RECENT DEVELOPMENTS IN INDIANA TAX CASE LAW: SURVEY 2024

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I. INTRODUCTION

This survey article analyzes the tax decisions issued by the Indiana Supreme Court (Supreme Court) and the Indiana Tax Court (Tax Court) between December 1, 2023, and December 1, 2024. During this period, the Tax Court released twenty published opinions addressing substantive tax issues—seventeen related to real property tax, one involving income tax, one concerning sales tax, and one covering excise tax.[1]

While it does not cover every tax decision issued by the Tax Court during this time, this article highlights the most significant opinions rendered within the survey period.[1] The Tax Court decisions addressing substantive tax issues that are not discussed in detail include the following:

1. Camelot Co. v. Bartholomew County Assessor.[2]—Senior Judge Robb authored the opinion, deciding whether the Indiana Board of Tax Review ("IBTR") correctly determined that the taxpayer failed to challenge a decision issued by the Bartholomew County Property Tax Assessment Board of Appeals ("PTABOA") in a timely manner and whether the PTABOA used the correct land order to revalue and increase the taxpayer's taxable land value. [3]
2. Marion County Assessor v. Square 74 Assocs.[4]—Addressed whether the Indiana IBTR properly ruled against the Marion County Assessor by calculating a lower tax for the taxpayer's leasehold estate, thereby triggering Indiana's burden-shifting-and-reversion statute, Ind. Code section 6-1.1-15-17.2, and reverting the disputed assessment to the undisputed value from a prior tax year.[5]
3. Chevrolet of Columbus, Inc. v. Bartholomew County Assessor.[6]—Determined whether the IBTR exceeded the Tax Court's remand directive by allowing additional briefs from the parties and whether it acted arbitrarily and capriciously by upholding the taxpayer's property tax assessments without substantial and reliable evidence. The case was

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1. *See Tax Court Opinions*, IND. APP. DECISIONS, https://public.courts.in.gov/decisions?c=9550 [https://perma.cc/3U27-GYU9] (last visited Jan. 27, 2025).

2. 224 N.E.3d 1007 (Ind. T.C. 2023).

3. *Id.*

4. 228 N.E.3d 542 (Ind. T.C. 2024).

5. *Id.*

6. 230 N.E.3d 400 (Ind. T.C. 2024).

consolidated with *Bushmann, LLC v. Bartholomew County Assessor*,[7] as both cases involved identical facts, issues, and legal arguments, and the resolution of one was dispositive for the other.[8]

4. Ciceu v. Knox County Assessor.[9]—Decided whether the IBTR properly upheld the valuation of a property for tax assessment purposes and whether it ignored the taxpayer's claim that assessing officials failed to provide the required *Form 11*, Notice of Land and Improvements, as mandated by Indiana law.[10]
5. Osborn v. Schultz.[11]—Senior Judge Martha B. Wentworth authored the opinion, deciding whether the IBTR improperly upheld two years of property tax assessments, allegedly violating the taxpayer's natural and inalienable right to own real property as protected under the federal and Indiana constitutions. [12]
6. Convention Headquarters Hotels, LLC v. Marion County Assessor.[13]—Senior Judge Wentworth authored the opinion, addressing whether the county assessor selectively assessed only certain properties under construction within the county, thereby violating the taxpayer's federal and state constitutional rights by unfairly assessing its property under construction. [14]
7. Majestic Properties, LLC v. Tippecanoe County Assessor.[15]—Examined whether the IBTR correctly determined the "current use" of the property for tax assessment purposes and whether its decision to uphold the assessed value of the taxpayer's single-family home aligned with Indiana's legal standard for determining market value-in-use. [16]
8. Sparre v. St. Joseph County Assessor.[17]—Senior Judge Wentworth authored the opinion, considering whether the IBTR erred in upholding the property tax assessments for Sparre's home despite his claims that the Board's small claims procedures violated his constitutional rights and that the assessments violated the Equal Protection Clause.[18]

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7. 230 N.E.3d 407 (Ind. T.C. 2024).

8. *See generally* Chevrolet of Columbus, Inc. v. Bartholomew Cnty. Assessor, 230 N.E.3d 400; *Bushmann, LLC*, 230 N.E.3d at 407.

9. 232 N.E.3d 662 (Ind. T.C. 2024).

10. *Id.*

11. 238 N.E.3d 730 (Ind. T.C. 2024). On September 13, 2024, the taxpayer Osborn filed a Petition for Review with the Indiana Supreme Court. *See* Petition for Review, Osborn v. Schultz, No. 22T-TA-00012 (Ind. Sept. 13, 2024).

12. *Id.*

13. 236 N.E.3d 747 (Ind. T.C. 2024). On August 30, 2024, the taxpayer Convention Headquarters filed its Petition for Review with the Indiana Supreme Court. *See* Petition for Review, Convention Headquarters Hotels, LLC v. Marion Cnty. Assessor, No. 19T-TA-00021 (Ind. Aug. 30, 2024).

14. *Id.*

15. 241 N.E.3d 642 (Ind. T.C. 2024).

16. *Id.*

17. 242 N.E.3d 543 (Ind. T.C. 2024).

18. *Id.*

9. Bougie v. Chapman.[19]—Senior Judge Robb authored the opinion, addressing whether the IBTR erred in accepting the county assessor's valuation of Bougie's property using the sales comparison approach, determining that the second-floor addition constituted substantially finished living space, and issuing an entry order for inspection of the property that Bougie claimed violated his Fourth Amendment rights.[20]

10. Crandall v. Bartholomew County Assessor.[21]—Considered whether the IBTR erred in concluding that the repealed version of Indiana's burden-shifting statute, which required assessors to bear the burden of proof in property tax appeals where assessed values increased by more than 5%, did not apply to the Crandalls' appeals and, consequently, upholding the property assessments based on appraisals provided by the county assessor.[22]

The Tax Court also issued four decisions related to budgetary or land order issues. Because these cases do not involve the type of substantive tax issues that arise when a taxpayer directly challenges their own tax liability, they are not reviewed in this Article.[23]

During the survey period, the Indiana Tax Court issued more decisions than in prior periods—a development likely attributable to the involvement of several retired senior judges who presided over tax cases and issued final judgments. This increased reliance on senior judges is noteworthy, as their involvement in the Tax Court has historically been rare and typically limited to instances in which the regularly presiding Tax Court judge faced a potential conflict with the taxpayer or was temporarily unable to perform judicial duties. In addition to the decisions issued by the current Tax Court Judge, Justin McAdam,[24] several retired senior judges—former appellate court judges John Baker,[25] and Margret

19. 244 N.E.3d 987 (Ind. T.C. 2024).

20. *Id.*

21. 246 N.E.3d 350 (Ind. T.C. 2024)

22. *Id.*

23. The Tax Court decisions involving budgetary or land order issues decided during the survey period, but not reviewed in detail in this Article, include the following: Young v. Dep't of Loc. Gov't Fin., 237 N.E.3d 1175 (Ind. T.C. 2024) (Special Judge Robb authored the opinion); Luebke, et al. v. Ind. Dep't of Loc. Gov't Fin., 240 N.E.3d 186 (Ind. T.C. 2024) (Special Judge Welch authored the opinion); Luebke v. Ind. Dep't of Loc. Gov't Fin., 244 N.E.3d 976 (Ind. T.C. 2024) (Special Judge Welch authored the opinion); City of Carmel v. Ind. Dep't of Loc. Gov't Fin., 246 N.E.3d 832 (Ind. T.C. 2024) (Special Judge Baker authored the opinion).

24. *See* Andrew W. Swain, *Recent Developments in Indiana Tax Law: Survey 2023*, 57 IND. L. REV. 979, 1010 (June 2024) (discussing the appointment of the new Indiana Tax Court judge, Justin L. McAdam).

25. In July 2020, Judge Baker retired from the Indiana Court of Appeals and now serves as a senior judge. *See Judge John G. Baker*, IND. JUD. BRANCH, https://www.in.gov/courts/appeals/judges/john-baker/ [https://perma.cc/6VU9-SYX3] (last visited Jan. 27, 2025).

Robb,[26] retired Marion County Superior Court Judge Heather Welch,[27] and former presiding Tax Court Judge Martha Wentworth[28]—also contributed to the issuance of tax decisions during this period. For any case decided during the survey period mentioned in this article, readers should assume that the presiding Tax Court judge issued the decision unless otherwise noted in the text discussing the decision or in the footnote providing the case's citation.

Finally, the Indiana Supreme Court did not issue any tax-related opinions during this survey period, continuing a trend of limited activity in tax cases. In fact, the last time the Supreme Court issued tax decisions was in 2021, when it reversed the Tax Court in two cases: *Muir Woods Section One Association v. Marion County Assessor*[29] and *Southlake Indiana, LLC v. Lake County Assessor*.[30] Both of these cases involved real property taxes. However, tax cases are currently pending review before the Indiana Supreme Court, suggesting the potential for the Court to reassert its influence in Indiana tax law. These reviews will be identified within the context of the relevant decisions under review.

II. SIGNIFICANT INDIANA TAX COURT DECISIONS

A. Real Property Tax

1. Muir Woods Section One Association, Inc. v. Marion County Assessor.[31]—The issue before the Tax Court was whether the taxpayer appealing an assessor's assessment exhausted its administrative remedies before the IBTR before seeking an appeal before the Indiana Tax Court and if such a failure deprived the Tax Court of subject matter jurisdiction to hear and decide the appeal.[32]

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26. In February 2024, Judge Robb retired from the Indiana Court of Appeals and now serves as a senior judge. *See Judge Robb, '78, to Retire from Indiana Court of Appeals in Summer 2023*, IND. UNIV. ROBERT H. MCKINNEY SCH. OF L., (Feb. 10, 2023), https://mckinneylaw.iu.edu/news/releases/2023/02/judge-robb-78-to-retire-from-indiana-court-of-appeals-in-summer-2023.html [https://perma.cc/57HR-TRZT]; *Judge Margret G. Robb*, IND. JUD. BRANCH, https://www.in.gov/courts/appeals/judges/margret-robb/ [https://perma.cc/M7Z2-7BUD] (last visited Jan. 27, 2025).

27. In October 2023, Judge Welch retired from the Marion County Superior Courts in Indiana. *See* IL Staff, *Marion Superior Judge Welch to retire in February; applications open to fill vacancy*, IND. LAW. (Oct. 20, 2023), https://www.theindianalawyer.com/articles/marion-superior-judge-welch-to-retire-in-february-applications-open-to-fill-vacancy [https://perma.cc/4DAL-V25V]. The Indiana Supreme Court certified her as a special judge through December 31, 2024. Certification of Senior Judge, *In re* Cert. of Senior J. Heather A. Welch, No. 23S-MS-381 (Ind. Dec. 15, 2023).

28. *See* Swain, *supra* note 24, at 1011 (discussing the retirement of Judge Wentworth and her appointment as a special judge).

29. *Muir Woods (Muir Woods I)*, 154 N.E.3d 877 (Ind. T.C. 2020), *rev'd in part*, 172 N.E.3d 1205 (Ind. 2021).

30. 160 N.E.3d 1156 (Ind. T.C. 2020), *rev'd*, 174 N.E.3d 177 (Ind. 2021).

31. *Muir Woods II*, 225 N.E.3d 236 (Ind. T.C. 2023) (Senior Judge Robb authored the opinion).

32. *Id.*

This case marked the Tax Court's second consideration of a property tax dispute it initially decided in 2021 in favor of the Assessor. Muir Woods Section One Association, Inc., Muir Woods, Inc., Spruce Knoll Homeowners Association, Inc., and Oakmont Homeowners Association, Inc. are all homeowners' associations (the "HOAs") that own real property located in Marion County, Indiana.[33] In *Muir Woods I*, the Indiana Supreme Court subsequently reviewed that decision, partially reversing it and remanding the case to the IBTR. The Supreme Court held that while the assessor's initial determination of a property's base rate was subjective, the application of a mandatory discount for common areas was an objective requirement.[34] On remand, the IBTR was instructed to revise its decision to align with this reasoning.[35]

Following remand, the IBTR scheduled a hearing, despite the HOAs' requests for a case management plan and additional discovery time.[36] The HOAs filed motions, including for partial summary judgment, and a deposition notice, but the IBTR struck their filings for procedural noncompliance and dismissed their appeal after they failed to attend the remand hearing on December 15th.[37] The HOAs sought reinstatement of their appeal and eventually filed a petition with the Tax Court, asserting that the IBTR's dismissal contradicted Indiana law and procedural rules.[38]

To support their challenge, the HOAs argued that the IBTR's decision dismissing their administrative appeal contradicted the Indiana Rules of Trial Procedure and was invalid in all the ways that statutorily permit the Tax Court to grant relief from a final determination.[39] Specifically, the HOAs argued they had timely informed the IBTR it needed to conduct discovery before any remand evidentiary hearing and timely sought a case-management schedule that facilitated this.[40] Rather than logically grant those requests, the HOAs argued, the IBTR illogically ignored them, prematurely scheduled an evidentiary hearing, denied the HOAs' summary-judgment motion, and, when the HOAs failed to attend the hearing, dismissed their administrative appeal.[41]

In response, the Assessor asserted, in essence, that the HOAs' arguments were irrelevant because the Tax Court lacked subject matter jurisdiction to either consider them or decide the HOAs' tax appeal.[42] The Assessor argued that the Tax Court lacked subject matter jurisdiction because the HOAs had not received

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33. *Id.* at 238.
34. *Muir Woods I*, 172 N.E.3d at 1205.
35. *Id.* at 1218.
36. *Muir Woods II*, 225 N.E.3d at 239.
37. *Id.*
38. *Id.* at 241.
39. *Id.* (citing IND. CODE § 33-26-6-6(e) (2017), which lists all the invalid forms an IBTR action can take that permit the Tax Court to grant a party relief from a final determination issued by the IBTR.).
40. *Id.*
41. *Id.*
42. *Id.* at 242.

a final determination from the IBTR that they could challenge before the Tax Court.[43] The Tax Court agreed with the Assessor's argument.

The Tax Court noted that it has exclusive subject matter jurisdiction to review all original tax appeals.[44] An original tax appeal is premised on the IBTR issuance of a final determination.[45] The Tax Court noted that this requirement "embodies the principle basic to all administrative law that a party seeking judicial relief from an agency action must first establish that all administrative remedies have been exhausted."[46] In other words, the court asserted that a party's failure to acquire a final determination from the IBTR equaled its failure to exhaust administrative remedies.[47] This failure prohibited an appeal to the Tax Court.[48]

The Tax Court said that, when the IBTR dismissed the HOAs' appeal, it had issued an appealable final determination.[49] Rather than appeal that determination, however, the HOAs sought a rehearing asking the IBTR to reconsider its final determination dismissing the appeal.[50] The IBTR took this rehearing request under advisement.[51] The Tax Court said that, pursuant to the relevant statute, if the IBTR grants a rehearing request:

> (1) it may conduct the additional hearings that it determines necessary, or it may review the written record without additional hearings; and
> (2) it shall issue a final determination not later than ninety days after notifying the parties that it will rehear the final determination.[52]

Furthermore, the court noted that a party's request for rehearing does not extend the date by which it must file a petition for judicial review unless the rehearing request is granted.[53] The Tax Court held that, pursuant to the unambiguous controlling Indiana statute (i.e., Indiana Code section 6-1.1-15-5(a)), once the IBTR granted a request for rehearing, "its original final determination cease[d] to carry any weight as the [IBTR] must issue a new final determination in the matter that either affirm[ed] or modif[ied] the original final determination."[54] Therefore, when the HOAs moved to vacate the IBTR's December 22, 2021

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43. *Id.*

44. *Id.* (citing I.C. §§ 33-26-3-1, -3 (2023)).

45. *Id.* (citing I.C. § 33-26-3-1(2) (2023)).

46. *Id.* (citing State Bd. of Tax Comm'rs v. Ispat Inland, Inc., 784 N.E.2d 477, 482 (Ind. 2003)).

47. *Id.* (citing State ex rel. Att'y Gen. v. Lake Superior Ct., 820 N.E.2d 1240, 1247 (Ind. 2005); *Ispat Inland, Inc.*, 784 N.E.2d at 482).

48. *Id.*

49. *Id.* at 243.

50. *Id.* (citing I.C. § 6-1.1-15-5(a) (2021), providing that once the IBTR issues a final determination, a party has fifteen days to request a rehearing).

51. *Id.*

52. *Id.* (citing I.C.§ 6-1.1-15-5(a) (2021)).

53. *Id.*

54. *Id.* (internal quotation marks omitted).

dismissal, and the IBTR took the motion under advisement and scheduled another remand hearing, the original dismissal order ceased to be an appealable final determination because the administrative review process had not yet been concluded.[55] The Tax Court deemed the IBTR's taking the HOAs' motion of a rehearing under advisement and its scheduling a new remand hearing as a renewal of the administrative review process that the HOAs failed to exhaust when they failed to wait for the IBTR to issue a final decision resolving the renewed administrative process.[56] The court cited no precedent to support this conclusion. Despite this, the Tax Court held that, because the HOAs prematurely sought an appeal before the Tax Court during the renewed administrative process, it must be dismissed.[57]

The way the Tax Court applied the tax statute it identified as controlling (i.e., Indiana Code section 6-1.1-15-5(a)) to the facts presented in this second *Muir Woods* case is questionable. On January 11th, according to the Tax Court's characterization of the case's facts, the IBTR did not "grant" the motion for rehearing. On that date, the IBTR merely took the motion "under advisement" and, rather than schedule a rehearing proceeding, rescheduled the remand evidentiary hearing for February 11, 2022 (the same hearing the IBTR had previously scheduled and rescheduled in the past). The IBTR said it would consider all remaining open matters at that hearing. The IBTR did not say it was conducting a rehearing as mandated in Indiana Code section 6-1.1-15-5(a). Also, according to Indiana Code section 6-1.1-15-5(a), the IBTR has fifteen days after receiving a petition for a rehearing to "determine whether to *grant* a rehearing." The IBTR did not make that determination on January 11, 2022, but merely delayed it to a later date (that is, February 11, 2022), one well beyond the fifteen-day determination deadline mandated by the statute. Finally, pursuant to § 5(a), the IBTR's failure "to grant a rehearing not later than fifteen . . . days after receiving the petition shall be treated as a final determination to deny the petition."[58]

According to the Tax Court, the IBTR's order dismissing the appeal it issued on December 22, 2021, constituted an appealable final determination. Pursuant to Indiana Code section 6-1.1-15-5(b), the HOAs had forty-five days to appeal the IBTR's December dismissal—that is, the HOAs' appeal of the dismissal was due on or before February 7, 2022. As the Tax Court correctly noted, a party's request for rehearing does not extend the time by which it must file a petition for judicial review unless the rehearing request is *granted*.[59] Accordingly, the HOAs' deadline for appealing the IBTR's December 2021 dismissal order was February 7, 2022—that is, the date on which the HOAs, in

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55. *Id.*
56. *Id.*
57. *Id.* at 244.
58. *See* I.C. 6-1.1-15-5(a) (2021).
59. *Muir Woods II*, 225 N.E.3d at 243 (citing I.C.§ 6-1.1-15-5(a) (2021), which states that "[a] petition for a rehearing does not toll the time in which to file a petition for judicial review unless the petition for rehearing is *granted*" (emphasis added)).

fact, filed their appeal to the Tax Court. The IBTR did not decide to grant the rehearing within the statutorily mandated fifteen-day period, thereby rendering that omission itself an appealable final determination. Therefore, because the IBTR had not granted the rehearing within the statutorily mandated fifteen-day period, and because a mere request for rehearing did not toll the period in which the HOAs needed to file their original tax appeal with the Tax Court, the HOAs had no statutorily mandated choice but to file their appeal on February 7, 2022, the appeal deadline date.

According to Indiana Code section 6-1.1-15-5(a), "granting" a motion to rehear an otherwise appealable final determination eliminates that determination's appealability and renews the administrative review process that leads to a new superseding appealable final determination. According to that same section, section 5(a), taking a motion to rehear an appealable final determination "under advisement" does not affect the appealability of that determination. Granting a rehearing motion or taking the rehearing motion under advisement is not the same judicial action per the statute's verbiage. The Tax Court mistakenly equated them and did so without citing any legal authority. The HOAs correctly realized the lack of statutory equivalence between granting a rehearing motion and merely taking it under advisement and, in a timely manner, filed its appeal challenging the IBTR's appealable dismissal determination. Accordingly, it appears that the Tax Court erroneously dismissed the HOAs' statutorily valid appeal in ruling in the Assessor's favor.

2. Slatten v. Hamilton County Assessor.[60]—The issue before the Tax Court was whether the IBTR correctly interpreted the property tax statute governing the standard homestead deduction[61] to require that an individual purchasing residential real property under a contract record a memorandum of contract with the county recorder's office by December 31 of the assessment year to qualify for the deduction.[62]

On December 31, 2020, the taxpayer, Pamela Slatten ("Slatten"), contracted to purchase a home in Carmel, Indiana that she had lived in since October 2020.[63] Also on that date, she prepared and signed an application for Indiana's homestead deduction (i.e., the *Claim for Homestead Property Tax Standard/Supplemental Deduction*—State Form 5473 [or Form HC10]).[64] On January 5, 2021, Slatten recorded a memorandum of contract authenticating her residential land purchase in the Hamilton County Auditor's Office (the

60. 226 N.E.3d 270 (Ind. T.C. 2023). This marked Judge Justin McAdam's first ruling as the newly appointed Indiana Tax Court Judge.

61. During the 2020 assessment year, the standard homestead deduction removed from annual property taxation the first $45,000 of the assessed value of a taxpayer's residential property. *See* I.C. § 6-1.1-12-37(c)(2) (2020); *see also Slatten*, 226 N.E.3d at 272.

62. *Slatten*, 226 N.E.3d at 272.

63. *Id.*

64. *Id. See also* The Dep't of Local Gov't Fin., *Deduction Forms*, https://www.in.gov/dlgf/forms/deduction-forms/ [https://perma.cc/KF87-NP7N] (providing State Form 5473 (*i.e.*, Form HC10)).

"Auditor") and filed her completed Form HC10.[65] The Auditor granted Slatten the homestead deduction for the 2021 assessment year.[66] It denied, however, her the deduction for the 2020 assessment year because the Auditor believed that the relevant Indiana Tax Statute, 6-1.1-12-37, required Slatten to record her memorandum of contract by December 31, 2020, to be eligible for the deduction that assessment year.[67] Slatten challenged the Assessor's deduction denial for 2020 to the Hamilton County PTABOA.[68] Getting no favorable relief from the PTABOA, Slatten appealed her deduction's denial to the IBTR.[69] On February 1, 2022, the IBTR denied her appeal and ruled in the Assessor's favor.[70] Slatten filed an original tax appeal with the Indiana Tax Court in a timely manner.[71]

The method by which a homeowner taxpayer can claim a homestead deduction, which is at issue in this case, requires the taxpayer to complete and date the homestead deduction application form (i.e., the State Form 5473 [Form HC10]) on or before December 31 of the assessment year but file the form with the county auditor on or before January 5 of the next year.[72] As a part of this application and approval process, the taxpayer must establish that the real property for which he or she seeks the deduction is his or her homestead. If a taxpayer buys the real property in question via a land contract,[73] he or she establishes this property as a qualifying homestead property by recording the contract or memorandum of contract[74] that evidences the purchase in the county recorder's office.[75] In the context of defining what real property constitutes a homestead property, the homestead deduction statute specifies this recording requirement in the following manner:

> "Homestead" means an individual's principal place of residence . . . that . . . the individual is buying under a contract *recorded* in the county recorder's office, or evidenced by a memorandum of contract *recorded*

65. Slatten v. Hamilton Cnty. Assessor, 226 N.E.3d 270, 272 (Ind. T.C. 2023).
66. *Id.*
67. *Id.*
68. *Id.*
69. *Id.*
70. *Id.*
71. *Id.*
72. *See* I.C. § 6-1.1-12-37(e) (flush language) (providing that "[t]o obtain the deduction for a desired calendar year in which property taxes are first due and payable, the statement must be completed and dated in the immediately preceding calendar year and filed with the county auditor on or before January 5 of the calendar year in which the property taxes are first due and payable.").
73. *See, e.g.*, I.C. § 24-9-2-9.5 (providing that a '"land contract" means a contract for the sale of real estate in which the seller of the real estate retains legal title to the real estate until the total contract price is paid by the buyer"); I.C. § 36-2-11-20(a) (providing that a "'contract' means an agreement for a seller to sell real estate to a purchaser that provides for the purchaser to pay the purchase price to the seller in periodic installments, with the seller retaining record title to the real estate and the purchaser acquiring equitable title to the real estate.").
74. *See, e.g.*, I.C. § 36-2-11-20(g) (describing the form that a memorandum of contract must take to replace the land contract for recording purposes.).
75. *See* I.C. § 6-1.1-12-37.

in the county recorder's office. . . .[76]

The specific question before the Tax Court was this: when must a taxpayer effect the recording of a land contract or memorandum of contract with the county recorder's office to qualify for the homestead deduction in a particular calendar year? More specifically, for Slatten to qualify for the homestead deduction in 2020, must she have presented the contract or memorandum of contract to the Hamilton County Recorder's Office (the "Recorder's Office") for recording on or before the last day of 2020 (i.e., December 31), or could she have presented the contract to the Recorder's Office for recording on or before the fifth day of the next year's first month (i.e., January 5) and remained eligible for the deduction for 2020? The answer to this question turns on the meaning of the word "recorded" as used in the homestead deduction statute—that is, Indiana Code section 6-1.1-12-37(a)(2)(B)(ii). The Tax Court answered this question in the IBTR's favor and upheld its final determination, rejecting Slatten's claim of entitlement to a homestead deduction for tax year 2020.[77] Was the court correct in taking this action? The short answer is no.

To answer the question at issue in her favor, Slatten first asserted a grammatical argument to the Tax Court. She argued that the term "recorded" as used in section 37(a)(2)(B)(ii) of the Indiana Code should be understood as a past participle and, therefore, as a "nonfinite verb that has no tense."[78] She concluded that "one cannot infer a deadline [i.e., December 31, 2020], a point in time by which an act must be completed, from a past participle."[79] In other words, she contended that her submitting the memorandum of contract on January 5, 2021 for recording was still timely for claiming the homestead deduction for the 2020 assessment year.

The Tax Court disagreed with Slatten's grammatical argument, saying that it "actually work[ed] against her."[80] The court said that, although past participles do not have a specific tense, they do convey a sense of completion because "they convey a perfective aspect."[81] The court explained that past participles such as "recorded" inherently signal that the action (in this case, the recording of the memorandum of contract) is completed.[82] Therefore, the Tax Court concluded that "[t]hese grammatical nuances confirm[ed] that the recording required by the homestead definition [statute] must be completed during the assessment year for which a deduction is sought" to qualify the real property as a "homestead."[83] The Tax Court's grammatically premised interpretive conclusion is arguably a

76. *Id.* (emphases added).
77. *Slatten*, 226 N.E.3d at 276.
78. *Id.* at 273.
79. *Id.* (brackets added by Tax Court omitted).
80. *Id.*
81. *Id.* (original quotation marks omitted).
82. *Id.* at 274.
83. *Id.*

non-sequitur and, therefore, questionable.[84]

A court's use of English grammar rules to interpret the meaning of a statute's wording to ascertain the statute's meaning is always problematic because it presumes the court correctly understands: (1) the rules' meanings, (2) the manner of their proper application, and (3) the message or messages those rules' application conveys to the statute's readers. Also, a court's understanding of the rules and its application of them will likely be heavily influenced by its subjective beliefs and preferences regarding what constitutes, rightly or wrongly, proper legal writing or proper writing in general.

Nevertheless, while it is true that past participles generally indicate completed actions, they do not inherently specify the *timing* of that completion. Past participles can refer to actions completed before, during, or after the time of reference.[85] Accordingly, the past participle nature of the word record—that is, recorded—could denote merely the general idea that the contract or memorandum of contract must be publicly published (i.e., undergo the recording process as defined by Indiana law) in the county recorder's office before the auditor can grant a homestead deduction pursuant to a timely filed deduction application (i.e., the State Form 5473 [Form HC10]) rather than denote the specific idea that it must be published (i.e., recorded) in the recorder's office "in the year" for which the deduction is sought. The use of the past participle "recorded" in the statute does not explicitly indicate that the recording must be completed within the assessment year.[86] The Tax Court does not explain why the more narrow and specific denotation of "recorded" is more compelling, and therefore controlling, than the broader, more general one. In other words, the court does not explain the legitimacy of its inference or cite any precedent supporting it. The Tax Court's conclusion that the word "recorded" mandates a specific completion due date (i.e., the "consequent" in logical reasoning) of the contract's recording does not match the past participle nature of the word "recorded" that merely denotes the general idea of completion (i.e., the antecedent), thereby rendering the inference underlying the consequential conclusion, and therefore, the conclusion itself, invalid.[87]

The Tax Court's deductive reasoning journey down the esoteric rabbit hole

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84. *See* Andrew W. Swain, *Pitfalls of Relying Only on Grammer for Statutory Interpretation*, 112 TAX NOTES (ST.) 641 (May 27, 2024) (explaining in detail how the Tax Court's mistaken application of the grammar canon of statutory construction, and its failure to consider other interpretive canons, resulted in a misreading of Indiana's homestead deduction statute; also explaining how The court misinterpreted the past participle "recorded" to imply a December 31st deadline, when in fact past participles do not specify when an action must be completed, but merely that it must be completed at some point—specifically, before the deduction is granted in this case).

85. *See, e.g.*, *In re* Roberts, 431 B.R. 914, 917–18 (Bankr., S.D. Ind. 2010) (stating that, "[a]s noted in one leading grammar treatise, both present and past participles can be used for referring to past[,] present[,] or future time and the past participle signifies perfectiveness or completion, but is not restricted to past time" (internal quotation marks omitted).).

86. IND. CODE § 6-1.1-12-37(a)(2)(B)(II) (2022).

87. *Slatten*, 226 N.E.3d at 274.

of English grammar and past participles caused it to lose sight of the real statutory interpretive question—that is, what is the substantive legal meaning of the word "recorded" under Indiana statutory law? Recording (including "record," "recording," and other permutations of the word "record") an instrument is merely the statutorily prescribed process by which a document eligible for recording is placed into official county records.[88] Recording legally significant instruments with a county recorder's office serves several important purposes. Recording primarily provides a public, reliable, and readily locatable historical record of legal transactions, property rights, or other legally significant actions that alert the public to the instruments' existence and any related rights or claims (e.g., establishing creditor priority, creating a chain of custody, or satisfying a legal requirement).[89] The recording process also gives the public access to the instruments.[90]

Recording the land contract or memorandum of contract as mandated in the homestead deduction statute, Indiana Code section 6-1.1-12-37(a)(2)(B)(ii) merely fulfills a legal requirement (i.e., recording the taxpayer's residential rights in the property he or she purchased by contract) that the taxpayer must satisfy *before* the county assessor grants the taxpayer a homestead deduction for whatever tax year the timely filing of their homestead deduction application qualified them.[91] In other words, the recording of the contract with the county auditor must be *completed* before the county auditor can grant a homestead deduction requested via a properly prepared and timely filed homestead deduction application. It is this general notion of "completion" to which the word "recorded" as the past participle form of "record" refers and mandates and not the exact date by which the recording must be completed. Accordingly, a more accurate interpretation of the homestead deduction statute's use of the word "recorded" focuses on whether the property meets the requirements for the homestead deduction at the time the deduction is sought via the timely filing of the applicable application rather than whether the statute imposes a rigid temporal requirement based solely on the form of the verb "recorded."

To further support her argument, Slatten noted Indiana Code section 6-1.1-12-45(f), which provides that:

> A person who is required to record a contract with a county recorder in order to qualify for a deduction under this article must record the

88. *See, e.g.*, IND. CODE § 36-2-11-8 (2024) (establishing the county recorder's duty to record "all instruments that are proper for recording); I.C. §§ 36-2-11-10, -12 through -14.5, -16, -22, -23, -25 (describing the various instruments eligible for recording and establishing the methods by which county recorders record those various instruments for public availability). *See also* Reid Kress Weisbord & Stewart E. Sterk, *The Commodification of Public Land Records*, 97 NOTRE DAME L. REV. 507 (2022) (discussing and describing the functions of recording instruments, particularly land deeds, with county recorder offices).

89. I.C. § 6-1.1-12-37(a)(2)(B)(II) (2022).

90. *Id.*

91. *Id.*

> contract, or a memorandum of the contract, *before, or concurrently with,* the filing of the corresponding deduction application.[92]

Slatten argued that the statute's verbiage allowed her until January 5, 2021, to record her memorandum of contract because that was the day she filed her homestead deduction application.[93]

The Tax Court rejected this argument. It said that section 45(f) of the Indiana Code established the sequence of actions (i.e., between recording and filing) required for obtaining a homestead deduction.[94] Though section 45(f) mandated that any required recording must be done before or concurrently with the filing of the deduction application, the statutory section did not extend the deadline for recording a memorandum of contract.[95] Instead, it placed a limit on the time allowed for recording by prohibiting recording after filing a deduction application.[96] The Tax Court said that Slatten's interpretation of Section 45(f) could only be accepted if the mandatory word "must" in section 45(f) is replaced with the permissive word "may."[97] In any case, assuming that section 45(f) did establish some deadline for when a taxpayer could submit a memorandum of contract to satisfy a condition for qualifying for the homestead deduction, The court said that a statute such as section 45(f) cannot override a deadline established by another statutory provision such as, in this instance, the recording deadline the court interpreted Indiana Code section 6-1.1-12-37(a)(2)(B)(ii) as establishing via its use of the past participle "recorded."[98]

The Tax Court appears to assert another *non-sequitur* argument. First, as previously explained, the homestead deduction statute at Indiana Code section 6-1.1-12-37(a)(2)(B)(ii) did not establish a date-certain deadline by which the taxpayer must submit the memorandum of contract for recording by the county recorder.[99] Therefore, there was no deadline for section 45(f) of the Indiana Code to override. Second, though the Tax Court correctly said that a property tax statute created a sequence of actions, that statute, however, was the homestead deduction statute, section 6-1.1-12-37(a)(2)(B)(ii), and not, as the court asserted, section 6-1.1-12-45(f).[100] This sequence of action is not between recording and filing, but between recording the memorandum of contract and, by effecting this recording, satisfying a prerequisite requirement that must be performed *before* the county assessor can consider granting the deduction.

The other requirement the taxpayer must satisfy is filing a homestead

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92. *Slatten*, 226 N.E.3d at 275 (citing I.C. § 6-1.1-12-45(f) (emphases added)).
93. *Id.*
94. *Id.*
95. *Id.*
96. *Id.*
97. *Id.*
98. *Id.*
99. *Id.*
100. *Id.*

deduction application on time.[101] Indiana Code section 6-1.1-12-45(f) provides that the taxpayer can submit the memorandum of contract "concurrently with the filing of the corresponding deduction application."[102] Because section 6-1.1-12-37(e) provides that a taxpayer can file the deduction application on or before January 5 of the next calendar tax year and still receive the deduction for the immediately preceding calendar tax year, and because section 6-1.1-12-45(f) provides that the taxpayer can submit the memorandum of contract to the county recorder for recording simultaneously with the filing of the corresponding deduction application with the county assessor, a taxpayer can seek recording the memorandum of contract with the county recorder on or before January 5th of the next calendar tax year and still receive the deduction for the immediately preceding calendar tax year.[103] Furthermore, the court's reliance on the term "must" in section 6-1.1-12-37(e) to support its interpretation is arguably misplaced.[104] The use of "must" does not necessarily indicate a strict deadline but rather emphasizes the requirement of recording the memorandum of contract before a county auditor can grant the deduction or consider doing so.

Because the Tax Court's decision did not invalidate the deduction statute on constitutional grounds or was premised on such grounds, the Indiana General Assembly could easily amend the homestead deduction statute found at Indiana Code section 6-1.1-12-37(a)(2)(B)(ii), and override the court's decision in *Slatten*. In fact, during the 2023–24 legislative session, that is what the Indiana legislature did. The 123rd Indiana General Assembly passed Indiana Enrolled Act number 1120, section 14, in which the legislature amended the deduction statute to clarify that taxpayer can, on or before January 15 of the next calendar tax year, file his or her homestead deduction application with the county assessor and satisfy the recording requirement on or before that same date.[105]

3. Shapiro v. Hamilton County Assessor.[106]—The issue before the Tax Court was whether the IBTR correctly determined that two taxpayers' Indiana property was ineligible for Indiana's homestead deduction during the 2017 through 2020 tax years.[107]

In 1991, Brian J. Shapiro and Sarah K. Shapiro ("Shapiros") bought a single-story home on one acre in Zionsville, Indiana ("Indiana Property"), titled in their joint names and serving as their marital home.[108] From 2017 to 2020, this property benefitted from Indiana's homestead deduction.[109] In June 1996,

101. *See* IND. CODE § 6-1.1-12-45(f) (2024).

102. *Id.*

103. *See* I.C. §§ 6-1.1-12-37(e), -45(f).

104. *See* I.C. § 6-1.1-12-37(e).

105. *See* IND. ENROLLED ACT NO. 1120, § 14 (2024) (amending I.C. § 6-1.1-12-37 and adding section (f)), effective Jan. 1, 2025).

106. 231 N.E.3d 291 (Ind. T.C. 2024) (Senior Judge Wentworth authored the opinion), *trans .denied*, 2024 Ind. LEXIS 25 (Ind. 2024) (Chief Justice Rush and Justice Slaughter voted to grant review).

107. *Id.*

108. *Id.* at 292.

109. *Id.*

Sarah Shapiro acquired property in Omena, Michigan, initially holding the title alone.[110] In January 2016, she refinanced and transferred the title to both her and her husband through a quitclaim deed, but later that year, they executed another quitclaim deed returning sole ownership to her.[111] From 2017 to 2020, she secured Michigan's *Principal Residence Exemption* ("Michigan PRE") for this property.[112]

In December 2020, after a review of the county's homestead deductions, the Hamilton County Auditor ("Auditor") notified the Shapiros that it had removed their homestead deductions for the years 2017 through 2019 because their Indiana Property was not their principal place of residence during that time.[113] The Assessor informed the Shapiros that they owed $12,319.57 in extra property taxes and penalties for the Indiana Property.[114] The Auditor also removed their Indiana homestead deduction for 2020.[115] The Shapiros challenged the Auditor's actions unsuccessfully to the Hamilton County PTABOA, then to the IBTR.[116]

Before the IBTR, Brian Shapiro testified that, since marrying in 1989, he and his wife had resided in Indiana, operating Shapiro's Delicatessen in Indianapolis, and consistently paid their Hamilton County property and Indiana income taxes.[117] He noted, however, that since 2016, his wife had lived in Michigan over 200 days a year, where she voted, paid taxes, and held a driver's license.[118] The Shapiros argued that their property had qualified for Indiana's homestead deduction[119] from 2017 to 2020 because the deduction differed from the Michigan PRE. The IBTR rejected the Shapiros' argument and upheld the Assessor's deduction denial and delinquent tax assessment.[120] It held that the Michigan PRE and Indiana's homestead deduction were substantially similar—each exempting a principal residence from property taxes based on its value.[121]

The Shapiros challenged the IBTR's decision to the Indiana Tax Court.[122] The court first considered the Shapiros' eligibility for Indiana's homestead deduction in 2017.[123] For the 2017 tax year, Indiana's homestead deduction statute provided that individuals are ineligible for multiple deductions and cannot receive a homestead deduction if they reside with someone who already

110. *Id.*
111. *Id.*
112. *Id. See also* MICH. COMP. LAWS §§ 211.7cc, 211.7dd (2018).
113. *Id.* at 292–93.
114. *Id.* at 293.
115. *Id.*
116. *Id.*
117. *Id.*
118. *Id.*
119. *See* IND. CODE § 6-1.1-12-37 (2017) (Indiana's homestead deduction statute).
120. *Shapiro*, 231 N.E.3d at 294.
121. *Id.*
122. *Id.*
123. *Id.* at 297.

has one.[124] There was a specific exemption if the individual's spouse claimed a similar deduction on an out-of-state residence, subject to certain criteria.[125] To qualify, an affidavit confirming that neither spouse has ownership in the other's primary residence must be filed with the county auditor within sixty days of the disqualification.[126] The Tax Court concluded that the administrative record showed that the Shapiros did not file such a qualifying affidavit in 2017 and could not file one because Mrs. Shapiro owned both the Indiana and Michigan Properties.[127] Accordingly, the Tax Court concluded that the Shapiros were ineligible for the deduction in 2017.[128]

The court turned next to the 2018 through 2020 tax years.[129] For those years, the applicable homestead deduction statute specified that individuals receiving a homestead deduction are disqualified if they also receive an *equivalent* deduction in another state.[130] Disqualified taxpayers must file a certified statement with the relevant county auditor within sixty days of becoming ineligible.[131] Though a married couple is typically limited to a single homestead deduction, Indiana's deduction statute allowed an exception when each spouse can claim a separate deduction on two distinct properties under certain conditions.[132] This exception applied if one spouse's property is outside Indiana.[133] To qualify, an affidavit must be filed with the applicable county auditor stating: (a) the out-of-state location where the other spouse is claiming a *substantially similar* deduction; (b) that each spouse has a separate principal residence; (c) that neither spouse holds ownership in the other's principal residence; and (d) that neither spouse has claimed a similar deduction on any other property in the same tax year.[134]

The Shapiros argued that the IBTR incorrectly interpreted the Indiana deduction statute by treating "equivalent" in the disqualification section (i.e., Indiana Code section 6-1.1-12-37(f)(2)(B) ("section 37(f)(2)(B)")) as synonymous with "substantially similar" in the exception section (i.e., Indiana Code section 6-1.1-12-37(n) ("section 37(n)")).[135] They claimed this confusion led the IBTR to overlook key differences between Indiana's homestead deduction and the Michigan PRE, thus wrongly concluding the two were equivalent.[136] The Tax Court concluded that the outcome of the parties' dispute turned on the meaning of the word "equivalent" as it is used in section

124. *Id.* (citing I.C. § 6-1.1-12-37(f)(2) (2017)).
125. *Id.* (citing I.C. § 6-1.1-12-37(n) (2017)).
126. *Id.* (citing I.C. § 6-1.1-12-37(f) (2017) (flush language)).
127. *Id.*
128. *Id.*
129. *Id.*
130. *Id.* (citing I.C. § 6-1.1-12-37(f)(2)(B) (2018)).
131. *Id.* (citing I.C. § 6-1.1-12-37(f) (2018) (flush language)).
132. *Id.*
133. *Id.* at 295.
134. *Id.* at 295–96 (citing I.C. § 6-1.1-12-37(n) (2017)).
135. *Id.* at 296.
136. *Id.*

37(f)(2)(B).[137] The court said that the Shapiros claimed that the word "equivalent," as used in section 37(f)(2)(B), meant "virtually identical," while the Assessor asserted that it meant "substantially similar."[138]

The Tax Court said that WEBSTER'S DICTIONARY defined "equivalent" as "equal in force, amount, or effect" and "virtually identical," while BLACK'S LAW DICTIONARY echoes this with "equal in value, effect, or significance."[139] However, neither dictionary equates "equivalent" with "identical."[140] Conversely, "substantial" is defined as "considerable in amount or value,"[141] and "similar" means having common characteristics or being comparable.[142] This suggests, the court said, that while "equivalent" and "substantially similar" both serve as comparative standards, they convey different degrees of resemblance.[143] The distinct choice of "equivalent" in section 37(f)(2)(B) and "substantially similar" in "section 37(n) by Indiana's Legislature implies they are not intended to mean the same thing.[144] The court concluded that this intentional use of different terms across the statute indicates that "equivalent" in section 37(f)(2)(B) should be understood as "virtually identical," not merely "similar."[145]

The Shapiros argued that the Michigan PRE and Indiana's homestead deduction were not equivalent.[146] First, the Shapiros contended that they cannot be considered equivalent because the former is an exemption and the latter a deduction.[147] The Tax Court disagreed. It noted that, despite those technical differences, the core function of both the Michigan PRE and Indiana's deduction is essentially the same—that is, they both provide property tax relief for the homeowner's principal residence, indicating their equivalence in practice.[148]

Second, the Shapiros argued that the Michigan PRE and Indiana's homestead deduction were not equivalent because of key differences between them.[149] The Michigan PRE was narrower in scope, specifically eliminating liability for certain school taxes imposed by one taxing unit, local school districts, whereas Indiana's deduction was broader in scope, affecting county-wide tax revenues.[150] The Tax Court rejected this argument, holding that "[t]his

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137. *Id.*
138. *Id.* at 297.
139. *Id.* at 298 (citing WEBSTER'S THIRD NEW INT'L DICTIONARY 769 (2002 ed.), and BLACK'S LAW DICTIONARY 682 (11th ed. 2019)).
140. *Id.*
141. *Id.* (citing WEBSTER'S THIRD NEW INT'L DICTIONARY 2280 (2002 ed.), BLACK'S LAW DICTIONARY 1728 (11th ed. 2019)).
142. *Id.* (citing WEBSTER'S THIRD NEW INT'L DICTIONARY 2120 (2002 ed.)).
143. *Id.*
144. *Id.*
145. *Id.*
146. *Id.* at 299.
147. *Id.*
148. *Id.*
149. *Id.*
150. *Id.*

distinction show[ed] that the two [were] not identical, but [did] not demonstrate that they [were] not equivalent because they both affect[ed] local school funding."[151]

Third, the Shapiros argued that the Michigan PRE was not equivalent to Indiana's homestead deduction because the Michigan PRE, unlike Indiana's deduction, did not influence state property taxes, property assessments, or the equalization process in Michigan.[152] The Tax Court rejected this argument, noting that those differences were misleading.[153] Like Michigan's property tax, Indiana's is assessed and collected locally, not at the state level.[154] Additionally, neither Indiana's homestead deduction nor the Michigan PRE altered the property's assessed value, though both reduced the property tax liability on a certain assessed value.[155] Furthermore, neither impacted the equalization processes in their respective states, which occurred before tax bills were issued.[156]

Finally, the Shapiros argued that recognizing a distinction between the Michigan PRE and Indiana's homestead deduction aligned with public policy goals of promoting home ownership in Indiana and ensuring tax revenue fairness across different household types.[157] They asserted that the Michigan PRE and Indiana's deduction, while both offering property tax relief, differ significantly in scope and impact, challenging the notion of their equivalence.[158] The Tax Court rejected this fourth argument, holding that the Shapiros did not provide any authoritative sources linking public policy to Indiana's homestead deduction and overlooked section 37(n), which equalized treatment for married and unmarried individuals under the subsection's terms.[159] Therefore, the Tax Court determined that the Michigan PRE and Indiana's homestead deduction were virtually identical, thus disqualifying the Shapiros from the Indiana homestead deduction on their Indiana property from 2018 to 2020.[160]

Accordingly, the court reversed the IBTR's decision that the terms "equivalent" in section 37(f)(2)(B) and "substantially similar" in section 37(n) were synonymous.[161] Despite this, though, the court upheld the IBTR's decision to deny the Shapiros' Indiana homestead deduction for tax years 2017 to 2020.[162]

4. Gilday & Associates, P.C. v. Marion County Assessor.[163]—The issue

151. *Id.*
152. *Id.* at 299–300.
153. *Id.* at 300.
154. *Id.*
155. *Id.*
156. *Id.*
157. *Id.*
158. *Id.* at 298.
159. *Id.* at 300.
160. *Id.* at 301.
161. *Id.*
162. *Id.*
163. 236 N.E.3d 1160 (Ind. T.C. 2024) (Senior Judge Robb authored the opinion).

before the Tax Court was whether a person who acquired real property through a sheriff's sale is entitled to a property tax refund resulting from a retroactive reinstatement of homestead deductions for taxes paid by the primary lender on behalf of the prior owner from 2014 through mid-2017 and by the new owner for the remaining 2017 liability.[164]

In 1987, Dr. Paul Terry Batties bought a single-family home in Lawrence Township, Marion County, Indiana, and used it as his personal residence.[165] He received Indiana's homestead deduction until it was revoked in 2013.[166] Before the revocation, Dr. Batties took out a mortgage with Green Tree Servicing, LLC ("Green Tree"), and a second mortgage with Gilday & Associates, P.C. ("Gilday").[167] After Dr. Batties defaulted on the first mortgage, Green Tree paid the property taxes from 2014 to 2016 and half of the 2017 taxes.[168] In September 2013, Green Tree filed for foreclosure in a Marion County Superior Court, naming Dr. Batties, Gilday, and others as defendants.[169] Gilday filed a counterclaim and crossclaim.[170] Eventually, Gilday and Green Tree entered into an Agreed Foreclosure Judgment, which the superior court approved.[171] The court also issued a separate foreclosure decree for Green Tree.[172] Approximately three years later, Gilday purchased the property for $375,000 at a sheriff's sale.[173] The Marion County Sheriff ("Sheriff") used $280,467.86 of those monies to settle Green Tree's judgment.[174] The Sheriff issued a deed to Gilday, and Dr. Batties vacated the property.[175]

Gilday paid the remaining 2017 tax liability and filed four appeals with the Marion County PTABOA to correct deduction errors from 2014 to 2017.[176] Gilday argued that the homestead deductions were wrongly removed, resulting in overpaid property taxes, and claimed entitlement to a refund for taxes paid directly and indirectly through the Sheriff's sale.[177] The PTABOA denied the appeals, stating that, as the new owner, Gilday could not retroactively claim an inactive deduction.[178] Gilday appealed to the IBTR, which dismissed the case for lack of standing.[179] Gilday appealed this decision to the Indiana Tax Court,

164. *Id.*
165. *Id.* at 1162.
166. *Id.*
167. *Id.*
168. *Id.* at 1163.
169. *Id.*
170. *Id.*
171. *Id.*
172. *Id.*
173. *Id.*
174. *Id.*
175. *Id.*
176. *Id.*
177. *Id.*
178. *Id.*
179. *Id.*

which found the dismissal improper and remanded the case.[180] On remand, though the IBTR held a hearing, it failed to issue a final determination within 90 days,[181] leading Gilday to file a second appeal and a motion for summary judgment with the Tax Court.[182]

The first question the Tax Court resolved was whether Gilday qualified as a taxpayer with the necessary standing to seek refunds under the administrative tax appeals process for 2017 taxes it paid directly and those 2014 to mid-2017 taxes paid by the primary lender, Green Tree, on Dr. Batties' behalf.[183] Indiana's administrative tax appeals process allows taxpayers to contest certain property tax assessment errors but does not clearly define "taxpayer."[184] The Tax Court had previously defined "taxpayer" as "a person who is subject to, or liable to pay, real property tax, under Indiana Code section 6-1.1-2-4."[185] It explained that its foundational definition of "taxpayer" established an entity's tax liability for real property taxes.[186] Consequently, an entity's status as a taxpayer depended on either property ownership or a contractual obligation to pay the taxes.[187] When Gilday acquired the property and the associated fiscal responsibilities in July 2018, it assumed responsibility for previously assessed yet unpaid taxes from earlier periods.[188] Accordingly, the court concluded that Gilday was a "taxpayer" with standing to claim refunds for the 2017 tax liabilities it directly paid.[189]

The Tax Court next considered the assessment period from 2014 to mid-2017.[190] During this period, Green Tree paid the property taxes on behalf of Dr. Batties, thereby fulfilling its contractual obligation and establishing itself as the taxpayer for that period.[191] The question before the Tax Court regarding this period was whether Gilday acquired "taxpayer" status for the same period through the rights transferred to him via either the agreed foreclosure judgment or the sheriff's deed.[192] The court determined that Gilday was not a taxpayer for this period.[193] First, The court concluded that neither the agreed foreclosure judgment nor Green Tree's separate foreclosure decree included any contractual

180. *Id.* (citing Gilday & Assocs., P.C. v. Marion Cty. Assessor, 176 N.E.3d 1000, 1004–06 (Ind. T.C. 2021)).

181. *Id.* (citing IND. CODE § 6-1.1-15-4(f) (2022) (providing that the IBTR shall issue a final determination ninety days after conducting a hearing)).

182. *Id.* at 1164.

183. *Id.*

184. *Id.* at 1165.

185. *Id.* (citing Marion Cty. Assessor v. Kohl's Ind., L.P., 179 N.E.3d 1, 6–9 (Ind. T.C. 2021).

186. *Id.*

187. *Id.*

188. *Id.* at 1166.

189. *Id.*

190. *Id.*

191. *Id.*

192. *Id.*

193. *Id.*

provisions that discussed the right to claim tax refunds or transferred that right to Gilday.[194] Likewise, the court concluded that neither the Sheriff's deed nor the statutes governing such deeds transferred to Gilday all the rights and interests previously held by Green Tree in the property, including those related to past tax payments.[195] In other words, the Sheriff's deed did not confer taxpayer status to Gilday.[196]

The second question the Tax Court resolved was whether homestead deductions can be retroactively reinstated.[197] The Tax Court noted that Indiana's homestead deduction statute provided that a revoked deduction would be reinstated if "the taxpayer provides proof that the taxpayer is eligible for the deduction and is not claiming the deduction for another property."[198] The statute does not specify a time limit or method for proving eligibility. Furthermore, it does not clarify whether reinstatement relief can be applied retroactively or only prospectively.[199] Finally, the court said that nothing in Indiana's homestead deduction statute precluded using the Tax Court appeals process to retroactively reinstate the homestead deduction and the related benefits.[200]

The property at issue received the homestead deduction from 1987 to 2013, when the Marion County Auditor ("Auditor") revoked it because of determining Dr. Batties had failed to comply with the deduction's verification deadlines.[201] If not for this determination, the Tax Court noted, the homestead deduction would have reduced the 2017 property tax liability.[202] When Gilday paid those liabilities in 2018 after acquiring the property, it positioned itself to benefit from any adjustments due to reinstated deductions.[203] Since the homestead deduction statute permitted the retroactive reinstatement of the deduction and Gilday was a taxpayer for the 2017 period, the court concluded that it was entitled to seek and receive a refund for overpaid taxes if the deduction was reinstated.[204] Consequently, the Tax Court partially granted Gilday's summary-judgment motion and remanded the case to the IBTR to determine the eligibility for the deduction's reinstatement for the 2017 tax year.[205]

5. Clark County Assessor v. Dillard Department Stores, Inc.[206]—The issue before the Tax Court was whether the IBTR correctly reduced a county's department store assessments from 2018 through 2020 using the percentage-of-sales methodology.

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194. *Id.* at 1167.
195. *Id.*
196. *Id.* at 1167–68.
197. *Id.* at 1168.
198. *Id.* at 1168 (citing IND. CODE § 6-1.1-12-17.8(h) (2022)).
199. *Id.*
200. *Id.* at 1169.
201. *Id.*
202. *Id.* at 1169–70.
203. *Id.* at 1170.
204. *Id.*
205. *Id.*
206. 236 N.E.3d 771 (Ind. T.C. 2024).

Dillard Department Stores, Inc. ("Dillard") owned and operated a 204,500-square-foot, one-level retail anchor store on approximately thirteen acres of land in Clarksville, Indiana.[207] The Clark County Assessor ("Assessor") assigned the property a value of $9,850,200 for tax year 2018, $9,925,500 for tax year 2019, and $9,766,900 for tax year 2020.[208] Dillard challenged those assessments before the county PTABOA and then to the IBTR.[209]

Before the IBTR, Dillard and the Assessor presented competing appraisals prepared by professional appraisers.[210] Dillard's appraisal employed both the income and sales-comparison methods to determine the property's value.[211] It concluded that the property should have been valued at $5,200,000 for 2018 and $5,110,000 for both 2019 and 2020.[212] Dillard's appraisal did not use the cost approach, citing it as time-consuming and incapable of accurately determining the property's true value.[213] The Assessor's appraisal used all three approaches, giving the greatest weight to the cost-and-sales comparison methods.[214] It determined the property's value at $10,773,000 for 2018, $10,500,000 for 2019, and $10,332,000 for 2020.[215]

The IBTR ruled in Dillard's favor and adopted its valuation conclusions.[216] While it raised concerns about the valuation methods and conclusions of both parties, it leaned toward Dillard's approach as the most reliable estimate of the property's value among those presented.[217] The Assessor challenged the IBTR's decision before the Indiana Tax Court.[218]

Dillard's appraiser used a methodology he called the "percentage of sales method" to estimate the value of Dillard's property.[219] This involved applying the rent paid by comparable department stores against their corresponding retail sales to establish a percentage relationship between the two.[220] Upon analysis, the appraiser found that these stores typically paid rent ranging from 2% to 3% of their retail sales, yielding an average ratio of 2.5%.[221] This ratio was then applied to the estimated retail sales for the stores similarly situated to Dillard's store.[222] Consequently, the appraiser calculated market rent estimates for Dillard's property at $2.50 per square foot for 2018 and $2.40 per square foot

207. *Id.* at 773.
208. *Id.*
209. *Id.*
210. *Id.*
211. *Id.*
212. *Id.*
213. *Id.*
214. *Id.*
215. *Id.*
216. *Id.*
217. *Id.*
218. *Id.*
219. *Id.* at 774.
220. *Id.*
221. *Id.*
222. *Id.*

for both 2019 and 2020.[223]

Before the Tax Court, the Assessor raised three objections to the appraiser's methodology. First, it asserted that the percentage-of-sales method failed to comport with generally recognized appraisal principles.[224] Second, it argued that the estimate of retail sales improperly included intangible business value in Dillard's real property value.[225] Finally, the Assessor contended that the appraiser lacked sufficient evidence to substantiate the 2.5% ratio he used in estimating market rent and, consequently, the Dillard property's generated income and, ultimately, its value for tax assessment.[226]

Regarding the Assessor's first argument, the court noted that neither Indiana property tax statutes nor regulations list generally recognized appraisal principles, and lists of such principles were not collected in any other source.[227] The court said that recognized appraisal principles constantly evolve.[228] Accordingly, determining whether an appraiser's percentage-of-sales methodology comported with generally recognized appraisal principles was a question of fact for the court.[229] The Tax Court observed that the IBTR held that Dillard's appraisal complied with the *Uniform Standards of Professional Appraisal Practice* (USPAP),[230] the recognized ethical and performance standards for the appraisal profession in the United States.[231] The court also noted that the Assessor failed to present any evidence or legal or appraisal authorities negating the IBTR's determination of the validity of the appraiser's methodology.[232] Because of this failure and based on the Tax Court's other conclusions, the court rejected the Assessor's argument.[233]

The Tax Court next addressed the Assessor's second argument, which contended that the appraiser's retail sales estimate improperly included the intangible business value in Dillard's real property valuation. Indiana's standard of value for property taxation is "true tax value," which reflects the "value of a property *for* its use, not the value *of* its use" and excludes "business value, investment value, [and] the value of contractual rights."[234] The Assessor argued that Dillard's appraiser inserted intangible business value in the property valuation because retail sales vary according to the efficiency or inefficiency of

223. *Id.* at 775.
224. *Id.*
225. *Id.*
226. *Id.*
227. *Id.*
228. *Id.*
229. *Id.* (citing *In re* Equalization Appeal of Walmart Stores, Inc., 513 P.3d 457, 476 (Kan. 2022)).
230. *Id.* at 775–76.
231. *Id.* at 776 n.4 (providing the URL to the USPAP).
232. *Id.* at 776.
233. *Id.*
234. *Id.* (citing Howard Cty. Assessor v. Kohl's Ind. LP, 57 N.E.3d 913, 917 (Ind. T.C. 2016)) (emphasis original).

a store's management.[235] The Tax Court rejected this. It noted that Dillard's appraiser specifically acknowledged the need to exclude business value from the property's value and explained what methods he used to accomplish this.[236] It also said that the Assessor failed to provide any evidence, legal authority, or other authority demonstrating that the appraiser's exclusion methodology insufficiently alleviated the risk of improperly including business value, conflicted with the law, or conflicted with recognized appraisal principles.[237] Finally, the court held that the Assessor failed to introduce any evidence that quantified the amount of any allegedly improperly included business value.[238]

Lastly, the Tax Court addressed the Assessor's third and final argument, which contended that, because Dillard's appraiser used "arbitrary data," he failed to substantiate his calculation of the 2.5% average rent-paid-in-relation-to-retail-sales ratio used in estimating market rent and, ultimately, the property's taxable value.[239] The Assessor cited two previous Tax Court decisions in which the court rejected an appraiser's selection of a percentage ratio used to calculate a property's tax value from an estimated range of ratios without the appraiser explaining the rationale for their selection.[240] The Tax Court rejected this argument but failed to provide a clear and persuasive explanation of why. It said that, when it looked at the entire evidentiary record before it, though Dillard's appraiser did not explain the reason for its ratio choice, there existed in the record "sufficient evidence . . . to permit a reasonable mind to accept the selection of 2.5%."[241] In other words, the court held that other evidence in the record corroborated the appraiser's unexplained decision and, therefore, relieved him of needing to explain his decision in order to substantiate it.[242] The court did not identify this evidence or explain how it corroborated the appraiser's ratio-choice decision. The court explained how the appraiser calculated the range of percentage ratios but not how he selected the 2.5% ratio.[243] Despite this explanatory omission, the court concluded that "the [IBTR's] determination on this point was supported by substantial evidence."[244] Because the Tax Court rejected all three of the Assessor's arguments, it affirmed the IBTR's decision in Dillard's favor.[245]

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235. *Id.*
236. *Id.*
237. *Id.* at 777.
238. *Id.*
239. *Id.* at 778.
240. *Id.* (citing Southlake Ind., LLC v. Lake Cty. Assessor, 181 N.E.3d 484, 493 (Ind. T.C. 2021); Marion Cty. Assessor v. Washington Square Mall, LLC, 46 N.E.3d 1, 11 (Ind. T.C. 2015)).
241. *Id.* at 779.
242. *Id.* at 778–79.
243. *Id.*
244. *Id.* at 779.
245. *Id.*

6. Sawlani v. Lake County Assessor[246]—The issue before the Tax Court was whether the Indiana General Assembly's statutory limitation of the constitutionally prescribed 1% tax cap to only one acre of land—curtilage—surrounding a taxpayer's principal place of residence was constitutional, given the absence of explicit verbiage in the relevant constitutional provision justifying such a limitation.

In *Sawlani*, Dr. Tulsi and Kamini Sawlani ("Sawlanis") owned a two-story home on 3.981 acres in Crown Point, Indiana.[247] For the 2019 tax assessment year, the Lake County Assessor (the "Assessor") classified their home and one acre of surrounding land as residential property subject to the 1% property tax cap, while classifying the remaining 2.981 acres as nonresidential property subject to the 3% tax cap.[248] Believing that the Indiana Constitution mandated their entire property eligible for the 1% tax cap, the Sawlanis challenged the Assessor's classifications to the Lake County PTABOA and then to the IBTR.[249] Both administrative agencies rejected their claim, with the IBTR denying the authority to resolve the constitutional issue.[250] The Sawlanis sought review before the Indiana Tax Court.[251]

Before the Indiana Tax Court, the Sawlanis noted that the Indiana Constitution applied the 1% tax cap (a cap often commonly referred to as a "circuit breaker" in Indiana) to all property used as a principal residence, including curtilage, without imposing an acreage limit.[252] However, the Sawlanis asserted that the statute limited the cap to homestead property, defined as a dwelling and its curtilage, with curtilage further defined by statute as one acre of land surrounding the homestead.[253] The Sawlanis argued that this statutory limitation was unconstitutional because Indiana's Constitution did not

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246. 240 N.E.3d 734 (Ind. T.C. 2024). On October 1, 2024, the Lake County Assessor filed a Petition for Review with the Indiana Supreme Court. *See* Petition for Review, Sawlani v. Lake Cty. Assessor, No. 21T-TA-00044 (Ind. 2024). While the Supreme Court did not formally grant review, it issued an order stating that the case warranted an oral argument, scheduling it for late June 2025. *See* Order Setting Oral Argument and Inviting Amicus Briefing, Sawlani v. Lake Cnty,. No. 21T-TA-00044, Docket Entry No. 21T-TA-00044. Additionally, the court invited amicus briefs from interested parties. *Id.*

247. *Id.* at 736.

248. *Id.*

249. *Id.*

250. *Id. See also, e.g.*, Osborn v. Schultz, 238 N.E.3d 730, 734 n. 4 (Ind. T.C. 2024) (in which the Indiana Tax Court said that the IBTR, as an administrative agency, lacked the authority to declare a statute unconstitutional. Despite this, the court reminded the IBTR that, when litigants present claims beyond its authority to resolve, such as constitutional challenges to Indiana's assessment system, it should still make factual findings on the claims. This would allow the Tax Court to review and resolve the constitutional issues presented); Bielski v. Zorn, 627 N.E.2d 880, 887–88 (Ind. T.C. 1994) (providing that "[t]he [IBTR] and its subordinate local officers and agencies have no authority whatsoever to determine the constitutionality of a statute . . . [and that] . . . [a]llegations that a statute is unconstitutional are matters solely for judicial determination").

251. *Id.* at 736.

252. *Id.* at 736, 737.

253. *Id.*

impose such an acreage restriction on applicable curtilage.[254] The Assessor contended that the statutorily imposed limitation comported with the term "curtilage" as used in Article 10, section (1)(c)(4)(A) of Indiana's Constitution and the relevant statute's legislative history (i.e., Indiana Code section 6-1.1-12-37(a)(2)(A), (C)).[255] The Sawlanis did not contest any other aspect of Indiana's property tax scheme or their property's assessment.[256] Accordingly, the Tax Court was tasked with deciding if the statutory one-acre limitation was consistent with the constitutional mandate. If not, the limitation had to be set aside, allowing the additional 2.981 acres to qualify for the one percent tax cap.[257]

The Tax Court began its analysis by reviewing and comparing the phrases and words used in Article 10, section 1 of the Indiana Constitution with those in the cap's implementing statute, Indiana Code section 6-1.1-12-37(a)(2)(A) and (C), focusing on their definitions and meanings. The Constitution specified that the 1% cap applies to "[t]angible property, including curtilage, used as a *principal place of residence*."[258] However, the statute that administered the constitutionally mandated tax cap applied the 1% cap to "homestead" property that received a standard homestead deduction.[259] The statute defined a homestead as an "individual's principal place of residence" comprising a dwelling and one acre of surrounding real estate.[260] The excess land was subject to higher tax caps depending on the property type.[261]

The Tax Court noted that the constitutional text did not use the word "homestead" or impose size limits on eligible properties.[262] Its analysis of the phrases "tangible property" and "principal place of residence," as well as the word "curtilage," suggested no implicit size constraints.[263] The court explained that "tangible property" referred to physical property, while "principal place of residence" indicated the main home without fixed size restrictions.[264] The varying definitions of "curtilage," none of them including specific size limits, referred to the area surrounding a dwelling.[265] Therefore, the Tax Court concluded that the verbiage in Article 10, Section 1 of the Indiana Constitution, which mandated the 1% tax cap on a "principal place of residence", did not support the statute's limitation of that 1% cap to one acre of property

254. *Id.*
255. *Id.* at 737.
256. *Id.*
257. *Id.*
258. *Id.* (quoting IND. CONST. ART. 10, § 1(c)(4), (f)(1)) (emphasis added).
259. *Id.*
260. *Id.* at 737 (citing IND. CODE §§ 6-1.1-20.6-7.5(a)(1) (2019); I.C. § 6-1.1-12-37(a)(2) (amended 2024)).
261. *Id.* at 743.
262. *Id.* at 743.
263. *Id.* at 744–45.
264. *Id.* at 744.
265. *Id.* at 745.

surrounding the "principal place of residence."[266] Accordingly, the court held that the constitutional 1% tax cap in Article 10, Section 1 of the Indiana Constitution did not impose fixed size or acreage limitations; it allowed land eligible for the cap to be more than one acre based on that land's practical usage rather its size alone.[267]

The Tax Court continued its analysis, asserting that its conclusion regarding the 1% cap comported with the other two tax caps.[268] The court noted that Subsection 1(f)'s verbiage and overall structure describing the 1%, 2%, and 3% tax caps defined five distinct property classes. [269] Specifically, the 1% cap pertains to "tangible property" utilized as a principal place of residence, as outlined in Subsection (1)(c)'s paragraph (4).[270] Conversely, the 2% cap applied to "other residential property" and "agricultural land," both delineated by use rather than size. [271] "Other residential property" was described as property used for residential purposes but ineligible for the 1% cap, whereas "agricultural land" referred to land dedicated to agricultural use. [272] The 3% cap included "other real property" and non-residential personal property, defined through exclusion—that is, those properties not used for agricultural or residential purposes. [273] The Tax Court said the consistent drafting of the constitutional provision among these property classes suggested that the absence of a size or acreage restriction within the 1% cap was deliberate.[274] When interpreting a statute, courts should consider its overall structure and the plain meanings of its verbiage. [275] The explicit omission of size restrictions in other property classes indicated that such limitations would have been clearly articulated if the 1% cap had been intended.[276] The Tax Court concluded that, absent explicit language in Article 10, Section 1(f), imposing a one-acre restriction within the 1% cap would undermine the "stated [constitutional] goal of ensuring permanent property tax relief to homeowners."[277]

The Assessor argued that the 2008 statutory tax caps and the constitutional tax caps should be interpreted together, as they were enacted in the same legislative session.[278] The Assessor emphasized that the digests of the joint resolutions referred to "homestead property," suggesting a legislative intent to

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266. *Id.*
267. *Id.*
268. *Id.* at 746–47.
269. *Id.* at 746.
270. *Id.*
271. *Id.*
272. *Id.*
273. *Id.* at 746–47.
274. *Id.* at 747.
275. *See id.* (citing Ernst & Ernst v. Underwriter's Nat'l Assurance Co. 178 Ind. App. 77, 81–82 (1978).
276. *Id.*
277. *Id.*
278. *Id.*

confine the constitutional tax caps to the same scope as the statutory tax caps.[279] However, the Tax Court found this argument flawed due to, in its opinion, the Assessor's fundamental misunderstanding of the constitutional tax caps.[280] The court noted that the defining verbiage of the constitutional 1% tax cap, specifically Subsection (1)(c)'s paragraph (4), originated in a 2004 constitutional amendment that expanded the General Assembly's power to exempt certain properties from taxation.[281] This amendment allowed exemptions for "[t]angible real property, including curtilage, used as a principal place of residence by an . . . owner of the property," reflecting broad legislative authority.[282] There is no evidence, the Tax Court said, that the 2004 amendment intended to restrict the scope to a statutory homestead definition or impose size limitations.[283] The verbiage in Subsection (1)(c)'s paragraph (4) was fixed when ratified by voters in 2004, with the only subsequent change in 2010 broadening its scope to include both real and personal property.[284] The court concluded that, if Subsection (1)(c)'s paragraph (4) were narrowly interpreted to align with the 2010 amendment, as the Assessor asserted, this would conflict with the broad legislative power granted in 2004, thereby creating tension between the provisions.[285] The Tax Court said that courts strive to interpret statutes harmoniously to reflect legislative intent, and the 2010 amendment did not indicate an intent to narrow the 2004 amendment.[286] Therefore, the Tax Court rejected the Assessor's interpretation, emphasizing that the legislative digests lack legal authority and should not outweigh the original language of Subsection (1)(c)'s paragraph (4).[287] The court concluded that the Assessor's reliance on the digests improperly elevated them to a status akin to constitutional amendments, contrary to Indiana's legislative process.[288]

The Assessor also argued that the ballot question presented to voters in 2010, which included the term "homestead," demonstrated that the 1% tax cap was intended to align with the statutory definition of "homestead."[289] However, the Tax Court found that this interpretation conflated the ordinary meaning of "homestead" with its statutory definition.[290] The ordinary meaning of "homestead" did not include the statutory one-acre limitation.[291] The court determined that the voters likely understood "homestead" in the ballot question

279. *Id.* (citing Digest of S.J. Res. 1, 115th Gen. Assemb., 2d Reg. Sess. (Ind. 2008); Digest of H.J. Res. 1, 116th Gen. Assemb., 2d Reg. Sess. (Ind. 2010)).
280. *Id.* at 748.
281. *Id.*
282. *Id.*
283. *Id.*
284. *Id.*
285. *Id.*
286. *Id.*
287. *Id.* at 748–49.
288. *Id.* at 749.
289. *Id.*
290. *Id.*
291. *Id.* at 750.

according to its everyday usage, not its technical legal sense.[292] Furthermore, the court held that allowing the ballot question to alter or limit the constitutional amendment's language would have violated the constitutional amendment process outlined in Article 16, Section 1 of the Indiana Constitution, which required ratification by voters after passage by two different Indiana General Assemblies separated by an intervening general election.[293] The court reasoned that, since the ballot question was passed like any other ordinary legislation, it could not modify the constitutional language or redefine "homestead" beyond what voters approved.[294] Therefore, the Tax Court concluded that the legal force lay in the constitutional amendment's verbiage, not the ballot question—a conclusion the court said followed the legal precedent that prioritized a ratified amendment's text over any legislative intent expressed in supplementary materials.[295]

The Tax Court concluded that the one-acre limitation imposed by the statutory 1% cap was not unconstitutional on its face because it could be constitutionally applied in some circumstances such as to residential properties with less than one acre.[296] However, the court found that the one-acre limitation was unconstitutional as applied to taxpayers such as the Sawlanis, who had residential properties exceeding that size.[297] Consequently, the Tax Court vacated the IBTR's determination that the Sawlanis were not entitled to the 1% tax cap credit on their residential acreage exceeding the one-acre limitation and remanded the case back to the IBTR for further evidentiary findings consistent with its opinion.[298] Lastly, the Tax Court explained the factual findings the IBTR must perform on remand.[299] The IBTR's inquiry need not address the eligibility of the Sawlanis' initial one acre of land for the 1% tax cap. Instead, it should focus on the remaining 2.981 acres and whether the Sawlanis used them as part of their principal place of residence.[300]

The Indiana Tax Court's decision in *Sawlani* to invalidate the General Assembly's statutory definition of curtilage for the 1% tax cap raises significant concerns about judicial overreach, strict textualism, and its broader implications for Indiana's tax framework. The court relied on a rigid interpretation of constitutional language, emphasizing precise textual alignment while disregarding the legislature's clear intent to operationalize constitutional provisions through statutory definitions. By rejecting the General Assembly's

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292. *Id.*
293. *Id.*
294. *Id.*
295. *Id.*
296. *Id.* at 751 (citing Meredith v. Pence, 984 N.E.2d 1213, 1218 (Ind. 2013), which held that a statute is unconstitutional on its face if there are no circumstances under which it can be constitutionally applied).
297. *See id.*
298. *Id.*
299. *Id.* at 752.
300. *Id.*

statutory framework—in which "curtilage" was defined as the one-acre surrounding a principal place of residence—the Tax Court introduced uncertainty into a system that relies on predictability, fairness, and uniformity.

The Tax Court's insistence on an ad hoc, case-by-case determination of curtilage's boundaries undermines legislative efforts to provide a clear and equitable framework. This approach creates administrative inefficiencies, risks inequitable tax treatment, and contradicts the constitutional mandate for uniform property tax assessment. Moreover, the Tax Court's decision dismisses well-established principles of legislative deference and the Indiana Supreme Court's doctrine of agency deference, which demand judicial restraint when reviewing statutory or regulatory interpretations by the legislature or administrative agencies.

The Tax Court's reasoning in *Sawlani* also contradicts its earlier recognition of the interconnectedness between the homestead deduction and the 1% tax cap. This decision not only nullifies the legislature's efforts to balance the competing interests of taxpayers and government revenue collection but also risks creating an effectively unlimited tax exemption. Such an outcome violates Indiana Supreme Court precedent, which emphasizes that constitutional protections like tax caps or exemptions must balance public policy considerations with operational limits to ensure fairness and sustainability.[301]

B. Income Tax

1. PENN Entertainment, Inc. (f/k/a Penn National Gaming, Inc.) v. Indiana Department of State Revenue.[302]—The issue before the Tax Court was whether the Department violated Indiana's statutory definition of adjusted gross income and the federal and Indiana constitutions when it required the taxpayer to add back to the Indiana taxable income payments it made to other state governments.[303]

The taxpayer, PENN Entertainment, Inc. ("PENN"), previously known as Penn National Gaming, Inc., is a Pennsylvania-based company that operates a casino in Indiana through a subsidiary.[304] PENN owned entities involved in gaming and entertainment in seventeen other states.[305] For the tax years 2015, 2016, and 2017, it filed Indiana adjusted gross income tax (AGIT) returns on

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301. *See* Andrew W. Swain, *Overloading the 1% Circuit Breaker: The Indiana Tax Court Constitutionally Expands Curtilage*, 11 TEX A&M J. PROP. L. 491 (forthcoming 2025) (providing an in-depth examination of the flaws in the *Sawlani* decision, including a detailed critique of the Tax Court's rationale, its departure from established judicial principles, its implications for Indiana's tax system, and its broader ramifications for the state's legislative and judicial processes).

302. 230 N.E.3d 385 (Ind. T.C. 2024) (Senior Judge John Baker authored the opinion of the court).

303. *Id.* at 390.

304. *Id.*

305. *Id.* at 390–91.

which it reported and deducted the value of income taxes paid in other states from its federal returns but added those values back to its Indiana tax base.[306] The Indiana Department of State Revenue ("Department") audited PENN's AGIT returns for these years and concluded that other out-of-state tax payments by PENN should also be added back to its Indiana tax base.[307] This resulted in PENN's owing additional taxes for these years along with interest and penalties.[308] It protested the additional tax assessments, and after an administrative hearing, the penalties were dropped, but the Department otherwise denied the protest.[309] After the Department rejected PENN's rehearing request, PENN appealed to the Tax Court, before which the parties filed cross-motions for summary judgment.[310]

The Tax Court said the dispute before it centered on whether certain payments made by PENN to other state governments should be included in the calculation of its Indiana adjusted gross income ("AGI") as mandated by the statute defining Indiana AGI—that is, Indiana Code section 6-3-1-3.5 (2015).[311] Indiana AGI for businesses such as PENN is defined similarly to federal taxable income per section 63 of the Internal Revenue Code ("IRC"), which calculates federal taxable income as gross income minus allowable deductions.[312] A payment of state income taxes qualifies as an allowable federal deduction.[313] Pursuant to Indiana Code section 6-3-1-3.5(3)(b) (2015) (the "section (3)(b) add-back provision"), a taxpayer calculating its Indiana AGI must add back an amount equal to any deduction or deductions allowed by IRC section 63 for taxes paid to any U.S. state when those taxes were based on or measured by income.[314] PENN argued that the disputed payments were for "'un-apportioned excise taxes, privilege fees, and other non-tax payments' that are not measured by income" and, therefore, should not be added back.[315] Accordingly, the court noted that the dispute turned on the definition of the phrase "taxes based on or measured by income" as established by past Indiana legal precedents and whether the out-of-state taxes in question comported with that definition.[316]

The Tax Court stated that, in 1991, the Indiana Supreme Court determined in *Consolidation Coal Co. v. Indiana Department of State Revenue*, that West Virginia's Business and Occupation Tax ("B&O tax") was effectively measured by income and thus fell under the section (3)(b) add-back provision.[317] A B&O tax is commonly viewed as a gross receipts tax, which is based on the value of

306. *Id.* at 391.
307. *Id.*
308. *Id.*
309. *Id.*
310. *Id.*
311. *Id.*
312. *Id.* at 392 (citing IND. CODE § 6-3-1-3.5(b) (2015).
313. *Id.* (citing IRC § 164 (2014)).
314. *Id.* (citing I.C. § 6-3-1-3.5(b)(3).
315. *Id.*
316. *Id.*
317. *Id.* (discussing *Consolidation Coal Co.*, 583 N.E.2d 1199 (Ind. 1991)).

products, gross sale receipts, and gross income rather than net income determined after the application of tax deductions, exemptions, and credits.[318] The Supreme Court premised its determination on its conclusion that, though the B&O tax taxed the privilege of doing business in West Virginia, the state calculated the tax using gross proceeds of sales derived from tangible property rather than the value of property held.[319] The Supreme Court also concluded that the Indiana General Assembly used the phrase "based on or measured by income" to denote a broader inquiry than would be appropriate if the legislature had merely used the phrase "taxes on income" in the section (3)(b) add-back provision.[320] The Tax Court also noted that it had previously determined that Indiana's Riverboat Wagering Tax was subject to the section (3)(b) add-back provision because the tax was measured by adjusted gross receipts received from gaming operations—that is, income—even though the tax was an excise tax.[321] The Tax Court also noted that it had previously reached an opposite determination in *First Chicago NBD Corp. v. Department of State Revenue*.[322] There, the court found that that Michigan's Single Business Tax, a value-added tax, was not based on income because it measured the value the production process added to a product, not income derived from the product's sale.[323]

The Tax Court said that its analysis of PENN's payments to ten states involved a variety of taxes, many styled as fees or based on gaming revenues, akin to the privilege tax discussed in the Indiana Supreme Court's case *Consolidation Coal Co.*[324] Thus, the nature of the out-of-state taxes PENN paid would ultimately determine whether they would be included in Indiana's AGI under the section (3)(b) add-back provision.[325] The Tax Court analyzed the nature of these taxes, which involved considering taxes imposed by Illinois, Maine, Massachusetts, Mississippi, Missouri, Nevada, New Mexico, Ohio, Pennsylvania, and West Virginia.[326] The court concluded that these out-of-state taxes imposed on PENN included taxes on gross receipts from gaming activities, licensing fees calculated from gaming income, and other similar charges that suggested a closer alignment with income-based taxation addressed in the Indiana Supreme Court's *Consolidation Coal Co.* case than with the value-added measurements at issue in the Tax Court's *First Chicago NBD Corp.*

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318. *See, e.g.*, BRUCE M. NELSON & JOHN C. HEALY, SALES AND USE TAX ANSWER BOOK Q22:1 (2020) (explaining in detail gross receipt and business and occupation taxes).

319. *PENN Ent., Inc.*, 230 N.E.3d at 392 (citing *Consolidation Coal Co.*, 583 N.E.2d at 1202).

320. *Id.* (citing *Consolidation Coal Co.*, 583 N.E.2d at 1201).

321. *Id.*; *see also* Aztar Ind. Gaming Corp. v. Ind. Dep't of State Revenue, 806 N.E.2d 381, 386 (Ind. T.C. 2004).

322. *PENN Ent., Inc.*, 230 N.E.3d at 392-93; *First Chicago NBD Corp.*, 708 N.E.2d 631 (Ind. T.C. 1999).

323. *PENN Ent., Inc.*, 230 N.E.3d at 392-93.

324. *Id.* at 393–94.

325. *Id.* at 393.

326. *Id.* at 393–94.

case.[327]

PENN also argued that the Department's assessment premised on its adding back the out-of-state tax payments pursuant to the section (3)(b) add-back provision violated its rights under the Commerce, Due Process, and Equal Protection Clauses of the U.S. Constitution.[328] The Tax Court noted that the Commerce Clause is violated when a taxing authority imposes a tax: (a) on an activity that lacked substantial nexus with the taxing state, (b) not fairly apportioned between states, (c) that discriminated against interstate commerce, or that (d) failed to fairly relate to the services the taxing state provided to taxpayers.[329] The court said that it was undisputed that PENN had a physical presence in Indiana and, therefore, substantial nexus with it because PENN owned and operated a casino in Indiana through a subordinate business entity.[330] PENN conceded that Indiana apportioned its fair share of interstate taxes after the add-back process was completed and, through this apportionment process, taxed only that value fairly attributable to Indiana.[331] The Tax Court also concluded that no evidence established that the state's application of the section (3)(b) add-back provision coerced taxpayers to conduct intrastate rather than interstate business.[332] Finally, the Tax Court concluded that it was undisputed that, after PENN's income was apportioned, it paid taxes on only Indiana's fair share of that income.[333]

Regarding PENN's due process claim, the Tax Court said that a two-step analysis is used to evaluate whether a state tax meets the Due Process Clause's requirements. First, there must be a significant link or minimal connection between the state and the entity, property, or transaction being taxed. Second, the income assigned to the state for taxation should be logically tied to the taxing state.[334] The first prong was not violated because the court had already determined that PENN had a substantial nexus with Indiana.[335] The second prong was not violated because the court had already determined that PENN paid taxes on only Indiana's fair share of its income.[336] Regarding PENN's equal protection claim, the Tax Court said that the clause is violated only if a taxpayer has been treated differently from similarly situated taxpayers.[337] The court concluded that PENN failed to identify any evidentiarily supported examples of the Department's applying the section (3)(b) add-back provision against another

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327. *Id.* at 394.
328. *Id.* at 395.
329. *Id.* (citing Complete Auto Transit, Inc. v. Brady, 430 U.S. 274, 279 (1977)).
330. *Id.*
331. *Id.* at 396.
332. *Id.* at 396–97.
333. *Id.* at 397.
334. *Id.* (citing North Carolina Dep't of Revenue v. The Kimberley Rice Kaestner 1992 Fam. Tr., 588 U.S. 262, 269 (2019)).
335. *See id.* at 398.
336. *Id.*
337. *Id.* (quoting UACC Midwest, Inc. v. Ind. Dep't of State Revenue, 667 N.E.2d 232, 239 (Ind. T.C. 1996)).

taxpayer in a way that resulted in disparate treatment.[338]

Lastly, PENN argued that the Department's assessments violated the Due Course of Law Clause of Indiana's Constitution.[339] The Tax Court observed that Indiana courts use the same approach to assess alleged violations of procedural due process under Indiana's Due Course of Law Clause as the U.S. Supreme Court does when examining similar claims under the Due Process Clause of the U.S. Constitution.[340] PENN asserted that the Department applied the section (3)(b) add-back provision in neither a "rational" nor "fundamentally fair" manner.[341] The Tax Court disagreed. It held that Indiana had a "rational interest in ensuring that taxpayers' taxable income includes amounts that they deducted from their federal income taxes."[342] Furthermore, the court noted that PENN acknowledged this general point when it added back some amounts to its taxable Indiana income, reflecting payments of other states' income taxes.[343] Accordingly, the Tax Court granted the Department's motion for summary judgment, denied PENN's motion, and affirmed the Department's delinquent tax assessment.[344]

The rationale employed by the Tax Court to uphold the Department's position is, at best, tenuous and faces numerous obstacles. The central interpretive question in *Penn Entertainment* is whether the term "income" in the add-back statute under Indiana Code section 6-3-1-3.5(b)(3) refers exclusively to net income (i.e., profit after expenses and deductions) or extends to gross income/gross receipts (i.e., total revenue before expenses and deductions).[345] This distinction is critical as it directly affects the treatment of excise taxes, privilege fees, and license fees, determining which taxes fall within the scope of the add-back provision under Indiana law.

The Tax Court's decision disregards its own prior holding that the plain meaning of the word "income" in the context of Indiana's adjusted gross income tax refers to net income. In *Smith v. Indiana Department of State Revenue*, the Tax Court concluded that the AGIT statutory framework generally defines "income" as adjusted gross income (AGI)—a calculation rooted in net income.[346] Further reinforcing this interpretation, the U.S. Supreme Court has defined "income" as: "[G]ain derived from capital, from labor, or from both combined," provided it includes profit.[347] Similarly, the Federal Tax Code defines taxable income as "gross income minus deductions. . . ."[348] Finally,

338. *Id.* at 399.
339. *Id.* (citing IND. CONST. ART. 1, § 12).
340. *Id.* (citing Doe v. O'Connor, 790 N.E.2d 985, 988 (Ind. 2003)).
341. *Id.* at 400.
342. *Id.*
343. *Id.*
344. *Id.*
345. *Id.* at 397.
346. Smith v. Ind. Dep't of State Revenue, 122 N.E.3d 489, 494 (Ind. T.C. 2019).
347. *E.g.*, Eisner v. Macomber, 252 U.S. 189, 206 (1920).
348. I.R.C § 63(a).

Indiana tax regulations also align with this understanding, frequently defining income in terms of net income.[349]

If the Department's broader interpretation of "income" to include gross receipts is correct, it introduces a significant new ambiguity: how can taxpayers and the Department consistently distinguish between excludable, unapportioned excise taxes, privilege fees, and other non-tax payments and taxes that must be added back? By adopting this broad definition, the Department essentially replaces one ambiguity—the meaning of "income"—with another: the method by which taxpayers are expected to differentiate between add-back taxes measured by income and other taxes measured by non-income factors. This shift erodes taxpayer certainty and undermines the repeatability necessary for a predictable and fair tax system.

The Indiana Supreme Court will now weigh in on this issue. On May 29, 2024, the taxpayer PENN filed its Petition for Review.[350] On November 6, 2024, the Supreme Court granted review and scheduled the case for oral arguments, offering a critical opportunity to resolve the interpretive challenges surrounding the scope of the term "income" in Indiana's add-back statute.[351]

C. Sales Tax

1. Indiana Finance Financial Corp. v. Indiana Department of State Revenue.[352]—The issue before the Tax Court was whether the Indiana Department of State Revenue ("Department") properly denied a taxpayer's sales tax refund claims premised on a taxpayer's calculation of a bad-debt deduction involving repossessed property.

The taxpayer, Oak Motors, Inc. ("Oak Motors"), an Indiana-based car dealership, sold cars via installment-sale contracts, financing all or part of the purchase price.[353] It remitted the sales tax to the Department.[354] Oak Motors'

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349. *See, e.g.*, 45 IND. ADMIN. CODE 3.1-1-55 (2009) (describing income as the result of "income-producing activities" intended to obtain "gains or profit," explicitly distinguishing it from gross receipts); 45 I.A.C. 15-5-7(e) (defining income for Indiana's adjusted gross income tax (AGIT) purposes as adjusted gross income for the state's adjusted gross income tax and other similar tax schemes).

350. Petition for Review, PENN Entertainment, Inc. v. Dep't of State Revenue, (No. 22T-TA-00015), 2024 Ind. LEXIS 693 (Ind. Nov. 6, 2024).

351. *See* mycase.IN.gov, Chronological Case Summary—Order Granting Petition for Review, PENN Entertainment, Inc. v. Dep't of State Revenue (No. 24S-TA-00382), *accessible at* https://public.courts.in.gov/mycase/#/vw/CaseSummary/eyJ2Ijp7IkNhc2VUb2tlbiI6ImVzcFBBV0NDdVpVYjFWRlE5T0xwcEpqTkxpdXJsQkpocTlJNUROTW9tX2MxIn19 [https://perma.cc/3YX7-84L4]

352. 226 N.E.3d 276 (Ind. T.C. 2024) (Senior Judge Wentworth authored the opinion).

353. *Id.* at 277.

354. *Id.*

affiliate, Indiana Finance, purchased these contracts without recourse[355] for 65% or 70% of the original amount financed.[356] That is, it purchased the installment contracts at a 35% or 30% discount on their face values.[357] After several customers defaulted on their contracts, Indiana Finance repossessed and sold the vehicles at auction or directly back to Oak Motors.[358] Indiana Finance determined the fair market value of repossessed vehicles sold at auction using the auction proceeds, and used the Manheim Market Report ("MMR")[359] to establish the fair market value of vehicles sold to Oak Motors.[360] Indiana Finance also collected third-party insurance and warranty claim payments for some repossessed vehicles.[361]

Pursuant to Internal Revenue Code ("IRC") section 166's bad-debt deduction rules, and for federal and Indiana income tax purposes, Indiana Finance claimed bad-debt deductions on these defaulted contracts for the 2017 and 2018 tax years.[362] It also sought a refund for the sales taxes Oak Motors had remitted to the Department, which became uncollectable receivables following the customer defaults.[363] Indiana Finance asserted that its bad-debt calculations comported with Indiana Tax Court precedent.[364] Indiana Finance applied the Market Discount Rules under IRC sections 1276 through 1278 "to the value of repossessed vehicles, insurance claim payments, and warranty claim payments."[365] Consequently, it increased its basis in the installment sale contracts by the market discount recognized in gross income—specifically, 30% of the receipts, which represented the discount from the contracts' face value and constituted taxable profit for Indiana Finance.[366] Simultaneously, it reduced its basis in these contracts by 100% of all payments made.[367]

The Department approved the part of Indiana Finance's bad-debt

355. The term "without recourse" in the context of selling or transferring an asset, such as an installment-sale contract, indicates that the seller or transferor relinquishes any responsibility to collect on the debt or handle defaults associated with the asset. The buyer assumes the risk of non-payment or default by the end parties involved. This means the seller or original creditor cannot be pursued for compensation if the debtor fails to fulfill its financial obligation. This arrangement contrasts with "with recourse" transactions, in which the seller or original creditor retains some liability and can be approached to cover losses if the debtor defaults. *See, e.g.*, BLACK'S LAW DICTIONARY 1603 (6th ed. 1990); IRS, *Cancellation of Debt–Basics: Recourse vs. Nonrecourse Debt*, https://apps.irs.gov/app/vita/content/36/36_02_020.jsp?level=advanced [https://perma.cc/Q9M3-CLW4].

356. *Indiana Finance Financial Corp.*, 226 N.E.3d at 277.

357. *Id.* at 277–78.

358. *Id.* at 277.

359. *Id.* at 278 n.4 (The MMR provides values and wholesale prices for used vehicles).

360. *Id.* at 277–78.

361. *Id.* at 278.

362. *Id.*

363. *Id.*

364. *Id.* (citing SAC Finance, Inc. v. Ind. Dep't of State Rev., 24 N.E.3d 541 (Ind. T.C. 2014)).

365. *Id.*

366. *Id.*

367. *Id.*

calculations that applied the federal market discount treatment to installment payments, but it denied the same treatment for repossessed property.[368] The Department asserted that Indiana Finance needed to decrease its unpaid balances on the defaulted contracts by the total value of the repossessed property.[369] In simpler terms, the Department rejected the portion of Indiana Finance's two refund claims in which the Market Discount Rules were applied to the repossessed property. This reduced the uncollectible amount by only 70% instead of 100% of the repossessed property's value.[370] In summary, the Department approved the part of Indiana Finance's bad-debt calculations that applied the federal market discount treatment to installment payments, but it denied the same treatment for repossessed property.[371] The Department asserted that Indiana Finance needed to decrease its unpaid balances on the defaulted contracts by the full value of the repossessed property.[372]

Indiana Finance contested the Department's partial denial of its refund claims.[373] During the administrative protest, the Department maintained that Indiana Finance should have deducted the full amount of the repossessed property, while Indiana Finance argued that doing so would prevent any decrease in its basis due to the receipt of such property.[374] This would result in a higher contract basis than that stated in its refund claims, potentially leading to a larger sales tax refund than it had originally sought.[375] The Department rejected Indiana Finance's arguments and dismissed the protest.[376]

Indiana Finance sought a rehearing with the Department and submitted two supplemental refund claims for the 2017 and 2018 tax years, recalculating its bad-debt deductions as directed by the Department.[377] Although the Department granted the request for a rehearing, it denied the supplemental claims because they did not account for the value of the repossessed property in reducing the bad-debt deduction.[378] Accordingly, the Department adjusted Indiana Finance's tax basis by reducing the unpaid balances of its defaulted contracts by the entire value of the repossessed property.[379] Indiana Finance again administratively contested these refund denials, resulting in the Department once more denying its refund claims.[380] Indiana Finance initiated a tax appeal, disputing the Department's denials, which amounted to $163,044.00 from its original sales

368. *Id.*
369. *Id.*
370. *Id.*
371. *Id.*
372. *Id.*
373. *Id.*
374. *Id.*
375. *Id.*
376. *Id.* at 279.
377. *Id.*
378. *Id.*
379. *Id.*
380. *Id.*

tax refund claims and $258,584.00 from its supplemental refund claims.[381] The parties filed cross-motions for summary judgment, and the Tax Court ruled in Indiana Finance's favor.[382]

The Tax Court began its opinion by reviewing the relevant Indiana sales tax law. In Indiana, a retail merchant must remit the entire amount of sales tax corresponding to an item's total purchase price during the reporting period in which a retail transaction occurred, even if an item's sales price and related sales tax had been financed over time and not yet fully collected by the retail merchant.[383] Indiana's bad-debt deduction statute, however, allowed a retail merchant (or its assignee) to deduct from the amount of sales tax due the amount of sales tax corresponding to the amount of its receivables written off as uncollectible debt under the federal bad-debt deduction statute, IRC section 166.[384] Indiana's bad-debt deduction statute provided, in relevant part, that the deduction amount shall be determined in the manner provided by IRC section 166 for bad debts but shall be adjusted to exclude repossessed property.[385] In 2004, the Indiana Supreme Court determined "whether an auto dealership that financed its customers' vehicle purchases, including the related sales tax, was required to deduct the total amount of repossessed collateral under" Indiana's bad debt deduction statute.[386] The Supreme Court held that an "auto dealership could deduct only that portion of its receivables equal to the amount written off for federal income tax purposes" because Indiana's Legislature "intended that only the net debt that cannot be collected may be deducted."[387] This has been called the "Net Debt Principal."[388] According to this principle, noted the Tax Court, the statutory exclusions specified in subsection (d) of Indiana's bad-debt deduction statute cannot be applied to allow "a taxpayer to write off more than the amount it actually paid for its uncollectible debt."[389]

The Tax Court next explored the application of Indiana's bad-debt deduction statute to repossessed property. Indiana Finance contended that it should receive summary judgment for its refund claims because it applied the Market Discount Rules to its bad-debt deductions.[390] Specifically, it excluded 70% of the face value of repossessed property when adjusting the basis in its installment contracts.[391] Indiana Finance argued that this approach aligned with subsection (d)'s requirements, which, according to it, did not mandate the subtraction of the full value of the repossessed property—only a portion of it,

381. *Id.*
382. *Id.* at 279, 286.
383. *Id.* at 280 (citing IND. CODE § 6-2.5-6-1(a) (2017)).
384. *Id.* (citing I.C. § 6-2.5-6-9).
385. *Id.* (quoting I.C. § 6-2.5-6-9(d)(2)(E)).
386. *Id.* at 281 (citing Indiana Dep't of State Revenue v. 1 Stop Auto Sales, Inc., 810 N.E.2d 686, 686–88 (Ind. 2004)).
387. *Id.*
388. *Id.*
389. *Id.* (citing I.C. § 6-2.5-6-9(d) (2017)).
390. *Id.*
391. *Id.*

excluding market discount income.[392] Conversely, the Department argued that Subsection (d) mandated the complete subtraction of the amount of the repossessed property, Market Discount Rules applying to installment payments, not repossessed property.[393] It also argued that the precedent the Indiana Tax Court established in *SAC Finance, Inc. v. Indiana Department of State Revenue* was incorrect and should be overturned. [394]

Though not fully explained in *Indiana Finance Financial Corp.*'s opinion, *SAC Finance, Inc.*'s precedent was this. In *SAC Finance, Inc.*, the Tax Court noted that, in *Indiana Department of State Revenue v. 1 Stop Auto Sales, Inc.*, the Indiana Supreme Court said that the mathematics of IRC § 166 must be used when calculating Indiana's bad-debt deduction under Indiana's bad-debt statute.[395] Accordingly, the Tax Court surmised, because "the mathematics of IRC section 166 depend[ed] on the content of other sections of the Internal Revenue Code," the court held that the Market Discount Rules contained in other Internal Revenue Service code sections were also a part of IRC section 166's mathematics and, therefore, available to taxpayers for calculating their Indiana bad-debt deduction.[396]

The IRS's Market Discount Rules apply to bonds bought at a price lower than their face value on the secondary market. If a bond is sold or matures, the market discount is treated as ordinary income rather than capital gains. The discount is recognized gradually over the period the bond is held, calculated using either the straight-line or the constant-yield method. Taxpayers have the option to defer recognizing this income until the bond is sold or redeemed, but they forfeit the capital gains treatment on the discount amount.[397] The Tax Court's deductive reasoning in *SAC Finance, Inc.* ignored the fact that, based on the Market Discount Rules' own statutory wording in the federal tax code defining them and establishing their scope and function, the rules applied to bonds but nothing else. For example, defaulted installment sales contracts or repossessed tangible property. In other words, though the Market Discount Rules might be one of many parts of IRC § 166's overall mathematical framework, this does not mean that one part of the section's mathematics applies to every calculation of a bad-debt deduction, including calculations of the deduction for defaulted installment sales contracts or repossessed tangible property.

Returning to *Indiana Finance Financial Corp.*, the Department argued that Indiana Finance incorrectly applied the Market Discount Rules to its repossessed property, as those rules applied only to installment payments

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392. *Id.*

393. *Id.* at 282.

394. *Id.* (discussing SAC Fin. v. Ind. Dep't of State Revenue, Inc., 24 N.E.3d 541 (Ind. T.C. 2014).

395. *SAC Fin., Inc.*, 24 N.E.3d at 544 (citing Ind. Dep't of State Revenue v. 1 Stop Auto Sales, Inc., 810 N.E.2d 686 (Ind. 2004)).

396. *Id.*

397. *See* IRC §§ 1276–1278.

according to Tax Court precedent.[398] It asserted that, when Indiana Finance repossessed and resold a vehicle, the compensation came from a third party, such as an auction house or Oak Motors, rather than the defaulting customer.[399] This repossession and resale acted as a recovery of an account considered worthless.[400] During this process, Indiana Finance did not receive any principal payments; the last genuine principal payment received was the final payment made by the defaulting customer.[401] The Department argued that, according to the Tax Court's precedent in *SAC Finance, Inc.*, repossessed property and installment payments must be treated differently because the portion of each installment payment made by a customer and characterized as market discount income for federal income tax purposes is income that has actually been paid to the taxpayer.[402]

The Tax Court disagreed with the Department's argument, saying that the distinction made between installment payments paid to Indiana Finance by customers and repossessed property recovered by Indiana Finance from third parties was misleading and did not justify different treatment under the Market Discount Rules.[403] The court said that the way value is received is not critical; the essential point is that value should be consistently recorded as per the calculations specified in IRC section 166, which, according to its precedent in *SAC Finance, Inc.*, include the federal Market Discount Rules.[404] However, IRC section 166 and its accompanying regulations do not explicitly mandate that repossessed property be treated identically to installment payments.[405] The court said, though, that logically, they should be treated similarly.[406] However, it did not explain why logic mandated such a conclusion.

Indiana Finance acknowledged that its initial refund claims did not adhere strictly to the literal wording of subsection (d) of Indiana's bad-debt deduction statute, which provided that repossessed property should be excluded from the calculation.[407] However, Indiana Finance contended that its calculations aligned with the spirit of subsection (d), a position the Tax Court had previously upheld in *SAC Finance., Inc.*[408] Indiana Finance deemed its interpretation logical because it prevented what it described as the unreasonable outcome of diminishing sales tax refunds caused by excluding the market discount income from repossessed property.[409]

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398. *Indiana Fin. Financial Corp.*, 226 N.E.3d at 282.
399. *Id.*
400. *Id.*
401. *Id.*
402. *Id.*
403. *Id.* (characterizing the Department's argument as "a red herring").
404. *Id.*
405. *Id.*
406. *Id.*
407. *Id.*
408. *Id.*
409. *Id.*

The Tax Court agreed with Indiana Finance's argument.[410] The court said rejecting this interpretation would disrupt the foundational Net Debt Principle, especially since Indiana Finance purchased the defaulted contracts at 70% of their face value.[411] If the market discount income also reduced the basis of these contracts, it could significantly jeopardize Indiana Finance's eligibility for a refund commensurate with its expenditures.[412] Therefore, the court concluded that the adjustment to include market discount income from Indiana's bad-debt calculation aligned with the Net Debt Principle, ensuring fairness in the treatment of amounts actually paid by Indiana Finance.[413]

The Department also argued that the value of a repossessed property should not be equated to an installment payment since it involved payment by a third party.[414] Relying on *Corbin on Contracts*, the Tax Court held that this distinction was irrelevant as there is a longstanding legal precedent that a third-party payment can satisfy someone else's obligation.[415] Furthermore, Indiana Finance had consistently treated installment payments and repossessed property similarly in its federal and state tax filings.[416] This practice was crucial because Indiana's bad-debt deduction statute merely stipulates that the bad debt must be deducted on federal tax returns without requiring proof of the deduction's validity.[417]

The Department's summary judgment motion asserted that the Tax Court wrongly decided its previous decision in *SAC Finance, Inc.* because the Market Discount Rules do not apply to repossessed property under Indiana's bad-debt deduction statute.[418] Consequently, income derived from market discounts

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410. *Id.*

411. *Id.* at 282–83.

412. *Id.* at 283.

413. *Id.* The Tax Court's reasoning regarding the alignment appears questionable. A tax refund claim premised on tax exemptions or deductions shares their interpretive nature—that is, the refund is strictly construed in favor of taxation and against tax exclusion and repayment. *See, e.g.*, Ind. Dep't of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014) (holding that "if a statute authorizing a [tax] deduction is ambiguous, [the Indiana Supreme Court] must construe the deduction narrowly because an income tax deduction is a matter of legislative grace and . . . the burden of clearly showing the right to the claimed deduction is on the taxpayer [internal quotation marks and case reference omitted]"); *see also, e.g.*, Crystal Flash Petroleum, LLC v. Ind. Dep't of State Revenue, 45 N.E.3d 882, 886 (Ind. T.C. 2015); Mid-America Energy Resources, Inc. v. Ind. Dep't of State Revenue, 681 N.E.2d 259, 261 (Ind. T.C. 1997); Mechanics Laundry & Supply, Inc. v. Dep' of State Revenue, 650 N.E.2d 1223, 1227 (Ind. T.C. 1995); Indiana Dep't of State Revenue v. Kimball Int'l Inc., 520 N.E.2d 454, 456 (Ind. Ct. App. 1988); Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp., 310 N.E.2d 96, 97 (Ind. Ct. App. 1974) (cases all asserting the proposition that tax exemptions are strictly construed favoring taxation). These cases and the precedent they represent appear to contradict the Tax Court's belief that its judicially created Net Debt Principle must comport with some overriding principle favoring sales tax refunds, but such a principle does not exist under Indiana tax law.

414. *Id.*

415. *Id.* (citing CORBIN ET AL., CORBIN ON CONTRACTS § 67.3 n.1 (13th ed. 2023)).

416. *Id.*

417. *Id.*

418. *Id.*

should not be factored into the calculation of a bad-debt deduction write-off.[419] To support its request that the Tax Court overrule its precedent in *SAC Finance*, the Department asserted that IRC section 166(e) and IRC section 165(g)(2)(C) mandated that the Market Discount Rules do not apply to securities.[420] Section 166(e) stated that it did not apply to a debt, which was evidenced by a security as defined in IRC section 165(g)(2)(C).[421] Section 165(g)(2)(C) defined a "security" as "a bond, debenture, note, or certificate, or other evidence of indebtedness, issued by a corporation or by a government or political subdivision thereof, with interest coupons or in registered form."[422] Because Indiana Finance's installment sales contracts constituted excluded securities, the Department asserted that the contracts could not be deducted under IRC section 166 and, therefore, must be excluded from the bad-debt deduction's calculation.[423] The Tax Court rejected the argument, labeling the Department's legal interpretation of the relevant federal tax statutes as merely a "conclusory argument" unsupported by any properly designated evidence demonstrating that the contracts were in registered form.[424] The Tax Court also said that the issuer of a bond or other proof of indebtedness is commonly understood as the borrower, not the lender.[425] The undisputed designated facts demonstrated that Oak Motors was a lender because it financed all or a part of a vehicle's cost, including the sales tax on its purchase price.[426] Accordingly, the Tax Court concluded that the installment sales contracts were not securities.[427]

Lastly, the Department argued that the Tax Court wrongly decided *SAC Finance, Inc.* because the inclusion of market discount income in Indiana's bad-debt calculation permitted taxpayers to claim a deduction amount greater than their uncollectible debt, thereby conflicting with subsection (d) of Indiana's bad-debt deduction statute, which excluded repossessed property, and distorting the meaning of a tax write-off.[428] The Tax Court rejected this argument because the Department failed to present any evidence, precedent, or persuasive authority to support its claim that Indiana Finance sought a deduction for an amount greater than their uncollectible debt.[429] The Tax Court also noted that the Department's argument invited it to ascertain the validity of Indiana Finance's federal bad-debt calculations and corresponding deductions.[430] The Tax Court said that its precedent mandated that the Indiana bad-debt deduction statute required that the taxpayer had deducted the bad debt only for federal income tax purposes, not

419. *Id.*
420. *Id.*
421. *Id.*
422. *Id.*
423. *Id.* at 283–84.
424. *Id.* at 284.
425. *Id.* (citing TREAS. REG. § 1.165-5(j), Ex. 3; TREAS. REG. § 1.446-5).
426. *Id.*
427. *Id.*
428. *Id.* at 284–85.
429. *Id.* at 285.
430. *Id.*

that the taxpayer had demonstrated the validity of the federal income tax deduction.[431] Therefore, the court rejected the Department's argument because it invited the court to scrutinize the validity of Indiana Finance's federal income tax calculations and deductions, an invitation the court had rejected in the past.[432] Accordingly, the Tax Court granted Indiana Finance's summary-judgment motion, denied the Department's motion, and remanded the case to the Department to effect corrective actions consistent with the court's decision.[433]

D. Excise Tax

1. B.L. Reever Transport, Inc., Charles Paar, d/b/a Sandman Services, and Leland Wilkins, d/b/a Lost River Trucking v. Ind. Department of State Revenue.[434]—The issue before the Tax Court was whether the Indiana Department of State Revenue ("Department") properly denied refund claims for excise taxes because it believed toll roads were highways subject to Indiana's motor fuel tax.

B.L. Reever Transport, Inc., Charles Paar (d/b/a Sandman Services), and Leland Wilkins (d/b/a Lost River Trucking) are three small business motor carriers ("Motor Carriers") that haul property on Indiana's highways, including its toll roads.[435] They paid Indiana's motor carrier fuel tax ("MCFT") during the 2016 and 2017 tax years.[436] The Motor Carriers sought tax refunds for amounts they claimed corresponded to their travel on toll roads.[437] Taxpayers Paar, Wilkins, and B.L. Reever sought refunds for their respective tax years: Paar requested $56.27 for 2016, Wilkins requested $7.47 for the same year, and B.L. Reever requested $8.02 for 2017.[438] The Department denied the refund claims, and the Motor Carriers filed an appeal with the Tax Court in a timely manner.[439]

The Department first sought to dismiss the Motor Carriers' appeal pursuant to Indiana Trial Rule 12(B)(1) and (6) asserting that: (a) the Tax Court did not have subject matter jurisdiction over the Motor Carriers' claims, and (b) the Motor Carriers failed to state a claim upon which they could receive relief in conjunction with their challenging the Department's denial of the claims for refund of toll road taxes they paid while traveling on toll roads in Indiana leased to a private company.[440] The Tax Court denied the Department's dismissal

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431. *Id.* (citing Chrysler Fin. Co. v. Ind. Dep't of State Revenue, 761 N.E.2d 909, 916 n.17 (Ind. T.C. 2004)).

432. *Id.*

433. *Id.* at 286.

434. 226 N.E.3d 834 (Ind. T.C. 2024) (Senior Judge Wentworth authored the opinion).

435. *Id.* at 836–37.

436. *Id.* at 837.

437. *Id.*

438. *Id.*

439. *Id.*

440. *See* B.L. Reever Transport, Inc., et al. v. Ind. Dep't of State Revenue, 163 N.E.3d 968 (Ind. T.C. 2021).

motion.[441] The parties also filed cross-motions for summary judgment, which the Tax Court denied.[442] The parties subsequently filed their second cross-motions for summary judgment, disputing whether toll roads leased to a private company continued to be "publicly maintained" as required by the definition of "highway," a condition for subjecting the Motor Carriers to the MCFT.[443] In other words, the Motor Carriers claimed MCFT refunds because, they argued, the MCFT applied only to travel on highways, and, because toll roads were not publicly maintained, they were not highways for purposes of the MCFT.[444]

In support of their position, the Motor Carriers asserted two arguments—that the Department was bound by its prejudicial admissions about the nature of Indiana toll roads in a related federal case and that it should be barred from asserting claims regarding the nature of Indiana toll roads different from the one asserted in the refund case before the Tax Court. The Tax Court rejected both arguments.[445] Ultimately, the Tax Court granted the Department's summary-judgement motion and upheld its denial of the Motor Carriers' refund claims.[446] The court noted that the Indiana toll roads at issue were leased to a private entity that assumed responsibility for their upkeep.[447] The toll roads at issue were owned by the Indiana Finance Authority ("IFA") since May 2005.[448] In April 2006, the IFA leased the roads to a private entity, the ITR Concession Company LLC, for 75 years.[449] The lease provided that the lease transaction was contingent on its enabling legislation, which had been enacted into codified law.[450] The Tax Court concluded that the lease constituted a statutorily authorized public-private agreement. Along with its enabling legislation, it legally established that the toll roads in question were maintained as public highways throughout the relevant tax years and, therefore, subject to Indiana's MCFT.[451] Accordingly, the Tax Court affirmed the Department's denial of the Motor Carriers' refund claims.[452]

III. CONCLUSION

The 2024 survey of Indiana tax decisions highlights several critical trends in the state's evolving tax jurisprudence. The Indiana Tax Court has reaffirmed its firm commitment to textual interpretation, often relying heavily on dictionary

441. *Id.* at 974.
442. B.L. Reever Transport, Inc., 226 N.E.3d at 837 (citing *B.L. Reever Transport, Inc*., 163 N.E.3d 968, 971 n.1).
443. *Id.*
444. *Id.*
445. *Id.* at 842, 844.
446. *Id.* at 844.
447. *Id.* at 838.
448. *Id.* at 839.
449. *Id.*
450. *Id.* (citing PUB. LAW NO. 47-2006, IND. CODE §§ 8-15.5-1-1–13-8 (2024)).
451. *Id.* at 844.
452. *Id.*

definitions. This approach continues to place significant pressure on the legislature to refine statutory language and eliminate ambiguities. However, cases like *Slatten*, *Sawlani*, and *Penn Entertainment* illustrate the ongoing tension between maintaining judicial consistency and navigating the practical realities of tax administration, all within the framework of prior Indiana tax precedents, state legislative and agency deference, and the principles of separation of powers. The increasing involvement of senior judges further underscores the importance of preserving institutional continuity and expertise within the Tax Court. As the Indiana Supreme Court prepares to review pivotal cases, its forthcoming decisions are poised to shape the contours of the state's tax policy for years to come. Ultimately, the dynamic interplay between the judicial, legislative, and administrative branches remains essential to ensuring fairness and predictability in Indiana's tax system. This survey emphasizes the need to closely monitor these developments to understand better their implications for taxpayers, practitioners, and policymakers alike.