RECENT DEVELOPMENTS IN INDIANA TAX LAW: SURVEY 2023

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INTRODUCTION

This article surveys the tax decisions issued by the Indiana Supreme Court (Supreme Court) and the Indiana Tax Court (Tax Court) from November 1, 2022 to December 1, 2023. During this period, the Tax Court issued five published opinions—four concerning real property tax and one concerning sales tax.[1] The Supreme Court did not issue any tax-related opinions during this period. The article also discusses a few significant legislative additions to Indiana's tax code and an important change to the Tax Court—that is, a new judge.

I. INDIANA TAX COURT DECISIONS

A. Real Property Tax

1. Gold Coast Rand Development Corp. v. Lake County Assessor.[2]—The issue before the Tax Court was whether the Indiana Board of Tax Review (the "IBTR") properly upheld the 2017 tax assessments of five residential properties.

Gold Coast Rand Development Corp. ("Gold Coast") owned five vacant residential properties in Gary, Indiana, located in Calumet Township, Lake County.[3] Gold Coast challenged the 2017 property tax assessments of those five properties before the Lake County Property Tax Assessment Board of Appeals (the "PTABOA"), asserting that they exceeded the valuation specified in a 2012 settlement agreement.[4] Settlement agreements are common in all types of litigation including property tax appeals. County assessors and taxpayers commonly resolve property tax disputes via settlement agreements in which the parties stipulate a property's contested value for the tax years at issue. The PTABOA held that Gold Coast had failed to submit sufficient evidence justifying any change to the five assessments issued by the Lake County Assessor (the "Assessor").[5] Gold Coast challenged this decision to the IBTR pursuant to its small claims procedures.[6]

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1. *See Indiana Appellate Decisions—Tax Court*, https://public.courts.in.gov/decisions?c=9550 [https://perma.cc/3U27-GYU9] (last visited Dec. 1, 2023).

2. 197 N.E.3d 1274 (Ind. T.C. 2022).

3. *Id.* at 1275.

4. *Id.*

5. *Id.*

6. *Id.* at 1275-76.

The IBTR conducted five separate telephonic hearings on the appeals.[7] Gold Coast criticized the telephonic format, asserting that it prejudiced its ability to properly present its evidence.[8] It argued that the Assessor used a "shoddy" methodology to calculate the neighborhood base rates in Calumet Township, which served as the basis for the five assessments.[9] Gold Coast asserted that this allegedly "shoddy" methodology resulted from the Assessor's failure to develop the base rates pursuant to the correct assessment laws and guidelines, thereby causing the Assessor to produce "arbitrary" assessments.[10] The Assessor ignored assessment laws and guidelines, argued Gold Coast, because it:

a. used outdated neighborhood boundaries and maps for Calumet Township;
b. used "redundant neighborhoods", most unmodified since 2007;
c. used "'representative parcels'" to adjust 2017 parcel values that did not exist in 2017;
d. failed to demonstrate that the Assessor derived the base rates from "sales data for at least 3% of the total number of parcels within each neighborhood";
e. violated Indiana Code section 6-1.1-4-13.6[11] when it permitted the Calumet Township Assessor to develop all of the base rates rather than doing so itself;
f. valued certain parcels in excess of the "20% maximum allowable percentage variance";
g. used unchanged base rates from years 2007 and 2017 even though they should have changed due to mandated annual trending;[12]
h. assessed Gold Coast's five properties substantially higher than nearby comparable properties; and
i. used adopted "large assessment fluctuations between 2005 and 2017" despite the market's failure to improve or change during this period.[13]

Finally, Gold Coast argued that a 2012 property tax settlement agreement between the parties mandated that the Assessor value one of the five properties

7. *Id.* at 1276.
8. *Id.*
9. *Id.*
10. *Id.*
11. Section 13.6(a) provides that "[t]he county assessor shall determine the values of all classes of commercial, industrial, and residential land (including farm homesites) in the county using guidelines determined by the department of local government finance." IND. CODE § 6-1.1-4.13.6(a) (2023).
12. Citing 50 IND. ADMIN. CODE 27-5-1 and -2(a) (2022), the Tax Court described "trending" as the process by which assessors annually estimate and adjust real property's value as of some specific date. *Gold Coast Rand Development Corp.*, 197 N.E.3d at 1276 n.4.
13. *Id.* at 1276-77.

at $600 and the other four at $1,000 each.[14]

The Assessor responded, arguing that all of Gold Coast's evidence supporting its position came from only its president, Andy Young, who was not a certified Level III Assessor-Appraiser.[15] Gold Coast's evidence, therefore, amounted to nothing more than its "own unsupported valuation opinions rather than reliable, probative market-based evidence."[16] The IBTR upheld the Assessor's five assessments.[17]

First, the IBTR held that the telephonic hearings did not prejudice Gold Coast.[18] The IBTR explained that, before the hearings, it offered Gold Coast the opportunity to request a continuance if it did so in conjunction with an explanation of why the telephonic conferences caused it a hardship.[19] Gold Coast did not avail itself of this opportunity, and neither did it request either an in-person or Zoom hearing.[20] The IBTR's hearing notice also explained how the parties submitted documentary evidence to the IBTR before the hearings.[21] Gold Coast failed to comply with the instructions and submit evidence to the IBTR.[22] Finally, at none of the five telephonic hearings did Gold Coast claim that the hearing format caused it difficulty identifying, offering, or exchanging evidence critical to its presentations.[23] Second, the IBTR held that Gold Coast failed to make a prima facie case for reducing any of the five parcels' assessments.[24] The IBTR said that Gold Coast "did not offer any market-based evidence that established the correct value[] of each [property]."[25] Gold Coast sought re-hearings of the IBTR's decisions upholding the assessments, but the IBTR denied the requests.[26] Gold Coast challenged the IBTR's decisions to the Tax

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14. *Id.* Based on the Tax Court's opinion in *Gold Coast Rand Development Corp.*, it appears that neither the IBTR nor the Tax Court addressed or decided the validity of Gold Coast's claim that its 2012 property tax settlement agreement controlled the 2017 assessment. If they had directly reviewed Gold Coast's claim regarding the 2012 settlement's precedential value, they would have likely rejected it. Judicial policy strongly favors settlement agreements. They allow courts to operate more efficiently and allow parties to fashion the outcome of their disputes through mutual agreement. The Indiana Supreme Court, however, has held that, though "[t]he law encourages parties to engage in settlement negotiations in several ways[,] . . . [i]t prohibits the use of settlement terms or even settlement negotiations to prove liability for or invalidity of a claim or its amount." *See* Dep't of Local Gov't Fin. v. Commonwealth Edison Co. of Ind., 820 N.E.2d 1222, 1227 (Ind. 2005). The "strong policy justification for denying [a] settlement['s] precedential effect in [a] property tax case[]" is that allowing parties to "use the settlement would have a chilling effect on the incentive of [the parties] to resolve cases." *Id.* at 1228.

15. *Gold Coast Rand Development Corp.*, 197 N.E.3d at 1277.

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.* at 1277-78.

25. *Id.* at 1278.

26. *Id.*

Court pursuant to its small claims procedures and requested the consolidation of all five appeals into one.[27]

Gold Coast attached twelve exhibits to the brief it filed with the Tax Court.[28] These exhibits were not included in the certified administrative record that Gold Coast filed with the Court.[29] Gold Coast asked the Tax Court to consider its challenge and review its twelve new exhibits de novo.[30] The Tax Court refused, noting that it was "well settled . . . that in challenges to the final determinations of the [IBTR, the Tax Court is a record-reviewing court—an intermediate reviewer—not the trier of fact."[31] The Court noted, however, that Indiana Code section 33-26-6-5 permits it to consider new evidence submitted along with the certified administrative record if the submitting party, after having exercised due diligence, could not discover the evidence before the administrative hearing and raise it at that time and thereby make it a part of the administrative record.[32] The Tax Court stated that Gold Coast asserted that the Court should consider the new evidence because it was "newly discovered," not because it satisfied the requirements of Indiana Code section 33-26-6-5.[33] The Tax Court also noted that the certified record contradicted Gold Coast's claim that the twelve attached exhibits were newly discovered.[34] The record indicated that Gold Coast stated at the hearing that it had received from the Assessor "plenty of documentation so far that demonstrate[d]" the erroneous nature of the Assessor's assessment.[35] Also, Gold Coast's only witness, Andy Young, neither argued nor testified that the Assessor failed to produce the twelve new exhibits.[36] Accordingly, the Tax Court refused to consider the twelve exhibits attached to Gold Coast's brief.[37]

The Tax Court also held that Gold Coast failed to cite any evidence in the certified record that supported its claim that the Assessor had issued erroneous assessments.[38] The Court noted that it has no affirmative duty to search the certified record and develop any party's case on the party's behalf.[39] Finally, the Tax Court noted that the IBTR weighed the credibility and reliability of the evidence officially submitted to it during the hearings.[40] The IBTR determined that, based on that evidence or the lack thereof, Gold Coast had failed to provide probative market-based evidence to demonstrate the five parcels' correct values

27. *Id.*
28. *Id.*
29. *Id.* at 1279.
30. *Id.*
31. *Id.*
32. *Id.*
33. *Id.* at 1280.
34. *Id.*
35. *Id.*
36. *Id.*
37. *Id.*
38. *Id.* at 1280-81.
39. *Id.* at 1281.
40. *Id.*

for the 2017 tax year.[41] Because the Tax Court's statutory authority permits it to neither reweigh the evidence nor judge its credibility when reviewing IBTR decisions, it had to uphold the IBTR's decision against Gold Coast.[42]

2. Wendy H. Elwood Trust. v. Bartholomew County Assessor.[43]—The issue before the Tax Court was whether the IBTR properly ruled that, since determining a taxpayer's eligibility for a developer's discount involved subjective judgment, a taxpayer challenging this determination failed to do so in a timely manner because it used the appeal process governed by the three-year filing limitation rather than the forty-five-day one.

In 2016, Carr Road Development, LLC ("Carr Road") owned several undeveloped, vacant, contiguous lakefront lots in Bartholomew County.[44] During its ownership, Carr Road invested at least $1.5 million in the development and renovation of the lots.[45] Carr Road discounted the assessed value of its lots pursuant to Indiana's "developer's discount."[46] Indiana's legislature had enacted the discount to encourage developers to buy farmland, subdivide it into lots, resell the lots, and receive the benefit of a lower agriculture land assessment.[47] Lot 8's 1.07 acres received an assessed value of $1,900, while Lot 9's 0.88 acres received a $2,000 assessed value.[48]

In 2017, Mark and Wendy Elwood (the "Elwoods"), via their trust, the Wendy H. Elwood Trust (the "Trust"), purchased Carr Road's lots 8 and 9, intending to re-plat the two lots into four lots, build their primary residence on one, and resell the remaining contiguous lots.[49] The Trust paid $1,550,000.[50] In 2018, the Bartholomew County Assessor (the "Assessor") removed the developer's discount from the lots, increasing Lot 8's assessment in 2018 and 2019 to $729,100 and Lot 9's assessment to $705,600.[51] In 2020, the assessment valuations were reduced to $412,600 for Lot 8 and $416,100 for Lot 9.[52] In order to facilitate the lots' resale, the Trust sought re-platting of Lots 8 and 9 and dividing them into four lots.[53]

In May 2020, the Trust challenged the Assessor's removal of the developer's discount for each of the lots' 2018 to 2020 assessment years by filing three Form 130 appeals.[54] For the 2018 and 2019 assessment years, the

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41. *Id.*
42. *Id.*
43. 217 N.E.3d 1286 (Ind. T.C. 2023).
44. *Id.* at 1287.
45. *Id.*
46. *Id.*
47. *Id.* at 1287 n.2 (citing IND. CODE § 6-1.1-4-12 (2023)); *id.* at 1291 (citing IND. CODE § 6-1.1-4-12 (2018)).
48. *Id.* at 1288.
49. *Id.* at 1287.
50. *Id.*
51. *Id.* at 1288.
52. *Id.*
53. *Id.*
54. *Id.*

Trust requested relief under the correction-of-error-appeal procedure, which corrects objective errors.[55] A taxpayer must initiate such an appeal no later than three years after the tax's due date.[56] For the 2020 tax year, the Trust requested relief under the appeal procedure that permits the correction of all assessment errors.[57] A taxpayer must initiate this appeal within forty-five days *of* the notice of assessment's postmark date.[58]

In July 2021, the Bartholomew County PTABOA issued three final assessment determinations (i.e., Forms 115s) reinstating the developer's discount for all the assessment years at issue and, therefore, significantly reducing the assessments.[59] In September 2021, the Assessor challenged all three of the PTABOA's determinations to the IBTR.[60] The Assessor asserted that the determination of whether the developer's discount applied to the lots was a subjective judgment, not an objective one.[61] The Trust's 2018 and 2019 appeals filed pursuant to the objective appeal procedures were done outside the forty-five-day period and, therefore, filed untimely.[62]

The Assessor also argued that the Trust failed to demonstrate its eligibility for the developer's discount.[63] For example, the Assessor asserted that the Trust's evidence established that: (1) Carr Road, not the Trust, incurred the costs related to the lots' development; (2) the Elwoods described themselves as being in the "people business," not the land development business; and (3) the Elwoods acquired the lots intending to build their own residence on them.[64] Finally, the Assessor argued the Trust's assessments should be increased to conform with the lots' 2017 purchase price of $1,550,000.[65]

The Trust responded, asserting that: (1) it was acting as a land developer because, when it purchased the two lots, it re-platted them into four lots to improve their resale marketability; and (2) the statutory factors permitting the Assessor to reclassify the lots and remove the developer's discount had not occurred.[66] Therefore, argued the Trust**,** the Assessor's removal of the developer's discount was illegal as a matter of law.[67]

In December 2022, the IBTR ruled in the Assessor's favor regarding the 2018 and 2019 assessments but in the Trust's favor regarding the 2020 assessment.[68] With regard to the 2018 and 2019 assessments, the IBTR

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55. *Id.* (citing 34 IND. ADMIN. CODE 7-8, 23-24) (2023)).
56. *Id.*
57. *Id.*
58. *Id.* (citing IND. CODE § 6-1.1-15-1.1(a)-(b) (2020)); *id.* at 1290.
59. *Id.*
60. *Id.*
61. *Id.*
62. *Id.* at 1288-89.
63. *Id.* at 1289.
64. *Id.*
65. *Id.*
66. *Id.*
67. *Id.*
68. *Id.*

determined that the PTABOA had no authority to reinstate the developer's discount for those years because determining the discount's application involved subjective judgment and, therefore, warranted review pursuant to the forty-five-day objective appeal process.[69] Accordingly, the Trust filed its appeal of the 2018 and 2019 assessments in an untimely manner.[70] With regard to the 2020 assessment, the IBTR determined that the Trust filed the appeal in a timely manner, and the Assessor failed to satisfy its burden of proof and establish a prima facie case for overturning the PTABOA's determinations.[71] The IBTR reinstated the Assessor's assessment for the 2018 and 2019 tax years and upheld the PTABOA's revised assessment for the 2020 tax year.[72] In February 2023, the Trust appealed the IBTR's decision regarding the 2018 and 2019 assessments to the Indiana Tax Court.[73]

The Tax Court stated that the primary issue before it was "whether determining a taxpayer's eligibility for the developer's discount requires objective or subjective judgment."[74] The Court noted that the Trust argued that the mere existence of unique facts concerning the taxpayers that were well known to the Assessor and the PTABOA transformed the subjective determination into an objective one.[75] Noting the uniqueness of the Trust's argument, the Tax Court rejected it, saying that "well-known facts to individuals on an administrative board or within a community do not convert a subjective issue into an objective one."[76] Furthermore, the Tax Court said that a case's unique facts must be analyzed by evaluating them against the statutory requirements that define the eligibility of the developer's discount.[77]

The Tax Court held that the developer's discount was available to a person who holds land as inventory for sale in the ordinary course of the person's trade or business.[78] The Court then reviewed the evidence before the IBTR.[79] That evidence established that the Elwoods initially purchased the lots intending to build their primary residence on them.[80] When the Elwoods found a home elsewhere, however, they decided to subdivide the lots by re-platting them in order to improve their marketability for resale.[81] The evidence before the IBTR

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69. *Id.*
70. *Id.*
71. *Id.*
72. *Id.*
73. *Id.*
74. *Id.* at 1291.
75. *Id.* at 1292 (The opinion does not elaborate further regarding what facts the Trust considered unique and well-known enough to cause the determination of the discount's applicability to transform from subjective to objective. The opinion also does not state if the Trust cited any precedential authority supporting its "unique" argument. *Id.*).
76. *Id.*
77. *Id.*
78. *Id.*
79. *Id.*
80. *Id.*
81. *Id.*

also demonstrated that only Carr Road, not the Trust, had developed the land.[82] Finally, the Court noted that the Trust failed to present any direct evidence to the IBTR showing that either the Elwoods or the Trust were in the trade or business of land development.[83] The Tax Court concluded that the "juxtaposition of facts indicate[d] that subjective analysis [was] required to determine whether the Elwoods were indeed land developers that held the four lots in inventory."[84] Furthermore, the Court concluded that "interpreting the relevance and importance of the objective facts and evaluating one's intent involves subjectivity."[85] Accordingly, the Tax Court upheld the IBTR's determination, finding that it did not abuse its discretion when it concluded that the Trust filed in an untimely manner its appeal involving the 2018 and 2019 tax years.[86]

3. Elkhart County Assessor v. Lexington Square, LLC.[87]—The issue before the Tax Court was whether the IBTR properly ruled that, because neither the Elkhart County Assessor (the "Assessor") nor the taxpayer, Lexington Square, LLC ("Lexington Square"), made a correct assessment of the taxpayer's real property for tax years 2016-2018, pursuant to Ind Code section 6-1.1-15-17.2, the assessments had to revert to the property's 2015 assessed value.

In September 2016, Lexington Square purchased a multi-building apartment complex in Elkhart, Indiana.[88] The Assessor increased the property's assessment from the 2015 amount to increasingly higher amounts for taxes years 2016 through 2018.[89] The Assessor attributed the yearly increases to its removal of an obsolescence adjustment it had previously granted the property.[90]

Lexington Square challenged these higher assessments, first to the Elkhart PTABOA, which upheld the assessments, then to the IBTR.[91] Lexington Square asserted that the increased assessments for 2016 through 2018 were incorrect (i.e., the valuation issue) and unfair when compared to the assessments of other apartment complexes in Elkhart County (i.e., the uniformity issue).[92] The Assessor agreed that Indiana Code section 6-1.1-15-17.2 applied to the valuation issue and it bore the burden of proof.[93] Pursuant to section 6-1.1-15-17.2, when an Assessor increases the assessed value of a taxpayer's property by more than 5% above the previous tax year, it "bears the burden of proving that the assessment is correct."[94] Pursuant to the statute's revisionary clause, if

82. *Id.*
83. *Id.*
84. *Id.*
85. *Id.*
86. *Id.*
87. 219 N.E.3d 236 (Ind. T.C. 2023).
88. *Id.* at 238.
89. *Id.* at 238-39.
90. *Id.* at 239.
91. *Id.*
92. *Id.*
93. *Id.*
94. *See* IND. CODE § 6-1.1-15-17.2(b) (2023), *repealed by* Pub. L. No. 174-2022, *§* 32.

neither the Assessor nor the taxpayer can establish a property's correct assessment, the assessment reverts to the property's previous assessed value.[95] The Assessor and Lexington Square agreed that the latter party bore the burden of proof regarding the uniformity issue.[96]

Regarding the valuation issue, in substantiating the higher assessments, the Assessor submitted an appraisal that comported with the Uniform Standards of Professional Appraisal Practice.[97] In response, Lexington Square offered the testimony of its property management company's vice president, Kevin Donohoe.[98] He provided a lower value range within which he believed the property's assessed values fell.[99] He explained that he arrived at the lower value range "by applying a capitalization rate to the average of the property's actual net operating income for tax years 2015 through 2017."[100] Regarding the uniformity issue, Lexington Square presented comparisons of recent sales prices of other apartment complexes in Elkhart County to their assessment values.[101] The taxpayer argued that the comparison "demonstrated that those properties were under-assessed on average by more than 26%," whereas its property was under-assessed by only 4%.[102]

On March 24, 2022, the IBTR issued its decision.[103] Regarding the valuation issue, the IBTR held that the Assessor failed to prove the correctness of its assessment because its "appraisal evidence did not conclude 'exactly and precisely'. . . the actual assessed values [the Assessor] applied during the years at issue."[104] The IBTR held that Lexington Square also failed to establish the value of its property.[105] It failed to do so, according to the IBTR, "because Donohoe based his analysis solely on the subject property's historical income, expenses, and occupancy without comparing that data to the market."[106] Regarding the uniformity issue, the IBTR held that Lexington Square failed to prove it was unfairly assessed in comparison to similarly situated properties because its "evidence failed to comport with any of the standards for ratio studies as set forth by both the Indiana Department of Local Government Finance and the International Association of Assessing Officers."[107] Because neither party proved the property's correct assessed value for the tax years at

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95. *Id.* § 6-1.1-15-17.2(a), *repealed by* Pub. L. No. 174-2022, *§* 32.

96. *Lexington Square, LLC*, 219 N.E.3d at 239 (citing Thorsness v. Porter Cnty. Assessor, 3 N.E.3d 49, 52 (Ind. T.C. 2014) (holding the burden-shifting rule in IND. CODE § 6-1.1-15-17.2(b) (2019) applied only to valuation issues, not to constitutional uniformity issues).

97. *Id.* at 239.

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.* at 239-40.

105. *Id.* at 240.

106. *Id.*

107. *Id.*

issue, the IBTR, applying section 6-1.1-15-17.2's revisionary clause, ordered that each of the taxpayer's contested assessments revert to the property's 2015 assessed value.[108]

The Assessor sought a rehearing of the IBTR's decision.[109] It argued that the IBTR had erroneously applied section 6-1.1-15-17.2(b)'s burden-shifting rule because, three days before the IBTR issued its final determination, the Indiana General Assembly repealed section 6-1.1-15-17.2, replacing it with Indiana Code section 6-1.1-15-20.[110] The new statute provided that the Assessor has the burden of proof only when "a property's assessment increased more than five percent (5%) over the property's assessment for the prior tax year."[111] The Assessor also argued that it was as if section 6-1.1-15-17.2 never existed because the new statute: (1) specified that it applied to appeals filed only after its effective date of March 21, 2022,[112] and (2) did not specify that the provisions in the repealed section 6-1.1-15-17.2 still applied to pending appeals.[113] Accordingly, the Assessor argued, it did not bear the burden of proof before the IBTR.[114] The IBTR denied the Assessor's rehearing request, and the Assessor appealed this final decision to the Indiana Tax Court.[115]

The Tax Court started its decision with an explanation of the applicable property tax law as it existed when Lexington Square challenged its tax assessments and how that law changed afterward.[116] Prior to 2009, a taxpayer bore the burden both of persuading the factfinder that the assessment was incorrect and of initially producing evidence to demonstrate the correct assessment.[117] In 2009, however, the Indiana Legislature enacted Indiana Code section 6-1.1-15-17.2 (2012) (repealed 2022) and other property tax statutes that, under certain circumstances, removed this burden of proof from the taxpayer and placed it on the assessing official.[118] Section 6-1.1-15-17.2 provided that the burden of proof shifted from the taxpayer to an assessing official when a taxpayer filed an appeal on an assessment that had increased by more than 5% from one year to the next.[119] The assessing official satisfied this burden by presenting evidence that "exactly and precisely conclude[d] to [the]

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108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.* at 242 (citing IND. CODE § 6-1.1-15-20(b) (2023), *added by* Pub. L. No. 174-2022, § 34).

112. *See* IND. CODE § 6-1.1-15-20(h) (2023).

113. *Lexington Square, LLC*, 219 N.E.3d at 240.

114. *Id.*

115. *Id.*

116. *Id.* at 240-41.

117. *Id.* (citing Orange Cnty. Assessor v. Stout, 996 N.E.2d 871, 873 (Ind. T.C. 2013)).

118. *Id.* at 241; *see also* IND. CODE § 6-1.1-15-1(p) (2009) (amended 2011); IND. CODE § 6-1.1-15-17 (2011) (repealed 2012).

119. *Lexington Square, LLC*, 219 N.E.3d at 241.

original assessment."[120] The Tax Court then explained section 6-1.1-15-17.2's revisionary clause; if the assessing official does not meet the burden, and the taxpayer does not introduce evidence countering the assessor's, or, alternatively, introduces evidence that does not prove the correct assessment amount, the challenged assessment reverts to the amount for the prior tax year.[121]

On March 21, 2022, the Indiana Legislature repealed Indiana Code section 6-1.1-15-17.2 and replaced it with a new statutory exception—that is, Indiana Code section 6-1.1-15-20.[122] The new statute preserved section 6-1.1-15-17.2's burden-shifting rule, but effected the following changes:

a. Eliminated the requirement that the assessor satisfy its burden by presenting evidence that "exactly and precisely concluded to the original assessment";
b. Permitted the IBTR to determine the correct assessment based on evidence presented by both the assessor and the taxpayer; and
c. Limited the reversionary clause to apply only when neither the assessor nor the taxpayer presented sufficient evidence for the IBTR to determine a property's correct assessment.[123]

Before the Tax Court, the Assessor argued that IBTR mistakenly applied section 6-1.1-15-17.2's burden-shifting rule and revisionary clause because it failed to note that, on March 21, 2022, three days before the IBTR issued its final determination favoring Lexington Square, the Indiana Legislature repealed section 6-1.1-15-17.2 and replaced it with a new statutory section—that is, section 6-1.1-15-20.[124] To support its position, the Assessor cited Indiana precedent that, "in the absence of a legislative enactment to the contrary, the repeal of a statute without a saving[s] clause, where no vested right is impaired, completely obliterates it, and renders the same as ineffective as if it had never existed."[125] The Tax Court rejected the Assessor's argument, noting that it failed to recognize other Indiana precedent holding that "an express savings clause is not required to prevent the destruction of rights existing under a repealed statute if the Legislature's intention to preserve and continue those rights is otherwise clearly apparent."[126] The Court determined that, despite the absence of a savings clause in section 6-1.1-15-20, evidence existed that the Indiana Legislature did not intend to retroactively rescind the rights of taxpayers created by the replaced section 6-1.1-15-17.2 when it repealed the old section with section 6-1.1-15-20

120. *Id.* (citing Southlake Ind., LLC v. Lake Cnty. Assessor, 181 N.E.3d 484, 489 (Ind. T.C. 2021)).

121. *Id.*

122. *Id.*

123. *Id.* at 242.

124. *Id.* at 242-43.

125. *Id.* (citing *e.g.*, Parr v. Paynter, 78 Ind. App. 639, 137 N.E. 70, 71 (1922)).

126. *Id.* at 243-44 (citing *e.g.*, State *ex rel.* Milligan v. Ritter's Est., 48 N.E.2d 993, 999 (1943)).

on March 21, 2022.[127] The new section 6-1.1-15-20 explicitly provided that it applied only to appeals filed after March 21, 2022.[128] In other words, the Tax Court concluded that section 6-1.1-15-20's verbiage demonstrated the Legislature's intent that section 6-1.1-15-17.2 ceased applying to property tax appeals filed after its repeal date of March 21, 2022.[129]

The Assessor also argued that the repeal of section 6-1.1-15-17.2 was remedial.[130] Remedial statutes repair defects in the existing law.[131] As an exception to the general rule that legislation is applied only prospectively, remedial statutes are sometimes applied retroactively to cure defects.[132] The Tax Court rejected this argument.[133] The Court said that the Assessor's argument erroneously assumed that the Indiana Legislature's repeal of section 6-1.1-15-17.2 automatically meant the statute contained some defect.[134] On the contrary, the Tax Court held that the Legislature's repeal of a statute in and of itself provided insufficient reason to conclude that the replaced statute was defective and its repeal curative.[135] Rather, such legislative action indicated nothing more than the Legislature's intent to "revers[e] course on an otherwise expressly stated policy."[136]

Beyond the Assessor's rejected argument that legislative repeal automatically equates to remedial action, the Assessor tried to establish "strong and compelling reasons" why the Tax Court should retroactively apply the new section 6-1.1-15-20.[137] The Assessor argued that the repealed and replaced section 6-1.1-15-17.2's revisionary clause undermined and displaced Indiana's market value-in-use and true tax value standards, failed to connect a value with the assessment date at issue, and inevitably led to unjust and inequitable results.[138] The Assessor argued that the Tax Court's retroactive application of section 6-1.1-15-20 eliminated the problems caused by section 6-1.1-15-17.2's revisionary clause.[139] The Assessor's argument failed to persuade the Tax Court

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127. *Id.* at 244.

128. *Id.* (citing IND. CODE § 6-1.1-15-20(h) (2022) ("[t]his section applies only to appeals filed after the effective date of this section as added by HEA 1260-2022." *Id.*)). Indiana Governor Eric Holcomb signed section 6-1.1-15-17.2's repeal and section 6-1.1-15-20's enactment on March 21, 2022. *See* Indiana General Assembly 2022 Session, *Actions for House Bill 1260*, https://iga.in.gov/legislative/2022/bills/house/1260/actions [https://perma.cc/95BU-36BH] (last visited Jan. 4, 2024).

129. *Id.*

130. *Id.*

131. *See* Bourbon Mini-Mart, Inc. v. Gast Fuel & Servs., Inc., 783 N.E.2d 253, 260 (Ind. 2003) (explaining remedial statutes are "statutes intended to cure a defect or mischief that existed in a prior statute.").

132. *Lexington Square, LLC*, 219 N.E.3d at 245.

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

in light of the fact that section 6-1.1-15-20 specifically provided that it applied prospectively from the date of enactment.[140]

Finally, the Tax Court held that the Assessor's argument would result in absurd results.[141] According to the Court, retroactively applying section 6-1.1-15-20 to pending cases awaiting final determinations would change the rules that taxpayers use to prepare and litigate their pending challenges to tax assessments after they had already litigated their challenges.[142] The Court said that such a retroactive application would result in "the rules of play" being "unfairly changed mid-stream."[143] To avoid this, said the Tax Court, taxpayers with pending tax appeals would have to be allowed to relitigate every one of their pending cases.[144] Such "re-does" would place "an undue strain . . . on administrative level resources, and costs of litigation would greatly increase."[145] The Tax Court concluded that the Indiana Legislature could not have intended such an absurd result when it repealed section 6-1.1-15-17.2 and replaced it with section 6-1.1-15-20.[146] Therefore, the Tax Court rejected all the Assessor's arguments, concluding that the Assessor was entitled to no relief under section 6-1.1-15-20 and the IBTR had correctly applied section 6-1.1-15-17.2.[147] Accordingly, the Court affirmed the IBTR's decision in Lexington Square's favor.[148]

In a footnote, the Tax Court addressed the Assessor's waiver of an argument that it failed to raise and exhaust during the administrative review process.[149] The Court noted that, in its reply brief filed with the Tax Court, the Assessor asserted a new theory for recovery—that is, it asserted that even under the old section 6-1.1-15-17.2, the IBTR failed to correctly apply that statute to Lexington Square's 2017 and 2018 appeals.[150] The Court noted that the Assessor did not present this argument to the IBTR despite having an opportunity to do so in, for example, the Assessor's request for a rehearing before the IBTR.[151] The Tax Court refused to consider this new Assessor argument because it was not first considered at the administrative level and exhausted there.[152]

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140. *Id.*
141. *Id.* at 245-46.
142. *Id.* at 246.
143. *Id.*
144. *Id.*
145. *Id.*
146. *Id.*
147. *Id.*
148. *Id.*
149. *Id.* at 246 n.8.
150. *Id.*
151. *Id.*
152. *Id.* (citing *e.g.*, Hoogenboom-Nofziger v. State Bd. of Tax Comm'rs, 715 N.E.2d 1018, 1022 (Ind. T.C. 1999) (stating "[t]he general rule in original tax appeals is that the Court is bound by the evidence and issues raised at the administrative level . . . Therefore, whe[n] a taxpayer fails to raise an issue at the administrative level, the issue is waived and may not be considered by the

4. Mary Abraytis v. Porter County Assessor.[153]—The issue before the Tax Court was whether the IBTR properly ruled that the taxpayer, Mary Abraytis ("Abraytis"), because she asserted non-cogent arguments, failed to refute the Porter County Assessor's (the "Assessor") increased property tax assessment based on an increased valuation it assigned to the taxpayer's residential property for the tax year 2020.

In 2015, Abraytis purchased a residential property in Valparaiso, Indiana, which is in Porter County.[154] For the 2019 property tax year, the Assessor increased the property's value and, accordingly, its tax assessment.[155] Abraytis successfully challenged the increased 2019 assessment before the IBTR, which ordered the property's valuation reduced, as well as its corresponding tax assessment.[156] In 2020, the Assessor again increased the property's valuation and corresponding tax assessment.[157] The Assessor increased the property's valuation to an amount greater than ascribed to the property in 2019, which the IBTR had reduced.[158]

Abraytis challenged the 2020 assessment to the Porter County PTABOA.[159] When PTABOA failed to address her challenge in a timely manner, she appealed to the IBTR.[160] On June 22, 2021, the IBTR conducted a telephonic hearing.[161] Because the Assessor, pursuant to Indiana Code section 6-1.1-15-17.2, bore the burden of proof, it presented its evidence first.[162] The Assessor offered into evidence an appraisal report prepared by an Indiana-certified general appraiser and conforming with the Uniform Standards of Professional Appraisal Practice.[163] In the report, using "sales data from four purportedly comparable properties," the appraiser estimated the property's value at $212,000.[164] Based on this higher figure, the Assessor asked the IBTR to increase the property's value to this amount, which was higher than the one originally asserted by the Assessor in its 2020 tax assessment.[165]

In response to the Assessor's evidence, Abraytis presented a property record card revised to reflect how she believed the Assessor should have applied

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Court."); IND. CODE § 33-26-6-3(b)(2) (2023) ("Judicial review is limited to only those issues raised before the [IBTR], or otherwise described by the [IBTR] in its final determination.")).

153. 220 N.E.3d 77 (Ind. T.C. 2023).

154. *Id.*

155. *Id.*

156. *Id.* at 77-78.

157. *Id.* at 78.

158. *Id.* In 2019, the Assessor valued the property at $174,900 ($32,700 for land and $142,200 for improvements). *Id.* at 77. The IBTR reduced this to $150,500 ($32,700 for land and $117,800 for improvements). *Id.* at 78. In 2020, the Assessor valued the property at $196,400 ($32,700 for land and $163,700 for improvements). *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

Indiana's cost schedules to her property improvements to arrive at the correct value of her property—a value lower than the one ascribed to it by the Assessor.[166] Abraytis also argued that the appraisal report should be given no probative value because:

a. The appraiser failed to use other, more comparable properties;
b. The appraiser incorrectly reported two of the comparable sales prices he used;
c. Because offering estimates of land values was not within the scope of the appraiser's appraisal duties, his doing so was unethical; and
d. Regarding the property at issue, the appraiser incorrectly
    i. reported the basement's square footage;
    ii. indicated that the fireplace had a "stack" (i.e., the portion of the chimney that emerges from the structure's roof);
    iii. listed the garage as attached;
    iv. indicated that the home on the property had a partial crawl space;
    v. incorrectly computed the effective age of the home on the property; and
    vi. reported that the home had three bedrooms rather than two.[167]

On October 20, 2021, the IBTR ruled in the Assessor's favor, holding that it satisfied its initial burden and established a prima facie case supporting its assessment.[168] Though Abraytis, the IBTR said, identified some problems undermining the appraisal report's reliability, the report retained enough probative value to support the Assessor's assessment.[169]

When the burden shifted to Abraytis after the Assessor established a prima facie case, the IBTR held that the taxpayer failed to meet it.[170] The taxpayer failed because she merely attacked the appraiser's methodology and, using the property record card, attempted to apply the Department of Local Government Finance's Assessment Guidelines in a manner that favored her position and negated the Assessor's.[171] The IBTR said such an evidentiary presentation is inadequate.[172] An adequate one required a taxpayer to use market-based evidence to demonstrate that their proposed value accurately reflected the property's true market value-in-use.[173] The IBTR held that Abraytis failed to rebut the Assessor's prima facie case because she failed to present any probative market-based evidence to support her requested value.[174]

The IBTR did, though, reject the Assessor's request to raise the property's

166. *Id.*
167. *Id.*
168. *Id.* at 79.
169. *Id.*
170. *Id.*
171. *Id.*
172. *Id.*
173. *Id.*
174. *Id.*

value to the higher value specified in the appraiser's report.[175] It said the report's problems, which were identified by Abraytis, established that it possessed insufficient probative value to justify increasing the assessment beyond the amount originally calculated by the Assessor.[176] On December 20, 2021, Abraytis challenged the IBTR's decision by initiating pro se an original tax appeal with the Tax Court.[177]

The Tax Court rejected Abraytis' arguments, stating that, just as she had failed to present cogent reasoning and legal authority to the IBTR to support her argument for a lower property value and corresponding lower tax assessment, she failed to do so before the Court.[178] The Court first provided examples of Abraytis' arguments from her brief that the Tax Court believed lacked any coherent reasoning.[179] It next noted that, though Abraytis cited numerous statutes in her brief in support of her arguments, she failed to analyze any of them in conjunction with the relevant facts or explain how the statutes applied to her case.[180] The Tax Court concluded that "[b]y failing to provide the Court with cogent reasoning supported by legal authority, Abraytis ha[d] waived this Court's review of her claims."[181] Accordingly, the Court determined that Abraytis failed to satisfy her burden to prove that the IBTR's decision was erroneous and, therefore, the Court affirmed the IBTR's decision favoring the Assessor.[182]

B. Sales Tax

1. Covance Central Laboratory Services LP v. Indiana Department of State Revenue.[183]—The issue before the Tax Court was whether the Indiana Department of State Revenue (the "Department") properly denied a taxpayer's request for a refund of sales tax paid on utility purchases.

Covance Central Laboratory Services LP ("Covance") operated multiple pharmaceutical research and development facilities in Indiana.[184] In the course of its operations, it purchased and consumed natural gas, water, and electricity (the "utilities").[185] Covance sought refunds for sales taxes paid on the utilities it purchased during the tax years at issue—that is, between January 1, 2011, and December 31, 2018.[186] Covance asserted that the utilities were exempt because

175. *Id.* at 80.
176. *Id.*
177. *Id.* at 77, 80.
178. *Id.* at 81.
179. *Id.*
180. *Id.*
181. *Id.*
182. *Id.* at 82.
183. 204 N.E.3d 348 (Ind. T.C. 2023).
184. *Id.* at 351.
185. *Id.*
186. *Id.*

it had purchased and consumed them for its "'research and development functions.'"[187]

The Department denied in full the refund claims associated with the sales tax paid for the utilities purchased between January 1, 2011 and June 30, 2013.[188] The Indiana Tax Court referred to these utilities purchased during this period as the "Older Utilities."[189] The Department had denied these claims because, before July 1, 2013, Indiana did not exempt from sales and use tax utilities purchased for, or consumed in, research and development.[190] The Department, however, granted partial refunds of sales tax Covance paid on its utilities purchased between July 1, 2013 and December 31, 2018—dates occurring after Indiana exempted utilities from its sales and use taxes if consumed in research and development.[191] The Tax Court referred to the utilities purchased during this period as "the Newer Utilities."[192] The Department granted partial refunds for the Newer Utilities ranging from 58% to 86% of the initial refund claims.[193] It calculated these percentages based on its determination of what utilities Covance actually consumed during this later period to perform its research and development.[194] Covance administratively protested all the Department's refund decisions, but the Department denied the challenges.[195]

Covance challenged all the Department's full and partial refund denials to the Indiana Tax Court.[196] Before the Court, the parties filed cross-motions for summary judgment.[197] Neither party disputed the material facts at issue.[198] The parties' motions asserted the same two issues:

a. Issue One: Whether Covance's Older Utilities qualified for Indiana's research and development equipment sales tax exemption.[199]
b. Issue Two: Whether Indiana's exemption for sales tax on research and development equipment permitted the Department to grant partial sales tax refunds that corresponded proportionately to those tax dollars it believed were paid in relation to research and development property rather than a full

187. *Id.*
188. *Id.*
189. *Id.*
190. *Id.* at 352.
191. *Id.*
192. *Id.*
193. *Id.*
194. *Id.*
195. *Id.*
196. *Id.*
197. *Id.* at 351, 352.
198. *Id.* at 354.
199. *Id.* at 351, 352 (citing IND. CODE § 6-2.5-5-40 (2013)).

> refund after it determined that Covance predominately consumed the Newer Utilities in relation to that property.[200]

The Department's motion asserted two additional issues:

a. Issue Three: Whether the absence of an administrative decision by the Department regarding whether Covance's utility purchases qualified for Indiana's manufacturing sales tax exemptions deprived the Tax Court of subject matter jurisdiction to review the question and answer it.[201]
b. Issue Four: Whether Covance's inadequately pled claim that the Department violated its constitutional rights to due process and equal protection caused it to waive this claim before the Tax Court.[202]

First, the Tax Court considered Issue One. It noted that, in 2005, the Indiana General Assembly enacted legislation that exempted from sales tax certain tangible personal property used for research and development ("R & D") activities.[203] The Court further noted that, between June 30, 2007 and July 1, 2013, the R & D exemption expressly exempted from sales tax "equipment" used for research and development activities.[204] The Court explained that, in 2013, Indiana's legislature amended the R & D exemption to expressly exempt from sales tax retail transactions occurring after July 1, 2013 involving research and development "property."[205] Accordingly, after the 2013 amendment, the R & D exemption distinguished research and development property from research and development equipment.[206]

Covance argued that its purchases of the Older Utilities (i.e., its purchases between January 1, 2011 and June 30, 2013) qualified for the R & D sales tax exemption even though the exemption applicable to those purchases did not specifically list "utilities" as tangible personal property that constituted exempt R & D equipment.[207] Covance reasoned that, because Indiana deemed electricity, water, and gas as tangible personal property for purposes of Indiana's sales tax imposition, the R & D exemption's use of the phrase "tangible personal property" necessarily included the Older Utilities.[208] The Department responded, arguing that the R & D sales tax exemption specifically defined what

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200. *Id.* Covance did not challenge the Department's specific exemption percentages. *See id.* at 352 n.3.

201. *Id.* at 351 (citing IND. CODE §§ 6-2.5-5-3, -6 (2023)).

202. *Id.*

203. *Id.* at 353 (citing IND. CODE § 6-2.5-5-40 (2005)).

204. *Id.* (citing IND. CODE § 6-2.5-5-40(f) (2018)).

205. *Id.* (citing IND. CODE § 6-2.5-5-40(g) (2013)).

206. *Id.*

207. *Id.* at 355.

208. *Id.* (citing IND. CODE § 6-2.5-1-27 (2011)); *see also id.* at 353 (pursuant to IND. CODE § 6-2.5-1-27 (2004), "[E]ectricity, water, gas, [and] steam are deemed to be tangible personal property for purposes of Indiana's sales tax." (internal quotations marks omitted) (alterations in original)).

tangible personal property constituted exempt research and development equipment, and that definition did not include utilities of any type.[209]

The Tax Court agreed with the Department's argument concerning Issue One. Interpreting the R & D sales tax exemption statute as written and giving all its words their plain and ordinary meaning, the Court determined that the R & D exemption's definition of the term "equipment" included property that consisted of an express list of items or a combination of them.[210] The Indiana Legislature did not use words or phrases such as "'such as,' 'including,' or 'for example'" to suggest that the list of qualifying equipment was not exclusive.[211] Accordingly, the Court said that the exemption's verbiage provided no indication that its specified list of tangible personal property constituting qualifying equipment was illustrative rather than exclusive.[212] The Tax Court also noted that courts interpret tax exemption statutes narrowly, resolving any ambiguity in the taxing authority's favor.[213] Accordingly, this interpretive principle mandated that the Court narrowly interpret the R & D exemption and not expand its specified list of exempt items.[214] Finally, the Tax Court used another statutory interpretative principle to support its conclusion. The Court said that the more specific R & D sales tax exemption statute must control over the general statute mandating that utilities constitute tangible personal property subject to sales and use taxes.[215] Accordingly, the Tax Court concluded that the Department did not err when it determined that Covance's Older Utilities did not qualify for Indiana's R & D sales tax exemption.[216] The Court granted summary judgment on Issue One in the Department's favor.[217]

Next, the Tax Court considered Issue Two. Covance asserted that the Department's determination that it predominantly used its New Utilities in relation to research and development property mandated that the Department issue a full sales tax refund.[218] Covance argued that the exemption statute did not permit the Department to issue partial refunds after making a finding of predominant use.[219] The Tax Court disagreed with Covance.[220] The Court noted that the R & D exemption statute provided that Indiana exempted from sales and use taxes: (a) equipment purchased for the purpose of R & D "activities devoted

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209. *Id.* (citing IND. CODE § 6-2.5-5-40(b) (2018)).

210. *Id.* (citing IND. CODE § 6-2.5-4-40(b)(1) (2018)).

211. *Id.*

212. *Id.*

213. *Id.* (citing Raintree Friends Hous., Inc. v. Ind. Dep't of State Revenue, 667 N.E.2d 810, 813 (Ind. T.C. 1996)).

214. *Id.* at 356.

215. *Id.* (citing City Sec. Corp. v. Dep't of State Revenue, 704 N.E.2d 1122, 1128 (Ind. T.C. 1998) (holding that "[w]hen two statutory provisions [related to the same subject matter] are in conflict with one another, the more specific of the two controls.").

216. *Id.*

217. *Id.* at 356, 362.

218. *Id.* at 357.

219. *Id.*

220. *Id.* at 357-58.

directly to experimental or laboratory research"; and (b) property purchased for the purpose of R & D activities "essential and integral to" experimental or laboratory research, and not merely "incidental" to such research.[221]

Accordingly, the Tax Court held that the statute's use of the word "directly" with regard to exempt R & D equipment, and its use of the phrase "essential and integral to" with regard to exempt property along with the word "incidental" with regard to unexempted property meant that the Department was required to undergo a proportionality analysis.[222] In other words, the exemption statute's plain and unambiguous verbiage required the Department to premise any sales tax refund on its determination of which tax dollars corresponded to equipment "directly" related to experimental or laboratory research, which tax dollars corresponded to property "essential and integral to" experimental or laboratory research, and which tax dollars correspond to property "incidental" to experimental or laboratory research.[223] The Tax Court noted that the R & D exemption statute also identified specific unexempt activities.[224] The Court concluded that these exclusions "indicate[d] the Legislature's intent to wholly exempt, dollar-for-dollar, purchases of utilities essential and integral to exempt R & D activities; . . . [but] . . . not . . . any purchases of utilities incidental to exempt R & D activities."[225]

Covance also asserted that the Department's predominant-use standard expressed in its administrative tax regulations supported its position that its predominant use of the New Utilities in relation to experimental or laboratory research and development activities warranted a 100% refund, not a proportionate, partial one.[226] The regulation states:

> Where public utility services are sold from a single meter and the services or commodities are utilized for both exempt and nonexempt uses, the entire gross receipts will be subject to tax unless the services or commodities are used predominately for excepted purposes. Predominant use shall mean that more than fifty percent (50%) of the utility services and commodities are consumed for excepted uses.[227]

Covance argued that, because the Department admitted that Covance used more than 50% of its Newer Utilities directly in research and development activities, the predominant use standard controlled and mandated that the Department grant it a 100% sales tax refund, not a partial one.[228]

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221. *Id.* at 356-58.
222. *Id.* at 357.
223. *Id.*
224. *Id.* at 358.
225. *Id.*
226. *Id.*
227. *Id.* (citing 45 IND. ADMIN. CODE 2.2-4-13(e) (2013)).
228. *Id.*

The Tax Court disagreed with Covance, finding that the predominant-use regulation did not serve to clarify the R & D exemption statute and, for this reason, should be ignored. The regulation's introduction expressly stated that it applied to exemption statutes other than the R & D exemption statute.[229] For this reason, it "cannot properly clarify the application of the wholly unrelated R & D exemption statute."[230] Finally, the Tax Court held that it did not need to rely on a regulation to interpret verbiage contained in the R & D regulation when the pertinent verbiage, as in this case, was unambiguous.[231] Accordingly, the Court granted summary judgment on Issue Two in the Department's favor.[232]

The Tax Court next turned to Issue Three, an issue raised exclusively in the Department's motion for summary judgment.[233] In the original tax appeals Covance filed with the Tax Court, it also asserted that all its utility purchases were exempt pursuant to Indiana's manufacturing exemptions—that is, the exemption for manufacturing machinery and equipment exemption[234] and the one for manufacturing and processing materials exemption.[235] The Department argued that, because Covance failed to raise these claims before the Department as a part of the administrative review process, the Department did not issue a final determination regarding them.[236] Covance's failure to obtain a final determination regarding the manufacturing exemption claims deprived the Tax Court of subject matter jurisdiction to review the claims and resolve them.[237]

The Tax Court disagreed with the Department. First, the Tax Court noted that, contrary to the Department's factual assertions, Covance did assert the manufacturing claims before the Department as part of the administrative review process.[238] In two of Covance's four designated refund claims, it stated that it sought a refund because it used its "electricity in [its] Research & Development/**Mfg** functions."[239] Second, and more importantly, the Court noted that, when it reviewed the Department's denial of a refund claim, it did so de

229. *Id.* (referring to the regulation's introduction that states it affects IND. CODE § 6-2.5-4-5 (2022) (the exemption pertaining to the purchase of manufacturing machinery, tools, and equipment) and IND. CODE § 6-2.5-5-5.1 (2022) (the exemption pertaining to tangible personal property consumed in the manufacture, production, or assembly of other tangible property)).

230. *Id.* The Tax Court does not adequately explain its rationale for this position. It is, however, consistent with the position the Court has taken in similar instances. *See, e.g.*, Ingredion, Inc. v. Marion Cnty. Assessor, 184 N.E.3d 731, 737 (Ind. T.C. 2022), *trans. denied*, 197 N.E.3d 822 (Ind. 2022) (in which the Tax Court refused to defer to a property tax regulation that purported to define the ambiguous statutory verbiage at issue because the words and phrases defined in the regulation did not match exactly those words and phrases specified in the statute).

231. *Id.*

232. *Id.* at 359, 362.

233. *Id.* at 351.

234. *Id.* at 359 (citing IND. CODE § 6-2.5-4-5 (2023)).

235. *Id.* (citing IND. CODE § 6-2.5-5-6 (2023)).

236. *Id.*

237. *Id.*

238. *Id.*

239. *Id.* (bold and underlined emphases in original).

novo.[240] This means "it is not bound by either the evidence or the legal arguments made to the Department at the administrative level."[241] Accordingly, the Court granted neither the Department nor Covance summary judgment regarding Issue Three.[242]

Lastly, the Tax Court considered Issue Four. The Department argued in its summary-judgment motion that, though Covance asserted in all its original tax appeals before the Court that the Department's failure to accurately apply the law violated the Equal Protection and Due Process Clauses of the United States Constitution, Covance did not allege a single fact supporting this claim in its appeals.[243] For this reason, Covance waived the constitutional claim, and this waiver warranted that the Tax Court grant the Department a favorable summary judgment on it.[244]

The Tax Court noted that Indiana, as a notice-pleading state, merely required that a complaint provide "a short and plain statement of the claim showing that the pleader is entitled to relief."[245] This rule does not require the complaint to assert detailed facts on which the claimant bases the claim or describe a specific legal theory of recovery to which the claimant must adhere throughout the case.[246] Nevertheless, the Tax Court noted that Indiana's notice-pleading rule required that a claimant provide some operative facts supporting its claim.[247]

The Tax Court described the two elements that Covance had to prove to establish that the Department violated the rights afforded it by the U.S. Constitution's Equal Protection Clause.[248] The Court also described the two elements one of which Covance must prove to establish that the Department violated the rights afforded it by the U.S. Constitution's Due Process Clause.[249] The Tax Court concluded that Covance merely alleged that the Department had violated its rights under the constitutional clauses.[250] It failed to plead any operative facts in its original tax appeals supporting any of the necessary

240. *Id.* at 360.
241. *Id.*
242. *Id.* at 360, 362.
243. *Id.* at 360.
244. *Id.* at 361.
245. *Id.*
246. *Id.*
247. *Id.*
248. *Id.* (stating that, "[w]hen claiming a violation of the Equal Protection Clause of the United States Constitution, a litigant must generally prove that it is 1) a member of a class that is suspect or which trammels on fundamental rights and the class is not rationally related to a legitimate state interest or that 2) as a member of a legitimate class, it is treated differently than persons who in all relevant respects are alike" (citations omitted)).
249. *Id.* (stating that, "[w]hen claiming a violation of the U.S. Constitution's Due Process Clause, a litigant must generally prove that, as a taxpayer, it has not been provided with notice and a meaningful opportunity to be heard before its tax liability is finally fixed or that it has been assessed a tax that is arbitrary, oppressive, or unjust" (citations omitted)).
250. *Id.* at 360-61.

elements it had to prove to establish its claims of constitutional violation.[251] In its response to the Department's motion for summary judgment, Covance failed to assert any facts or designated evidence opposing the Department's arguments regarding the alleged constitutional violations.[252] Accordingly, the Court granted summary judgment on Issue Four in the Department's favor.[253]

II. INDIANA TAX LEGISLATION

The 2023 First Regular Session of the 123rd Indiana General Assembly passed numerous new statutes, and amended many others, affecting Indiana's revenue and property tax schemes. In July 2023, the Indiana Department of Revenue released its annual summary of legislation passed by the General Assembly that affected the Department and Indiana revenue taxes.[254] On June 26, 2023, the Indiana Department of Local Government Finance published a memorandum that listed and described the 2023 legislative changes concerning property tax assessments.[255] Though all legislative changes and modifications to Indiana's tax code are important, a review of them all is beyond the scope of this survey. Nevertheless, a few of these changes or modifications warrant specific attention.

A. Property Tax

During the 2022 Legislative Session, the Indiana General Assembly repealed Indiana Code section 6-1.1-4-4.4, which included a provision related to the documentation of changes made by the assessor to the underlying parcel characteristics.[256] One of its sections required the assessor to bear the burden of proving that each change was valid.[257] In the 2023 Session, the General Assembly replaced this section. Starting after December 31, 2023, if county or township assessors change a parcel of real property's underlying characteristics, including its age, grade, or condition, from the previous year's assessment, they must document each change and the reason for it.[258] The new section omitted, however, the verbiage requiring the assessor to bear the burden of proving the validity of any changes.

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251. *Id.* at 361-62.

252. *Id.* at 362.

253. *Id.*

254. *See* THE IND. DEP'T OF REVENUE, 2023 LEGISLATIVE SYNOPSIS (2023), https://www.in.gov/dor/files/2023-legislative-synopsis.pdf [https://perma.cc/8SY9-7NW2].

255. *See* Memorandum from Wesley R. Bennet, Commissioner, The Ind. Dep't of Local Gov't Fin., on Legislation Affecting Assessment Matters to the Assessing Official & Property Tax Boards of Appeal (June 26, 2023), https://www.in.gov/dlgf/files/2023-memos/230620-Bennett-Memo-Legislation-Affecting-Assessment-Matters.pdf [https://perma.cc/28PK-KSAF].

256. *See* Pub. L. No. 174-2022, § 7 (repealing IND. CODE § 6-1.1-4-4.4 (2016)).

257. *See* IND. CODE § 6-1.1-4-4.4(b) (2016), *repealed by* Pub. L. No. 174-2022, § 7 (flush language).

258. *See* IND. CODE § 6-1.1-4-4.9(a) (2023).

The Indiana Generally Assembly also addressed the assessment appeal process via an amendment to Indiana Code section 6-1.1-15-1.2.[259] The General Assembly provided that a taxpayer does not need an appraisal of the real property to appeal its assessment.[260] If, however, a taxpayer presents an appraisal of the property meeting certain criteria to the county PTABOA as part of its appeal, the value in the appraisal is presumed to be correct.[261] To be presumed correct, the taxpayer's appraisal must be:

a. Prepared by a certified appraiser in compliance with the Uniform Standards of Professional Appraisal Practice to determine the market value in use;
b. Addressed to the property owner or the assessor's office;
c. Commissioned for the purpose of the assessment appeal; and
d. Marked with an effective date matching the date of the assessment that is the subject of the appeal.[262]

If the county PTABOA disagrees with the appraisal, it may either: a) seek a review of the appraisal by a certified, independent third-party appraiser, or b) obtain an independent appraisal report conducted by a certified appraiser in compliance with the Uniform Standards of Professional Appraisal Practice.[263] If the PTABOA's appraisal differs from the taxpayer's appraisal, it must weigh the evidence and determine the property's true tax value based on the totality of the probative evidence before it.[264] The PTABOA's determination of the property's true tax value may be higher or lower than the challenged assessment, but it may not be:

a. lower than the lowest appraisal presented to or obtained by the PTABOA, or
b. higher than the highest appraisal presented to or obtained by the PTABOA.[265]

After the county PTABOA assigns a true tax value to the property, the parties retain their rights to appeal to the IBTR, which reviews the challenge de novo.[266]

The Indiana General Assembly also expanded the homestead deduction to comport with an Indiana Tax Court decision. Indiana's homestead deduction, Indiana Code section 6-1.1-12-37, provided that the standard homestead deduction applied to an individual's "dwelling," an attached garage, and one acre of real estate immediately surrounding the dwelling.[267] In *Schiffler v.*

259. *See id.* § 6-1.1-15-1.2(h).
260. *See id.*
261. *See id.*
262. *See id.*
263. *See id.*
264. *See id.*
265. *See id.*
266. *See id.*
267. *See* IND. CODE § 6-1.1-12-37(a)(2)(A)-(C) (2022).

Marion County Assessor,[268] the Tax Court held that the word "dwelling" "[was] not defined as just one house and garage."[269] Rather, pursuant to the word's plain meaning, it had a broader denotation that prevented the homestead deduction and its 1% tax cap from applying only to one house and one garage.[270]

In response to *Schiffler*, the Indiana General Assembly amended Indiana Code section 6-1.1-12-37, revising and expanding the definition of the real property eligible for the homestead deduction.[271] First, the General Assembly clarified that a "dwelling" includes a single house and a single garage, regardless of whether they are attached.[272] The General Assembly then redefined the word "homestead" as consisting of a dwelling (as described above), up to one acre of land immediately surrounding that dwelling, and any of the following improvements:

a. Any number of decks, patios, gazebos, or pools.
b. One additional building that is not part of the dwelling if the building is predominantly used for a residential purpose, not as an investment property or rental property.
c. One additional residential yard structure other than a deck, patio, gazebo, or pool.[273]

B. Income Tax

On December 22, 2017, former President Donald J. Trump signed into law the Tax Cuts and Jobs Act (the "TCJA").[274] This Act, among many other things, limited the amount of state and local income, property, and sales taxes individual taxpayers who itemize deductions could deduct for federal income tax purposes for tax years 2018 through 2025.[275] The TCJA limits an individual's deduction for the aggregate amount of state and local taxes paid during the calendar year to $10,000 ($5,000 in the case of a married individual filing a separate return).[276] This lessening of the federal deduction harmed those taxpayers who had benefited from state and local tax deductions exceeding the new limits.

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268. 184 N.E.3d 726 (Ind. T.C. 2022); *see also* Andrew W. Swain, *Recent Developments in Indiana's Tax Case Law: Survey 2022*, 56 IND. L. REV. 827, 827-30 (2023) (discussing the *Schiffler* case in detail).

269. *Schiffler*, 184 N.E.3d at 729.

270. *Id.* at 729-30, 731.

271. *See* § 6-1.1-12-37 (2023).

272. *See id.* § 6-1.1-12-37(a)(1)(A).

273. *See id.* § 6-1.1-12-37(a)(2)(C)(i)-(iii).

274. *See* Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054 (2017).

275. *Id.* (that is, for tax years beginning after December 31, 2017, and before January 1, 2026).

276. *See id.* at 2085-86 (codified at I.R.C. § 164(b)(6)(B)).

The new deduction limits have a loophole (referred to as the "SALT cap workaround").[277] The deduction limits apply only to personal income taxes, not taxes paid by businesses.[278] Business entities can deduct the state and local taxes they pay from federal taxation without any limitation.[279] The problem with this is that entities such as partnerships and S Corporations do not pay state and local taxes; they are "pass-through" entities—that is, their earnings are "passed through" to the partners' or shareholders' personal tax returns, and the partners and shareholders pay the taxes.[280] If, however, the taxes are, in fact, paid at the business-entity level, the federal deduction limits for state and local taxes do not apply, and the business entity's deduction is unfettered.[281]

To make this loophole available to its residents' personal income taxes, many states have adopted pass-through entity taxes ("PET") permitting entities such as partnerships, limited liability companies, and S-Corporations (collectively referred to as "PTEs") to elect state and local taxation at the business-entity level.[282] In 2021, the Indiana General Assembly took the first step in Indiana's adopting its own PET. The legislature added section 15.1 to chapter 6-3-4.[283] This provided that the Indiana Department of State Revenue (the "Department") may prescribe procedures by which a pass-through entity resident in Indiana can elect to remit Indiana state and local taxes on behalf of partners, shareholders, and beneficiaries resident in Indiana as long as they also withhold and remit the taxes on behalf of nonresident partners, shareholders, and beneficiaries.[284]

In 2023, the Indiana General Assembly took the next step. The General Assembly adopted an elective PET, which on February 22, 2023, Governor Eric Holcomb signed into law.[285] The newly added chapter, Indiana Code section 6-

277. *See* Jacob Boyd et al., *Pass-through Entity Level Tax: Is This a Viable SALT Cap Workaround?*, BLUE (Aug. 29, 2022), https://www.blueandco.com/pass-through-entity-level-tax/ [https://perma.cc/EK2A-NHBD].

278. *See id.*

279. *See id.*

280. *See id.*

281. *See id.*

282. *See, e.g.*, Bradley Wilhelmson & Raj Lapsiwala, *Passthrough Entity Taxes: The Next Workaround Trend?*, THE TAX ADVISER (June 1, 2019), https://www.thetaxadviser.com/issues/2019/jun/passthrough-entity-taxes-workaround-trend.html [https://perma.cc/3S37-4VYF].

283. Act of Apr. 29, 2021, Pub. L. No. 159-2021, § 16, 2021 Ind. Acts 1630, 1671 (codified as amended at IND. CODE § 6-3-4-15.1 (2021)).

284. Act of Apr. 29, 2021, Pub. L. No. 159-2021, § 16, 2021 Ind. Acts 1630, 1671 (codified at IND. CODE § 6-3-4-15.1 (2021)); *see also* IND. CODE §§ 6-3-4-12, -13, -15 (2017) (requiring that pass-through entities residing in Indiana withhold Indiana taxes for non-resident partners, shareholders, and beneficiaries and remit those taxes on their behalf to the Department).

285. *See* S. B. 2, 123d Gen. Assemb. 1st Reg. Sess. (Ind. 2023) (click on subtab *Bill Actions*), https://iga.in.gov/legislative/2023/bills/senate/2 [https://perma.cc/G2X8-LYRG].

3-2.1, is retroactive to taxable years beginning after December 31. 2021.[286] Indiana is one of 35 states that have adopted such legislation.[287]

This new chapter permits an "authorized person" to elect on behalf of a qualifying pass-through "electing entity" to have the adjusted gross income tax imposed on the entity rather than the "entity owners." The entity owners, however, remain liable for adjusted gross income tax on their respective shares of the electing entity's adjusted gross income.[288] An "electing entity" is a pass-through entity subject to Subchapter K or Subchapter S of the Internal Revenue Code.[289] "Entity owners" are the direct or indirect owners of an electing entity who are ultimately liable for the income tax under Subchapter K or Subchapter S, with some exceptions.[290] Owners can be individuals, other pass-through entities, C corporations, or beneficiaries of an estate or trust.[291] An "authorized person" is any individual with authority from the electing entity to bind it to the election or sign returns on the entity's behalf.[292] The election can be made at any point during the taxable year or after its end but before the due date of the electing entity's tax return or the date of filing the return.[293]

The new chapter explains the process for calculating and imposing the tax on the electing entity's adjusted gross income.[294] The tax is calculated based on the direct owners' share of the income.[295] Nonresident direct owners' shares are determined after allocation and apportionment, while resident direct owners' shares can be determined either before or after allocation and apportionment, using the same method for all resident direct owners.[296] A "nonresident direct owner" is an owner of the qualifying entity that neither resides in Indiana nor is domiciled there.[297] The tax rate is based on the last day of the electing entity's taxable year, and the tax is due on the same date as the entity's return.[298]

Each entity owner is entitled to a refundable credit equal to the amount of tax credited to it.[299] The electing entity must include a schedule detailing the tax calculation and credits for each entity owner and remit the tax with the return,

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286. *See id.* § 5 (adding IND. CODE § 6-3-2.1, retroactive to Dec. 31, 2021).

287. *See, e.g.*, Eileen Reichenberg Sherr, *Update on States Moving Ahead with PTETs*, J. OF ACCT. (May 26, 2023), https://www.journalofaccountancy.com/news/2023/may/update-states-moving-ahead-with-ptets.html (last updated May 31, 2023) [https://perma.cc/T2FY-UEGM].

288. IND. CODE § 6-3-2.1-3(b) (2022).

289. *See id.* § 6-3-2.1-2(1) (defining an electing entity). Subchapter K refers to the federal tax statutes that pertain to the taxation of partnerships. Subchapter S refers to the federal tax statutes that pertain to the taxation of S-Corporations.

290. *Id.* § 6-3-2.1-2(2) (defining an entity owner); *id.* § -3(b).

291. *Id.* § 6-3-2.1-2(4) (defining an owner).

292. *Id.* § 6-3-2.1-3(a) (defining an authorized person).

293. *Id.* § 6-3-2.1-3(b)-(d).

294. *Id.* § 6-3-2.1-4(a).

295. *Id.*

296. *Id.* § 6-3-2.1-4(a)(1).

297. *Id.* § 6-3-2.1-2(3).

298. *Id.* § 6-3-2.1-4(b).

299. *Id.* § 6-3-2.1-3(b).

also taking into account previous estimated tax payments and other tax payments made by the electing entity.[300] The Department provides guidance on the form used for this purpose.[301]

If a pass-through entity does not elect under this chapter but has made estimated or other tax payments, it may attribute the pass-through entity tax remitted on its behalf to its direct owners provided the tax is designated on a schedule and reported to the direct owners.[302] The pass-through entity can credit these amounts to the direct owners, ensuring the amounts do not surpass the tax that would be due under this chapter on their share of the adjusted gross income or the pass-through entity tax passed through to the entity.[303] Any payment beyond the greater of these amounts are refunded on request.[304] Other payments not designated as estimated or other tax payments will be treated as withholding tax under the relevant sections of the Indiana Code.[305]

Each electing entity must compute the individual share of the tax for its direct owners and report this to the Department using the prescribed form.[306] Additionally, each entity owner is entitled to a refundable credit equal to the tax amount credited to it under this chapter.[307] Other credits that arise from the electing entity's operations or are passed through to or assigned to the entity will not apply to the tax imposed by the new Chapter.[308] The pass-through entity tax credit should be applied before using any other credits.[309] The statutory provision regarding credits also applies to pass-through entities passing the tax through to their owners.[310] However, it does not restrict the electing or pass-through entity from claiming credits for taxes withheld or paid on its behalf.[311]

The qualifying entity is also subject to estimated tax payment requirements and penalties for underpayment of estimated tax.[312] Finally, if an electing entity underreports tax or files an amended return supporting an underpayment, or if the IRS adjusts the entity's adjusted gross income, the entity may be subject to an assessment, interest, or a penalty.[313] Penalties are waived through August 30, 2024, for late payments for tax years ending before January 1, 2023.[314] Since the Department continues to develop its guidance concerning Indiana's PTE, and the federal income tax consequences associated with PTEs continue to

300. *Id.* § 6-3-2.1-4(c).
301. *Id.*
302. *Id.* § 6-3-2.1-4(d).
303. *Id.* § 6-3-2.1-4(d)(1)(B).
304. *Id.* § 6-3-2.1-4(d)(3).
305. *Id.* § 6-3-2.1-4(d)(2).
306. *Id.* § 6-3-2.1-5(a).
307. *Id.* § 6-3-2.1-5(b).
308. *Id.* § 6-3-2.1-5(c).
309. *Id.*
310. *Id.*
311. *Id.*
312. *Id.* § 6-3-2.1-6(a).
313. *Id.* § 6-3-2.1-7(a) and (b).
314. *Id.* §§ 6-3-2.1-3(d)(2); -6(c), (d).

evolve, these waiver provisions may allow taxpayers to revise their PTE filing strategies without suffering significant penalty.

C. Sales Tax

A business entity may acquire another business either through: (1) an interest acquisition such as stock in a corporation or membership in a limited liability company; or (2) an asset acquisition.[315] When a business acquires another business via an interest acquisition in the form of a reorganization, merger, consolidation, separation, or outright purchase, the purchasing or surviving entity assumes all the liabilities of the entity it acquired, including state and local sales and use tax liabilities.[316] Contrary to the result of purchasing an interest in a business entity, the purchase of a business's assets generally does not cause the purchaser to assume any sales or use tax liabilities (or other contingent or unknown liabilities) associated with the assets or held by the assets' seller.[317] Accordingly, for sales and use tax purposes, an outright purchase of a business's assets does not differ from any everyday taxable purchase of tangible personal property made at retail stores.[318] Some states, however, have recognized an exception to this general rule and created successor liability via a "bulk sale" exception. When a purchaser acquires the "bulk" of a business's assets, the exception permits a state taxing authority to collect the seller's outstanding sales tax liability from the purchaser.[319]

In 2023, the Indiana General Assembly adopted a new bulk sale exception that, effective January 1, 2024, creates successor liability for certain unpaid transactional taxes following a business asset sale.[320] Indiana's new bulk sale exception applies to any "transfer in bulk" of a business's assets.[321] A transfer in bulk occurs when any business or person directly or indirectly purchases in an arm's-length transaction, acquires, is gifted, or succeeds to the ownership of more than one half of the value of all tangible personal property (including

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315. *See, e.g.*, Alyson Outenreath, *Asset Acquisitions: Things That Make You Go Hmmm. . . Are You Really Entitled to That Beloved Occasional Sales Exemption*, 48 IND. L. REV. 550, 552-53 (2015) (discussing the occasional sale exemption and other state and local tax consequences in the context of a business sale structured as an asset sale); Andrew W. Swain, *Sales and Use Tax Consequences of Reorganizations, Separations, and Acquisitions*, 32 COLO. LAW. 81, 82 (2003) (discussing the state and local consequences associated with acquiring a business).

316. *See* Outenreath, *supra* note 315; *see* Swain, *supra* note 315.

317. *See* Outenreath, *supra* note 315, at 552-50; *see* Swain, *supra* note 315, at 52.

318. *See* Outenreath, *supra* note 315, at 552-50; *see* Swain, *supra* note 315, at 52.

319. *See, e.g.*, Timothy P. Noonan & Joseph N. Endres, *Sales Tax Considerations in an Asset Purchase*, STATE TAX NOTES 119, 121 (Apr. 11, 2011), https://www.hodgsonruss.com/media/publication/162_04_2011%20Sales%20Tax%20Considerations%20In%20an%20Asset%20Purchase.pdf (discussing successor liability and the "bulk sale" exception) [https://perma.cc/Z4V3-K65G].

320. *See* Pub. L. No. 255-2023, § 1 (codified as amended at IND. CODE § 6-8.1-10-9.5 (2023)).

321. IND. CODE § 6-8.1-10-9.5(a)(5) (2018).

inventory) of a business.[322] Such a transfer results in the assets' purchaser assuming the seller's liabilities for sales and use, food and beverage, and county innkeeper taxes.[323] The tax liabilities include any interest or penalties imposed on the assets' seller.[324] The successor business cannot protest the tax liabilities if the transferring person or business exhausted its tax protest remedies before the sale.[325] The successor business can always, though, protest whether it qualifies as a successor of the transferring person or the business's tax liabilities.[326] Finally, the transfer in bulk of a business's assets and the creation of successor tax liability for the assets' purchaser does not relieve the seller of its original tax liability.[327] The Department can seek the collection of taxes from the purchaser, the seller, or both simultaneously so long as it ultimately collects only the total taxes, interest, and penalties due.[328]

The new statute also creates a process by which either the purchaser or the seller can acquire a tax clearance letter from the Department. To acquire such a letter, forty-five days before the purchaser takes possession of the assets or pays the purchase price and using a form prescribed by the Department, either the purchaser or seller can notify the Department of the impending asset transfer, the transfer's terms and conditions, and both the purchaser's and seller's tax identification numbers.[329] Within a prescribed period, the Department will notify the parties as to the existence of tax liabilities and their amounts, or that no liabilities exist.[330] In the latter case, the Department will issue the parties a tax clearance letter.[331]

Indiana's new bulk sale exception has one benefit for taxpayers. A transfer in bulk of a business's assets does not constitute a retail transaction or, therefore, a taxable one.[332] In other words, Indiana does not impose its sales and use taxes on a qualifying bulk sale of a business's assets.[333] Excluded from this transfer tax exemption are inventory, motor vehicles, watercraft, aircraft, and rental property.[334] Inventory acquired in a bulk sale, however, can likely be shielded from the imposition of sales or use taxes on that sale if the assets' purchaser

322. *Id.*
323. *Id.* § 6-8.1-10-9.5(a)(1), (6).
324. *Id.* § 6-8.1-10-9.5(k).
325. *Id.* § 6-8.1-10-9.5(h).
326. *Id.*
327. *Id.* § 6-8.1-10-9.5(j).
328. *Id.* § 6-8.1-10-9.5(k).
329. *Id.* § 6-8.1-10-9.5(b).
330. *Id.* § 6-8.1-10-9.5(c)(2), (3).
331. *Id.* § 6-8.1-10-9.5(c)(3).
332. *Id.* § 6-8.1-10-9.5(i).
333. *Id.*
334. *Id.*

intends to resell the inventory and provides a sale-for-resale certificate to the seller contemporaneously with the bulk sale.[335]

D. Department of Revenue Administrative Matters

In the early 2000s, the Indiana Department of Revenue publicly provided the name and business address of a person issued a retail merchant certificate and verified the certificate's active or inactive status via its website or in response to phone inquiries. It stopped this practice, fearing it might violate the confidentiality of taxpayer information—a violation that constitutes a crime in Indiana.[336] Despite this, it remained important for retail customers purchasing taxable goods or services from a seller to inquire as to the seller's status as active or inactive.[337] A seller's inactive status suggests that the Department has revoked its retail merchant certificate due to a failure to remit sales taxes, a failure to file sales tax returns in a timely manner, or because of its owing delinquent taxes. Because a retail customer remains liable for sales taxes paid to a seller but not remitted to the Department, the customer is wise to ascertain a seller's status with the Department before engaging in a high-dollar retail transaction.[338] The same is true for sellers making sales to persons claiming they have a sales tax exemption.[339] Sellers collect and hold sales and use taxes in trust for Indiana and are personally liable for the payment of those taxes.[340] Accordingly, sellers must know when they are properly forgoing the collection of a sales tax in order to avoid becoming personally liable for those taxes.

In 2021, the Indiana General Assembly enacted legislation permitting the Department to release information pertaining to a person's retail merchant's certificate and provide verification of its active or inactive status.[341] In 2023, the General Assembly further closed the transparency loop by enacting legislation that authorized the Department to publish a list of persons, corporations, or other entities that qualify for a sales tax exemption under Indiana Code section 6-2.5-

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335. Indiana calls its sale-for-resale certificate the *General Sales Tax Exemption Certificate*. *General Sales Tax Exemption Certificate*, Form ST-105 (R6/12-22), https://www.in.gov/dor/tax-forms/sales-tax-forms/ [https://perma.cc/785Y-76L8].

336. *See* IND. CODE § 6-8.1-7-3 (2023) (stating that a person who improperly discloses confidential tax information commits a Class C misdemeanor. Also, if the person making the disclosure is "an officer or employee of the state, [he or she] shall be immediately dismissed from [his or her] office or employment.").

337. *See id.* § 6-2.5-8-1(a) (stating that "[a] retail merchant may not make a retail transaction in Indiana, unless the retail merchant has applied for a registered retail merchant's certificate.").

338. *See id.* § 6-2.5-2-1(b) (stating that the person who acquires property in a retail transaction is liable for the tax on the transaction).

339. *See id.* § 6-2.5-8-4(a) (stating that "[a]n organization, exempt from the state gross retail tax under IC 6-2.5-5-21, IC 6-2.5-5-25, or IC 6-2.5-5-26, may register with the department as a purchaser of property in exempt transactions.").

340. *See id.* § 6-2.5-9-3(a)(2).

341. *See* Act of Apr. 29, 2021, Pub. L. No. 159-2021, § 34, 2021 Ind. Acts 1630, 1717 (codified at IND. CODE § 6-8.1-7-1 (2021)).

5-16 (state and local governments), Indiana Code section 6-2.5-5-25 (nonprofit purchases), or Indiana Code section 6-2.5-5-26 (nonprofit sales).[342] The Department may disclose the following information:

a. Any federal identification number or other identification number for the entity assigned by the Department;
b. Any expiration date of an exemption under Indiana Code section 6-2.5-5-25;
c. Whether any sales tax exemption has expired or has been revoked by the Department; and
d. Any other information reasonably necessary for a recipient of an exemption certificate to determine if an exemption certificate is valid.[343]

The General Assembly also expanded Indiana's mailbox rule for filing tax documents or submitting tax payments via the U.S. Postal Service. If the Department of Revenue receives a document or payment after a deadline, it must consider it received in a timely manner if it has a postmark date within three business days after the deadline.[344] Business days are Monday to Friday. They do not include weekends (Saturday and Sunday), national legal holidays recognized by the federal government, or statewide holidays.[345]

III. NEW TAX COURT JUDGE

Judge Martha Blood Wentworth presided over the Indiana Tax Court for twelve years—that is, from January 2011 to September 2023.[346] She replaced the first Tax Court judge, Judge Thomas G. Fisher, who presided over the court from July 1, 1986 to December 2010.[347] After Judge Wentworth announced her retirement from the Court, the Indiana Judicial Nominating Committee launched its effort to find her replacement. From ten applicants, the Nominating Committee presented three candidates to Indiana Governor Eric J. Holcomb, who, on July 11, 2023, selected Justin L. McAdam to become the third Indiana Tax Court judge.[348] Judge McAdam's robing ceremony occurred on October 18,

342. *See* IND. CODE § 6-8.1-7-1(v)(1)-(4) (2023)).
343. *Id.*
344. *See id.* § 6-8.1-6-3(e).
345. *Id.*
346. *See* Michael W. Hoskins, *New Tax Court Judge 'Honored and Humbled' by Appointment*, IND. LAW. (Dec. 23, 2010), https://www.theindianalawyer.com/articles/25435-new-tax-court-judge-honored-and-humbled-by-appointment [https://perma.cc/J937-6JYE].
347. *See* Michael W. Hoskins, *State Says Goodbye to Its First Tax Judge*, IND. LAW. (Dec. 21, 2010), https://www.theindianalawyer.com/articles/25397-state-says-goodbye-to-its-first-tax-judge [https://perma.cc/92EL-3MTY].
348. *See* Tyler Fenwick, *McAdam Appointed Next Indiana Tax Court Judge*, IND. LAW. (July 11, 2023), https://www.theindianalawyer.com/articles/mcadam-appointed-next-indiana-tax-court-judge [https://perma.cc/5ABY-E2EC].

2023.[349] He was, however, sworn in as the Tax Court judge on September 1, 2023, at a private ceremony.[350] On August 17, 2023, the Indiana Supreme Court certified Judge Wentworth as a senior judge, effective September 3, 2023, through December 31, 2024.[351] On December 15, 2023, the Supreme Court recertified Judge Wentworth as a senior judge through December 31, 2024.[352] She continues to serve as a senior judge with the Tax Court on a part-time basis.[353]

Before Judge McAdam's selection, he had served in the Holcomb administration as the Deputy Director and Chief Legal Counsel for the Indiana Office of Management & Budget.[354] Judge McAdam received his bachelor's degrees in economics and political science from Indiana University Bloomington and his J.D. from Harvard Law School.[355] During his interview before the Judicial Nominating Committee on May 23, 2023, Judge McAdam said that, if selected, he would address two main concerns while serving as the Tax Court judge.[356] He said he would focus on making the court operate more

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349. *See Robing Ceremony of the Honorable Justin L. McAdam*, WBIW (Oct. 11, 2023), https://www.wbiw.com/2023/10/11/robing-ceremony-of-the-honorable-justin-l-mcadam/ [https://perma.cc/9WBS-9QRY].

350. *See* Tyler Fenwick, '*Enormously Equipped' McAdam Talks Building Up the Tax Court at Robing Ceremony*, IND. LAW. (Oct. 19, 2023), https://www.theindianalawyer.com/articles/enormously-equipped-mcadam-talks-building-up-the-tax-court-at-robing-ceremony [https://perma.cc/F382-MV2J].

351. *See* Alexa Shrake, *Wentworth Certified as Senior Judge Ahead of Tax Court Retirement*, IND. LAW. (Aug. 22, 2023), https://www.theindianalawyer.com/articles/wentworth-certified-as-senior-judge-ahead-of-tax-court-retirement [https://perma.cc/HT94-CWKB]; *In re* Certification of Senior Judge Martha B. Wentworth, No. 23S-MS-229 (Aug. 17, 2003), https://www.in.gov/courts/files/order-judges-2023-23S-MS-229.pdf [https://perma.cc/HU9V-SXDF].

352. *See In re* Recertification of Senior Judges for Calendar Year 2024, No. 23S-MS-289 (Dec. 15, 2023), https://www.in.gov/courts/files/order-judges-2023-23S-MS-289b.pdf [https://perma.cc/YY8V-5RPQ].

353. *See* Daniel Carson, *Wentworth Honored by IN Senate for Years of Service, Devotion to Tax Issues*, IND. LAW. (Feb. 21, 2024), https://www.theindianalawyer.com/articles/wentworth-honored-by-in-senate-for-years-of-service-devotion-to-tax-issues [https://perma.cc/WK8C-BG9L]; Martha Wentworth (2024) LINKEDIN PROFILE, https://www.linkedin.com/in/martha-wentworth-5510b4b/ (stating that "[Judge Wentworth is] happy to share that [she is] starting a new position as Senior Judge at [the] Indiana Tax Court.").

354. *See* Tyler Fenwick, *'You Don't Do It Alone': McAdam Prepares to Take Over IN Tax Court*, IND. LAW. (Aug. 2, 2023), https://www.theindianalawyer.com/articles/you-dont-do-it-alone-mcadam-prepares-to-take-over-in-tax-court [https://perma.cc/FDR3-ETF6].

355. *Id.*

356. *See* Tyler Fenwick, *Government Attorneys, Private Practitioner Named Tax Court Finalists; Afternoon Candidates Talk Possible Changes to Court*, IND. LAW. (May 23, 2023), https://www.theindianalawyer.com/articles/government-attorneys-private-practitioner-named-tax-court-finalists-afternoon-candidates-talk-possible-changes-to-court [https://perma.cc/RHN6-QZ9U].

efficiently.[357] He said 90 days is an appropriate amount of time to issue a decision.[358] Judge McAdam also said he would review the court's structure because its caseload is, he noted, "relatively low."[359]

357. *Id.*
358. *Id.*
359. *Id.*