RECENT DEVELOPMENTS IN INDIANA TAXATION SURVEY 2011

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INTRODUCTION: SOME REFERENCES USED IN THIS ARTICLE

This Article highlights the major tax developments that occurred during the calendar year of 2011. Whenever the term "GA" is used in this Article, the term refers only to the 117th Indiana General Assembly. Whenever the term "Tax Court" is referred to, such term refers only to the Indiana Tax Court. Whenever the term "Court of Appeals" is referred to, the term refers only to the Indiana Court of Appeals. Whenever the term "DLGF" is used, the term refers only to the Indiana Department of Local Government Finance. Whenever the term "IBTR" is used, the terms refers only to the Indiana Board of Tax Review. Whenever the terms "Department" or "DOR" are used, these terms refers only to the Indiana Department of State Revenue. Whenever the terms "IC" or "Indiana Code" are used in this Article, these terms refer only to the Indiana Code in effect at time of the publication of this Article, unless otherwise explicitly stated. Whenever the term "ERA" is used, the term refers only to an Indiana Economic Revitalization Area. Whenever the term "CAGIT" is used, the term refers only to the Indiana County Adjusted Gross Income Tax. Whenever the term "COIT" is used, the term refers only to the Indiana County Option Income Tax. Whenever the term "LOIT" is used, the term refers only to the Local Option Income Tax. Whenever the term "IEDC" is used, the term refers only to the Indiana Economic Development Corporation. Whenever the term "CEDIT" is used, the term refers only to the Indiana County Economic Development Income Taxes. Whenever the terms "IRC" or "Code" are used, these terms refer only to the Internal Revenue Code in effect at the time of the publication of this Article. Whenever the term "section" is used in this Article, the term only refers to a section of the Indiana Code, unless it is a reference to the Internal Revenue Code. Whenever the term "Public Law" is used, the term only refers to legislation passed by the Indiana General Assembly and assigned a Public Law number. Whenever the term "PTABOA" is used, the term refers only to a Property Tax Assessment Board of Appeals.

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I. INDIANA GENERAL ASSEMBLY LEGISLATION

The 117th General Assembly passed several pieces of legislation affecting various areas of state and local taxation. The most significant changes were in the area of property taxes. This section highlights the majority of the GA's changes from 2011 in the areas of local finance, tax procedure, sales and other excise taxes, income tax, and inheritance tax.

A. Property Taxes

Unlike previous years, where the amendments were esoteric and technical,[1] in 2011 there were many legislative amendments with wide-ranging implications for taxpayers. Indiana Code section 6-1.1-2-8 is a new code section applying to all property taxes due and payable starting in 2002. It requires that for any levy, distribution, or budget appropriation based on property taxes, the assessed value must be increased from 33.33% to 100% of true tax value (TTV).[2] However, the IBTR and DLGF must adjust the tax rates of all jurisdictions so as to make the change from partial to full TTV neutral, both in terms of payments by taxpayers[3] and revenue collected by government units.[4] Similar changes will be made to neutralize any assessed value limitations on the amount of aggregate bonds a taxing jurisdiction may issue.[5]

Indiana Code section 6-1.1-2-10 makes most actions taken by a county or the DLGF to stop collecting taxes, among other things before November 21, 2007, retroactively valid.[6] It also validates the same actions after November 21, 2007.[7] To help adjustment with the transition to full TTV and the property tax caps now existing in the Indiana Constitution,[8] the time to file an amended property tax return was extended from six to twelve months beginning on May 15, 2011.[9]

Noting northern Indiana's reliance on the petrochemical and steel industries, the GA devised an alternative scheme for property tax assessment of petrochemical and steel properties by amending Indiana Code section 6-1.1-3-23.[10] The 2003 laws allowing abnormal reporting for severely obsolete property had the effect of drastically reducing northern Indiana's tax base, and absent statutory modification, would have continued to do so for the foreseeable future.[11] To compensate for this, the GA developed an alternative valuation scheme for

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1. *See generally* Lawrence A. Jegen III et al., *Recent Developments in Indiana Taxation*, 42 IND. L. REV. 1215, 1216-19 (2010).
2. IND. CODE § 6-1.1-2-8(b)(2) (2011).
3. *Id.* § 6-1.1-2-8(d).
4. *Id.* § 6-1.1-2-8(g).
5. *Id.* § 6-1.1-2-8(h).
6. *Id.* § 6-1.1-2-10(a).
7. *Id.* § 6-1.1-2-10(d).
8. IND. CONST. art. 10, § 1.
9. IND. CODE § 6-1.1-3-7.5(a).
10. *Id.* § 6-1.1-3-23(a).
11. *Id.* § 6-1.1-3-23(a)(6).

any steel mill owned at least 50% by an integrated steel mill.[12] This method recognizes that obsolescence of steel and petrochemical plants is caused by different forces than those causing normal obsolescence.[13] The goal of the statute is to eliminate abnormal obsolescence deduction claims, which can deprive counties of needed revenue and increase uncertainty.[14] This plan gives the taxpayer the option of taking a set depreciation schedule for their equipment, accounting for all types of depreciation and obsolescence, including abnormal obsolescence.[15] If the taxpayer elected this scheme, it would be precluded from adopting any other schedule.[16]

There were also changes in the statutes regarding the distribution of funds. Indiana Code section 6-1.1-8-35.2 removed the restrictions on commuter transportation district's allocation of funds received between July 1, 1999 and December 31, 2000.[17] Also, houses for fraternities and sororities that are tax exempt under Internal Revenue Code §§ 501(c)(2), (c)(3), or (c)(7) may now have their property exempt greater than one acre in size.[18] It also makes it more flexible because the definition of being used for fraternity or sorority purposes may now include land that is used for headquarters or to support the administrative or executive functions of the Greek organization.[19] Moreover, it allows for multiple exempt fraternities and sororities to share the same property, and the property will still be tax exempt.[20] Any tangible property owned by an exempt fraternity or sorority does not require an exemption application to be exempt for property tax purposes.[21]

The GA provided added flexibility for taking the homestead deduction. It amended Indiana Code section 6-1.1-12-37 so that a married couple, in which each spouse has a separate primary residence, may now take two homestead deductions so long as the non-resident spouse does not have an ownership interest in the resident spouse's homestead.[22] It also added Indiana Code section 6-1.1-12-46 for enhanced deduction schedules for the rehabilitation or redevelopment of real property in economic development areas.[23] If the property is at least 50,000 square feet, is in an area where the county unemployment rate exceeds the state unemployment rate by at least 2%, and the total investment by the taxpayer exceeds $10 million, the taxpayer can take a 100% property tax deduction for three (3) years on the gross assessed value of any tangible personal property

12. *Id.* § 6-1.1-3-23(a)(7).
13. *Id.* § 6-1.1-3-23(a)(7)(B).
14. *Id.* § 6-1.1-3-23(a)(9).
15. *Id.* § 6-1.1-3-23(a)(8).
16. *Id.* § 6-1.1-3-23(a)(8).
17. *Id.* § 6-1.1-8-35.2.
18. *Id.* § 6-1.1-10-24(a)(1).
19. *Id.* § 6-1.1-10-24(c).
20. *Id.* § 6-1.1-10-24(d).
21. *Id.* § 6-1.1-11-4(d)(1)(D).
22. *Id.* § 6-1.1-12-37(n).
23. *Id.* § 6-1.1-12-46.

located on the redevelopment site.[24] The GA also modified section 6-1.1-12-17(a) and established an alternative schedule for property owners taking a tax abatement for economic development properties. This schedule is based on the amount of the investment, the number of full time equivalent jobs created, average wages for those employees, and the infrastructure investment in the property.[25]

Due to the housing bust, there are many completed or partially completed residential properties unsold. Therefore, the GA passed a new tax code section for property builders to take deductions on these properties, termed residence in inventory.[26] These are single-family residences (homes, condominiums, or townhouses) that are either fully or partially completed,[27] which have never been inhabited and are not model homes.[28] An owner is allowed a deduction of 50% of assessed value, depending on whether the residence is fully or partially completed.[29]

The GA has made provisions for tax credits during the years in which the property tax caps had been passed by the GA but had not yet been enshrined in the Indiana Constitution.[30] For taxes due and payable in 2008, assessed on March 1, 2006 or January 15, 2007, homeowners can get a tax credit of up to $2500. There is also a new chapter added to the Indiana Code for property tax credits applying to taxes due and payable in 2010, assessed on March 1, 2008 and January 15, 2009.[31] The GA allotted $140,000,000 in homestead tax credits to be distributed *pro rata* to the counties based on pre-2008 total property tax levies.[32] The distributions are determined by the DLGF through a complex formula.[33] An additional $80,000,000 is allocated for property taxes due and payable on March 1, 2009 and January 15, 2010, using the same formula.[34]

B. Local Finance

The GA also provided for specific flexibility for one county and one township in their property tax levies to ensure that each has adequate revenue. This has taken on heightened importance since implementing the property tax caps.[35] Jefferson County is allowed to increase its levy up to $300,000 "if the [DLGF] finds that the county experienced a property tax revenue shortfall that

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24. *Id.* §§ 6-1.1-12.1-16(a)-(b).
25. *Id.* § 6-1.1-12.1-17(a).
26. *Id.* § 6-1.1-12.8-1.
27. *Id.* § 6-1.1-12.8-3(b).
28. *Id.* § 6-1.1-12.8-1(a).
29. *Id.* § 6-1.1-12.8-3(b).
30. *Id.* § 6-3-2-25(c).
31. *Id.* § 6-1.1-20.1.
32. *Id.* §§ 6-1.1-20.1-1(e)-(f).
33. *Id.* §§ 6-1.1-20.1-1(g)-(h).
34. *Id.* § 6-1.1-20.1-2.
35. IND. CONST. art. 10, § 1.

resulted from an erroneous estimate of the effect of the supplemental deduction under [Indiana Code section] 6-1.1-12-37.5 on the county's assessed valuation."[36] The legislature also amended Indiana Code section 6-1.1-18.5-13.7.[37] Fairfield Township in Tippecanoe County is allowed to petition the DLGF for the right to increase its levy, but it must have done so by September 1, 2011.[38] This amount is capped at $130,000 per year, but its levy may be increased annually for up to four years, or until July 1, 2016, whichever is the lesser.[39] Finally, the GA amended Perry County's income tax structure under Indiana Code section 6-3.5-7-27.5.[40] While Perry County is allowed to impose a CEDIT, capped at 0.5%,[41] the sum of that tax and its COIT must be capped at 1.75%.[42]

C. Tax Procedure

One of the most important developments in tax procedure has been in citizen appeals of property tax assessments. The GA eliminated subsection (p) from Indiana Code section 6-1.1-15-1, moved the material to later in the chapter, and gave it its own section: Indiana Code section 6-1.1-15-17.[43] This provision shifts the burden on an appeal from the taxpayer to the county assessor if there was an increase of more than 5% in the assessed value of the property.[44] There has also been a change to Indiana Code section 6-1.1-20-3.6(e), the procedure for governments seeking to put a bond issuance before voters in a referendum.[45] Beginning May 1, 2011, the DLGF must review and approve the ballot language for it to be placed on the ballot.[46] The DLGF must respond to the local government agency within ten days, either approving the language or making changes.[47] If the DLGF makes changes, the local government agency must revise and resubmit its ballot language to the DLGF.[48] Only upon DLGF approval may it be approved by the county auditor and go on the ballot.[49]

Through Indiana Code section 6-1.1-22.5-8(e)(1), DLGF has also received new oversight responsibilities over the county auditors' adjustment authority.[50] The DLGF may now authorize the following types of adjustments:

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36. IND. CODE § 6-1.1-18.5-14.
37. *Id.* § 6-1.1-18.5-13.7.
38. *Id.* § 6-1.1-18.5-13.7(a).
39. *Id.* §§ 6-1.1-18.5-13.7(b)-(d).
40. *Id.* § 6-3.5-7-27.5(d).
41. *Id.*
42. *Id.* § 6-3.5-7-5(z).
43. *Id.* § 6-1.1-15-17 (Version a).
44. 2011 Ind. Acts 1969, 2014.
45. IND. CODE § 6-1.1-20-3.6(e).
46. *Id.*
47. *Id.*
48. *Id.*
49. *Id.*
50. *Id.* § 6-1.1-22.5-8(e)(1).

(C) adjustments to include current year special assessments or exclude special assessments payable in the year of the assessment date but not payable in the current year;
(D) adjustments to include delinquent:
(i) taxes; and
(ii) special assessments;
(E) adjustments to include penalties that are due and owing; and
(F) adjustments to include interest that is due and owing.[51]

The GA now requires DOR to publish a notification informing taxpayers of their obligation to remit use tax on their state income tax returns.[52] DOR is also now prohibited from renewing the retail merchant certificate for any entity delinquent on its taxes.[53]

The GA authorized counties to impose COITs, retroactive to 2009[54] and changed the filing deadline for such taxes from October 1 to December 1 of the taxable year.[55] Counties now also have additional flexibility of when to pass ordinances affecting tax rates, specifically when those ordinances take effect. Previously, an ordinance raising taxes, lowering taxes, or rescinding an ordinance doing either of the first two had to be passed between March 31 and August 1 to be effective that taxable year.[56] This restriction has been removed for all three circumstances.[57] Additionally, the statutory provisions mandating an effective date of the increase, decrease, or rescission of October 1 of that year has been removed.[58] Presumably, since no alternative date was included, an ordinance will become effective immediately upon passage.

Motor carrier fuel tax returns now must be filed electronically,[59] and DOR can revoke a taxpayer's license to operate if the taxpayer fails to file the electronic return.[60]

For a CEDIT, the deadline for a change in the tax to be effective on January 1 of the next calendar year has been extended from July 1 to August 2.[61] The deadline for paying DOR's assessment or filing a written tax protest has been extended from forty-five to sixty days.[62] If a tax warrant issued is erroneous, the circuit court clerk is now responsible for expunging the warrant from the

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51. *Id.*
52. *Id.* § 6-2.5-3-10.
53. *Id.* § 6-2.5-8-1(g).
54. *Id.* § 6-3.5-0.8.
55. *Id.* § 6-3.5-1.1-2(a).
56. 2011 Ind. Acts 699, 703-05 (2011).
57. IND. CODE §§ 6-3.5-1.1-3(a); 6-3.5-1.1-3.1(a); 6-3.5-1.1-4(b).
58. 2011 Ind. Acts 699, 703-05.
59. IND. CODE § 6-6-4.1-10(e)-(f) (Version b).
60. *Id.* § 6-6-4.1-17(5)-(6) (Version b).
61. *Id.* § 6-3.5-7-12(c)(1).
62. *Id.* § 6-8.1-5-1(d).

taxpayer's record.[63]

Finally, there have been changes in the jurisdiction and procedure for appeals made to the Tax Court. Under Indiana Code section 6-8.1-8-16, no levy or other court-approved action may be taken by DOR against a taxpayer until after the appeal period has expired or there is a final decision made by the Indiana Tax Court (Tax Court).[64] Additionally, the Tax Court loses jurisdiction for an appeal if a taxpayer does not appeal within ninety days of the later of a denial of claim by DOR or a final DOR decision.[65]

D. Sales and Other Excise Taxes

The GA passed Indiana Code chapter 6-2.3-0.1 for the Utility Receipts Tax, making it retroactively effective for taxable years starting after 2002.[66] It provides for a short taxable year for some entities for the first year of the tax credit, starting January 1, 2003 and ending at the end of the fiscal year, as registered with the Internal Revenue Service (IRS).[67] The $1,000 deduction and resource recovery system depreciation will be prorated retroactively from January 1, 2003 to the end of the entity's fiscal year.[68] Modifying section 6-6-4.1-2, nine-passenger vans are now exempt from the motor carrier fuel tax.[69] Also, the additional excise tax for the purchase of a boat has been reduced from 10% to 8.33%, pursuant to new language in section 6-6-11-17(a).[70]

The GA also took steps to expand the definition of what constitutes a retail transaction subject to sales tax. A vendor selling prepaid phone cards is now considered a retail merchant and thus, must collect and remit sales tax.[71] Additionally, the exemption for sales of durable medical equipment has been repealed.[72] Finally, the GA amended Indiana Code section 6-2.5-10-10(a)(2) and increased the percentage of sales and other excise taxes going into the state general fund. The percentage of sales tax revenue going into the state general fund has increased from 99.178% to 99.848%,[73] and the 0.67% contribution into the state mass transit revenue fund has been eliminated.[74]

The GA made several changes to the hotel and innkeeper's taxes as well by amending Indiana Code sections 6-9-7-7(a)(1) and 6-9-10.5-6(b). Normally, 30% of the innkeeper's tax is allotted to the Department of Natural Resources (DNR)

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63. *Id.* § 6-8.1-8-2(h) (Version a).
64. *Id.* § 6-8.1-8-16(b).
65. *Id.* § 6-8.1-9-1(c)(2).
66. *Id.* § 6-2.3-0.1-1.
67. *Id.* § 6-2.3-0.1-2(c).
68. *Id.* § 6-2.3-0.1-2(d).
69. 2011 Ind. Acts 492.
70. IND. CODE § 6-6-11-17(a) (2011).
71. *Id.* § 6-2.5-4-13.
72. *Id.* § 6-2.5-5-18(a).
73. 2011 Ind. Acts 3316, 3618.
74. IND. CODE § 6-2.5-10-10(a)(2).

"for the development of projects in the state park on the county's largest river, including its tributaries."[75] However, from July 1, 2015 until June 30, 2017, this 30% is to go in the county's general fund.[76] The maximum hotel tax a county may levy was increased from 3% to 5% as of July 1, 2011.[77] If the rate increases during the middle of the year, this increase shall be applied *pro rata* to the lake fund for the rest of the year;[78] in other words, it would not be a retroactive increase in the deposit of funds. Also, any increase in the hotel and innkeeper's tax must be accompanied by the establishment of a county promotion fund[79] and economic development commission.[80]

The Nashville (Indiana) food and beverage tax was extended ten years, until January 1, 2022.[81] Also, the sunset provision for the Allen County Supplemental Food and Beverage Tax was modified. Whereas before it was to terminate two years after the debt incurred was retired, it now terminates on the later of that date or two years after the retirement of the debt by the Capital Improvement Board of Directors.[82]

Finally, the GA modified section 6-9-39-9 to create a narrow exception for any county that enacted an ordinance authorizing a dog licensing system—but without a county option dog tax—in January 2007.[83] The ordinance is retroactively valid.[84]

E. Income Taxes

There have been several significant changes to the calculation of Indiana corporate adjusted gross income (AGI). Many of these changes are due to the implementation of the E-Verify program, in which employers must ensure the workers they hire are legally authorized to work in the United States. Indiana Code chapter 6-3-1 has been amended such that employers who do not participate in E-Verify are prohibited from deducting the reasonable wages of undocumented immigrant employees as a business expense to arrive at AGI.[85] Employers are also similarly prohibited from claiming Economic Development for a Growing Economy Tax Credits on the wages of undocumented immigrants, for which the employers would otherwise be eligible, unless they participated in E-Verify.[86] An employer who deducted these wages on its federal income tax returns as a

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75. *Id.* § 6-9-7-7(a)(1)(A) (Version b).
76. *Id.* § 6-9-7-7(a)(1)(B).
77. *Id.* § 6-9-10.5-6(b).
78. *Id.* § 6-9-10.5-7(c).
79. *Id.* § 6-9-10.5-8(a).
80. *Id.* § 6-9-10.5-9(a)(1).
81. *Id.* §§ 6-9-24-9(a)-(b).
82. *Id.* § 6-9-33-3(d).
83. *Id.* §§ 6-9-39-9(a)-(b).
84. *Id.*
85. *Id.* § 6-3-1-3.5(a)(35) (Version b).
86. *Id.* §§ 6-3.1-13-5(b)(1)-(2).

business expense must add them back for Indiana tax purposes unless the employer participated in E-Verify.[87] In addition to these sanctions, the GA also provided an important incentive for businesses; if they willingly participated in E-Verify, the ten-year limit on the above-mentioned tax credits would not apply to their businesses.[88]

There were also other changes to the calculation of individual AGI. The required addback of IRC § 221, the federal tax deduction for married couples, for taxable years 1986 and prior has been eliminated.[89] Interest income under IRC § 128 has been eliminated for taxable years prior to and including 1984 has been eliminated.[90] However, out-of-state state or municipal bond income is now added to AGI.[91] Eighteen additional addbacks have been added to the AGI calculation[92]:

> (35) Add the amount deducted from gross income under Section 198 of the Internal Revenue Code for the expensing of environmental remediation costs.
> (36) Add the amount excluded from gross income under Section 408(d)(8) of the Internal Revenue Code for a charitable distribution from an individual retirement plan.
> (37) Add the amount deducted from gross income under Section 222 of the Internal Revenue Code for qualified tuition and related expenses.
> (38) Add the amount deducted from gross income under Section 62(2)(D) of the Internal Revenue Code for certain expenses of elementary and secondary school teachers.
> (39) Add the amount excluded from gross income under Section 127 of the Internal Revenue Code as annual employer provided education expenses.
> (40) Add the amount deducted from gross income under Section 179E of the Internal Revenue Code for any qualified advanced mine safety equipment property.
> (41) Add the monthly amount excluded from gross income under Section 132(f)(1)(A) and 132(f)(1)(B) that exceeds one hundred dollars ($100) a month for a qualified transportation fringe.
> (42) Add the amount deducted from gross income under Section 221 of the Internal Revenue Code that exceeds the amount the taxpayer could deduct under Section 221 of the Internal Revenue Code before it was amended by the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312).
> (43) Add the amount necessary to make the adjusted gross income of any

87. *Id.* § 6-5.5-1-2(a)(2)(H) (Version b).

88. *Id.* § 6-3.1-13-18(c).

89. *Id.* § 6-3-1-3.5(a)(10) (Version a).

90. *Compare id.* § 6-3-1-3.5(a)(11) (Version c), *with id.* § 6-3-1-3.5(a)(10) (Versions a & b).

91. *Compare id.* § 6-5.5-1-2(c) (Version c), *with id.* § 6-5.5-1-2(c) (Version a & b).

92. Unless explicitly stated otherwise, "section" in this list refers to the Internal Revenue Code section, and "P.L." refers to the federal Public Law number, not Indiana.

taxpayer that placed any qualified leasehold improvement property in service during the taxable year and that was classified as 15-year property under Section 168(e)(3)(E)(iv) of the Internal Revenue Code equal to the amount of adjusted gross income that would have been computed had the classification not applied to the property in the year that it was placed into service.
(44) Add the amount necessary to make the adjusted gross income of any taxpayer that placed a motorsports entertainment complex in service during the taxable year and that was classified as 7-year property under Section 168(e)(3)(C)(ii) of the Internal Revenue Code equal to the amount of adjusted gross income that would have been computed had the classification not applied to the property in the year that it was placed into service.
(45) Add the amount deducted under Section 195 of the Internal Revenue Code for start-up expenditures that exceeds the amount the taxpayer could deduct under Section 195 of the Internal Revenue Code before it was amended by the Small Business Jobs Act of 2010 (P.L. 111-240).
(46) Add the amount necessary to make the adjusted gross income of any taxpayer for which tax was not imposed on the net recognized built-in gain of an S corporation under Section 1374(d)(7) of the Internal Revenue Code as amended by the Small Business Jobs Act of 2010 (P.L. 111-240) equal to the amount of adjusted gross income that would have been computed before Section 1374(d)(7) of the Internal Revenue Code as amended by the Small Business Jobs Act of 2010 (P.L. 111-240).[93]

(R) Add the amount necessary to make the adjusted gross income of any taxpayer that placed any qualified leasehold improvement property in service during the taxable year and that was classified as 15-year property under Section 168(e)(3)(E)(iv) of the Internal Revenue Code equal to the amount of adjusted gross income that would have been computed had the classification not applied to the property in the year that it was placed into service.
(S) Add the amount deducted from gross income under Section 198 of the Internal Revenue Code for the expensing of environmental remediation costs.
(T) Add the amount deducted from gross income under Section 179E of the Internal Revenue Code for any qualified advanced mine safety equipment property.
(U) Add the amount necessary to make the adjusted gross income of any taxpayer that placed a motorsports entertainment complex in service during the taxable year and that was classified as 7-year property under Section 168(e)(3)(C)(ii) of the Internal Revenue Code equal to the amount of adjusted gross income that would have been computed had the classification not applied to the property in the year that it was placed

93. IND. CODE §§ 6-3-1-3.5(a)(35)-(46) (Version a).

into service.
(V) Add the amount deducted under Section 195 of the Internal Revenue Code for start-up expenditures that exceeds the amount the taxpayer could deduct under Section 195 of the Internal Revenue Code before it was amended by the Small Business Jobs Act of 2010 (P.L. 111-240).
(W) Add the amount necessary to make the adjusted gross income of any taxpayer for which tax was not imposed on the net recognized built-in gain of an S corporation under Section 1374(d)(7) of the Internal Revenue Code as amended by the Small Business Jobs Act of 2010 (P.L. 111-240) equal to the amount of adjusted gross income that would have been computed before Section 1374(d)(7) of the Internal Revenue Code as amended by the Small Business Jobs Act of 2010 (P.L. 111-240).[94]

There were also five new addback provisions in computing taxable income. As with computing AGI, these changes are made retroactive to January 1, 2011:

(19) Add the amount deducted from gross income under Section 198 of the Internal Revenue Code for the expensing of environmental remediation costs.
(20) Add the amount deducted from gross income under Section 179E of the Internal Revenue Code for any qualified advanced mine safety equipment property.
(21) Add the amount necessary to make the adjusted gross income of any taxpayer that placed any qualified leasehold improvement property in service during the taxable year and that was classified as 15-year property under Section 168(e)(3)(E)(iv) of the Internal Revenue Code equal to the amount of adjusted gross income that would have been computed had the classification not applied to the property in the year that it was placed into service.
(22) Add the amount necessary to make the adjusted gross income of any taxpayer that placed a motorsports entertainment complex in service during the taxable year and that was classified as 7-year property under Section 168(e)(3)(C)(ii) of the Internal Revenue Code equal to the amount of adjusted gross income that would have been computed had the classification not applied to the property in the year that it was placed into service.
(23) Add the amount deducted under Section 195 of the Internal Revenue Code for start-up expenditures that exceeds the amount the taxpayer could deduct under Section 195 of the Internal Revenue Code before it was amended by the Small Business Jobs Act of 2010 (P.L. 111-240).[95]

For life insurance companies, there are five new addbacks in computing AGI:

(18) Add the amount necessary to make the adjusted gross income of any taxpayer that placed any qualified leasehold improvement property in

94. *Id.* §§ 6-5.5-1-2(c)(1)(R)-(W) (Version a).
95. *Id.* §§ 6-3-1-3.5(b)(19)-(23) (Versions a & c).

service during the taxable year and that was classified as 15-year property under Section 168(e)(3)(E)(iv) of the Internal Revenue Code equal to the amount of adjusted gross income that would have been computed had the classification not applied to the property in the year that it was placed into service.
(19) Add the amount necessary to make the adjusted gross income of any taxpayer that placed a motorsports entertainment complex in service during the taxable year and that was classified as 7-year property under Section 168(e)(3)(C)(ii) of the Internal Revenue Code equal to the amount of adjusted gross income that would have been computed had the classification not applied to the property in the year that it was placed into service.
(20) Add the amount deducted under Section 195 of the Internal Revenue Code for start-up expenditures that exceeds the amount the taxpayer could deduct under Section 195 of the Internal Revenue Code before it was amended by the Small Business Jobs Act of 2010 (P.L. 111-240).
(21) Add the amount deducted from gross income under Section 198 of the Internal Revenue Code for the expensing of environmental remediation costs.
(22) Add the amount deducted from gross income under Section 179E of the Internal Revenue Code for any qualified advanced mine safety equipment property.[96]

Finally, six new addbacks were added to compute AGI for trusts and estates:

(16) Add the amount necessary to make the adjusted gross income of any taxpayer that placed any qualified leasehold improvement property in service during the taxable year and that was classified as 15-year property under Section 168(e)(3)(E)(iv) of the Internal Revenue Code equal to the amount of adjusted gross income that would have been computed had the classification not applied to the property in the year that it was placed into service.
(17) Add the amount necessary to make the adjusted gross income of any taxpayer that placed a motorsports entertainment complex in service during the taxable year and that was classified as 7-year property under Section 168(e)(3)(C)(ii) of the Internal Revenue Code equal to the amount of adjusted gross income that would have been computed had the classification not applied to the property in the year that it was placed into service.
(18) Add the amount deducted under Section 195 of the Internal Revenue Code for start-up expenditures that exceeds the amount the taxpayer could deduct under Section 195 of the Internal Revenue Code before it was amended by the Small Business Jobs Act of 2010 (P.L. 111-240).
(19) Add the amount deducted from gross income under Section 198 of the Internal Revenue Code for the expensing of environmental

96. *Id.* §§ 6-3-1-3.5(c)(18)-(22) (Versions a & c).

remediation costs.
(20) Add the amount deducted from gross income under Section 179E of the Internal Revenue Code for any qualified advanced mine safety equipment property.
(21) Add the amount necessary to make the adjusted gross income of any taxpayer for which tax was not imposed on the net recognized built-in gain of an S corporation under Section 1374(d)(7) of the Internal Revenue Code as amended by the Small Business Jobs Act of 2010 (P.L. 111-240) equal to the amount of adjusted gross income that would have been computed before Section 1374(d)(7) of the Internal Revenue Code as amended by the Small Business Jobs Act of 2010 (P.L. 111-240).[97]

While the above addbacks were, in many cases, attempts by the GA to keep Indiana in compliance with changes to the Internal Revenue Code, the GA did make several exceptions to 2010 changes to the Code:

(d) The following provisions of the Internal Revenue Code that were amended by the Tax Relief Act, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) are treated as though they were not amended by the Tax Relief Act, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312):
(1) Section 1367(a)(2) of the Internal Revenue Code pertaining to an adjustment of basis of the stock of shareholders.
(2) Section 871(k)(1)(c) and 871(k)(2)(C) of the Internal Revenue Code pertaining the treatment of certain dividends of regulated investment companies.
(3) Section 897(h)(4)(A)(ii) of the Internal Revenue Code pertaining to regulated investment companies qualified entity treatment.
(4) Section 512(b)(13)(E)(iv) of the Internal Revenue Code pertaining to the modification of tax treatment of certain payments to controlling exempt organizations.
(5) Section 613A(c)(6)(H)(ii) of the Internal Revenue Code pertaining to the limitations on percentage depletion in the case of oil and gas wells.
(6) Section 451(i)(3) of the Internal Revenue Code pertaining to special rule for sales or dispositions to implement Federal Energy Regulatory Commission or state electric restructuring policy for qualified electric utilities.
(7) Section 954(c)(6) of the Internal Revenue Code pertaining to the look-through treatment of payments between related controlled foreign corporation under foreign personal holding company rules.[98]

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97. *Id.* §§ 6-3-1-3.5(e)(16)-(21) (Versions a & c).
98. *Id.* §§ 6-3-1-11(d)(1)-(7).

Despite the property tax caps being implemented—and the uncertainty of how the caps will affect county, township, and municipality revenues—the GA also passed a gradual reduction in the Indiana corporate income tax through an amendment to Indiana Code section 6-3-2-1(b). Starting July 1, 2012, the income tax will be reduced by 0.5% annually until it reaches 6.5% on July 1, 2015.[99] However, with this reduction comes an expansion of the scope of AGI through several amendments to Indiana code chapter 6-3-2. Intangible personal property that can be sourced or apportioned to Indiana is now included in AGI,[100] and the net operating loss carryback for both individuals[101] and corporations[102] has been eliminated, effective January 1, 2012. Also, employers are no longer exempt from withholding taxes from employees simply because the employee qualifies for the Earned Income Tax Credit.[103]

In addition to these state-level changes, there have been several changes to the county income and COITs via amendments to Code chapter 6-3.5-6. The county option income tax a county may impose is now capped at 1% *per annum*, up from 0.6%.[104] However, this must be increased by increments of no more than 0.1% annually.[105] Additionally, if both a CAGIT and COIT are in effect by ordinance, the COIT will take effect and the CAGIT will not.[106] Counties also have the option to permanently freeze their COIT rates as of December 1 of a particular tax year.[107] If a county chooses not to freeze its COIT rate, it will automatically increase by 0.1% annually until it reaches 1%.[108]

The legislature greatly modified Code article 6-3.1. An eight-year moratorium has also been placed on the tax credits for teachers' summer employment.[109] Also, the tax credit for operating a maternity home was altered under Code chapter 6-3.1-9. It may not be awarded for a period beginning on January 1, 2012 and ending December 31, 2019,[110] but a taxpayer may carry forward any awarded but unclaimed credits and use them in the 2014 and 2015 tax years.[111] Eligibility for the Indiana Earned Income Tax Credit (EITC) is based on eligibility for the federal EITC before the passage of the federal Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, which

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99. *Id.* §§ 6-3-2-1(b)(1)-(5).
100. *Id.* § 6-3-2-2(a)(5).
101. *Id.* §§ 6-3-2-2.5(b), (f).
102. *Id.* §§ 6-3-2-2.6(b), (f).
103. 2011 Ind. Acts 1969, 2092-2096.
104. IND. CODE § 6-3.5-6-9(a) (2011).
105. *Id.*
106. *Id.* § 6-3.5-6-10.
107. *Id.* § 6-3.5-6-11(b).
108. *Id.* § 6-3.5-6-11(e).
109. *Id.* § 6-3.1-2-8.
110. *Id.* §§ 6-3.1-14 to -10.
111. *Id.* § 6-3.1-14-9.

altered the eligibility for the federal EITC.[112]

There have been several other important changes to the law surrounding tax credits as well. The cap on funds for the venture capital investment tax credit has increased from the lesser of 20% of all qualifying venture capital or $500,000, to the lesser of 20% of all qualifying venture capital or $1,000,000.[113] The tax credits are also extended for an additional two years, through the end of the 2014 taxable year.[114] Funds for the school scholarship tax credit have similarly been doubled to $5,000,000.[115] On the other hand, the GA imposed an eight-year moratorium on employers receiving new tax credits for their employee health benefit plans.[116] It also imposes a moratorium for 2012 on awarded but unclaimed credits; these must be carried forward to tax years between 2013 and 2016.[117] Similarly, an eight-year moratorium has been imposed on the Small Employer Qualified Wellness Program Tax Credit.[118]

The GA added new sections to Code chapter 6-3.5-9. Among them, it created a new hiring incentive, in which qualifying entities can receive a credit on their COIT or LOIT.[119] This incentive may last for up to ten years[120] and applies only to jobs either newly created or relocated from outside Indiana.[121] An annual compliance report must be submitted to the IEDC for a taxpayer to continue receiving the tax incentive.[122] The amount allowed to be withheld may be stated as either a percentage of the payroll taxes withheld or as a fixed dollar amount, but it may not exceed the total amount of payroll taxes withheld on behalf of employees.[123]

For the EDIT, counties now have additional flexibility in how they spend revenue generated from the tax as a result of modifications to Indiana Code chapter 6-3.5-7. At any time, the counties may transfer money from the economic development fund to the county general fund or the fund of any county, township, or municipality in the county.[124] However, there is an additional requirement: if the revenues collected exceed 150% of projected revenues, and there are no mandatory distributions to a rainy day fund, the county must distribute the funds exceeding 150%.[125] All counties and municipalities that have already imposed an economic development income tax may impose an additional

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112. *Id.* § 6-3.1-21-6(a).
113. *Id.* §§ 6-3.1-24-8(b)-(c).
114. *Id.* § 6-3.1-24-9(b).
115. *Id.* § 6-3.1-30.5-13.
116. *Id.* §§ 6-3.1-31-14(a) to -15.
117. *Id.*
118. *Id.* §§ 6-3.1-31.2-11 to -12.
119. *Id.* § 6-3.5-9-1.
120. *Id.* § 6-3.5-9-13(a).
121. *Id.* § 6-3.5-9-12.
122. *Id.* § 6-3.5-9-17(a).
123. *Id.* §§ 6-3.5-9-13(b)-(c).
124. *Id.* § 6-3.5-7-12.7.
125. *Id.* § 6-3.5-7-17.3(a).

tax of 0.05%.[126] However, if "a county or municipality that becomes a member of a development authority after June 30, 2011, and before July 1, 2013,"[127] it may only impose a tax of 0.025%.[128]

The legislature expanded the scope of its cigarette and tobacco taxes through amendments to Code chapter 6-7-2. Moist snuff is now included under the scope of cigarette and tobacco taxes,[129] but it will be taxed by weight, rather than by a percentage of the sale price.[130] For cigarette taxes in general, there is a two-year moratorium on distributions to the state retiree health benefit fund due to changes to Indiana Code subsection 6-7-1-28.1.[131] Instead, that revenue will go into the state's general fund.

F. Inheritance Taxes

The most significant change in Indiana inheritance tax law is a modification to Indiana Code section 6-4-1-3. This provision relating to stepchildren is now made retroactively valid for the estate of any decedent who died after June 30, 2004.[132] A stepchild of a decedent is now classified as a Class A beneficiary, regardless of whether the decedent legally adopted the stepchild before his or her death.[133] There are also additional clarifications on the effective dates of previous statutory modifications.[134]

II. INDIANA TAX COURT DECISIONS

The Tax Court rendered a variety of opinions from January 1, 2011 to December 31, 2011. Specifically, the Tax Court issued sixteen published opinions and decisions: five concerned the Indiana real property tax, two concerned the Indiana inheritance tax, two concerned the Indiana sales and use tax, one concerned the Indiana personal property tax, three concerned the Indiana personal income tax, and three concerned the Indiana corporate income tax. A summary of each opinion and decision appears below.

A. Real Property Tax

1. Truedell-Bell v. Marion County Treasurer.[135]—Brenda Truedell-Bell owned real property in Marion County.[136] Truedell-Bell filed four petitions with

126. *Id.* § 6-3.5-7-28(b)(2) (Version b).
127. *Id.* § 36-7.6-4-2(b)(2).
128. *Id.* § 6-3.5-7-28(b)(1) (Version b).
129. *Id.* § 6-7-2-5(a)(2) (Version b).
130. *Id.* § 6-7-2-7(a)(2) (Version b).
131. *Id.* §§ 6-7-1-28.1(3), (7).
132. *Id.* § 6-4.1-1-3(a)(3).
133. *Id.*
134. 2011 Ind. Acts 3316, 3735-53.
135. 955 N.E.2d 872 (Ind. T.C. 2011).
136. *Id.* at 873.

the Marion County Assessor which challenged her real property assessment for 2007.[137] The Marion County PTABOA never scheduled a hearing on her appeal, and Truedell-Bell did not pay the tax liability to keep the property out of the tax sale while her appeals were pending.[138] Because Truedell-Bell did not pay the taxes, the Marion County Treasurer and Auditor listed the property in the 2009 tax sale for delinquent taxes.[139] On March 8, 2010, Truedell-Bell filed a petition for an injunction to prevent her property from being sold prior to the resolution of her appeals.[140] The Circuit Court conducted a hearing and "denied Truedell-Bell's petition on the basis that it did not have subject matter jurisdiction."[141] Truedell-Bell appealed to the Court of Appeals, which affirmed the Circuit Court's denial of her petition.[142] The Court of Appeals explained that the Tax Court possessed "exclusive jurisdiction to grant the type of relief [Truedell-Bell] sought."[143] Truedell-Bell filed her petition with the Tax Court, stated that her property had been sold in the Marion County tax sale, and asked "the Court to enjoin the issuance of the tax deed on the property pending the PTABOA's determination an her appeal."[144]

Indiana Code section 33-26-3-1 provides that "[t]he [T]ax [C]ourt has exclusive jurisdiction over any case that arises under the tax laws of Indiana and that is an initial appeal of a final determination made by" either the Department or the IBTR.[145] Truedell-Bell argued that the Tax Court had jurisdiction because the Indiana Court of Appeals had explicitly made this determination,[146] but the Tax Court disagreed. The Court of Appeals stated that the "petition for injunctive relief met the first of the Tax Court's jurisdictional requirements," that is, the issue arises under Indiana's tax laws.[147] The Court of Appeals, however, stated that a final determination from the IBTR was required before the Tax Court had jurisdiction.[148] The legislature has provided that if the PTABOA fails to timely conduct a hearing, the taxpayer may "bypass the PTABOA and go directly to the [IBTR] for resolution."[149] Because the statute uses "may" instead of "shall,"[150] Truedell-Bell argued she was not required to remove her case to the IBTR. However, a taxpayer "cannot circumvent the IBTR final determination

137. *Id.*
138. *Id*.
139. *Id*.
140. *Id*.
141. *Id*.
142. *Id.*
143. *Id.*
144. *Id.* at 874.
145. IND. CODE § 33-26-3-1 (2011).
146. *Truedell-Bell*, 955 N.E.2d at 874.
147. *Id*.
148. *Id*.
149. *Id*. at 875 (citing IND. CODE § 6-1.1-15-1(o) (2008)).
150. *Id*.

requirement that is a basis for [the Tax] Court's exclusive jurisdiction."[151] The Tax Court held that the Indiana statute did, in fact, mandate that Truedell-Bell obtain a final determination from the [IBTR] before she appealed to the Tax Court.[152] Thus, the Tax Court ruled that it lacked subject matter jurisdiction to hear the case.[153]

2. Grant County Assessor v. Kerasotes Showplace Theatres, LLC.[154]—Kerasotes Showplace 12 ("Kerasotes") owned real property in Grant County consisting of a twelve-screen multiplex movie theater situated on seven acres of land.[155] Kerasotes built the facility in 2000 at a cost of $6,487,110.[156] In 2005, it sold the property in a portfolio transaction for $7,821,835.[157] In 2006, the Assessor assigned the property an assessed value of $6,137,800.[158] Kerasotes appealed to the Grant County PTABOA, alleging that the assessed value was too high.[159] The PTABOA, however, further increased the assessment to $7,821,000[160] causing Kerasotes to file an appeal with the IBTR.[161]

On appeal, the IBTR conducted an administrative hearing, and Kerasotes and the Assessor each presented appraisals[162] which consisted of significantly discrepant values.[163] Each appraisal arrived at substantially different values. The cause of the variation was attributed to "how much their appraisers relied on the subject property's allocated sales price and contract rent in their income approach analyses."[164] According to Kerasotes' appraisal, the property had a "market value-in-use" of $4,200,000 and accorded little weight to the "property's allocated sale's price and contractment."[165] The Assessor's appraisal, which was reliant on the "property's allocated sales price and contractual rent," estimated the market value-in-use of the subject property at $7,450,000.[166] The IBTR issued its final determination and stated "that based on what the evidence did, and did not, show, it could not conclude that the subject property's allocated sales price [or] contract rent reflected the value of the subject's real property alone."[167] The IBTR concluded that the Kerasotes' appraisal was more probative as to the

151. *Id.*
152. *Id*. at 876.
153. *Id*.
154. 955 N.E.2d 876 (Ind. T.C. 2011).
155. *Id.*
156. *Id*.
157. *Id*.
158. *Id*.
159. *Id.*
160. *Id*.
161. *Id.*
162. *Id.*
163. *Id.* at 878.
164. *Id.*
165. *Id*.
166. *Id.*
167. *Id*. at 880.

subject property's market value-in-use than the Assessor's appraisal"[168] and thus reduced the 2006 assessment to $4,200,000.[169] The Assessor subsequently initiated a tax appeal with the Tax Court.[170]

On appeal, the Assessor argued that the IBTR failed to value the property in accordance with Indiana's statutory mandate, Kerasotes' appraisal "ignored the data representing the 'realities' of the movie-theater industry . . . [and] failed to consider and value the actual utility gained from the use of the subject property."[171] The Tax Court disagreed with the Assessor and stated that the issue presented to the IBTR was whether the "property should be valued according to the terms of its lease . . . or according to what other similar properties would garner in rent."[172] Furthermore, the IBTR "explained that one should approach the rental data from such transactions with caution, taking care to ascertain whether the sales prices/contract rents reflect real property value alone or whether they include the value of certain other economic interests."[173] The Tax Court agreed with the IBTR that by using the income approach Kerasotes' appraiser exercised caution, unlike the Assessor's appraiser.[174] Additionally, the Assessor assumed that "sale was an arm's length transaction," but this conclusion was not supported by any facts.[175]

The IBTR is responsible for deciding which of the appraiser's values "is more probative."[176] Here, the IBTR concluded that Kerasotes' appraisal was more probative.[177] The Assessor's claim on appeal hinged on the Tax Court reweighing the evidence, which the court refused to do.[178] The Tax Court upheld the IBTR determination.[179]

3. Idris v. Marion County Assessor.[180]—After the IBTR upheld the Jaklin Idris and assessment of Dariana Kamenova's (collectively "Idris") real property, they initiated an appeal of the final determination in the office of the Clerk of the Tax Court.[181] The Marion County Assessor moved to dismiss Idris' appeal claiming that IC 33-26-6-2 and 6-1.1-15-5(b) and Tax Court Rule 16(C) bar the appeal.[182]

Indiana Code section 33-26-6-2 requires a taxpayer to file a petition asking

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168. *Id.*
169. *Id*. at 880-81.
170. *Id.* at 880.
171. *Id*.
172. *Id*. at 881.
173. *Id*. at 882.
174. *Id.*
175. *Id.*
176. *Id.* at 882-83.
177. *Id.* at 882.
178. *Id*. at 883.
179. *Id.*
180. 956 N.E.2d 783 (Ind. T.C. 2011).
181. *Id*. at 784.
182. *Id*.

the Tax Court to set aside the final determination of the IBTR.[183] According to the statute, "If a taxpayer fails to comply with any statutory requirement for the imitation of an original tax appeal, the tax court does not have jurisdiction to hear the appeal."[184] Furthermore, Indiana Code section 6-1.1-15-5(b) specifies that a "party must: (1) file a petition with the Indiana tax court; (2) serve a copy of the petition on (A) the county assessor; (B) attorney general; and (C) any entity that filed an amicus curiae brief with the [IBTR]; and (3) file a written notice of appeal with the [IBTR] informing the [IBTR] of the party's intent to obtain judicial review."[185] Although the above statutes do not say how a party must serve the petition, Indiana Tax Court Rule 16 specifies the manner of service required. Tax Court Rule 16 states that "[a] copy of the notice of claim shall be served upon the Attorney General by registered or certified mail, return receipt requested."[186]

The Marion County Assessor argued that Idris failed to comply with the statutory requirements because "the Clerk served a copy of the Petition on the Attorney General when Idris was required to do so."[187] In response, Idris maintained that she left four copies of the Petition, IBTR final determination, letter from the Assessor, and other relevant documents with the Clerk's office.[188] Idris argued that the Clerk's office that it would distribute the documents, and the Clerk mailed a copy of the Petition to the Attorney General on the same day.[189] The Tax Court held that Idris compiled with the requirements of IC 6-1.1-15-5.[190] Although the statute does not specify how a party is to serve the Attorney General, the Court concluded that "the statute's silence as to the method of service indicates its concern is not how service is accomplished, but rather that it is made."[191] Furthermore, the Tax Court held that dismissal is not appropriate under Tax Court Rule 16 because "[t]he purpose of [the] Rule is to ensure that there is evidence of both service and receipt. This evidence is present here in both the Transmittal Letter and the Assessor's own acknowledgement."[192] Therefore, Idris' method of service was within the purpose of the rule, and the Assessor's motion to dismiss was denied.[193]

4. Fuller v. Cass County Assessor.[194]—Maurice and Craig Fuller (the "Fullers") owned real property in Cass County, Indiana.[195] The Fullers 2008

183. IND. CODE § 33-26-6-2(1) (2011).
184. *Id*.
185. *Id.* § 6-1.1-15-5(b).
186. Ind. T.C. R. 16(C) (2011).
187. Idris v. Marion Cnty. Assessor, 956 N.E.2d 783, 785-86 (Ind. T.C. 2011).
188. *Id*. at 786.
189. *Id.*
190. *Id.*
191. *Id*. (citing Whetzel v. Dep't of Local Gov't Fin., 761 N.E.2d 904, 908 (Ind. T.C. 2002)).
192. *Id*. at 787.
193. *Id.*
194. No. 49T10-1011-TA-68, 2011 WL 5431823 (Ind. T.C. Nov. 9, 2011).
195. *Id.* at *1.

property tax bill was higher than any of the prior property owner's was required to pay.[196] The Cass County Assessor valued the Fullers' property at $101,800.[197] The Fullers claimed tax liability was too high because the homestead credit, homestead standard deduction, and mortgage deduction were not applied.[198] Although the Fullers attempted to have them reinstated, the Auditor's office informed them that they had missed the application deadline.[199] The Fullers filed an appeal with the Cass County PTABOA, seeking a review of both the assessment and their eligibility for the credits and deductions.[200] The PTABOA reduced the assessment to $79,100 but failed to address the Fullers' claims concerning credits and deductions.[201] The Fullers timely filed an appeal with the IBTR, seeking a determination regarding the credits and deductions.[202] In its final determination, the IBTR concluded that the Fullers "failed to establish that [they] met the statutory requirements for the credits and deductions."[203] The Fullers then filed an original tax appeal.[204]

On appeal, the Fullers argued that it was inequitable to require them to pay higher taxes because they had purchased the home "after the statutorily imposed deadlines" for the credits and deduction had passed.[205] In order to prove that they qualified for the homestead credit and the homestead standard deduction, the Fullers were required to establish ownership of the property on the assessment date.[206] The Tax Court held that the Fullers failed to establish that they were entitled to the credit or the deductions.[207] Furthermore, to be eligible for the mortgage deduction, the Fullers had to have a mortgage and "file the requisite application for the deduction on or before October 15, 2007."[208] Although the certified administrative record indicates that the Fullers had a mortgage, they could not comply with the application deadline because the deadline had lapsed before the Fullers even purchased the home.[209] Therefore, the Tax Court affirmed the IBTR's final determination that the Fullers "did not establish that [they were] entitled to the homestead credit, the homestead standard deduction, or the mortgage deduction."[210]

Furthermore, the Fullers argued that the invested a "great deal of time, effort,

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196. *Id.*
197. *Id*.
198. *Id.*
199. *Id*.
200. *Id.*
201. *Id*.
202. *Id.* at *2.
203. *Id*.
204. *Id.*
205. *Id.*
206. *Id.* at *3.
207. *Id*.
208. *Id*.
209. *Id.*
210. *Id*.

and money" in representing themselves, and they were thus entitled to the same compensation an attorney would have received.[211] The Tax Court held that, "in the absence of a statute [or] rule . . . providing otherwise, litigants must pay their own fees and costs."[212] Therefore, the Fullers' claim for fees and costs was denied.[213]

5. Metropolitan School District of Pike Township v. Department of Local Government Finance.[214]—The Metropolitan School District of Pike Township ("the School District"), a public school corporation in Marion County, adopted its annual budget for 2011, in which it "estimated the property tax rate necessary to generate its [capital projects fund (CPF)] levy."[215] The School District submitted its proposed budget to the DLGF for approval.[216] The DLGF made a decision to reduce, and subsequently certified it as a final order, the School District's "estimated CPF levy property tax rate" according to IC 6-1.1-18-12.[217] In March 2011, the School District appealed to the Tax Court.[218]

By statute, public schools' CPF levy rates are "capped at $0.4167 per each $100 of assessed valuation within the taxing district."[219] The legislature codified a formula for the DLGF to use in determining the annual adjustments of assessed values. IC 6-1.1-18-12(e) provides:

> STEP ONE: Determine the maximum rate for the political subdivision levying a property tax . . . under the statute for the year preceding the year in which the annual adjustment or general reassessment takes effect.
> STEP TWO: . . . [D]etermine the actual percentage (rounded to the nearest one-hundredth percent (0.01%)) in the assessed value . . . of the taxable property from the year preceding the year the annual adjustment or general reassessment takes effect to the year that the annual adjustment or general reassessment takes effect.
> STEP THREE: Determine the three (3) calendar years that immediately precede the ensuing calendar year and in which a statewide general reassessment of real property does not first take effect.
> STEP FOUR: . . . [C]ompute separately, for each of the calendar years determined in STEP THREE, the actual percentage change . . . in the assessed value . . . of the taxable property from the preceding year.
> STEP FIVE: Divide the sum of the three (3) quotients computed in STEP FOUR by three (3).
> STEP SIX: Determine the greater of the following:

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211. *Id.*
212. *Id.*
213. *Id.* at *4.
214. 962 N.E.2d 705 (Ind. T.C. 2011).
215. *Id.* at 706.
216. *Id.* at 705.
217. *Id.*
218. *Id.*
219. *Id.* (citing IND. CODE § 20-46-6-5 (2010)).

> (A) Zero (0).
> (B) The result of the STEP TWO percentage minus the STEP FIVE percentage.
> STEP SEVEN: Determine the quotient of the STEP ONE tax rate divided by the sum of one (1) plus the step six percentage increase.[220]

The Tax Court determined "that steps two and four . . . require the use of a zero value when there is no increase in a school district's assessed value from one year to the next."[221] The DLGF used zeros in Steps Two and Four of the formula when it calculated the 2011 CPF levy property tax rate.[222] The School District argued

> that because a CPF levy property tax rate calculation . . . is necessarily affected by previous years' rate calculations, the DLGF should have accounted for its [improper] use of negative numbers in [steps two and four of] its calculations for 2007-2010 by re-running those calculations. . . . This w[ould have] . . . produce[d] a rate of .3100 for Step 1 for 2011.[223]

The DLGF countered that because the School District only protested the 2011 budget, it would have been "improper to go back and recalculate step seven rates for prior 'closed' years."[224] Further, the DLGF argued that the School District's appeal asked the court to "determine the accuracy of [its] CPF tax rate calculations" for 2007-2010.[225] Because the School District never protested the rate calculations for earlier years, the DLGF never made any final determinations regarding the accuracy of the calculations.[226] Accordingly, the DLGF argued that the tax court lacked subject matter jurisdiction and did not possess the authority to modify DLGF valuations and did not have discretion to "order the DLGF to provide the retroactive cumulative relief" the School District sought.[227] The DLGF argued that the School District sought retroactive application of *DeKalb*'s zero value formula for years that were not in dispute.[228] The Tax Court disagreed.[229]

The Tax Court held that "when the 2010 *DeKalb* decision explained why steps two and four of the formula . . . required zero values as opposed to negative values, that meant that the DLGF should have been using those zero values since

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220. IND. CODE § 6-1.1-18-12(e) (2011).

221. *Metro Sch. Dist. of Pike Twp.*, 962 N.E.2d at 706-07 (citing DeKalb Cnty. E. Cmty. Sch. Dist. v. Dep't of Local Gov't Fin., 930 N.E.2d 1257, 1260-62 (Ind. T.C. 2010)).

222. *Id.* at 707.

223. *Id.* at 707-08 (alterations in original).

224. *Id*. at 708.

225. *Id*. (internal citation omitted).

226. *Id.*

227. *Id*.

228. *Id.*

229. *Id.*

2007 when Indiana Code § 6-1.1-18-12(e) first became applicable to public school corporations."[230] The Tax Court added that DLGF's argument did not comport with "the plain and ordinary meaning of the statute" and would produce an absurd result.[231] Relying on a logical interpretation, the Tax Court determined that any errors in previous CPF levy property calculations "should not be allowed to corrupt [the] accuracy of current and future years' calculations."[232] The Tax Court held that "the DLGF's use of negative numbers in steps two and four . . . to produce a CPF levy property tax rate calculation for 2011 [was] wrong" because it should have, instead, used zeros according to the statutory requirements.[233]

B. Inheritance Tax

1. Indiana Department of State Revenue v. Estate of Biddle.[234]—In March 2005, Deloras Biddle died intestate, survived by her son and sole heir, Curtis Biddle, who was appointed the personal representative of her estate (the "Estate").[235] The Estate "filed an inventory, a final accounting, and a verified closing statement"[236] but because the sole heir "received a distribution that was less than [the] statutory exemption,"[237] the Estate did not file an inheritance tax return. After the probate court approved the closing statement in April 2006, it released Curtis Biddle from his personal representative responsibilities.[238]

In 2008, the Department discovered that the insurance company paid death claim proceeds from Deloras' annuity contract to her brother, Richard Fine.[239] The Department stated that the "annuity proceeds paid to Fine were subject to Indiana's inheritance tax."[240] Thus, the Department argued that the Estate was "required to file an inheritance tax return" because the payments were life insurance proceeds—not annuity payments.[241] The probate court ruled that the statute did not require Richard Fine or the Estate's Personal Representative to file an Indiana Inheritance Tax Return.[242] When the probate court denied the Department's motion to correct the error, the Department filed an appeal with the Tax Court.[243]

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230. *Id*.
231. *Id.*
232. *Id*. at 709 (citing IND. CODE 6-1.1-18-12(e) (2008)).
233. *Id*.
234. 943 N.E.2d 932 (Ind. T.C. 2011).
235. *Id*.
236. *Id*.
237. *Id*.
238. *Id*.
239. *Id.* at 932-33.
240. *Id*. at 933.
241. *Id*. at 934.
242. *Id*. at 933.
243. *Id.*

Indiana law provides "[a]n inheritance tax is imposed at the time of the decedent's death on certain property interest transfers made by him."[244] Not all property transfers are subject to the inheritance tax, such as life insurance proceeds and annuity payments.[245] Annuity payments are exempt "only 'to the same extent that the annuity . . . is excluded from the decedent's federal gross estate under [IRC §] 2039.'"[246] Therefore, the annuity payment is subject to Indiana's inheritance tax if:

> (1) the annuity contract was entered into after March 3, 1931; and
> (2) the annuity was payable to the decedent, or the decedent possessed the right to receive the payment either for his life, for any period not ascertainable without reference to his death, or for any period which does not in fact end before his death.[247]

The Tax Court held that "[t]he probate court erred when it determined that the Estate was not required to file an inheritance tax return because the Metlife payments were life insurance proceeds and therefore not subject to Indiana's inheritance tax."[248]

2. Estate Neterer v. Indiana Department of State Revenue.[249]—Christine Neterer ("Neterer") died testate in September 2006.[250] When she died, Neterer owned an undivided one-half interest in real property in Elkhart County (the "Subject Property") as a tenant in common with her sister.[251] A month after Neterer's death "an unsupervised estate was opened, Neterer's will was admitted to probate, and her nieces, Deborah Pollock and Marilyn Humbarger, were appointed as co-personal representatives."[252] A year later, Pollock filed the Estate's Inheritance Tax Return, which included an appraisal estimating the fair market value of the property to be $855,250, "and a document titled 'Valuation of Decedent's Interest in Real Estate'" with the probate court, which "stated that it was necessary to reduce the subject property's appraised value by one-half, and then apply an aggregated discount of 30 percent (30%) to account for both a lack of marketability and a lack of control."[253] Therefore, the fair market value of the subject property was only $300,000.[254] In her Report of Appraiser, the County Assessor stated that "the return 'correctly' valued the subject property."[255] Pollock subsequently submitted an amended return, and the Assessor accepted all

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244. *Id.* at 933-34 (alteration in original) (quoting IND. CODE § 6-4.1-2-1 (2011)).
245. *Id.* at 934.
246. *Id.* (quoting IND. CODE § 6-4.1-3-6.5 (2005)).
247. *Id*. (citing IRC § 2039 (2005)).
248. *Id*. at 934-35.
249. 956 N.E.2d 1214 (Ind. T.C. 2011).
250. *Id*. at 1215.
251. *Id.*
252. *Id*.
253. *Id.*
254. *Id*. at 1215-16.
255. *Id*. at 1216.

of the valuations reported therein.[256] Based on these accepted valuations, the probate court entered an order establishing that "the Estate's inheritance tax liability was $31,937.98."[257] However, a month later the Department provided the Estate with a "Notice of Additional Tax Due," which stated

> [t]he value of the subject property was $427,625 and the Estate's actual inheritance tax liability was actually $45,224.48 because:
> 1. it had not reported the value of a life insurance policy in the return;
> 2. its deduction for monument expenses exceeded the statutory allowance for such deductions; and
> 3. it had not substantiated the propriety of the 30% discount.[258]

Based on these assertions, the Department informed the Estate that it owed another $13,278.64 in inheritance taxes plus interest.[259]

In January 2008, the Estate responded to the Department and explained that while there was no dispute regarding the life insurance and monument deduction adjustments, "it disagreed with the disallowance of the 30% discount . . . [but] offered to reduce the 30% discount by five percent."[260] The Department rejected the Estate's offer, and in February 2008, the Estate paid the requested amount in full.[261] Approximately a year and a half later, "the Estate filed a claim with the Department contending that it was entitled to a refund of the additional inheritance tax it paid. . . . The Department denied the Estate's refund claim."[262] The Estate next filed a Complaint with the probate court "challenging the Department's denial of its refund claim."[263] The Estate argued that the Department "was required to timely file with the probate court either a petition for rehearing or a petition for reappraisal" if it disagreed with the tax liability imposed by the probate court.[264] Because the Department did not follow the established procedure, the Estate argued the Department had "no authority to disallow the 30% discount because the probate court's [o]rder . . . established 'for all time' the amount of tax owed by the Estate."[265] The Department countered that the probate court's order was only an estimate of the taxes owed, which the Department could accept or reject.[266] The Department also explained that the Estate's appraisal was the best indicator of the subject property's fair market value because the Valuation of Decedent's Interest in Real Estate was unverified, unsigned, prepared by an anonymous person, and failed to disclose how the 30%

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256. *Id*.
257. *Id*.
258. *Id.*
259. *Id.*
260. *Id*.
261. *Id.*
262. *Id*.
263. *Id*.
264. *Id*.
265. *Id.*
266. *Id.* at 1217.

discount was even calculated.[267] The probate court held a hearing and entered an order of summary judgment in favor of the Department.[268] The Estate appealed to the Tax Court.[269]

Indiana Code section 6-4.1-10-4 provides that "a person who files a claim for the refund of inheritance . . . tax may appeal any refund order which the [Department] enters with respect to his claim."[270] In order to originate an "appeal, the person must, within ninety (90) days after the department enters the order, file a complaint in which the department is named as the defendant."[271] After an appeal has been initiated, "the probate court shall determine the amount of any tax refund due."[272]

On appeal, the Estate contended that "the Department had but only two avenues by which it could challenge the subject property's valuation: a petition for rehearing . . . or a petition for reappraisal."[273] The Estate argued that the Department's failure to utilize either method of challenge "within the statutorily prescribed time period, its collection of the additional inheritance tax from the Estate was *per se* erroneous or illegal as a matter of law."[274] The Tax Court disagreed.[275] The Tax Court explained that "[t]he Department supervises the enforcement *and* collection of Indiana's death taxes. . . . Under this grant of authority, it may investigate any facts or circumstances relevant to the imposition of inheritance tax."[276] Additionally, when the Department sent its notice to the Estate:

> [I]t was still well within the prescribed statutory period for filing a petition for reappraisal. . . . At that point, the Estate was free to either pay the tax or not, and it elected to pay the tax. . . . Given that the Estate paid the tax in full, just two days after receiving the Department's second notice, it would have been both improper and absurd for the Department to file a petition for reappraisal at that point.[277]

The Tax Court held that it was not an error for the probate court to reconsider "the subject property's valuation."[278]

Furthermore, the Estate claimed that the probate court erred in also determining that the 30% discount was not applicable to the subject property.[279]

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267. *Id*.
268. *Id.*
269. *Id.*
270. *Id*. at 1218 (quoting IND. CODE § 6-4.1-10-4(a) (2011)).
271. *Id*. (quoting IND. CODE § 6-4.1-10-4(a)).
272. *Id*. (quoting IND. CODE § 6-4.1-10-5).
273. *Id.*
274. *Id*.
275. *Id.* at 1219.
276. *Id*. (internal citations omitted).
277. *Id*. (internal citations omitted).
278. *Id.*
279. *Id.*

The Department, in contrast, asserted that the probate court was correct to disallow the discount "because the personal representatives did not establish that they qualified to determine whether the application of the 30% discount to the subject property was proper and, as a result, that the Valuation of the Decedent's Interest in Real Estate was unreliable."[280] The Tax Court explained that "experts initially determined whether the application of marketability or control discounts was proper and then quantified the applicable discount."[281] In this case, Pollock, one of the personal representatives possessed the knowledge of a layperson, not an expert, regarding the valuation of the discount.[282] Additionally, Pollock signed a verification clause for each return, where she declared that to the best of her knowledge, everything in the return was correct and complete.[283] Pollack's attestation did "not establish that the information provided in the Valuation of Interest in Real Estate was based on her personal knowledge."[284] The Estate also failed to establish that Pollock possessed the competency "to render an opinion concerning the application and quantification of the 30% discount for lack of marketability."[285] Therefore, the Tax Court upheld the probate court's order of summary judgment favoring the Department.[286]

C. Sales and Use Tax: Garwood v. Indiana Department of State Revenue[287]

In 2009, the Indiana Attorney General and the Department investigated the business activities of Virginia and Kristin Garwood (the "Garwoods") and found that they were selling puppies without remitting Indiana sales and income tax.[288] Upon this finding, the Department executed a warrant to search the Garwoods' residence and commercial properties in Harrison County to "seize certain items related to the puppy sales."[289] The Department "generated . . . jeopardy tax assessments for the Garwoods' purported" income and sales tax liabilities, and after the Garwoods failed to immediately pay the liabilities, the Department seized approximately 240 dogs and puppies from their property and sold them to the Humane Society for a total of $300.[290] The Department applied the money to the Garwoods' outstanding tax liabilities.[291] The Garwoods timely filed a written

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280. *Id*. at 1220.

281. *Id.*

282. *Id*.

283. *Id.*

284. *Id*. at 1221.

285. *Id*.

286. *Id.*

287. 939 N.E.2d 1150 (Ind. T.C. 2010). This is the first of two related cases between Garwood and the Indiana Department of State Revenue. The second is discussed *infra* at notes 293-308 and accompanying text.

288. *Id*. at 1151.

289. *Id.*

290. *Id.* at 1151-52.

291. *Id*.

protest with the Department.[292] The Department did not hold a hearing on the protest and advised the Garwoods to seek relief through the Harrison Circuit Court.[293] The Garwoods subsequently initiated an appeal with the Tax Court.[294]

On appeal, the Department argued that it properly exercised its statutory authority in issuing jeopardy assessments to the Garwoods.[295] Indiana Code section 6-8.1-5-3 provides that one of four circumstances must exist for the Department to issue a jeopardy assessment. If at any time the Department:

> [f]inds that a person owing taxes intends to quickly leave the state, remove his property from the state, conceal his property in the state, or do any other act that would jeopardize the collection of those taxes, . . . the Department may declare the person's tax period at an end, may immediately make an assessment for the taxes owing, and may demand immediate payment of the amount due, without providing the notice required in IC 6-8.1-8-2.[296]

The Tax Court held that it had subject matter jurisdiction to hear the appeal.[297] On the appeal, the Garwoods maintained that the Department "exceeded statutory authority" by applying the jeopardy assessment procedure.[298]

The Indiana Code permits the Department to "issue a jeopardy assessment when it determines a person owing taxes intends to quickly leave the state thereby avoiding tax collection."[299] The Tax Court stated that "the Department [did] not claim that the Garwoods were flight risks. In fact, the Garwoods were community fixtures, having lived in Harrison County their entire lives."[300] Therefore, the Department could not rely on this argument as a basis for its "use of jeopardy assessments."[301] Also, the Tax Court stated that "the Department [did] not claim that the Garwoods intended to remove property from the state, [and] the nature of the Garwoods' Indiana property" was not of the type that was easily moved.[302] Therefore, this was not a justifiable basis for the Department's jeopardy assessments.

Furthermore, the "Department claim[ed] its investigation revealed evidence of this intent that is documented in its designated sales and income tax

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292. *Id.* at 1152 (citing 45 IAC 15-5-8(c) (2007)).

293. *Id.* at 1152-53.

294. *Id.* at 1153.

295. *Id.* at 1153-54.

296. *Id*. at 1151 n.3 (internal citations omitted) (quoting IND. CODE §§ 6-8.1-5-3(a), -8-2 (2010)).

297. *Id*. at 1155-56.

298. *See* Garwood v. Ind. Dep't of State Revenue, 933 N.E.2d 682, 687 (Ind. T.C. 2011), *reviewed*, 963 N.E.2d 682 (Ind. 2012), *vacated*, 966 N.E.2d 1258 (Ind. 2012).

299. *Id*. (citing IND. CODE § 6-8.1-5-3(a) (2011)).

300. *Id*. (internal citations omitted).

301. *Id.*

302. *Id*.

Investigative Summaries."[303] The Garwoods did not permit the officers from Animal Control to access their property, but the Tax Court determined that this refusal was not "evidence of [an] attempt to conceal property in the state" under the statute.[304] The Department also argued that by selling the dogs in bulk, the Garwoods could conceal them, and thus the jeopardy assessments were proper.[305] The Tax Court found this assertion speculative because "there [was] no evidence that indicate[d] the Garwoods would sell all their dogs or release them to avoid paying tax."[306] Therefore, the Department could not justify using the jeopardy assessments on this basis.[307]

Finally, the Department argued that the Garwoods' actions (breeding and advertising dogs for sale, failing to register as retail merchant, failing to file sales tax returns, and failing to report income) indicated that the Garwoods intended to act in a way "that would jeopardize the collection of taxes."[308] The Tax Court, however, determined that the Garwoods' actions indicated that they "were not properly reporting and paying taxes, . . . not that they intended not to pay . . . their taxes."[309] Supporting this argument, the Tax Court articulated that the Garwoods filed professionally prepared tax returns, which "included income from the sales of dogs."[310] Therefore, this was also not a basis for the Department's use of jeopardy assessments.[311]

The Tax Court held that it could not "reasonably be inferred that the jeopardy assessment procedure was used in this case to protect the State's fiscal interests."[312] Otherwise, the Department would not have sold the seized dogs for only $300 when "logic dictate[d] that the dogs had a value far greater than just over $1.00 each."[313] Additionally, the fact that there was much media hype regarding this case suggests that the Department was using the jeopardy assessments "to eliminate a socially undesirable activity," not to collect the tax liabilities owed to the State.[314] Therefore, the Tax Court held that the jeopardy assessments were "void as a matter of law."[315]

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303. *Id.*
304. *Id.* at 687-88.
305. *Id.*
306. *Id*.
307. *Id.*
308. *Id*. at 689.
309. *Id*.
310. *Id.*
311. *Id.*
312. *Id.*
313. *Id*. at 689-90.
314. *Id.* at 690.
315. *Id.*

D. Personal Property Tax: Etzler v. Indiana Department of State Revenue[316]

In 2010, Dale Dodson was indebted to his attorney, Gordon Etzler, fees for legal services previously rendered. In order to pay his liability, "Dodson assigned to Etzler his right to the money he expected to receive in November 2011 from the Indiana Horse Racing Commission" (the "Commission").[317] Etzler filed a UCC financing statement to perfect the assignment, but the State Auditor notified Dodson that the funds were being "withheld to satisfy a Department tax levy."[318] Etzler made repeated attempts to the Department to have the funds released to him.[319] Etzler claimed that the Department failed to provide documentation to "justify" the levy.[320] Etzler asked for an administrative hearing, but the Department declined, so Etzler appealed to the Tax Court.[321]

On appeal, the Department argued that because it was not an original tax appeal, the Tax Court did not have subject matter jurisdiction to hear Etzler's case.[322] Furthermore, the Department claimed that tax laws were not even applicable because the case did "not principally involve the collection of a tax . . . [but was] . . . a collection matter arising from a final judgment."[323] The Department also added another argument: that there was "no tax statute that creates Etzler's right to sue the Department in th[e] [Tax] Court regarding the validity of the . . . judgments against Dodson."[324] Additionally, the Department posited "that if Etzler's appeal does indeed arise under Indiana's tax laws, Etzler has not received, and therefore does not appeal from, a final determination of the Department."[325] In his response, Etzler claimed that "by seizing the funds deposited in Dodson's account," the Department "sought to collect a tax" and thus the case did fall within the scope of Indiana's tax laws and qualified as an original appeal.[326] Etzler also argued that he was "appealing from a final determination of the Department . . . that took form in the Department's denial of his request for an administrative hearing."[327]

Although Dodson had stopped filing state income tax returns in the 1990s, the Department continued to issue assessments, which Dodson never protested.[328] When the Department began sending demand notices to Dodson, "he neither paid

316. 957 N.E.2d 706 (Ind. T.C. 2011).
317. *Id*. at 707.
318. *Id*.
319. *Id.*
320. *Id*.
321. *Id.*
322. *Id.* at 708.
323. *Id*.
324. *Id*. at 709.
325. *Id*. at 708.
326. *Id*.
327. *Id.*
328. *Id.*

the assessments nor came forward to show reasonable cause for non-payment."[329] By then recording the tax warrants with the count court, the Department caused the warrants to "bec[o]me final judgments of that court," thus creating property liens.[330] The Department had authority "to levy upon Dodson's bank accounts, garnish his wages, or levy upon and sell his property."[331] Because "Dodson never protested his tax liability, any case that could be theoretically advanced to Dodson *now* no longer involves the collection of a tax, rather, it . . . involve[s] the collection and enforcement of a judgment."[332] The Tax Court determined that Etzler's appeal "attack[ed] the validity of the . . . judgment against Dodson" and did not pertain to a tax collection.[333] Furthermore, there is no tax statute that allowed Etzler to challenge the validity of a judgment in the Tax Court.[334] The Tax Court therefore held that Etzler's appeal did "not 'arise under' the tax laws of Indiana."[335]

According to the Indiana Supreme Court, a taxpayer may receive "a final determination [from the Department] in one of two ways."[336] A "taxpayer can pay the tax, request a refund, and sue in the Tax Court if the request is denied. Alternatively, the taxpayer can protest the listed tax at the assessment stage and appeal to the Tax Court from a letter of findings denying the protest."[337] The Tax Court stated that Etzler did not receive "a final determination from the Department in either one of these ways."[338] Therefore, Etzler's appeal was not an original tax appeal, and the court lacked subject matter jurisdiction over the case.[339]

E. Personal Income Tax

1. Lacey v. Indiana Department of State Revenue.[340]—In 2009, Lyle Lacey ("Lacey"), according to the Department's final determination, "owed Indiana adjusted gross income tax [(AGIT)] for the 2007 tax year,"[341] and Lacey appealed.[342] Lacey's 2007 W-2 statement "indicate[d] that Adecco paid him a substantial amount in wages,"[343] Lacey did not attach the W-2 at the time he filed

329. *Id*. at 708-09.
330. *Id*. at 709.
331. *Id*.
332. *Id*.
333. *Id.*
334. *Id.*
335. *Id*.
336. *Id.* (quoting State v. Sproles, 672 N.E.2d 1353, 1357 (Ind. 1996)).
337. *Id*.
338. *Id*.
339. *Id.*
340. 948 N.E.2d 878 (Ind. T.C. 2011).
341. *Id*. at 878.
342. *Id.*
343. *Id*.

his 2007 taxes. Lacy instead attached a federal Form 4852 to his federal and state returns, stating "that his wages were zero."[344] Additionally, Lacey claimed a refund for "$5,034.98 in state and county income taxes that had been withheld by Adecco."[345] The Department, however, concluded "that Lacey was not entitled to a refund and that he actually owed another $1,113.21 in state income tax."[346] Lacey protested the determination, and the Department conducted a hearing in which it denied Lacey's protest.[347] Lacey subsequently appealed.[348]

Lacey argued his 2007 tax year compensation was "not income within the meaning of the Sixteenth Amendment to the United States Constitution or the Internal Revenue Code,"[349] and "because Indiana's adjusted gross income tax 'piggybacks' the federal income tax," Lacey contended his income was not subject to the State's income tax, and he had no state tax liability.[350] Lacey maintained that only "gain or profit" constitutes income, thus excluding the "equal exchange" of his services for compensation, the Tax Court disagreed. The Supreme Court has considered the issue and has "repeatedly rejected the argument that income is limited to gain or profit."[351] Finding Lacey's argument that income is defined by gain or loss irrelevant, the Tax Court applied the definition of gross income from the Internal Revenue Code, which includes wages as gross income.[352] Therefore, the Tax Court held that Lacey's argument, excluding the compensation from the definition of income was "incorrect as a matter of law."[353]

Lacey also set for the claim that because the federal income tax "runs counter to the Supreme Court's holding in *Brushaber v. Union Pacific Railroad Co.*"[354] because it "is 'an un-apportioned direct tax.'"[355] Lacey proffered that *Brushaber*'s holding exempting a tax from apportionment "conflict[s] with the general [constitutional] requirement that all direct taxes be apportioned,"[356] but the Tax Court explained that "Congressional power to tax is articulated in Article 1, Section 8 of the Constitution and 'embraces every conceivable power of taxation,' including the power to levy and collect income taxes."[357] Furthermore:

> there is no escape from the conclusion that the Amendment was drawn

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344. *Id*.
345. *Id*. at 879.
346. *Id.*
347. *Id.*
348. *Id.*
349. *Id*. at 879-80.
350. *Id*. at 880.
351. *Id.* at 881.
352. *Id.*
353. *Id.*
354. *Id.* (quoting Brushaber v. Union P. R.R. Co., 240 U.S. 1, 12-13 (1916)).
355. *Id.*
356. *Id*.
357. *Id*.

> for the purpose of doing away . . . with the principle . . . of determining whether a tax on income was direct [or] not . . . since, in express terms, the Amendment provides that income taxes, from whatever source the income may be derived, shall not be subject to the regulation of apportionment.[358]

Therefore, the Tax Court held that Lacey's employment compensation was subject to Indiana's adjusted gross income tax. [359]

2. Lacey v. Indiana Department of State Revenue.[360]—Lyle Lacey ("Lacey") after unsuccessfully launching two tax appeals where he argued that he did not owe Indiana AGIT, he again petitioned the Tax Court regarding his 2008 AGIT liability.[361] The Department moved to dismiss pursuant to Indiana Trial Rule 12(B)(6). Lacey argued in his previous appeals that "he had a constitutionally guaranteed right to trial by jury, that the judge of the tax court was biased, and that the Department had violated the Distribution of Powers Clause of the Indiana Constitution."[362] Lacey asserted that he owed no Indiana AGIT because the compensation he received in 2007 as a result of his employment was "not income within the meaning of the Sixteenth Amendment to the United States Constitution or the Internal Revenue Code."[363]

The Tax Court dismissed Lacey's first three claims of the Interim Order pursuant to Indiana Trial Rule 12(B)(6).[364] The court held a trial and oral argument and ruled in favor of the Department.[365] Lacey immediately filed a motion where he requested that the court take judicial notice of several authorities, including *Miles v. Department of Treasury*.[366] The court granted Lacey's motion to take judicial notice, but denied his petition for rehearing.[367] While Lacey's prior claim was pending, he filed an appeal.[368]

On appeal, the Department argued that Lacey failed "to state any claim upon which relief may be granted because it presents the same four claims and theories for relief as presented in [Lacey's previous appeal.]"[369] Lacey, however, maintained that his cases were substantively distinctive "because his theory of

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358. *Id*. at 881-82 (alterations in original).

359. *Id*. at 882.

360. 954 N.E.2d 536 (Ind. T.C. 2011).

361. *Id.* at 536.

362. *Id.* at 537 (citing Lacey v. Ind. Dep't of State Revenue, No. 49T10-0906-TA-25, slip op. *3-4, 2009 WL 3426348 (Ind. T.C. Oct. 26, 2009)).

363. *Id*. (quoting Lacey v. Ind. Dep't of State Rev. (*Lacey II*), 948 N.E.2d 878 (Ind. T.C. 2011)).

364. *Id.*

365. *Id*.

366. *Id.* (citing Miles v. Dep't of Treasury, 199 N.E. 372 (Ind. 1935)).

367. *Id.*

368. *Id.*

369. *Id*. at 537-38.

non-taxability in this case . . . hinges upon the *Miles* case."[370] The Tax Court disagreed, finding "Lacey's arguments and new authorities unpersuasive." The Tax Court thus determined that Lacey's arguments from *Miles* did "not create a new substantive issue for [the Tax] Court's review."[371] The court held that the issues in the current action were "substantially the same as those decided in [Lacey's previous appeal]" and dismissed the case.[372] Therefore, the Tax Court upheld its prior decisions and granted the Department's motion to dismiss.[373]

3. Lacey v. Indiana Department of State Revenue.[374]—Lacey filed an original tax appeal asserting that Indiana's adjusted gross income tax (AGIT) did not apply to his 2008 income.[375] Lacey had previously filed three similar appeals, setting forth numerous arguments about why his employment compensation was not subject to AGI.[376] He had also "received five written determinations" explaining that his income was subject to the AGIT.[377] In August 2011, the Tax Court dismissed his appeal "because the facts, issues, and arguments that Lacey asserted were substantially the same as those presented and resolved in [a previous case]."[378] The Department sought attorney fees under IC 34-52-1-1.[379] In its opinion regarding Lacey's second appeal, the Tax Court noted that it "marked the third time the Court had rejected the claim that one's employment compensation does not constitute income subject to AGIT and that both the federal courts and the Internal Revenue Service have deemed claims similar to Lacey's as frivolous and sanctionable."[380] In dealing with Lacey's repetitive claims, the court stated that "in the future, when a taxpayer advances the same . . . argument, the Court will not hesitate to consider whether an award of attorney fees is appropriate."[381] Then, on June 15, 2011, Lacey filed two motions in response to which "the Court took judicial notice of *Miles*, but denied Lacey's petition for rehearing."[382] Four months later, the Department filed a Motion for Attorney's Fees.[383]

During the hearing, the Department argued it was "entitled to an award of attorney fees because Lacey continued to pursue his claim . . . , reiterating the same arguments that proved unsuccessful [previously]."[384] Indiana Code section

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370. *Id*. at 538.
371. *Id*.
372. *Id.* at 537.
373. *Id*.
374. 959 N.E.2d 936 (Ind. T.C. 2011).
375. *Id.* at 937.
376. *Id.* at 938.
377. *Id.* at 937.
378. *Id*.
379. *Id*. at 939.
380. *Id*. at 938.
381. *Id.* (quoting Lacey v. Ind. Dep't of State Rev., 949 N.E.2d 878, 882 (Ind. T.C. 2011)).
382. *See supra* notes 354-66 and accompanying text.
383. *Lacey*, 959 N.E.2d at 939.
384. *Id.* at 939-40.

34-52-1-1(b) provides that:

> [I]n any civil action, the court may award attorney's fees as part of the cost to the prevailing party, if the court finds that either party:
> 1. brought the action or defense on a claim or defense that is frivolous, unreasonable, or groundless;
> 2. continued to litigate the action or defense after the party's claim or defense clearly became frivolous, unreasonable, or groundless; or
> 3. litigated the action in bad faith.[385]

The Department stated that:

> Lacey should have known that his continued pursuit of this claim was improper for three reasons: (1) the same rationale was argued and resolved in [previous case], (2) the Court cautioned [in the previous case] that advancing substantially similar arguments could trigger an award of attorneys' fees, and (3) the Court reminded Lacey of the possible consequences of pursuing previously resolved arguments during the hearing on the motion to dismiss.[386]

Lacey responded that his final claim, which relied upon *Miles*, was substantially different from that advanced by him previously.[387] Furthermore, Lacey argued that an "award [of] attorney fees to the State [would] put[] a chilling effect on anybody else wanting to make the claim using that case or using Indiana Supreme Court rulings as a basis for their claim because the Department never addressed why [his claim] was frivolous."[388] The Tax Court disagreed.[389] The court stated that Lacey admitted that his claim was "substantially similar to that presented in his [prior cases]."[390] Thus, taking judicial notice of *Miles*, and determining that the prior decisions would stand, the Tax Court stated that it would have been the "reasonable" decision for Lacey to have dismissed his case.[391] Rather, "Lacey chose to pursue the same claim and advance the same arguments as he [previously] did."[392] In conclusion, the Tax Court held that "Lacey's original tax appeals have advanced classic tax protestor arguments" and granted the Department attorney fees.[393]

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385. IND. CODE § 34-52-1-1(b) (2011).
386. *Lacey*, 959 N.E.2d at 940.
387. *Id.*
388. *Id*.
389. *Id.*
390. *Id.*
391. *Id.*
392. *Id.* at 940-41.
393. *Id*. at 941-42.

F. Corporate Income Tax

1. Miller Brewing Co. v. Indiana Department of State Revenue.[394]—Miller Brewing Company ("Miller") "manufactures and sells malt beverages" to customers throughout the country, including customers in Indiana.[395] Indiana customers submitted their purchase orders to Miller's headquarters in Milwaukee, Wisconsin, and Miller then produced and prepared the order for pick up in Trenton, Ohio.[396] Indiana customers then had to arrange for "third-party common carriers to pick up the products at the brewery" and transport them.[397] Miller filed tax returns in Indiana, but when it calculated its adjusted gross income tax liabilities, "Miller did not allocate the income it received from the carrier-pickup sales to Indiana."[398] The Department audited Miller's tax returns and determined the income from the carrier-pickup sales should have been allocated to Indiana.[399] After paying the proposed assessments, Miller filed a refund claim with the Department.[400] The Department conducted an administrative hearing and denied Miller's claim.[401] Miller initiated a tax appeal with the Tax Court.[402]

Indiana requires corporations to pay taxes on a portion of their AGI "that is 'derived from sources within Indiana.'"[403] For the tax years in dispute, "income was allocated to Indiana on the basis of a three-factor formula, reflecting a corporation's payroll, property, and sales attributed to this state, with the sales factor receiving the greater percentage of weight."[404] To determine whether a corporation's sales should be attributed to Indiana under this formula, IC 6-3-2-2(e)(1) states that "sales of tangible personal property are in this state if: (1) the property is delivered or shipped to a purchaser that is within Indiana, other than the United States government . . . regardless of the [free on board] point or other conditions of the sale."[405] The Department asserted that the language of the Indiana Code mandates the application of the destination rule because:

> (1) the legislature adopted statutory language that tracks the language of section 16 of the Uniform Division of Income for Tax Purposes Act ("UDITPA"), which incorporates the destination rule;
> (2) Indiana rejoined the Multistate Tax Commission ("MTC") in 2007 after a thirty year absence; and
> (3) other states with statutory language similar to [Indiana's code] have

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394. 955 N.E.2d 865 (Ind. T.C. 2011), *reviewed by* 963 N.E.2d 1120 (Ind. Feb. 29, 2012).
395. *Id.* at 866.
396. *Id.*
397. *Id*.
398. *Id*.
399. *Id*.
400. *Id.* at 866-67.
401. *Id.* at 867.
402. *Id.*
403. *Id*. (quoting IND. CODE § 6-3-2-1(b) (2011)).
404. *Id.* (citing IND. CODE § 6-3-2-2(b) (amended 2006)).
405. *Id*. (citing IND. CODE § 6-3-2-2(e)(1)).

construed their statutes as requiring the destination rule.[406]

Miller, however, argued that the legislature drafted the Indiana Code with "language that can reasonably be construed in two different ways."[407] First, Miller explained, "the statutory language can be construed to mean that a sale is an Indiana sale if the property's purchaser is domiciled or has a business situs in Indiana, no matter where the merchandise is shipped or delivered."[408] Alternatively, "the statutory language can be construed to mean that sale is an Indiana sale if the property is delivered or shipped to this state, whether or not the purchaser has an Indiana domicile or business situs."[409] Miller argued that the Department's regulation for interpreting the legislature's intent regarding the statute should govern, rather than UDITPA, the MTC, or other states.[410] Therefore, sales would not be considered in Indiana "if the purchaser picks up the goods at an out-of-state location and brings them back into Indiana in his own conveyance."[411]

The Tax Court "will construe and interpret a statute only if it is unclear and ambiguous," to interpret an ambiguity, "it is appropriate for the Court to look to a clarifying regulation or one indicating the method of [the statute's] application."[412] In determining how the legislature intended IC 6-3-2-2 to be applied, the court found "the Department's interpretation . . . to be more persuasive than UDITPA, Indiana's membership in the MTC, or how other states construe their statutory language."[413] The court reasoned that although the language of Indiana Code section 6-3-2-2(e)(1) does track the language of the UDITPA, Indiana has not adopted UDITPA."[414] Similarly, the Tax Court did not "impute the MTC's goal of uniform taxation of multistate businesses . . . to the legislature's intent in enacting [IC] 6-3-2-2(e)(1)."[415] Even though other state courts have established "that statutory language similar to that contained in Indiana Code § 6-3-2-2(e)(1) requires the application of the destination rule, the holdings from those jurisdictions are not binding on [the Tax] Court."[416]

The Department, meanwhile, argued "that if the carrier-pickup sales are not deemed Indiana sales, not only will Miller be excused from complying with Indiana law requiring the consistent apportionment of income between states, but inequity will prevail."[417] The Department explained that "a taxpayer's

406. *Id*. at 867-68.
407. *Id.* at 868.
408. *Id*.
409. *Id*. at 868-69.
410. *Id.* at 869.
411. *Id*.
412. *Id*. (alteration in original).
413. *Id*. at 870.
414. *Id*. (internal citation omitted).
415. *Id.*
416. *Id*.
417. *Id*. at 871.

apportionment of sales income between Indiana and other states must be consistent."[418] Furthermore, the Department stated that because both the Ohio and Wisconsin statutes "are substantially similar to Indiana's in that they apply the destination rule, those states would apportion Miller's carrier-pickup sales to Indiana."[419] The Department claimed that by avoiding sales tax in Indiana, Miller had an advantage over his competitors, who were taxed in Ohio and Wisconsin.[420] The Tax Court disagreed and stated that an "inconsistency by the Department with respect to how Miller reported its income from the carrier-pickup sales to Indiana as compared to Ohio and Wisconsin is irrelevant."[421] The court held Miller's carrier-pickup sales were not Indiana sales and were thus not allocable to Indiana.[422]

2. Rent-A-Center East, Inc. v. Indiana Department of State Revenue.[423]—Rent-A-Center East, Inc. ("RAC East") appealed the Department's final determination requiring RAC East to use a combined income tax return with two affiliates for reporting its AGI tax liability.[424] Rent-A-Center, Inc. ("RAC Inc."), formerly Renter's Choice, acquired its largest competitor and transferred the Rent-A-Center trademarks "to its new affiliate, Advantage Companies, Inc. ("Advantage")."[425] In 2003, the RAC family reorganized its corporate structure with RAC Inc., assuming the name RAC East and Advantage changing its name to Rent-A-Center West, Inc. ("RAC West").[426] Additionally, Rent-A-Center Holdings, Inc. ("RAC Holdings") and Rent-A-Center Texas, LP ("RAC Texas").[427] The matter before the Tax Court arose because:

> In 2003, RAC East filed its 2003 Indiana corporate AGI tax return on a separate company basis reporting that it owed no tax. The Department audited RAC East for the 2001, 2002, and 2003 tax years, proposing an additional $513,272.60 in AGI tax liability, penalties, and interest for the 2003 tax year based on its determination that RAC East should have filed a combined AGI tax return with RAC West and RAC Texas.[428]

RAC East disputed the determination, but the Department upheld its original finding.[429] RAC East subsequently filed an original tax appeal.[430]

In Indiana, corporations must pay taxes on their "AGI that is derived from

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418. *Id*.
419. *Id*.
420. *Id.*
421. *Id*.
422. *Id.* at 872.
423. 952 N.E.2d 387 (Ind. T.C. 2011), *rev'd*, 963 N.E.2d 463 (Ind. 2012).
424. *Id*. at 388.
425. *Id*.
426. *Id*.
427. *Id*.
428. *Id.*
429. *Id.*
430. *Id.*

sources within Indiana."[431] Generally, "[e]ach corporation . . . must report on a separate company basis."[432] There is a limited exception, however, which gives "the Department discretionary authority to grant prospectively or require retroactively that a taxpayer determine its Indiana source income using an alternative method."[433] According to the statute:

> If the allocation and apportionment provisions . . . *do not fairly represent the taxpayer's income derived from sources within the state of Indiana*, the taxpayer may petition for or the [D]epartment may require, in respect to all or any part of the taxpayer's business activity, if *reasonable*:
> (1) separate accounting;
> (2) the exclusion of any one (1) or more factors;
> (3) the inclusion of one (1) or more additional factors which will fairly represent the taxpayer's income derived from sources within the state of Indiana; or
> (4) the employment of any other method to effectuate an *equitable* allocation and apportionment of the taxpayer's income.[434]

The Department argued "that requiring a combined filing was a reasonable and fair alternative."[435] To require a combined filing, the Department must "designate[] facts to show that RAC East's separate return did not fairly represent its income from Indiana sources" and that mandating that RAC East file a combined return was "reasonable and equitable."[436] The Department claimed that it disallowed using separate company basis reporting because it would actually have "increase[d] RAC East's Indiana tax liability."[437] The Tax Court stated, however, that the "information provided [was] insufficient to establish that the Department considered alternatives to assessing tax based on a combined return."[438] The Court held that the Department failed to make "a *prima facie* case that it [was] entitled to judgment as a matter of law . . . the Court . . . . grant[ed] summary judgment in favor of RAC East."[439]

3. AE Outfitters Retail Co. v. Indiana Department of State Revenue.[440]—AE Outfitters Retail Co. ("AE Outfitters"), assessed with adjusted gross income (AGI) tax liability for the tax years 2004 through 2007, appealed the Department's final determination.[441] After AE Outfitters filed its corporate AGI

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431. *Id.*
432. *Id*. at 389 (citing IND. CODE §§ 6-3-2-2(a)-(k) (2011)).
433. *Id*.
434. *Id.* (quoting IND. CODE § 6-3-2-2(l) (2011)).
435. *Id.* at 390.
436. *Id.* at 390-91.
437. *Id.* at 391.
438. *Id*.
439. *Id*. at 392.
440. No. 49T10-1012-TA-66, 2011 WL 5059896 (Ind. T.C. Oct. 25, 2011).
441. *Id*. at *1.

tax returns, the Department audited AE Outfitters.[442] The Department concluded that AE Outfitters' "separate returns did not fairly reflect its Indiana income," and therefore it needed to report its Indiana "AGI liability via a combined income tax return."[443] Proposing eight assessments, the Department determined that AE Outfitters' total tax liability was $2,060,239.41, in addition to penalties and interest.[444] AE Outfitters filed its protest of the proposed assessments, and the Department affirmed the assessments and required AE Outfitters to use the combined return.[445] AE Outfitters subsequently filed an original tax appeal with the Tax Court.[446]

AE Outfitters argued that before the Department can compel the use of a combined tax return to report AGI liability it "must apply each of the methodologies listed in" IC 6-3-2-2(l)-(m).[447] Indiana Code section 6-3-2-2(p) provides:

> The [D]epartment may not require that income, deductions, and credits attributable to a taxpayer and another entity not described in subsection (o)(1) or (o)(2) be reported in a combined income tax return for any taxable year, unless the [D]epartment is unable to fairly reflect the taxpayer's adjusted gross income for the taxable year through use of other powers granted to the [D]epartment by subsections (l) and (m).[448]

AE Outfitters argued that the statute curtained "the Department's ability to mandate the filing of combined income tax returns" because it first had to "determine whether a taxpayer's income could be fairly reflected through use of all of the other methodologies listed in Indiana Code section 6-3-2-2(l) and (m)."[449] The Department replied that it was only required to "apply any one of the methodologies . . . before issuing a combined return mandate."[450] The Tax Court ambiguity in the statute because it "plainly conveys that the Department may not require a taxpayer to file a combined income tax return *unless* [it] is unable to fairly reflect the taxpayer's adjusted gross income for the taxable year through use of other powers granted to [it]."[451] Therefore, prior to demanding that a taxpayer file a combined tax return, the Department "must ascertain whether application of *each* of the . . . methodologies would result in an equitable allocation and apportionment of the taxpayer's income."[452] The Indiana Code provides:

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442. *Id.*
443. *Id*.
444. *Id*.
445. *Id.*
446. *Id.*
447. *Id*. at *2; *see also* IND. CODE § 6-3-2-2(p) (2011).
448. *AE Outfitters Retail Co.*, 2011 WL 5059896, at *1 (quoting IND. CODE § 6-3-2-2(p)).
449. *Id*. at *2 (citing IND. CODE § 6-3-2-2(p)).
450. *Id*.
451. *Id*. (alterations in original).
452. *Id*.

> When two (2) or more organizations, trades, or businesses are owned or controlled directly or indirectly by the same interests, however, "the [D]epartment [must] distribute, apportion, or allocate the income derived from [Indiana] sources . . . between and among those organizations, trades, or businesses in order to fairly reflect and report the income derived from [Indiana] sources . . . by various taxpayers."[453]

Thus, the Tax Court held that the Department was required to "apply all of the methodologies . . . before it may require a taxpayer to report its AGI liability *via* a combined income tax return."[454]

453. *Id.* (second, third, and fourth alterations in original) (quoting IND. CODE § 6-3-2-2(*l*)).

454. *Id*. at *3.