RECENT DEVELOPMENTS IN INDIANA TAXATION SURVEY 2010

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INTRODUCTION: SOME REFERENCES USED IN THIS ARTICLE

This Article highlights the major tax developments that occurred through the calendar year of 2010. Whenever the term "GA" is used in this Article, such term refers only to the second regular session of the 117th Indiana General Assembly. Whenever the term "Governor" is used in the Article, such term refers only to the Governor of Indiana who was serving in office during the second regular session of the 117th General Assembly. Whenever the term "Tax Court" is referred to in this Article, such term refers only to the Indiana Tax Court. Whenever the term "DLGF" is used in this Article, such term refers only to the Indiana Department of Local Government Finance. Whenever the term "IBTR" is used, such term refers only to the Indiana Board of Tax Review. When the term "Department" is used, such term refers only to the Indiana Department of State Revenue. Whenever the term "IC" or "Indiana Code" is used, such term refers only to the Indiana Code in effect at the time of the publication of this Article. Whenever the term "EDGE" is used, such term refers only to the "Economic Development for a Growing Economy" tax credit. Whenever the term "CRED" is used, such term refers only to Indiana's "Community Revitalization Enhancement District" tax credit. Whenever the term "CAGIT" is used, such term refers only to the Indiana county adjusted gross income tax. Whenever the term "COIT" is used in this Article, such term refers only to the Indiana county option income tax. Whenever the term "LOIT" is used in this article, such term refers to the local option income tax. Whenever the term "IEDC" is used, such term refers only to the Indiana Economic Development Corporation. Whenever the term "CEDIT" is used, such term refers only to the Indiana county economic development income taxes. Whenever the term "IEDIT" is used, such term refers only to the Indiana economic development income tax. Whenever the term "BMV" is used in this Article, such term refers only to the Indiana Bureau of Motor Vehicles. Whenever the term "IRC" is used, such term refers only to the Internal Revenue Code which was in effect at the time of the publication of this Article. Whenever the term "AOPA" is used in this Article, such term refers only to the Indiana Administrative Orders and Procedures Act. Whenever the term "CBTCPR" is used, such term refers only to the County Board of Tax and Capital Projects. Whenever the term "PTABOA" is used in this Article, such term refers only to a property tax assessment board of appeals.

I. INDIANA GENERAL ASSEMBLY LEGISLATION

The 117th GA passed several pieces of legislation affecting various areas of

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state and local taxation, including property taxes, riverboat and racino taxes, sales and use taxes, state income taxes, state inheritance taxes, business taxes, and local taxes.

A. Property Tax

The GA enacted a variety of changes to the property tax scheme. However, most of the amendments to the property tax laws are technical, and it takes an individual knowledgeable about property taxes to fully understand these amendments.

For example, the GA amended IC 6-1.1-4-4.5 to alter the method for assessing agricultural land.[1] Specifically, the statute was amended to require a six-year rolling average instead of a four-year rolling average, and it eliminated in calculating the rolling average the year among the six years for which the highest market value in use of agricultural land was determined.[2] This amendment was to be applied retroactively to January 1, 2010.[3]

The GA enacted new legislation in order to clarify, for property tax purposes, that the term "mobile home community" has the same meaning as that set forth by IC 16-41-27-5.[4]

The GA also placed a greater burden on an assessor to explain why changes are made to the underlying characteristics of an assessment by enacting new legislation that requires the assessor to document "changes [to] the underlying parcel characteristics, including age, grade, or condition, of a property, from the previous year's assessment date."[5] The assessor is also required to document the reason each change is made. On appeal, the assessor has the burden of proving that each change was valid.[6] This legislation was effective upon passage.

The GA amended IC 6-1.1-4-5 to clarify that a petition for reassessment of real property under this statute applies only to the most recent real property assessment date.[7] Furthermore, upon receipt of such a petition, the DLGF may either order or conduct a reassessment. These provisions did not take effect until January 1, 2011.[8]

The GA also amended IC 6-1.1-4-13.6 to alter the method for reviewing land values determined by a county assessor.[9] As of January 1, 2011, a petition for the review of the land values determined by a county assessor under this statute may be filed with the DLGF no later than forty-five days after the county assessor

1. 2010 Ind. Acts 1341-42.
2. *Id.* at 1342.
3. *Id.*
4. *Id.* at 1371.
5. *Id.*
6. *Id.*
7. *Id.* at 1372.
8. *Id.*
9. *Id.* at 1373-75.

makes the determination of the land values.[10] The statute requires that the petition must be signed by at least the lesser of: "(1) one hundred . . . property owners in the county; or (2) five percent . . . of the property owners in the county."[11] Upon receipt of such a petition, the DLGF shall review the land values determined by the county assessor and, after a public hearing, shall approve, modify, or disapprove the land values at issue.[12]

The GA also amended IC 6-1.1-4-31 with regard to the DLGF's ability to check local assessment activities by eliminating the DLGF's power to rescind a previously ordered state-conducted assessment or reassessment that was ordered under this statute.[13]

The GA amended IC 6-1.1-5-16 to require a landowner to pay the outstanding taxes on all parcels when requesting that tax parcels be consolidated.[14] This provision did not take effect until July 1, 2011.[15]

The GA amended IC 6-1.1-12-26 to limit the amount the owner of real property or a mobile home which is equipped with a solar energy heating or cooling system may deduct annually from the assessed value of such property.[16] The amount is now limited to an amount equal to the "out-of-pocket expenditures by the owner (or a previous owner) of the real property or mobile home for: (1) the components; and (2) the labor" for such system.[17]

The GA amended IC 6-1.1-12-37 to include a deck or patio, a gazebo, or another residential yard structure within the term "homestead" for assessments made after 2009.[18] A swimming pool is specifically excluded from this updated definition.[19]

The GA provided an additional tax deduction by enacting new legislation that allows for a county fiscal body to pass an ordinance allowing a deduction for personal property within a certified technology park.[20] In order to qualify, the personal property must be assessed for the first time after December 31, 2010 and must be located within a certified technology park. The personal property must be "primarily used to conduct high technology activity" and "not part of the assessed value for which a personal property tax allocation has been made [under another IC section]."[21] The IEDC must review such an ordinance and determine whether it is in the best interest of the development of the certified technology

10. *Id.* at 1374.
11. *Id.*
12. *Id.* at 1374-75.
13. *Id.* at 1376.
14. *Id.* at 1378.
15. *Id.*
16. *Id.* at 1382-83.
17. *Id.*
18. *Id.* at 1389.
19. *Id.*
20. *Id.* at 1389-90.
21. *Id.* at 1390.

park to permit the deduction.[22]

In an effort to provide more public oversight, the GA amended IC 6-1.1-17-20 to require a public library to "submit its proposed budget and property tax levy to the county fiscal body," rather than to a city or town fiscal body, "if more than fifty percent . . . of the parcels of real property within the jurisdiction of the public library are located outside the city or town."[23] However, the GA also amended IC 6-1.1-17-20.5 so that this requirement does not apply if a public library seeks to "issue bonds or enter into a lease payable in whole or in part from property taxes" and the decision with regard to these transactions was approved before December 31, 2010.[24]

The GA amended IC 6-1.1-18.5-1 to allow the DLGF to adjust the city or county's maximum permissible ad valorem property tax levy for the ensuing calendar year if the city or county requesting the adjustment had an actual levy that was lower than the city or county's maximum permissible ad valorem property tax levy for the calendar year immediately preceding the request because the city or county had used cash balances.[25] The DLGF may make such adjustment for property taxes first due and payable after December 31, 2010.

In addition, the GA amended IC 6-1.1-18.5-10.5 to allow the DLGF to increase the maximum permissible ad valorem property tax levy that would otherwise apply to a civil taxing to allow the civil taxing unit to meet its obligations to a fire protection territory.[26]

The GA made a technical amendment to IC 6-1.1-20-3.2 and IC 6-1.1-20-3.5 to require that a political subdivision provide notice to the circuit court clerk prior to entering into a transaction that would require increased property taxes to pay for a "controlled project."[27]

The GA also amended IC 6-1.1-20-3.6 to require a county election board to submit the language of a public question to the DLGF for review.[28] The DLGF shall then review the language of the public question to evaluate "whether the description of the controlled project is accurate and is not biased against either a vote in favor of the controlled project or a vote against the controlled project."[29] The DLGF has the authority to recommend that the ballot language be used as submitted or modified to ensure that the description of the controlled project is appropriate and is not biased. After reviewing any recommendations of the DLGF, the county election board must act to approve the ballot language.[30] This amendment applies to a public question submitted after June 30, 2010.

The GA amended IC 6-1.1-24-1.2 to require a taxpayer to pay "delinquent

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22. *Id.*
23. *Id.* at 1393.
24. *Id.* at 1394.
25. *Id.* at 1396.
26. *Id.* at 1397-98.
27. *Id.* at 1404.
28. *Id.* at 1415.
29. *Id.*
30. *Id.*

taxes and special assessments due before the date on which the property" is listed for tax sale in order to remove the property from the tax sale.[31] A partial payment does not remove the property from a tax sale unless the county auditor has the authority under IC 6-1.1-24-1.2(c) to enter into a mutually satisfactory arrangement with the taxpayer for the payment of delinquent taxes.[32]

In an effort to assist taxpayers with property tax disputes, the GA enacted new legislation to allow an employee of the IBTR to assist taxpayers and local officials in their attempts to voluntarily resolve disputes in which a taxpayer has challenged an action of a township or county official.[33] If an IBTR employee provides such assistance to a taxpayer, the employee may not act as an administrative law judge or participate in a decision relating to the taxpayer's dispute. The IBTR is authorized to establish procedures for IBTR employees assisting in resolving these disputes.[34]

The GA amended IC 6-1.1-12-1 to clarify that in order for a taxpayer to claim the mortgage deduction for property tax purposes, the mortgage, installment loan, or home equity line of credit upon which the deduction is based must be recorded in the county recorder's office.[35]

The GA amended IC 6-1.1-20-1.9 to define the term "owner of property" as a person that owns "(1) real property; (2) a mobile home assessed as personal property, used as a principal place of residence, . . . or (3) a manufactured home assessed as personal property, used as a principal place of residence."[36] The GA also amended IC 6-1.1-20-3.1, IC 6-1.1-20-3.2, and IC 6-1.1-20-3.5 to conform to this definition.

In an effort to coordinate changes to the tax levy, the GA amended IC 20-46-1-7 to require a school corporation to notify the DLGF of a resolution that reimposes or extends a tax levy.[37]

In an effort to streamline the collection of provisional taxes, the GA amended IC 6-1.1-22.5-6 to adjust the manner in which provisional property taxes can be assessed by a county assessor.[38] In addition, the GA amended IC 6-1.1-22.5-8 to allow for the payment of provisional property taxes in two equal installments.[39] Also, the GA amended IC 6-1.1-22.5-9 to authorize the county treasurer to mail a provisional statement one time per year so long as the statement is mailed at least "fifteen . . . days before the date on which the first installment is due."[40]

The GA enacted new legislation related to vacant parcels subject to tax sale

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31. *Id.* at 1422.
32. *Id.*
33. *Id.* at 1423.
34. *Id.*
35. *Id.* at 925.
36. *Id.* at 635-36.
37. *Id.* at 652.
38. *Id.* at 1073-74.
39. *Id.* at 1076-77.
40. *Id.* at 1081.

in Indianapolis, Indiana.[41] In an effort to streamline the tax sale process, the new statute establishes procedures by which a contiguous landowner may purchase a vacant parcel and consolidate into the landowner's original parcel, as well as providing authority to the county legislative body to establish criteria for the identification of vacant parcels to be offered for tax sale under this statute.[42]

The GA amended IC 6-1.1-25-4 to clarify that a tax deed for real property sold in a tax sale does not extinguish an "easement recorded before the date of the tax sale . . . regardless of whether the easement was taxed . . . separately from the real property."[43] Furthermore, the tax deed "conveys title subject to all easements recorded before the date of the tax sale."[44]

The GA amended IC 6-1.1-24-1 to move the date by which a county treasurer must certify a list of delinquent properties to the county auditor from July 1 to January 1.[45]

The GA also amended IC 6-1.1-24-6.1 to require a person redeeming a delinquent parcel to pay all costs of sale, advertising costs, and other expenses of the county directly attributable to the tax sale.[46]

In addition, the GA amended IC 6-1.1-24-7 to allow a person seeking to claim a tax sale surplus to do so only as "directed by the court having jurisdiction over the tax sale of the parcel for which the surplus claim is made."[47] The court may grant such a claim only on petition by the claimant and if such petition is filed "within three . . . years after the date of sale of the parcel in the tax sale."[48]

The GA also enacted new legislation related to agreements between property owners and third parties that has the primary purpose of compensating the third party for locating, delivering, recovering, or assisting in "the recovery of money deposited in the tax sale surplus fund."[49] In such an instance, the agreement is valid only if compensation is limited to "not more than ten percent . . . of the amount collected from the tax sale surplus fund . . . ; . . . is in writing; . . . is signed by the property owner; and . . . clearly sets forth" the amount available to the property owner.[50] This new statute only applies to agreements entered into on or after May 1, 2010.[51]

The GA amended IC 6-1.1-24-9 to allow a county executive to "assign a certificate of sale held in the name of the county executive to any political subdivision during the life of the certificate."[52] The period of redemption

41. *See id.* at 1158.
42. *Id.*
43. *Id.* at 1162.
44. *Id.*
45. *Id.* at 1419.
46. *Id.* at 809.
47. *Id.* at 810.
48. *Id.*
49. *Id.*
50. *Id.* at 811.
51. *Id.*
52. *Id.* at 812-13.

following such an assignment is 120 days.[53] In addition, the GA amended IC 6-1.1-25-4 to correspond to IC 6-1.1-24-9.[54]

Finally, the GA amended IC 6-1.1-25-11 with regard to sales

> declared invalid after a claim is submitted . . . for money deposited in the tax sale surplus fund and the claim is paid, the county auditor shall . . . refund the purchase money plus six percent (6%) interest per annum . . . to the purchaser . . . and certify the amount paid to the property owner from the tax sale surplus fund as a lien against the property and as a civil judgment against the property owner.[55]

B. Riverboat and Racino Taxes

The GA amended IC 4-33-12-1 to decrease the riverboat admissions tax for the riverboat at French Lick from $4 to $3, and it also changed the distribution of the tax revenue.[56]

C. Sales and Use Tax

The GA made a number of minor changes to the Indiana Code with regard to Indiana's sales and use taxes. The majority of changes were administrative in nature.

The GA amended IC 6-2.5-1-5 to provide that telecommunications nonrecurring charges for services are not included in the definition of gross retail income.[57] In addition, the GA enacted new legislation that defined the term "telecommunications nonrecurring charges" to mean "amount[s] billed for installation, connection, change, or initiation of a telecommunications service."[58]

The GA enacted new legislation codified under IC 6-2.5-4-17, which provides that "[a] person is a retail merchant making a retail transaction when the person enters into a computer software maintenance contract to provide future updates or upgrades to computer software."[59] In addition, IC 6-2.5-1-14.5 reflects new legislation that defines a computer software maintenance contract as a contractual obligation "to provide a customer with future updates or upgrades of computer software."[60]

The GA amended IC 6-2.5-4-16.4 to provide that "[t]he sale of a digital code that may be used to obtain a product transferred electronically shall be taxed in the same manner as the product transferred electronically."[61] This code section

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53. *Id.* at 813.
54. *Id.*
55. *Id.* at 815-16.
56. *Id.* at 1135.
57. *Id.* at 1425.
58. *Id.* at 1426.
59. *Id.* at 1427.
60. *Id.* at 1425.
61. *Id.* at 1427.

also defines “digital code” to mean a method that permits a purchaser to obtain a product transferred electronically at a later date.[62] In addition, the GA enacted new legislation that defines the phrase “transferred electronically” as something “obtained by a purchaser by means other than tangible storage media.”[63]

The GA also amended IC 6-2.5-2-2 to eliminate the sales tax brackets and also made a technical change to the rounding rule.[64]

The GA clarified other IC sections, including IC 6-2.5-5-18, which was amended to clarify that the sale or rental of mobility enhancing equipment is exempt from the sales tax if “prescribed by a person licensed to issue the prescription.”[65] In addition, IC 6-2.5-5-20 was amended to clarify that dietary supplements are not food items that would be exempt from the sales tax.[66]

The GA provided some relief to cities and towns that operate municipal golf courses by enacting new legislation providing that transactions of a city or town are exempt from the sales and use tax if the property acquired is used in the operation of a municipal golf course.[67] This new legislation is retroactive to July 1, 2007.

Finally, the GA amended IC 6-2.5-11-10 to provide that a certified service provider operating under the Streamlined Sales Tax Agreement is not liable for sales or use tax collection errors that result from reliance on the DLGF’s taxability matrix.[68]

D. Adjusted Gross Income Tax

The GA clarified and adjusted a few provisions related to Indiana’s adjusted gross income tax.

The GA amended both IC 6-3-2-2.5 and IC 6-3-2-2.6 to provide that the net operating loss deduction for individuals, nonresidents, and corporations may be carried back only two years for losses incurred in 2008 and 2009.[69] These amendments differ from the IRC, which provides a five-year carry-back.[70] These provisions are to be applied retroactively to November 6, 2009.

The GA also amended IC 6-3-1-11 in order to update Indiana’s reference to the Internal Revenue Code to be the “Internal Revenue Code . . . as amended and in effect on January 1, 2010.”[71] This measure was to be applied retroactively to January 1, 2010.

Finally, in an effort to streamline the tax reporting process, the GA enacted

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62. *Id.*
63. *Id.* at 1426.
64. *Id.* at 1430.
65. *Id.* at 1427.
66. *Id.* at 1429.
67. *Id.*
68. *Id.* at 1429-30.
69. *Id.* at 1431-32, 1433-34.
70. *See id.*
71. *Id.* at 1431.

new legislation requiring employers to file the annual WH-3 and W-2 statements electronically if the employer files more than twenty-five withholding statements.[72] This provision is to be applied to all statements filed after December 31, 2010.

E. Income Tax Credits

The GA passed legislation that clarified the application of certain tax credits and also granted some new opportunities for tax credits.

The GA amended IC 6-3.1-13-10 to provide that the definition of a taxpayer for purposes of the EDGE tax credit includes a taxpayer "that submits incremental income tax withholdings under IC 6-3-4-8."[73] In addition, the GA amended IC 6-3.1-13-15.5 to eliminate the requirement that an existing business must have at least thirty-five employees to qualify for an EDGE credit for job retention.[74] These provisions were to be applied retroactively to January 1, 2010.

The GA also amended IC 6-3.1-19-3 to make a technical change that adds an internal reference to the CRED tax credit.[75] Also, the GA enacted new legislation to provide that the CRED tax credit does not apply to areas in Muncie, Indiana unless the advisory commission on industrial development selects the area to receive incremental withholding and incremental sales tax.[76] This new legislation also provides that the IEDC may not approve a taxpayer's expenditures as being entitled to the credit until the IEDC receives notice from the advisory commission.[77] The provisions related to the CRED tax credit were effective upon passage.

The GA enacted new legislation that created a new employer tax credit for a corporation or pass-through entity that after December 31, 2009 either "locates or relocates the operations of a business enterprise in Indiana; incorporates or otherwise first organizes in Indiana;" or expands its operations in Indiana and employs at least ten new qualified employees.[78] This new legislation also requires the IEDC to approve taxpayers for the credit, and it provides that the credit shall be 10% of the wages paid by the new business to qualified employees during a twenty-four-month period.[79] This legislation is to be applied retroactively to January 1, 2010.

In a non-code provision, the GA repealed IC 6-3.1-13-27, thereby eliminating a nonprofit provision contained in the EDGE credit.[80] This repeal was retroactive to January 1, 2010.

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72. *Id.* at 1436.
73. *Id.* at 1437.
74. *Id.* at 1294.
75. *Id.* at 1437.
76. *See id.* at 1438.
77. *Id.*
78. *Id.* at 1295.
79. *Id.* at 1298.
80. *Id.* at 1540.

Finally, in a second non-code provision, the GA created an interim study committee to study economic development methods and tax credits.[81] This provision was effective upon passage.

F. Local Option Income Taxes

In an effort to provide local governments with more flexibility, the GA enacted new legislation that provided that CAGIT, COIT, or CEDIT can be adopted, increased, decreased, or rescinded if the ordinance is adopted any time between January 1 and November 1.[82] This new legislation provided effective dates for such ordinances as well.

G. Inheritance and Estate Taxes

In an effort to clarify the reporting requirements imposed on a taxpayer, the GA amended IC 6-4.1-4-0.5 to specify the requirements of an affidavit used to state that no inheritance tax is due after applying statutory exemptions to each transferee receiving property as a result of the decedent's death.[83]

The GA also amended both IC 6-4.1-4-1 and 6-4.1-4-7 to require that both resident and non-resident inheritance tax returns include all taxable transfers known to the person filing the return.[84]

H. Aircraft Registration

The GA enacted new legislation that allows for an aircraft to be registered in Indiana without payment of the use tax.[85] This provision holds if "the aircraft was registered in another state as of January 1, 2010, and any sales or use tax due in the registration state was paid and ownership of the aircraft has not changed after December 31, 2009."[86] There also must be no outstanding liability in the registration state that relates to the aircraft, and an application for an Indiana registration must be filed between June 30 and September 30 of 2010.[87]

I. Innkeeper's Tax

The GA amended IC 6-9-2-2 to correct a conflict in the Lake County Innkeeper's Tax statute. This amendment was effective upon passage.[88]

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81. *Id.* at 1551-53.
82. *See id.* at 1453.
83. *Id.* at 162.
84. *Id.* at 164.
85. *Id.* at 1453.
86. *Id.*
87. *Id.*
88. *Id.* at 1454.

J. Other Provisions

The GA also passed a number of other provisions affecting various aspects of tax policy. For instance, the GA amended IC 36-7-13-12 to establish a third community revitalization enhancement district in Muncie, Indiana.[89] This amendment was effective upon passage.

The GA also enacted new legislation that allowed for only two of the three CRED tax credit districts in Muncie to receive incremental sales and withholding taxes as determined by the advisory commission.[90] The advisory commission is required to notify the budget agency as to which districts are selected to receive the allocation.[91]

The GA amended IC 36-7-32-11 to provide that if a certified technology park is not recertified by the IEDC, the IEDC is required to notify the county auditor, the DLGF, and the Department.[92]

The GA enacted IC 36-8-16.6-12, which imposes an enhanced prepaid wireless telecommunications service charge.[93] The fee is one-half of the wireless emergency enhanced 911 fee. The fee is to be collected by the seller of prepaid wireless telecommunications service when such services are sold to another person.[94] Prepaid wireless telecommunications service is defined by the statute as a telecommunication service that provides the right to use mobile wireless service that must be paid for in advance and is sold in predetermined units or dollars.[95] The fee is imposed on each retail transaction. The seller is required to remit the fee to the DLGF at the time and in the manner prescribed by the DLGF. The fee is exempt from the utility receipts tax. A seller is provided a collection allowance of 1% of the fees that are collected by the seller.[96] The DLGF, in conjunction with the wireless enhanced 911 advisory board, is required to establish procedures governing the collection and remittance of the fee in accordance with procedures used for listed taxes. The DLGF must take into consideration the difference between large and small sellers and may establish lower thresholds for the remittance of the fee by small sellers.[97] The term "small seller" is defined by the statute as a seller "that sells less than one hundred dollars . . . of prepaid wireless telecommunications services each month."[98] By January 1, 2011, the DLGF is required to determine the amount of fees collected and remitted for prepaid wireless telecommunications by a commercial mobile radio

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89. *Id.* at 1508.
90. *Id.* at 1278.
91. *See id.*
92. *Id.* at 1520.
93. *Id.* at 1521.
94. *Id.*
95. *Id.* at 1527.
96. *Id.* at 1528.
97. *Id.*
98. *Id.* at 1529.

service provider during the period from July 1, 2008 through June 30, 2010.[99] The DLGF is required to ascertain the total amount of fees collected for prepaid wireless telecommunications for the period from July 1, 2010 through June 30, 2012 by January 1, 2013. If the amount determined for the period from July 2010 through June 2012 is less than the amount determined from July 2008 through June 2010 by more than 5%, the fee will sunset and no longer apply.[100]

II. INDIANA TAX COURT DECISIONS

The Tax Court rendered a variety of opinions from January 1, 2010 to December 31, 2010. Specifically, the Tax Court issued seventeen published opinions and decisions: eight of which concerned the Indiana real property tax,[101] five of which concerned the inheritance tax,[102] two of which concerned the sales and use tax,[103] one of which concerned the personal property tax,[104] and one of which concerned the utility services use tax.[105] The Tax Court also issued ten unpublished opinions: six of which concerned Indiana real property tax,[106] one of which concerned the sales and use tax,[107] one of which concerned the personal property tax,[108] one of which concerned the corporate income tax,[109] and one of which concerned the utility services use tax.[110] A summary of each opinion and decision appears below.

A. Real Property Tax

1. Holsapple v. Monroe County Assessor.[111]—E.L. and B.L. Holsapple (the "Holsapples") appealed the IBTR's final determination regarding their real property assessment for the 2006 and 2007 tax years. The IBTR issued a final determination on May 8, 2009 in which it valued the Holsapples' real property for the 2006 and 2007 tax years. An appeal was filed on July 3, 2009, and the Monroe County Assessor moved to dismiss the Holsapples' appeal because it was not timely filed under Indiana Code section 6-1.1-15-5.[112]

Indiana Code section 6-1.1-15-5 requires a taxpayer to file a petition with the Tax Court no later than forty-five days after the IBTR gives notice of its final

99. *Id.* at 1529-30.
100. *Id.* at 1530.
101. *See supra* Part I.A.
102. *See supra* Part I.B.
103. *See supra* Part I.C.
104. *See supra* Part I.D.
105. *See supra* Part I.J.
106. *See supra* Part I.A.
107. *See supra* Part I.C.
108. *See supra* Part I.D.
109. *See supra* Part I.E.
110. *See supra* Part I.J.
111. 918 N.E.2d 783 (Ind. T.C. 2010).
112. *Id.* at 783-84.

determination.[113] The Monroe County Assessor argued that the Holsapples had until June 25, 2009 to comply with all of the notice requirements provided under the statute. The Monroe County Assessor further argued that because the Holsapples' petition was not filed until July 3, 2009, the Tax Court lacked jurisdiction to hear the appeal.[114] In response, the Holsapples maintained that they had originally filed a handwritten petition on June 22, 2010, but the clerk of the court had returned these documents for reformatting. The Holsapples reformatted the documents and resubmitted them to the clerk. The Holsapples argued that the Tax Court should recognize the original filing date and consider the reformatted petition to be an amendment to that filing.[115] The Tax Court held that the Monroe County Assessor was correct and cited Indiana law that states, "[I]f a taxpayer fails to comply with any statutory requirement for the initiation of an original tax appeal, the tax court does not have jurisdiction to hear the appeal."[116] The Tax Court further rejected the Holsapples' argument, explaining that even if the Holsapples' reformatted petition related back to the original filing, the Holsapples had failed to comply with the notice provisions of Indiana Code section 6-1.1-15-5.[117]

2. Allport v. Fulton County Assessor.[118]—Sharon L. Allport ("Allport") owned real property on Lake Manitou near Rochester, Indiana. Allport's 2006 property tax bill reflected an increase in her real property tax liability because the Fulton County Assessor had changed the classification of her property from "off-water" to "on-water."[119] Allport filed an appeal with the Fulton County PTABOA, and the PTABOA denied her appeal. Allport subsequently filed an appeal with the IBTR. The IBTR issued a final determination affirming the assessment. Allport then filed an original tax appeal with the Tax Court claiming that the IBTR erred in upholding the Fulton County Assessor's valuation of Allport's property.[120]

Allport's argument essentially focused not on the value of her property, but instead on the fact that because her property had been classified differently than her neighbors' properties, her taxes were unfair.[121] The Fulton County Assessor responded that, like Allport's property, her neighbors' properties had also been incorrectly classified as "off-water." The Fulton County Assessor further argued that while Allport's neighbors would enjoy the benefit of an incorrect classification for a year more than Allport, it was irrelevant. The Tax Court held that Allport had failed to present any evidence during the IBTR hearing that would establish that the assessed value was incorrect. Furthermore, the Tax

113. IND. CODE § 6-1.1-15-5(c) (2011).
114. *Holsapple*, 918 N.E.2d at 784.
115. *Id.*
116. *Id.* (quoting IND. CODE § 33-26-6-2(a)).
117. *Id.* at 784-85.
118. 919 N.E.2d 1251 (Ind. T.C. 2010).
119. *Id.* at 1251.
120. *Id.* at 1251-52.
121. *Id.* at 1252.

Court held that there was no sound reason to award Allport the benefit of an incorrect assessment.[122]

3. Guingrich v. Allen County Assessor.[123]—Ronald O. Guingrich ("Guingrich") owned real property consisting of a residence located on one acre of the land and other primarily wooded acreage. For the 2006 tax year, the Allen County Assessor reclassified Guingrich's land from woodland to excess residential acreage, resulting in a significant increase in assessed value.[124] Guingrich subsequently appealed this assessment to the Allen County PTABOA. The PTABOA denied this appeal, and Guingrich timely filed an appeal with the IBTR. The IBTR issued its final determination denying Guingrich's request for relief based on his argument that the land was for agricultural use, finding that pursuant to Indiana Code section 6-1.1-4-13(a), the land could only be assessed as agricultural if it was "devoted to agricultural use."[125] Guingrich timely filed his original tax appeal.[126]

On appeal, Guingrich argued that the IBTR's final determination was not supported by substantial evidence. Specifically, Guingrich claimed that based on the evidence, a reasonable mind would conclude that he used his land for agricultural purposes. The Tax Court agreed with Guingrich.[127] The Allen County Assessor presented a DLGF memorandum during the IBTR hearing, outlining a fact-sensitive inquiry to determine whether Woodland was "devoted" to an agricultural use.[128] For example, "firewood harvesting may be deemed an agricultural use when certain evidence or factors are present."[129] The Tax Court found that Guingrich had presented such evidence. First, Guingrich had testified that the reason he had purchased the land was because he intended to harvest firewood when he retired. Guingrich also produced an aerial photograph from the USDA Farm Services Agency website showing that his farm number was 9167. Finally, the Tax Court found that while Guingrich had left the land in its original state until he was ready to begin his harvesting activities, upon commencing those activities, he reported this income on his federal income tax returns.[130] Therefore, the Tax Court held that the IBTR's final determination was not supported by substantial evidence.[131]

4. Meijer Stores Ltd. Partnership v. Smith.[132]—In 2000, Meijer Stores Ltd. Partnership ("Meijer") opened a discount retail store in Richmond, Indiana, which, along with its parking lot, sat on twenty-six acres of land. Meijer timely

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122. *Id.* at 1253.

123. No. 49T10-0812-SC-68, 2010 WL 1064372 (Ind. T.C. Mar. 14, 2010).

124. *Id.* at *1.

125. *Id.* at *2 (quoting IND. CODE § 6-1.1-4-13(a) (2011)).

126. *Id.*

127. *Id.* at *3.

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.* at *4.

132. 926 N.E.2d 1134 (Ind. T.C. 2010).

filed petitions for review with the Wayne County PTABOA, arguing that the assessments for years 2002, 2003, and 2005 were too high. The PTABOA subsequently upheld those assessments; thereafter, Meijer timely filed petitions for review with the IBTR.[133] Meijer presented an appraisal during the IBTR hearing to show that the market value-in-use of its property was significantly lower for the 2002, 2003, and 2005 tax years. The appraisal employed the cost approach, the income approach, and the sales comparison approach to estimate the value of Meijer's property. The Wayne County Assessor and the PTABOA presented no evidence during the IBTR hearing.[134] The sales comparison and income approach analyses were rejected by the IBTR because they utilized properties that were not "comparable" to Meijer's property. Meijer's obsolescence analysis was rejected because it found that Meijer failed to show that "its property was subject to the market forces that caused certain retail properties to lose value."[135] Meijer timely filed an appeal to challenge that final determination.

On appeal, Meijer argued that the IBTR "erred in rejecting its obsolescence analysis and its sales comparison analysis, as there was no evidence in the record that indicated that the analyses were unreliable."[136] In response, the Wayne County Assessor argued that the IBTR's final determination was proper because several parts of the appraisal were entitled to no weight.[137] The Tax Court found that the IBTR improperly rejected Meijer's sales comparison analysis because in formulating an estimate of value under the sales comparison approach, an appraiser need only "locate [ ] sales of comparable [ ] *properties* and adjust [ ] the selling prices to reflect the subject property's total value."[138] The Tax Court held that it was "improper to discount the appraisal's sales comparison approach because 'secondary users' purchased vacated big-box properties instead of entities like Wal-Mart."[139]

As to the IBTR's rejection of Meijer's obsolescence analysis, the court explained that obsolescence is a form of depreciation that takes into account "the functional or economic loss of value to property, which is then expressed as a percentage reduction to an improvement's replacement cost new."[140] The court found that Meijer had based its entire argument with regard to obsolescence on the fact that there were a limited number of buyers for properties of this size and an oversupply of big-box properties within the retail market, but Meijer had presented no evidence that the market trends presented actually impacted or affected the Meijer store at issue in this appeal, or even Meijer stores in

133. *Id.* at 1135.
134. *Id.*
135. *Id.* at 1136 (citation omitted).
136. *Id.* (citation omitted).
137. *Id.*
138. *Id.* at 1137 (quoting REAL PROPERTY ASSESSMENT MANUAL 13 (2004)).
139. *Id.*
140. *Id.*

general.[141] The court further found that the Wayne County Assessor presented no evidence or argument that refuted that testimony, but instead argued that Meijer's building was not old enough to be entitled to an obsolescence adjustment.[142] Based on these findings, the Tax Court held that the IBTR's decision on this issue was not based on substantial evidence.[143] In support of this holding, the Tax Court explained that Meijer had effectively presented evidence in support of its appraisal, and the Wayne County Assessor failed to present any market-based evidence that supported its own assessment and discounted Meijer's appraisal.[144]

5. Stinson v. Trimas Fasteners, Inc.[145]—In 2002, Trimas Fasteners, Inc. ("Trimas") owned and occupied a manufacturing facility situated on forty-four acres of land in Frankfort, Indiana. The Washington Township Assessor in Clinton County (the "Assessor") valued the Trimas property at $7,762,600. Trimas filed an appeal with the Clinton County PTABOA seeking to lower the assessment.[146] The PTABOA reduced the assessment to $7,212,300. Trimas timely filed an appeal with the IBTR seeking to lower the assessed value still further. At the administrative hearing on the matter, Trimas presented an appraisal and testimony that estimated that on January 1, 1999, the market value-in-use of Trimas's property was $2,960,000.[147] The Assessor, in response, presented two appraisals testifying that the market value-in-use of Trimas's property was $8,000,000 on March 1, 2002 and $8,100,00 on July 31, 2003. The IBTR reduced Trimas's assessment to $2,960,000 based on Trimas's appraisal. The IBTR found this appraisal to be more accurate because it was based on the Uniform Standards of Professional Appraisal Practice (USPAP) and had valued the property January 1, 1999, the proper valuation date.[148] The Assessor timely filed an appeal.

The Tax Court gave great deference to the IBTR's final determination. Furthermore, the court stated that when there are "competing opinions as to how a property should be valued, the [IBTR] . . . must determine which opinion is more probative" by persuading the IBTR "that its value opinion is more credible and reliable than that of the other."[149]

However, the Assessor challenged the IBTR's evaluation of the competing appraisals. In considering the Assessor's challenge, the court first examined why the appraisals were so different.[150] The court found one primary difference between the sides: the appraisal presented by Trimas concluded that its property suffered from external obsolescence, while the Assessor's appraisals disagreed.

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141. *Id.* at 1138-39.
142. *Id.* at 1138.
143. *Id.*
144. *Id.* at 1139.
145. 923 N.E.2d 496 (Ind. T.C. 2010).
146. *Id.* at 497.
147. *Id.*
148. *Id.* at 498.
149. *Id.* at 502.
150. *Id.* at 499.

Trimas's conclusion of external obsolescence rested upon the selection and use of properties within each appraisal's sales-comparison approach to value.[151] The Trimas appraisal utilized the sale of similar properties throughout Indiana involving fee simple transactions and concluded that there was external obsolescence because the market was saturated with manufacturing facilities for sale.[152] The Assessor's appraisals arrived at the opposite conclusion by examining six sales of industrial facilities located in Indiana. All of these sales occurred with leases in place. Therefore, the Assessor asserted that the IBTR erred in adopting the Trimas appraisal because the Trimas property was, in fact, being used by its owner while the comparable properties in the Trimas appraisal were vacant. The court, however, found that the IBTR "did not ignore the Assessor's evidence; it simply found Trimas's evidence to be more persuasive."[153]

6. Meyers v. Kosciusko County Assessor.[154]—William Meyers ("Meyers") occupied residential lakefront property on Dewart Lake in Syracuse, Indiana. In 2007, the property's assessed value increased to $314,600—a significant increase over the previous year. The Kosciusko County Assessor attributed the increase to Meyers' land being reclassified as "lakefront."[155] Meyers filed an appeal with the Kosciusko County PTABOA challenging the reclassification. The PTABOA reduced the assessment to $293,200. Meyers timely filed an appeal with the IBTR. At the IBTR hearing on the matter, Meyers argued that: (1) his friends owned more expensive property, and their taxes had not increased; (2) property values nationwide had plummeted; (3) the governor and other legislators had proclaimed that his property tax liability was supposed to decrease; and (4) his assessment was disproportionate to what he had paid for the property in 1975.[156] The IBTR rejected these arguments, and Meyers timely filed an original tax appeal.

On appeal, Meyers repeated his four arguments.[157] As the court explained, Indiana real property is assessed on the basis of its market value-in-use, and the taxpayer is required to provide probative evidence demonstrating what a property's market value-in-use would have been at the time of assessment.[158] Meyers provided no such evidence to the IBTR, and therefore, the Tax Court refused to find the IBTR's final determination erroneous.

7. Pachniak v. Marshall County Assessor.[159]—In 2006, Lawrence and Glenda Pachniak (the "Pachniaks") purchased residential property on Lake Maxinkuckee in Culver, Indiana for $1,175,000. The property consisted of four parcels: two were lakefront, and two sat across the street. In 2006, the Marshall County

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151. *Id.*
152. *Id.* at 501.
153. *Id.*
154. No. 49T10-0909-TA-56, 2010 WL 1806692 (Ind. T.C. Mar. 6, 2010).
155. *Id.* at *1.
156. *Id.*
157. *Id.* at *2.
158. *Id.*
159. 928 N.E.2d 655No. 49T10-0904-TA-18, 2010 WL 2284248 (Ind. T.C. June 8, 2010).

Assessor valued the Pachniaks' property at $1,182,700.[160] The Assessor classified all four parcels as "lakefront" while applying a negative 50% influence for the parcels that sat across the street, which accounted for "traffic flow" and "size and shape." The Pachniaks appealed to the Marshall County PTABOA, arguing that classification of two non-lakefront parcels was erroneous because they were not located on the lake.[161] The PTABOA denied their appeal, so the Pachniaks timely filed an appeal with the IBTR. At the IBTR hearing, the Pachniaks argued that the assessments of their across-the-street parcels were inconsistent with the assessments of similar properties located nearby.[162] The IBTR affirmed the assessment, and the Pachniaks timely filed an original tax appeal.

On appeal, the Pachniaks argued that the IBTR "erred when it failed to reclassify their two across-the-street parcels so that their assessed values were more in line with the assessed values of other similarly situated parcels."[163] The court rejected this argument, holding that taxpayers are required to produce "objectively verifiable evidence demonstrating what their property's market value-in-use actually is."[164] The court further found that the Pachniaks' property assessment was in line with its purchase price of $1,175,000 and that there was nothing in the administrative record showing how much, if any, of that purchase price represented the two parcels that sat across the street.[165] Therefore, the court affirmed the assessment.

8. Country Acres Ltd. Partnership v. Pleasant Township Assessor.[166]—Country Acres Ltd. Partnership ("Country Acres") owned an apartment complex in LaPorte, Indiana situated on approximately seven acres of land.[167] The complex primarily served tenants who benefited from federal subsidized housing programs. The Pleasant Township Assessor/LaPorte County Assessor (collectively, the "Assessor") assessed Country Acres's property at $3,336,200 in 2004. Country Acres appealed the assessment to the LaPorte County PTABOA and eventually, to the IBTR.[168] Country Acres presented two analyses during those proceedings to prove that there was an error in the assessment. The first analysis estimated that the property's market value-in-use was $836,921 as of January 1, 1999.[169] The second analysis, prepared in conformance with the USPAP, estimated the property's market value to have been $2,200,000 on June 28, 2005. Both analyses employed the income approach to value.[170] In contrast, the Assessor's analysis established the market value-in-use of the Country Acres

160. *Id.* at *1.
161. *Id.*
162. *Id.*
163. *Id.* at *2 (citation omitted).
164. *Id.*
165. *Id.*
166. No. 71T10-0903-TA-5, 2010 Ind. Tax LEXIS 27 (Ind. T.C. July 19, 2010).
167. *Id.* at *1.
168. *Id.* at *2.
169. *Id.*
170. *Id.* at *2-3.

complex at $2,393,000 on January 1, 1999. The Assessor's analysis also employed the income approach. The IBTR issued a final determination in which it reduced Country Acres's assessment to $2,135,900.[171] In doing so, the IBTR concluded that after applying a 7% trending factor, the Country Acres second analysis was the best evidence of the property's market value-in-use on the date of assessment. The IBTR found the Assessor's appraisal to be unreliable.[172] Country Acres timely filed an original tax appeal.

On appeal, Country Acres claimed that the IBTR abused its discretion when it concluded that the Country Acres second appraisal best reflected the complex's market value-in-use. Country Acres argued that the IBTR had overstepped its authority by linking the probative value of the first analysis to the fact that it had been prepared on a contingent fee basis.[173] Country Acres further argued that the evidence did not support the IBTR's finding that the first analysis miscalculated the replacement reserve estimate and also applied the wrong capitalization rate.

As to the contingency fee issue, the court disagreed with this position, explaining that "the contingent nature of an expert witness's fee *goes to the weight*, not the admissibility, of the expert's testimony."[174] Furthermore, as the finder of fact, the IBTR was responsible for weighing the evidence and judging the credibility of witnesses, and the court refused to reweigh the evidence.

As to the replacement reserve estimate, the court found that the accuracy of the replacement reserve estimate calculation in the first appraisal did not simply depend on the appraiser's methodology in formulating the estimate, but instead required an examination of the facts underlying the analysis.[175] The administrative record showed that the use of the replacement reserve estimate utilized in the first appraisal had been previously questioned by the Assessor's representatives due to the manner in which apartment complexes typically handle replacement or repair of reserve items.[176] In the apartment management industry, a reserve fund is not normally maintained. Furthermore, the second appraisal stated that Country Acres "historically" engaged in the practice of repairing and replacing items without maintaining a reserve. The court held that these facts suggested that Country Acres's repair expenses, as reported on its balance sheets, most likely "included expenses that should have been categorized as reserves."[177] The court held that it would not disturb the IBTR's resolution of an issue if it was supported by enough relevant evidence.

As to the capitalization rate, the court explained that "[t]he valuation of property is the formulation of an opinion; it is not an exact science."[178] The IBTR was faced with determining which opinion presented was more probative. In this

171. *Id.* at *3.
172. *Id.* at *6.
173. *Id.* at *8.
174. *Id.* (quoting Wirth v. State Bd. of Tax Comm'rs, 613 N.E.2d 874, 877 (Ind. T.C. 1993)).
175. *Id.* at *11.
176. *Id.*
177. *Id.* at *12.
178. *Id.* at *14.

case, the court reviewed the written evidence and found that the IBTR did not err in rejecting the capitalization rate utilized in the first appraisal, as it was consistent with its findings.[179]

Country Acres prevailed on one issue. Country Acres argued that the IBTR had erroneously reduced the assessment on its property to $ 2,135,900 because the IBTR had miscalculated the application of a 7% trending factor to the figure presented by the second appraisal.[180] After reviewing the math, the court held that only a 3% trending factor was applied, and when a 7% trending factor was applied, the final market value-in-use would be $ 2,056,075. This issue was remanded to the IBTR so that it could instruct the appropriate assessing officials to assess the subject property consistent with a 7% trending factor.[181]

9. DeKalb County Eastern Community School District v. DLGF.[182]—The DeKalb County Eastern Community School District (the "District") is a public school corporation located in DeKalb County, Indiana. On August 18, 2008, the District adopted its proposed budget for 2009, estimating the tax rate needed to finance its capital projects fund.[183] The District asked the DLGF to approve its budget. The DLGF reduced the tax rate applicable to the District's capital projects fund levy according to Indiana Code section 6-1.1-18-12. The District timely protested reduction. The DLGF denied the protest, and the District timely filed an original tax appeal.[184]

Pursuant to Indiana Code section 20-46-6-5, the tax rate applicable to any school corporation's capital projects fund levy "is capped at a maximum rate of $0.4167 per each $100 of assessed valuation within the taxing district."[185] The maximum rate is subject to adjustment each year based on a statutory formula provided in Indiana Code section 6-1.1-18-12. The District challenged how this formula is to be applied. Specifically, the District questioned the meaning of the term "actual percentage increase" as used in the statute.[186] The District argued that the phrase should be interpreted to mean actual increases only, and if there is no increase in a District's assessed value from year to year, a zero value should be used in the formula. Conversely, the DLGF asserted that the use of a zero value in the formula ignored the fact that when the maximum capital projects fund rate was calculated for 2009, there were two years accounted for in the formula in which the assessed value of property actually decreased, and the use of a zero value was an inaccurate reflection of the actual change in the District's assessed value.[187] The court held that the DLGF's position was contrary to the rules of statutory construction generally applied by the court when faced with

179. *Id.*
180. *Id.* at *15.
181. *Id.*
182. 930 N.E.2d 1257 (Ind. T.C. 2010).
183. *Id.* at 1258.
184. *Id.* at 1258-59.
185. *Id.* at 1259 (citing IND. CODE § 20-46-6-5 (2011)).
186. *Id.* at 1260.
187. *Id.*

such a question.[188] The court further explained that when faced with a question of statutory construction, its function is to determine and implement the intent of the legislature in enacting that statutory provision, and in doing so, it will normally rely on the plain language of the statute. Therefore, the court gave great weight to the legislature's intentional use of the phrase "actual percentage increase" in the statutory formula.[189] Given the actual language used in Indiana Code section 6-1.1-18-12, the court held that the phrase "actual percentage increase" means increase only, and if there is no increase, a zero value should be used.[190]

10. Brown v. DLGF.[191]—On January 20, 2009, Gregg Township (the "Township"), in northwest Morgan County, Indiana, issued a resolution authorizing the Township to enter into a loan for up to $250,000. The funds would allow the fire department to reinstate EMS personnel, restoring the ambulance service that was eliminated in 2007.[192] Dora Brown, Ben Kindle, and Sonjia Graf (the "Petitioners") challenged the need for such a loan by filing objections to the Township's authorization of loan with the Morgan County Auditor (the "Auditor"). The matter was forwarded to the DLGF. The DLGF conducted a hearing on the matter and issued a final determination approving the loan but reducing the amount from $250,000 to $120,806.[193] The Petitioners timely filed an original tax appeal.

On appeal, the Petitioners presented four arguments in support of their position that the Township's loan resolution must be reversed. First, they argued that the board's resolution was void ab initio because one member who voted to approve the loan was not a resident of the Township. Second, the Petitioners argued that the Township's contract with the fire department was prohibited by statute.[194] Third, they argued that there was no evidence supporting the DLGF's finding that emergency services were needed. Fourth, and finally, the Petitioners contended that "with the DLGF's approval of the loan resolution, the Township will unfairly bear the entire cost for the fire department's provision of ambulance service."[195]

As to the first issue, the court explained that the Indiana Constitution requires that "[a]ll county, township, and town officers shall reside within their respective counties, townships and towns[,]"[196] but there is a well-recognized exception if the officer's removal or absence is merely temporary.[197] The evidence suggested that the board member whose residency was in question had abandoned his

188. *Id.*
189. *Id.* at 1261.
190. *Id.*
191. No. 49T10-0909-TA-52, 2010 Ind. Tax LEXIS 34 (Ind. T.C. Aug. 31, 2010).
192. *Id.* at *2.
193. *Id.* at *2-3.
194. *Id.* at *4.
195. *Id.*
196. *Id.* at *5 (quoting IND. CONST. art. VI, § 6).
197. *Id.* (citing Relender v. State *ex rel.* Utz, 49 N.E. 30, 32 (Ind. 1898)).

residence only temporarily until it could be repaired. Therefore, the court found that it was the Petitioners' burden to rebut the evidence and the Petitioners had not done so.[198]

As to the Township being statutorily prohibited from contracting with the fire department for emergency services, the Petitioners cited Indiana Code section 36-8-13-3, arguing that the statute provided townships with authority to provide firefighting services only. The court disagreed, holding that "to the extent a township board may contract for the provision of emergency ambulance services and emergency medical services, it may contract with a volunteer fire department to provide those services."[199]

As to the Petitioners' contention that the evidence did not support the DLGF's finding that the need for emergency services existed, the court cited Indiana Code section 36-6-6-14(d), which outlines certain factors that a township board or any reviewing authority should consider when approving additional borrowing. The court therefore gave great deference to whatever factor or reason the DLGF used to justify its final determination, since no single factor deserved more weight or was dispositive as long as its reasoning was supported by substantial evidence. The court found that the evidence in the administrative record supported the Township's desire to obtain quicker response times to the emergency needs of township residents, and hence, the DLGF's decision was justified.[200]

Finally, as to the Petitioners' contention that the Township would unfairly bear the entire cost for the fire department's provision of ambulance services, the court noted that during the administrative hearing, the Petitioners presented evidence demonstrating that the fire department responded to calls outside of the township. Therefore, the Petitioners argued, to the extent the fire department also was the primary responder for other jurisdictions, the other jurisdictions should bear a portion of the overall cost associated with the fire department's provision of ambulance services.[201] The court found that the DLGF's final determination failed to address this issue whatsoever.[202] Therefore, the court remanded the matter to the DLGF.

11. 6787 Steelworkers Hall, Inc. v. Scott.[203]—6787 Steelworkers Hall, Inc. ("Local 6787"), an affiliate of the United Steelworkers of America, had been a domestic not-for-profit corporation since 1967, recognized as a 501(c)(5) organization by the Internal Revenue Service.[204] During the relevant year, Local 6787 owned and operated a banquet facility and a union hall in Portage, Indiana. The Porter County Assessor (the "Assessor") assessed the property at $3,554,800: $344,300 for the land and $3,210,500 for the improvements. Local 6787

198. *Id.* at *7.
199. *Id.* at *11 (internal citation omitted).
200. *Id.* at *14-15.
201. *Id.* at *20.
202. *Id.* at *22.
203. 933 N.E.2d 591 (Ind. T.C. 2010).
204. *Id.* at 592.

subsequently applied for an educational purposes exemption with the Assessor on the banquet facility, the union hall, the land, and the personal property.[205] The Porter County PTABOA issued a final determination concluding that Local 6787's union hall, the personal property, and the land were exempt from taxation, but the banquet facility was 100% taxable.

Local 6787 filed a petition for review of exemption with the IBTR. During a hearing before the IBTR, Local 6787 presented substantial amounts of evidence with regard to the actual use of the banquet facility, especially those uses that coincided with charitable purposes.[206] The IBTR issued a final determination concluding that Local 6787 had not demonstrated that the banquet facility was predominately used for educational or charitable purposes, but instead, the banquet facility was mainly used to promote the employment interests of Local 6787's membership. Local 6787 timely filed an original tax appeal.[207]

On appeal, Local 6787 asserted that because its union activities were charitable, that made the use of the facility charitable as well. The court, however, disagreed with that assertion.[208] The court noted that Local 6787 did not support its argument with any Indiana statute, case law, or any other persuasive authority. Furthermore, the court explained that the fact that Local 6787's union hall had qualified for a property tax exemption in the past did not mean that its banquet facility should automatically be deemed exempt.[209] The court found that the there was no evidence presented to the IBTR "as to how the educational or charitable uses of the union hall coincided with the uses of the banquet facility."[210] In addition, the court held that while Local 6787's by-laws indicated some charitable and educational intent as to the organization, such intent did not establish predominant use of the facility. Finally, the court found that "Local 6787's educational uses of the banquet facility . . . were insufficient to support a finding of . . . charitable use because the facility was used for such activities less than . . . [fifty] percent of the time."[211] Based on this reasoning, the court found that the IBTR did not err in denying the exemption.[212]

12. Scopelite v. DLGF.[213]—In September 2007, the City of Hammond (the "City") adopted a budget and correlating property tax levy for 2008. In May 2008, the Auditor of Lake County, Indiana (the "Auditor") posted a notice to City taxpayers of the new property tax rates to be charged under the approved property tax levy.[214] Shortly thereafter, a group of taxpayers, including Dale J. Scopelite and James T. Sheehan (collectively, "Petitioners"), appealed the increased rates

205. *Id.*
206. *Id.* at 593-94.
207. *Id.* at 594.
208. *Id.* at 595-96.
209. *Id.* at 596.
210. *Id.*
211. *Id.*
212. *Id.*
213. 939 N.E.2d 1138 (Ind. T.C. 2010).
214. *Id.* at 1140.

by filing an objection statement with the Auditor. The taxpayers argued that the City had recklessly spent money for the past several years, "forcing taxpayers to make up the shortfall through higher property taxes."[215] The matter was passed on to the DLGF. The DLGF held a hearing; its final determination denied the taxpayers' petition and approved the City's 2008 budget. In so doing, the DLGF did not address each of the taxpayers' objections individually; instead, it addressed them collectively as four distinct issues.[216] Petitioners timely filed an original tax appeal.

On appeal, Petitioners presented four issues for the court to consider. First, Petitioners argued that they were denied due process by the DLGF when it conducted its hearing on the taxpayers' objection statement. Second, the Petitioners argued that DLGF did not follow the law when it failed to provide written determinations and statements on each of the taxpayers' fifty-nine objections.[217] Third, Petitioners argued that the DLGF erred in failing to conclude that the City had exceeded its debt limit. Fourth, Petitioners claimed that the DLGF had erroneously approved the City's budget.

As to the first issue, the Petitioners argued that the DLGF, by statute, should have conducted its hearing on the taxpayers' objection no later than February 15, 2008, but the DLGF did not conduct its hearing on the taxpayers' objection petition until October 30, 2008. As a result, the Petitioners claimed that they had been denied due process.[218] The court rejected this argument. In doing so, the court reasoned that the February 15 deadline set forth in Indiana Code section 6-1.1-17-16(h) is not mandatory since the statute does not specify adverse consequences if the deadline is not met.[219] Such an omission in the statute led the court to conclude that the "legislature's purpose behind the specified date is simply to keep the budget process 'moving along' and, ultimately, to ensure that the DLGF has final review on both budgets and taxpayer objections thereto."[220] The court also found, with respect to the Petitioners' allegation that the City implemented its budget prior to the DLGF's hearing on October 30, 2008, that there was no evidence in the record to substantiate that allegation.

As to the second issue, "the Petitioners argued that pursuant to Indiana Code . . . [section] 6-1.1-17-13, the DLGF was required to provide written determinations and statements on each of the fifty-nine objections."[221] The court disagreed, finding that the statute cited by the Petitioners did not require that the DLGF's final determination or statement of findings be in a specific format.

As to the third issue, the Petitioners argued that the DLGF's final determination was erroneous because the DLGF incorrectly calculated the City's

215. *Id.*
216. *Id.* at 1141.
217. *Id.* at 1143.
218. *Id.* at 1142.
219. *Id.* at 1143.
220. *Id.*
221. *Id.* (citation omitted).

debt and failed to determine that the City exceeded its debt limit.[222] The court explained that the Petitioners bore the burden of proving that the DLGF's final determination was invalid, and they had failed to produce any evidence from the administrative record to meet this burden.[223] The court also found that the Petitioners' argument incorrectly interpreted Indiana Code section 36-1-15-2(2) with regard to debt limitations for political subdivisions and that the Petitioners had failed to show that the DLGF erred in calculating the amount of debt to which the City was allowed.[224]

Finally, as to the fourth issue, the Petitioners argued that they provided specific instances to the DLGF where the City's budget was inaccurate during their objection hearing. The Petitioners argued that the DLGF failed to rectify the mistakes even after the Petitioners alerted them. The court explained that when reviewing a DLGF final determination, it will give the DLGF's determination great deference as long as it is supported by substantial evidence.[225] The court found, after reviewing the transcript and evidence from the DLGF hearing, that the budget issues of which the Petitioners complained were really nothing more than "unsupported allegations, conclusory statements, open-ended questions, and opinions" as to how money would be better spent.[226] Therefore, the court would not find that the DLGF erred with regard to the City's budget. The court affirmed the DLGF's final determination in its entirety.[227]

13. Hubler Realty Co. v. Hendricks County Assessor.[228]—Hubler Realty Company ("Hubler") owned three contiguous parcels of land ("Parcels 195-1, 195-2, and 197-1") in Plainfield, Indiana. Parcels 195-1 and 197-1 were occupied by an automobile service center, and a commercial garage sat on Parcel 197-1. For tax year 2006, Parcel 195-1 was assessed at $1,011,400; Parcel 195-2 was assessed at $173,300; and Parcel 197-1 was assessed by the Hendricks County Assessor (the "Assessor") at $453,500.[229] Hubler timely filed three petitions for review with the Hendricks County PTABOA, alleging that its assessments were inaccurate because the three parcels should have been assessed as a single property.[230] The PTABOA held a hearing and issued three final determinations in which it adjusted the assessments of Parcels 195-1 and 195-2 because "the land delineations on . . . the [two] parcels were incorrect."[231] The PTABOA's determination decreased the overall assessed value of Hubler's three parcels from $1,638,200 to $1,553,000.[232]

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222. *Id.* at 1144.
223. *Id.* at 1145.
224. *Id.* at 1145-46.
225. *Id.* at 1147.
226. *Id.*
227. *Id.*
228. 938 N.E.2d 311 (Ind. T.C. 2010).
229. *Id.* at 312.
230. *Id.*
231. *Id.*
232. *Id.* at 313.

Unsatisfied, Hubler timely filed three petitions for review with the IBTR. Hubler's appraisal, presented during the IBTR hearing, valued the properties at $1,375,000. The PTABOA argued in response that Hubler's sales disclosure form demonstrated that the assessed value of the properties was not too high.[233] The IBTR's final determination "explained that the totality of the evidence . . . demonstrated that the PTABOA's assessments did indeed reflect the properties' market values-in-use."[234] Hubler timely filed an original tax appeal.

On appeal, Hubler called for reversal of the IBTR's final determination because it sanctioned selective reappraisal and sales chasing. The court, however, found that the certified administrative record failed to show that the Assessor or the PTABOA applied either selective reappraisal or sales chasing in determining the market values-in-use of Hubler's parcels.[235] The court explained that "[w]hen a taxpayer elects to challenge its assessment, it assumes a certain degree of risk, as resolution of a property tax appeal may lead to an increase in assessment."[236] Also, each party to an appeal uses probative evidence in order to prove to the IBTR that its valuation best reflects a property's market value-in-use.[237] The court found that the evidence revealed that the Assessor's initial $1.6 million valuation of Hubler's properties was a result of Indiana's annual trending process and not the product of "sales chasing, spot assessments, or selective reappraisals."[238] Rather, the evidence suggested that both the Assessor and the PTABOA reviewed Hubler's sales disclosure form in order to determine whether the properties were overvalued for assessment purposes. Finally, the court found that the IBTR reached its conclusions by weighing the evidence presented by both Hubler and by the PTABOA, which is within the purview of the IBTR.[239]

14. Shelby County Assessor v. Shelby's Landing-II, LP.[240]—In 2006, Shelby's Landing-II, LP ("Shelby LP") owned two low-income apartment complexes in Shelbyville, Indiana. The complexes were completed in early 2006 and commenced operations shortly thereafter. Both complexes were designed as low-income housing in order to qualify for federal tax credits under the IRC. Shelby LP awarded those tax credits to project investors over a period of ten years.[241] In exchange, Shelby LP agreed to "rent all of the units in each of the complexes to individuals whose income was . . . [sixty] percent or less of the county's median gross income . . . and subject to Indiana Housing Finance Authority rental guidelines" for a period of thirty years.[242] The Shelby County Assessor (the "Assessor") assigned the larger complex an assessed value of

233. *Id.*
234. *Id.* (citation omitted).
235. *Id.* at 314.
236. *Id.* (citation omitted).
237. *Id.*
238. *Id.* at 314-15.
239. *Id.* at 315.
240. No. 49T10-1004-TA-17, 2010 WL 4950099 (Ind. T.C. Dec. 6, 2010).
241. *Id.* at *1.
242. *Id.*

$7,434,600, and the smaller complex was assessed at $1,761,200.[243] Shelby LP disagreed with these values and filed petitions for review—first with the Shelby County PTABOA, and then with the IBTR.

During the IBTR hearing, Shelby LP presented an appraisal using the income approach, which estimated that as of January 1, 2005, the market value-in-use of the larger complex was $3,100,000. This value was calculated after applying a capitalization rate of 11.05% to the complex's estimated net operating income of $368,048.[244] That rate was "derived from the capitalization rates of several recently sold conventional apartment complexes and a 2.3% local tax rate adjustment."[245] This appraisal estimated the market value-in-use of the other complex at $642,500, applying the same methodology as the other appraisal, but employing a 10.28% capitalization rate.[246] The Assessor argued that the appraisals were unreliable due to the use of flawed capitalization rates. The IBTR issued a final determination that for 2006, the larger complex should have been assessed at $3,100,000, and the smaller complex should have been assessed at $642,500.[247] The Assessor timely filed an original tax appeal.

On appeal, the Assessor claimed that the IBTR's final determination should be reversed because it ignored evidence presented by the Assessor and failed to address the Assessor's challenges to Shelby LP's appraisals. In support of this claim, the Assessor argued that the Shelby LP appraisals used net operating income estimates that were not based on aggregate market data and that the appraisals' capitalization rates were based on incomparable market rent apartment complexes.[248]

The court explained that the IBTR had found the Assessor's first argument unpersuasive because it was inconsistent with evidence presented by the Assessor. The IBTR had also found that the Assessor had failed to present probative evidence as to the inaccuracy of the appraisal data.[249] Therefore, the court held that the administrative record supported the IBTR's finding.

As to the Assessor's position on the capitalization rates, the court explained that the IBTR found this position ineffective because Shelby LP's overall evidentiary presentation was consistent with the properties' market values-in-use.[250] Therefore, the court held that the administrative record supported the IBTR's finding as well.

Finally, the court explained that the act of valuing real property is not an "exact science" and that when faced with "competing opinions as to how a property should be valued, the . . . [IBTR] determines which opinion is more

243. *Id.*
244. *Id.*
245. *Id.* (citation omitted).
246. *Id.* (citation omitted).
247. *Id.* at *2.
248. *Id.*
249. *Id.* at *3.
250. *Id.*

probative."[251] The court found that the evidence clearly supported the IBTR's final determination, and therefore, the court could not find that the IBTR erred in valuing Shelby LP's two apartment complexes.[252]

B. Inheritance Tax

1. Indiana Department of State Revenue v. Estate of Parker.[253]—In May 1983, Doris Parker and her husband, Roy Parker, executed four warranty deeds in order to convey the family farm to their children, but reserving life estates to themselves. Roy died in January 1984. In December 1006, Doris died intestate and was survived by her two children.[254] Doris Parker's estate (the "Estate") timely filed an Indiana inheritance tax return reporting that the total fair market value of the family farm was $1,230,950 and that $307,737.50 represented the fair market value of Doris's life estates used to compute Doris's children's inheritance tax liabilities.[255] The Estate did not attach a formal appraisal to the return. The Hendricks County Inheritance Tax Appraiser (the "Appraiser") issued a report that the information in the return was correct. Based on this report, the probate court entered an order determining inheritance tax due.[256]

In January 2008, the Inheritance Tax Division of the Indiana Department of State Revenue (the "Department") petitioned for rehearing and for a redetermination of the inheritance tax (the "Petition") with the probate court. The Department claimed that the Estate had incorrectly computed the children's inheritance tax liabilities and did not include an appraisal with its return.[257] At the hearing on the Petition, the Department identified only two issues: first, whether Indiana Code section 6-4.1-4-1 and Indiana Administrative Code title 45, section 4.1-4-3 "required the Estate to file an appraisal with its inheritance tax return;" and second, whether Indiana Code section 6-4.1-2-4 and Indiana Administrative Code title 45, section 4.1-2-7 required the children's "inheritance tax liabilities to be based on the fair market value of the family farm, not merely the fair market value of Doris's life estates."[258] The probate court held that a formal appraisal was not required, but that the Estate must submit a determination of fair market value of the Estate's assets. The probate court also held that the children had received less than a fee interest upon the death of Doris, and therefore, their inheritance tax liabilities should be based on Doris's life estates.[259] The Department timely filed an appeal with the Tax Court.

On appeal, the Department asserted that the probate court's decision with

251. *Id.* at *4.
252. *Id.*
253. 924 N.E.2d 230 (Ind. T.C. 2010).
254. *Id.* at 231.
255. *Id.*
256. *Id.* at 232.
257. *Id.*
258. *Id.*
259. *Id.*

regard to the appraisal requirement must be reversed because the Estate's inheritance tax return did not comply with Indiana Code section 6-4.1-4-1 as clarified by Indiana Administrative Code title 45, section 4.1-4-3. The court held that this statute did not require the Estate to obtain an appraisal valuing its assets at their fair market value, nor did it require the Estate to file such an appraisal with its inheritance tax return.[260] In support of this holding, the court stated, "If the legislature had intended for the Estate to substantiate its own opinion as to the fair market value of its assets by attaching an appraisal to its return, it would have stated as much."[261] The court further reasoned that the documents listed under Indiana Administrative Code title 45, section 4.1-4-3 are only required to "be attached to an inheritance tax return *only if they exist*, as the existence of each of the documents is not guaranteed."[262]

The Department also argued that it was erroneous for the probate court to hold that the life estates alone were subject to the inheritance tax. Instead, the Department argued that the inheritance tax liability should have been based on what the children inherited—the entire fair market value of the family farm. The court agreed.[263] The court reasoned that "Indiana's inheritance tax statutes impose, at the time of the decedent's death, a tax on the privilege of succeeding to certain property rights of deceased persons," and the tax should be based on the beneficial interest transferred at death.[264] The court found that Roy and Doris Parker conveyed real property to their children, reserving life estates to themselves. The inter vivos transfers of the children's remainder interests in 1983 resulted in no inheritance tax liabilities because Doris had retained a present possessory interest in the family farm until her death. Doris's interest in the family farm extinguished upon her death, and her children automatically gained possession of the entire property.[265]

2. *Indiana Department of State Revenue v. Estate of Ogle*.[266]—Marjean Ogle died on April 13, 2008, and the Estate timely filed its Indiana inheritance tax return, reporting a total tax liability of $1488.[267] The Estate attached an appraisal to establish the value of real estate owned by Marjean Ogle at the time of her death. The Jasper County Inheritance Tax Appraiser determined that the information on the Estate's return was accurate, and the probate court issued an order consistent with the Estate's reported tax liability.[268] On February 17, 2009, the Department filed a petition for rehearing, reappraisement, and redetermination of inheritance tax, claiming that the amount of tax in controversy could not be

260. *Id.* at 234.

261. *Id.*

262. *Id.* at 235 (citing Will's Far-Go Coach Sales v. Nusbaum, 847 N.E.2d 1074, 1078 (Ind. T.C. 2006)).

263. *Id.* at 236.

264. *Id.*

265. *Id.* at 237.

266. 923 N.E.2d 493 (Ind. T.C. 2010).

267. *Id.* at 494.

268. *Id.*

established. Following a hearing, the probate court denied the Department's petition and found that pursuant to Indiana Code section 6-4.1-4-1, the Estate was not required to file an appraisal for the real estate.[269] The Department timely filed an appeal to the Indiana Tax Court.

On appeal, the Department asserted that it had "promulgated an administrative rule that explain[ed] how an estate is to 'indicate' the fair market value of real estate under" Indiana Code section 6-4.1-4-1.[270] The administrative rule specifically provided that "[t]he following documentation shall be attached to the inheritance tax return: . . . [a] formal appraisal, by a licensed appraiser, setting forth the fair market value of all tangible property reported on the return."[271] Moreover, the Department argued for reversal of the probate court's order determining the Estate's inheritance tax liability because the Estate's appraisal was "insufficient."[272] The court held that Indiana Code section 6-4.1-4-1 did not require that an appraisal be attached to an inheritance tax return.[273]

3. In re Estate of Quackenbush.[274]—In May 2007, Forrest Quackenbush ("Forrest") died testate. Upon his death, Forrest's trust provided that the co-trustees distribute all of the annual net income and a portion of the principal in equal shares to his grandchildren, including to a grandchild who had been given up for adoption shortly after birth.[275] On February 2, 2008, the Estate filed its inheritance tax return in February 2008, reporting that the grandchild who had been given up for adoption was Forrest's biological granddaughter and that her two sons were his great-grandsons. Therefore, the Estate had treated the grandchild and two great-grandchildren as "class A" transferees in computing its inheritance tax liability. The probate court accepted the Estate's inheritance tax return as filed.[276]

The Department filed a petition for rehearing and redetermination of inheritance tax with the probate court. The Department argued that the grandchild and her children should have been classified as "class C" transferees because they had been given up for adoption before they were emancipated. As a result, the Department claimed that the Estate owed additional inheritance tax plus interest.[277] After a hearing, the probate court issued an order granting the Department's petition and ordered the Estate to pay the additional inheritance tax plus statutory interest.[278] The Estate timely filed an appeal.

The Estate argued that the probate court erred in finding that the grandchild

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269. *Id.*

270. *Id.* at 495.

271. *Id.* (quoting 45 IND. ADMIN. CODE 4.1-4-3(a)(6) (2011)).

272. *Id.* at 496.

273. *Id.* The court cited *Indiana Department of State Revenue v. Estate of Parker*, 924 N.E.2d 230 (Ind. T.C. 2010), which had been handed down the same day.

274. 926 N.E.2d 127 (Ind. T.C. 2010).

275. *Id.* at 128.

276. *Id.*

277. *Id.*

278. *Id.*

and her children were "class C" transferees. In support of this position, the Estate argued that "nothing within that statute or the inheritance tax statutes in general prevents an adoptee 'from being treated as . . . a lineal descendant of . . . [a] natural ancestor . . . for inheritance tax purposes.'"[279] In response, the Department asserted that the resolution of the issue should not be solely based upon the inheritance tax statutes, but the court should also consider the adoption, intestacy succession, and testacy succession statutes. These other statutes make clear that the legislature intended to sever the biological tie to a natural ancestor in a legal sense, and therefore, the probate court correctly held that the grandchild and her children should be classified as "class C" transferees.[280]

The court found this issue to be a matter of first impression in Indiana; therefore the court looked to other jurisdictions to see how they had addressed similar issues. The court further explained that, while not binding, each court's analysis of "the interrelationship between its descent and devise statutes and its inheritance tax statutes" was instructive.[281]

The court further explained that the "overall design of Indiana's probate code with respect to the distribution of property is to treat an adopted child as the natural child of the adoptive parents only."[282] After a thorough explanation of Indiana's probate code, the court found that the General Assembly has unambiguously determined that for purposes of inheritance, a child adopted pre-emancipation by unrelated individuals obtains a family status equal to that of a natural child of those adoptive parents only, and the child's biological ties to his or her natural parents are legally severed.[283]

The court went on to explain that Indiana Code section 6-4.1-1-3 provides that "a legally adopted child is to be treated as if the child were the natural child of the child's adopting parent if the adoption occurred before the individual was totally emancipated."[284] The court considered this code section in relation to the adoption and descent and devise statutes and concluded that the probate court had correctly determined that the legislature did not intend to confer "class A" transferee status to the grandchild or her children. The court further explained that the clear thrust of Indiana's adoption and inheritance statutes, and the case law interpreting these statutes, provides that in non-relative adoption cases, the natural parent-child relationship is legally severed.[285] Therefore, the court refused to legitimize the familial relationship between the decedent and his previously adopted grandchild for inheritance tax purposes.[286]

4. Indiana Department of State Revenue v. Estate of Boehle.[287]—On

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279. *Id.* at 129 (citation omitted).
280. *Id.*
281. *Id.*
282. *Id.* at 130 (citation omitted).
283. *Id.*
284. *Id.* (quoting IND. CODE § 6-4.1-1-3(d) (2011)).
285. *Id.* at 131.
286. *Id.* at 132.
287. 932 N.E.2d 260 (Ind. T.C. 2010).

November 15, 2006, Katherine Boehle died testate. She was survived by a son and her nephew. At the time of Katherine's death, her son was a fifty-six-year-old adult with Down Syndrome who resided in an assisted living facility. Katherine's will established a testamentary special supplemental needs trust (the "Trust") by which she sought to create a purely discretionary supplemental care fund for the benefit of her son in order to avoid displacing any public or private financial assistance that was otherwise available to him.[288] The Trust further provided that upon the death of her son, the Trust would terminate, and the remaining corpus would be distributed to Katherine's nephew.[289] Katherine's estate (the "Estate") timely filed its Indiana inheritance tax return "valuing all beneficiaries' interests in the Trust as future interests,"[290] which the probate court accepted as filed.[291] The Department challenged the Estate's calculation of its inheritance tax liability, and the Estate filed a petition to docket trust asking the probate court to establish the amount of the tax. The probate court ordered that the Estate's inheritance tax liability was to be established under Indiana Code section 6-4.1-6-4. The probate court's order further provided that the Estate's tax calculation, which was based upon a life estate to the son, was fair, and the Estate owed no additional inheritance tax.[292] The Department timely filed a motion to correct error, asserting that the probate court erred in determining the Estate's inheritance tax liability. The probate court denied the Department's motion without making any additional findings. The Department timely filed an appeal with the Tax Court.

On appeal, the Department argued for reversal of the probate court's order because the Trustee had complete discretion with regard to distributions which resulted in the son having no "beneficial interest" in the Trust.[293] Therefore, Katherine failed to transfer any real interest in the Trust to her son upon her death.[294] The Department also claimed that the son's interest in the Trust was "valueless because the Trust specifically stated he had 'no entitlement to the income or corpus' of the Trust."[295] Therefore, the language of the document clearly established that the true purpose of the Trust was not to imperil any public or private financial assistance that Katherine's son might be entitled to receive, and "assigning any value other than zero to . . . [the son's] interest . . . [would be] contrary to Katherine's intent."[296]

As to the son's beneficial interest, the court explained that the Indiana Trust Code designates the beneficiary of a trust as either an "income beneficiary" or a "remainder beneficiary" and that these terms are further defined under the Indiana

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288. *Id.* at 261-62.
289. *Id.* at 262.
290. *Id.* at 262.
291. *Id.*
292. *Id.* at 263.
293. *Id.* at 264 (citation omitted).
294. *Id.*
295. *Id.* at 265 (citation omitted).
296. *Id.*

Code.[297] The court explained that under the code, there "can be no remainder beneficiary without an income beneficiary."[298] Therefore, a trustee's discretion in distributing net income is not related to whether a person has an interest in a trust.[299] The court further found that the evidence established that Katherine's son had a legally cognizable interest in the Trust.

As to the value of the son's interest, the court found that the Trust clearly established Katherine's intent to provide for her incapacitated son upon her death. To that end, the court found that Katherine's structuring of the Trust precluded automatic, fixed transfers of income to her son in order to preserve any public or private financial assistance to which he would otherwise be entitled.[300] The court explained that the Trust was designed to ensure that Katherine's son's income interest would not prohibit his access to either private or public assistance benefits, but that his interest in the Trust was not perpetually set at zero.[301]

5. Indiana Department of State Revenue v. Estate of Daugherty.[302]—Bernard Daugherty owned a 462-acre farm in Knox County, Indiana. Bernard's sole beneficiary under his will was his nephew. Bernard's estate (the "Estate") at the time of his death in December 2007[303] timely filed an inheritance tax return, claiming deductions for six general types of expenses: funeral, personal representative, farming-related, pre-existing debt, general administrative, and those related to the sale of real and personal property. The probate court accepted the Estate's inheritance tax return.[304] The Department timely filed a petition with the probate court for rehearing and redetermination, arguing that the Estate's deductions for farming-related expenses were improper. The Estate argued that since Bernard failed to maintain the farm during the fifteen years before his death, the deductions were necessary and proper. The Estate also filed a counterclaim seeking an additional ten deductions for farming-related expenses.[305]

At the probate court's hearing on the matters, the Department argued that the farming-related deductions were impermissible because they were business expenses undertaken to maintain, improve, and operate the farm.[306] The Department also claimed that the Estate's counterclaim was untimely, and the probate court lacked jurisdiction over the claim. The Estate moved to dismiss the Department's petition due to the Department's failure to meet its burden of proof.[307] In the alternative, the Estate claimed that its farming-related deductions were proper because the regulation upon which the Department relied to exclude

297. *Id.* at 264 (citing IND. CODE §§ 30-4-1-2(3), 30-2-14-2(2) (2011)).
298. *Id.*
299. *Id.*
300. *Id.* at 265.
301. *Id.* at 266.
302. 938 N.E.2d 315 (Ind. T.C. 2010).
303. *Id.* at 317.
304. *Id.*
305. *Id.* at 317-18.
306. *Id.* at 318.
307. *Id.*

those deductions was invalid. The Estate also maintained that its counterclaim was timely filed.[308]

The probate court found that the Department did not exceed its statutory authority. The probate court also found all twelve of the farming-related deductions proper because those expenses should have been "construed as expenses incurred by the personal representative in the administration of the estate and not merely as expenses incurred in the operation of a farming business."[309] The probate court also held that the Estate's counterclaim was untimely.[310] Both sides timely filed appeals with the Tax Court.

On appeal, the Estate asserted that the probate court erred in denying its motion to dismiss and that the probate court also erred when it concluded that it lacked subject matter jurisdiction over the Estate's counterclaim. The Department, on the other hand, asserted that the probate court erred in approving the twelve deductions for farming-related expenses.[311]

As to the probate court's ruling on the motion to dismiss, the Estate argued that the probate court's erroneous ruling was due to confusion over who bore the burden of proof. The court found that the issues before the probate court were questions of law, and in construing the regulation at issue, the probate court should have applied the same rules of construction that apply to statutes.[312] Based on this finding, the court found that the probate court's ruling was not in error when it found that regulation at issue was valid and denied the Estate's motion to dismiss.[313]

As to the jurisdictional issue, the Estate argued that its counterclaim was compulsory under Indiana Trial Rule 13 and therefore timely filed because the rule extended the 120-day statute of limitations contained in Indiana Code section 6-4.1-7-1 for filing its own petition for rehearing and redetermination.[314] The court, however, found that the Estate sought affirmative relief with a counterclaim filed approximately 128 days after the probate court's initial determination. The court explained that "Indiana Trial Rule 13 is not a tolling rule; rather, it is a rule of procedure."[315] Therefore, the Court held that it did not extend the statute of limitations found in Indiana Code section 6-4.1-7-1.[316]

Finally, as to the issue of the probate court's approval of the farming-related expense deductions, the Department argued that since the probate court did not hold that Indiana Administrative Code title 45, section 4.1-3-11was invalid, it must control. The Estate argued instead that an Indiana Court of Appeals

308. *Id.*
309. *Id.*
310. *Id.* at 319.
311. *Id.*
312. *Id.*
313. *Id.* at 319-20.
314. *Id.* at 320.
315. *Id.* (citation omitted).
316. *Id.*

decision, *In Re Estate of Cook*,[317] controlled the outcome of this matter. The court found that the *Cook* case did not control the outcome for three reasons. First, the issue in *Cook* concerned whether expenses arising from the discretionary sale of real property are proper inheritance tax deductions, rather than the question of whether expenses incurred to preserve, maintain, and operate a farm are deductible for inheritance tax purposes.[318] Second, when *Cook* was decided in 1988, the Indiana Administrative Code at issue had not been promulgated.[319] Third, the regulation was consistent with *Cook*, as the holding in that case was incorporated into the regulation.[320]

After a thorough review of the facts of the case in light of the regulation, the court found that only nine of the farming-related expenses were deductible for inheritance tax purposes. Specifically, the court found deductions for clay drainage tiles, electrical repairs, grain bin repairs, and pole barn repairs to have been proper because they were "incurred during the course of administering the estate and were undertaken to preserve, maintain, and repair the assets of the farm."[321] The court also found that expenses related to a fertilizer bill and a pre-existing debt were deductible as lawful claims against the resident estate. The court found the remaining expenses to be related to operating the farming business and therefore reversed the probate court's order as to those deductions.[322]

C. Sales and Use Tax

1. AWHR America's Water Heater Rentals, LLC v. Indiana Department of State Revenue.[323]—AWHR America's Water Heater Rentals, LLC ("AWHR") advertised that it could provide a worry-free solution to providing hot water.[324] During 2003, 2004, and 2005, customers in Indiana contracted with AWHR for its hot water services. According to the contracts, AWHR provided and bore the expenses of installation and repair of a free new or reconditioned water heater for the customer. The customer agreed to pay a monthly fee to AWHR and acknowledged that AWHR retained ownership and title to the water heater at all times.[325] The agreements also provided that upon their expiration, AWHR was permitted to enter the premises to disconnect and remove the water heater.[326]

In 2006, the Department determined that AWHR should have collected sales tax from its Indiana customers during the years 2003, 2004, and 2005 because by

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317. 529 N.E.2d 853 (Ind. Ct. App. 1988).

318. *Daugherty*, 938 N.E.2d at 321 (citing *Cook*, 529 N.E.2d at 853).

319. *Id.* at 321-22.

320. *Id.* at 322. The *Cook* case was incorporated into 45 IND. ADMIN. CODE § 4.1-3-11(c) (2011).

321. *Id.* at 323.

322. *Id.* at 323-24.

323. 941 N.E.2d 573 (Ind. T.C. 2010).

324. *Id.* at 574.

325. *Id.*

326. *Id.*

leasing tangible personal property to its customers, AWHR was engaging in transactions subject to sales tax. The Department "assessed AWHR with a sales tax liability, a 10% negligence penalty, and interest, totaling $557,625.19."[327] AWHR protested the assessment, and after a hearing, the Department issued a letter of findings denying AWHR's protest. AWHR timely filed an original tax appeal. In the course of the proceedings, AWHR filed a motion for summary judgment, and the Department filed a cross-motion for summary judgment.[328]

On appeal, AWHR argued that the imposition of sales tax was in error for two reasons. First, AWHR asserted that it did not lease the water heaters because it never relinquished control to the customers. Alternatively, AWHR argued that the water heaters were real property instead of tangible personal property. [329]

The court explained that the existence of a lease arrangement "depends on the purported lessee's possession and control over the property involved,"[330] and therefore, tax consequences are determined based on the substance, not the form, of a transaction.[331] Furthermore, the court found that AWHR's customers possessed and controlled the water heaters and even though AWHR had access to the water heaters, such access was ultimately controlled by the customer. Therefore, the court characterized the transactions as leases.[332]

As to AWHR's alternative argument that its transactions were not subject to sales tax because of the characterization of the water heaters, the court disagreed. The court applied the ordinary meaning to "tangible personal property," which resulted in the finding that the water heater was considered part of the structure and, therefore, real property.[333] However, the court found that water heaters, prior to their installation, are tangible personal property and that all sales of tangible personal property are taxable even if the property is later converted into real property by attachment.[334] Therefore, the court held that AWHR should have paid sales tax on its purchase of the water heaters. AWHR admitted that it had not. Based on this reasoning, the court affirmed the Department's assessment of sales tax liability against AWHR.[335]

2. Garwood v. Indiana Department of State Revenue.[336]—In 2009, the Office of the Indiana Attorney General and the Department investigated Virginia and Kristin Garwood's (the "Garwoods") business activities and determined that they were selling puppies without remitting Indiana sales and income tax due on those

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327. *Id.*

328. *Id.* at 575.

329. *Id.*

330. *Id.* (quoting Mason Metals Co. v. Ind. Dep't of State Revenue, 590 N.E.2d 672, 674 (Ind. T.C. 1992)).

331. *Id.* at 575-76 (citing Bethlehem Steel Corp. v. Ind. Dep't of State Revenue, 597 N.E.2d 1327, 1331 (Ind. T.C. 1992), *aff'd*, 639 N.E.2d 264 (1994)).

332. *Id.* at 576.

333. *Id.* at 577.

334. *Id.*

335. *Id.* at 578.

336. 939 N.E.2d 1150 (Ind. T.C. 2010).

sales.[337] The Department obtained a warrant to search the Garwoods' residence in Harrison County, as well as their commercial properties, to seize certain items related to the sales. The Department also generated jeopardy tax assessments for the Garwoods' purported income and sales tax liabilities, served them to the Garwoods, and demanded immediate payment.[338] When the Garwoods did not pay, the Department seized approximately 240 dogs and puppies from their property and sold them to the Humane Society of the United States for a total of $300. The Department applied the money from the sale towards the Garwoods' outstanding income and sales tax liabilities.

The Garwoods timely protested their jeopardy assessments to the Department. The Department issued a letter in which it declined to conduct the hearing requested by the Garwoods, as the relief requested by them was available in the Harrison Circuit Court.[339] The Garwoods filed with the Tax Court, seeking a stay of the jeopardy tax assessments. After the conclusion of the final stay, the Department filed a motion to dismiss pursuant to Indiana Trial Rules 12(B)(1), 12(B)(2), 12(B)(3), 12(B)(6), and 12(B)(8).[340] The court established that its resolution of the Department's 12(B)(1) claim—lack of subject matter jurisdiction—would also resolve the Department's 12(B)(2), 12(B)(3), 12(B)(6), and 12(B)(8) claims.

The Department presented two alternative arguments in support of its lack of subject matter jurisdiction claim.[341] First, the Department argued that the Indiana Supreme Court case of *State ex rel. Indiana Department of Revenue v. Deaton* (*Deaton II*)[342] controlled the disposition of this matter.[343] Second, the Department argued that the court lacked jurisdiction because the Garwoods had failed to exhaust their administrative remedies.

The court rejected the Department's position that *Deaton II* controlled the outcome of the matter because its holding was inapplicable to the current case.[344] The court further explained that unlike the facts of *Deaton II*, the Garwoods had attempted to contest the validity of the jeopardy tax assessments with both the Department and this court, and therefore, *Deaton II* did not control the outcome of this matter. The holding of *Deaton II* simply suggested that the jeopardy tax warrants at issue had not attained the status of "judgments."[345]

As to the Department's alternative claim, the court determined that the Garwoods' appeal to the court arose under the tax laws of Indiana, and it was an initial appeal of a final determination made by the Department with respect to a

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337. *Id.* at 1151.
338. *Id.* at 1152.
339. *Id.* at 1152-53.
340. *Id.* at 1253.
341. *Id.*
342. 755 N.E.2d 568 (Ind. 2001).
343. *Garwood*, 939 N.E.2d at 1153.
344. *Id.* at 1154.
345. *Id.*

listed tax.[346] The court found that Indiana Code section 6-8.1-5-3 was silent as to the manner by which a taxpayer may challenge the validity of a jeopardy assessment, and the Department's position would eliminate one administrative path to the Tax Court when there are at least two provided through Indiana Code sections 6-8.1-5-1 or 6-8.1-9-1.[347]

3. AOL, LLC v. Indiana Department of State Revenue.[348]—AOL, LLC ("AOL") was a foreign limited liability company that provided its customers with access to the Internet, e-mail, instant messaging, and other proprietary online content. During the tax periods of January 1, 2003 through November 30, 2006 and May 1, 2006 through June 30, 2007, AOL distributed two types of promotional materials to prospective and current members in several states, including Indiana.[349]

The first type, "ROM packages," were produced in two separate phases. First, "AOL's out-of-state 'vendors' copied AOL's proprietary software onto blank CDs and added graphics to the CDs."[350] Next, the components were shipped to the assembly houses, where the components were compiled into a final package and each package was printed with identifying information. The assembly houses then distributed the completed ROM packages to various destinations, including Indiana.[351]

The second type of promotional materials, "CM [m]aterials[,] consisted of a variety of printed letters, brochures, and other promotional materials."[352] AOL contracted with several out-of-state "letter shops" for the production of the CM materials.[353] During the tax periods at issue, AOL filed monthly Indiana sales and use tax returns with the Department and paid all use taxes along with each return. AOL later filed two claims requesting a combined refund of $371,464.00. Both of AOL's claims were denied by the Department. AOL initiated an original tax appeal, and both parties moved for summary judgment.[354]

In its motion, AOL asserted that three Indiana cases interpreting Indiana Code section 6-2.5-3-2 clearly illustrated that AOL's "in-state use of the ROM [p]ackages and CM [m]aterials were not subject to Indiana use tax because they were not acquired in retail transactions."[355] The Department, on the other hand, argued in favor of the dismissal of AOL's claims since "AOL acquired the ROM [p]ackages and CM [m]aterials in taxable retail unitary transactions."[356]

The Department argued that AOL's transactions with the letter shops,

346. *Id.* at 1154-55.
347. *Id.* at 1155.
348. No. 49T10-0903-TA-7, 2010 Ind. Tax LEXIS 54 (Ind. T.C. Dec. 29, 2010).
349. *Id.* at *2.
350. *Id.* at *3.
351. *Id.* at *4.
352. *Id.*
353. *Id.*
354. *Id.* at *6.
355. *Id.* at *9.
356. *Id.*

vendors, and assembly houses should be considered one retail unitary transaction. The court disagreed and held that the undisputed material facts proved the transactions were separate. The court examined each step in the manufacturing process of the ROM packages and CM materials and found that AOL's transactions with regard to the production of promotional materials did "not serve as the basis for imposition of Indiana's use tax."[357]

The court further explained that in order for AOL to incur a use tax liability, it must have acquired tangible personal property in retail transactions and must have then used, stored, or consumed that tangible personal property in Indiana. The court found that "[w]hile AOL indisputably used the ROM [p]ackages and CM [m]aterials in Indiana, it did not acquire them in retail transactions or retail unitary transactions," and therefore, the Department's denials of AOL's two claims were improper.[358]

D. Personal Property Tax

1. Lake County Assessor v. Amoco Sulfur Recovery Corp.[359]—Amoco Sulfur Recovery Corporation, BP Products North America, Inc., and BP Products North America, Inc. (collectively, "BP") owned and operated a 1400-acre refinery that stretched across the Indiana cities of Whiting, Hammond, and East Chicago. BP timely filed its business tangible personal property returns for the 2004, 2005, and 2006 tax years.[360] BP used the DLGF's personal property tax return forms to complete the returns, following the given instructions. On the returns, BP "reported the actual cost of all of its depreciable business tangible personal property, it deducted the cost of certain property claimed to be exempt air pollution control system (hereinafter, 'APCS') property, and it excluded the assessed value of the APCS property from its overall personal property assessed value computation."[361]

In 2004, the Lake County Assessor (the "Assessor") hired an accounting firm to review the accuracy of BP's returns. The accounting firm did not review the propriety of BP's APCS exemption claim because "it lacked the expertise."[362] In 2007, the Assessor hired a refinery engineer to review BP's APCS exemption. The Assessor determined that BP's exemption claim was improper based on the engineer's findings. The Assessor notified BP several times, making it aware of the increase in value of its personal property as a result of the disallowance of BP's claimed APCS exemption.[363] BP challenged the Assessor's increased assessments, arguing that they were untimely.

The Lake County PTABOA conducted a hearing and determined that under

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357. *Id.* at *11 (citation omitted).
358. *Id.* at *13.
359. 930 N.E.2d 1248 (Ind. T.C. 2010).
360. *Id.* at 1249.
361. *Id.*
362. *Id.*
363. *Id.* at 1250.

Indiana Code section 6-1.1-9-3, the assessments were timely. BP filed six petitions for review with the IBTR. At a hearing before the IBTR, BP renewed its assertion that the assessments were untimely and requested its prior assessments to be reinstated.[364] The IBTR found that BP's returns "substantially complied with the APCS statutes and regulations, [and] the assessments were untimely under Indiana Code . . . [section] 6-1.1-16-1."[365] The Assessor initiated an original tax appeal.

On appeal, the Assessor advanced several arguments in support of its claim that the IBTR's grant of summary judgment in BP's favor was in error, but the court identified one dispositive issue: namely, "whether BP's [r]eturns substantially complied with the APCS statutes and regulations."[366] Specifically, the Assessor asserted that the altered assessment was timely because the time frame under which the Assessor could alter BP's returns depended on the finding that BP had failed to substantially comply with the APCS statutes and regulations.

The court explained that the main objectives of Indiana's personal property tax system are full disclosure and accurate reporting.[367] Indiana's APCS return forms allow for a taxpayer to accurately disclose property entitled to the APCS exemption, and they also allow the Assessor to preliminarily evaluate whether such claim is proper. The court found that by completing these return forms, "a taxpayer need not provide a description of its property that instantaneously demonstrates to the Assessor that the equipment qualifies for the exemption or how the property is used within the air pollution control system."[368] Rather, a taxpayer simply needs to identify the property. After a thorough examination of the applicable regulations, the court held that "a taxpayer's inaccurate determination as to its entitlement to a personal property tax exemption is not a per se indicator of bad faith, fraud, dishonesty, or a lack of substantial compliance."[369]

The court found that for the 2004, 2005, and 2006 tax years, BP's returns substantially complied with the various APCS statutes and regulations; therefore, the court affirmed summary judgment in favor of BP.[370]

2. Lake County Assessor v. Amoco Sulfur Recovery Corp.[371]—In 2010, the IBTR issued a final determination regarding Amoco Sulfur Recovery Corporation and BP Products North America, Incorporated's (collectively, "the Respondents") 2007 personal property assessment. The Lake County Assessor, the North Township Assessor, and the Lake County PTABOA ("Lake County") challenged

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364. *Id.*
365. *Id.*
366. *Id.* at 1251.
367. *Id.* at 1252.
368. *Id.* at 1253.
369. *Id.* at 1255 (citation omitted).
370. *Id.* at 1257.
371. No. 49T10-1010-TA-55, 2010 Ind. Tax LEXIS 53 (Ind. T.C. Dec. 27, 2010).

the IBTR's final determination.[372] The petition named both Respondents in its caption as well as throughout the petition itself. Lake County also issued a summons to "BP Products North America, Inc." The Respondents filed a motion to dismiss Lake County's appeal under Indiana Trial Rules 12(B)(2) (lack of personal jurisdiction), 12(B)(4) (insufficiency of process), and 12(B)(5) (insufficiency of service of process).

The Respondents had two arguments for dismissal. First, they maintained that Lake County failed to issue a summons and did not even attempt service on Amoco. Second, they maintained that if Lake County had issued summons and served BP, the summons and service were defective and insufficient to give the court jurisdiction.[373]

First, the Respondents argued that Lake County was required to file two original tax appeals and issue a summons and effect service upon both Respondents individually since the IBTR handed down two separate final determinations.[374] The court, however, found that the IBTR issued only one final determination after having consolidated BP and Amoco's assessment challenges. The court further found that the administrative record indicated that the attorneys for the Respondents presented one assessment challenge, not two challenges. The one final determination served to trigger Lake County's right to appear, and therefore, Lake County was only required to file one tax appeal.[375] The court further found that pursuant to Indiana Trial Rule 4.15(F), Lake County's summons and service of process may have been directed to "BP," and they were reasonably calculated to inform Amoco of Lake County's action against it, as the two entities acted as the same entity.[376] Therefore, the summons and service were proper.

With respect to the defective summons and service of BP, the Respondents specifically argued that under either Indiana Trial Rule 4.6 or 5(B), service upon BP's attorney was insufficient to establish personal jurisdiction over BP. The court explained that Indiana Trial Rule 4.6 provides that service upon an organization may be made upon a number of individuals, including the organization's agent "*deemed by law* to have been appointed to receive service."[377] With this rule in mind, the court further explained that Lake County and the Respondents had an extensive history litigating the propriety of the Respondents' personal property tax assessments. Both parties acknowledged that in the course of this extensive past litigation, BP's attorney accepted service for the Respondents. Therefore, the court found that BP's attorney was the Respondents' appointed agent to receive service, and therefore, service was not defective.[378]

372. *Id.* at *1.
373. *Id.* at *4.
374. *Id.* at *4-5.
375. *Id.* at *5-6.
376. *Id.* at *6-7.
377. *Id.* at *7 (citation omitted).
378. *Id.* at *8.

E. Utility Services Use Tax

1. Mirant Sugar Creek, LLC v. Indiana Department of State Revenue.[379]—Mirant Sugar Creek, LLC ("Mirant") filed an original tax appeal seeking a refund of approximately $65,000 in utility services use tax (USUT) it remitted to the Department during the month of July 2006. The Department filed a motion for summary judgment claiming that the USUT amount paid by Mirant was proper. Mirant filed a cross-motion for summary judgment designating as evidence the affidavit of its senior tax analyst, as well as several e-mails between the tax analyst and a tax analyst with the Department. The Department moved to strike both the affidavit and e-mails.[380]

As to the affidavit of Mirant's tax analyst, the Department asserted that the affidavit should have been struck because it did not satisfy the requirements of the Indiana Rules of Evidence.[381] The Department argued in the alternative that the court strike the affidavit pursuant to the *Blinn/McCullough* rule.

As to Indiana Evidence Rule 402, which prohibits the admission of irrelevant evidence, the court found that the testimony contained within the affidavit was both helpful and relevant, as it provided background information with respect to the e-mail exchanges between Mirant and the Department. Thus, the court denied this objection.[382]

As to the Department's Indiana Evidence Rule 602 objection, the court found that based on the first and third paragraphs of the affidavit, wherein the tax analyst averred personal knowledge of the facts set forth therein and explained the duties of a tax analyst with Mirant, the affidavit was based on her personal knowledge. Accordingly, the court denied this objection.[383]

As to Indiana Evidence Rule 704(b), which prohibits witnesses from testifying to opinions concerning legal conclusions, the court found the averments within the affidavit to be statements of fact and not legal conclusions. Therefore, the court denied this objection.[384]

As to the Department's hearsay objections under Indiana Rule 802, the court found that statements made in the affidavit regarding the content of the e-mails were statements by a party-opponent and did not constitute hearsay since they were statements by the Department offered against the Department. Based on this line of reasoning, the court held the e-mails to be admissible as well and the Department's objection was denied.[385]

Finally, as to the Department's assertion that the entire affidavit must be disregarded pursuant to the *Blinn/McCullough* rule, the court explained that the

379. No. 71T10-0803-TA-18, 2010 WL 2400436 (Ind. T.C. June 16, 2010).
380. *Id.* at *1.
381. *Id.* Specifically, the Department alleged problems with Rules 402, 602, 704(b), and 802.
382. *Id.* at *2.
383. *Id.*
384. *Id.* at *2-3.
385. *Id.*

Blinn/McCullough rule "militates against the granting of summary judgment when 'a reasonable trier of fact could choose to disbelieve the movant's account of the facts.'"[386] The court, however, determined that this was not a case to which this rule should have been applied. Despite the Department's argument that the affidavit should be struck because it was vague and conflicting, the court held that the majority of the affidavit appeared to be a rendition of the facts that gave rise to this cause of action. Therefore, the court denied this objection by the Department.[387]

2. Mirant Sugar Creek, LLC v. Indiana Department of State Revenue (Mirant II).[388]—Mirant Sugar Creek, LLC ("Mirant") owned and operated a power plant fueled by natural gas in Terre Haute, Indiana. Mirant purchased natural gas from an out-of-state vendor. The natural gas was shipped to the plant through pipelines the vendor neither owned nor controlled.[389] The plant generated electricity by consuming the natural gas and then sold the electricity to an out-of-state customer who, in turn, resold the electricity to its own customers.

In July 2006, the Department's tax policy division issued a letter informing Mirant that it might be required to pay USUT.[390] Shortly thereafter, Mirant began to exchange e-mails with the Department challenging the Department's position that its natural gas purchases were subject to the USUT, but Mirant filed a USUT return for July 2006 and remitted approximately $65,000 to the Department. In September 2006, Mirant received an e-mail from the Department which affirmed Mirant's position with regard to the USUT, and Mirant therefore did not file another USUT return.[391] Mirant also filed a claim for refund as to the July 2006 payment.[392] The Department denied Mirant's refund claim. Mirant timely filed an original tax appeal, and the parties then filed cross-motions for summary judgment.

The court identified the following issues with regard to the parties cross-motions: (1) "[w]hether Mirant obtained a ruling from the Department providing that it was not subject to the USUT"; and (2) if not, "[w]hether Mirant's purchases of natural gas were subject to the USUT."[393]

As to the first issue regarding whether Mirant had obtained a ruling from the Department, Mirant argued the Department's denial of its claim "constitute[d] an impermissible retroactive change in the Department's interpretation of the USUT law."[394] Specifically, Mirant asserted that its e-mail correspondence with the Department created a binding Letter of Findings (LOF) which exempted Mirant's

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386. *Id.* at *4 (quoting Insuremax Ins. Co. v. Bice, 879 N.E.2d 1187, 1190 (Ind. Ct. App. 2008)).

387. *Id.*

388. 930 N.E.2d 697 (Ind. T.C. 2010).

389. *Id.* at 698.

390. *Id.*

391. *Id.* at 698-99.

392. *Id.* at 698.

393. *Id.* at 699, 701.

394. *Id.* at 699 (citation omitted).

purchases of natural gas from the USUT.[395] The Department argued that the e-mail exchanges were simply non-binding letters of advice (LOA).

The court found that the e-mail exchanges, taken together, showed that Mirant "merely sought a *generic opinion* as to whether a generator's natural gas purchases were subject to the USUT."[396] The court further found that it was not discernible what information the Department's policy analyst used in reaching its final decision. Perhaps most importantly, the court found no publication in the Indiana Register.[397] Under Indiana Code section 6-8.1-3-3, such publication would have been required in order for the Department to be bound by the ruling it issued, regardless of whether such a ruling was issued in an LOF or an LOA.[398] Therefore, the court rejected Mirant's position on this issue.

As to the second issue concerning whether Mirant's purchases of natural gas were subject to the USUT, the court explained that the Indiana Code controlled whether or not the USUT applied. Specifically, the 2006 version of Indiana Code section 6-2.3-3-5 provided that "[g]ross receipts do not include a wholesale sale to another generator or reseller of utility services."[399] The Department argued that a 2008 amendment to the statute served to change rather than clarify the scope of what constituted a "wholesale sale" to another generator.[400] Mirant, in contrast, argued that the legislature simply intended to clarify what constituted a wholesale sale and that such clarification proved that the General Assembly intended to exempt transactions similar to Mirant. The court sided with Mirant in finding that the amended version of Indiana Code section 6-2.3-3-5 served to express the original intent of the statute more clearly by clarifying "what transactions are to be considered wholesale sales with respect to the purchase of utility services for consumption."[401] Since neither party disputed that in July 2006, Mirant was engaged in the business of both generating and selling electricity to others, and based on the court's interpretation of Indiana Code section 6-2.3-3-5, Mirant's purchases of natural gas were not subject to the USUT.[402]

Based on its findings, the court denied the Department's motion for summary judgment in its entirety but granted Mirant's cross-motion for summary judgment in part.[403]

F. Corporate Income Tax: UPS v. Indiana Department of State Revenue[404]

United Parcel Service, Inc. ("UPS") included the income of UPINSCO, Inc.

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395. *Id.*
396. *Id.* at 700-01.
397. *Id.* at 701.
398. *Id.*
399. *Id.* at 702 (quoting IND. CODE § 6-2.3-3-5(a) (2011)).
400. *Id.* The 2008 amendment was codified at Indiana Code section 6-2.3-3-5(c).
401. *Id.* at 704.
402. *Id.*
403. *Id.*
404. No. 49T10-0704-TA-24, 2010 Ind. Tax LEXIS 55 (Ind. T.C. Dec. 29, 2010).

and UPS Re Ltd. (two foreign reinsurance companies) (collectively, "foreign corporations") on its Indiana corporate income tax returns before 2001. The foreign corporations were not included on UPS's 2001 return, and UPS amended its 2000 return in order to remove the income derived from the foreign corporations. After amending its return, UPS requested a refund of $359,466 in income taxes.[405] The Department determined after an audit that UPS should have included the income of the foreign corporations on its tax returns. UPS's claim for refund for tax year 2000 was denied, and the Department also determined that UPS owed taxes on the income of the foreign corporations for 2001, which resulted in $291,105 in additional tax liability.[406] UPS protested the Department's actions to no avail, and it subsequently filed an original tax appeal. The parties then filed cross-motions for summary judgment.

The court explained that in 2000 and 2001, corporate income was subject to numerous taxes, including an adjusted gross income tax that was imposed on the adjusted gross income derived from sources within Indiana. However, pursuant to Indiana Code section 27-1-18-2, the adjusted gross income tax did not apply to insurance companies that were subject to the premiums tax.[407] UPS argued that it properly excluded the income of the foreign corporations from its Indiana corporate income tax returns for the years at issue "because they were 'subject to' the premiums tax under Indiana Code . . . [section] 27-1-18-2."[408] Both insurers were foreign insurance companies that charged premiums for property within Indiana. The Department, on the other hand, argued in its motion for summary judgment that the income of the foreign corporations should have been included on the UPS corporate returns "because they were *not* 'subject to' the premiums tax: neither filed a premiums tax return nor paid any premiums tax."[409] Hence, the court was forced to determine the meaning of the term "subject to" with regard to the Indiana premiums tax. Based on the plain language of the statute, the court held that one was not required to "pay" the premiums tax in order to be "subject to" the tax. Rather, the court explained, one simply one had to be under the authority of the premiums tax.[410] The court found further support from the fact that "while domestic insurance companies can *elect* to be 'subject to' the premiums tax, foreign insurance companies clearly do not have that option."[411]

Based on this reasoning, the court granted UPS's motion for summary judgment and denied the Department's motion for summary judgment.

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405. *Id.* at *3.
406. *Id.* at *4.
407. *Id.* at *5-8.
408. *Id.* at *8.
409. *Id.* (citation omitted).
410. *Id.* at *10.
411. *Id.* (citation omitted).