XVI. Taxation

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A. Introduction

While the 1981-82 survey period brought radical changes and significant developments in the area of federal tax law through, most significantly, the enactment of the Economic Recovery Tax Act of 1981 (ERTA),[1] the same cannot be said with respect to case and statutory developments in the area of Indiana tax law. Nevertheless, there are several case and statutory developments which occurred during this period that are worthy of comment not only for the purpose of isolating their independent significance to particular areas of Indiana tax law, but also for the purpose of tracing the trends in the overall development of Indiana tax law.

Insofar as the judicial developments in the area of Indiana tax law are concerned, this author would agree with the comment made in last year's Survey[2] with respect to the significant case of *Indiana Department of Revenue v. Kimberly-Clark Corp.*[3] that "common sense is still the prevailing yardstick in Indiana for measuring state tax liability."[4] This is evidenced by the approach that the Indiana Supreme Court and the Indiana Court of Appeals have taken in most of the cases discussed in this Survey.[5] Although that is generally the case, the area of taxation, being a code as opposed to a common law discipline, often turns on technical aspects. The importance of the technician is highlighted in certain cases handed down during the survey period.[6]

Insofar as the statutory area is concerned, there are likewise specific statutory developments and general statutory trends which are worthy of comment. Certain of these specific statutory

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[1]Pub. L. No. 97-34, 95 Stat. 172 (1981). Discussion of the Economic Recovery Tax Act of 1981 (ERTA) is, of course, beyond the scope of this Article. ERTA was, however, the basis for many of the more significant legislative developments of the Survey Period. *See infra* text accompanying notes 93-123.

[2]King, *Taxation, 1981 Survey of Recent Developments in Indiana Law*, 15 Ind. L. Rev. 409 (1982).

[3]416 N.E.2d 1264 (Ind. 1981).

[4]King, *supra* note 2, at 409.

[5]*See, e.g.*, Park 100 Dev. Co. v. Indiana Dep't of State Revenue, 429 N.E.2d 220 (Ind. 1981). This case is discussed later in this Article. *See infra* text accompanying notes 69-72.

[6]*See, e.g.*, Indiana Dep't of Revenue v. United States Steel Corp., 425 N.E.2d 659 (Ind. Ct. App. 1981). One highlight of this case is the importance the court placed upon segregating accounts to track and support sales and use tax exemptions.

developments will be discussed in some detail, while other statutory developments of a specialized nature will merely be noted. The 1982 General Assembly did continue the process of recodifying the various acts in Title 6 of the Indiana Code by enacting Public Law 59 which is a recodification of the Indiana Motor Carrier Fuel Tax.[7] Of more general significance, however, was the Indiana Legislature's selective acceptance of portions of ERTA in its traditional updating of the Internal Revenue Code references in Title 6.[8]

Also to be noted is the increased volume of administrative rulings[9] issued by the Indiana Department of State Revenue (Revenue Department) during the past survey period. The increased number of rulings has been helpful to the practitioner planning transactions and evaluating controversies, because they provide an ever-growing body of authority from which to draw when evaluating a particular set of circumstances. As an adjunct to noting the rulings activity of the Revenue Department, the efforts of the Revenue Department to update regulations and to issue explanatory releases or guidelines should also be noted. While these administrative activities have been beneficial to the practitioner by providing a published basis for determining the view of the Revenue Department as to a particular issue, they also provide a basis for litigation.[10]

B. Sales and Use Tax Decisions

The "double direct" language of the sales and use tax exemption for transactions involving machinery, tools, and equipment used for manufacturing[11] has lead to substantial litigation over what qualifies for the exemption. The statutory language restricts the application of the exemption to manufacturing equipment which is *directly* used or consumed by the purchaser in the *direct* production of tangible personal property. The judicial decisions dealing with what types of manufacturing equipment may be considered to be directly used in direct production appear to be irreconcilable from a doctrinal

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[7]Act of Feb. 24, 1982, Pub. L. No. 59, 1982 Ind. Acts 523 (1982). In recent years past, the Gross Income Tax, Sales and Use Tax, Motor Fuel, and Special Fuel Tax Acts have been recodified, and the administrative provisions of the various tax acts have been incorporated into an "administrative code."

[8]Act of Feb. 25, 1982, Pub. L. No. 52, 1982 Ind. Acts 494 (1982).

[9]Such rulings are summarized and distributed to the public in quarterly "circulars" in accordance with Commissioner's Directive No. 3.

[10]*See, e.g.*, Indiana Dep't of Revenue v. United States Steel Corp., 425 N.E.2d 659 (Ind. Ct. App. 1981) (the Revenue Department's Sales and Use Tax Regulations, 45 Ind. Admin. Code §§ 2-1-1 to -16-1 (1979), were called into question).

[11]Ind. Code §§ 6-2.5-5-3 to -4 (1982) (previously codified at *id.* § 6-2-1-39(b)(6) and (10) (1976)).

perspective.[12] This irreconcilability may have been partially eliminated through the common sense gloss placed on the exemption by the court of appeals in *Indiana Department of Revenue v. United States Steel Corp.*[13]

At issue in that case was the application of the exemption to certain protective equipment, including safety eyeglasses, protective gloves, hardhats, shields, and protective clothing used by production workers at the taxpayer's steel production facilities. In upholding the trial court determination that the equipment was not only "essential and integral" to the production of steel but also was directly used in direct production,[14] the court of appeals rejected the "positive effect" test proffered by the Revenue Department because it was "too vague and misleading to provide an effective and accurate guide for taxpayers."[15]

In support of its denial of the exemption for the safety equipment in question, the Revenue Department relied primarily on *Indiana Department of State Revenue v. Harrison Steel Castings Co.*[16] In *Harrison*, the court of appeals denied the exemption for safety glasses used to protect workers' eyes from flying debris and for gloves used to protect workers' hands from rough castings, because this equipment did not have a "positive effect" on and direct causal relationship with the product.[17] Although the court in *United States Steel* noted that the adoption of the Revenue Department's positive effect test in *Harrison* was "inconsistent with the careful analysis of earlier decisions,"[18] the court did not overrule *Harrison*; rather, it stated that the two cases are factually distinguishable because the safety equipment in *Harrison* was for the protection of the workers and was not necessary for the creation of the product, while the safety equipment in *United States Steel* was "so highly specialized that creation of the product is impossible without it."[19]

Notwithstanding the basis of the foregoing distinction, *United States Steel* cannot be seen as establishing a simple sine qua non test for directness. The court in *United States Steel* continues to adhere to the directness test set forth in *Indiana Department of State Revenue*

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[12] *Compare* Indiana Dep't of Revenue v. Calcar Quarries, Inc., 394 N.E.2d 939 (Ind. Ct. App. 1979) *with* Indiana Dep't of State Revenue v. Cave Stone, Inc., 409 N.E.2d 690 (Ind. Ct. App. 1980), *reh'g denied*, 427 N.E.2d 922 (1981).

[13] 425 N.E.2d 659 (Ind. Ct. App. 1981).

[14] *Id.* at 661.

[15] *Id.* at 666.

[16] 402 N.E.2d 1276 (Ind. Ct. App. 1980).

[17] *Id.* at 1278.

[18] 425 N.E.2d at 664.

[19] *Id.*

v. RCA Corp.[20] That test requires the manufacturing equipment to have an "immediate link with the product being produced."[21] According to the court in *United States Steel*, in order for equipment to have an immediate link with the product being produced, it must be "essential and integral" to the production of the product.[22] This embellishment on the directness test furthers the common sense theme so familiar in recent decisions, and it removes some of the previously existing doctrinal uncertainty as to the appropriate analysis.

United States Steel also lends some clarification to the contradiction, noted in last year's Survey,[23] between the court's 1980 opinion in *Indiana Department of State Revenue v. Cave Stone, Inc.*[24] and its earlier decision in *Indiana Department of Revenue v. Calcar Quarries, Inc.*[25] *Calcar Quarries* rejected the Revenue Department's positive effect test; whereas, *Cave Stone* appeared to utilize the positive effect test in denying the exemption for transportation equipment used to haul graded stone from one step of the manufacturing process to another. The contradiction between these cases was reviewed in last year's Survey as follows:

> [I]t is not clear whether in *Cave Stone* the court was really embracing the Revenue Department's direct use test and requiring that the machinery have a "positive effect" on the manufactured product or whether the court was simply concluding that the taxpayer was engaged in two separate exempt functions, quarrying and manufacturing. In the latter instance, transportation equipment which merely moved the stone from the quarry to the manufacturing operation was taxable because such equipment was not directly integral to either exempt function.[26]

In addressing this issue, the court in *United States Steel* explained that *Cave Stone* should be interpreted as denying an exemption for equipment which merely transports the product between two exempt functions.[27]

The *United States Steel* interpretation was confirmed when the court of appeals denied the petition for rehearing of *Cave Stone*[28] and

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[20]160 Ind. App. 55, 61, 310 N.E.2d 96, 100 (1974).

[21]*Id., quoted in* Indiana Dep't of Revenue v. United States Steel Corp., 425 N.E.2d 659, 662 (Ind. Ct. App. 1981).

[22]425 N.E.2d at 664.

[23]King, *supra* note 2, at 413-15.

[24]409 N.E.2d 690 (Ind. Ct. App. 1980).

[25]394 N.E.2d 939 (Ind. Ct. App. 1979).

[26]King, *supra* note 2, at 413-14.

[27]425 N.E.2d at 664.

[28]Indiana Dep't of State Revenue v. Cave Stone, Inc., 427 N.E.2d 922 (Ind. Ct. App. 1981).

stated that "manufacturing equipment must have a *transformational* effect as opposed to a *translational* effect for it to be exempt."[29] Thus, neither the quarried stone nor the crushed stone was considered to be undergoing processing, mining, or production during transportation. In the *Cave Stone* rehearing opinion, the court also stated that it disagreed with the *Calcar* holding to the extent that *Calcar* recognized an exemption which encompassed an overlapping of enumerated statutorily exempt functions.[30]

Although the decision in *United States Steel* may not provide the definitive answer to the ambiguity created by the double direct language of the manufacturing exemption statute, it does represent a positive step towards a more realistic interpretation by eliminating the vacuous positive effect test and emphasizing a fact-sensitive analytical approach. The *Cave Stone* rehearing opinion also represents a step toward an understandable interpretation by requiring the analysis to focus on the actual production process.

C. Gross Income Tax Decisions

1. Interstate Commerce Cases.—During the survey period, the court of appeals was faced with three cases involving the applicability of the Indiana gross income tax to corporations involved in interstate commerce. Two of these cases, *Indiana Department of State Revenue v. Brown Boveri Corp.*[31] and *Indiana Department of State Revenue v. General Foods Corp.*,[32] were essentially mine run cases involving taxation of interstate commerce concepts, but the third case, *Reynolds Metals Co. v. Indiana Department of State Revenue*,[33] involved issues of a more novel nature.

In *Brown Boveri*, the interstate commerce in question involved a contract whereby the defendant, a foreign corporation, was to install an induction melting system in an Indianapolis foundry of a national corporation. The system in question was prefabricated at an out-of-state plant, broken down for shipment to Indiana and then reassembled at the purchaser's Indiana facility. In order to fulfill its obligation under the contract, the taxpayer was required to engage in various activities in Indiana, including removing obsolete equipment and foundations, trenching, and reassembling and reinforcing the new equipment. The part of this system for air pollution control was obtained from a third party and was to be installed by yet another party. Both the supplier and the installer of the pollution equipment were foreign corporations.

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[29] *Id.* at 924.
[30] *Id.* at 923.
[31] 429 N.E.2d 285 (Ind. Ct. App. 1981).
[32] 427 N.E.2d 665 (Ind. Ct. App. 1981).
[33] 433 N.E.2d 1 (Ind. Ct. App. 1982).

In asserting that the receipts from the contract were taxable as gross income, the Revenue Department argued that the performance of substantial installation activities within Indiana removed the transaction from the statutory interstate commerce exemption. In support of its argument, the Revenue Department relied on case law which holds that if activities taking place within this state are "more than minimal or incidental" to the overall contract, then such activities are sufficient to justify the imposition of state taxation.[34]

Having little difficulty in rejecting those arguments, the court harkened back to the principle that the determining factor in deciding what activity constitutes interstate commerce that is insulated from state taxation is whether the in-state activities "are so intrinsically related to and inherently a part of the interstate sale that it is seen as one continuing transaction."[35] With the facts presented in *Brown Boveri*, the court had little problem in concluding that the taxpayer's activities within this state were intrinsically related to, and inherently a part of, the sale in interstate commerce.[36] Consequently, the receipts generated by the contract were held to be exempt from gross income taxation.[37]

Indiana Department of State Revenue v. General Foods Corp.[38] involved an assessment of gross income tax on amounts received by a national food producing and wholesaling corporation from sales to Indiana customers. These sales were made through out-of-state sales facilities pursuant to orders accepted at out-of-state facilities and were shipped to Indiana customers from out-of-state distribution facilities. The basis of the Revenue Department's assertion that such receipts were taxable was that products of the same type were from time to time stored in Indiana warehouse facilities. It should be noted that the taxpayer did report and pay gross income tax on receipts from sales to Indiana customers generated by shipments from its Indiana warehouse facilities.[39] However, the Revenue Department contended that all of the taxpayer's products sold in Indiana which were of a type maintained in inventory in Indiana facilities were subject to the tax, regardless of whether the sales were generated by, and shipped from, out-of-state facilities.

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[34]429 N.E.2d at 287 (citing Gross Income Tax Div. v. Surface Combustion Corp., 232 Ind. 100, 111 N.E.2d 50 (1953); Gross Income Tax Div. v. Fort Pitt Bridge Works, 227 Ind. 538, 86 N.E.2d 685 (1949)).

[35]429 N.E.2d at 288. As authority for this principle, the court cited Gross Income Tax Div. v. Surface Combustion Corp., 232 Ind. 100, 111 N.E.2d 50 (1953) and Gross Income Tax Div. v. Fort Pitt Bridge Works, 227 Ind. 538, 86 N.E.2d 685 (1949).

[36]429 N.E.2d at 288.

[37]*Id.*

[38]427 N.E.2d 665 (Ind. Ct. App. 1981).

[39]*Id.* at 667.

In effect, the Revenue Department in *General Foods Corp.* was attempting to assert that the presence of certain types of inventory within Indiana subjects all Indiana-destination sales of that type of inventory to gross income taxation, regardless of other factors which may exist with respect to those sales. Noting that the derivation of income must be attributable to *in-state* activities of the taxpayer in question as opposed to the source of the sales receipts, the court of appeals rejected the Revenue Department's contention and ruled that the gross income tax was inapplicable to the sales receipts in question.[40]

In *Reynolds Metals Co. v. Indiana Department of State Revenue*,[41] the taxpayer raised the issue of whether the statutory three-factor apportionment formula,[42] used in determining business income derived from Indiana sources for *adjusted* gross income purposes, could be utilized for *gross* income tax purposes. By way of background, use of the apportionment formula was, as the court in *Reynolds* noted, "suggested for possible application in the gross income context in *Indiana Department of Revenue v. P.F. Goodrich Corp.*"[43] The court in *Reynolds* rejected the taxpayer's argument that *Goodrich* required the use of the three-factor apportionment formula "in lieu of identifying the actual income generated by business activity in this state."[44] Noting that *Goodrich* involved a one-instance transaction which was incapable of division into portions attributable to in-state and out-of-state business activity, the court in *Reynolds* held that the apportionment formula was not appropriate in this case, effectively limiting the application of apportionment in gross income tax to receipts inherently incapable of association with a particular taxing jurisdiction.[45]

Instructive to taxpayers was the court's distilled analysis of the thrust of many of the significant cases regarding the taxation of interstate business activities. The court stated that:

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[40] *Id.* at 670.

[41] 433 N.E.2d 1 (Ind. Ct. App. 1982).

[42] Ind. Code § 6-3-2-2(b) (1982) provides as follows:

> If the business income derived from sources within the state of Indiana of a corporation or nonresident person cannot 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 payroll factor plus the sales factor, and the denominator of which is three (3).

Id.

[43] 433 N.E.2d at 5 (citing Indiana Dep't of Revenue v. P.F. Goodrich Corp., 260 Ind. 41, 292 N.E.2d 247 (1973)).

[44] 433 N.E.2d at 7.

[45] *Id.* at 8.

> [A] corporation must segregate its accounts and keep sufficient records so that intrastate and interstate activities producing income can be sufficiently identified and interpreted to intelligently assess the interstate commerce exemption without resort to an arbitrary formula not provided in the Gross Income Tax statute of 1933. . . . Failure to identify and segregate its records will result in adverse tax consequences to the corporation.[46]

Reynolds also involved several more mundane issues which arise in the interstate commerce area under the gross income tax. Discussing sales to Indiana customers that result from solicitations by the out-of-state sales personnel of a company which has Indiana-based sales personnel, some Indiana inventory in certain of its divisions, and certain Indiana plants, the court applied the standard "nexus" test[47] on a transactional basis and affirmed the generally accepted principles that the mere solicitation of orders within a state does not, in itself, form a sufficient nexus to support taxing jurisdiction over the receipts generated by the solicitation[48] and that legitimate "house accounts" may be exempt.[49] With respect to house accounts, however, *Reynolds* makes it clear that substantial in-state activities involving installation or assembly of a nonstandardized item may subject receipts from a house account to gross income taxation.[50] Additionally, *Reynolds* held that the maintenance of a security interest in consigned goods located in Indiana, standing alone, does not have sufficient nexus to support taxing jurisdiction over the secured party when the goods are ultimately sold by the consignee.[51]

2. Taxpaying Entities.—Indiana Department of Revenue v. American Underwriters, Inc.[52] presented an issue of first impression in Indiana. In this case, the court of appeals addressed the issue of

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[46] *Id.* at 9.

[47] This test, emanating from General Motors Corp. v. Washington, 377 U.S. 436 (1964), requires that a transaction or category thereof sought to be subject to state taxation must have a sufficient relationship with the taxing jurisdiction, vis-a-vis the party sought to be taxed, in order to support the imposition of taxation.

[48] 433 N.E.2d at 12-13 (discussing Mueller Brass Co. v. Gross Income Tax Div., 255 Ind. 514, 538, 265 N.E.2d 704, 719 (1971); Gross Income Tax Div. v. Owens-Corning Fiberglass Corp., 253 Ind. 102, 118, 251 N.E.2d 818, 827 (1969); 45 IND. ADMIN. CODE § 1-1-120(1)(b) (1979)).

[49] 433 N.E.2d at 14-15 (discussing Mueller Brass Co. v. Gross Income Tax Div., 255 Ind. 514, 538, 265 N.E.2d 704, 719 (1971); Gross Income Tax Div. v. Owens-Corning Fiberglass Corp., 253 Ind. 102, 118, 251 N.E.2d 818, 827 (1969); 45 IND. ADMIN. CODE § 1-1-120(1)(b) (1979)).

[50] 433 N.E.2d at 12-13.

[51] *Id.* at 17.

[52] 429 N.E.2d 306 (Ind. Ct. App. 1981).

whether an interinsurance exchange[53] and a corporation, organized solely to act as attorney-in-fact for the exchange, constitute a single taxable entity for state income tax purposes where the interests of the interinsurance exchange and the corporation are divergent and not coextensive.

American Underwriters (A-U), an Indiana corporation, was organized to act as attorney-in-fact for American Interinsurance Exchange (Exchange), a reciprocal insurance business which provided indemnity or risk-sharing among subscribing casualty insurers. The Exchange had no separate officers or organization, was not incorporated, had no articles of partnership, nor any other articles of agreement other than the subscribers' agreement which gave A-U the authority to manage the insurance business of the Exchange. Other than its attorney-in-fact, the Exchange had no agents or other persons or entities through which business was conducted. Policies were written by A-U in the name of the Exchange. The subscribers' agreement entitled A-U to a management fee of fifteen percent of all monies received by the Exchange. This fee was A-U's sole source of income. The subscribers were entitled to any profits and assets of the Exchange upon dissolution, and A-U had no interest in those assets. Through the Exchange, A-U operated in a manner similar to a mutual insurance company. All assets of the Exchange were subject to the liability of the insurance operation; however, none of A-U's assets were available to those claimants. Furthermore, A-U and the Exchange maintained completely separate books and records, and the Exchange filed federal income tax returns separate from A-U.

The Revenue Department contended that A-U and the Exchange were two separate taxable entities. Thus, premiums and other receipts of the Exchange which were paid to A-U, as attorney-in-fact, were taxable, and, consequently, the receipt of the management fee by A-U was a second taxable event.[54] A-U, on the other hand, argued that for gross tax purposes the whole enterprise was one taxable entity and that a second tax levied upon the fifteen percent management fee amounted to a double taxation which conflicted with the Indiana interinsurance statute. A-U relied heavily on the provision of the interinsurance statute which limits the taxation of an attorney-in-fact, such as A-U, to that which would be imposed on a mutual insurance company.[55] According to A-U, the position of the Revenue Department, if upheld, would contravene the interinsurance statute.

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[53]See IND. CODE § 27-6-6-1 (1982) which gives subscribers the authority to exchange reciprocal interinsurance contracts.

[54]*See* IND. CODE § 6-2-1-1(a) (1976) (currently codified, in part, at *id.* § 6-2.1-1-16 (1982)).

[55]*Id.* § 27-6-6-12 (1982).

In reversing the trial court, the court of appeals held that A-U and the Exchange were two separate and distinct taxable entities.[56] The court noted that it is a common occurrence under the Indiana Gross Income Tax Act for an agent to sell goods or to otherwise produce income for a principal which creates both a taxable event for the principal, as to the sale, and a taxable event for the agent, as to the commission. From a practical standpoint, the court stated that:

> [W]e view A-U as desiring to treat the Exchange as a separate entity to maintain insulation from liability, and on the other hand, as desiring to escape dual taxation by calling itself and the Exchange one single enterprise. We agree with the Department that for the purpose of the Indiana Gross Income Tax the Exchange is a pool, association, cooperative association, or other group or combination acting as a unit, and therefore is a taxable entity.[57]

In addition, the court noted that the enactment of the interinsurance statute pre-dated the enactment of the Indiana Gross Income Act of 1933 and rejected A-U's argument that the language of interinsurance statutes was controlling.[58]

Two other gross income tax decisions are significant vis-a-vis the planning impact which results from determinations of what types of structures are taxpaying entities for gross income tax purposes. In *Indiana Department of Revenue v. Glendale-Glenbrook Associates*[59] and *Park 100 Development Co. v. Indiana Department of State Revenue*,[60] the Indiana Supreme Court vacated opinions of the court of appeals[61] and adopted a more pragmatic and less literal interpretation of the section of the gross income tax statute which makes partnerships with at least one corporate partner subject to the gross income tax.[62]

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[56]429 N.E.2d at 312.

[57]*Id.*

[58]*Id.*

[59]429 N.E.2d 217 (Ind. 1981).

[60]429 N.E.2d 220 (Ind. 1981).

[61]The opinions vacated are Indiana Dep't of Revenue v. Glendale-Glenbrook Assoc., 404 N.E.2d 1179 (Ind. Ct. App. 1980) and Park 100 Dev. Co. v. Indiana Dep't of State Revenue, 388 N.E.2d 293 (Ind. Ct. App. 1979).

[62]IND. CODE § 6-3-7-1(b) (1976) (amended 1981). This code section was amended in 1981 to rectify the result of a strict literal application of the pre-1981 code section. Although the supreme court's decisions in *Glendale-Glenbrook* and *Park 100* were decided based upon the pre-1981 code section, the result in both cases is consistent with the 1981 amendment. The text of the amended provisions reads:

> In the event the tax imposed by IC 6-3-1 through IC 6-3-7 is held inapplicable or invalid with respect to any person, or the shareholders of any corporation described in IC 6-3-2-3(b), or the partners of any such partnership, then notwithstanding IC 6-2.1-3-23 or IC 6-2.1-3-24 such person or such

In *Indiana Department of Revenue v. Glendale-Glenbrook Associates*, the taxpayer was a partnership composed of individuals and one corporate partner, a mutual life insurance company which was engaged in a shopping center development, management, and leasing business. The Revenue Department asserted that the partnership was subject to the gross income tax under Indiana Code section 6-3-7-1(b)[63] which provided that all partnerships, in which one or more of the partners is a corporation, are liable for the tax. The taxpayer contended that it was exempt on the basis of the statutory exemption for qualified insurance companies.[64] In other words, because each partner was exempt from the tax by being either an individual or an exempted insurance company, the partnership was not a taxable entity. In holding Glendale-Glenbrook was subject to the tax, the court of appeals stated that the language of Indiana Code section 6-3-7-1(b) was clear and unambiguous on its face and did not distinguish between types of corporations.[65] Thus, according to the court of appeals, the composition of the partnership was significant only for purposes of determining the presence of a corporate partner.

In vacating the opinion of the court of appeals and affirming a summary judgment of the trial court, the Indiana Supreme Court noted, in *Glendale-Glenbrook*, that the purpose of Indiana Code section 6-3-7-1(b) "was to plug a tax loophole where one corporation which was paying gross income tax might join with another corporation to form a partnership to circumvent the tax."[66] The supreme court recognized that Glendale-Glenbrook's sole corporate partner was not trying to evade the payment of taxes by its participation in the partnership and stated that the very reason insurance companies were exempted from paying gross income tax was because they were subject to taxation under Indiana insurance law. Considering the gross income tax statute as a whole, the supreme court found that a strictly literal interpretation of Indiana Code section 6-3-7-1(b) under the facts before it "would lead to injustice, absurdity or contradictory provisions."[67] Consequently, the partnership was found to be exempt from the tax.[68]

> corporation or such partnership shall be liable for the tax on gross income as imposed by IC 6-2.1 for the taxable periods with respect to which the tax under IC 6-3-1 through IC 6-3-7 is held inapplicable or invalid.

Id. § 6-3-7-1 (1982).

[63]IND. CODE § 6-3-7-1(b) (1982).

[64]The provision of the Act exempting qualified insurance companies is codified at IND. CODE § 6-3-2-3(d) (1982). Insurance companies are subject to tax under IND. CODE § 27-1-18-2 (1982).

[65]404 N.E.2d at 1179.

[66]429 N.E.2d at 219.

[67]*Id.*

[68]*Id.*

Park 100 Development Co. v. Indiana Department of State Revenue[69] involved a multi-tiered partnership structure. The taxpayer was a partnership consisting of an individual and two partnerships. One of those partnerships was comprised of two partners, both of which were general business corporations. The Revenue Department asserted that the taxpayer was subject to the gross income tax under Indiana Code section 6-3-7-1(b)[70] on the theory that this section should be applied to any partnership which has, as a partner, a separate partnership, one of the partners of which is a corporation. In reversing the trial court, the court of appeals found that the gross income tax was improperly assessed against the taxpayer on the grounds that the literal language of section 6-3-7-1(b) rendered the statute inapplicable to the taxpayer.[71] Under the approach of the court of appeals' decision, a multi-tiered partnership structure represented an intriguing planning device for ventures in which corporate participation was involved.

The supreme court observed that such a literal application of the statute would clearly contravene the intent of the legislature which was to prevent a corporation subject to the gross income tax from circumventing the tax by joining another corporation to form a partnership. In vacating the appellate court decision, the supreme court stated that a corporation should not be allowed to "escape the corporate tax liability indirectly by forming a two-tiered partnership when it [the legislature] did not allow a corporation to escape that liability as a direct or first-tier partner."[72] Thus, one of the reasons for using a multi-tiered partnership structure has been eliminated.

3. Procedure.—State v. Meadowood Indiana University Retirement Community, Inc.[73] presented the court of appeals with the question of whether a corporation could seek declaratory relief from the Revenue Department's ruling which denied tax exempt status to the corporation prior to the assessment of taxes by the Revenue Department. In this case, Meadowood applied for tax exempt status with

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[69]429 N.E.2d 220 (Ind. 1981).

[70]Prior to the 1981 amendment, the statute read:

> Every partnership of which one or more of the partners is a corporation shall be liable for the tax imposed by Sections 2 and 3 of the Gross Income Tax Act of 1933 as amended (IC 1971, 6-2-1, 2 and 3) and by the Adjusted Gross Income Tax Act of 1963 as amended (IC 1971, 6-3-1 through 6-3-7). No partner of such partnership shall be liable for the tax imposed on the partner's distributive share of the partnership income by the Gross Income Tax Act of 1933 as amended or the Adjusted Gross Income Tax Act of 1963 as amended.

IND. CODE § 6-3-7-1(b) (1976) (amended 1981). *See supra* note 62.

[71]429 N.E.2d at 223 (citing the holding in Park 100 Dev. Co. v. Indiana Dep't of State Revenue, 388 N.E.2d 293 (Ind. Ct. App. 1979)).

[72]429 N.E.2d at 223.

[73]425 N.E.2d 791 (Ind. Ct. App. 1981).

the Revenue Department, and the application was denied. This denial was affirmed on administrative appeal, and Meadowood filed suit seeking a declaratory judgment that it was tax exempt as a "corporation organized and operating exclusively for charitable, educational, and civic purposes."[74] The trial court entered judgment declaring that Meadowood was entitled to tax exempt status.

On appeal, the Revenue Department argued that Meadowood's exclusive statutory remedy was to pay the taxes and then to bring an action to recover those taxes. Meadowood asserted that the anti-injunction statute[75] was not applicable under the facts because no assessment had been made. According to Meadowood, to disallow the declaratory judgment would leave the taxpayer without a statutory remedy.

The court of appeals reversed the verdict of the trial court and instructed the trial court to sustain the Revenue Department's motion to dismiss.[76] In rejecting Meadowood's argument, the court stated that Meadowood was not without a remedy because a taxpayer always may pay, voluntarily, the taxes owed prior to an assessment by the Revenue Department. Then the taxpayer may request a refund, and if the refund is denied, according to the court, the taxpayer may then bring suit in a trial court. Upon this reasoning, the appellate court held that the statutory refund procedure is an exclusive remedy regardless of whether an assessment has been made.[77]

D. *Judicial Review of State Tax Board Assessments*

In *State Board of Tax Commissioners v. South Shore Marina*,[78] the court of appeals delineated the limitations placed upon a trial court's review of State Tax Board decisions. Noting that appeals from State Tax Board decisions are, statutorily, not subject to the requirements of the Administrative Adjudication Act,[79] the court held that the standard of review of State Tax Board decisions should be substantially equivalent to the standard of review under the Administrative Adjudication Act.[80] The court stated that "[j]udicial review . . . is limited to whether the agency possessed jurisdiction over the subject matter

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[74]*Id.* at 722-23. Such corporations are tax exempt under IND. CODE § 6-2.1-3-20(a)(8) (1982).

[75]IND. CODE § 6-2-1-19(d) (1976). The anti-injunction principle is now part of the Indiana Administrative Tax Code. *Id.* § 6-8.1-9-1(d) (1982).

[76]425 N.E.2d at 793.

[77]*Id.*

[78]422 N.E.2d 723 (Ind. Ct. App. 1981). *See* Smith, *Administrative Law, 1982 Survey of Recent Developments in Indiana Law*, 16 IND. L. REV. 1, 18 (1983).

[79]422 N.E.2d at 727 n.2 (citing IND. CODE § 4-22-1-2 (1976)).

[80]422 N.E.2d at 727.

and whether the agency's decision was made pursuant to proper procedures, was based upon substantial evidence, was not arbitrary or capricious, and was not in violation of any constitutional, statutory or legal principle."[81] The importance of the *South Shore Marina* decision lies in the guidelines which the court set forth for review of such cases under the above definition.

The facts of *South Shore Marina* are particularly relevant. South Shore Marina was assessed property taxes on approximately fifty boats located on its property. The Marina claimed that it rented space to boat owners for the storage of their boats and boating equipment, and therefore had no ownership or possessory interest in the boats. At a hearing of the State Tax Board, the Marina was requested to produce a list of boats which were stored on its property and a list of the respective owners. The Marina refused to produce such lists. The State Tax Board repeated the request at a subsequent hearing, in a letter, and in a subpeona duces tecum. Without variation, the Marina insisted that it was not liable for the assessment on the boats and had no legal obligation to produce the requested information. The State Tax Board responded by assessing the Marina for the value of the boats in the State Tax Board's Final Assessment Determination. The Marina appealed the assessment to the county superior court, asserting that it did not hold, possess, or control the boats as required by the applicable taxing statute.[82] The trial court entered judgment for the Marina and vacated the State Tax Board's assessment on the boats.

The court of appeals vacated the judgment of the trial court and reinstated the State Tax Board's final assessment, holding that the trial court erred in its standard of judicial review.[83] The court stated that the issues which should have been addressed by the trial court were limited to whether the State Tax Board's decision was arbitrary or capricious, was based upon substantial evidence, and was not in violation of any constitutional, statutory, or legal principle.

The court defined an arbitrary or capricious administrative act as "one which is willful and unreasonable, without consideration and in disregard of the facts or circumstances in the case."[84] Recognizing that leaving the boats unassessed would clearly violate constitutional and legislative mandates under which the State Tax Board operates, the court stated that:

> [T]he Board could not reasonably do other than assess the

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[81] *Id.* (footnotes omitted).
[82] *See* IND. CODE § 6-1.1-2-4(b) (1982).
[83] 422 N.E.2d at 727.
[84] *Id.*

> boats to Marina. The assessment was invited by and was the natural consequence of Marina's actions. Marina may not now urge error predicated upon those actions. Marina characterizes the Board's action as arbitrary and capricious. To the contrary, the assessment was the reasonable and considered result with respect to the facts and circumstances confronting the Board.[85]

In a footnote, the court noted that this result does not stand for the proposition that a taxpayer must automatically supply the information sought by the State Tax Board; rather, according to the court, it stands for the proposition that a taxpayer's refusal must be based on legitimate grounds.[86]

In determining whether there was substantial evidence before the State Tax Board to support its final assessment, the court adopted the test set forth in *Evansville v. Southern Indiana Gas & Electric Co.*[87] Although that case involved the review of a Public Service Commission decision, the court in *Evansville* stated that a reviewing court could only set aside agency findings of fact when a review of the entire record "clearly indicates that the agency's decision lacks a reasonably sound basis of evidentiary support."[88] The court in *South Shore Marina* found that there was substantial evidence to support the State Tax Board's final assessment because the evidence clearly established that fifty boats were on Marina's property on the assessment date and the evidence clearly established the value of these boats.[89]

In determining whether the State Tax Board violated any legal principles by its assessment on the Marina, the court noted that the legislature created the State Tax Board and specifically gave the State Tax Board the power to promulgate rules and regulations concerning discovery of information relevant to assessment determinations. The court recognized that broad investigatory powers were necessary to the proper execution of the State Tax Board's tax assessment responsibility. Furthermore, to construe the property tax statute as not permitting the assessment of property taxes on the *apparent* owner, holder, or possessor of the property would be contrary to the constitutional and legislative mandates placed on the State Tax Board.[90] In holding that the State Tax Board's assessment did not violate any of these legal principles, the court stated that it has long been established that

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[85] *Id.* at 730.
[86] *Id.* at 730-31 n.4.
[87] 167 Ind. App. 472, 339 N.E.2d 562 (1975).
[88] *Id.* at 485, 339 N.E.2d at 572.
[89] 422 N.E.2d at 731.
[90] *Id.* at 734 (construing IND. CONST. art. 10, § 7 and IND. CODE § 6-1.1-2-1 (1976)).

the burden of nonliability is placed on the individual assessed.[91] The court noted that to hold otherwise would provide the dishonest with an incontrovertible method of avoiding liability by merely disclaiming ownership, possession, or control of the property in question.

The *South Shore Marina* case provides the basic guidelines for judicial review of future State Tax Board decisions and re-emphasizes that the burden of proving nonliability is clearly on the taxpayer. While the express requirements of the Administrative Adjudication Act may not apply to State Tax Board decisions, the court has once again recognized that this agency and the reviewing courts will be subject to basic administrative law requirements which are substantially equivalent to the requirements under the Administrative Adjudication Act.

E. Legislative Developments

As previously noted, the actions of the 1982 General Assembly with respect to Title 6 of the Indiana Code cannot be considered extraordinarily significant from a purely legal standpoint. Rather, much of the legislative activity may be viewed as a political response to the budgetary concerns engendered by the decrease in state revenues which has resulted from national economic problems and from the decrease in certain tax rates which Indiana taxpayers have enjoyed over the past few years.[92] Furthermore, a substantial portion of the significant legislative activity can be attributed to the legislative response to ERTA.[93]

The following is a summary of the actions of the 1982 General Assembly relating to Indiana taxation which are deemed to be significant by the author. Of course, other legislative actions may have significance in individualized cases.

1. Net Income Taxes.— a. General changes based on the Economic Recovery Tax Act of 1981 (ERTA).—The income tax provisions of Title 6 contain various references to the Internal Revenue Code.[94] These

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[91]422 N.E.2d at 735 (citing Prudential Casualty Co. v. State, 194 Ind. 542, 143 N.E. 631 (1924); Buck v. Miller, 147 Ind. 586, 47 N.E. 8 (1896); Fell v. West, 35 Ind. App. 20, 73 N.E. 719 (1905)).

[92]The gross income tax phase out, begun in 1973, has seen the tax rates reduced from 2% to 1.3% at the retail level and from 5% to .325% at the wholesale level. IND. CODE § 6-2-1-3 (1976) (repealed 1981); *id.* § 6-2.1-2-3 (1982). The adjusted gross income tax rate for individuals is now 1.9% as opposed to the former 2% rate. *Id.* § 6-3-2-1 (1982). The phase out of the tax on intangibles begins this calendar year with the rate reduction from .25% to .233%. *Id.* § 6-5.1-2-2 (1982).

[93]*See* Act of Feb. 25, 1982, Pub. L. No. 52, 1982 Ind. Acts 494.

[94]*See, e.g.*, IND. CODE § 6-3-1-11 (1982) (defining "Internal Revenue Code" for adjusted gross income tax purposes); *id.* § 6-3-1-17 (incorporating by reference Internal Revenue Code sections).

references are to the provisions of the Internal Revenue Code in effect on a particular date. With the adoption, by Congress, of ERTA and the various provisions therein affecting federal tax computations which are the starting point for state net income tax computations for the 1981 tax year and future years, the Title 6 references to the Internal Revenue Code, in effect, became dated. In adopting Public Law 52,[95] the Indiana legislature revised and updated the Internal Revenue Code references to include both the Internal Revenue Code and the regulations thereunder, which became effective on January 1, 1982. As a result, the amendments to the Internal Revenue Code effected by ERTA, which affect taxable years beginning after January 1, 1982, are effective for Indiana net income tax purposes.

In adapting ERTA to Indiana net income taxes, however, the Indiana legislature either negated or delayed the effect of certain specific portions of ERTA. For instance, the new accelerated cost recovery system (ACRS),[96] which effectively replaces the federal depreciation system[97] with respect to assets placed in service during 1981, was not made effective for Indiana tax purposes until 1982.[98] That is, ACRS does not apply to Indiana taxpayers until tax years which began after 1981. Thus, for taxable years which began in 1981, taxpayers will be required to use one system, ACRS, for federal tax purposes and another system, depreciation, for state tax purposes.

Section 128 of the Internal Revenue Code provides for an exclusion from gross income of interest earned from a type of investment certificate commonly known as an "All Savers Certificate."[99] This interest exclusion, applicable to individual taxpayers, has been effectively negated for Indiana adjusted gross income tax purposes by the provision in Public Law 52 which makes that exclusion unavailable for any taxable year beginning before January 1, 1982 and creates an add-back provision[100] for excluded interest for all taxable years beginning before January 1, 1985.

Further, with respect to individual taxpayers, the newly implemented federal "marriage penalty" deduction provisions,[101] effective for tax years beginning in 1982, have not been incorporated into the Indiana adjusted gross income tax structure.[102] The marriage penalty deduction, allowed for federal purposes pursuant to section 221 of the

[95] Act of Feb. 25, 1982, Pub. L. No. 52, 1982 Ind. Acts 494.

[96] I.R.C. § 168 (Law. Co-op. Supp. 1982).

[97] *Id.* § 167 (1976).

[98] Act of Feb. 25, 1982, Pub. L. No. 52, 1982 Ind. Acts 494, 499.

[99] I.R.C. § 128 (Law. Co-op. Supp. 1982).

[100] IND. CODE § 6-3-1-3.5(a)(10) (1982).

[101] I.R.C. § 221 (Law. Co-op. Supp. 1982).

[102] IND. CODE § 6-3-1-3.5(a)(9) (1982).

Internal Revenue Code, must be added back to gross income when determining Indiana adjusted gross income.

b. Research credit.—For taxable years beginning after December 31, 1981, a new Indiana research expense credit becomes effective.[103] The credit may be taken by any taxpayer entitled to utilize the research expense credit provided by section 44F of the Internal Revenue Code,[104] who incurs "Indiana qualified research expenses."[105] Structured as an incentive to increase research, the credit is based upon the "incremental research amount" of the taxpayer. This amount is defined as being the excess of the research expenditures for the current taxable year over the average yearly research expenditures during a base period consisting of the three preceding taxable years.[106] To phase in the credit, transitional rules are provided for the first two years of implementation.[107] The credit is effective for qualified research expenses incurred during the period from January 1, 1982 through December 31, 1985.[108]

Because of the Internal Revenue Code reference[109] and the statutory enactment of the Indiana qualified research credit, the research credit will apply to two types of expenses paid or incurred in carrying on any type of trade or business. The first type of expenses is "in-house research expenses."[110] This includes expenses for research wages and supplies plus lease and other charges for research equipment used. As to any particular individual, the wages which are included in qualified expenditures must be paid to an individual whose services substantially consist of direct research activities, supervision, or support thereof. The second type of qualified expenses is "contract research expenses."[111] These amounts consist of expenditures to a non-employee for qualified research; however, only 65% of such expenses qualify for the credit.

Under the statutory provisions, a taxpayer with no income apportioned to Indiana pursuant to Indiana Code section 6-3-2-2 is entitled to a credit for that year equal to the increase in the taxpayer's Indiana qualified research expenses, over the base period Indiana qualified research expenses, multiplied by 2% for tax years beginning in 1982

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[103]Act of Feb. 25, 1982, Pub. L. No. 52, 1982 Ind. Acts 494 (codified at IND. CODE § 6-3-3.8-1 to -6 (1982)).

[104]I.R.C. § 44F (Law. Co-op. Supp. 1982).

[105]IND. CODE § 6-3-3.8-2(a) (1982).

[106]*Id.* § 6-3-3.8-2(b).

[107]*Id.* § 6-3-3.8-2(d).

[108]*Id.* §§ 6-3-3.8-2, -6.

[109]*Id.* § 6-3-3.8-4 (this reference is to Internal Revenue Code section 44F).

[110]I.R.C. § 44F(b)(2) (Law. Co-op. Supp. 1982).

[111]*Id.* § 44F(b)(3).

and 1983, and 5% for tax years beginning in 1984 and 1985.[112] A taxpayer with income apportioned to Indiana, for any particular year, is entitled to a credit for that year equal to the lesser of the credit to which the taxpayer would have been entitled had it not had any income apportioned to Indiana, or its increase in total qualified research expenses over its total base period qualified research expenses, multiplied by the calendar year percentage amount provided above and by its apportionment percentage for that taxable year.[113]

In terms of its application, the credit is applied against the gross, adjusted gross, and supplemental corporate net income taxes.[114] The credit is taken only after all other applicable credits against the taxes are applied.[115] The credit is a nonrefundable credit,[116] and any unused portions of the credit may be carried forward for fifteen years.[117] However, the credit may not be carried back.[118]

In determining which research expenses may qualify as Indiana research expenses, the following factors are to be considered: "(1) the place where the [research] services are performed, (2) the residence or business location of the person or persons performing the services, (3) the place where qualified research supplies are consumed, and (4) other factors that the department determines are relevant for the determination."[119]

c. Supplemental corporate net income tax.—Effective as of January 1, 1982, the supplemental corporate net income tax rate is increased from 3% to 4%.[120] For fiscal year taxpayers, the rate increase for years ending in 1982 is prorated so that the former 3% rate applies for portions of the fiscal year occurring before January 1, 1982, and the 4% rate applies for portions of the fiscal year occurring during 1982. The Revenue Department has provided a schedule of precomputed supplemental net income tax rates for 1981-1982 fiscal years.[121]

d. Acceleration of tax payments.—Effective as of April 1, 1982, employers, partnerships, corporations, trusts or estates are required to file returns on income tax withheld and are required to pay the tax so withheld, within twenty days after the end of each month for

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[112]IND. CODE § 6-3-3.8-2(b) (1982).

[113]*Id.* § 6-3-3.8-2(c).

[114]*Id.* § 6-3-3.8-3(a).

[115]*Id.*

[116]*Id.* § 6-3-3.8-3(c).

[117]*Id.* § 6-3-3.8-3(a) (incorporating the I.R.C. § 44F(g)(2)(A)(ii) (Law Co-op. Supp. 1982) provision for a fifteen-year carryforward).

[118]IND. CODE § 6-3-3.8-3(c) (1982).

[119]*Id.* § 6-3-3.8-5.

[120]Act of Feb. 25, 1982, Pub. L. No. 52, 1982 Ind. Acts 494, 499 (codified at IND. CODE § 6-3-8-4.1 (1982)).

[121]INCOME TAX DIV. INFORMATION BULL. NO. 58, 5 IND. REG. 789, 790 (April 1982).

which the return is filed, if the average monthly payment for the preceding year exceeded $1,000.[122] Further, monthly reports and payments may be required by the Revenue Department within the twenty day period if the Revenue Department estimates that the taxpayer's monthly average payment for the current year will exceed $1,000.[123]

2. *Property Taxes.—a. Deduction procedures.*—Effective as of January 1, 1982, the procedure for claiming a property tax deduction for mortgages, blindness, senior citizens, veterans, veterans' surviving spouses, and World War I veterans has been amended; the amendment provides that a taxpayer who receives such a deduction for prior years, and who remains eligible for the deduction, is not required to file a claim of entitlement for the deduction for the following year.[124] Rather, if the taxpayer should become ineligible for any such deduction, the county auditor must be notified of ineligibility prior to May 10 of the year in which the ineligibility occurs.[125]

b. Library district levy limitations.—The State Board of Tax Commissioners may not permit a library district to increase its levy in excess of published amounts. Such an increase is limited to the lesser of 125% of the levied rate for the prior budget year or the rate the district would have levied had it not applied for an increase plus $.05.[126] Under a new legislative provision, school corporations incurring shortfalls caused by erroneous tax figures may be permitted to collect an excessive tax levy in the year following the shortfall.[127]

3. *Sales and Use Taxes.*—Effective as of April 1, 1982, the due dates for the filing of sales and use tax returns and the remittance of such taxes is accelerated.[128] If a taxpayer's average monthly liability for collections of sales and use taxes for the preceding year exceeded $1,000, such returns and payments must be made not more than twenty days after the close of each month.[129] Additionally, the fees applicable to retail merchants have been changed.[130] Effective January

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[122]Act of Feb. 25, 1982, Pub. L. No. 49, 1982 Ind. Acts 477, 481 (codified at IND. CODE § 6-3-4-8.1(a) (1982)).

[123]IND. CODE § 6-3-4-8.1(b) (1982).

[124]Act of Feb. 18, 1982, Pub. L. No. 44, 1982 Ind. Acts 448, 452 (codified at IND. CODE § 6-1.1-12-17.8(a) (1982)).

[125]IND. CODE § 6-1.1-12-17.8(b) (1982).

[126]Act of Feb. 25, 1982, Pub. L. No. 54, 1982 Ind. Acts 506, 511 (codified at IND. CODE § 6-3.5-1-12(e)(xiii) (1982)).

[127]IND. CODE § 6-3.5-1-12(f) to (g) (1982).

[128]Act of Feb. 25, 1982, Pub. L. No. 49, 1982 Ind. Acts 477 (codified at IND. CODE § 6-2.5-6-1(a) (1982)).

[129]IND. CODE § 6-2.5-6-1(a) (1982).

[130]Act of Feb. 18, 1982, Pub. L. No. 50, 1982 Ind. Acts 487 (codified at IND. CODE § 6-2.5-8-1 (1982)).

1, 1983, a one time $25.00 fee is imposed for each place of business of a retail merchant.[131] The new certificates issued for the $25.00 fee are valid so long as the merchant remains in business.[132]

4. Inheritance Tax.—The legislature passed three acts amending the inheritance tax law. The former requirement that a person in possession or control of personalty owned by an Indiana decedent or held jointly by an Indiana decedent and the decedent's surviving spouse notify the Revenue Department or the county assessor of the county of the decedent's domicile regarding the transfer of such property to the surviving spouse has been repealed effective June 1, 1982; however, this change is effective only with respect to decedents dying after May 31, 1982.[133]

The exemptions and reductions to the inheritance tax have been broadened. Formerly, the reduction in taxable value for the portion of jointly held survivorship personalty attributable to the survivor's contribution required the survivor to prove not only the "value of that portion of the . . . property which . . . belonged" to the survivor but also that that portion never "belonged" to the decedent.[134] Effective June 1, 1982, the latter restriction has been eliminated.[135] Additionally, the statutory language regarding exemptions for transfers to each of the children of a decedent has been clarified to insure that the $10,000 and $5,000 exemptions, applicable to children under and over twenty-one respectively, are available with respect to transfers to *each* child of a decedent.[136] The "orphan's exemption" has been eliminated.[137] The children's exemptions as clarified and the elimination of the orphan's exemption are effective retroactively to certain dates under a schedule which precludes "double exemptions."[138] The parents' exemption has also been clarified to insure that the exemption applies to transfers to each, as opposed to one, parent of a decedent.[139]

The inter-spousal transfer exemption has been clarified in certain respects and modified to complement the new federal estate tax "qualified terminable interest property" concept instituted by ERTA.[140]

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[131] IND. CODE § 6-2.5-8-1(b) (1982).

[132] *Id.* § 6-2.5-8-5.

[133] Act of Feb. 24, 1982, Pub. L. No. 57, 1982 Ind. Acts 517 (repealing IND. CODE § 6-4.1-8-4.5 (1982)).

[134] IND. CODE § 6-4.1-2-5 (Supp. 1981) (amended 1982).

[135] Act of Feb. 18, 1982, Pub. L. No. 56, 1982 Ind. Acts 516 (codified at IND. CODE. § 6-4.1-3-9.1 (1982)).

[136] IND. CODE §§ 6-4.1-3-9.1 to -9.5 (1982).

[137] Act of Feb. 18, 1982, Pub. L. No. 56, 1982 Ind. Acts 516, 517 (previously codified at IND. CODE § 6-4.1-3-8.5 (Supp. 1981)).

[138] Act of Feb. 18, 1982, Pub. L. No. 56, 1982 Ind. Acts 516, 517.

[139] *Id.* at 516-17 (codified at § 6-4.1-3-9.7 (1982)).

[140] *See* I.R.C. § 2056(b) (Law. Co-op. Supp. 1982).

In 1979, the exemption applicable to inter-spousal transfers was broadened to apply to "[e]ach property interest which a decedent transfers to his surviving spouse . . . ;"[141] however, the Revenue Department has, on occasion, taken the position that the full inter-spousal exemption was not available for transfers where the survivor takes a life estate with a general power of appointment. By referencing the code section to the federal marital deduction provisions applicable to powers of appointment, the Inheritance Tax Act now makes it clear that the full exemption applies to such transfers.[142]

ERTA changed the previously existing treatment for marital deductions purposes of life income interests by establishing that "qualified terminable interest property" (QTIP) can qualify for the marital deduction.[143] By referencing the Indiana Code provision to the QTIP provisions of the Internal Revenue Code, the inter-spousal exemption applies to QTIP.[144] That is, a decedent's personal representative or the trustee or transferee of property may make an irrevocable election to treat QTIP as "a property interest which a decedent transfers to his surviving spouse," thereby exempting the full value of the QTIP from inheritance taxation on the death of the first spouse.[145] As under ERTA, the price extracted for electing the full exemption is a tax on the full value of the QTIP at the death of the surviving spouse.[146]

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[141] IND. CODE § 6-4.1-3-7 (Supp. 1981).

[142] Act of Feb. 18, 1982, Pub. L. No. 55, 1982 Ind. Acts 514, 515 (codified at IND. CODE § 6-4.1-3-7(b), (c) (1982)).

[143] I.R.C. § 2056(b)(7) (Law. Co-op. Supp. 1982).

[144] IND. CODE § 6-4.1-3-7(c) (1982).

[145] *Id.* at § 6-4.1-3-7(d).

[146] *Id.* at § 6-4.1-2-4(d).