explain policy coverage to an insured.[83] It is unclear from the decision whether the actual knowledge of defendant was essential to the result but the court's language in its discussion of *Farmers Mutual Insurance Co. v. Wolfe*[84] did not seem to require such knowledge. The court stated that the issue of the soliciting agent's authority was not decided in that case and that the *Farmers Mutual* decision should not be read "to imply that authority to solicit insurance [did] not carry with it, as a power impliedly incidental thereto, the apparent authority to state what the policy [covered]."[85]

IV. Corporate Taxation*

During the survey period, the Indiana Supreme Court and Court of Appeals handed down three decisions concerned with corporate taxation. Statutory interpretations of the Indiana Code concerning penalty abatement, interstate business activities by Indiana corporations, and gross income exemptions are the areas in which the courts construed corporate tax laws.

In *Buell v. Budget Rent-A-Car, Inc.*,[1] the Treasurer of Marion County made demand for taxes, penalties, and interest pursuant to

---

[83]On these grounds, the court distinguished Cadez v. General Cas. Co., 298 F.2d 535 (10th Cir. 1961), in which the court refused to hold the insurance company liable for the soliciting agent's representations, of which the company had no knowledge. The *Cadez* court indicated that it would have reached a different result had there been a showing of knowledge:

> If untrained or over-zealous agents make a negligent or reckless representation as to policy coverage and it can be shown that the company had actual knowledge thereof or that knowledge may be implied from the circumstances of a particular situation, the company must accept the responsibility.

Id. at 537.

[84]142 Ind. App. 206, 233 N.E.2d 690 (1968).

[85]285 N.E.2d at 671.

*Robert G. Leonard.

[1]227 N.E.2d 798 (Ind. Ct. App. 1972).

Indiana Code section 6-1-53-1[2] against the taxpayer corporation for the years 1963 through 1968. The Treasurer did not proceed against the corporation until 1970, but claimed that Indiana Code section 6-1-53-2[3] entitled the state to the entire amount due and owing, and subsequently levied upon the taxpayer's personal property. The trial court, granting taxpayer's request for a restraining order, ruled that an abatement of penalties for delinquencies was justified, excepting those penalties attributable to the taxable year 1968 and payable in 1969.[4] The Court of Appeals of Indiana affirmed the trial court's decision on the basis of nonexhaustion of the appropriate administrative steps, *i.e.*, failure to proceed against the taxpayer corporation in earlier years.[5]

Indiana Code section 6-1-60-3[6] explicitly uses the word "tax," not the word "penalty," which must be interpreted to mean that only the taxes of the delinquent taxpayer can be carried forward for those years in which the Treasurer chooses not to proceed pursuant to section 6-1-53-2. Because the amounts representing taxes and penalties are clearly separable, the Treasurer is not precluded from collecting the delinquent taxes in the future, but the penalties for prior years must be abated.

---

[2]This section states:

> Annually . . . each county treasurer shall make one (1) demand . . . upon every resident of the county who has not paid the personal property and poll taxes owing by him, for the amount of such delinquent taxes with penalties and the costs of the demand. . . . [I]f such amount is not paid within thirty (30) days from the date of the demand sufficient personal property of the taxpayer shall be sold to satisfy such amount or that a judgment may be entered against him in the circuit court of the county as provided by [IND. CODE § 6-1-53-2 (1971)].

[3]This section provides:

> If the delinquent taxes with penalties and costs of the demand are not paid within thirty (30) days from the date of the demand required by [IND. CODE § 6-1-53-1 (1971)], the county treasurer shall proceed to levy upon sufficient personal property of the taxpayer to pay such amount, and to sell the same as hereinafter provided.

[4]277 N.E.2d at 800.

[5]*Id.* at 801.

[6]This section states:

> If the tax for any year or years on any property liable to taxation cannot be collected by reason of any erroneous proceeding, the amount of such *tax* shall be added to the amount to be collected in the next succeeding year.

(Emphasis added).

Once a demand has been made pursuant to section 6-1-53-1, the Treasurer has two alternative remedies available to him to satisfy the debt. He can wait thirty days for satisfaction by the taxpayer and then levy upon his personal property by virtue of section 6-1-53-2, or he may elect not to levy and instead wait sixty days and, upon taxpayer's failure to make full payment, prepare a record of the delinquency and file it with the circuit or superior court pursuant to Indiana Code section 6-1-55-1.[7] This filing has the same effect as a judgment, and the amount due draws interest in lieu of penalty.[8] However, both methods require that the Treasurer make an annual demand in accordance with section 6-1-60-3.

In *Indiana Department of State Revenue v. Purcell Walnut Lumber Co.*,[9] the Court of Appeals of Indiana held that the gross income tax exemption in Indiana Code section 6-2-1-1[10]

---

[7]This section states:

> In the year following any year in which a deliquency in the payment of any installment of taxes on personal property . . . has occurred, and a demand for payment has been made pursuant to [IND. CODE § 6-1-53-1 (1971)] . . . any amount for which demand was so made remains after sixty (60) days from the date of said demand, the county treasurer shall prepare a record of all such delinquencies. . . . On and after deposit of said record in the office of the clerk of the circuit court, the amounts of delinquent taxes, penalties and costs stated therein shall constitute a debt of the person named, which debt shall in all respects have the same force and effect as judgments. The judgments so entered shall be in favor of the county for the benefit of all taxing units having an interest therein. From the date of deposit of the record in the office of the clerk of the circuit court, the judgments shall bear interest at the same rate as other judgments and such interest shall be in lieu of penalties which would have otherwise accrued on the taxes. . . .

[8]277 N.E.2d at 800.

[9]282 N.E.2d 336 (Ind. Ct. App. 1972).

[10]IND. CODE § 6-2-1-1 (1971) states:

> That with respect to individuals resident in Indiana and corporations incorporated under the laws of Indiana authorized to do and doing business in any other state and/or foreign country, the term "gross income" shall not include gross receipts received from sources outside the state of Indiana in cases where such gross receipts are received from a trade or business situated and regularly carried on at a legal situs outside the state of Indiana, or from activities incident thereto. . . .

Gross income of an Indiana corporation doing business at a situs outside the state will not therefore include receipts from such out-of-state sources. But to qualify for the above stated exemption, the corporation must be

did not apply to an Indiana corporation authorized to do business in Kansas, which sold lumber to its own resident agent in Indiana.

Purcell, although incorporated in Indiana, located its office and conducted its business in Kansas. As required by statute, Purcell maintained a resident agent, Amos-Thompson Corporation (also formed under state law), in Indiana. The Department assessed a gross income tax against income received by Purcell from its sales to Amos.

In reversing the trial court, special attention was given to the exact definition of the word "sources" because the statute specifically states that the gross income of an Indiana corporation doing business at a situs outside the state "shall not include gross receipts received from *sources* outside the state of Indiana. . . ."[11] If the proper definition referred to the situs of the customers of that corporation, then Indiana corporations doing business out-of-state would nevertheless be taxed if they sold to customers within the state. But "sources" could also logically refer to the situs at which the seller's business is being conducted. This interpretation would allow such Indiana corporations doing their principal business outside this state to escape the Indiana gross income tax while being taxed by the state in which they are located. The statute, however, specifically creates a category of taxpayers consisting of Indiana corporations "authorized to do and doing business in any other state."[12] Indeed, as the court pointed out, to interpret "sources" to mean anything other than the situs of the customer would allow every Indiana corporation having its main office outside the state to be exempt from the Indiana gross income tax because such income would have been derived from an out-of-state source.[13] Because the income received by Purcell was from a source inside the state (its own resident agent), and because it was an Indiana corporation, the exclusion allowed by section 6-2-1-1 did not apply.

The court further opined that the imposition of the gross income tax upon this source of income did not violate the com-

---

incorporated under Indiana laws, conducting business in another state, and deriving income from sources outside the state.

[11] *Id.* (Emphasis added).

[12] *Id.*

[13] 282 N.E.2d at 340-41.

merce clause of the United States Constitution.[14] It is a well settled principle that a state has the power to tax corporations conducting interstate commerce if the tax has a relation to opportunities, benefits, or protection afforded by the taxing state.[15] Due process requires that there be a definite link or connection between the state and the corporation it seeks to tax.[16] The court specifically cited *Mueller Brass Co. v. Gross Income Tax Division*[17] as authority for allowing the court to examine the bundle of corporate activity in order to determine if an adequate nexus between the corporation and the state did in fact exist.[18] While corporations conducting interstate commerce are not immune from state taxation, absent action by Congress, the state tax must neither provide direct commercial advantage to local business[19] nor create a multiple taxation system.[20] Because the state tax burden here was reasonably apportioned to the Indiana activities of Purcell concerning its sales to Amos, the court evidently found no unreasonable burden placed on the conduct of interstate business by the corporation.[21]

In *Gross Income Tax Division v. B. F. Goodrich Corp.*,[22] the Supreme Court of Indiana interpreted the same statute which the *Purcell* court construed. The court here concluded that the statute, Indiana Code section 6-2-1-1, was neither contrary to

---

[14]U.S. CONST. art. I, § 8(3) states that Congress shall have the power "to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes. . . ."

[15]*See* Braniff Airways, Inc. v. Nebraska State Bd. of Equalization & Assessment, 347 U.S. 590 (1954).

[16]*See* Mueller Brass Co. v. Gross Income Tax Div., 255 Ind. 514, 265 N.E. 2d 704 (1971).

[17]*Id.* This case involved a Michigan corporation which conducted business in Indiana through its office and sales representatives (statutory agent), but shipped goods ordered in Indiana from its Michigan plant directly to the customers solicited by the salesmen.

[18]282 N.E.2d at 341-42.

[19]*See* Portland Cement Co. v. Minnesota, 358 U.S. 450 (1959).

[20]*See* Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U.S. 157 (1954).

[21]*See* General Motors Corp. v. Washington, 377 U.S. 436 (1964). In this decision, the United States Supreme Court gave states the authority to place a reasonable tax burden on corporations conducting interstate activities, if the tax was properly apportioned, and if the subject of the tax was not such an integral part of the interstate flow of commerce that it could not be separated from the intrastate corporate activity.

[22]292 N.E.2d 247 (Ind. 1973).

the due process clause of the fourteenth amendment[23] (which requires the taxing state to have a definite link, a certain degree of contact, or nexus between itself and the corporation being taxed[24]) nor prohibited by the operation of the commerce clause.[25] However, the court felt that the danger inherent in an unapportioned gross receipts tax created a risk of cumulative burdens on interstate commerce which was specifically prohibited.

Goodrich had received proceeds from the dissolution of a Delaware corporation in which it had been a shareholder. It listed the income as an "out-of-state security transaction,"[26] and therefore exempt from the Indiana gross income tax by virture of the due process and commerce clauses. It is a virtual certainty that no corporate taxpayer which is incorporated in Indiana, as Goodrich, can deny the state's jurisdiction to tax the corporation on money received by it while conducting business in Indiana or any other state. The mere fact that it is incorporated in this state implies that it is afforded all the rights, protections, and privileges of Indiana's government and is, in turn, expected to bear the responsibility shouldered by the remaining residents for the maintenance of that government.[27] Even though a state may have due process jurisdiction over a corporation, it may nevertheless lack the power to tax its receipts because the commerce clause prohibits an unapportioned gross receipts tax which results in a multiple tax burden.[28] Therefore, if the tax is fairly apportioned to the corporation's activities in Indiana, the Indiana courts have apparently concluded that this satisfies the commerce clause requirements.

The court here cited Indiana Code section 6-3-2-2[29] as giving the state statutory power to apportion a corporation's revenue

---

[23]U.S. CONST. amend. XIV, § 1 states that: "No state . . . shall . . . deprive any person of life, liberty, or property, without due process of law. . . ."

[24]292 N.E.2d at 249-50.

[25]*See* note 14 *supra.*

[26]292 N.E.2d at 248.

[27]*See* Wisconsin v. J.C. Penney Co., 311 U.S. 435 (1940).

[28]*See* Pacific Broadcasting Corp. v. Riddell, 427 F.2d 519 (9th Cir. 1970).

[29]IND. CODE § 6-3-2-2 (1971) states:

With regard to corporations and nonresident persons, "adjusted gross income derived from sources within the state of Indiana," for purposes of [IND. CODE § 6-3-1-1 to 6-3-7-4 (1971)], shall mean and include

and levy a tax on that portion of its gross receipts attributable to its Indiana activities. Apparently, the court concluded that the tax imposed by section 6-2-1-1 was not a tax on interstate commerce, as interpreted by the Indiana courts, but a tax on the privilege of doing business within Indiana measured by the gross income of a domestic corporation. However, the income must be apportioned properly because of the interstate aspects of the overall transaction.[30]

Although the court did not cite the *Purcell* decision, it is obvious that the two cases compliment each other by making it clear that corporations which are incorporated within Indiana and receive a portion of their gross income from out-of-state sources will not be entitled to the exemption pursuant to section 6-2-1-1 if the intrastate and interstate activities can be separated, and the tax accordingly apportioned between these two activities.

---

income from real or tangible personal property located in this state; income from doing business in this state; income from a trade or profession conducted in this state; compensation for labor or services rendered within this state; income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises and other intangible personal property having a situs in this state. . . . In the case of business income, only so much of such income as is apportioned to this state . . . shall be deemed to be derived from sources within the state of Indiana.

. . . If the business income derived from sources within the state of Indiana of a corporation or nonresident person can not be separated from the business income of such person or corporation derived from sources without the state of Indiana, then the business income derived from sources within this state shall be determined by multiplying the business income derived from sources both within and without the state of Indiana by a fraction, the numerator of which is the property factor plus the pay-roll factor plus the sales factor, and the denominator of which is three (3).

[30]292 N.E.2d at 251.