

1996 DEVELOPMENTS IN INDIANA TAXATION

LAWRENCE A. JEGEN, III*
JAMES S. TRIPP**
STEPHEN P. MURPHY, JR. ***

INTRODUCTION

Both the 109th Indiana General Assembly and the Indiana Tax Court contributed to the 1996 changes and clarifications to all of the major, and to many of the minor, Indiana tax laws. This Article highlights some of the more interesting 1996 developments. The following abbreviations are frequently used in this Article: Indiana Department of State Revenue (IDSR) and Indiana State Board of Tax Commissioners (ISBTC).

I. GENERAL ASSEMBLY LEGISLATION

There were hundreds of 1996 legislative changes that impacted Indiana taxation, many of which had a direct effect on both broad segments of Indiana residents as well as narrow segments of Indiana residents. Many of the changes were attempts to fine-tune existing laws, but significant policy changes surfaced in four major areas: income tax, property tax, probate, and other relevant laws.

The general assembly passed four bills into law which have an impact on Indiana income taxation. The first of these establishes the medical savings account contribution deduction for employers.¹ A provision of this law provides that an employer may assist in paying the deductible amount on an account the employer purchases to establish a medical savings account if the employer did not previously assist in paying for its employees' medical expenses.² This law also reconciles conflicts between previously enacted statutes.

Second, the general assembly enacted legislation that affects local Indiana income taxation. A provision of this law, effective March 15, 1996, allows Ripley County to appeal to the ISBTC to adjust its maximum General Fund property tax levy in 1996 to restore an amount equal to the amount that the levy was reduced in 1995 due to the creation of a child services fund.³ Another provision of this law allows a county to reduce the required six-month balance of that county's adjusted gross income tax special account to a three-month balance.⁴ Finally, this law

* Thomas F. Sheehan Professor of Tax Law and Policy, Indiana University School of Law—Indianapolis. B.A., Beloit College; M.B.A., J.D., University of Michigan; LL.M., New York University.

** B.A., Brigham Young University; J.D., 1996, Indiana University School of Law—Indianapolis.

*** J.D. Candidate, 1998, Indiana University School of Law—Indianapolis. B.S., 1994, Indiana State University, Terre Haute, Indiana.

1. IND. CODE § 6-8-11-10(c) (Supp. 1996) (retroactive to January 1, 1996).

2. *Id.* § 6-8-11-10(b).

3. Act of Mar. 15, 1996, No. 58, § 2, 1996 Ind. Acts at 1535-36. (This provision, retroactive to January 1, 1996, will expire January 1, 1998 and is not codified.)

4. IND. CODE § 6-3.5-1.1-9.5(a) (Supp. 1996).

contains a provision which provides a formula for allocating the distribution among civil taxing units.⁵

Third, the general assembly enacted legislation that affects the state income tax liabilities members of a partnership, limited liability company, limited liability partnership, and shareholders of a Subchapter S corporation by allowing an enterprise zone investment credit or an historic rehabilitation credit against state tax liability to pass through⁶ to the members of a partnership, limited liability company, limited liability partnership, or shareholders of a Subchapter S corporation, for qualified investments or expenditures in Vigo County.⁷

Fourth, the general assembly addressed a number of issues affecting Indiana income taxation in general. The law now provides that a person is a retail merchant making a retail transaction when the person furnishes or sells an intrastate telecommunication service and receives gross retail income from billings or statements rendered to customers.⁸ Other provisions of this law provide that: the research expense tax credit expires December 31, 1999;⁹ the Commission on State Tax and Financing Policy shall, during the interim after the 1996 session of the general assembly, review issues relating to enterprise zones;¹⁰ an enterprise zone business be required to assist the zone urban enterprise association;¹¹ the municipal legislative body shall determine the amount of assistance a zone business must provide to an urban enterprise association;¹² the municipal legislative body may disqualify a zone business if it does not assist the urban enterprise;¹³ the summary of tax credits form be required to be submitted to the state enterprise zone board by a zone business to also be submitted to the local zone urban enterprise association;¹⁴ disclosure of the report is a Class A misdemeanor;¹⁵ and, proceeds received by a commuter transportation district from the sale of equipment in a sale and leaseback transaction may be invested in or used to purchase a guaranteed investment contract with an insurance company whose long term indebtedness is rated in one of the two highest categories by at least two national rating services.¹⁶ This law also includes a provision that

5. *Id.* § 6-3.5-1-1-9.5(e).

6. *Id.* § 6-3.1-10-6.5 (retroactive to January 1, 1995).

7. *Id.* § 6-3.1-10-4 (enterprise zone); *id.* § 6-3.1-16-7.5 (historic property).

8. *Id.* § 6-2.5-4-6(b) (effective March 21, 1996).

9. *Id.* § 6-3.1-4-6 (effective July 1, 1996). This provision would have expired December 31, 1996. The law was also amended to allow limited liability partnerships to take advantage of the credit. *See id.* § 6-3.1-4-1.

10. Act of Mar. 21, 1996, No. 8, § 12, 1996 Ind. Acts 923, 936-37. (This section is uncodified.)

11. IND. CODE § 4-4-6.1-2(b) (effective January 1, 1996).

12. *Id.*

13. *Id.*

14. *Id.* § 4-4-6.1-2.5(a).

15. *Id.* § 4-4-6.1-2.5(b).

16. *Id.* § 8-5-15-3(d) (effective March 21, 1996).

increases the floor for filing quarterly estimated tax returns from \$100 to \$400.¹⁷ Another provision included in this law allows an employer of a domestic service employee to withhold income tax and unemployment insurance contributions in the same manner as allowed under the Internal Revenue Code.¹⁸ Finally, this law contains a provision which allows the industrial recovery credit to be assigned to a lessee of the site owner.¹⁹

In the area of property taxation, the general assembly enacted twelve bills into law. The first of these extends the interstate exemption from property tax for packaged inventory destined for an out-of-state buyer to include books or other printed materials stored at an in-state commercial printer's facility.²⁰

Second, the general assembly approved measures which affect solid waste district property tax levy and revenue. A solid waste management district must now receive approval of a proposed property tax levy and use of the property tax revenue from a majority of the county fiscal bodies in the district if the levy increases by at least five percent over the previous year's levy.²¹

Third, the general assembly established various rules that affect county welfare financing. This law provides that the requirement that a civil taxing unit obtain the permission of the ISBTC before incurring certain forms of debt does not apply to debt that will be repaid through property taxes collected for financing county welfare.²² Another provision of this law provides that the county fiscal body, rather than the Local Government Tax Control Board, is the proper authority to determine whether to increase the maximum County Family and Children property tax levy.²³ This law also contains a provision that will allow Floyd County to transfer up to \$500,000 from the County Welfare Fund to the County Family and Children Fund.²⁴ Finally, this law requires the State Budget Agency to carry out a study of county welfare services and related services before December 1, 1996.²⁵

Fourth, the general assembly changed and added to existing legislation which affects school finance. A provision of this law provides for changes from \$6.90 in calendar year 1996, to the sum of the 1995 adjusted general fund tax rate plus twenty-five cents, the general fund ad valorem adjusted property tax rate ceiling for on-chart school corporations.²⁶ Another provision of this law changes the basic school tuition formula provisions that reduce the guaranteed minimum amount of state support for a school corporation with a declining student population in two

17. *Id.* § 6-3-4-4.1(c) (effective January 1, 1997).

18. *Id.* § 6-3-4-8(j), (k) (retroactive to January 1, 1996).

19. *Id.* § 6-3.1-11-16(c) (effective March 21, 1996).

20. *Id.* § 6-1.1-10-29, -29.5(d) (retroactive to January 1, 1996).

21. *Id.* § 13-21-3-16.

22. *Id.* § 6-1.1-18.5-9.7 (effective March 21, 1996).

23. *Id.* § 6-1.1-18.6-3 (effective July 1, 1996).

24. *Id.* § 12-19-3-2.1 (effective March 21, 1996).

25. Act of Mar. 21, 1996, No. 52, § 5, 1996 Ind. Acts 1482, 1484-88. (This section is effective March 21, 1996 and is uncodified.)

26. IND. CODE § 6-1.1-19-1.5(b)(A)(ii) (Supp. 1996) (effective March 21, 1996).

successive years.²⁷ This law also contains a provision that further provides for a second variable equalization grant to certain school corporations.²⁸ In another provision, this law increases the 1996 tuition support calendar year cap from \$2,457,400,000 to \$2,467,000,000.²⁹ Further, another provision included in this law allows certain school corporations to make a one-time transfer of money from the capital projects fund to the general fund for remedial summer and special school functions.³⁰ Finally, this law allows an appropriation for teachers' social security distribution to be used also for retirement distributions under the school formula and applies the same distribution principles to educational cooperative distributions.³¹

Fifth, the general assembly enacted legislation that affects remonstrance procedures and school transportation expenditures. First, this law allows a school corporation to appeal to the ISBTC to increase the maximum levy for the school corporation's Transportation Fund (Operating Costs Account) due to the closure of a school building within the school corporation that results in a significant increase in the distances that students must be transported to attend another school building.³² This law also changes the remonstrance process applicable to the issuance by political subdivisions of bonds, leases, and other evidences of indebtedness for projects that cost more than \$2,000,000 to: exempt a political subdivision from certain other procedures when the political subdivision has complied with the remonstrance procedure; specify that the county auditor has fifteen business days to review a petition requesting a remonstrance or containing signatures supporting or opposing a project; specify that petitions and remonstrances must be verified within the time specified for filing the petitions and remonstrances; and, require county auditors to distribute the number of petition and remonstrance forms requested by an owner of real property within the political subdivision.³³ This law also contains a provision that allows a school corporation to pay from the school bus replacement account the capital portion of the school corporation's expenses under an agreement to provide contracted transportation services.³⁴ This law includes a provision that allows a school corporation to appeal to the ISBTC for a one-time adjustment to the maximum allowable property tax levy for a school transportation fund, to treat cash reserves used to fund transportation expenses in 1995 as part of the base on which the 1996 property tax levy is computed.³⁵ A related provision of this law requires that

27. *Id.* § 21-3-1.7-6.5(b) (STEP 8) (retroactive to January 1, 1996).

28. *Id.* (STEP 9).

29. *Id.* § 21-3-1.7-9(b)(2).

30. Act of Mar. 21, 1996, No. 30, § 6(b), 1996 Ind. Acts 1207, 1220. (This provision is effective March 21, 1996 and is uncodified.)

31. *Id.* § 8, 1996 Ind. Acts at 1243. (This provision is retroactive to July 1, 1995 and is uncodified.)

32. IND. CODE § 6-1.1-19-5.4(a)(5) (Supp. 1996) (retroactive to January 1, 1996).

33. *Id.* §§ 6-1.1-20-3.1, -3.2 (effective March 21, 1996).

34. *Id.* § 21-2-11.5-2(e) (retroactive to January 1, 1996).

35. Act of Mar. 21, 1996, No. 53, § 11, 1996 Ind. Acts 1488, 1504-05 (expires January 1,

revenues collected by the school corporation as a result of such an appeal, to be expended only as appropriated in a budget or supplemental budget.³⁶ Finally, a provision of this law requires an adjustment in the assessed valuation used to compute state school transportation distributions to neutralize the effect of a general reassessment.³⁷

Sixth, the general assembly modified existing legislation to include changes as well as enhancements that affect property tax deductions and property tax exemptions. A provision of this law increases the income (adjusted gross income) and assessed valuation limitations applicable to the property tax deductions for the elderly, the blind and disabled, and World War I veterans.³⁸ Another provision of this law allows a taxpayer to claim a 1992 interstate commerce exemption for property tax on inventory under certain circumstances.³⁹

Seventh, the general assembly established a procedure for claiming a property tax exemption for a chassis used to fill an order from an out-of-state dealer.⁴⁰

Eighth, the general assembly adjusted various aspects of property tax revenue and collection procedures. A provision of this law allows the county treasurer to treat property taxes "paid" with a dishonored check or other financial instrument as delinquent unpaid taxes.⁴¹ Another provision of this law requires that collection fees charged by a private entity collecting delinquent property taxes for a county treasurer be reasonable.⁴² This law also added four more reasons for setting aside a judgment against a delinquent personal property taxpayer.⁴³ Another provision of this law changes the amount and interest rates payable to redeem property sold at a tax sale from 10% to 12%.⁴⁴ In another provision, this law changes from monthly to quarterly the schedule under which a county treasurer remits gross income taxes collected when real property is transferred.⁴⁵ This law changes the information that a county treasurer stamps on a deed or other instrument of conveyance to provide proof of the payment of gross income tax and changes from monthly to quarterly the schedule under which a county treasurer remits gross income taxes collected when real property is transferred.⁴⁶ Another provision requires the sheriff to apply the proceeds of a sheriff's sale to foreclose a mortgage to the payment of delinquent property taxes.⁴⁷ Further, another provision of this

1998).

36. *Id.* § 11(d), 1996 Ind. Acts at 1505.

37. *Id.* § 11(b), 1996 Ind. Acts at 1504.

38. IND. CODE §§ 6-1.1-12-9, -11, -14, -17.4 (Supp. 1996) (retroactive to March 1, 1995).

39. Act of Mar. 21, 1996, No. 48, § 5, 1996 Ind. Acts 1401, 1405-07 (retroactive to March 1, 1992) (expired December 31, 1996).

40. IND. CODE § 6-1.1-10-31.7(c) (Supp. 1996) (retroactive to January 1, 1994).

41. *Id.* § 6-1.1-22-6.5 (effective March 14, 1996).

42. *Id.* § 6-1.1-23-1.5(b) (effective March 14, 1996).

43. *Id.* § 6-1.1-23-12 (effective March 14, 1996).

44. *Id.* § 6-1.1-24-2(a)(4).

45. *Id.* § 6-2.1-8-5(b) (effective July 1, 1996).

46. *Id.* § 6-2.1-8-5(a).

47. *Id.* § 34-1-53-12(2) (effective March 14, 1996).

law states that unclaimed money collected at the scene of a death must be deposited in the county general fund.⁴⁸ Still another provision allows any person with a substantial property interest of public record in Marion County, Allen County, or St. Joseph County to seek a refund of surplus money collected at a tax sale.⁴⁹ Further, this law decreases the period in which an owner of property sold at a tax sale can obtain a refund of money in the tax sale surplus fund from five years to three years.⁵⁰ Finally, a provision of this law changes to one month the waiting period for a tax deed in certain expedited tax sales.⁵¹

Ninth, the general assembly addressed various issues that affect local unit budget procedures. A provision of this law changes procedures concerning the formulation of budgets, tax levies, and tax rates for political subdivisions.⁵² Further, a provision of this law changes the date for township legislative body annual meetings from the second Tuesday after the first Monday in January to a date on or before the third Tuesday after the first Monday in January.⁵³ (The introduced version of this bill was prepared by the Local Budget Year Commission).

Tenth, the general assembly provided procedural guidance upon the filing of enterprise zone tax credit summaries. A provision of this law includes a cross reference in the law concerning enterprise zone inventory credits to the law that requires an applicant to file a summary of enterprise zone credits and exemptions with the enterprise zone board.⁵⁴ Further, another provision of this law validates the late filing in 1995 of a verified summary concerning the amount of enterprise zone tax credits applicable to certain inventory.⁵⁵

Eleventh, the general assembly gave allowances to certain members of the armed forces with respect to their vehicle registrations by providing that an Indiana resident who has registered a car in Indiana, is an active member of the Armed Forces of the United States, is assigned to a duty station outside Indiana, and *does not operate the motor vehicle* inside or outside Indiana is not required to register the motor vehicle, pay motor vehicle excise tax, or pay property tax on the motor vehicle.⁵⁶

Twelfth, the general assembly imposed several requirements which directly affect local taxation. A provision of this law increases from ten days to fifteen business days the time in which a county auditor may certify petitions for and remonstrances against leases and bond issues for controlled projects that are payable from property tax levies and involve more than \$2,000,000 in

48. *Id.* § 36-2-10-21 (effective March 14, 1996).

49. *Id.* § 6-1.1-24-7(a)(3) (effective March 14, 1996).

50. *Id.* § 6-1.1-24-7(c).

51. *Id.* § 6-1-1-25-4.5(a)(3) (effective March 14, 1996).

52. *Id.* §§ 6-1.1-17-1, -3, -5, 16 (effective January 1, 1997).

53. *Id.* § 36-6-6-9 (effective January 1, 1997).

54. *Id.* § 6-1.1-20.8-2(c) (effective March 21, 1996).

55. Act of Mar. 21, 1996, No. 55, § 2, 1996 Ind. Acts 1515, 1515-16 (effective March 21, 1996).

56. IND. CODE § 9-18-2-1 (Supp. 1996) (effective March 21, 1996).

expenditures.⁵⁷ Another provision of this law requires each petition and remonstrance form to include instructions specifying new requirements that the carrier and signer must be property owners, that the carrier must be a signer, that the carrier must attest to the signatures, and that the deadline for filing be set forth.⁵⁸ Also contained in this law is a provision that prohibits officers of a political subdivision from making a preliminary determination to issue bonds or enter into a lease for a controlled project that is not substantially different from a project that was defeated within one year of the defeat.⁵⁹ This law also specifies that withdrawing a bond petition has the same consequences as if the petition were defeated.⁶⁰ Further, this law allows residents of included towns within Washington Township in Marion County to pay the township fire property tax rate for fire service, rather than receiving the service under contract.⁶¹ This law also adjusts the maximum property tax levies of all affected units.⁶² Finally, this law makes a technical correction to clarify the fund from which refunds for overpayments of 1996 motor vehicle excise tax will be made.⁶³

In the area of probate tax law, the general assembly enacted six bills into law which have an impact on Indiana probate taxation. The first of these concerns trust holding professional corporations. A new section was added that states that "charitable remainder annuity trust" has the meaning set forth I.R.C. § 664(d)(1).⁶⁴ A related provision of this law provides that "charitable remainder unitrust" has the meaning set in I.R.C. § 664(d)(2) or I.R.C. § 664(d)(3).⁶⁵ Finally, this law allows shares of a professional corporation to be held by a charitable remainder annuity trust or a charitable remainder unitrust if the trust complies with each of the following conditions:

- (A) Has one or more current income recipients, all of whom are qualified persons;
- (B) Has a trustee or an independent special trustee who:
 - (i) is a qualified person, and
 - (ii) has exclusive authority over the shares of the professional corporation while the shares are held in the trust;
- (C) Has one or more irrevocably designated charitable remaindermen, all of which must at all times:
 - (i) be domiciled, or
 - (ii) maintain a local chapter, in Indiana.

57. *Id.* § 6-1.1-20-3.2(5) (effective March 21, 1996).

58. *Id.* § 6-1.1-20-3.2(3).

59. *Id.* § 6-1.1-20-3.2(6).

60. *Id.*

61. *Id.* § 36-8-13-3(c) (effective March 21, 1996).

62. *Id.* § 36-8-13-4.7 (effective March 21, 1996).

63. Act of Mar. 21, 1996, No. 54, § 6, 1996 Ind. Acts 1506, 1513-14. (This provision is retroactive to July 1, 1995, expires January 1, 1999 and is not codified.)

64. IND. CODE § 23-1.5-1-5.4 (Supp. 1996) (effective July 1, 1996).

65. *Id.* § 23-1.5-1-5.6 (effective July 1, 1996).

(D) When distributing any assets during the term of the trust to charitable organizations, the distributions are made only to charitable organizations described in Section 170(c) of the Internal Revenue Code that:

- (i) are domiciled, or
- (ii) maintain a local chapter, in Indiana.⁶⁶

Second, the general assembly made allowances and included additions to the law which affect changes in a corporate trustee. A provision of this law allows the beneficiary of a trust that is held by a corporate trustee and that is executed after June 30, 1996, to petition the court to have the corporate trustee removed if there has been a change in control of the corporate trustee.⁶⁷ This law also provides that, unless the trust instrument provides otherwise, a corporate trustee that acquires a trust as a result of a change in control may not decline to accept the trust property, resign as trustee, or otherwise refuse to administer the trust, based on the amount of property or funds in the trust.⁶⁸ This law also contains a provision that allows the court to remove the corporate trustee if the court determines the removal is in the best interests of all the beneficiaries.⁶⁹ Another provision of this law requires a court to inquire into the qualifications of a proposed successor trustee.⁷⁰ Finally, this law adds language concerning the circumstances under which a trustee that has acquired a trust as a result of a change in control may petition to be removed from the trust.⁷¹

Third, the general assembly advanced a procedural limit that bars a claim filed against an estate more than one year after the decedent's death.⁷² (The introduced version of this bill was prepared by the probate code study commission).

Fourth, the general assembly provided a procedural requirement as well as an exception that affects consents to transfer property. Specifically, a provision of this law requires written consent from the IDSR or the county assessor before a deceased person's property held in trust may be transferred.⁷³ Another provision of this law also makes an exception to the consent requirement if the transfer is to the surviving spouse of the deceased person.⁷⁴

Fifth, the general assembly established guidelines by including a provision in the Indiana inheritance tax law that transfers the responsibility for collecting delinquent inheritance tax from the county prosecuting attorney to the IDSR.⁷⁵

66. *Id.* § 23-1.5-1-13(3).

67. *Id.* § 30-4-3-29 (effective July 1, 1996).

68. *Id.* § 30-4-3-29.5(a) (effective July 1, 1996).

69. *Id.* § 30-4-3-29(e).

70. *Id.* § 30-4-3-29(c).

71. *Id.* § 30-4-3-29.5(b).

72. *Id.* § 29-1-7-7(d) (effective July 1, 1996).

73. *Id.* § 6-4.1-8-4(b) (effective March 10, 1996); *see id.* § 6-4.1-8-4(c) (exception where transfer will result in no Indiana inheritance or estate tax).

74. *Id.* § 6-4.1-8-4(b).

75. *Id.* § 6-4.1-9-11 (effective March 10, 1996).

(The introduced version of this bill was prepared by the probate code study commission).

Sixth, the general assembly added a provision stating that the entire value of an irrevocable trust or an escrow established under current law that provides for payment of funeral, burial services, or merchandise in advance of need by a person who applies for or receives Medicaid may not be considered as a resource in determining the person's eligibility for Medicaid.⁷⁶

In the area of other relevant laws, the general assembly passed nine bills into law which have an impact on Indiana taxation. The first of these involves motor vehicle and boat transactions legislation. A provision of this law requires the Bureau of Motor Vehicles to issue boat excise tax decals at the time the tax is collected.⁷⁷ Another provision of this law permits licensed new motor vehicle dealers, financial institutions, and selected other persons to provide partial license branch services.⁷⁸ This law also contains a provision that requires at least one full service license branch in each county.⁷⁹ Further, a provision of this law requires the Bureau of Motor Vehicles Commission to adopt minimum standards for partial service contractors before January 1, 1997.⁸⁰ This law also includes a provision that requires the commission to establish standards for telephonic, facsimile, electronic, and computer access to branch services before March 1, 1997.⁸¹ Another provision included in this law permits cross county registration if it is not an in-person over the counter transaction.⁸² Also, a provision of this law requires the bureau to provide a monthly cross county collection report to each county treasurer and auditor.⁸³

Second, the general assembly changed poor relief administration. The law now provides that a person other than an attorney who receives anything of value for assisting an applicant to receive poor relief commits a Class C misdemeanor.⁸⁴ Another provision of this law also expands the authority and discretion of township trustees in the following areas: hiring;⁸⁵ action on poor relief applications;⁸⁶ information retrieval about poor relief recipients;⁸⁷ denial of aid;⁸⁸ services provided to recipients that will be paid for by poor relief funds;⁸⁹ and, other functions of the township trustee. This law also contains a provision that

76. *Id.* § 12-15-2-17 (effective March 10, 1996).

77. *Id.* § 6-6-11-13 (effective January 1, 1997).

78. *Id.* § 9-16-1-1(3) (effective July 1, 1996).

79. *Id.* § 9-15-2-1(6) (effective July 1, 1996).

80. *Id.* § 9-15-2-1(7).

81. *Id.* § 9-15-2-1(8).

82. *Id.* § 9-18-2-13 (effective July 1, 1996).

83. *Id.* § 6-6-5-9 (effective July 1, 1996).

84. *Id.* § 12-20-1-4(b) (effective July 1, 1996).

85. *Id.* § 12-20-4-3 (effective July 1, 1996).

86. *Id.* § 12-20-6-7 (effective July 1, 1996).

87. *Id.* § 12-20-7-1 (effective July 1, 1996).

88. *Id.* § 12-20-5.5-2(1) (effective July 1, 1996).

89. *Id.* § 12-7-2-20.5 (effective July 1, 1996).

requires township trustees to establish written standards for processing poor relief applications, and provides guidelines for these standards.⁹⁰ Further, a provision of this law extends most laws that apply to poor relief applicants to other members of the applicant's household and requires each board of county commissioners to develop uniform written standards regarding appeals from the denial of poor relief assistance.⁹¹ Finally, this law increases the amount of information and number of reports township trustees must file annually with the State Board of Accounts and repeals several statutes that govern township trustees' administrative responsibilities.⁹²

Third, the general assembly enacted legislation that affects tax-exempt bonding.⁹³ Previously, the Indiana Secondary Market for Education Loans had been allocated nine percent of the state's volume cap established by I.R.C. § 146. This allocation has been eliminated. This allocation has been transferred to the Indiana Development Finance Authority.⁹⁴ This law also contains a provision which allows the Indiana Development Finance Authority to operate the volume cap under guidelines established by the authority.⁹⁵ Finally, a provision of this law repeals various sections that deal with the administration of the volume cap program⁹⁶ and replaces references to "state ceiling" with the term, "volume cap."⁹⁷

Fourth, the general assembly introduced measures aimed at improving legislation in the area of transportation and special fuels. International Registration Plan enforcement is now conducted by the IDSR.⁹⁸ The law also makes changes in the area of special fuel taxation⁹⁹ and oversized and overweight vehicles.¹⁰⁰ Another provision of this law also specifies that interstate and intrastate motor carriers transporting persons or property throughout Indiana must comply with certain federal regulations that have been incorporated into state law.¹⁰¹ This law also contains a provision which specifies that to avoid the requirements of a federal regulation involving the maintenance of logs that has been incorporated into state law, a vehicle must be used as a farm truck.¹⁰² This law includes a provision that specifies that notwithstanding the requirements of a federal regulation that has been incorporated into state law, a person who is at least eighteen years of age but less than twenty-one years of age may be employed to

90. *Id.* §§ 12-20-5.5-1 to -6 (effective July 1, 1996).

91. *Id.* § 12-20-15-3(b) (effective July 1, 1996).

92. *Id.* § 12-20-28-3 (effective July 1, 1996).

93. *Id.* § 4-4-11.5-9(b) (effective January 1, 1997).

94. *See id.*

95. *Id.* §§ 4-14-11.5-39 to -43 (effective January 1, 1997).

96. Act of Mar. 15, 1996, No. 10, § 17, 1996 Ind. Acts 950, 957 (effective January 1, 1997).

97. IND. CODE § 4-4-11.5(d) (Supp. 1996) (effective January 1, 1997).

98. *Id.* § 9-28-4-6 (effective March 21, 1996).

99. *Id.* §§ 6-6-2.5-41(i), 62(c), -64(c)(1) (effective July 1, 1996).

100. *Id.* § 6-8.1-4-4 (effective March 21, 1996).

101. *Id.* § 8-2.1-24-18(b) (effective July 1, 1996) (amended 1997, to be recodified at IND. CODE § 8-2.1-24-18(a)).

102. *Id.*

operate a commercial motor vehicle intrastate.¹⁰³ Another provision included in this law makes changes to Indiana law concerning outdoor advertising to allow Indiana law to be in compliance with federal law.¹⁰⁴ Finally, a provision of this law eliminates the ninety-five-foot overall length restriction for manufactured home transports.¹⁰⁵

Fifth, the general assembly modified aspects of emergency planning and notification. A provision of this law specifies that money distributed by the IDSR from the Local Emergency Planning and Right to Know Fund that is used to enhance communication among local emergency planning committees and between local emergency planning committees and the Indiana State Emergency Response Commission is allocated to the Indiana State Emergency Response Commission and administered by the Department of Environmental Management.¹⁰⁶ Another provision of this law specifies that the notification requirements in the law concerning emergency planning and notification apply to the transportation, or storage incident to transportation, of an extremely hazardous substance.¹⁰⁷

Sixth, the general assembly provided legislation which affects mayoral appointments and the Lake County Convention & Visitor Bureau (Bureau). A provision of this law allocates a portion of the Lake County innkeeper's tax to the Bureau.¹⁰⁸ Another provision of this law requires the Bureau to establish a fund consisting of its allocation.¹⁰⁹ Also, this law contains a provision that requires the Bureau to elect a chairman and a vice chairman from among the Bureau's members.¹¹⁰ This law includes a provision which provides for the appointment of members of the board of directors of the Hammond Port Authority.¹¹¹ Another provision included in this law provides that an appointed board member of a political subdivision may only serve sixty days after the expiration of the member's term, even if the appointing authority has not appointed a successor.¹¹² Further, a provision of this law makes conforming changes in statutes governing specific boards of political subdivisions, including mayoral appointments to the board of public works and safety of a second or third class city.¹¹³

Seventh, the general assembly modified prior legislation relating to controlled substance offenses by changing the controlled substance excise tax law. A provision of this law specifies that the amount of the controlled substance excise

103. *Id.* § 8-2.1-24-18(g) (effective July 1996).

104. *Id.* § 8-23-1-43 (retroactive to January 1, 1996).

105. *Id.* § 9-13-2-171(1) (effective March 21, 1996).

106. *Id.* § 6-6-10-7 (effective July 1, 1996).

107. *Id.*

108. *Id.* § 6-9-2-2 (effective July 1, 1996).

109. *Id.* § 6-9-2-2(b).

110. *Id.* § 6-9-2-3(m) (effective July 1, 1996).

111. *Id.* § 8-10-5-5 (effective March 21, 1996).

112. *Id.* § 36-4-11-2(f) (effective July 1, 1996).

113. *Id.* §§ 36-4-9-6, -8 (effective July 1, 1996).

tax is: on each gram of marijuana, \$3.50 for each gram¹¹⁴ and a proportionate amount for each fraction of a gram; on each pill, capsule, hit, rock, or dosage of a schedule I, II, or III controlled substance, \$40;¹¹⁵ on each pill, capsule, hit, rock, or dosage of a schedule IV controlled substance, \$20;¹¹⁶ on each pill, capsule, hit, rock, or dosage of schedule V controlled substance, \$10.¹¹⁷ Further, a provision of this law extends the period for which evidence of payment of tax issued by the IDSR is effective from forty-eight hours to thirty days.¹¹⁸ Another provision of this law removes a provision that made it a Class D felony for a person to knowingly or intentionally deliver, possess, or manufacture a controlled substance without having paid the controlled substance excise tax that was due.¹¹⁹ This law also contains a provision which gives a court the discretion of ordering the IDSR to commence collection proceedings for the tax and penalties if the court finds that a defendant has not paid the tax.¹²⁰ Further, a provision of this law allows the IDSR to commence collection proceedings if the prosecuting attorney notifies the IDSR in writing that the prosecutor does not intend to pursue criminal charges of delivery, possession, or manufacture of the controlled substance that may be subject to tax.¹²¹ This law includes a provision that specifies that the controlled substance tax is intended to be in addition to certain criminal penalties.¹²² Another provision included in this law removes juvenile court jurisdiction over children at least sixteen years of age charged with violating certain controlled substance statutes.¹²³ Finally, this law provides that a family housing complex, for purposes of criminal law, is a building or series of buildings that contains at least twelve dwelling units from which children are not excluded by means of prominently displayed signage.¹²⁴ This law raises the penalties for dealing or possessing: a controlled substance; cocaine; a narcotic drug; marijuana; hash oil; or, hashish if the offense is committed in, on, or within 1000 feet of a family housing complex.¹²⁵

Eighth, the general assembly included legislation that affects public finance. A provision of this law increases the homestead credit against property taxes from 4% to 8% for 1996, and from 4% to 6% for 1997.¹²⁶ Another provision of this law retroactively accelerates to the 1996 registration year the motor vehicle excise tax

114. *Id.* § 6-7-3-6(b)(2) (effective July 1, 1996).

115. *Id.* § 6-7-3-6(b)(3).

116. *Id.* § 6-7-3-6(b)(5).

117. *Id.* § 6-7-3-6(b)(7).

118. *Id.* § 6-7-3-10(b) (effective July 1, 1996).

119. Act of Mar. 14, 1996, No. 65, § 4, 1996 Ind. Acts 1579, 1580-81.

120. IND. CODE § 6-7-3-18 (Supp. 1996).

121. *Id.* § 6-7-3-19 (effective July 1, 1996).

122. *Id.* § 6-7-3-20 (effective July 1, 1996).

123. *Id.* § 31-6-2-1.1(c)(12) to -(14) (effective July 1, 1996) (repealed 1997) (to be recodified at IND. CODE § 31-30-1-4(a)).

124. *Id.* § 35-41-1-10.5 (effective July 1, 1996).

125. *Id.* §§ 35-48-4-1 to -10 (effective July 1, 1996).

126. *Id.* § 6-1.1-20.9-2(d) (retroactive to January 1, 1996).

schedule applicable to the 2001 registration year and provides for a refund of excise tax overpayments made in 1996.¹²⁷ This law contains a provision that appropriates \$200,000,000 to the Pension Stabilization Fund from the State General Fund,¹²⁸ and it also appropriates \$50,000,000 to the Pension Relief Fund from the State General Fund.¹²⁹ Also, this law changes the formula for distribution of money under the "m" portion of the Pension Relief Fund.¹³⁰ Another provision of this law accelerates the amount payable from the property tax relief fund to political subdivisions so that all distributions currently required in April, May, and June are payable in March, April, and May.¹³¹ Another provision of this law makes an appropriation from the State General Fund in the amounts needed, if any, to transfer the full \$30,000,000 annual appropriation to the Local Road and Street Account and the full \$20,000,000 annual appropriation to the Indiana Technology Fund.¹³² This law includes a provision that requires pari-mutuel wagering taxes and surplus money in the Charity Gaming Enforcement Fund to be transferred to the lottery and gaming surplus account in the build Indiana fund.¹³³ Another provision included in this law changes the date after which certain university building projects are eligible for fee replacement appropriations from July 1, 1999, to July 1, 1997.¹³⁴ Finally, this law changes the effective date of several provisions in the budget bill enacted in 1995 to change the date when certain university capital projects are authorized.¹³⁵

Ninth, the general assembly imposed requirements and provided allowances that affect local government taxation. A provision of this law requires the legislative body of a municipality outside Marion County to hold a public hearing before adopting an annexation ordinance.¹³⁶ Another provision of this law allows municipalities to abate the property tax liability of property owners in annexed territory for not more than three years after an annexation occurs.¹³⁷ A provision included in this law specifies that if a judgment is adverse to annexation, a municipality outside Marion County may not attempt to annex territory less than two years after the latest of certain events.¹³⁸ Another provision included in this law allows Greene Township in St. Joseph County and Deer Creek Township in Miami County to appeal to the Local Government Tax Control Board to adjust the townships' 1997 maximum ad valorem property tax General Fund and

127. *Id.* § 6-6-5-5(c) (retroactive to January 1, 1996).

128. Act of Feb. 22, 1996, No. 26, § 18, 1996 Ind. Acts 1163, 1189 (expires July 1, 1997).

129. *Id.* § 19, 1996 Ind. Acts at 1189 (expires July 1, 1997).

130. IND. CODE § 5-10.3-11-4 (Supp. 1996) (effective January 1, 1997).

131. *Id.* § 6-1.1-2-10(c) (retroactive to January 1, 1996).

132. Act of Feb. 22, 1996, No. 26, § 11, 1996 Ind. Acts at 1186 (expires July 1, 1997).

133. IND. CODE § 4-31-9-3 (Supp. 1996) (retroactive to January 1, 1996).

134. Act of Feb. 22, 1996, No. 26, § 13, 1996 Ind. Acts at 1187 (effective July 1, 1997).

135. *Id.* §§ 14-15, 1996 Ind. Acts at 1187 (effective July 1, 1997).

136. IND. CODE § 36-4-3-2.1 (Supp. 1996) (effective July 1, 1996).

137. *Id.* § 36-4-3-8.5(b)(1) (effective July 1, 1996).

138. *Id.* § 36-4-3-15 (effective July 1, 1996).

Firefighting Fund levies.¹³⁹ Finally, this law contains a provision which allows Decatur County to use E-911 funds to pay for emergency communication costs.¹⁴⁰

II. INDIANA TAX COURT OPINIONS AND DECISIONS

The tax court published twelve opinions during 1996,¹⁴¹ the most interesting of which are discussed below. The opinions are presented under an alphabetical listing of the Indiana taxes involved in each case.

A. *Indiana Income Taxes—Indiana Gross Income Tax (IGIT)*

In *UACC Midwest, Inc. v. Indiana Department of State Revenue*,¹⁴² the taxpayer, a cable television operator, appealed a final determination of the Department of Revenue finding that UACC's gross income should be taxed at the rate of one and two-tenths percent (1.2%) rather than at the rate of three-tenths of one percent (0.3%).¹⁴³

The Indiana Gross Income Tax Act imposes a tax upon the receipt of: "(1) the entire taxable gross income of a taxpayer who is a resident or a domiciliary of Indiana; and (2) the taxable gross income derived from activities or businesses or any other sources within Indiana by a taxpayer who is not a resident or a domiciliary of Indiana."¹⁴⁴ The gross income tax is imposed at one of two rates: 0.3% or 1.2%.¹⁴⁵ In determining which of the two rates is to be applied, "the type of transaction from which the taxable gross income is received" governs.¹⁴⁶ Gross income received from, inter alia, selling at retail is taxed at the 0.3% rate.¹⁴⁷ The

139. Act of Mar. 21, 1996, No. 231, § 4, 1996 Ind. Acts 2747, 2749.

140. *Id.* § 5 (expires July 1, 1998).

141. During 1996, the tax court had issued the following twelve published opinions, as of November 8, 1996, which opinions are listed chronologically: *Boshart v. State Bd. of Tax Comm'rs*, 672 N.E.2d 499 (Ind. T.C. 1996); *State ex rel. ANR Pipeline Co. v. Indiana Dep't of State Revenue*, 672 N.E.2d 91 (Ind. T.C. 1996); *Vonnegut v. State Bd. of Tax Comm'rs*, 672 N.E.2d 87 (Ind. T.C. 1996); *National Ass'n of Miniature Enthusiasts v. State Bd. of Tax Comm'rs*, 671 N.E.2d 218 (Ind. T.C. 1996); *Monarch Steel Co. v. State Bd. of Tax Comm'rs*, 669 N.E.2d 199 (Ind. T.C. 1996); *Raintree Friends Housing, Inc. v. Indiana Dep't of State Revenue*, 667 N.E.2d 810 (Ind. T.C. 1996); *UACC Midwest, Inc. v. Indiana Dep't of State Revenue*, 667 N.E.2d 232 (Ind. T.C. 1996); *Town of St. John v. State Bd. of Tax Comm'rs*, 665 N.E.2d 965 (Ind. T.C.), *rev'd sub nom.* 675 N.E.2d 318 (Ind. 1996); *Encyclopaedia Britannica, Inc. v. State Bd. of Tax Comm'rs*, 663 N.E.2d 1230 (Ind. T.C. 1996); *Storm, Inc. v. Indiana Dep't of State Revenue*, 663 N.E.2d 552 (Ind. T.C. 1996); *Riley at Jackson Remonstrance Group v. State Bd. of Tax Comm'rs*, 663 N.E.2d 802 (Ind. T.C. 1996); *Indiana Hi-Rail Corp. v. State Bd. of Tax Comm'rs*, 660 N.E.2d 1084 (Ind. T.C. 1996).

142. 667 N.E.2d 232 (Ind. T.C. 1996).

143. *See* IND. CODE § 6-2.1-2-3 (1993).

144. *Id.* § 6-2.1-2-2 (1993).

145. *Id.* § 6-2.1-2-3.

146. *Id.* § 6-2.1-2-2.

147. *Id.* § 6-2.1-2-4.

1.2% rate, however, applies to gross income received from, inter alia, the provision of services.¹⁴⁸ UACC claimed that its income should be taxed at the rate of 0.3% rather than 1.2% because it is received in the course of “selling at retail” under section 6-2.1-2-4, and not from “the provision of a service” under section 6-2.1-2-5. In other words, UACC argued that its income is derived from the sale of cable television programming.

The tax court found that, for purposes of the Gross Income Tax Act, the term, “selling at retail,” has a definition that does not include the sale of cable television programming.¹⁴⁹ Selling at retail means a transaction in which a retail merchant in the ordinary course of his regularly conducted business transfers the ownership of *tangible personal property* to another.¹⁵⁰ Under this definition, UACC is not “selling at retail” because cable television programming is not tangible personal property; therefore, UACC’s income is derived from the provision of a service, which income is subject to the 1.2% rate.

UACC also argued that Indiana’s Gross Income Tax Act, as applied to cable television operators, violates several United States and Indiana constitutional protections. First, UACC maintained that it was being denied equal protection of the law under the Fourteenth Amendment and article I, section 23 of the Indiana Constitution. More specifically, UACC argued that it is similarly situated to conventional television broadcasters and/or telephone and telegraph companies. In Indiana, the gross income of conventional television broadcasters is either wholly exempt from taxation,¹⁵¹ or taxed at the rate of 0.3%;¹⁵² telephone and telegraph companies are exempt from taxation altogether under the Commerce Clause. The tax court found, however, that UACC is not similarly situated to conventional television broadcasters or telephone and telegraph companies because it receives its income from different sources.¹⁵³ Specifically, UACC receives its income by charging its viewers for cable television programming—the provision of a local service¹⁵⁴ (only residents of Indiana subscribe to, and pay for, UACC’s programming). Conventional television broadcasters receive their income from non-viewer sources, such as media advertising.¹⁵⁵ Telephone and telegraph companies receive their income from consumers who make phone calls—an activity which triggers simultaneous activity in several states and which is not a purely local event.¹⁵⁶ Consequently, the Indiana Gross Income Tax Act did not violate UACC’s equal protection rights.

Next, UACC argued that the Indiana Gross Income Tax Act violates the

148. *Id.* § 6-2.1-2-5 (Supp. 1996).

149. *See id.* § 6-2.1-2-1(b)(1) (1993); *see also* IND. ADMIN. CODE tit. 45, r. 1-1-13 (1996).

150. *See* IND. CODE § 6-2.1-2-1(b)(1).

151. *See id.* § 6-2.1-3-28 (1993).

152. *See id.* § 6-2.1-2-4(2).

153. *UACC Midwest v. Indiana Dep’t of State Revenue*, 667 N.E.2d 232, 239 (Ind. T.C. 1996).

154. *See id.*

155. *See id.*

156. *See id.* at 238-40.

expressive activities of cable television operators protected by the First Amendment. Specifically, UACC argued that the Indiana Gross Income Tax Act singles out cable television operators for payment of taxes at a higher rate, while other identically situated electronic speakers (i.e., local network affiliates, wireless broadcasters, and radio operators) pay taxes at a lower rate.

The tax court resolved this argument easily “Indiana’s gross income tax is a tax of general applicability. It applies to the receipt of all income from the sale of tangible personal property and a broad range of services.¹⁵⁷ Indiana’s gross income tax does not single out the press or raise concerns about censorship of critical ideas and opinions.¹⁵⁸ Similarly, Indiana’s gross income tax is also not content-based.¹⁵⁹ Indeed, nothing in the tax’s imposition statutes refers to the content of media communications. Because the Indiana Gross Income Tax Act does not discriminate on the basis of ideas, but only on the source of income, the tax court found that it does not violate the protections afforded to UACC under the First Amendment.¹⁶⁰

Finally, UACC argued that the Indiana Gross Income Tax Act conflicts with, and is preempted by, the Cable Communications Policy Act of 1984 (the Cable Act).¹⁶¹ Specifically, UACC argued that Indiana’s gross income tax constitutes an unduly discriminatory “franchise fee” prohibited under the Cable Act. The tax court disagreed, finding that although the Cable Act protects cable operators from excessive “franchise fees”¹⁶² imposed by state and local governments, the act does not cover “any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable subscribers).”¹⁶³

B. Indiana Carrier Fuel Taxes—Indiana Special Fuel Tax

In *Storm, Inc. v. Indiana Department of State Revenue*,¹⁶⁴ the tax court held that, in the absence of a written agreement, special fuel dealers (i.e. station operators) are liable to the Department for special fuel taxes on the special fuel that they deliver or place into the fuel supply tanks of motor vehicles in Indiana.

C. Indiana Procedures For Tax Administration—Indiana Department of State Revenue (IDSR)

157. *Id.* at 242.

158. *See id.* (citing *Leathers v. Medlock*, 499 U.S. 439, 447 (1991)).

159. *Id.*

160. *Id.*

161. Pub. L. No. 98-549, 98 Stat. 2779 (codified as amended at scattered sections of U.S.C.).

162. *See* 47 U.S.C. § 542(g)(1) (1994) (A “franchise fee” is defined as “any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator . . . solely because of [its] status as such.”).

163. *UACC Midwest*, 667 N.E.2d at 242 (quoting 47 U.S.C. § 542(g)(2) (1994)).

164. 663 N.E.2d 552 (Ind. T.C. 1996).

In *State ex rel. ANR Pipeline Co. v. Indiana Department of State Revenue*,¹⁶⁵ the issue was whether the IDSR had the authority to revoke a Letter of Findings. The taxpayer had protested an unfavorable audit report received from the IDSR. The IDSR, in response, issued a Letter of Findings sustaining the taxpayer's protest. Subsequently, the IDSR issued a second Letter of Findings (second Letter), reversing the position it had taken in the first Letter of Findings (first Letter). The IDSR stated in the second Letter that the purpose of the second Letter was: (1) to correctly state the IDSR's position as it related to the issue that affected the taxpayer, and (2) to revoke the first Letter. The taxpayer claimed that the first Letter was a final determination of the IDSR that could not be revoked or modified by the IDSR.

At the outset, the tax court found that the first Letter was a proper exercise of the IDSR's authority and constituted a final determination.¹⁶⁶ The IDSR argued that, even if the first Letter was a final determination, the IDSR possessed the power to vacate the first Letter because the first Letter was based on a mistake of law, and the IDSR had the authority to issue the second Letter to correct that mistake of law. The tax court disagreed with this notion, finding that: (1) because administrative agencies (such as the IDSR) are creations of the legislature, they generally cannot exercise powers beyond those specifically granted by the general assembly;¹⁶⁷ (2) all doubts regarding a claim to power by a governmental agency are resolved against the agency;¹⁶⁸ and (3) administrative bodies may not usually rescind their final determination absent some statutory provision granting that authority.¹⁶⁹ Of course, as the tax court noted, this rule is not absolute in all cases, for "[w]hen an administrative agency recognizes its own error of law, it may correct that error."¹⁷⁰ However, the IDSR had failed to cite to a statute, legal principle, or change in case law that was neglected or misapplied to the facts, which citation would have been necessary in order to show that an error of law had occurred.

The IDSR also argued that because it could have denied the taxpayer's request in the first Letter, it should be permitted to revoke its approval of that request, whether through a second Letter or otherwise. The tax court found this argument no more persuasive today than it was to the Indiana Supreme Court in 1926 when the high court explained that the "power to undo an act once done will not be implied from the mere grant of power, in the exercise of a sound discretion, to do the act."¹⁷¹ "[A]n act once done . . . cannot be undone and nullified unless the

165. 672 N.E.2d 91 (Ind. T.C. 1996).

166. *Id.* at 94.

167. *Id.* (citing *Auburn Foundry, Inc. v. State Bd. of Tax Comm'rs*, 628 N.E.2d 1260, 1263 (Ind. T.C. 1994)).

168. *Id.* (citing *Adkins v. City of Tell City*, 625 N.E.2d 1298, 1302 (Ind. Ct. App. 1993)).

169. *Id.* (citing *Auburn Foundry*, 628 N.E.2d at 1263).

170. *Id.* (citing *Adkins*, 625 N.E.2d at 1302).

171. *Cress v. State*, 152 N.E. 822, 826 (Ind. 1926).

power to undo it has been reserved."¹⁷² In other words, absent clear authority from the legislature, the IDSR may not revoke a final determination merely because it has a change of heart.¹⁷³ Because the IDSR failed to cite to any such authority, the tax court was obligated to resolve the claim against the IDSR.

The tax court also noted that even if the circumstances of this particular case would have permitted the IDSR to revisit its first decision, the IDSR would have forfeited any such authority by failing to act within a reasonable amount of time.¹⁷⁴ In Indiana, a reasonable period of time has been defined, in this context, as "co-extensive with the time allowed by the controlling statute for review."¹⁷⁵ A taxpayer has one hundred eighty days after the date on which a Letter of Findings is issued in which to seek an appeal.¹⁷⁶ In this case, the IDSR had issued the second Letter eleven months after the first Letter and five months after the time provided for taking an appeal.

D. Indiana Procedures for Tax Administration—Indiana State Board of Tax Commissioners (ISBTC)

In *Riley at Jackson Remonstrance Group v. State Board of Tax Commissioners*,¹⁷⁷ the tax court ruled that the Director of the Indiana Department of Education's Division of School Facility Planning, and not the ISBTC, is responsible for determining compliance with section 20-5-52-2(a) of the Indiana Code (whether a proper "1028" hearing has been held in the context of school building construction, repair and/or alteration).¹⁷⁸ The statute itself is silent as to whether it is the ISBTC or the Department of Education which has the responsibility for determining whether a proper 1028 hearing has been held.¹⁷⁹ However, the ISBTC and the Department of Education had issued a joint memorandum stating that the Department of Education's Division of Accreditation and Facility Planning would be responsible for determining compliance with the 1028 public hearing requirement. The tax court gave special emphasis to the fact that "a long adhered-to administrative interpretation [of a statute] dating from the legislative enactment, with no subsequent change having been made in the statute involved, raises a presumption of legislative acquiescence which is strongly persuasive upon the courts."¹⁸⁰ Accordingly, the tax court found that on these

172. *Id.* at 826.

173. *ANR Pipeline*, 672 N.E.2d at 95.

174. *See Indiana Civil Rights Comm'n v. Indiana Dep't of Aging & Community Servs.*, 529 N.E.2d 872, 876 (Ind. Ct. App. 1988); *Dale Bland Trucking, Inc. v. Calcar Quarries, Inc.*, 417 N.E.2d 1157, 1160 (Ind. Ct. App. 1981).

175. *See Dale Bland*, 417 N.E.2d at 1160.

176. IND. CODE § 6-8.1-5-1(g) (1993).

177. 663 N.E.2d 802 (Ind. T.C. 1996).

178. The public hearing required called a "1028" hearing because it came to be law via House Bill 1028. *See id.* at 804 n.1.

179. IND. CODE § 20-5-52-2 (1993).

180. *Riley*, 663 N.E.2d at 806 (quoting *Indiana Dep't of State Revenue v.*

facts a presumption existed that the legislature had acquiesced in the two agencies' interpretation of the statute because: (1) the joint memorandum was issued just two months after the statute became effective, and (2) in the fourteen years that the statute had been in existence, the legislature had taken no action to change or amend it.

E. Indiana Property Taxes—Business Personal Property Tax

In *Encyclopaedia Britannica, Inc. v. State Board of Tax Commissioners*,¹⁸¹ Encyclopaedia Britannica (EB), the renowned encyclopedia publisher, appealed a final determination of the ISBTC denying EB an inventory exemption from Indiana's business personal property tax for the March 1, 1993 assessment date.

In preparing its encyclopedias for publication, EB sends new and/or revised editions to various companies for printing and binding. One such company was R.R. Donnelley & Sons (RRD), located in Crawfordsville, Indiana. EB had hired RRD as an independent contractor to print, bind, and mass produce some of its books. RRD placed completed books into shipping boxes and stored them in its warehouse until EB directed that they be shipped to certain locations. EB directed and controlled RRD's printing and binding work to the extent that EB: (1) established a mandatory production schedule, (2) established mandatory product specifications, (3) inspected the quality of materials supplied and used by RRD, and (4) inspected samples of both work in progress and completed books.

EB claimed that the books stored in RRD's warehouse on the March 1, 1993, assessment date were exempt from taxation under section 6-1.1-10-29(b) of the Indiana Code, which provides: "Personal property owned by a manufacturer or processor is exempt from property taxation if the owner is able to show by adequate records that the property is stored and remains in its original package in an in-state warehouse for the purpose of shipment, without further processing, to an out-of-state warehouse." The ISBTC, however, maintained that EB's books were not exempt from taxation because EB was not the "manufacturer" or "processor" of the books.

The terms "manufacturer" and "processor," as they are used in section 6-1.1-10-29(b), are defined as: "a person that performs an operation or continuous series of operations on raw materials, goods, or other personal property to alter the raw materials, goods, or other personal property into a new or changed state or form. The operation may be performed by hand, machinery, or a chemical process directed or controlled by an individual."¹⁸² Relying on this definition, EB argued that it (EB) was the "manufacturer" or "processor" of the books at issue because it performed a series of operations necessary to create the books. In the alternative, EB argued that it must be considered the "manufacturer" or "processor" of the books at issue because it directed or controlled RRD's manufacturing operations. The tax court rejected both arguments.

Glendale-Glenbrook Assoc., 429 N.E.2d 217, 219 (Ind. 1981)).

181. 663 N.E.2d 1230 (Ind. T.C. 1996).

182. IND. CODE § 6-1.1-10-29(a) (Supp. 1996).

The tax court found that, although there was no doubt that EB performed a series of operations (editorial work) necessary to create the books at issue, such operations were not performed on raw materials, goods, or other tangible personal property as required by section 6-1.1-10-29(a).¹⁸³

EB insisted it took already existing, outdated books and, by performing editorial work, changed them into revised, updated books. The tax court disagreed and, relying on a literal reading of the statute, concluded that EB's editorial work did not consist of manual, mechanical, or chemical operations performed on books.¹⁸⁴ Rather, EB's editorial work was an intellectual or cerebral operation performed by composing and arranging facts, ideas, and words.¹⁸⁵

EB also insisted that the language "directed or controlled by an individual" in section 6-1.1-10-29(a) established that persons who relegate manufacturing work to others are entitled to claim the exemption provided by section 6-1.1-10-29(b)—so long as those persons direct and control the others' work. In essence, EB was encouraging the tax court to read section 6-1.1-10-29(a) as conferring the status of "manufacturer" on two types of persons: (1) persons who themselves perform manufacturing work, and (2) persons who direct and control the manufacturing work they relegate to others. The tax court rejected such a reading, finding the language of the statute unambiguous.

The first sentence of section 6-1.1-10-29(a) provides that in order for a person to qualify as a "manufacturer" or "processor," that person must perform "an operation or continuous series of operations on raw materials, goods, or other [tangible] personal property to alter the raw materials, goods, or other [tangible] personal property into a new or changed state or form." The second sentence in section 6-1.1-10-29(a) provides that the operation or continuous series of operations referred to in the first sentence of section 6-1.1-10-29(a) may be performed by: (1) hand, (2) machinery, or (3) a chemical process directed or controlled by an individual.

The tax court held that the second sentence of section 6-1.1-10-29(a) did not extend the status of "manufacturer" or "processor" to persons who "direct and control" the manufacturing work they relegate to others. Rather, the second sentence simply explained that the term "operation," as used in the first sentence, is not limited to manual operations, but includes mechanical operations and chemical operations performed by individuals as well.¹⁸⁶

Interestingly, section 6-1.1-10-29 was amended on March 10, 1996. The amendment added the following emphasized language:

As used in this section, "manufacturer" or "processor" means a person that performs an operation or continuous series of operations on raw materials, goods, or other personal property to alter the raw materials, goods, or other personal property into a new or changed state or form.

183. *Encyclopaedia Britannica*, 663 N.E.2d at 1233.

184. *Id.*

185. *Id.*

186. *Id.* at 1234.

The operation may be performed by hand, machinery, or a chemical process directed or controlled by an individual. The terms include a person that: (1) dries or prepares grain for storage or delivery; or (2) *publishes books or other printed materials*.¹⁸⁷

This amendment to was effective retroactive to January 1, 1996, however, and so was not applicable to EB's 1993 assessment.

F. Indiana Real Property Taxes—Tax On Public Utility Companies' Distributable Property

In *Indiana Hi-Rail Corporation v. State Board of Tax Commissioners*,¹⁸⁸ Indiana Hi-Rail Corporation (IHR), a railroad company with real and personal property located in Indiana, challenged the ISBTC's final determination assessing its distributable property.¹⁸⁹

Over a number of years IHR received federal grant money, which was used to purchase property such as rail, ties, and ballasts (grant property). IHR recorded the acquisition cost of the grant property in its books, and included the grant property in the statement it filed with the ISBTC for the March 1, 1994, assessment date. Additionally, IHR spent money repairing a bridge that it owns, which expenditure was recorded on its books as a capital expenditure.

For the March 1, 1994, assessment date, the ISBTC issued a tentative assessment of IHR's distributable property. In arriving at its tentative assessment, the ISBTC was required to calculate IHR's unit value,¹⁹⁰ and in calculating IHR's unit value, the ISBTC utilized the cost of the grant property and bridge work as recorded in IHR's books.

IHR objected to the tentative assessment for two reasons. First, IHR argued that the ISBTC relied solely on the book cost of the grant property and ignored the fact that a portion of the value of the grant property was subject to the federal government's "constructive beneficial interest" which, IHR insisted, is not taxable.¹⁹¹ The tax court held that, regardless of whether United States fully or partially owned the grant property, the ISBTC "had authority to assess IHR for the grant property based on the fact that IHR uses it."¹⁹² "[A] State may . . . raise

187. IND. CODE § 6-1.1-10-29(a)(2).

188. 660 N.E.2d 1084 (Ind. T.C. 1996).

189. Distributable property is "property owned or used by a public utility company that is not locally assessed real property or locally assessed personal property." See IND. ADMIN. CODE tit. 50, r. 5.1-1-9 (1996).

190. "The term 'unit value' means the total value of all property owned or used by a public utility company." IND. CODE § 6-1.1-8-2(16) (1993).

191. The property of the United States and its agencies and instrumentalities is exempt from property taxation to the extent that this state is prohibited by law from taxing it. However, any interest in tangible property of the United States shall be assessed and taxed to the extent this state is not prohibited from taxing it by the Constitution of the United States. *Id.* § 6-1.1-10-1(a).

192. *Indiana Hi-Rail*, 660 N.E.2d at 1088 (citing IND. CODE 6-1.1-8-1 (1993)). The property owned or used by a public utility company shall be taxed in the manner prescribed in this chapter.

revenues on the basis of property owned by the United States as long as that property is being used by a private citizen or corporation and so long as it is the possession or use by the private citizen that is being taxed."¹⁹³

Second, IHR asserted that the value of the work performed on the bridge was not assessable because it was not a "betterment,"¹⁹⁴ or, alternatively, that if the value of the work performed on the bridge was assessable, then it should have been adjusted to account for abnormal obsolescence. Due to the standard of review for cases involving public utility companies who appeal a final determination of the ISBTC,¹⁹⁵ the tax court deferred to the ISBTC's determination that the repair work performed on the bridge was assessable as a "betterment."¹⁹⁶ As for the abnormal obsolescence adjustment, the tax court found that, because the bridge was repaired and fully restored to service prior to the March 1, 1994 assessment, IHR was not entitled to an abnormal obsolescence adjustment.¹⁹⁷

IHR also attempted, unsuccessfully, to persuade the tax court that the methodology employed by the ISBTC to assess IHR's property violated Indiana law and/or the Equal Protection Clause.

G. *Indiana Property Taxes—Real Property Taxes*

In *Vonnegut v. State Board of Tax Commissioners*,¹⁹⁸ the taxpayer appealed a final determination of the ISBTC assessing his residential land, which land is located on the corner of Spring Mill Road and on the edge of the Spring Mill Court Subdivision. Specifically, the taxpayer maintained that a Land Order—promulgated by the Marion County Land Valuation Commission and the ISBTC and used to assess the taxpayer's property—was inequitable because the base rates of nearly identical properties, located on the opposite side of Spring Mill Road but still in the taxpayer's neighborhood, were \$100 less per front foot. The ISBTC argued that the values were correctly determined according to the plat map for the Spring Mill Court Subdivision, and that although properties on the opposite side of Spring Mill Road were in the same neighborhood, they were not in the same subdivision and therefore were irrelevant to the taxpayer's appeal. The tax court, siding with the taxpayer, referred to some of its own prior cases to reemphasized the importance of considering the value of surrounding properties in the same "neighborhood," not just the same subdivision, when conducting

Property used by a public utility company consists of property which the company uses under an agreement whereby the company exercises the beneficial rights of ownership for the major part of a year). IND. CODE § 6-1.1-8-1.

193. See *United States v. County of Fresno*, 429 U.S. 452, 462 (1977).

194. See IND. ADMIN. CODE tit. 50, r. 5.1-6-2(e) (1996).

195. See IND. CODE § 6-1.1-8-32 (1993).

196. *Indiana Hi-Rail*, 660 N.E.2d at 1089.

197. *Id.* See IND. ADMIN. CODE tit. 50, r. 5.1-11-1 (1996).

198. 672 N.E.2d 87 (Ind. T.C. 1996).

assessments.¹⁹⁹ The tax court also referred to the ISBTC's own regulations, which have a similar emphasis.²⁰⁰ Because the ISBTC failed to consider comparable properties outside of the taxpayer's subdivision in making its assessment, the tax court found that the ISBTC had acted in an arbitrary and capricious manner, which constituted an error of law.

H. Charitable Exemption From Indiana Taxes

1. *Raintree Friends Housing, Inc. v. Indiana Department of State Revenue.*²⁰¹—In *Raintree Friends*, Raintree Friends Housing and Jamestown Friends Housing (the Corporations) appealed final determinations of the IDSR assessing them with gross income tax, sales tax, and food and beverage tax. The issue before the tax court was whether the Corporations are organized and operated exclusively for charitable purposes, and thus are exempt from Indiana's gross income tax, sales tax, and food and beverage tax.

Prior to the dispute with the IDSR, the Corporations had received recognition as not-for-profit, tax-exempt charitable organizations under section I.R.C. § 501(c)(3), and, accordingly, did not owe federal income tax for the periods at issue.

The Corporations also received not-for-profit status from the IDSR based upon the IRS 501(c)(3) ruling. However, after conducting an audit the IDSR determined that the Corporations did not qualify for tax-exempt status in Indiana. The IDSR did not dispute the Corporations' not-for-profit status nor the fact that the Corporations do not use gross income for private benefit or gain. The IDSR did, however, dispute the contention that the Corporations are operated exclusively for charitable purposes.

The Corporations argued that they exist solely to care for the elderly (a charitable purpose), and that such care benefits society by relieving a burden society would otherwise shoulder. For example, the Corporations cater to the elderly, and do not accept individuals younger than age fifty-five; each apartment is equipped with hallway and bathroom grab bars, as well as emergency pull cords and smoke detectors which alert the twenty-four-hour support services office; some of the apartments are specially designed to accommodate persons in wheel chairs; on-site cafeterias serve three meals each day seven days a week; qualified nurses aids or L.P.N.s are on staff to assist residents with their medications and

199. See *id.* at 90 (citing *Simmons v. State Bd. of Tax Comm'rs*, 642 N.E.2d 559, 561-62 (Ind. T.C. 1994); *Western Select Properties v. State Bd. of Tax Comm'rs*, 639 N.E.2d 1068, 1074 (Ind. T.C. 1994)).

200. *Id.* "The County Land Valuation Commission should use plat maps or recorded plats as land value maps. . . . Each *neighborhood* can be delineated based on characteristics that distinguish it from surrounding neighborhoods, such as value ranges of improvements, zoning, or other restrictions on land use. *Neighborhood* boundaries may be drawn based on these kinds of characteristics, or may coincide with major roads, waterways, or other geographic features." IND. ADMIN. CODE tit. 50 r. 2.1-2-1(a).

201. 667 N.E.2d 810 (Ind. T.C. 1996).

provide other minor medical testing and assistance; an activities director plans on and off-site social functions, takes residents on errands, and arranges for clergy from the community to come in and conduct Sunday worship services; a variety of pay-for-use services are specially provided for residents who need assistance with tasks such as bathing, doing laundry, housekeeping, scheduling and attending doctor's visits, and running errands; and so forth. The Corporations argued that such charitable activities demonstrate that the Corporations are operated exclusively for charitable purposes, and thus relieve the Corporations of tax liability.

The IDSR, on the other hand, argued that although the Corporations provide services which are worthwhile and beneficial, the income they receive from the operation of those services is unrelated business income, and therefore taxable. In other words, the IDSR argued that the Corporations are not operating for a charitable purpose because the services they offer are no different than those offered by traditional apartment complexes.

The tax court, noting that for purposes of the Indiana gross income tax (and the other taxes at issue) there is no codified definition of "charitable," took its usual route of looking to the plain, ordinary, and usual meaning of charitable and how courts have construed the term.²⁰² The tax court cited to Indiana courts' historically broad construction of the term, "charity," for its conclusion that by meeting the needs of the elderly, namely relief of loneliness, boredom, decent housing that has safety and convenience and is adapted to their age, security, well-being, emotional stability, and attention to problems of health, the Corporations are operated exclusively for charitable purposes.²⁰³ The tax court found, therefore, that the Corporations are exempt from Indiana's gross income tax,²⁰⁴ gross retail tax,²⁰⁵ and food and beverage tax.²⁰⁶

Despite the tax court's findings, the IDSR continued to assert that the Corporations are subject to gross income tax on unrelated trade or business income as defined I.R.C. § 513.²⁰⁷ The tax court responded that § 513 concerns income received by an exempt organization that is not substantially related to the exercise of its charitable purpose or function constituting the basis for its exemption.²⁰⁸ The evidence presented at trial showed that the Corporations' gross income is, in fact, directly related to the charitable purposes for which they are organized and operating.²⁰⁹ Therefore, the tax court held that § 513 does not apply and the

202. *Id.* at 813 (citing IND. CODE § 1-1-4-1(1) (1993)).

203. *Id.* at 814.

204. *See* IND. CODE § 6-2.1-3-20(a) (1993).

205. *See id.* §§ 6-2.5-5-25, -26(b).

206. *See id.* §§ 6-9-12-4, 6-9-25-4(c).

207. "The exemptions provided by [IND. CODE §§ 6-2.1-3-19, 6-2.1-3-20, 6-2.1-3-21, and 6-2.1-3-22] of this chapter do not apply to gross income received by a taxpayer that is derived from an unrelated trade or business, as defined in Section 513 of the Internal Revenue Code." IND. CODE § 6-2.1-3-23 (1993).

208. *See* I.R.C. § 513 (1994).

209. *Raintree Friends Housing, Inc. v. Indiana Dep't of State Revenue*, 667 N.E.2d 810, 816

Housing Corporations are not subject to unrelated trade or business income tax pursuant to section 6-2.1-3-23 of the Indiana Code.²¹⁰

2. *National Ass'n of Miniature Enthusiasts v. State Board of Tax Commissioners*.²¹¹—The National Association of Miniature Enthusiasts (NAME) sought a charitable exemption for its real and personal property.²¹² The property NAME wanted to be exempt from taxation, all located in Hamilton County, Indiana, consists of a dwelling house and an outbuilding (and the land upon which these buildings sit), and personal property. The dwelling house contains a museum, library, and administrative offices. NAME is a not-for-profit organization and was granted a charitable exemption from federal income tax under § 501(c)(3). NAME's application for a charitable exemption from Indiana taxes was rejected in a final determination by the ISBTC. NAME appealed to the tax court and this opinion resulted from the ISBTC's motion for summary judgment.

NAME is a trade association for members of the general public who are interested in miniatures.²¹³ NAME's Articles of Incorporation declare that NAME is organized and operated exclusively for charitable and educational purposes. NAME's stated goals are to: (1) stimulate and enhance the interest and understanding of the general public in the construction and collection of miniatures as historical and creative art forms, (2) provide instruction and training to those members of the general public interested in miniature building and collections through publications, workshops, permanent and temporary exhibitions, programs, conferences and conventions, (3) recognize outstanding achievement in the creation and promotion of miniatures as an art form, (4) stimulate the exchange of information through the support of regional groups of persons interested in miniature building and collecting, and (5) develop a permanent collection and museum devoted to the art of miniature construction for the benefit of the general public. The activities of NAME include publishing the *Miniature Gazette*, a quarterly periodical; sponsoring a national houseparty and several regional houseparties each year; promoting local clubs; maintaining a permanent collection and museum at its headquarters; and conducting workshops on miniatures.

The first floor of the dwelling contains the museum and library. There is no charge for admission to the museum and library; however, they are open to the public only by making an appointment. Workshops on miniatures are also conducted on the first floor. The entire second floor functions as the national headquarters of NAME. NAME employs four persons to publish the *Miniature Gazette* and regional newsletters, plan and present houseparties, and support local clubs.

(Ind. T.C. 1996).

210. *Id.* at 816-17.

211. 671 N.E.2d 218 (Ind. T.C. 1996).

212. *See* IND. CODE § 6-1.1-10-16 (Supp. 1996).

213. Miniatures are miniaturized versions of everyday items, such as buildings, dolls, doll houses, furniture, etc., built to scale.

The tax court wasted no time in concluding that, although “[o]perating a museum for the public and enhancing the public’s knowledge about miniatures is a noble endeavor, such an endeavor does not relieve human want and suffering, two essential requirements for the charitable exemption in Indiana.”²¹⁴ The tax court also noted that by “declaring itself a charity in its Articles of Incorporation, NAME did not change its activities and endeavors into the sort the law recognizes as charitable and therefore entitled to tax exemption.”²¹⁵

NAME also claimed that its property qualifies for an exemption as having an educational purpose.²¹⁶ Indiana’s educational exemption is available to taxpayers who provide instruction and training equivalent to that provided by tax-supported institutions of higher learning and public schools because to the extent such offerings are utilized, the state is relieved of its financial obligation to furnish such instruction.²¹⁷ The tax court found that any educational training provided through NAME’s museum, library, workshops, local clubs, and houseparties are merely incidental to its recreational and hobby activities.²¹⁸

Therefore, the tax court denied NAME an exemption from property taxation as a charitable or educational organization.²¹⁹

214. *Miniature Enthusiasts*, 671 N.E.2d at 221 (citing *Indianapolis Elks Bldg. Corp. v. State Bd. of Tax Comm’rs*, 251 N.E.2d 673, 682-83 (Ind. App. 1969)).

215. *Id.* (citing *Indianapolis Elks*, 251 N.E.2d at 683).

216. IND. CODE § 6-1.1-10-16.

217. *Miniature Enthusiasts*, 671 N.E.2d at 222. *See also* *State Bd. of Tax Comm’rs v. Fort Wayne Sport Club, Inc.*, 258 N.E.2d 874 (Ind. App. 1970). In *Sport Club*, the court denied the exemption because “any educational benefits derived from [the soccer club’s and athletic club’s] operations [were] merely incidental” to the social and recreational activities that were the predominant uses to which the clubs were put. *Sport Club*, 258 N.E.2d at 882.

218. *Id.*

219. *Id.*