tent of their right of contribution from the sureties released.[202] Parol evidence was admitted to establish that two of four co-makers on a promissory note were sureties or accommodation makers who were not discharged by a tender of the principal sum and interest when the debtors failed to include in the tender attorney's fees required by the note. Tender was made after suit had been filed by the holder of the note.[203] A promisee entitled to attorney's fees by agreement is not entitled to enforce the provision in litigation when he fails to win an affirmative judgment.[204]

XVI. Taxation

*John W. Boyd**

A. Case Law Developments

During this year's survey period, the Indiana courts reported nine noteworthy decisions in the area of state taxation. Two of those nine cases were decided by the Indiana Supreme Court.

1. Property and Excise Taxes.—a. Ad Valorem Taxes, Commerce Clause Exemption.—The Indiana Supreme Court considered the exemption to the personal property tax for property in interstate commerce[1] in *State Board of Tax Commissioners v. Carrier*

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[202]Carvey v. Indiana Nat'l Bank, 374 N.E.2d 1173 (Ind. Ct. App. 1978).

[203]Stockwell v. Bloomfield State Bank, 367 N.E.2d 42 (Ind. Ct. App. 1977).

[204]Rauch v. Circle Theatre, 374 N.E.2d 546 (Ind. Ct. App. 1978).

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[1]Act of Mar. 18, 1975, Pub. L. No. 47, §§ 29-30, 1975 Ind. Acts 317 (current version at IND. CODE 6-1.1-10-30 (1976)), provided that personal property of nonresidents of the state who are able to show by adequate records that such personal property has been shipped into this state and placed in the original package in a public warehouse for the purpose of transshipment to an out-of-state destination, shall not, while so in the original package in such warehouse, be subject to the tax imposed by IND. CODE §§ 6-1-20 to 39 (1971) and that portion of a premises owned or leased by a consignor or consignee, shall be deemed to be a public warehouse.

Personal property of nonresidents of the state shipped into this state and placed in the original package in a public or private warehouse for the purpose of transshipment to an out-of-state or within-the-state destination and so designated on the original bill of lading, or personal property of residents or nonresidents of the state placed in the original package in a public or private warehouse for the purpose of transshipment to an out-of-state destination and so designated on the original bill of lading, shall not, while so in the original package in such warehouse, be subject to tax imposed by this act. In construing this section, goods, wares and merchandise shall be exempt only to the extent that they are exempt from ad valorem taxes under the commerce clause of the Constitution of the United States. *Id.*

Corp.[2] One of Carrier's subsidiaries manufactured products in Indiana for Carrier upon a forecast and need basis, so that upon manufacture there were no specific buyers for the individual units. After manufacture, the goods were boxed and delivered by common carrier to an independent warehouse in Indianapolis. The goods so delivered were covered by a bill of lading which stated: "The merchandise covered hereby is placed in its original package in a public warehouse for purpose of transshipment to an out-of-state destination."[3] The ultimate destination for the goods was determined by Carrier's shipping department in Syracuse, New York. According to the facts, approximately ninety-five percent of the goods were eventually shipped out of Indiana.

Although Carrier had been allowed exemptions under the same circumstances in 1969 and 1970, the State Board of Tax Commissioners (Board) disallowed the exemption for tax year 1971 pursuant to its expanded Regulation 16.[4] The expanded regulation allows the goods to qualify for the exemption only if the bill of lading covering the goods shows the items' actual and ultimate destination.

The majority of the court stated that to uphold the Board's interpretation of the statutory exemption would require the court to find the legislature, in enacting the exemption for property in warehouse for interstate transshipment, intended for the taxpayer to have an exemption only when an exemption would be constitutionally mandated by the Commerce Clause of the United States Constitution.[5] In rejecting this argument, the court said, "This interpretation would make the statute nothing more than a restatement of the rights of the taxpayer under the Commerce Clause of the United States Constitution. The statute would therefore serve no purpose."[6]

Instead the supreme court placed primary reliance on the doctrine of legislative acquiescence[7] established in *Whirlpool Corp. v. State Board of Tax Commissioners.*[8] *Whirlpool*, a case reviewed in a previous Survey,[9] was based upon facts similar to those in *Carrier.* In both *Whirlpool* and *Carrier*, the taxpayers relied on the statute and claimed the exemption without being questioned by the Board. In *Whirlpool*, after allowing the exemption for at least three years,

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[2]365 N.E.2d 1385 (Ind. 1977), *rehearing denied*, 368 N.E.2d 1153 (Ind. 1978).

[3]365 N.E.2d at 1386.

[4]IND. ADMIN. R. & REGS. §§ 6-1.1-3-9 to 32 (Burns 1976).

[5]365 N.E.2d at 1386.

[6]*Id.*

[7]*Id.* at 1387.

[8]338 N.E.2d 501 (Ind. Ct. App. 1975).

[9]Allington, *Taxation, 1976 Survey of Recent Developments in Indiana Law*, 10 IND. L. REV. 340, 358-59 (1976).

the Board challenged the taxpayer's claim under a then-new amendment to the statute; but, after a series of meetings and hearings, ruled that Whirlpool was entitled to the exemption. Nonetheless, three years later, the Board again challenged Whirlpool's claimed exemption with the appropriate township assessor and notified the legislature must be deemed to have acquiesced in the exemption as applied and found such deemed acquiescence binding and controlling.

In *Carrier*, the supreme court somewhat broadened this doctrine of legislative acquiescence by ruling that privity to an administrative ruling is not a prerequisite for the invocation of the doctrine.[10] The court noted further that factual foundation for use of the doctrine was present notwithstanding the lack of privity because Carrier was allowed to use the exemption in 1969 and 1970 with the Board's acquiescence.[11] It was not until 1971, when the Board issued the more restrictive regulation challenged in *Carrier*, that a more than literal compliance with the statute providing the exemption was required of Carrier. The court stated: "[I]t is clear that the legislature intended to provide for exemption under the facts stated in this case."[12]

The court's concluding comments in *Carrier* were to the effect that the exemption covers only what the state *could* constitutionally tax in the area of ad valorem taxation and not in any other possible area of taxation.[13] Considering this rejection based on constitutional grounds in tandem with the court's rejection of the statute's construction as a restatement of federal constitutional principles, the only meaning which could be assigned to the last sentence of the exemption statute was one enunciating the provision as a limitation on the statute's applicability. This ruling and dicta, therefore, cast doubt on the currency of much of the court of appeals decision in *State Board of Tax Commissioners v. Philco-Ford Corp.*,[14] discussed in last year's Survey.[15]

b. Exemptions, Industrial Waste Control Facilities.—The statutory procedure for determining the allowability of a property tax exemption for industrial waste control facilities[16] was upheld by

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[10]365 N.E.2d at 1387.

[11]*Id.*

[12]*Id.*

[13]*Id.* at 1388.

[14]356 N.E.2d 1379 (Ind. Ct. App. 1976).

[15]Boyd, *Taxation, 1977 Survey of Recent Developments in Indiana Law*, 11 IND. L. REV. 292, 300-01 (1977).

[16]Act of Mar. 18, 1975, Pub. L. No. 47, § 4, 1975 Ind. Acts 466 (repealing IND. CODE §§ 6-1-8-1 to 4 (1971)). Current law on industrial waste control facilities is codified at IND. CODE §§ 6-1.1-10-9 to 11 (1976).

the court of appeals in *Levy Co. v. State Board of Tax Commissioners.*[17] That procedure called for the Indiana Stream Pollution Control Board to review and certify a taxpayer's claim for exemption.[18] The pollution Board was to determine whether property qualifies for the statutory exemption after the taxpayer filed for the exemption with the appropriate township assessor and notified the pollution Board of the claim. The statute required the assessor to follow the pollution Board's determination in allowing or denying the claim for exemption. As noted in *Levy*: "The statute . . . delegates the technical determination to the expertise of the Stream Pollution Control Board."[19]

In *Levy*, the attack on the statute was based on the argument that, if the tax Board could not review and reverse a pollution board's determination, the statute would amount to an unconstitutional delegation of the state taxing authority to the pollution Board.[20] The argument was "[s]ince the Legislature delegated to the tax board the administrative duties of construing the tax laws of the State and seeing that all assessments of property are made according to law, the tax Board must also have the power to make an independent decision as to whether certain property satisfies the definition of an industrial waste control facility."[21] The court made short shrift of this argument, finding that the delegation of taxing duties to the tax board did not preclude the legislature from delegating a specific factual determination to an agency which possessed the technical expertise necessary for making such specific factual determination.[22]

The validity of the Indiana Aircraft Excise Tax Act of 1975, Indiana Code section 6-6-6.5-1 to 22[23] was upheld over multi-pronged state and federal constitutional challenges by the Indiana Supreme Court in *Indiana Aeronautics Commission v. Ambassadair, Inc.*[24] This tax removes the property tax burden from aircraft and imposes an excise tax on aircraft based upon the age, maximum landing weight, and classification. In *Ambassadair*, the burden imposed by the excise tax, on airplanes owned by the two travel clubs, was nearly twice what it would have been had the property tax been applicable. The challenge to the tax structure was based upon article

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[17]365 N.E.2d 796 (Ind. Ct. App. 1977).

[18]IND. CODE § 6-1-8-3 (repealed 1975).

[19]365 N.E.2d at 800.

[20]*Id.* at 801.

[21]*Id.*

[22]*Id.*

[23]IND. CODE §§ 6-6-6.5-1 to 22 (Supp. 1978).

[24]368 N.E.2d 1340 (Ind. 1977), *cert. denied sub nom.*, Four Winds, Inc., v. Indiana Aeronautics Comm'n, 98 S. Ct. 2235 (1978).

4, section 23 of Indiana Constitution (Equal Privileges) and the Equal Protection and Due Process Clauses of the fourteenth amendment to the United States Constitution.

In relating the equal protection and due process issues to state taxation, the court said those constitutional concepts: (1) Impose no specific limitation on the power of the states to make classifications for tax purposes other than to prohibit arbitrary classifications, (2) require the maintenance of no particular scheme of property or excise taxes, and (3) impose no particular classification requirements.[25] The court noted that the state constitutional requirement of equality in property taxation[26] was not mandated by federal equal protection.[27]

In view of the principal that equal protection neither condemns nor approves specific criteria for tax classifications in the abstract but, rather, must be measured in context, the court found that the aircraft excise tax "is not invalid as a denial of equal protection simply because it utilizes the criteria of age and maximum landing weight, or simply because it may not utilize value, as none of these three criteria are required or rejected, per se."[28] Instead, the court proceeded to analyze the tax scheme as it applied and proffered the legislative objectives for the act: to raise revenues to support airports and governmental services rendered to operational aircraft and to distribute the resulting tax burden upon aircraft owners.[29] Distribution of the tax burden according to weight and age was found to be a reasonable means of accomplishing the legislative end.[30] Classifying aircraft differently from other property for purposes of taxation was, then, not offensive to the Equal Protection Clause.

The other prong of the equal protection attack was directed at two exemptions in the Aircraft Excise Tax Act. Those provisions exempted regularly scheduled airlines and granted a temporary three-year tax reduction in the case of aircraft assessed for 1974 property taxes payable in 1975.[31] Concluding that "the great deference given to tax legislature and the classification they may employ by the Fourteenth Amendment and Article 1, Section 23 of the Indiana Constitution,"[32] the court had little trouble finding justifications for the exemptions sufficient to withstand the challenge.[33]

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[25]368 N.E.2d at 1343-44.
[26]IND. CONST. art. 10, § 1.
[27]368 N.E.2d at 1344.
[28]*Id.*
[29]*Id.*
[30]*Id.* at 1345.
[31]IND. CODE §§ 6-6-6.5-9(f), -13(c) (1976) (amended §§ 6-6-6.5-9(b), -13(c) (Supp. 1978)).
[32]368 N.E.2d at 1347.
[33]*See id.*

In their due process challenge the travel clubs contended the excise tax was confiscatory. The court rejected this claim by indicating other statutes in which the effective tax rate per dollar value of the property taxes was significantly higher than that in issue in *Ambassadair.*[34]

d. Personal Property Tax.—Relying on a factual determination made by a trial court regarding a taxpayer's intent, in *State Board of Tax Commissioners v. Farmers Cooperative Co.*,[35] the court of appeals found that grain intended for shipment to out-of-state buyers before the March 1 deadline but held beyond that date due to circumstances beyond the taxpayer's control was exempt from the personal property tax under the exemption for property in interstate commerce.[36] The court's ruling centered on the exemption as set forth in the departmental regulations.[37]

The Board argued that, since the grain in question could have, under the terms of the contract, been shipped after March 1, the taxpayer was not entitled to the exemption as set forth in the regulation. The contention was that "intended shipment date" was equivalent to the latest date for shipment allowable within the terms of the sale contract. The word "intended" was included in the regulation, and, in giving the regulation its plain and ordinary meaning,[38] the court concluded that the terms of the contract do not necessarily determine the "intended shipping date" within the meaning of the regulation.[39] As the trial court had properly determined the "intended shipping date" was prior to the March 1 deadline, the court of appeals found the grain in question was exempt, explaining that if the Board desired to have the contract date controlling, it could have so provided in the regulation.[40]

2. Tax Procedure.—In F.W. Woolworth Co. v. State Board of Tax Commissioners,[41] the court of appeals confronted a situation in which the State Board of Tax Commissioners issued a defective notice of assessment, discovered its error, and then issued a corrected assessment notice after the statutory period for changes in assessments had run. The court ruled that a defective notice which obstructs or prohibits an effective appeal constitutes a denial of due process.[42]

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[34]*Id.* at 1348.
[35]370 N.E.2d 389 (Ind. Ct. App. 1977).
[36]*Id.* at 391.
[37]IND. ADMIN. R. & REGS. §§ 6-1.1-3-9 to 32 (Burns 1976).
[38]370 N.E.2d at 391.
[39]*Id.*
[40]*Id.*
[41]369 N.E.2d 958 (Ind. Ct. App. 1977).
[42]*Id.* at 961.

The first notice in *Woolworth* was issued on September 29, 1971, just before the October 1 statutory limit,[43] and omitted assessments of thirteen of Woolworth's Indiana stores but purported to be a final assessment for all of Woolworth's Indiana stores. The first notice stated the taxpayer had thirty days within which to institute a statutory appeal and that the Board could take no action to extend the period for appeal. The second "final" notice, issued on October 21 contained the same statement but added the previously omitted assessments. Further, the second notice stated it was for corrective purposes only and was not intended to modify the previous "final" notice. Noting that the failure of the Board to include the assessments for the thirteen omitted stores in the first notice effectively reduced the statutory period for the filing of an appeal from thirty to eight days,[44] the court held the corrected notice invalid as it prejudiced Woolworth's appeal rights.[45] To have upheld the belated assessment would have amounted to a denial of due process.[46]

3. Death Taxes.—a. Flower Bonds.—The court of appeals in *Second National Bank of Richmond v. Department of State Revenue, Inheritance Tax Division*,[47] a case of first impression, ruled that the value of "Flower Bonds"[48] for purposes of Indiana inheritance tax was the price of such bonds on the open market, not their redemption value.[49] Face value of the "Flower Bonds" in the decedent's estate was $200,000, but, at the time of the decedent's death, the bonds were worth slightly more than $150,000 on the over-the-counter bond market. By statute, these bonds may be redeemed at face value in payment of the federal estate tax even though they are not mature.[50] The state argued that the higher face value should apply.

The *Second National Bank* court did not allow the state's position to prevail, noting the statutory basis for valuing an estate in Indiana is the fair market value of the property in the estate at the

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[43]Act of Mar. 18, 1975, Pub. L. No. 47, § 4, 1975 Ind. Acts 389 (current version at IND. CODE § 6-1.1-3-20 (1976)).

[44]369 N.E.2d at 962.

[45]*Id.*

[46]*Id.*

[47]366 N.E.2d 694 (Ind. Ct. App. 1977).

[48]*See* Treas. Reg. §§ 301.6312-1, -2 (1976). *See also* 1978 STAND. FED. TAX. REP. ¶ 9764 for an explanation of the use of Flower Bonds.

[49]*See* 366 N.E.2d at 696. For federal estate tax purposes, such bonds must be valued in the gross estate at par value including interest accrued at date of death to the extent they are redeemable in payment of estate taxes, even though the bonds are not so used. Rev. Rul. 69-489, 1969-2 C.B. 172.

[50]I.R.C. § 6312 (repealed 1971 with respect to obligations issued after Mar. 3, 1971).

time of death.[51] Additionally, a Department of Revenue regulation sets forth the over-the-counter market price of bonds as the proper value for inclusion in an estate.[52] The court agreed with an Illinois court's holding that if a statute specifies fair market value as the value to be used for estate valuation, the legislature was not referring to a special or limited value which a particular asset may have for a captive buyer's specific purpose (here, the Department of Treasury).[53] The Indiana court ruled: "The plain meaning of the words 'fair market value' must be employed when interpreting the statute."[54] Further noting that the commonly accepted definition of "fair market value" is what a willing buyer, under no compulsion to buy, would pay a willing seller, under no compulsion to sell, the *Second National Bank* court held for the taxpayer inasmuch as the federal government, in the "Flower Bonds" situation, is under a compulsion to buy.[55] The court of appeals relied on the reasoning of *Second National Bank* in reaching the same conclusion in *State v. Bower*.[56]

b. Gift in Contemplation of Death.—Under the gift in contemplation of death statute,[57] the value of gifts made in contemplation of the transferor's death are includible in the transferor-decedent's gross estate, and gifts made within two years prior to death are presumed to have been made in contemplation of death.[58] Nonetheless, as noted in *Bower* that presumption is not conclusive, and it may be overcome by the showing of a substantial lifetime motive.[59] In *Bower*, the lifetime motive found factually sufficient by the trial court and upheld on review, was the elimination of property from the estate by gift to the decedent's nieces and nephews. The decedent had received this property from her sister's estate and she maintained it should have been given from her sister's estate directly to the nieces and nephews. The *Bower* court agreed and further buttressed its decision by acceptance of the argument that the gifts were actually made to avoid a contest of the decedent's sister's will.[60] The court said this latter fact alone could suffice as a substantial lifetime motive to overcome the statutory presumption.[61]

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[51]366 N.E.2d at 695.

[52]IND. ADMIN. R. & REGS. § 6-4-1-7 (Burns 1976).

[53]*In re* Estate of Voss, 55 Ill. 2d 313, 303 N.E.2d 9 (1973). *See also In re* Estate of Power, 156 Mont. 100, 476 P.2d 506 (1970).

[54]366 N.E.2d at 696.

[55]*Id.*

[56]372 N.E.2d 1227, 1229 (Ind. Ct. App. 1978).

[57]IND. CODE § 6-4.1-2-4 (1976).

[58]*Id.*

[59]372 N.E.2d at 1228-29.

[60]*Id.*

[61]*Id.*

4. Gross Income Tax.—The court of appeals, in *Indiana Department of State Revenue v. William A. Pope Co.*,[62] found that a 1955 amendment to the definition of "selling at retail"[63] clearly evidenced a legislative intent to make retail transactions having both sales and service aspects severable for gross income tax purposes.[64] The severability factor is significant because income received from "selling at retail" is subject to gross income tax at a rate of one-half percent, while income received from the rendering of services is taxed at a two-percent rate.[65] The court also ruled that the meaning of the term "delivery" did not include installation.[66] Delivery is complete when the goods sold reach their destination; any installation work done thereafter is the performance of services and is subject to the higher tax rate.

5. Sales Tax.—In *Department of Revenue v. Mumma Brothers Drilling Co.*,[67] the court of appeals reversed a trial court determination that certain pump and drilling equipment sold by the taxpayer to a person engaged in a farming operation was exempt from the state sales tax under one of the exemptions found in Indiana Code section 6-2-1-39(b). The two particular exemptions argued to be applicable covered (1) sales to persons occupationally engaged in farming of "feed . . . , seeds, plants, fertilizers, fungicides, insecticides and other tangible personal property to be directly used in the direct production of food and commodities"[68] and (2) "[s]ales of manufacturing machinery, tools, and equipment to be directly used . . . in the direct . . . extraction . . . of tangible personal property."[69]

The court noted that the drilling and pump equipment was clearly not within the first exemption because it was not *directly* used in the *direct* production of food. As the court stated: "[T]he pump equipment was *essential* . . . but it was not *directly* used"[70] in the production of food. The pump was only indirectly used in the production of food because it directly produced the water which in turn was directly used in the production of food.

In regard to the other claimed ground, the court opined that the taxpayer was probably entitled to a exemption because it sold equipment directly used in the direct extraction of tangible personal prop-

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[62]367 N.E.2d 47 (Ind. Ct. App. 1977).

[63]Act of Mar. 11, 1955, ch. 263, § 1, 1955 Ind. Acts 703. That amendment is now reflected in IND. CODE § 6-2-1-1(j), (k) (Supp. 1978).

[64]367 N.E.2d at 50.

[65]IND. CODE § 6-2-1-37 (1976).

[66]367 N.E.2d at 50.

[67]364 N.E.2d 167 (Ind. Ct. App. 1977).

[68]IND. CODE § 6-2-1-39(b)(1) (1976 & Supp. 1978).

[69]*Id.* § 6-2-1-39(b)(6).

[70]364 N.E.2d at 171.

erty.[71] The decision of the trial court in favor of the taxpayer, however, was reversed on procedural grounds.[72]

Mumma Brothers is also instructive on a point of Indiana tax procedure. The court noted that a timely filed petition for refund pursuant to section 6-2-1-19 is a jurisdictional condition precedent to the bringing of a refund suit in an Indiana trial court.[73] For one of the years in question, the taxpayer in *Mumma Brothers* had not filed a petition for refund within the three-year period set forth in the statute and was, therefore, barred as a matter of subject matter jurisdiction from testing its claim in court.

B. Legislative Developments

Several bills of greater or lesser note to Indiana tax law were enacted by the 1978 General Assembly. This Survey Article will endeavor to give a brief sketch of the scope of those bills and the changes they have made in Title 6 of the Indiana Code.

The General Assembly enacted special bills under the Local Tax article of Title 6 pertaining to the promotion of convention and tourism in counties having population of between 88,000 and 108,000[74] and pertaining to the development of convention and visitor industries in counties with populations ranging from 107,000 to 113,000.[75] Practitioners in affected counties should be alert to these statutes which create new bureaucracies and levy innkeepers' taxes.

1. Income Taxation.—a. Gross Income Tax.—The general definition of gross income[76] has been amended to exclude from its sweep "the amounts received by a corporation or by a division of a corporation owned, operated, or controlled by its member electric cooperatives for electrical energy to be resold to their member-owner consumers."[77]

Further, an exemption from gross income taxation has been extended to include the gross receipts from transportation charges, or

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[71]*Id.* at 172.

[72]The trial court granted summary judgment for the taxpayer. IND. R. TR. P. 56. The appellate court felt genuine issues of material fact remained in regard to the number of transactions and amount of money involved, notwithstanding the fact that, it was "clear" certain of the transactions were exempt. The case was remanded for the purpose of making the necessary fact-finding. 364 N.E.2d at 172.

[73]*Id.* at 170 (quoting Marhoefer Packing Co. v. Indiana Dep't of State Revenue, 157 Ind. App. 505, 519-20, 524-25, 301 N.E.2d 209, 216, 218-19 (1973)).

[74]IND. CODE §§ 6-9-6-1 to 8 (Supp. 1978).

[75]*Id.* §§ 6-9-7-1 to 8.

[76]*Id.* § 6-2-1-1(m).

[77]*Id.*

other charges, directly related to the interstate transportation of the property from which the receipts were derived.[78]

Taxpayers may now deduct from their gross income amounts paid for the return of empty returnable containers.[79]

b. Adjusted Gross Income Tax.—Under a 1978 amendment to the definition of adjusted gross income, individual taxpayers may now subtract from their baseline figure of adjusted gross income, as determined pursuant to section 62 of the Internal Revenue Code, any amounts of supplemental railroad retirement annuities[80] which were included by the taxpayer in federal gross income, and which were not already deducted as being exempt from taxation by reason of the United States Constitution or federal statutes.[81]

Two new legislative provisions allow tax relief to the state's "senior citizens." First, taxpayers over age 65 may subtract $1,000 from their baseline adjusted gross income in order to arrive at their Indiana adjusted gross income.[82] This $1,000 subtraction is available for each "senior citizen" exemption available to the taxpayer under section 151(c) of the Internal Revenue Code[83] and is in addition to the standard $1,000 subtraction provided to each taxpayer.[84] Formerly, senior citizens were allowed a $500 subtraction for the Indiana adjusted gross income computation.[85]

Second, a credit provision was added to the adjusted gross income tax law which provides tax relief to low- and middle-income senior citizens.[86] This twenty-five dollar credit against adjusted gross income tax liability is available to individuals age 65 or over who have resided in Indiana for at least six months of the relevant taxable year and whose "household federal adjusted gross income" for the taxpayer and his spouse, if they live together, is less than $15,000 for that year. It is important to realize that the credit is also available in the form of a refund for taxpayers having insufficient tax liability against which to apply the credit or having no tax liability whatsoever. The legislature noted that the new credit "is intended to provide relief to the individual for the state gross retail sales and use taxes that he pays on his utilities."[87]

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[78] *Id.* § 6-2-1-7(q).

[79] *Id.* § 6-2-1-6(b).

[80] *See* 45 U.S.C. § 231 (Supp. V 1975).

[81] IND. CODE § 6-3-1-3.5(a)(8) (Supp. 1978).

[82] *Id.* § 6-3-1-3.5(a)(4).

[83] *Id.*

[84] *Id.* § 6-3-1-3.5(a)(3).

[85] *Id.* § 6-3-1-3.5(a)(4).

[86] *Id.* § 6-3-3-8.

[87] *Id.* § 6-3-3-8(b). The term "household federal adjusted gross income" means the total adjusted gross income, pursuant to section 62 of the Internal Revenue Code, of the taxpayer and his spouse, if they live together, for the relevant taxable year.

Another credit against adjusted gross income tax for charitable contributions to colleges and universities has been increased to $100 for individual taxpayers and $200 for joint taxpayers. Corporate taxpayers may now have a credit of up to ten percent of their adjusted gross income, or $1,000, whichever is less.[88] Both credits are on the basis of one dollar of credit for each two dollars of contribution.

The legislature also enacted an energy-conservation related adjusted gross income tax deduction for tax years beginning after December 31, 1978. The deduction is for amounts up to $1,000 expended by resident individual taxpayers who install new insulation, weather stripping, double pane windows, storm windows, or storm doors in their residences.[89] The deduction is only available for installations made on parts of residences constructed at least three years before the taxable year for which the deduction is claimed.[90]

2. Sales and Use Taxes.—The provisions of the state gross retail sales tax act,[91] as they apply to the sale of petroleum in Indiana, have been amended,[92] and a new section has been added to the Indiana Code clearly setting forth the manner in which these sales are covered by the act.[93]

The "transactions included" section of the act[94] was further amended in its "public utilities furnishing energy" subsection to provide that a corporation producing power exclusively for the use of one or more public utilities and which is owned or controlled by a public utility shall be considered a retail merchant and subject to tax except on sales to other public utilities or to owned or controlled corporations producing power exclusively for the use of such utilities.[95] Transactions constituting sales to corporations which produce power exclusively for the use of public utilities and which are owned or controlled by such utilities are extended sales tax exemptions by an amendment to the exemption statute.[96]

The legislature also extended sales tax exemptions to include sales of equipment or devices used to administer insulin,[97] necessities for colostomy or ileostomy, and medical equipment, supplies, or devices used in conjunction with the aforementioned articles.[98]

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[88]IND. CODE § 6-3-3-5 (1976 & Supp. 1978).

[89]*Id.* § 6-3-2-5 (Supp. 1978).

[90]*Id.* § 6-3-2-5(b).

[91]*Id.* §§ 6-2-1-37 to 53 (1976).

[92]*See id* § 6-2-1-38(c) (Supp. 1978).

[93]*Id.* § 6-2-1-37.5. *See also id.* §§ 6-6-1-2, -22.1 for additional new legislation relating to the taxation of fuels.

[94]*Id.* § 6-2-1-38 (1976).

[95]*Id.* § 6-2-1-38(c) (Supp. 1978).

[96]*Id.* § 6-2-1-39(b)(16).

[97]*Id.* § 6-2-1-39(b)(13).

[98]*Id.* § 6-2-1-39(b)(28).

3. Exempt Organizations.—The tangible personal property of an exempt organization which is used by the organization in a trade or business not substantially related to the exercise or performance of the organization's exempt purpose is no longer exempt from the personal property tax.[99] Further, the income from unrelated trades or businesses of exempt organizations is no longer exempt from the gross income tax,[100] or the adjusted gross income tax.[101] The definition of "unrelated trade or business" is keyed to the definition of that term in the Internal Revenue Code.[102]

4. Property and Excise Taxes.—The 1978 legislature deferred for one year, to March 1, 1979, all counties' general reassessment of real property.[103]

One provision of the personal property tax exemption extending to property in interstate commerce[104] has been rewritten to provide that personal property is exempt from property taxation if: (1) The property has been placed in the original package in a public or private warehouse for transshipment to an out-of-state destination as evidenced by an original bill of lading covering the goods, (2) the property remains in the original package in such a warehouse, and (3) the property had been ordered and is ready for shipment in interstate commerce to a specific known destination to which the property is subsequently shipped.[105] If the property is not shipped to that destination, the taxpayer claiming the exemption must file an amended return.[106]

The reworked exemption statute also provides that personal property is exempt from property taxation if the property: (1) Is placed in the original package in a public warehouse, (2) was transported to that warehouse by common carrier, (3) is held in the warehouse for transshipment to an out-of-state destination and is so labeled, and (4) remains in the warehouse in the original package.[107]

Both of those exemptions, as well as a similar one for nonresidents,[108] are subject to the limitation discussed in connection with *Carrier*.[109] That limitation stipulates application "only to the extent the property is exempt from taxation under the commerce clause of the Constitution of the United States."[110]

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[99] *Id.* § 6-1.1-10-36.5.
[100] *Id.* § 6-2-1-7.5.
[101] *Id.* § 6-3-2-3.1.
[102] I.R.C. § 513.
[103] IND. CODE § 6-1.1-4-4 (Supp. 1978).
[104] *Id.* § 6-1.1-10-30.
[105] *Id.* § 6-1.1-10-30(b).
[106] *Id.*
[107] *Id.* § 6-1.1-10-30(c).
[108] *Id.* § 6-1.1-10-30(a).
[109] For a discussion of this case, see notes 1-15 *supra* and accompanying text.
[110] IND. CODE § 6-1.1-10-30(d) (Supp. 1978).

A new personal property tax exemption was extended to property held in a foreign trade zone established under federal law[111] which was either imported into the foreign trade zone from a foreign country or placed in that zone exclusively for export to a foreign country.[112] The statute further provides the foreign trade zone exemption applies only to the extent required by the commerce clause of the United States Constitution. Taxpayers claiming foreign trade zone exemptions are required to include the true cash value of the exempt property on their personal property tax return.[113]

Tangible personal property owned by an Indiana not-for-profit corporations and used by that corporation in a residential health facility or Christian Science home or sanitorium is exempt from property taxation.[114]

The $1,000 deduction from assessed value of residential real property belonging to certain low-income senior citizen property owners[115] has been broadened in scope. Formerly, the deduction applied only to such taxpayers whose gross income, combined with that of his spouse, did not exceed $6,000 and the assessed value of the property did not exceed $6,500. Those figures, under the 1978 amendment, are now $10,000 and $9,000, respectively. A new provision also extends the deduction to a surviving spouse of a senior citizen, who is more than sixty years old and has not remarried.[116]

Other related property actions by the 1978 legislature include: (1) Extension of real property tax relief to surviving spouses of veterans[117] and to World War I veterans,[118] (2) increase of the penalty for unpaid property taxes from eight percent of the deficiency to ten percent of the deficiency,[119] (3) amendment of the Motor Vehicle Excise Tax to exclude vehicles owned or leased and operated by an institution of higher learning from the definition of "vehicles" covered by the act,[120] and (4) amendment of the Saving and Loan Association Tax[121] and establishment of a new rate schedule.[122]

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[111] *See* 19 U.S.C. § 81 (1978).
[112] IND. CODE § 6-1.1-10-30.5 (Supp. 1978).
[113] *Id.* § 6-1.1-10-31.
[114] *Id.* § 6-1.1-10-18.5.
[115] *Id.* § 6-1.1-12-9.
[116] *Id.* § 6-1.1-12-9(d).
[117] *Id.* § 6-1.1-12-16.
[118] *Id.* § 6-1.1-12-17.4.
[119] *Id.* § 6-1.1-37-10.
[120] *Id.* § 6-6-5-1(a)(5).
[121] *Id.* § 6-5-8-5.
[122] *Id.* § 6-5-8-5.1.