [hay on their] non-homestead acreage to be used as cattle feed."[323] The Gertzes also asserted that they had used a portion of the acreage for beekeeping.[324]

The IBTR ruled in the Gertzes' favor, holding that their evidence demonstrated that their 10.094 acres should be classified and assessed as agricultural land.[325] The IBTR explained that the Assessor failed to: (1) establish that the county's four directives were required by law, and (2) rebut the Gertzes' evidence "that the land was used for agricultural purposes in 2019."[326] Accordingly, the IBTR "ordered the Assessor to reclassify the Gertzes' 10.094 acres of non-homestead land as agricultural land, reassess it as tillable land, and apply the 2% tax cap to it for the 2019 assessment year."[327] The Gertzes sought a rehearing, asking the IBTR to apply its ruling retroactively to the 2012 through 2018 tax years.[328] The IBTR denied the request for a rehearing.[329]

The Gertzes challenged the IBTR's decision to the Tax Court by raising two issues. The first dealt with four exhibits the Gertzes attached to their petition for review.[330] They filed a motion in limine requesting that the Tax Court accept the exhibits as additional evidence supporting their position.[331] The Tax Court denied the motion, but the Gertzes asked the Court to reconsider its decision.[332] The Tax Court noted that its "review of disputed issues of fact must be confined to the

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319. *Id.*
320. *Id.*
321. *Id.* at 980-81.
322. *Id.* at 981.
323. *Id.* (alteration in original).
324. *Id.*
325. *Id.*
326. *Id.*
327. *Id.*
328. *Id.* at 981-82.
329. *Id.* at 982.
330. *Id.*
331. *Id.*
332. *Id.*

record of the proceeding before the [IBTR]".[333] Also, of the four documents attached to the petition, three were already included in the certified administrative record.[334] With regard to the fourth, the Gertzes failed to "explain[] how the exhibit (1) demonstrate[d] the constitution of the [IBTR] as a decision-making body was improper, (2) identifie[d] the grounds for disqualification of the [IBTR's] decision-makers personally, or (3) demonstrate[d] that the [IBTR's] decision-making process or procedure was unlawful."[335] Therefore, the Tax Court refused to reconsider its denial of the Gertzes' motion in limine.[336]

The Gertzes' second issue piggybacked on their successful appeal for the 2019 tax year: they asked that the Tax Court order the IBTR to provide them with additional retroactive relief and apply its final determination pertaining to the 2019 tax year to their 2012 through 2018 assessments.[337] The Tax Court stated that the Gertzes' appeals regarding the 2012 through 2018 assessments had missed the statutory deadlines.[338] The Court also noted the longstanding principle that, "in property assessment appeals at both the administrative and judicial levels, each tax year—and each appeals process—stands alone."[339] Accordingly, the Tax Court concluded that, without more evidence, it could not retroactively extend the IBTR's order to earlier tax years.[340] The Court affirmed the IBTR's decision.[341]

10. Mac's Convenience Stores, LLC v. Hendricks County Assessor.[342]—In *Mac's*, the issue before the Tax Court was whether the IBTR properly upheld a real property tax assessment.[343] In October of 2014, Mac's Convenience Stores, LLC (Macs) paid approximately $2.7 million to purchase commercial property in Hendricks County, Indiana.[344] The property consisted of 3.2 acres of land on which stood "a 4,476-square-foot convenience store with a gas station, a 1,219-square-foot car wash, and a variety of personal property."[345] During the 2018 and 2019 tax years, the Hendricks County Assessor assessed the real property at a value of $1,913,400 ($1,200,000 for land and $713,400 for improvements).[346] Macs challenged the assessment before the Hendricks County PTABOA and the IBTR.[347]

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333. *Id.* (citing IND. CODE §§ 33-26-6-3, -5).
334. *Id.* at 983.
335. *Id.*
336. *Id.*
337. *Id.* at 983.
338. *Id.* at 984.
339. *Id.* at 985 (citing Fisher v. Carroll Cnty. Assessor, 74 N.E.3d 582, 588 (Ind. Tax Ct. 2017)).
340. *Id.*
341. *Id.*
342. 191 N.E.3d 285 (Ind. Tax Ct. 2022).
343. *Id.* at 286.
344. *Id.*
345. *Id.* at 286-87.
346. *Id.* at 287.
347. *Id.*

To meet its burden that its assessments were correct, the Assessor submitted as evidence to the IBTR a sales disclosure form and the property's appraisal report.[348] The Assessor argued that the sales disclosure form demonstrated that "Macs purchased the convenience store for $1,982,000 and the related personal property for $720,000."[349] The appraisal report "relied exclusively on the sales-comparison approach to estimate the value of [the] property as of January 1, 2018."[350] The appraiser "used for comparison the sales of five convenience stores with gas stations in Hendricks, Johnson, and Marion counties."[351] He adjusted their sales prices to account for factors such as, for example, the properties' ages, the number of fuel pumps located on the properties, and the properties' having or not having car washes.[352] The appraiser valued the real property at $2,100,000.[353] Accordingly, the Assessor argued that the evidence supported the assessments for both 2018 and 2019 "because it showed that neither assessment exceeded the property's market value in 2014 or 2018."[354]

Macs responded, arguing that the Assessor placed too much weight on the property's 2014 purchase price; in fact, "the Hendricks County properties used as sales comparables were assessed at a fraction of their 2014 sales prices."[355] Macs also argued that the IBTR should ignore the appraisal report because the appraiser failed to confine its valuation to the real property.[356] Macs argued that, when convenience stores with gas stations were sold, the sales prices typically reflected the value of both real and related personal property.[357] It noted that approximately 27% of the 2014 purchase price corresponded to the fuel pumps, underground storage tanks, walk-in coolers, and portable racks and shelves.[358] Macs argued that the properties the appraiser used as sales comparables in its appraisal report were inappropriate because information on what personal property amount was included in the sales was unavailable.[359] In addition, Macs argued that the appraiser, instead of removing the personal property costs from the sale prices of the comparable properties, increased all their sale prices to account for the lack of personal property relative to Macs's property.[360] Accordingly, "Macs claimed its 2018 and 2019 assessments should revert to its 2017 assessment of $1,734,100 because the Assessor" failed to satisfy its burden

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348. *Id.*
349. *Id.*
350. *Id.*
351. *Id.*
352. *Id.*
353. *Id.*
354. *Id.*
355. *Id.*
356. *Id.* at 288.
357. *Id.*
358. *Id.*
359. *Id.*
360. *Id.*

of showing that its 2018 assessment was correct.[361]

The IBTR rejected Macs's arguments and ruled in the Assessor's favor.[362] First, the IBTR held it permissible for comparable properties to include personal property since the real and personal properties had transferred as a part of a single transaction with a single sale price.[363] Second, it held that "the appraisal report's imperfections did not deprive it of all probative weight because none of the evidence showed that the inclusion of personal property had 'played a significant role in" the appraiser's valuation.[364] Third, the IBTR held that "the property's 2014 purchase price, when adjusted to exclude the cost of the personal property, supported the assessments because '[the appraiser] concluded that the market for convenience stores appreciated by 3% per year' between the [] property's date of sale (i.e., October 2014) and the 2018 valuation date."[365] This, the IBTR said, offset the property's depreciation over the same period.[366] Finally, the IBTR held that, "because Macs had attacked the assessment methodology without offering any market-based evidence of its own, it failed to show that either [the 2018 or 2019] assessments were incorrect."[367] Macs challenged the IBTR's decision in the Tax Court.[368]

The Tax Court agreed with Macs and reversed the IBTR's decision. First, the Tax Court noted that the Indiana General Assembly had divided the tangible property into two categories—personal property and real property.[369] Pursuant to its rulemaking authority, the Department of Local Government Finance (DLGF) "promulgated two independent regulations that prescribe[d]" the different methods of determining assessed values according to the two categories.[370] Accordingly, the Court held that, under Indiana's property tax law, the Assessor had the burden of proving that the real property's valuation did not include any personal property.[371] The Court said that the Assessor failed to do this.[372] The Assessor argued that, even if its valuation included the value of personal property such as, for example, fuel pumps, the inclusion was permissible because the personal property created additional intangible business value for the real property.[373] The Tax Court rejected this argument, holding that regardless of whether the inclusion reflected the value of the personal property or intangible

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361. *Id.*
362. *Id.*
363. *Id.*
364. *Id.*
365. *Id.* at 289.
366. *Id.*
367. *Id.*
368. *Id.*
369. *Id.* at 290.
370. *Id.* (citing 50 IND. ADMIN. CODE 4.2-1.1.1 to 4.2-17-3 (2022)); *see also* 50 IND. ADMIN. CODE 2.4-1-1.
371. *Mac's Convenience Stores, LLC*, 191 N.E.3d at 290.
372. *Id.*
373. *Id.* at 290-91.

business value, both "non-realty costs" must be excluded under Indiana property tax law.[374]

The Tax Court rejected the IBTR's upholding the appraiser's conclusion that the 3% appreciation offset the property's depreciation; it said that the IBTR failed to explain how this "offset" worked.[375] Also, the Court said that it could not find in the record any evidence or argument from either party supporting the "offset" argument.[376] It concluded that the argument reflected the IBTR's "flirting with taking an advocacy role as it sometimes does."[377] The Tax Court held that the IBTR "abused its discretion by finding the 3% market conditions adjustment was sufficient to relate Macs's 2014 purchase price to the relevant assessment dates because that finding was based on speculation, not evidence."[378] Accordingly, the Tax Court reversed the IBTR's decision and ordered it to revert Macs's 2018 and 2019 assessments to the one in place during the 2017 tax year.[379]

a. Legislative override.—Pursuant to Indiana Code section 6-1.1-15-17.2, when an Assessor increased the assessed value of a taxpayer's property by more than 5% above the previous tax year, the Assessor bore the burden of proving that the assessment was correct.[380] If the Assessor failed to satisfy its burden, this failure triggered section 17.2's reversionary clause and the reinstatement of the previous year's lower value.[381] In *Mac's*, the Tax Court noted that, because the Assessor had increased the taxpayer's assessment by about 10% since 2017, pursuant to section 6-1.1-15-17.2, the Assessor bore the burden of proving the 2018 assessment was correct.[382] The Tax Court ultimately held that the IBTR abused its discretion when it upheld the Assessor's assessment because the Assessor failed to satisfy its burden of proof.[383] Although the Tax Court did not explicitly cite section 6-1.1-15-17.2 as the basis for its decision, it nevertheless ruled in a manner comporting with the section's reversionary clause—the Court ordered the IBTR to revert the taxpayer's 2018 and 2019 assessments to the lower assessment of the 2017 tax year.[384]

In 2020, the Tax Court was faced with a situation similar to that in *Mac's*, but it took a different approach. In *Southlake Indiana, LLC v. Lake County Assessor*,[385] the Ross Township Assessor issued, in February 2014, assessment notices retroactively increasing the assessed value of Southlake Indiana, LLC's

374. *See id*. at 291.
375. *Id*. at 291-92.
376. *Id*.
377. *Id*.
378. *Id*. at 292.
379. *Id*.
380. IND. CODE § 6-1.1-15-17.2(a), (b) (2020) (repealed 2022).
381. *See Mac's Convenience Stores*, 191 N.E.3d at 292.
382. *Id*. at 287.
383. *Id*. at 291-92.
384. *Id*. at 292.
385. 160 N.E.3d 1156 (Ind. Tax Ct. 2020), *rev'd*, 174 N.E.3d 177 (Ind. 2021).

(Southlake) property for tax years 2011 through 2014.[386] The Assessor had more than doubled the property's assessed value for all four years.[387] Because Indiana Code section 6-1.1-15-17.2 placed the burden of proof on the Assessor, and the IBTR determined that the Assessor had failed to satisfy this burden, Southlake believed section 17.2's reversionary clause mandated that the IBTR reinstate the property's previously assessed values.[388] The IBTR, however, did not do this. Rather, it determined assessed values on its own—that is, values that neither the taxpayer nor Assessor or either party's testifying experts had offered at the hearing.[389] The Tax Court affirmed the IBTR's determination, holding that the Assessor's failure to satisfy its burden pursuant did not trigger section 17.2's reversionary clause and the reinstatement of the previous assessed values.[390] The Indiana Supreme Court accepted review of the Tax Court's decision and reversed it.[391] Because the IBTR had determined that "neither party met its burden of proof," the Supreme Court held that section 17.2's reversionary clause mandated that Southlake's assessment revert to that of 2010.[392]

During the 122nd Indiana General Assembly's 2022 short session, it repealed Indiana Code section 6-1.1-15-17.2, effective immediately.[393] The General Assembly's statutory override nullified the primary holding in *Southlake Indiana* and its precedential controlling effect on Tax Court cases such as *Mac's Convenience Stores*. Accordingly, the Assessor no longer bears the burden of proof if it increases the assessed value of a taxpayer's property by more than 5% above the values in the previous tax year.[394] As importantly, a taxpayer is no longer entitled to have an assessment revert to the prior year's lower value because the Assessor failed to satisfy the burden of proving its new assessment increase correct.[395]

11. Young v. Lake County Assessor.[396]—The first issue before the Tax Court in *Young* was whether it could consider exbibits attached to the taxpayer's brief that did not appear in the certified record of proceedings before the IBTR.[397] The second issue was whether the taxpayer identified any evidence in the certified record of proceedings that the IBTR's refusal to reduce the 2017 property assessments of three properties constituted an abuse of discretion, diverged from the law, violated applicable legal procedures, or lacked supportive substantial

386. *Southlake Ind.*, 174 N.E.3d at 178.
387. *Id.*
388. *Id.* at 179.
389. *Id.* at 178.
390. *Id.* at 179.
391. *Id.* at 180-81.
392. *Id.* at 180-81.
393. *See* H.R. 1260, 122d Gen. Assemb., 2d Reg. Sess. § 32 (Ind. 2022).
394. *See id.*
395. *See id.*
396. 194 N.E.3d 1229 (Ind. T.C. 2022).
397. *Id.* at 1236.

evidence.[398]

From 2003 to 2006, Andy Young purchased four residential properties, all located in Gary, Calumet Township, Lake County, Indiana.[399] For the 2017 tax year, the Calumet Township Assessor (Assessor) valued all four properties.[400] "Believing those values were too high, Young" challenged them before the Lake County PTABOA.[401] The PTABOA reduced the value of one property while leaving the other three unchanged.[402] Dissatisfied with this, Young filed four appeals with the IBTR pursuant to its small claim procedures, each claim corresponding to one of the four properties.[403]

Young argued before the IBTR that the Assessor's assessments failed to reflect his properties' market values.[404] He argued that this failure reflected the fact that assessed values of properties in Calumet Township, particularly the base rates used to determine the assessed value of land, had not for many years reflected actual market values.[405] To substantiate this assertion, Young presented documents for each of his properties that included "copies of emails, a page from a newspaper, a request for proposals, excerpts from five appraisals of other properties, a land comparison chart, and a settlement agreement."[406]

The emails recorded exchanges between Young and several Lake County assessing officials in which he asked them to adjust the assessed values of 1,700 properties in Gary to reflect their lower sales prices.[407] Young believed this adjustment would prevent a disconnect between the values and the city's annual budgeting process.[408] In this exchange, an assessing official admitted that some of the properties' assessed values exceeded their sales prices and suggested that someone needed to effect value reductions.[409] The newspaper article "contained a list of approximately eighty residential properties that were to be offered for sale in 'as is' condition by Gary's Redevelopment Commission."[410] The article reported that the assessed values of the properties ranged from $90 to $45,900, and the appraised values from $125 to $225.[411] Young asserted that the article "illustrated the historical disparities between assessments and market values of properties in Calumet Township."[412]

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398. *Id.* at 1237.
399. *Id.* at 1230-31.
400. *Id.* at 1231.
401. *Id.*
402. *Id.*
403. *Id.*
404. *Id.*
405. *Id.*
406. *Id.* at 1232.
407. *Id.*
408. *Id.*
409. *Id.*
410. *Id.*
411. *Id.*
412. *Id.*

The Redevelopment Commission's request for proposals listed the bids for the development of 138 properties in Gary and their collective market value.[413] Using this value figure, Young calculated the properties' individual values.[414] He noted that these properties were located near his four residential properties and "had identical characteristics."[415] Accordingly, Young argued that the 138 properties' assessed values demonstrated that his four properties were over-assessed.[416] The excerpts from the five appraisals provided the assessed values of vacant properties in Calumet Township for 2017 and 2020.[417] Young argued that a comparison of these values between the two years demonstrated "the disparity between the assessed values and market values of land in Calumet Township."[418]

The one-page land comparison chart contained sales data that Young compiled for thirty vacant lots in Hammond and East Chicago sold from 2014 to 2017.[419] Young argued that the data, when compared to the values the Assessor assigned to his four properties, demonstrated the chronic land assessment problem in Calumet Township.[420] Finally, the eight-page settlement agreement pertained to Young's 2012 Chapter 11 bankruptcy proceeding.[421] The agreement "applied to approximately 120 of Young's properties located in Gary, Lake Station, and Dyer, Indiana."[422] It indicated that Young and the Lake County Assessor had agreed to the properties' assessed values for tax year 2010.[423] The agreement said that the agreed values would act as the starting point for future reassessments and that Young and the Assessor agreed that the properties would be assessed in the future in the same manner and using the same methodologies as any other similar properties in Lake County.[424] Young argued that the Assessor violated the agreement because the assessed values agreed upon for his four properties had not been entered into Lake County's computerized property assessment system and, therefore, were not used as the starting point for the 2017 assessments at issue.[425]

In response to Young's evidence, the Assessor did not offer any documentary evidence supporting its assessment of Young's four properties or rebutting his evidence.[426] Rather, the Assessor objected to the admission of Young's evidence as being irrelevant and argued that "Young had failed to present relevant market-

413. *Id.*
414. *Id.* at 1232-33.
415. *Id.* at 1233.
416. *Id.*
417. *Id.*
418. *Id.*
419. *Id.*
420. *Id.*
421. *Id.*
422. *Id.*
423. *Id.*
424. *Id.* at 1233-34.
425. *Id.* at 1234.
426. *Id.*

based evidence in support of his requested assessment reductions."[427] The IBTR rejected the Assessor's objection to the admission of Young's evidence based on its relevance. Regarding one of the four properties, the IBTR held that "Young had made a *prima facie* case for its assessment reduction because his 'unrebutted testimony established that [it] was unimproved' during the tax year at issue."[428] With regard to the other three properties, however, the IBTR refused to grant them a reduction.[429] The IBTR held that Young failed to offer any probative market-based evidence demonstrating: (1) their correct market value-in-use, or (2) that the Assessor had given them a valuation greater than the common level of assessment given to similar properties in Lake County during the year at issue.[430]

After the IBTR denied Young's request for a rehearing, he challenged the IBTR's final determination before the Indiana Tax Court.[431] Before the Court, Young proceeded *pro se*.[432] He argued that the Assessor had failed to abide by Indiana property tax law, Indiana's assessment guidelines, or any rational and consistent methodology to establish the base rates applicable for assessing land in Calumet Township.[433] Young attached eight exhibits to his brief that were not admitted into evidence at the administrative hearing before the IBTR and, therefore, were not a part of the certified record of proceedings before the IBTR.[434]

The Tax Court first resolved whether it could consider evidence submitted to it anew, outside the certified administrative record. The Court noted that its review of IBTR decisions was generally limited to the certified record of the proceeding before the IBTR.[435] The Court said, however, that it could consider evidence presented to it that was not contained in the record if the evidence addressed a dispute regarding either: (1) the improper constitution as a decision-making body or disqualification grounds for those taking agency action, or (2) the unlawfulness of procedures used by a decision-making body.[436] In either case, the Court could consider this new evidence only if, after exercising due diligence, the

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427. *Id.*

428. *Id.*

429. *Id.*

430. *Id.*

431. *Id.* at 1235.

432. *Id.* at 1236.

433. *Id.* at 1235-36.

434. *Id.* The eight exhibits Young attached to his brief were: "(1) a two-page excerpt of the minutes from the PTABOA's hearing of April 6, 2022; (2) the 2018 to 2021 Lake County Cyclical Reassessment Plan; (3) the 2022 to 2025 Lake County Cyclical Reassessment Plan; (4) the cover page for and minutes of the PTABOA's hearing of April 6, 2022; (5) emails between Young and the Assessor regarding neighborhood base rates; (6) a map of Calumet Township; (7) another map of Calumet Township produced as a result of Young's request; and (8) emails between Young and several assessing officials regarding Lake County's cyclical reassessment plans." *Id.* at 1236.

435. *Id.*

436. *Id.* (quoting IND. CODE § 33-26-6-5(b) (2022)).

party offering it could not have discovered and offered it during the administrative proceeding before the IBTR.[437] The Court held that it could not consider the newly offered evidence because Young failed to demonstrate that, even after exercising the requisite diligence, he could not have done this.[438]

With regard to the second issue—whether the IBTR abused its discretion in determining that the three properties were not entitled to a reduction in assessed value—the Court upheld the IBTR's decision. The Court determined that Young failed to direct it to any evidence in the record showing that the IBTR's final determination constituted an abuse of discretion, contradicted Indiana property tax law, failed to comply with mandated procedures, or lacked support by substantial evidence.[439] Accordingly, the Tax Court affirmed the IBTR's determination.[440]

B. Income Tax Case

1. Joseph R Guy, P.C. v. Department of State Revenue.[441]—The Tax Court in *Guy* considered whether the Department's notice of a tax balance due constituted a final determination, thereby invoking the Court's subject matter jurisdiction over the taxpayer's appeal of the notice.[442] In November 2021, Joseph R. Guy, P.C. (Guy) "electronically filed a withholding tax return for the period from September 1, 2021, to September 30, 2021."[443] At that same time, "Guy paid the corresponding tax liability of $688.26 to the Department."[444] In December 2021, the Department of State Revenue (Department) "sent Guy a 'Notice of Failure to File,' (Notice) stating that" he failed to submit "a withholding tax return for the period at issue and, if the return was not filed by January 2022, the Department would [issue him a best-information assessment] (BIA)."[445] "The Notice also stated that if Guy had a tax liability for the period at issue, 'a 20% penalty [would] be assessed and interest would accrue from the date the return was due.'"[446]

In December 2021, Guy responded to the Department, explaining that he had "filed a withholding tax return for the period at issue, but mistakenly labeled it for the October 2021 tax period."[447] Guy provided the Department with his September and October 2021 payroll ledgers and the related electronic payment receipts to show that he "already paid the withholding tax liability of $688.26 for

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437. *Id.* (citing IND. CODE § 33-26-6-5(b)).
438. *Id.* at 1236-37.
439. *Id.* at 1237.
440. *Id.*
441. 188 N.E.3d 74 (Ind. T.C. 2022).
442. *Id.* at 78.
443. *Id.* at 75.
444. *Id.* at 76.
445. *Id.*
446. *Id.*
447. *Id.*

the period at issue and $984.03 for the October 2021 tax period."[448] The Department did not respond to Guy's explanation.[449] On January 20, 2022, when using the Department's electronic tax filing system[450] "to file a withholding tax reconciliation form [ ] for the December 2021 tax period, Guy discovered that the Department's records indicated his having an outstanding withholding tax liability of $1,273.22 for the period at issue."[451] Guy promptly contacted the Department, notifying it that, contrary to its electronic records, he had filed the required withholding returns and paid all the withholding taxes.[452] The Department responded, instructing Guy to send a message through the electronic filing system "to receive assistance with the issue."[453] It is unknown whether Guy followed the Department's instructions.[454]

In February 2022, "the Department sent Guy a 'Statement of Account' and a 'Notice of Proposed Assessment' stating that [he] owed additional withholding tax, penalties, and interest in the amount of $1,409.77 for the period at issue."[455] Additionally, the notice informed him that he could protest the assessment in writing within 60 days of its issue date.[456] In February 2021, Guy sent the Department a letter explaining that the BIA assessment had been erroneously issued.[457] The Department answered, confirming its receipt of Guy's letter and explaining that a more complete response would take up to fifteen business days.[458]

In March 2022, the Department sent Guy a message via the electronic filing system explaining the various adjustments it had performed with regard to Guy's mislabeled filings and payments.[459] Soon after this, in March, "the Department sent Guy a 'Notice of Balance Due' (Second Notice) that reduced Guy's withholding tax liability for the period at issue from $1,266.52 to $578.26."[460] Before the month was out, Guy challenged this Second Notice to the Tax Court.[461] The Department filed an Ind. Trail Rule 12(B)(1) motion requesting that the Court dismiss Guy's case for lack of subject matter jurisdiction.[462]

The Tax Court noted that a final determination "is an order that determines

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448. *Id.*

449. *Id.*

450. The Department calls this system the *Indiana Taxpayer Information Management Engine,* or INTIME.

451. *Guy*, 188 N.E.3d at 76.

452. *Id.*

453. *Id.*

454. *Id.*

455. *Id.*

456. *Id.*

457. *Id.*

458. *Id.* at 77.

459. *Id.*

460. *Id.*

461. *Id.*

462. *Id.*

the rights of, or imposes obligations on, the parties as a consummation of the administrative process."[463] While the Second Notice imposed an obligation upon Guy to pay additional withholding tax for the period at issue, "it did not constitute a final determination because Guy failed to initiate either of the Department's administrative process" for an appeal.[464] The Second Notice could not constitute the consummation of a process that had never been initiated.[465] Because Guy's case was not an original tax appeal subject to the Court's jurisdiction, the Tax Court granted the Department's motion to dismiss.[466]

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463. *Id.* at 78 (quoting Garwood v. Ind. Dep't of State Revenue, 939 N.E.2d 1150, 1155 (Ind. T.C. 2010)).

464. *Id.* at 78-79 (citing IND. CODE §§ 6-8.1-5-1 (to appeal an assessment); 6-8.1-9-1 (to appeal the denial of a refund claim).

465. *Id.* at 79.

466. *Id.*