DEVELOPMENTS IN INDIANA TAXATION

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INTRODUCTION

Both the 111th Indiana General Assembly and the Indiana Tax Court contributed changes and clarifications to the Indiana tax laws in 1999. This Article highlights the more interesting developments for the period of October 1, 1998 through September 30, 1999.

I. GENERAL ASSEMBLY LEGISLATION

There were numerous legislative changes in 1999 that impacted Indiana taxation. While many of the changes were made to fine-tune existing laws, significant policy changes occurred in the following major areas: sales and use taxes; state and local income taxes; state offices and administration; and property taxes.

A. Sales and Use Taxation

The 1999 general assembly passed three bills with provisions that impacted sales and use taxation both procedurally and substantively.[1] One bill established a requirement that the Indiana Department of State Revenue ("IDSR") must annually compile a county-by-county list of retail merchants that sell tobacco products.[2] The IDSR must provide the information to the division of mental heath and the alcoholic beverage commission.[3] The list must include the name and business address of each location where the retailer sells the products.[4] The IDSR is also required to provide an updated list annually with additions and deletions since the previous report.[5] The statute expressly requires the retail merchant to provide the information to the IDSR.[6]

In the second bill, the general assembly amended the statutory provision dealing with the tax on motor fuel sales.[7] Prior to the amendment, Indiana was not collecting sales tax on kerosene.[8] Under the amended statute, the tax on

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1. *See* IND. CODE §§ 6-2.5-6-14, 6-2.5-7-3, 6-2.5-10-1 (Supp. 1999).
2. *See id.* § 6-2.5-6-14(a).
3. *See id.* § 6-2.5-6-14(a)(3).
4. *See id.* § 6-2.5-6-14(a)(1).
5. *See id.* § 6-2.5-6-14(a)(2)-(3).
6. *See id.* § 6-2.5-6-14(b).
7. *See id.* § 6-2.5-7-3.
8. The amendment brings Indiana in line with the federal government which began

kerosene sales from a metered pump is calculated in the same manner as the tax on the sale of "special fuel."[9] Specifically, a tax of 5% is imposed on the sale unless an exemption certificate is presented.[10] A second provision stated that the 5% tax is to be imposed on the price per unit of kerosene *before* adding state and federal excise taxes.[11] The result is rounded to the nearest $.001.[12] This amendment allows a retailer of kerosene to "back out" the state and federal excise taxes just as it would in calculating the tax on the sale of gasoline or special fuel.[13]

In addition to these changes to specific taxes, the general assembly modified the distribution percentages for all sales and use taxes collected by the IDSR.[14] The amendment lowered the distribution of proceeds to the state general fund from 59.2% to 59.03%.[15] The amendment also added a provision allocating 0.17% of proceeds to the commuter rail service fund.[16]

B. State and Local Income Tax

The general assembly made several changes affecting the computation of adjusted gross income ("AGI") used by individuals in calculating the adjusted gross income tax. One law created a deduction for the amount of any Holocaust victim's settlement payment included in that individual's Federal AGI.[17] Separate provisions of the law define who is eligible for the deduction[18] and what is to be included as a Holocaust victim's settlement payment.[19] This deduction applies retroactively as of January 1, 1998.[20]

A second law established an AGI tax deduction for premiums paid on any long-term care insurance policy approved by the Indiana Long Term Care Insurance Program.[21] The deduction may be claimed if the premium payments are for the benefit of the taxpayer or the taxpayer's spouse, or both.[22] A third provision established a deduction of $500 for taxpayers and their spouses who

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applying a federal excise tax to kerosene in January 1, 1998. *See* 26 U.S.C. § 4081 (Supp. IV 1999).

9. See IND. CODE § 6-6-2.5-22 for definition of "special fuel."
10. *See id.* § 6-2.5-7-3(b)(ii).
11. *Id.* § 6-2.5-7-3(b)(i).
12. *See id.* § 6-2.5-7-3(b).
13. *Id.* § 6-2.5-7-3(b)(i).
14. *See id.* § 6-2.5-10-1.
15. *See id.* § 6-2.5-10-1(b)(2).
16. *See id.* § 6-2.5-10-1(b)(5).
17. *See* Ind. Pub. L. No. 128-1999, § 27 (codified at scattered sections of IND. CODE § 6-3-1).
18. *See* IND. CODE § 6-3-1-29 (Supp. 1999)
19. *See id.* § 6-3-1-30.
20. *See id.*
21. *See id.* § 6-3-1-3.5.
22. *See id.* § 6-3-1-3.5(a)(16)

qualify for the federal deduction for the aged and have AGI under $40,000.[23] This deduction is in addition to the previously existing $1000 dollar personal exemption[24] and $1000 additional exemption for taxpayers who are sixty-five years old and over and/or blind.[25] The additional $500 deduction applies retroactively to tax years beginning after December 31, 1998.[26]

The general assembly increased the deduction amount for dependents from $500 to $1500 per year.[27] The increase is retroactive to January 1, 1998.[28] As a result of this significant increase, the Legislative Services Agency estimates a $57.9 million decrease in income tax revenue for the General Fund for fiscal year 2000.[29] A separate provision of the law makes this deduction permanent by deleting a previously established expiration date of December 31, 2000.[30]

In addition to the increased deduction for dependents and the increased personal exemption amount, the general assembly increased the maximum allowable renter's deduction from $1500 to $2000.[31] The deduction is available to taxpayers who rent a dwelling as their principle place of residence.[32] Qualifying taxpayers may deduct the lesser of the actual rent paid or $2000.[33]

The general assembly enacted one law dealing with Indiana residents working in Illinois.[34] The new provision permits the IDSR to enter into a reciprocal agreement with Illinois for the payment of individual income taxes paid by residents of Indiana to Illinois and vice versa.[35] Under current Indiana law, nonresidents working in Indiana are excused from paying Indiana adjusted gross income tax if the nonresident's state of residence has a reciprocal exemption for Indiana residents working in that state.[36] Indiana had reciprocal agreements with Illinois, Kentucky, Michigan, Ohio, Pennsylvania, and Wisconsin.[37] However, Illinois terminated its prior agreement effective January 1, 1998.[38] The 1999 bill authorizes the IDSR to establish a method for

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23. *See* Pub. L. No. 249-1999, § 1 (Ind. 1999) (codified at IND. CODE § 6-3-1-3.5(a)(5)(B) (Supp. 1999)).

24. *See* IND. CODE § 6-3-1-3.5(a)(3).

25. *See id.* § 6-3-1-3.5(a)(4)(B).

26. *See* S. 198, § 2, 111th Leg., 1st Reg. Sess. (Ind. 1999).

27. *See* IND. CODE § 6-3-1-3.5(a)(5).

28. *See* S. 297, § 2, 111th Leg., 1st Reg. Sess. (Ind. 1999).

29. *See* Legislative Services Agency, *Fiscal Impact Statement* (visited Apr. 8, 2000) <http://www.state.in.us/legislative/bills/1999/PDF/FISCAL/SB0297.002.pdf>.

30. *See* IND. CODE § 6-3-1-3.5(a)(5)(A) (as amended by Pub. L. No. 257-1999).

31. *See id.* § 6-3-2-6.

32. *See id.* § 6-3-2-6(a).

33. *See id.*

34. *See id.* § 6-3.5-3.

35. *See id.*

36. *See id.* § 6-3-5-1.

37. *See* IND. ADMIN. CODE tit. 45, r. 3.1-1-115 (1999).

38. *See* Legislative Services Agency, *Fiscal Impact Statement* (visited Apr. 8, 2000) <http://www.state.in.us/legislative/bills/1999/PDF/FISCAL/HB1573.003.pdf>.

calculating the payment to Illinois but sets a ceiling on the possible payment that Indiana may make under the new agreement.[39]

The computation of adjusted gross income tax was also impacted by the tax provisions included in the state budget. Specifically, one provision removed the property tax "add-backs" which were previously available to individual and corporate taxpayers.[40] The same provision created a deduction available to individual taxpayers equal to the lesser of $2500 or the amount of property taxes that are paid during the taxable year on the individual's principle place of residence.[41] This new deduction essentially replaced the lost "add-back" for individuals. However, corporate taxpayers were not provided with a similar deduction.[42] A separate provision removed the property tax add-back available to financial institutions that are subject to the financial institutions tax.[43]

Finally, some miscellaneous changes were made to the Local Option Income Taxes.[44] One tax provision of the state budget made a technical change to the tax so that Marion County's special distribution will take into account the change of welfare costs from the county to the State.[45] A second provision changed the definition of "attributed levy" for the county adjusted gross income tax distributions for the county's welfare fund and welfare administration funds.[46] In addition, a separate bill provided that Hancock County could adopt the county economic development income tax and allocate up to .15% of the resulting revenue to library property replacement credits.[47]

C. Tax Credits

In 1999, the general assembly repealed the earned income tax deduction and replaced it with a refundable earned income tax credit.[48] The eligibility requirements remain the same under the new format. However, only taxpayers with "Indiana total income" under $12,000 and a "qualifying child" are eligible for the new credit.[49] Furthermore, at least 80% of the Indiana total income must be "earned income."[50] Separate provisions define Indiana total income, qualifying child, and earned income for purposes of the credit.[51] The refundable

39. *See* IND. CODE § 6-3-5-3.

40. *See id.* § 6-3-1-3.5. The add back applied to taxes levied by a local government unit of any state. *See id.*

41. *See id.* § 6-3-1-3.5(a)(17).

42. *See id.* § 6-3-1-3.5.

43. *See id.* § 6-5.5-1-2.

44. *See generally id.* § 6-3.5.

45. *See id.* § 6-3.5-6-17.6.

46. *See id.* § 6-3.5-1.1-15.

47. *See id.* § 6-3.5-7-23.

48. *See id.* §§ 6-3-2.5-1 to -10 (1998), *repealed by* Ind. Pub. L. No. 273-1999, § 228.

49. *See* IND. CODE § 6-3.1-21-5 (Supp. 1999).

50. *See id.* § 6-3.1-21-5(3).

51. *See id.* §§ 6-3.1-21-3, 6-3.1-21-4, 6-3.1-21-2.

credit amount is 3.4% of the difference between the taxpayer's total income and $12,000.[52] Therefore, under the new credit system, a refund of $408 would be available to a taxpayer with no Indiana income.[53]

The general assembly also amended a statute to encourage more corporations and individuals to donate to an individual development fund account.[54] These accounts were established in 1997 to allow low-income individuals to deposit money into an account for education, housing, and business development purposes.[55] The qualifying individual's contributions are matched by the state and other entities.[56] Previously, to encourage contributions to the fund program, taxpayers who contributed at least $1000 received a credit[57] against any gross, adjusted gross, or supplemental net income tax due.[58] The 1999 law lowered the minimum qualifying donation to $100.[59] However, the bill did not increase the total allowable credit per taxpayer from the current $50,000 maximum per year.[60]

The Enterprise Zone ("EZ") credits were also affected by 1999 legislation.[61] The 1999 law expanded the definition of a taxpayer under the existing statute to allow pass-through entities[62] to take advantage of both the tax credit for increased employment expenditures in an EZ and the EZ loan interest credit.[63] Prior to the bill's enactment, the EZ credits were only available to c-corporations and sole proprietorships.[64]

The increased employment expenditures credit may be used to offset gross income, adjusted gross income, insurance premium, or the financial institutions tax.[65] The credit equals the lesser of: 1) 10% of the qualified increased employment expenditures,[66] or 2) $1500 multiplied by the number of qualified employees.[67] For purposes of the credit, qualified expenses are wages paid to employees living in the EZ and working for the taxpayer's trade or business that

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52. *See id.* § 6-3.1-21-6.

53. (0 – $12,000) x .034 = $408.

54. *See* IND. CODE § 6-3.1-18-6 (1998), *as amended by* Ind. Pub. L. No. 4-1999, § 4.

55. *See id.* § 4-4-28-5.

56. *See id.* § 4-4-28-5(1).

57. The credit amount was unchanged. It remains at 50% of the qualified contribution. *See id.* § 6-3.1-18-6(a).

58. *See id.*

59. *See id.*

60. *See id.*

61. The EZ credits were created to encourage capital investments in economically depressed areas and to create jobs. *See* H.R. 1983, 111th Leg., 1st Reg. Sess. (Ind. 1999).

62. "Pass through entity" is defined as a: (1) corporation exempt from the AGI tax under IND. CODE § 6-3-2-2.8(2); (2) partnership; (3) trust; (4) limited liability company; or (5) limited liability partnership. IND. CODE § 6-3-3-10 (Supp. 1999).

63. *See id.* §§ 6-3-3-10, 6-3.1-7-1.

64. *See id.* § 6-3-3-10 (1998).

65. *See id.* § 6-3-3-10(a) (Supp. 1999).

66. *See id.* § 6-3-3-10(b)(1).

67. *See id.* § 6-3-3-10(b)(2).

is also located in the EZ.[68] Pass-through entities may claim the credit for employees first employed after December 31, 1998.[69]

The enterprise zone interest credit allows a qualified lender to deduct 5%[70] of the loan interest received on loans made to benefit an EZ business or to repair real property located in an EZ.[71] The provision also contains an amendment allowing the shareholder, partner, or member of the pass-through entity to receive the credit if the entity has no state tax liability to offset.[72] In such a case, the percentage passed through to each individual member is equal to the percentage of the entity's distributive income to which the member is entitled.[73]

D. Inheritance Tax

The general assembly enacted a new law dealing with certain procedural aspects of the Indiana inheritance tax.[74] Prior to enactment of the law, a person in control of a decedent's safety deposit box was required to notify the county assessor or an IDSR representative before opening the box.[75] The box was to be made available to the assessor or department representative so that the contents could be inventoried.[76] The 1999 bill deleted both of these requirements from the statute.[77]

A second provision of the bill repealed two related statutory sections.[78] One section had prohibited the assessor or department representative from revealing any information gained in the examination of the safe deposit box.[79] The other repealed section made the reckless disclosure of this information by the state employees a class B misdemeanor.[80] With the elimination of the notification and examination requirements relating to the safe deposit boxes of decedents, these related statutory sections dealing with proscribed penalties were no longer necessary.

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68. *See id.* § 6-3-3-10(a) (requiring that (1) the employee's principle residence in the EZ where he is employed; (2) 90% of employee's work is related to EZ business; (3) employee performs at least 50% of his work for the taxpayer in the EZ; (4) (if a pass through entity is seeking the credit) only wages paid after December 31, 1998 are eligible.).

69. *See id.*

70. *See id.* § 6-3.1-7-2(a).

71. *See id.* § 6-3.1-7-1.

72. *See id.* § 6-3.1-7-2(c).

73. *See id.* § 6-3.1-7-2(c)(2).

74. H.R. 1304, §§ 1, 2, 111th Leg., 1st Reg. Sess. (Ind. 1999).

75. *See id.* § 1.

76. *See id.*

77. *See* IND. CODE § 6-4.1-8-5 (Supp. 1999).

78. *See* H.R. 1304, § 2, 111th Leg., 1st Reg. Sess. (Ind. 1999).

79. *See* IND. CODE § 6-4.1-8-6 (1998).

80. *See id.* § 6-4.1-8-8.

E. Motor Carrier Fuel Use Tax

The general assembly enacted a law effecting the motor carrier fuel use tax.[81] The law established a proportional use credit for fuel used to power equipment mounted on a motor vehicle.[82] The credit is available where the equipment shares a common fuel tank with the vehicle on which it is mounted.[83] It applies only to that portion of the fuel used to power the mounted equipment.[84] However, the credit applies to such fuel whether consumed in Indiana or another state.[85] The credit is claimed on the motor carrier's quarterly return.[86]

In order to qualify for the credit, the motor carrier must apply for certification with the IDSR and pay a one-time fee of $7.[87] The motor carrier services division of the IDSR is responsible for issuing the certificates.[88] The IDSR determines the amount of the credit to approve subject to limitations on the aggregate amount of credits granted per quarter.[89] If claims submitted exceed the quarterly limit, they are to be paid on a pro rata basis.[90] If they are less than the quarterly limit, the difference is used to increase the allotment for the following quarter.[91] However, the IDSR may not approve more than $3.5 million of proportional use credits in a state fiscal year.[92]

F. Tax Administration

A number of laws addressing tax administration were enacted in 1999. One law contained multiple provisions related to the administration of a new commercial vehicle excise tax.[93] The general assembly created this tax as a new "listed tax" as defined in the Indiana Code.[94] Under the previous vehicle tax system, vehicles with a weight of up to 11,000 pounds were taxable under the motor vehicle excise tax while vehicles above 11,000 pounds were subject to the personal property tax.[95] Effective January 1, 2000, an excise tax is imposed on

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81. Indiana taxes motor carriers for the benefit of using its highways based on the number of gallons of fuel the carrier consumes on those highways during a tax year. *See id.* §§ 6-6-4.1-4(a), -4.5(a) (Supp. 1999).

82. *See id.* § 6-6-4.1-4(d).

83. *See id.*

84. *See id.*

85. *See id.*; *see also infra* Part II.G.

86. *See* IND. CODE § 6-6-4.1-4(d).

87. *See id.* § 6-6-4.1-4.7(c), (d).

88. *See id.* § 6-8.1-4-4.

89. The limit for the first quarter is $1.375 million, second quarter $625,000, third quarter $625,000, 4th quarter $875,000. *See id.* § 6-6-4.1-4.8(d)(1)-(4).

90. *See id.* § 6-6-4.1-4.8(c).

91. *See id.* § 6-6-4.1-4.8(d)(1)-(4).

92. *See id.* § 6-6-4.1-4.8(d).

93. *See* H.R. 2022, § 2, 111th Leg., 1st Reg. Sess. (Ind. 1999).

94. *See* IND. CODE § 6-8.1-1-1.

95. *See id.* § 6-6-5-1(i)(4).

commercial vehicles like trucks, tractors, trailers, and semi-trailers instead of a personal property tax.[96]

The new excise tax is based on the weight of the vehicle and is paid at vehicle registration.[97] However, the tax imposed on farm vehicles is 50% of the tax on non-farm commercial vehicles of the same weight.[98] The statute sets out the commercial vehicle excise tax rates for the calendar year 2000 and provides the method for establishing the rate in later years.[99] Primary responsibility for the administration and collection of the new tax lies with the IDSR.[100] The motor carrier services division of the IDSR determines the amount of tax due on a commercial vehicle for a tax year.[101] However, because the tax is collected at the time of vehicle registration, the Bureau of Motor Vehicles ("BMV") is required to collect the tax paid by owners of intrastate trucks registering in Indiana.[102] The IDSR will collect the tax paid by owners of interstate trucks which are not registered with the BMV but instead under the International Registration Plan.[103] Any attempt to avoid the tax will subject the taxpayer to the same penalty as failing to file a tax return.[104] Furthermore, the commercial vehicle excise tax is exempted from the departments confidentiality statute and any information relating to the delinquency or evasion of the tax may be released to another state for the purpose of enforcement and collection.[105]

G. Innkeeper's Tax and Other Local Taxes

The general assembly enacted one law with two key provisions affecting the innkeeper's tax of Vanderburgh County.[106] The innkeeper's tax is levied on those engaged in renting or furnishing rooms, lodgings, or accommodations for a period less than thirty days.[107] The 5% tax is imposed in addition to any applicable state sales tax.[108] Prior to the enactment of this law, 40% of the funds collected under this 5% tax were deposited in the county's visitor promotion fund and the remaining 60% to the tourism capital improvement fund.[109]

The newly enacted bill requires that, beginning January 1, 2000, the 60%

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96. *See id.* § 6-6-5.5-3(a).
97. *See id.* § 6-6-5.5-8(a).
98. *See id.* § 6-6-5.5-7.5.
99. *See id.* § 6-6-5.5-4.
100. *See id.* § 6-8.1-3-1(a).
101. *See id.* § 6-8.1-4-4.
102. *See id.* § 6-8.1-3-1(c).
103. *See id.*
104. *See id.* § 6-8.1-5-2(d).
105. *See id.* § 6-8.1-7-1(j), (k).
106. *See* H.R. 1458, 111th Leg., 1st Reg. Sess. (Ind. 1999).
107. *See* IND. CODE § 6-9-2.5-6 (1998).
108. *See id.*
109. *See id.* § 6-9-2.5-7, -7.5.

distribution to the tourism capital improvement fund will be decreased to 20%.[110] The funds making up the 40% reduction will instead be distributed to the new convention center operating fund that was created by a second provision of the law.[111] This new fund will be used solely to pay for operating expenses of Vanderburgh county's convention center.[112] This new distribution formula will be effective between January 1, 2000, and December 31, 2005.[113] At that point, the convention center operating fund will be dissolved and the funds will again be distributed to the tourism capital improvement fund.[114]

Two other counties also had their innkeeper's statutes amended by the general assembly in 1999. Under one law, the Vigo County Council was permitted to increase its innkeeper's tax rate ceiling from 2% to a maximum of 5%.[115] A separate law addressed the possible uses of funds collected under Jackson county's innkeeper's tax.[116] The law added a separate chapter to the Indiana Code specifically addressing Jackson county which had been collecting the tax under the Uniform County Innkeeper's tax.[117] The tax rate and collection procedures were not changed. However, the law does allow Jackson County to spend up to 25% of the collected funds on economic and industrial development.[118] Under the prior law, the county could only use the funds to promote conventions and tourism.[119]

H. Miscellaneous Provisions

There were several laws passed which contained provisions impacting state tax issues that do not fall within the broad categories previously addressed. In one law, the general assembly altered the procedure for obtaining a mobile home transportation permit from the motor carrier services division of the IDSR.[120] Under the previous system, a manufacturer had to obtain a separate permit for each trip at a cost of \$10 or \$18 per trip.[121] The cost and the processing time led some manufacturers to transport mobile homes without obtaining the permits. The new provision was intended to increase compliance with the permit

110. *See id.* § 6-9-2.5-7.5 (Supp. 1999).

111. *See id.* § 6-9-2.5-7.7.

112. *See id.*

113. *See id.*

114. *See id.* § 6-9-2.5-7.5.

115. *See id.* § 6-9-11-6.

116. *See* H.R. 1074, § 1, 111th Leg., 1st Reg. Sess. (Ind. 1999) (codified at IND. CODE § 6-9-32 (Supp. 1999)).

117. *See* IND. CODE § 6-9-32-1.

118. *See id.* § 6-9-32-4(c)(2).

119. *See id.* § 6-9-18-6(a)(6).

120. *See* H.R. 1130, §§ 1, 2, 111th Leg., 1st Reg. Sess. (Ind. 1999).

121. *See* IND. CODE §§ 9-20-15-1, -4 (1998); State of Indiana, *Oversize/Overweight Vehicle Permitting Handbook* at 65 (visited Apr. 9, 2000) <http://www.state.in.us/dor/mcs/pdf/osowhandbook.pdf>.

requirement by reducing these burdens.[122]

The new provision allows a manufacturer of mobile homes to obtain an annual permit for moving a mobile home from the manufacturing site to a storage facility.[123] The annual permit is $40 for each three-mile increment the mobile home rig is transported.[124] The maximum distance the rig may be transported is fifteen miles.[125] Consequently, the maximum annual fee may not exceed $200.[126]

One other bill dealing with motor carrier services was enacted by the general assembly. Prior to this amendment, all intrastate motor carriers not operating under authority granted by the United States Department of Transportation were required to register with the IDSR as an intrastate motor carrier. Under the first provision of the bill, farm vehicles operated in connection with agricultural pursuits were exempted from that registration requirement.[127] The second provision added a new section to the statute giving the IDSR or the state police the authority to confiscate registrations, license plates, and cab cards.[128] The authority exists where the United States Department of Transportation or the Federal Highway Administration issues an operations out of service order (safety related order?) affecting a motor carrier operating in Indiana.[129]

The general assembly enacted one bill containing two provisions dealing with the annual registration fee for underground storage tanks.[130] This fee is collected from a petroleum marketer or retailer who owns or operates an underground storage tank on July of the applicable tax year.[131] Under the bill, the amount of the fee was decreased from $290 to $90.[132] The bill also decreased the amount of the storage tank fee that is deposited into the underground storage tank excess liability trust fund from $245 to $45.[133] Therefore, under the new system, $45 of the fee is deposited into the excess liability trust fund and $45 is deposited into the petroleum trust fund.[134]

One bill enacted during 1999 was prompted by recent settlements between tobacco retailers and the state governments.[135] Under provisions of this bill, the general assembly recognized the extreme financial burden that is placed on the state from the treatment of cigarette smokers with health problems.[136] In an effort

122. *See* IND. CODE § 9-20-15-2.1 (Supp. 1999).
123. *See id.*
124. *See id.* § 9-29-6-12.
125. *See id.*
126. *See id.*
127. *See id.* § 8-2.1-24-18.
128. *See id.* § 8-2.1-24-28.
129. *See id.*
130. *See* H.R. 1578, §§ 4, 5, 111th Leg., 1st Reg. Sess. (Ind. 1999).
131. *See* IND. CODE § 13-23-12-1 (Supp. 1999).
132. *See id.*
133. *See id.* § 13-23-12-4.
134. *See id.*
135. *See* H.R. 1870, 111th Leg., 1st Reg. Sess. (Ind. 1999).
136. *See* IND. CODE § 24-3-3-1 *added by* Ind. Pub. Law 223-1999, § 1.

to insure that this burden is placed on the tobacco product manufacturers, in accordance with the "Master Settlement Agreement,"[137] the general assembly has required a reserve fund be established.[138] Those tobacco manufacturers who are not participants of the MSA must contribute annually to the reserve fund.[139] The contribution is based on the number of units sold in the state during the tax year.[140] The statute provides the required contribution per unit for years beginning in 1999 through and beyond the year 2007.[141] The contribution rate is adjusted each year for inflation.[142]

A final bill worth noting allows an advisory commission to designate two areas within Delaware county as community revitalization enhancement districts.[143] Taxpayers investing in property within these districts can utilize the community revitalization tax credit against certain state and local tax liabilities.[144] This credit was created by the general assembly in 1998 to encourage economic development within the districts.[145] It equals 25% of the qualified investments made for the rehabilitation or redevelopment of property located within the district.[146]

Under the previous version of the statute, the designation as a "district" for purposes of the credit was only available to counties with a population between 108,950 and 112,000, e.g. Monroe county.[147] Because of the general assembly's most recent additions to the statute, a county with a population between 112,000 and 125,000, e.g. Delaware county, is eligible for the designation as well.[148] Under the law, eligible counties are allowed to retain up to $1 million of the incremental taxes generated annually by the development in the enhancement districts.[149] These funds are then transferred to the districts' industrial development fund.[150]

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137. On November 23, 1998, leading United States tobacco product manufactures entered into a settlement agreement, entitled the "Master Settlement Agreement" with the state. Under this agreement, these manufacturers, in return for release of past, present, and certain future claims are required to make certain payments. *See id.* § 24-3-3-1(5).

138. *See id.* § 24-3-3-1(6).

139. *See id.* § 24-3-3-12.

140. *See id.*

141. *See id.*

142. *See id.*

143. *See* S. 19, §§ 1-6, 111th Leg., 1st Reg. Sess. (Ind. 1999).

144. *See* IND. CODE § 6-3.1-19-3(a) (1998); *see also id.* § 36-7-13-2.4 (West 1999).

145. *See id.* § 6-3.1-19-3(a).

146. *See id.* § 6-3.1-19-2; *see also id.* § 6-3.1-19-2 (1998).

147. *Id.* § 36-7-13-12(b)(5).

148. *See id.* § 36-7-13-10 (Supp. 1999).

149. *See id.* § 36-7-13-14.

150. *See id.* § 36-7-20-14.

II. INDIANA TAX COURT DECISIONS

A. Indiana Property Taxes—Real Property Taxes

In *State Board of Tax Commissioners v. Town of St. John* ("*St. John V*"),[151] the Indiana Supreme Court considered the tax court's ruling that the Indiana statute[152] and related regulations[153] governing real property valuation for assessment purposes violated the Indiana constitution. The case initially arose when residents of the town of St. John and Marion County challenged the constitutionality of Indiana's property tax system.[154] In *St. John I*, the tax court found the system unconstitutional concluding that the Indiana Constitution requires an absolute and precise fair market value system.[155] The Indiana Supreme Court reversed, holding that a system based on fair market value was not required.[156] However, it remanded the case for a determination of whether Indiana's system provided a "uniform and equal rate of property assessment and taxation based on property wealth"[157] as required by article X, section 1(a) ("the Property Taxation Clause")[158] of the Indiana Constitution.

On remand, the tax court issued a preliminary opinion finding that the statute and related regulations governing Indiana's property tax valuation system violated the uniformity and equality requirements of the Property Taxation Clause.[159] It ordered the state board to "make future real property assessments for purposes of taxation under a system that incorporates an objective reality."[160] In its final judgment, the tax court specifically ordered the state board to consider all competent evidence of property wealth in appeals filed with the county review boards on or after May 11, 1999.[161] The state board appealed the decision to the Indiana Supreme Court.[162]

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151. 702 N.E.2d 1034 (Ind. 1998).

152. *See* IND. CODE § 6-1.1-31-6(c) (1998).

153. *See, e.g.*, IND. ADMIN. CODE tit. 50, r. 2.2-7-11, r. 2.2-8-7, r. 2.2-9-6 (1996).

154. *See* Town of St. John v. State Bd. of Tax Comm'rs, 665 N.E.2d 965 (Ind. Tax Ct.) ("*St. John I*"), *rev'd sub nom.* Boehm v. Town of St. John, 675 N.E.2d 318 (Ind. 1996).

155. *See id.* at 974.

156. *See Boehm*, 675 N.E.2d at 328 ("*St. John II*").

157. *Id.*

158. The Property Tax Clause states: "The General Assembly shall provide, by law, for a uniform and equal rate of property assessment and taxation and shall prescribe regulations to secure a just valuation for taxation of all property, both real and personal." IND. CONST. art. X, § 1(a).

159. *See* Town of St. John v. State Bd. Of Tax Comm'rs, 690 N.E.2d 370, 398 (Ind. Tax Ct. 1997) ("*St. John III*"), *rev'd in part*, 702 N.E.2d 1034 (Ind. 1998).

160. *Id.*

161. *See* Town of St. John v. State Bd. Of Tax Comm'rs, 691 N.E.2d 1387, 1390 (Ind. Tax Ct.) ("*St. John IV*"), *rev'd in part*, 702 N.E. 1034 (Ind. 1998).

162. The preliminary opinion rendered in *St. John III* and the final judgment of *St. John IV* were considered as a single appeal by the Indiana Supreme Court in *St. John V*. *See St. John V*, 702 N.E.2d at 1036 n.1.

In *St. John V*, the Indiana Supreme Court reversed that portion of the tax court's decision that declared section 6-1.1-31-6(c)[163] of the Indiana Code unconstitutional.[164] The supreme court suggested that the tax court misinterpreted the statute as prohibiting the use of fair market value as "true tax value."[165] The court agreed that the statute would be unconstitutional if interpreted as an absolute prohibition.[166] However, it determined that the statute should instead be interpreted merely to instruct that "true tax value" is not exclusively or necessarily identical to fair market value.[167]

In support of this interpretation, the court referred to other statutory provisions which suggest that the assessment regulations were meant to accommodate "unenumerated factors" that the state board considered proper in determining the true tax value of assessed property.[168] The Indiana Supreme Court concluded that the statute did not prohibit the state board from promulgating regulations based on property wealth.[169] Based on this conclusion, the court held that the statute was not unconstitutional simply because the state board did not consider fair market value to be a proper factor to be considered in arriving at true tax value.[170]

Next, the supreme court reviewed the constitutionality of the cost schedules used in arriving at the true tax value for property assessments.[171] By regulation, the true tax value of an improvement is the cost of reproduction minus physical or obsolescence depreciation.[172] The cost of reproduction to be applied in assessments is not the actual cost of reproducing an item, but rather the "reproduction cost" as specified in the state board's cost schedules.[173] The cost schedules are classified into different types of improvements and each is assigned a representative model.[174] The models feature amenities that are assumed to exist in the improvement type they represent.[175] If an amenity does not exist in the property being assessed, or if additional amenities are present, then the value of

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163. Section 6-1.1-31-6(c) of the Indiana Code governs real property tax valuation for assessment purposes. The statute states: "(c) With respect to the assessment of real property, true tax value does not mean fair market value. True tax value is the value determined under the rules of the state board of tax commissioners." IND. CODE § 6-1.1-31-(6)(c) (1998).

164. *See St. John V*, 702 N.E.2d at 1038.

165. *Id.*

166. *See id.*

167. *Id.*

168. *Id.* (citing IND. CODE §§ 6-1.1-31-6(a)(1)(ix), 6-1.1-31-6(a)(2)(viii), 6-1.1-31-6(b)(7), 6-1.1-31-5(b)).

169. *See id.*

170. *See id.*

171. *See id.*

172. *See* IND. ADMIN. CODE tit. 50, r. 2.2-2-1(c), 2.2-7-9 (1996).

173. *Id.* tit. 50, r. 2.2-7-7.1(f)(8).

174. *See St. John III*, 690 N.E.2d 370, 374 (Ind. Tax Ct. 1997), *rev'd in part*, *St. John V*, 702 N.E.2d at 1034.

175. *See id.*

the subject property is adjusted upward or downward to reflect the lack of similarity to the model.[176]

The tax court had concluded that the state board's cost schedules violated the Property Tax Clause of the Indiana Constitution because the schedules did not result in a uniform and equal rate of property assessment and taxation and did not accurately measure property wealth.[177] It held that the system must be based on objectively verifiable data to ensure that these constitutional requirements are met and that individual taxpayers have a means to assert a personal right to uniformity and equality as to individual assessments.[178]

The court agreed that the Property Taxation Clause requires the General Assembly to provide for a system of assessment and taxation characterized by uniformity, equality, and just valuation based on property wealth.[179] However, it held that the Clause does not require absolute and precise exactitude as to the uniformity and equality of each individual assessment.[180] Furthermore, it held that the Clause does not create a personal, substantive right of uniformity and equality.[181]

The court referred to the Constitutional Convention of 1850-1851 to illustrate that the delegates "did not expect the full achievement of absolute and precise exactitude"[182] but, rather, considered the Clause aspirational in nature.[183] It then likened the Property Tax Clause to other constitutional provisions that affirmatively require the legislature, by delegation, to enact laws for specified public purposes, but do not create entitlement rights for individuals.[184]

Finally, the court reversed the tax court's order to the state board to "make future real property assessments . . . under a system that incorporates an objective reality" and to "consider all competent real world evidence presented to the state board by persons filing appeals . . . on or after May 11, 1999."[185] The court based its decision on its conclusion that the Property Taxation Clause of the Indiana Constitution does not establish a substantive right to individual assessments nor does it mandate the consideration of independent property wealth evidence in individual tax appeals.[186]

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176. *See id.*
177. *See id.* at 382.
178. *See id.* at 376 & n.12.
179. *See St. John V*, 702 N.E.2d 1034, 1040 (Ind. 1995).
180. *See id.*
181. *See id.*
182. *Id.* at 1040 (citing *St. John II*, 675 N.E.2d 318, 323 (Ind. 1996)).
183. *See id.*
184. *See id.*
185. *Id.*
186. *See id.*

B. Indiana Property Taxes—Business Real Property Taxes

In *Whitley Products, Inc. v. State Board of Tax Commissioners*,[187] the tax court ruled against Whitley Products ("the taxpayer") in its appeal of a real estate assessment because it failed to provide probative evidence at the administrative level to support its position.[188] The case involved the assessment of an improvement to land located in Marshall County, Indiana.[189] The improvement was comprised of three sections that were assessed separately.[190] As background, the court explained that assessing an improvement under Indiana's True Tax Value system involves the use of cost schedules to determine the base reproduction cost of the improvement.[191] The assessor then assigns a grade based on the improvements materials, design, and workmanship.[192] The grade is used to increase or decrease the total assessed value from the pre-graded base reproduction cost.[193]

In this case, Whitley Products, Inc. ("Whitley") was granted a review of its assessment from the state board even though no probative evidence of any error was presented.[194] The review revealed errors in the assessment and resulted in lower grades for two of the three sections.[195] Still unsatisfied with the assessment, Whitley appealed the state board's final determination.[196] At trial before the tax court, Whitley argued that the state board failed to consider the quality of the materials and workmanship of the improvement when evaluating the grades.[197] The tax court affirmed the state board's final determination even though trial testimony revealed inconsistencies in the state board's final determination.[198] The court disregarded the disparity because Whitley failed to present evidence to the state board regarding the original alleged error.[199]

The court explained that a taxpayer who challenges a real property assessment is responsible for bringing any errors in that assessment to the state

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187. 704 N.E. 2d 1113 (Ind. Tax Ct. 1998), *review denied*, 714 N.E.2d 174 (Ind. 1999) (mem.).

188. *See id.* at 1122.

189. *See id.* at 1115.

190. *See id.*

191. *See id.* at 1116.

192. *See id.*

193. *See id.*

194. *See id.*

195. *See id.* The lower grades benefitted the taxpayer because they resulted in a lower assessed value for the improvement. *See id.* at 1120.

196. *See id.* at 1116.

197. *See id.*

198. *See id.* at 1118. The state board hearing officer testified that she did not consider the quality of the materials and workmanship in lowering the grades of the two sections of the improvement. However, the state board's final determination refers to both as reasons for the reduced grades. *See id.*

199. *See id.* at 1118-19.

board's attention.[200] It agreed that the state board, as an administrative agency, needs substantial evidence to support its decisions.[201] However, the court noted that Indiana case law clearly requires that a taxpayer do more than simply allege that an error exists in the assessment to trigger the state board's evidentiary burden.[202] A taxpayer must offer probative evidence regarding the alleged error.[203]

In this case, the taxpayer did not present any probative evidence to the state board regarding the grading of its improvement.[204] It offered only a conclusory statement that the improvement's grading was inaccurate given its construction and features.[205] The court held that this did not trigger the substantial evidence standard and, therefore, the state board could have simply refused to review the assessment.[206] It explained that if a taxpayer was never entitled to a review, that taxpayer will not later be granted a reversal of the resulting determination if such a review is nevertheless granted.[207]

The court justified what it called a "somewhat harsh result" by suggesting that forgiving the failure to present evidence would shift the taxpayer's responsibility for making its case to the state board.[208] Furthermore, it explained that Indiana's property tax system is most efficiently administered when the detailed factual presentations are made directly to the state board, Indiana's property tax experts.[209] Finally, it pointed out that the taxpayer in this case was not prejudiced by the holding; rather, it benefited from the lower grade assigned after the state board's review.[210]

Whitley also argued that the determination should be reversed because the grade regulations, in violation of Indiana's State Constitution, establish no ascertainable standards for the court to follow in reviewing the determination.[211] The court rejected this argument as well.[212] It agreed that these regulations were nearly identical to the 1995 general reassessment regulations that were declared unconstitutional.[213] However, the court reiterated that the present regulations must be used until the new regulations are in place and their constitutionality cannot be the sole basis for reversing a determination.[214]

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200. *See id.* at 1119.
201. *See id.*.
202. *See id.*.
203. *See id.*.
204. *See id.*.
205. *See id.*.
206. *See id.* at 1120.
207. *See id.*.
208. *Id.*
209. *See id.*.
210. *See id.*
211. *See id.* at 1121.
212. *See id.*.
213. *See id.*.
214. *See id.*.

In *CGC Enterprises v. State Board of Tax Commissioners*,[215] the owner[216] of an apartment building challenged the state board's choice of pricing model used in assessing its property.[217] The apartment building was assessed using a "residential pricing model with a row-type adjustment" ("row-type adjustment").[218] CGC argued that a General Commercial Residential ("GCR")[219] pricing model should have been used.[220]

CGC raised two issues on appeal before the tax court. First, it cited the regulation governing row-type adjustments in arguing that the apartment building lacked a necessary characteristic required for assessment under that model.[221] This regulation states that "Row-Type units, because they can be owned individually, shall be priced uniformly as individual dwelling units. . . ."[222] CGC suggested that the "can be owned individually" language established a requirement for assessment under that schedule.[223]

At its trial before the tax court, CGC offered a city ordinance purporting to prove that the individual units of its property could not be owned individually.[224] The state board objected to the presentation of the ordinance because it had not been presented at the administrative level.[225] In response, CGC argued that the ordinance constituted law that governed the case and could therefore be considered by the court even though it had not first been presented to the state board.[226] The court upheld the objection noting CGC's failure to provide authority in its brief regarding the admissibility of the ordinance.[227]

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215. 714 N.E.2d 801 (Ind. Tax Ct. 1999).

216. The opinion addressed a consolidated appeal filed by Columbus Village Apartments and CGC Enterprises. This Article refers only to CGC. However, both parties raised identical factual and legal issues in the actual appeal.

217. Indiana uses the"model method" of assessing improvements to real property. These models represent possible "use-types" for improvements. Each model is subject to a specific pricing schedule based on the construction elements assumed to exist in that type of improvement. Under this method, the assessor chooses that model which most closely matches the physical characteristics of the subject improvement and then adjusts that cost to account for specified variations between the subject improvement and the model. IND. ADMIN. CODE tit. 50, r. 2.2-1-37 (1996), r. 2.2-10-6.1(a).

218. Residential "row type" dwellings are multiple family dwellings, meaning two (2) or more individual units, which are separated vertically by common or party walls. *Id.* tit. 50, r. 2.2-7-8.1.

219. Because of the number of commercial and industrial models, they are organized into three major categories: General Commercial Mercantile, General Commercial Industrial, and General Commercial Residential (GCR). *See id.* tit. 50, r. 2.2-10-6.1(a)(1).

220. *See CGC Enters.*, 714 N.E.2d at 802.

221. *See id.* at 803.

222. *Id.* (quoting IND. ADMIN. CODE tit. 50, r. 2.2-7-8.1 (1996)).

223. *Id.* at 802.

224. *See id.*

225. *See id.* (citing IND. CODE § 33-3-5-14 (Supp. 1996)).

226. *See id.*

227. *See id.*

Finally, CGC argued that its property should have been assessed using the GCR pricing schedule because the property consisted of multiple units, each of which was rented out to tenants.[228] It referenced language of the GCR pricing regulations which indicate that GCR models include apartments and commercial flats.[229] The court rejected this argument as well explaining that the state board has the discretion to choose the pricing model it feels most closely fits the subject property.[230] It noted that the use of the property is only a starting point and is not a determinative factor in selecting the appropriate pricing schedule.[231]

C. Indiana Property Taxes—Business Real Property Taxes ("Obsolescence Adjustment")

In *Pedcor Investments-1990-XIII, L.P. v. State Board of Tax Commissioners*,[232] the owner of a low-income apartment complex sought an adjustment of its property tax assessment to recognize an alleged decrease in value caused by a deed restriction.[233] Pedcor Investments-1990-XIII, L.P. ("Pedcor") had entered into an agreement with the City of Franklin, Indiana to build an apartment complex for low and moderate-income tenants.[234] The agreement contained a deed restriction requiring forty percent of the rental units to be rented to such tenants at a rate fixed below the market rate.[235] However, by entering into the agreement, Pedcor was able to take advantage of federal tax incentives designed to encourage the production of affordable housing for low-income individuals.[236]

Under Indiana's property tax system, a commercial improvement's True Tax Value is its reproduction cost minus physical depreciation and obsolescence depreciation.[237] An adjustment for obsolescence depreciation recognizes

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228. *See id.* at 804.

229. *See id.* (citing IND. ADMIN. CODE tit. 50, r. 2.1-4-3(a) (1996)).

230. *See id.* (citing Bender v. State Bd. of Tax Comm'rs, 676 N.E.2d 1113, 1116 (Ind. Tax Ct. 1997)).

231. *See id.* (citing Herb v. State Bd. of Tax Comm'rs, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995)).

232. 715 N.E.2d 432 (Ind. Tax Ct. 1999).

233. Pedcor appealed two assessments. A March 1, 1992 assessment fixed the value of the land and the apartment complex while the complex was still under construction. *See id.* at 434. On March 1, 1993 a second assessment fixed the value of the land and the fully completed complex. *See id.* The appeals were consolidated. *See id.* at 435. Pedcor argued the impact of the deed restriction in disputing both assessments. *See id.* This Article addresses that issue only. A second argument regarding a one-time adjustment for the assessment done when the complex was under construction will not be addressed. *See id.* at 440.

234. *See id.* at 434.

235. *See id.*

236. *See id.*; *see also* I.R.C. 42 (West 1988 & Supp. 1999).

237. *See Pedcor Investments*, 715 N.E.2d at 435 (citing IND. ADMIN. CODE tit. 50, r. 2.1-5-1 (1992) (codified in present form at *id.* r. 2.2-10-7(f) (1996))).

functional or economic losses of value.[238] A functional loss of value is caused by factors internal to the property while an economic loss of value is caused by external factors.[239] According to Pedcor, because the deed restriction required that forty percent of the units were to be rented below the market rate, it caused an economic loss of value in the form of lost rental income.[240] Furthermore, it argued that the existence of the low-income units decreased the desirability of the other units causing the complex to experience additional economic obsolescence.[241] According to Pedcor, these external factors justified an obsolescence adjustment to the property assessment.[242]

In support of its final determination, the state board argued that the deed restriction could not constitute economic obsolescence because it was not external to the property.[243] Alternatively, it argued that an adjustment for obsolescence is not warranted because any loss of value was caused by a deed restriction entered into voluntarily by the property owner.[244] The court found no merit in these two arguments.[245] It explained that the external factor at work in such a case is not the deed restriction itself but rather the marketplace's reaction to that restriction.[246] It also held that a deed restriction that causes property to lose value does not have a different effect merely because the owner entered into the restriction voluntarily.[247]

The court upheld the state board's final determination based on its third argument.[248] The Board suggested that the proposed assessment adjustment was inappropriate because the deed restrictions did not cause the apartment complex economic obsolescence.[249] It justified this conclusion by explaining that to accurately determine whether the deed restrictions resulted in obsolescence, the financial benefits provided by the resulting tax incentives must be accounted for.[250] According to the state board, these benefits counteracted any decrease in income caused by the restrictions.[251] Therefore, the complex actually experienced no economic obsolescence.[252]

The court rejected Pedcor's argument that any benefits from the tax

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238. *See* IND. ADMIN. CODE tit. 50, r. 2.2-10-7 (1996). The issue of physical depreciation was not involved in Pedcor and will, therefore, not be discussed in this Article.

239. *See id.*

240. *See Pedcor*, 715 N.E.2d at 436.

241. *See id.*

242. *See id.*

243. *See id.*

244. *See id.*

245. *See id.*

246. *See id.* at 437.

247. *See id.*

248. *See id.* at 439.

249. *See id.* at 437.

250. *See id.*

251. *See id.*

252. *See id.*

incentives were speculative because they are subject to recapture if the apartment complex stopped renting to low-income tenants.[253] It explained that the argument itself speculated that Pedcor would stop renting to low-income tenants.[254] Furthermore, it found the point moot because the tax benefits were established for the tax years in issue.[255] The court also suggested that if Pedcor stopped renting to low-income tenants, it would likely have additional rental income as a result of increasing its rates to market value.[256] The court held that in light of the state board's conclusion about the tax incentives, Pedcor was obligated to present evidence demonstrating that benefits did not make up for the loss of value caused by the restrictions.[257] Because no such evidence was shown, the final determination was upheld.[258]

In *Phelps Dodge v. State Board of Tax Commissioners*, [259] the court held that it will not consider taxpayer complaints concerning influence factors in cases where the state board holds a hearing concerning an assessment unless the taxpayer has presented probative evidence that would support an application of a negative influence factor and a quantification of that influence factor at the administrative level.[260] Phelps Dodge ("Phelps") appealed the final determination of the state board regarding the assessment of two parcels of land it owned.[261] The case focused on the obsolescence depreciation applied to the improvements in the state board's final determination.[262] Phelps argued that the state board did not have substantial evidentiary support for (1) its quantification of the improvements' obsolescence, (2) its determination of the improvements' condition, and (3) its quantification of certain "negative influence" factors.[263] Additionally, Phelps argued that the state board incorrectly determined the age of the improvements and used the wrong tables in determining the amount of physical depreciation for the improvements.[264]

The court first considered whether the state board had substantial evidentiary support for its decision to quantify the obsolescence of the improvements located on the two parcels.[265] It started its analysis by referring to the two-step process for determining obsolescence.[266] Under this analysis, the assessor must identify

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253. *See id.* at 438.
254. *See id.*
255. *See id.*
256. *See id.* at 438 n.12.
257. *See id.* at 439.
258. *See id.*
259. 705 N.E.2d 1099 (Ind. Tax Ct.), *review denied*, 726 N.E.2d 297 (Ind. Ct. App. 1999).
260. *See id.* at 1106.
261. *See id.* at 1101.
262. *See id.* at 1102.
263. *Id.* at 1101.
264. *See id.*
265. *See id.* at 1102.
266. *See id.* (citing Clark v. State Bd. of Tax Comm'rs, 694 N.E.2d 1230 (Ind. Tax Ct. 1998)).

the cause of the obsolescence and then quantify the amount of obsolescence to apply.[267] The court explained that the regulation's lack of guidance on how to quantify the obsolescence of a particular improvement did not release the state board of its responsibility to support the quantification with substantial evidence.[268] Therefore, the court remanded the issue for further consideration because neither party offered any evidence on the quantification of the obsolescence of the improvements.[269]

The court next considered Phelps's contention that the state board lacked substantial evidentiary support for its determination of the improvements' condition.[270] The court summarized Phelps's argument to suggest that such determinations are per se reversible because they are based on regulations that lack ascertainable standards and therefore violate the State Constitution of Indiana.[271] In rejecting this argument the court reiterated its position that an assessment will not be reversed on this basis alone.[272] It explained that property assessments must continue under the old regulations until new regulations are in place.[273] Therefore, to have an assessment reversed, the taxpayer must present probative evidence of the alleged error.[274] In this case, Phelps presented no such evidence.[275] The court provided several examples including evidence of physical deterioration, evidence of the condition of comparable properties, and evidence establishing the amount of maintenance needed to restore the improvement to perfect condition.[276]

The court explained that land values for a neighborhood are developed by analyzing comparable sales data for the neighborhood and surrounding area.[277] After this analysis, the state board sets the final values in a "Land Order."[278] However, the Land Order values for properties with certain unique characteristics can be adjusted upward or downward by applying influence factors.[279] These factors allow an assessor to recognize a property that should not simply be lumped in with its surrounding neighborhood for valuation purposes.[280]

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267. *See id.* (citing *Clark*, 694 N.E.2d at 1238).

268. *See id.* (citing *Clark*, 694 N.E.2d at 1230).

269. *See id.* at 1103.

270. *See id.* An improvement's True Tax Value for purposes of the Indiana property tax assessment is adjusted by a percentage based on age and condition. *See id.* (citing IND. ADMIN. CODE tit. 50, r. 2.1-5-1(1992) (codified in present form at IND. ADMIN. CODE r. 2.2-12-4(c) (1996)).

271. *See id.*

272. *See id.* at 1104 (citing Whitley Prods., Inc. v. State Bd. of Tax Comm'rs, 704 N.E.2d 1113, 1121 (Ind. Tax Ct. 1998)).

273. *See id.* at 1104 (citing *Whitley Prods., Inc.*, 704 N.E.2d at 1121).

274. *See id.*

275. *See id.* at 1105.

276. *See id.* at 1104.

277. *See id.* at 1105.

278. *Id.*

279. *See id.*

280. *See id.*

In *Phelps*, the state board applied negative influence factors to the properties but offered no evidence of how the factors were calculated.[281] The court cited this failure in light of the state board's obligation to support its decisions with substantial evidence and remanded the issue so that the negative influence factors could be quantified.[282]

Finally, the court held that the issues of whether the state board correctly determined the age of the improvements and whether it used the proper depreciation tables were waived.[283] It explained that under section 33-3-5-14 of the Indiana Code, the court may not address issues that were not raised at the administrative level.[284] In this case, Phelps did not present the issues at the state board hearing; rather, they were first raised in its post-trial brief.[285] Accordingly, the court affirmed the state board's determinations.[286]

D. Indiana Property Taxes—Business Personal Property Tax

In Indiana, tangible personal property held, used, or consumed in connection with the production of income is subject to property tax.[287] Liability for this tax may fall on either the owner or the possessor of the property.[288] For personal property tax purposes, the Indiana legislature has defined the term "owner" as the legal title holder to the property.[289] However, when tangible personal property is security for a debt and the debtor is in possession of the property, the debtor is the owner of that property.[290] In *W.H. Paige & Co. v. State Board of Tax Commissioners*,[291] the tax court was asked to determine whether a rent-to-own lease agreement constituted such a security interest thereby relieving the lessor of both the designation of "owner of the subject matter" and the resulting property tax liability which follows that designation.

W.H. Paige & Co. ("Paige") appealed a final determination of the state board assessing personal property tax on musical instruments it leased to customers under its "Monthly Rent-to-Own Program" ("program").[292] The program consisted of a mandatory fixed trial rental period followed by an optional month-to-month renewable lease.[293] Under the terms of the program, customers could

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281. *See id.* at 1106.
282. *See id.*
283. *See id.*
284. *See id.* at 1107 (citing IND. CODE ANN. § 33-3-5-14 (West Supp. 1996)).
285. *See id.*
286. *See id.*
287. *See* IND. CODE §§ 6-1.1-1-11, -19 (1998).
288. *See id.* § 6-1.1-1-2-4.
289. *Id.* § 6-1.1-1-9(b) (1998).
290. *See id.* § 6-1.1-1-9(e).
291. 711 N.E.2d 552 (Ind. Tax Ct.), *trans. denied*, 726 N.E.2d 312 (Ind. 1999) (mem.).
292. *Id.* at 553.
293. *See id.* at 554.

purchase the musical instruments at any point during either lease term.[294] They could also return the instruments, with no further obligation, at any point after the trial rental period lease was satisfied.[295] If a customer exercised the purchase option, Paige would apply a credit towards the purchase price in recognition of the rental payments previously made.[296]

The terms of the program provided that Paige would retain title to the instruments unless and until the lessee paid the amount necessary to obtain ownership.[297] Despite this provision, Paige argued that its rent-to-own lease constituted conditional sale and that title retention was merely a "disguised security interest."[298] Relying on the security interest exception,[299] Paige argued that it was not the "owner" of the instruments leased under the program and, therefore, should not be held liable for the property taxes imposed on those instruments.[300]

The court rejected Paige's argument.[301] It looked to the law of security interests in determining that the program constituted a true lease and not a "disguised" security interest.[302] The court applied two tests it had established in *Kimco Leasing, Inc. v. State Board of Tax Commissioners*.[303] The tests were derived from the statutory definition of "security interest" found at section 26-1-1-201(37) of the Indiana Code.[304] It provides that a lease creates a security interest if (1) the lessee is obligated to perform for the full length of the lease without being able to voluntarily terminate it, or (2) if the lessor cannot reasonably expect to receive back anything of value at the end of the lease term.[305]

The court held that *Kimco*'s first test was not met in this case because the terms of Paige's program did not obligate a lessee to perform for the full length of the lease.[306] It also determined that even though Paige's customers could ultimately chose to purchase the leased instruments, the fact that they could terminate the lease after the trial rental period meant that Paige could reasonably expect to receive the instrument back at the end of the lease term.[307] Therefore, the program did not meet the requirements of *Kimco*'s second test.[308]

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294. *See id.*
295. *See id.*
296. *See id.*
297. *See id.*
298. *Id.* at 555.
299. *See* IND. CODE § 6-1.1-1-9(e) (1998).
300. *W.H. Paige & Co.*, 711 N.E.2d at 555.
301. *See id.* at 560.
302. *Id.*
303. *See id.* at 557 (citing 656 N.E.2d 1208 (Ind. Tax Ct. 1995)).
304. *Id.* (citing IND. CODE § 26-1-1-201(37) (West 1995)).
305. *See id.* at 557.
306. *See id.*
307. *See id.* at 558.
308. *See id.*

In concluding that Paige was the owner of the musical instruments, the court acknowledged that some courts have found a security interest despite the fact that a lessee could terminate the lease at will.[309] However, it explained that these cases generally involved a court's effort to protect an insolvent lessee from forfeiture, a justification not present in *Paige*.[310] The court also noted that under *Kimco*, it was required to base its determination on the situation existing at the inception of the lease, not at the end of the lease term.[311] Under this analysis, Paige's customers were not bound to see the lease agreements through to the point where the instrument was purchased.[312] Therefore, the court found that Paige owned the instruments for use in the production of income.[313] Accordingly, the instruments were subject to personal property tax and Paige was liable for that tax.[314]

In *Dav-Con, Inc. v. State Board of Tax Commissioners*,[315] the taxpayer appealed the state board's valuation of steel the company possessed in connection with its operations as a steel processing and storage plant. An earlier tax court decision found Dav-Con liable for personal property tax on steel it held as "not-owned business property".[316] However, the issue of that property's value was remanded to the state board.[317] On remand, the court ordered the state board to base the assessment on the steel's "actual cost" rather than its "value" as previously reported by the four companies that owned the steel.[318] The state board contacted the four companies to determine the actual cost of the steel.[319] Only two responded and neither reported any difference between the cost and the value originally reported. To value the steel owned by the two companies that did not respond, the state board hearing officer relied on a response received from the original valuation inquiry[320] and a storage invoice.[321]

On appeal before the tax court, Dav-Con argued that the owners of the steel

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309. *See id.* at 558-59 (citing South Carolina Rentals, Inc. v. Arthur, 187 B.R. 502 (D.S.C.1995); *In re* Barnhill, 189 B.R. 611 (Bankr. D.S.C. 1992); *In re* Fogelsong, 88 B.R. 194 (Bankr. C.D. Ill. 1988); *In re* Puckett, 60 B.R. 223 (Bankr. M.D. Tenn. 1986), *aff'd sub nom.* Consumer Lease Network v. Puckett, 838 F.2d 470 (6th Cir.1988); *cf.* Skendzel v. Marshall, 301 N.E.2d 641, 650 (Ind. 1973)).

310. *See id.* at 559.

311. *See id.* at 559-60.

312. *See id.* at 560.

313. *See id.*

314. *See id.* at 561.

315. 702 N.E.2d 1137 (Ind. Tax Ct. 1998), *review denied*, 714 N.E.2d 177 (Ind. 1999) (mem.).

316. Dav-Con, Inc. v. State Bd. of Tax Comm'rs, 644 N.E.2d 192 (Ind. Tax Ct. 1994).

317. *See id.* at 197.

318. The steel constituted inventory and, therefore, had to be assessed according to its cost. *See id.* at 197 (citing IND. ADMIN. CODE tit. 50, rs. 4.2-5.5 (1996)).

319. *See Dav-Con, Inc.*, 702 N.E.2d at 1140.

320. *See id.* at 1142.

321. *See id.* at 1143.

were primarily liable for the property tax.[322] The court rejected this argument citing section 6-1.1-2-4(a) of the Indiana Code which authorizes the state board to impose liability for property tax on the person in possession of the property but does not indicate any order of priority between the owner and the possessor.[323] Dav-Con next challenged the accuracy of the valuation.[324] It suggested that the state board's final assessment was flawed because the correspondence sent to the owners to obtain the true cost of the steel did not adequately define "cost".[325] The court held that the definition of "cost" under the relevant regulations was essentially the same as the common usage definition.[326] Therefore, the correspondence was a "reasonable means"[327] of arriving at a value for purposes of the assessment, despite the state board's failure to specifically define "cost."[328] The court noted Dav-Con's failure to provide any evidence that the valuations were flawed and upheld the state board's final determination.[329]

In *PPG Industries, Inc. v. State Board of Tax Commissioners*,[330] the tax court held that tangible personal property owned by a non-resident taxpayer temporarily stored pending shipping is not assessed at that location if the taxpayer has a principle office elsewhere in the state.[331] The taxpayer in that case, PPG Industries, Inc. ("PPG"), stored finished glass products at both its principle offices in Scott Township and a warehouse located in Center Township.[332] However, PPG reported the total cost of the glass on property tax returns filed in Scott Township and filed no return in Center Township.[333]

During review of a decision regarding an unrelated deficiency, the state board determined that PPG was not entitled to an interstate commerce exemption[334] for the finished glass stored at the warehouse.[335] It based its

322. *See id.* at 1140.

323. *See id.* (citing IND. CODE § 6-1.1-2-4(a) which imposes property liability on the person possessing the property on the assessment date unless that person can establish that the property is being assessed and taxed in the owner's name or that the owner is liable for the taxes under contract); *see also Dav-Con, Inc.*, 644 N.E.2d at 194-95.

324. *See Dav-Con, Inc.*, 702 N.E.2d at 1141.

325. *Id.*

326. *Id.*

327. *Id.* In the absence of information provided by the party to be assessed, the state board has authority to determine the assessed value of property by any method that is reasonable in light of the facts and circumstances and yields "substantial evidence" of the assessed value of the property. *Dav-Con, Inc.*, 644 N.E.2d at 196.

328. *Dav-Con, Inc.*, 702 N.E.2d at 1141.

329. *See id.* at 1143.

330. 706 N.E.2d 611 (Ind. Tax Ct. 1999).

331. *See id.* at 616.

332. *See id.* at 612.

333. *See id.*

334. *See id.* Section 6-1.1-10-29 of the Indiana Code exempts personal property owned by a manufacturer or processor that is stored in Indiana, remains in its original package, and is designated for shipment, without further processing, to an out-of-state destination. *See* IND. CODE

decision on PPG's failure to file a personal property tax return in Center Township where the warehouse was located.[336] According to the state board, by not filing the return PPG failed to comply with the statutory procedures for obtaining the exemption and effectively waived its right to that exemption.[337]

The tax court rejected the state board's position and held that the issue of whether PPG was required to file a personal property tax return was governed by statute.[338] In Indiana, personal property owned by non-residents is assessed where the owner's principle office within the state is located unless the property is: (1) regularly used or permanently located where it is situated; or (2) owned by a nonresident who does not have a principle office within the state.[339] The court held that the finished glass temporarily stored in the Center Township warehouse was neither "regularly used" nor "permanently located" there for purposes of the statute.[340] Therefore, the property was correctly reported and assessed in Scott Township and PPG was entitled to the exemption.[341] The court cautioned that its holding did not apply to merchandise awaiting sale as the finished glass in this case was already sold and in transit on the assessment date.[342]

E. Indiana Procedure for Tax Administration

In *State Board of Tax Commissioners v. Mixmill Manufacturing Co.*,[343] the Indiana Supreme Court considered the limits of the tax court's jurisdiction over direct appeals against the state board when the County Board of Review fails to act on a Petition for Review of Assessment.[344] The case arose when Mixmill Manufacturing Company ("Mixmill") filed for a review of assessment with the Wells County Auditor.[345] After five years, Mixmill had received no response from the county board of review or the state board regarding its petition.[346] Mixmill then filed an original appeal with the tax court.[347] At the appeal, the

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§ 6-1.1-10-29 (1998); *see also PPG Indus., Inc.*, 706 N.E.2d at 612 n.1.

335. *See PPG Indus., Inc.*, 706 N.E.2d at 612.

336. *See id.* at 613.

337. *See id.*; *see also* IND. CODE § 6-1.1-11-1 (Waiver of exemption).

338. *See PPG Indus., Inc.*, 706 N.E.2d at 613 (citing IND. CODE § 6-1.1-3-1(b)-(c) (Supp. 1998)).

339. *See id.* (citing IND. CODE § 6-1.1-3-1(b)-(c)).

340. *Id.* at 614.

341. *See id.*

342. *See id.* at 616.

343. 702 N.E.2d 701 (Ind. 1998).

344. *See also* State Board of Tax Comm'rs v. L.H. Carbide Corp., 702 N.E.2d 706 (Ind. 1998) (arriving at the same decision regarding the tax court's jurisdiction but dealt with Petitions for Correction of Errors as opposed to the Petition for Review of Assessment involved in this case).

345. *See Mixmill Mfg. Co.*, 702 N.E.2d at 702.

346. *See id.*

347. *See id.*

state board argued that the tax court lacked jurisdiction and moved to dismiss.[348] The motion was denied and the Indiana Supreme Court, under a petition for interlocutory appeal, accepted the case.[349]

The supreme court held that the tax court did not have jurisdiction over the original appeal because it was not preceded by a final determination by the state board.[350] The court referred to the enabling statute which provides jurisdiction to the tax court only over cases that arise under Indiana's tax laws and have been first subjected to review by the applicable administrative agency.[351] According to the statutory provisions regarding assessment reviews, Mixmill was required to wait for a determination from the county board, then appeal that determination to the state board, and subsequently file an original appeal with the tax court.[352]

The supreme court acknowledged that the provisions did not provide taxpayers with an alternative avenue when the county board simply fails to issue a determination.[353] However, it pointed out that section 33-3-5-11(a) of the Indiana Code specifically denies tax court jurisdiction where the taxpayer fails to comply with any statutory requirements for the initiation of an appeal.[354] The court did suggest that a sluggish administrative agency could be prodded into action with a writ of mandamus, but explained that such a suit must be brought in a court of general jurisdiction because it would not meet the final determination requirement of the tax court's jurisdiction.[355]

In *Matonovich v. State Board of Tax Commissioners*,[356] the tax court interpreted the statutory limits on the state board's authority over property reassessments.[357] The case arose when a Division of Tax Review[358] study revealed a need for a reassessment of all real property in Lake County due to a problem with the uniformity of assessments within classes of property.[359] As a result of that study, the state board ordered a reassessment of all real property in Lake County and stated that it would hire a contractor to conduct and oversee the reassessment.[360] A group of Lake County township assessors filed an original tax appeal arguing that the state board had no authority to conduct the reassessment or employ contractors to do so on its behalf.[361]

The tax court enjoined the state board from hiring the contractors to conduct

348. *See id.*
349. *See id.*
350. *See id.* at 706.
351. *See id.* at 702; *see also* IND. CODE § 33-3-5-2(a) (1998).
352. *See Mixmill Mfg. Co.*, 702 N.E.2d at 704.
353. *See id.*
354. *See id.* (citing IND. CODE § 33-3-5-11(a)).
355. *See id.* at 704; *see also* IND. CODE § 33-3-5-2(a).
356. 705 N.E.2d 1093 (Ind. Tax Ct.), *review denied*, 726 N.E.2d 298 (Ind. 1999) (mem.).
357. *See id.*
358. A division of the state tax board. *See* IND. CODE § 6-1.1-33-1.
359. *See Matonovich*, 705 N.E.2d at 1095.
360. *See id.*
361. *See id.* at 1096.

the reassessment.[362] The state board's statutory authority to order and supervise a countywide reassessment is clear and was not disputed in this case.[363] The issue considered was whether the state board's authority to order and supervise the reassessment necessarily implied the authority to conduct the reassessment.[364] The court determined that the state board does not have the authority to conduct a countywide reassessment and therefore cannot hire contractors to do so on its behalf.[365] The court's decision focused on the "plain language" of section 6-1.1-4-9 of the Indiana Code which refers to the board ordering a reassessment but not conducting a reassessment.[366] It held that this wording implies that the state board is not the body charged with actually conducting the reassessment.[367] The court supported its interpretation by pointing to separate statutory provisions that expressly charge Township assessors with conducting assessments[368] and limit the amount that assessors may spend to the cost of the reassessment estimated by the state board.[369] It also relied on the fact that, in general, assessments are done locally and the state board does not determine the assessed value of property, except in appeals.[370]

In *Word of His Grace Fellowship, Inc. v. State Board of Tax Commissioners*,[371] the court reversed the state board's denial of a property tax exemption when it failed to provide valid support for its position prior to the original tax appeal.[372] Word of His Grace Fellowship, Inc. ("Word"), is a not-for-profit corporation established exclusively for religious, charitable, educational, and ecclesiastical purposes. This case arose when Word was denied a property tax exemption[373] for property it purchased under a land sale contract for use as a church.[374] In its final determination, the state board based its denial on the fact that the property was not owned, occupied, and used by the same entity.[375] However, at the original tax appeal, the state board was forced to concede that a tax court decision handed down five months before that final

362. *See id.* at 1099.

363. *See id.* at 1096; IND. CODE §§ 6-1.1-4-9, 6-1.1-30-10 (1998).

364. *See Matonovich*, 705 N.E.2d at 1097.

365. *See id.*

366. *Id.*

367. *See id.*

368. *See id.* (citing IND. CODE § 36-6-5-3).

369. *See id.* (citing IND. CODE § 6-1.1-4-29(b)).

370. *See id.* at 1098.

371. 711 N.E.2d 875 (Ind. Tax Ct. 1999).

372. *See id.* at 878.

373. Section 6-1.1-10-16(a), (c) of the Indiana Code provides a property tax exemption for a building and a tract of land if it is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes. *See* IND. CODE § 6-1.1-10-16(a), (c) (Supp. 1998).

374. *See Word of His Grace Fellowship, Inc.*, 711 N.E.2d at 876.

375. *See id.* at 877. As vendee in the contract, Word possessed the property but held only equitable title.

determination held that no such requirement existed.[376]

In an alternative argument, the state board suggested that because Word was not the holder of legal title, it was not the proper party to apply for the property tax exemption.[377] The court agreed that the owner of the property must apply for the exemption and that an owner was defined as the holder of legal title.[378] However, because the state board did not raise that issue until the original tax appeal, the court refused to affirm the final determination.[379] The court based its decision on the well-settled rule that the state board may not support a final determination with reasons that were not previously ruled upon.[380] Therefore, even though Word was not the proper party to apply for the exemption, the court was forced to decide the case based solely on the question of whether the property was owned, occupied, and used for religious purposes.[381] Under that analysis, the court held that Word was entitled to the exemption.[382]

In *City Securities Corp. v. Department of State Revenue*,[383] the tax court ruled that no statutory remedy exists for taxpayers who do not receive a Letter of Findings ("LOF") from the IDSR within the prescribed deadline; however, the court noted that taxpayers in that situation could appeal to the tax court or petition for mandamus to compel the IDSR to act.[384]

City Securities Corp. ("City")[385] appealed to the tax court after the IDSR failed to respond to City's claim for a refund.[386] The IDSR had assessed additional tax liability against City for income it received from the purchase and resale of certain tax-exempt municipal bonds.[387] City filed a written protest and received a hearing.[388] However, the IDSR failed to issue its LOF within the sixty day prescribed deadline.[389] After 105 days, City received the LOF, paid the assessment, and filed a claim for refund. City appealed to the tax court after waiting six months without receiving a response to its claim.[390]

In its appeal, City argued that the IDSR's failure to meet the sixty-day

376. *See id.* (citing Sangralea Boys Fund, Inc. v. State Board of Tax Commissioners, 686 N.E.2d 954 (Ind. Tax Ct. 1997)).

377. *See id.* at 878 (citing IND. CODE § 6-1.1-11-1).

378. *See id.*

379. *See id.* at 878.

380. *See id.* at 878.

381. *See id.* at 879.

382. *See id.* at 879.

383. 704 N.E.2d 1122 (Ind. Tax Ct. 1998).

384. *See id.* at 1126.

385. City is a corporation engaged in the business of buying and selling securities for profit. *See id.* at 1124.

386. *See id.*

387. *See id.*

388. *See id.*

389. *See id.*

390. *See id.*

deadline voided the assessment.[391] Alternatively, it argued that the sale of the municipal bonds was exempted from gross income tax both by statute and by the IDSR which historically treated them as exempt.[392] The court rejected City's statutory argument.[393] It explained that the enabling statutes that City relied on were merely the legislature's attempt to create a tax exempt security to allow certain entities, such as schools, to raise funds with less expense.[394] However, the scope of that exemption is limited by the General Exemption Statute and extends only to income generated by the bonds themselves and not to income generated through the sales and marketing strategies of dealers like City.[395]

Despite the statutory support for the IDSR's position, the court held in favor of City because the IDSR had historically allowed the exemption and was statutorily required[396] to promulgate new regulations if it changed that policy.[397] The court acknowledged that the IDSR had issued new regulations suggesting the policy shift.[398] However, because it continued to allow City the exemption after the regulations were issued, it could not now impose the additional liability.[399]

In *Heart City Chrysler v. State Board of Tax Commissioners*,[400] the tax court reversed a final determination of the state board that was based on the state board's sua sponte assessment. The case arose after Heart City Chrysler ("Heart City") petitioned for an assessment adjustment to account for physical depreciation[401] of a sales office used in operating its car sales business.[402] The state board agreed with Heart City and granted the adjustment.[403] However, it then made a sua sponte assessment of a separate building owned by Heart City that led to an unfavorable depreciation adjustment[404] and a higher property tax liability.[405]

Heart City appealed to the tax court arguing that its due process rights were

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391. *See id.* at 1126.

392. *See id.* at 1127.

393. *See id.* at 1128.

394. *See id.*

395. *See id.*

396. While this statutory requirement was in effect at all time relevant to City's appeal, it has since been repealed. *See* IND. CODE ANN. § 6-2.1-8-3 (West 1989) (repealed 1997).

397. *See City Securities Corp.*, 704 N.E.2d at 1128; IND. CODE § 6-2.1-8-3.

398. *See City Securities Corp.*, 704 N.E.2d at 1129; IND. ADMIN. CODE tit. 45, r. 1-1-35, r. 1-1-127 (1996).

399. *See City Securities Corp.*, 704 N.E.2d at 1129.

400. 714 N.E.2d 329 (Ind. Tax Ct. 1999).

401. Physical depreciation of an improvement is recognized by applying a depreciation factor to the assessed value of the subject improvement. The factor is expressed as a percentage and is based on the improvement's age, condition, and structure type. *See supra* Part II.C.

402. *See Heart City Chrysler*, 714 N.E.2d at 331.

403. *See id.*

404. The state board decreased the physical depreciation factor from 45% to 35%. *See id.* at 332 n.8.

405. *See id.* at 332.

violated because it did not have the opportunity to rebut the findings provided in the state board's final determination regarding the sua sponte assessment.[406] The court did not reach the due process issue because it found another issue dispositive.[407] It explained that while the state board could conduct a sua sponte assessment, it was nevertheless required to comply with certain statutory requirements in issuing its final determination.[408]

The court cited section 6-1.1-30-12 of the Indiana Code,[409] which provides that a hearing officer shall submit a written report of his findings to the state board.[410] That section further provides that the state board shall base its final decision on the hearing officer's report, any additional evidence taken by the board, and any records it considers relevant.[411] In reversing the assessment, the court explained that the state board failed to comply with these requirements.[412] The court held that the hearing record did not include information indicating the basis for the state board's findings regarding the reduction of the depreciation factor.[413] Furthermore, the court noted that the hearing officer had not submitted a written report to the state board recommending the adjustment.[414]

In *Hoogenboom-Nofziger v. State Board of Tax Commissioners*,[415] the tax court once again upheld an otherwise deficient final determination of the state board simply because the taxpayer failed to properly present its case at the administrative level.[416] The court received the appeal after Hoogenboom-Nofziger ("HN") unsuccessfully challenged the assessment of its real estate sales office[417] at the County Board of Review ("BOR") and state board levels.[418] HN first argued that reversal of the state board's final determination was required because the board failed to adhere to specific statutory requirements in administering HN's hearing.[419]

HN cited sections 6-1.1-30-11 and 4-22-5-1 of the Indiana Code, which allow the state board to appoint a hearing officer to conduct a hearing on the Board's

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406. *See id.* at 331.

407. *See id.*

408. *See id.*

409. *See* IND. CODE ANN. § 6-1.1-30-12 (West 1989) (amended 1997, effective Jan. 1, 1999).

410. *See Heart City Chrysler*, 714 N.E.2d at 331 (citing IND. CODE § 6-1.1-1-30-12).

411. *See id.*

412. *See id.* at 332.

413. *See id.*

414. *See id.*

415. 715 N.E.2d 1018 (Ind. Tax Ct. 1999).

416. *See also* Whitley Prods., Inc. v. State Bd. of Tax Comm'rs, 704 N.E.2d 1113, 1116-21 (Ind. Tax Ct. 1998), *review denied*, 714 N.E.2d 174 (Ind. 1999) (mem.).

417. According to the taxpayer, the office should have been assessed under the Residential Pricing Schedule because the building was a converted dwelling. *See Hoogenboom-Nofziger*, 715 N.E.2d at 1021; *see also* IND. ADMIN. CODE tit. 50 r. 2.1-4-4 (1992) (codified in present form at IND. ADMIN. CODE r. 2.2-11-5.1(a) (1996)).

418. *See Hoogenboom-Nofziger*, 715 N.E.2d at 1021.

419. *See id.*

behalf if that appointment is made in writing and that writing advises the officer of his duties.[420] At trial before the court, HN established that the hearing officer in this case was given no written instructions and there was no evidence to indicate that the appointment had been made in writing.[421] The court agreed that the officer was not properly appointed.[422] However, it refused to reverse the state board's final determination because HN had not raised the appointment issue before the Board directly.[423] The court cited section 33-3-5-14 of the Indiana Code,[424] which allows the court to consider only evidence and issues raised at the administrative level.[425] Based on that restriction, the court held that the taxpayer had waived the issue of the appointment's validity by remaining silent and participating in the hearing before the state board.[426]

HN next argued that reversal was warranted because the state board failed to adequately account for differences between a real estate office ("subject improvement") and the model used in its assessment.[427] Specifically, HN argued that the subject improvement should have received a lower grade[428] than that assigned by the Board.[429] The court reviewed the final determination and held that the state board failed to support its conclusion with substantial evidence.[430] It acknowledged that such a failure would normally require reversal of the assessment.[431] However, in this case, it held that the state board's evidentiary burden was not "triggered" because of HN's failure to present evidence at the administrative level.[432]

At the state board hearing, HN[433] offered only conclusory statements and photographs with no accompanying explanations in support of its contention that

420. *See id.* (citing IND. CODE ANN. §§ 6-1.1-30-11; 4-22-5-1 (West 1989) (amended eff. Jan. 1, 1999)).

421. *See id.*

422. *See id.* at 1022.

423. *See id.*

424. *See* IND. CODE § 33-3-5-14 (1998).

425. *See Hoogenboom-Nofziger*, 715 N.E.2d at 1022 (citing IND. CODE § 33-3-5-14).

426. *See id.*

427. *See id.*

428. "Grades" are assigned to recognize the quality of materials and workmanship used in constructing an improvement. IND. ADMIN. CODE tit. 50, r. 2.1-4-3(1992) (codified in present form at IND. ADMIN. CODE tit. 50, r. 2.2-10-3 (1996)). In addition, grades can be adjusted to recognize situations where an improvement deviates from the model used to assess that improvement. *See* Whitley Prods., Inc. v. State Bd. of Tax Comm'rs, 704 N.E.2d 1113, 1116 (Ind. Tax Ct. 1998), *review denied*, 714 N.E.2d 174 (Ind. 1999) (mem.).

429. *See Hoogenboom-Nofziger*, 715 N.E.2d at 1023.

430. *See id.*

431. *See id.* at 1024.

432. *Id.* at 1024-25.

433. HN was represented at the administrative level by Mr. Drew Miller, a property tax consultant. *See id.* at 1023. However, in the interest of simplicity, this Article will not distinguish between the actions of the taxpayer and its representative.

the grading was in error.[434] The court interpreted this "de minimus factual showing" as an attempt by HN to shift the responsibility for making its case to the hearing officer.[435] It cited its earlier holding in *Whitley Prods., Inc. v. State Board of Tax Commissioners*,[436] where it similarly upheld a deficient final determination because of a taxpayer's failure to meet its evidentiary burden.[437] In defense of the holding, the court rhetorically asked: "If a taxpayer cares so little about its case that it does not make a strong factual case at the administrative level, why should the State Board care any more than the taxpayer?"[438]

F. Indiana Sales & Use Taxes

In *Tri-States Double Cola Bottling Co. v. Department of State Revenue*,[439] a soft drink bottling company appealed the IDSR assessment of use tax on purchases made in connection with its business operations.[440] Specifically, the court considered whether Tri-States Double Cola Bottling Co. ("Tri-States"), owed use tax for (1) uniforms purchased for employees, (2) glass-front coolers provided to retailers who sell Tri-State's products, and (3) computer equipment purchased from an out-of-state retailer.[441]

In finding in favor of the IDSR's assessment of use tax liability for the uniforms, the court rejected Tri-State's argument that an exemption applied.[442] An exemption from sales and use tax is available for "[s]afety clothing . . . [that] is required to . . . prevent contamination of the product during production."[443] The court found that the key issue was whether Tri-States established that the uniforms were required to prevent contamination.[444] The court held that simply showing that the uniforms reduce the possibility of contamination was not enough to meet that burden.[445] In finding that Tri-States did not qualify for the

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434. At trial before the tax court, HN gave responses to the state board's interrogatories which would have conclusively demonstrated errors in the assessment. However, because the responses contained factual assertions not made at the administrative level, the tax court did not consider them in its decision.

435. *Hoogenboom-Nofziger*, 715 N.E.2d at 1024-25.

436. 704 N.E.2d 1113, 1116-21 (Ind. Tax Ct. 1998), *review denied*, 714 N.E.2d 174 (Ind. 1999) (mem.)

437. *See Hoogenboom-Nofziger*, 715 N.E.2d at 1023 (citing *Whitley*, 704 N.E.2d at 1116-21).

438. *Id.*

439. 706 N.E.2d 282 (Ind. Tax Ct. 1999).

440. *See id.* Indiana imposes a use tax on the use, storage or consumption of tangible personal property in Indiana; *see* IND. CODE § 6-2.5-3-2 (1998), as a complement to the sales tax imposed on all retail transactions in Indiana. *Id.* § 6-2.5-2-1.

441. *See Tri-States Double Cola Bottling Co.*, 706 N.E.2d at 282.

442. *See id.* at 284.

443. *Id.* (citing IND. ADMIN. CODE tit. 45, r. 2.2-5-8(c)(2)(F) (1996)).

444. *See id.*

445. *See id.*

exemption, the court focused on the fact that the employees were allowed to wear the uniforms to and from work and during breaks.[446]

The court next considered whether the glass-front coolers provided to retailers were leased for the purpose of the use tax lease exemption.[447] It explained that the lease exemption exists to avoid the tax pyramiding[448] that would otherwise occur if a sales/use tax was imposed on both the purchase and the subsequent leasing of an item.[449] In holding that Tri-States was not entitled to such an exemption, the court determined that the agreement with the retailers did not constitute a lease under the ordinary understanding of the term.[450] Therefore, that transaction was not subject to use tax.[451] Because the transaction was not taxable as a lease, no tax pyramiding could occur and, therefore, the exemption would not apply.[452]

Finally, the court held that Tri-States was liable for use tax on the computer equipment purchase from the Kentucky retailer even though the retailer allegedly collected the tax.[453] The court explained that a taxpayer is only relieved of its liability for paying use tax to the state if the retail merchant is engaged in business in Indiana or if the retail merchant has permission from the IDSR to collect the tax.[454] In this case, Tri-States did neither and, therefore, remained liable for the use tax.[455] The court noted, however, that Tri-States could seek to recover from the retailer for failure to remit the tax.[456]

In *Mynsberge v. Department of State Revenue*,[457] the tax court held that the original purchase of electricity by a landlord resulted in sales tax liability to that landlord even though he "resold" it to his tenant, the ultimate consumer.[458] The original tax appeal was brought by "Richard C. Mynsberge d/b/a RCM Rentals"

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446. *See id.*

447. The Indiana Code exempts goods acquired for resale, rental, or leasing, from sales and use tax. *See* IND. CODE ANN. § 6-2.5-5-8 (West 1989) (amended 1990).

448. Tax Pyramiding would occur here where a sales/use tax was imposed on the purchase/use of the cooler by Tri-States followed by additional sales tax liability under section 6-2.5-4-10(a) of the Indiana Code imposed on the leasing of tangible personal property to the retailers.

449. *See Tri-States Double Cola Bottling Co.*, 706 N.E.2d at 285 n.5.

450. *See id.* at 286.

451. *See id.*

452. *See id.*

453. *See id.*

454. *See id.* at 287 (citing IND. CODE ANN. § 6-2.5-3-6(b) (West 1989) (amended 1989, 1994 & 1997)).

455. *See id.*

456. *See id.*

457. 716 N.E.2d 629 (Ind. Tax Ct. 1999).

458. *Id.* Indiana imposes an excise tax (gross retail or sales tax) on retail transactions made in Indiana. *See* IND. CODE § 6-2.5-2-1(a) (1998). However, an exemption is provided for sales of tangible personal property acquired in the ordinary course of business for "resale, rental, or leasing." *Id.* § 6-2.5-5-8.

("Mynsberge") after the IDSR denied his claim for a refund for sales taxes paid on purchases of electricity from a utility company.[459] In his appeal to the tax court, Mynsberge argued that his purchases of electricity from the utility company were not subject to sales tax because they were not retail transactions.[460] Alternatively, Mynsberge suggested that his electricity purchases from the utility company were exempt from sales tax because the electricity constituted tangible personal property that he later resold to his tenants in the ordinary course of business.[461]

As part of his business, Mynsberge leased buildings and equipment to his tenant who operated a cabinet manufacturing business.[462] In addition to the monthly lease payment, the tenant made a payment to Mynsberge for electricity used in its manufacturing business.[463] Mynsberge argued that his original purchase was not a retail transaction because statutory language describes the selling of electrical energy as a retail transaction when it is made "to a person for commercial or domestic consumption."[464] According to Mynsberge, his purchase from the utility company was not a retail transaction because he did not consume the electricity; rather he resold it to his tenant.[465]

The court rejected this argument and held that the statute did not require that the purchaser actually consume the electricity.[466] Instead, the court read the plain language of the statute to require only a sale to a person and that the electricity be used for either commercial or domestic consumption.[467] Under this interpretation, Mynsberge's purchase was a retail transaction.[468]

The court decided that, despite his arguments, Mynsberge was not entitled to a sales tax exemption under section 6-2.5-5-8 of the Indiana Code.[469] That section provides a sales tax exemption for sales of tangible personal property acquired in the ordinary course of business for resale, rental or leasing.[470] The court held that electricity is not tangible personal property under the Indiana Code and therefore the exemption did not apply.[471] It based this conclusion on the language of sections 6-2.5-4-5[472] and 6-2.5-5-5.1 of the Indiana Code,[473]

459. *Mynsberge*, 716 N.E.2d at 631.

460. *See id.* at 632.

461. *See id.* at 631; *see also* IND. CODE § 6-2.5-5-8 (1998).

462. *See Mynsberge*, 716 N.E.2d at 631.

463. *See id.*

464. *Id.* at 632 (citing IND. CODE ANN. § 6-2.5-4-5 (West 1989) (amended 1993)).

465. *See id.*

466. *See id.* at 633.

467. *See id.*; *see also* IND. CODE § 6-2.5-4-5.

468. *See Mynsberge*, 716 N.E.2d at 633.

469. *See id.* at 636.

470. *See id.*; *see also* IND. CODE § 6-2.5-5-8 (Supp.1999)).

471. *See Mynsberge*, 716 N.E.2d at 636.

472. The Indiana Code states that the sale of electricity by public utilities and power subsidiaries constitutes a retail transaction. *See* IND. CODE § 6-2.5-4-5.

473. Section 6-2.5-5-5.1 of the Indiana Code states that, for purposes of that section,

which treat electricity as tangible personal property for purposes of those sections.[474]

According to the court, if the legislature had intended electricity to be deemed tangible personal property under section 6-2.5-1-2(a) of the Indiana Code, this additional language would be unnecessary.[475] The court found support in *Department of State Revenue v. Cable Brazil, Inc.*,[476] where the Indiana Court of Appeals held that cable television signals were not tangible personal property for sales tax purposes.[477] The tax court determined that the similarities between cable television and electricity supported its holding in *Mynsberge*.[478]

G. Indiana Motor Carrier Fuel Taxes

In *Bulkmatic Transport Co. v. Department of State Revenue* ("*Bulkmatic III*"),[479] the tax court revisited the "in Indiana" limitation on the motor carrier fuel use tax exemption for fuel consumed in powering machinery attached to a motor vehicle.[480] In *Bulkmatic Transport Co. v. Department of State Revenue* ("*Bulkmatic II*"),[481] the court held that this limitation violated the Commerce Clause because it effectively imposed a different tax for the use of Indiana roads depending on whether a motor carrier operated attached machinery within Indiana or in another state.[482] One year later, after hearing the arguments in *Bulkmatic III*, the court reaffirmed that position.[483] To better understand the court's holdings in these cases, it is necessary to first review the tax to which this exemption applies.[484]

Indiana taxes motor carriers[485] for the benefit of using its highways based on

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electrical energy is tangible personal property and exempt from sales tax if "consumed in the direct production as a material to be consumed in the direct production of other tangible personal property in the person's business. . . ." IND. CODE § 6-2.5-5-5.1.

474. *See Mynsberge*, 716 N.E.2d at 637.

475. *See id.*

476. 380 N.E.2d 555 (1978).

477. *See id.* at 561. Indiana courts have never determined whether electricity constitutes tangible personal property for sales tax purposes. The court of appeals raised the issue in *State v. Indiana-Kentucky Electric Corp*., 438 N.E.2d 782, 785 (Ind. Ct. App. 1982), but did not decide it. *See Mynsberge*, 716 N.E.2d at 637.

478. *See Mynsberge*, 716 N.E.2d at 637.

479. 715 N.E.2d 26 (Ind. Tax Ct. 1999).

480. In 1999, the general assembly changed the motor carrier fuel use tax exemption to a credit and eliminated the "in Indiana" limitation.

481. 691 N.E.2d 1371 (Ind. Tax Ct. 1998).

482. *See id.* at 1379.

483. *See Bulkmatic III*, 715 N.E.2d at 26.

484. The "tax" is actually comprised of two separate taxes. The motor vehicle fuel tax and the motor carrier surcharge tax. However, for purposes of this discussion they will be referred to as one tax. *See* IND. CODE § 6-6-2.5-28(a) (1998).

485. *See id.* § 6-6-4.1-1(a) (defining carrier).

the number of gallons of fuel the carrier consumes on those highways during a tax year.[486] At the time of this case, the carrier calculated this figure by multiplying its entire fuel consumption by the number of miles traveled on Indiana highways and then dividing this amount by the total number of miles traveled.[487] The resulting total, representing the fuel consumed on Indiana highways, was multiplied by the applicable tax rate[488] to arrive at the fuel tax liability.[489]

Unfortunately, the formula did not account for those vehicles with a single fuel tank supplying both the vehicle's engine and attached "power take-off" ("PTO") equipment.[490] Consequently, the motor carrier's tax liability reflected the fuel consumed operating the attached equipment.[491] To avoid this result, the General Assembly exempted the fuel used in operating the PTO equipment from the motor carrier fuel tax.[492] However, this exemption[493] was limited to the use of PTO equipment in Indiana.[494] Therefore, the fuel consumed by a carrier's PTO equipment in all fifty states was included in figuring the tax liability, but only that fuel used in operating the PTO equipment in Indiana was exempted.[495]

The IDSR argued that Indiana could constitutionally exempt any fuel apportioned to it because those gallons were subject to the State's unquestioned power to tax.[496] It further argued that fuel that was not apportioned to Indiana was not subject to the motor carrier fuel tax and, therefore, need not be exempted.[497] In rejecting these arguments, the court held that the mere fact that Indiana was refunding tax that it could have kept did not make the "in-Indiana" limitation constitutional.[498] It further explained that while the fuel not apportioned to Indiana may not have been subject to Indiana tax, the limitation nevertheless distorted the apportionable base[499] by including all fuel used in operating the PTO but exempting only the Indiana PTO fuel.[500] According to the

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486. *See id.* §§ 6-6-4.1-4(a), -4.5(a).

487. *See Bulkmatic III*, 715 N.E.2d at 28.

488. The rate applicable in *Bulkmatic III* was $0.27 per gallon. *See* IND. CODE § 6-6-2.5-28(a).

489. *See Bulkmatic III*, 715 N.E.2d at 28.

490. *Id.* For example, some vehicles have attached equipment used in offloading cargo.

491. *See id.*

492. *See id.* (citing IND. CODE ANN. §§ 6-6-4.1-4(d), -4.5(d) (West Supp.1998)).

493. A fixed percentage of the fuel consumed is exempted. The applicable percentage depends on the type of vehicle and the type of PTO equipment on the vehicle. The carrier was required to pay the tax first and then file a refund claim. *See id.* at 28 n.7.

494. *See id.*

495. *See id.*

496. *See id.*

497. *See id.*

498. *Id.* (citing Westinghouse Electric Corp., 466 U.S. 388, 398 (1984)).

499. The total fuel consumption amount against which the ratio of Indiana mileage to total mileage is applied.

500. *See id.* at 33.

court, this distortion caused motor carriers to be taxed differently based solely on where they chose to use their PTO equipment.[501]

H. Indiana Inheritance Taxes

In *Department of State Revenue v. Estate of Hardy*,[502] the tax court determined the inheritance tax liability when a surviving joint tenant exercises survivorship rights over property for which he paid 100% of the purchase price.[503] The case involved a brother and sister, Dale and Avis Hardy, who owned real property jointly with rights of survivorship.[504] The brother paid 100% of the purchase price of the property, and, when his sister died, her interest passed to him.[505] The IDSR alleged that the brother owed inheritance tax on the exercise of his survivorship rights to the property.[506]

The estate argued that Dale's exercise of the survivorship rights were not subject to inheritance tax because the subject property belonged to Dale who contributed 100% of the purchase price.[507] It based its argument on section 6-4.1-2-5 of the Indiana Code, which provides that the value of property transferred by the exercise of the right of survivorship equals the value of the property minus the value of the portion of the property that "belonged to" the survivor.[508]

The IDSR argued that, for purposes of section 6-4.1-2-5 of the Indiana Code, property "belongs to" its owner regardless of whether the owner contributed to the purchase of the property.[509] Therefore, because the property was held in joint tenancy, fifty percent belonged to the decedent and fifty percent belonged to Dale prior to the decedent's death.[510] Based on this interpretation of the statute, Dale was liable for inheritance tax for the exercise of his survivorship rights over the fifty percent of the property owned by the decedent at death.[511]

The court rejected this argument citing title 45, rule 4.1-2-9(a) of the Indiana Administrative Code which provides an inheritance tax exemption to the extent of the surviving joint owner's contribution to the purchase of the jointly held property.[512] According to the court, this regulation was adopted by the IDSR to avoid the problems that would result if the value of such a transfer were based

501. *See id.*

502. *See* 703 N.E.2d 705 (Ind. Tax Ct. 1998).

503. Indiana Inheritance tax is imposed on the transfer of property at death, not on the property itself. *See* IND. CODE § 6-4.1-2-1 (1998). One transfer subject to Indiana inheritance tax is the exercise of survivorship rights in cases of jointly held property. *See id.* § 6-4.1-2-4, -5.

504. *See Estate of Hardy*, 703 N.E.2d at 706.

505. *See id.*

506. *See id.*

507. *See id.* at 707.

508. IND. CODE § 6-4.1-2-5.

509. *Estate of Hardy*, 703 N.E.2d at 707.

510. *See id.*

511. *See id.*

512. *See id.* at 710-11 (citing IND. ADMIN. CODE tit. 45 r. 4.1-2-9(a) (1996)).

only on the interests of the joint owners immediately before the decedent's death.[513] For example, it would allow survivors who had contributed nothing for their interest in property to avoid taxation on one-half the value of that property or, as in this case, it would require a survivor to pay inheritance tax to receive something he already purchased.[514] Therefore, the court held, because Dale had contributed 100% of the purchase price of the property, the exercise of his survivorship rights were was not subject to inheritance tax.[515]

I. Indiana Financial Institutions Tax

In *First Chicago NBD Corp. v. Department of State Revenue*,[516] the tax court held that Indiana's Financial Institutions Tax ("FIT") does not require a taxpayer to add back payments made under the Michigan Single Business Tax ("MSBT").[517] The case was heard after the IDSR assessed First Chicago NBD Corp. f/k/a NBD Bancorp. Inc. ("NBD"), with additional FIT and interest for the years 1992 and 1993. The IDSR argued that NBD must add back[518] its MSBT payments that were deducted in computing NBD's federal taxable income for those years.[519] According to the IDSR, the add-back was required because the MSBT is a tax based on or measured by income.[520]

In finding in favor of NBD, the court held that the MSBT is not a based on or measured by income.[521] The MSBT is essentially a value added tax ("VAT") imposed on the taxpayer's total business activity and is measured by the cost of producing its product.[522] Unlike a tax based on income, VAT can be owed even when a company fails to make a profit.[523] To calculate a taxpayer's MSBT, various adjustments are made to its federal taxable income to arrive at a tax base.[524] This tax base is divided among the states where the taxpayer does business.[525] A tax equal to 2.35% is then assessed on that portion of the tax base

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513. *See id.* at 710.

514. *See id.*

515. *See id.* at 711.

516. 708 N.E.2d 631 (Ind. Tax Ct. 1999).

517. Under section 6-5.5-1-2 of the Indiana Code, The FIT is assessed on a taxpayer's Indiana adjusted gross income, which is based on federal taxable income as computed under IRC § 63. *See* IND. CODE § 6-5.5-1-2 (1998).

518. Section 6-5.5-1-2(a)(7) of the Indiana Code requires the add back of taxes "based on or measured by income" to federal taxable income in computing FIT liability. IND. CODE § 6-5.5-1-2(a)(7).

519. *See First Chicago NBD Corp.*, 708 N.E.2d at 632-33.

520. *See id.* at 634.

521. *See id.* at 635.

522. *See id.* at 633.

523. *See id.*

524. *See id.* at 633-34.

525. *See id.*

attributable to Michigan.[526]

The court held that while income is one element of the MSBT, it is not a tax based on or measured by income.[527] Rather, the use of the income information was simply a way to quantify the value added by the production of the product.[528] The court cited the decisions of several courts in other jurisdictions, including Michigan, which also held that the MSBT is not a tax that is based on or measured by income.[529]

J. Indiana Tax Credits

In *CNB Bancshares, Inc. v. Department of State Revenue*,[530] the tax court interpreted the statutory requirements for claiming the enterprise zone ("EZ") loan interest credit.[531] The credit is part of the EZ program designed in part to stimulate development in certain economically depressed areas.[532] In addition to providing the credit to encourage taxpayers to loan money to businesses and individuals located in the EZ, the program provides credits directly to EZ businesses.[533] A zone business receiving tax credits under the program must pay an annual registration fee and reinvest any credit proceeds back into the EZ.[534]

In this case, CNB Bancshares, Inc. ("CNB"), located in Evansville, was denied a loan interest credit it claimed for interest it received from loans made to businesses and individuals located in the Evansville EZ.[535] The IDSR argued that CNB was itself a zone business and therefore subject to the registration and reinvestment requirement in order to maintain its eligibility for the loan interest credit.[536]

The court relied on the plain language of the relevant statutes in finding for CNB.[537] It explained that the registration and reinvestment requirements are only applicable to EZ businesses.[538] As defined by statute, an EZ business is any business claiming a credit provided under chapter 4-4-6.1.[539] CNB, however, was not a zone business under this definition because it was claiming the loan interest

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526. *See* MICH. COMP. LAWS ANN. § 208.31(1) (West 1998).

527. *See First Chicago NBD Corp.*, 708 N.E.2d at 635.

528. *See id.* at 634.

529. *See id.*

530. 706 N.E.2d 616 (Ind. Tax Ct. 1999).

531. Section 6-3.1-7-2 of the Indiana Code provides qualifying taxpayers a credit against state tax liability equal to 5% of the amount of interest received from qualified loans during a tax year. *See* IND. CODE § 6-3.1-7-2 (1998) (amended 2000).

532. *See CNB Bancshares*, 706 N.E.2d at 616.

533. *See* IND. CODE § 4-4-6.1-2.5.

534. *See id.* § 4-4-6.1-2(a)(4).

535. *See CNB Bancshares*, 706 N.E.2d at 617.

536. *See id.* at 618.

537. *See id.*

538. *See id.* at 619.

539. *See* IND. CODE § 4-4-6.1-1.1 (1998) (amended 2000).

credit provided by section 6-3.1-7-2.[540] That credit, explained the court, is available to any taxpayer receiving interest income from a qualified loan.[541] Accordingly, the requirements under section 4-4-6.1-2[542] do not apply to taxpayer's who lend money to zone businesses.[543]

540. *See CNB Bancshares*, 706 N.E.2d at 619 (citing IND. CODE § 6-3.1-7-2).

541. *See id.*

542. *See* IND. CODE § 4-4-6.1-2.

543. The court explained that the IDSR's position would effectively nullify any incentive for a taxpayer to loan money to a zone business if that taxpayer was then required to reinvest any resulting tax credit into the EZ. *See CNB Bancshares*, 706 N.E.2d at 619 n.5.