

DEVELOPMENTS IN INDIANA TAXATION

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INTRODUCTION

The 111th Indiana General Assembly, the Governor of Indiana, the Indiana Supreme Court, and the Indiana Tax Court each contributed changes and clarifications to the Indiana tax laws in 2000.¹ This Article highlights the more interesting developments for the period of October 1, 1999 through September 30, 2000.²

I. GENERAL ASSEMBLY LEGISLATION

Numerous legislative changes in 2000 impacted Indiana taxation. While many of the changes were made to fine-tune existing laws, some policy changes occurred in each of the following Indiana tax areas: property tax, income tax, tax credits, food and beverage tax, inheritance tax, financial institutions tax, and tax administration.

A. Indiana Property Taxes

The General Assembly enacted several laws affecting Indiana property taxes. For example, the General Assembly amended the law concerning the deduction for rehabilitation or redevelopment of real property in economic revitalization areas (ERA) from the assessed value of property.³ This new law extends the

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1. Hereinafter, at times, the following abbreviations are used in this Article: the Indiana General Assembly is referred to as General Assembly; the Governor of Indiana is referred to as Governor; the Indiana State Board of Tax Commissioners is referred to as ISBTC; the Indiana Department of State Revenue is referred to as IDSR; the Indiana Supreme Court is referred to as supreme court; the Indiana Tax Court is referred to as tax court; and, the terms petitioner, petitioners, taxpayer, and taxpayers are used interchangeably.

2. For comprehensive information concerning the Indiana Tax Court, the Indiana Department of State Revenue, the Indiana State Board of Tax Commissioners, and a variety of other tax items related to Indiana tax laws, visit the Indiana Web Site, *available at* <http://www.ai.org>.

3. See IND. CODE § 6-1.1-12.1-1(1) (2000). An economic revitalization area (ERA) is defined as:

[A]n area which is within the corporate limits of a city, town, or county which has become undesirable for, or impossible of, normal development and occupancy because of a lack of development, cessation of growth, deterioration of improvements or character of occupancy, age, obsolescence, substandard buildings, or other factors which have impaired values or prevent a normal development of property or use of property.

tangible property tax deduction to eligible “[n]ew research and development equipment,” which refers to “tangible personal property that: (A) is installed after June 30, 2000, and before January 1, 2006, in an [ERA] in which a deduction for tangible personal property is allowed.”⁴ The tangible personal property consists of laboratory equipment, research and development equipment, computers and computer software, telecommunications equipment, or testing equipment that “is used in research and development activities devoted directly and exclusively to experimental or laboratory research and development for new products, new uses of existing products, or improving or testing existing products” and that “is acquired by the property owner” for the above stated purposes and which research and development equipment “was never before used by the owner for any purpose in Indiana.”⁵ New research and development equipment excludes “equipment installed in facilities used for or in connection with efficiency surveys, management studies, consumer surveys, economic surveys, advertising or promotion, or research in connection with literacy, history, or similar projects.”⁶

In the same bill, the General Assembly revised the statute concerning the deduction for rehabilitation or redevelopment of real property in ERAs from the assessed value of property with respect to the periods for which the property tax deduction may be granted by the designating body.⁷ For real property located in an area designated as an ERA, other than a residentially distressed area, the real property deduction may be allowed for a period from one to ten years.⁸ In the case of real property located in an ERA which is a residentially distressed area, the period is from one to five years.⁹ In the case of tangible personal property which is located in an ERA, the deduction for the tangible personal property may be allowed for a period from one to ten years.¹⁰ These provisions were effective on July 1, 2000.¹¹

The General Assembly also made three important amendments to the property tax statute. First, the General Assembly amended the statute concerning the real property deduction for rehabilitation or redevelopment of real property in ERAs from the assessed value of property.¹² The amended statute provides

[An ERA] also includes: (A) any area where a facility or a group of facilities that are technologically, economically, or energy obsolete are located and where the obsolescence may lead to a decline in employment and tax revenues; and (B) a residentially distressed area

Id.

4. *Id.* § 6-1.1-12.1-1(12)(A).
5. *Id.* § 6-1.1-12.1-1(12)(B-D)
6. *Id.*
7. *See id.* § 6-1.1-12.1-3.
8. *See id.* § 6-1.1-12.1-3(d).
9. *See id.* § 6-1.1-12.1-3(c).
10. *See id.* § 6-1.1-12.1-4.5(h).
11. *See id.* § 6-1.1-12.1-3.
12. *See id.* § 6-1.1-12.1.

that a designating body may approve a deduction before September 1, 2000 "for the redevelopment or rehabilitation of real property consisting of residential facilities that are located in unincorporated areas of the county if the designating body makes a finding that the facilities are needed to serve . . . [e]lderly persons who are predominately low-income or moderate-income persons [and/or d]isabled persons."¹³ The amended statute, which applies only to St. Joseph County, Indiana,¹⁴ provides that a designating body may adopt an ordinance approving this deduction only one time and the provision expires on January 1, 2011.¹⁵

In addition, the General Assembly enacted statutory provisions concerning the real property deduction for rehabilitation or redevelopment of real property in ERAs from the assessed value of property.¹⁶ The new provisions provide that a designating body may authorize an owner of real property and of manufacturing equipment to relocate such equipment to another piece of real property which is owned by such person and still retain the real property rehabilitation or redevelopment deduction with respect to the original real property, which deduction is granted under section 6-1.1-12 of the Indiana Code.¹⁷ The relocation may be limited to a new location within the same ERA or to a new location within a different ERA, if the ERA is within the jurisdiction of the designating body.¹⁸ Under the new law, the designating body must conduct a public hearing on the matter before authorization can be granted.¹⁹ In addition, the designating body must notify each taxing unit within the original ERA and the new ERA of the proposed resolution.²⁰ If authorization is granted, the designating body must deliver a written copy of the authorization to both the county auditor and the ISBTC within thirty days after the issuance of the authorization.²¹ New manufacturing equipment relocated under this new law remains eligible for the assessed value deduction.²² However, the same deduction percentage is used as if the new manufacturing equipment was not relocated.²³

The General Assembly also amended the statutory provisions concerning the exemption from the real property tax for buildings and land used for educational, literary, scientific, religious or charitable purposes.²⁴ Under the amended statute, the acreage of property that may be exempted from the real property tax is increased from fifty acres to two hundred acres for local associations formed for

13. *Id.* § 6-1.1-12.1-3(f).

14. *See id.*

15. *See id.*

16. *See id.* § 6-1.1-12.1.

17. *See id.* § 6-1.1-12.1-4.6(a).

18. *See id.*

19. *See id.* § 6-1.1-12.1-4.6(b).

20. *See id.*

21. *See id.* § 6-1.1-12.1-4.6(c).

22. *See id.*; *see also id.* § 6-1.1-12.1.

23. *See id.* § 6-1.1-12.1-4.6(c).

24. *See id.* § 6-1.1-10-16.

the purpose of promoting 4-H programs.²⁵ This amendment was effective January 1, 2000.²⁶

In another bill, the General Assembly established a real property tax exemption for certain real property that is or may be located in Marion County, Indiana,²⁷ that has been "constructed, rehabilitated, or acquired for the purpose of providing housing to income eligible persons under the federal low income housing tax credit program."²⁸ The new law permits the City-County Council in Marion County to enter into agreements to accept payments in lieu of real property taxes.²⁹ Such payments in lieu of taxes (PILOTS) must be in amounts equal to the amount of the real property tax that would have been levied by the City-County Council if the real property were not subject to an exemption from the real property tax.³⁰ The PILOTS collected must be deposited into the housing trust fund³¹ and must be used for housing trust fund purposes.³² Specifically, the housing trust fund must be used to enable individuals and families whose incomes equal or are below eighty percent of Marion County's median income for individuals and families to purchase or lease residential units within Marion County; to pay the expenses of administering the fund; "to mak[e] grants, loans, and loan guarantees for the development, rehabilitation, or financing of affordable housing for [such] individuals and families . . . including the elderly, persons with disabilities, and homeless individuals and families;" and to "provid[e] technical assistance to nonprofit developers of affordable housing" for such individuals and families.³³

The General Assembly also amended the statutory provisions concerning the property tax exemptions for public airports.³⁴ Under the amendment, an exemption from the personal property tax is provided for commercial passenger aircraft located in specified counties solely for the purpose of maintenance.³⁵ Presently, this amendment affects Allen County, Indiana, and St. Joseph County, Indiana, and the amendment was effective on January 1, 2001.³⁶

25. *See id.* §§ 6-1.1-10-16(c)(2)(B), 6-1.1-10-16(d)(2)(B).

26. *See id.* § 6-1.1-10-16.

27. *See id.* § 6-1.1-10-16.7.

28. *Id.* § 6-1.1-10-16.7(3); *see also* 26 U.S.C. § 42 (2000) (providing a low-income housing credit).

29. *See* IND. CODE § 6-1.1-10-16.7 (2000).

30. *See id.* § 36-3-2-11(e).

31. *See id.* § 36-7-15.1-35.5.

32. *See id.* § 36-3-2-11(g).

33. *Id.* § 36-7-15.1-35.5(g).

34. *See id.* § 6-1.1-10-15.

35. *See id.* § 6-1.1-10-15(a) (referring to counties having a population of more than 200,000 but less than 400,000 individuals).

36. *See id.* § 6-1.1-10-15.

B. Indiana Income Taxes

The General Assembly amended references to the Internal Revenue Code in certain Indiana income tax statutes. This amendment provides that the term "Internal Revenue Code" means the Internal Revenue Code of 1986 of the United States of America which was in effect on January 1, 1999.³⁷ This amendment applied retroactively as of January 1, 1999³⁸ and similar amendments have been made each year since the enactment of the Indiana Adjusted Gross Income Tax.

C. Indiana Tax Credits

The General Assembly enacted three laws concerning Indiana tax credits. First, the General Assembly amended the statute dealing with the enterprise zone loan interest credit.³⁹ The current law provides that a taxpayer is entitled to the enterprise loan interest credit against certain tax liabilities⁴⁰ that the taxpayer owes to the State of Indiana if the taxpayer receives interest on a qualified loan.⁴¹ Specifically, the amended law provides that a taxpayer claiming the credit is required to: pay the registration fee which is charged to zone businesses,⁴² "provide[] the assistance to urban enterprise associations required from zone businesses,"⁴³ and comply with any requirements adopted by the enterprise zone board for taxpayers claiming the enterprise zone loan interest credit.⁴⁴ However, the amended law provides that if a taxpayer is located outside an enterprise zone, then the taxpayer is not required to reinvest these incentives within the enterprise zone, except with respect to the payment of the registration fee and the providing of assistance to urban enterprise associations.⁴⁵ These requirements apply retroactively as of January 1, 2000.⁴⁶

The General Assembly also extended the expiration date of the research

37. *See id.* § 6-3-1-11(a).

38. *See id.* § 6-3-1-11.

39. *See id.* § 6-3.1-7.

40. *See id.* § 6-3.1-7-1. The statute allows the taxpayer to take such a credit only against the following Indiana taxes: the gross income tax, the adjusted gross income tax, the supplemental net income tax, the bank tax, the savings and loan association tax, the insurance premiums tax, and the financial institutions tax. *See id.*

41. *See id.* § 6-3.1-7-2; *see also id.* § 6-3.1-7-1 (defining a qualified loan as "a loan which is made to an entity that uses the loan proceeds for: (1) a purpose that is directly related to a business located in an enterprise zone; (2) an improvement that increases the assessed value of real property located in an enterprise zone; or (3) rehabilitation, repair, or improvement of a residence").

42. *See id.* § 6-3.1-7-2(a)(2). The amended statute defines the term "zone business" to include any entity that claims certain tax benefits available to businesses located in an enterprise zone. *See id.* § 4-4-6.1-1.1.

43. *Id.* § 6-3.1-7-2(a)(3).

44. *See id.* §§ 4-4-6.1, 6-3.1-7-2(a)(4).

45. *See id.* § 6-3.1-7-2.

46. *See id.* §§ 4-4-6.1-1.1, 6-3.1-7-2.

expense credit.⁴⁷ Under the new provisions, a taxpayer who incurs an Indiana qualified research expense⁴⁸ in a particular taxable year is entitled to a research expense credit against the Indiana gross income tax, the Indiana adjusted gross income tax, and the Indiana supplemental net income tax for the taxable year.⁴⁹ Prior to the amendment, the credit was scheduled to expire on December 31, 1999,⁵⁰ but the amended statute provides that the credit is to expire for expenses incurred after December 31, 2002.⁵¹

The third provision amended the statute concerning the economic development for a growing economy (EDGE) tax credit.⁵² Generally, a taxpayer is entitled to a credit against certain Indiana tax liabilities⁵³ that arose after December 31, 1993, and that the taxpayer owes to Indiana, if the taxpayer is awarded an EDGE tax credit by the EDGE board for that taxable year.⁵⁴ The amended statute permits the EDGE board to award an EDGE tax credit for a specific project located in Hamilton County, Indiana, to a nonprofit organization that is a high growth company with high skilled jobs⁵⁵ and that pays wages of at least seventy-five percent of the organization's total workforce in Indiana and which wages are equal to at least two hundred percent of the average county wage, as determined by the Indiana Department of Commerce, in the county where the project for which the credit is granted will be located. Further, the organization must make an investment of at least fifty million dollars in capital assets and the affected political subdivision must provide substantial financial assistance to the project. Also, the incremental payroll attributable to the project must be at least ten million dollars annually and the organization must agree to pay the ad valorem property taxes on the organization's real property and personal property that would otherwise be exempt under section 6-1.1-10 of the Indiana Code. In addition, the organization must not receive any deductions from the assessed value of the organization's real property and personal property under sections 6-1.1-12 or 6-1.1-12.1 of the Indiana Code and the organization must pay all of its ad valorem property taxes to the taxing units in the taxing district in which the project is located.⁵⁶ The Legislative Services Agency estimates that

47. *See id.* § 6-3.1-4.

48. *See id.* § 6-3.1-4-1 (defining "Indiana qualified research expense" as an expense incurred for research conducted in Indiana; and "qualified research expense" as an expense as defined in 26 U.S.C. § 41(b) (2000)).

49. *See id.* § 6-3.1-4-2(a).

50. *See id.* § 6-3.1-4-6.

51. *See id.*

52. *See id.* § 6-3.1-13.

53. *See id.* § 6-3.1-13-9. The statute allows the taxpayer to take such tax credit only against the following Indiana taxes: the gross income tax; the adjusted gross income tax; the supplemental net income tax; the bank tax; the savings and loan association tax; the insurance premiums tax; and, the financial institutions tax. *See id.*

54. *See id.* § 6-3.1-13-11.

55. *See id.* §§ 4-4-10.9-9.5, 6-3.1-13-27.

56. *See id.* § 6-3.1-13-27(a)(2)(G).

the organization could receive up to \$310,000 in credits each taxable year for no more than ten years based on a \$10 million payroll multiplied by a 3.1% effective state income tax rate.⁵⁷

D. Indiana Food and Beverage Taxes

The General Assembly amended and enacted laws dealing with both the Allen County Food and Beverage Tax⁵⁸ and the Allen County Supplemental Food and Beverage Tax.⁵⁹ The new provisions enable the Allen County fiscal body to impose a supplemental food and beverage tax at a rate not to exceed one percent.⁶⁰ However, the amended law provides that the Allen County Food and Beverage Tax must terminate upon the imposition of the Allen County Supplemental Food and Beverage Tax.⁶¹ According to the Legislative Services Agency, the Allen County Food Beverage Tax generated almost \$3.9 million in revenue in fiscal year 1999.⁶² The new tax applies “to any transaction in which food or beverage is furnished, prepared, or served: (1) for consumption at a location, or on equipment, provided by a retail merchant; (2) in [Allen County]; and (3) by a retail merchant for consideration.”⁶³ Affected transactions

include transactions in which food or beverage is: (1) served by a retail merchant off the merchant's premises; (2) sold by a retail merchant who ordinarily bags, wraps, or packages the food or beverage for immediate consumption on or near the retail merchant's premises, including food or beverage sold on a “take out” or “to go” basis; or (3) sold by a street vendor.⁶⁴

However, the new “tax does not apply to the furnishing, preparing, or serving of any food or beverage in a transaction that is exempt, or to the extent exempt, from the state gross retail [sales] tax imposed by [section 6-2.5 of the Indiana Code].”⁶⁵

The provisions of the new law specify that the revenue from the new tax “may be appropriated only: (1) for acquisition, improvement, remodeling, or expansion of” an athletic and exhibition coliseum in existence before the

57. See LEGISLATIVE SERVICES AGENCY, FISCAL IMPACT STATEMENT, available at http://www.state.in.us/serv/lisa_billinfo?year=2000&request=getBill&doctype=HB&docno=1354 (last visited Mar. 4, 2001).

58. See IND. CODE § 6-9-23 (2000).

59. See *id.* § 6-9-33.

60. See *id.* § 6-9-33-5.

61. See *id.* § 6-9-23-3(d).

62. See LEGISLATIVE SERVICES AGENCY, FISCAL IMPACT STATEMENT, available at http://www.state.in.us/serv/lisa_billinfo?year=2000&request=getBill&doctype=SB&docno=0216 (last visited Mar. 4, 2001).

63. IND. CODE § 6-9-33-4(a) (2000). See also *id.* § 6-2.5-4-1 (defining retail merchant).

64. *Id.* § 6-9-33-4(b).

65. *Id.* § 6-9-33-4(c).

adoption of the tax or “(2) to retire or advance refund bonds issued, loans obtained, or lease payments incurred . . . to remodel, expand, improve, or acquire; an athletic and exhibition coliseum in existence before the” adoption of the tax.⁶⁶ If the Allen County fiscal body imposes the Allen County Supplemental Food and Beverage Tax, then the Allen County Treasurer must establish “a supplemental coliseum improvement fund” and “deposit in this fund all amounts received from the [new] tax.”⁶⁷ The Allen County Supplemental Food and Beverage Tax terminates two years after the retirement of debt that was incurred for such purposes.⁶⁸

E. Indiana Inheritance Taxes

The General Assembly revised the Indiana inheritance tax law⁶⁹ to authorize a refund of Indiana inheritance tax that has been erroneously or illegally collected⁷⁰ and to provide a procedure for making such refund.⁷¹ The new law requires the IDSR to review each claim for refund and to enter an order either approving, partially approving, or disapproving the refund. If the IDSR either approves or partially approves a claim for refund, then the IDSR must send a copy of the order to the county treasurer who collected the inheritance tax, if the refund applies to inheritance tax collected as a result of a resident decedent’s death; and, the Indiana treasurer. The Indiana treasurer is then required to pay the refund from money under the treasurer’s control that has not otherwise been appropriated. Moreover, the Indiana treasurer is to receive a credit for the county portion of the amount so refunded and the appropriate county treasurer must “account for the credit on the county [treasurer’s] inheritance tax report for the quarter in which the refund is paid.”⁷² Finally, “within five days after entering an order with respect to a claim for refund . . . , the [IDSR] must send a copy of the order to the person who filed the [refund] claim.”⁷³

F. Indiana Financial Institutions Tax

The General Assembly amended the law dealing with taxation of Indiana domiciled financial institutions.⁷⁴ The former law imposed the financial institutions tax on the adjusted gross income of resident financial institutions and allowed a credit to be taken for taxes paid to other states.⁷⁵ On the other hand, nonresident financial institutions used a one factor apportionment formula of

66. *Id.* § 6-9-33-8.

67. *Id.*

68. *See id.* § 6-9-33-3(d).

69. *See id.* § 6-4.1.

70. *See id.* § 6-4.1-10.

71. *See id.* § 6-4.1-10-3.

72. *Id.* § 6-4.1-10-3(a).

73. *Id.* § 6-4.1-10-3(b).

74. *See id.* § 6-5.5.

75. *See id.* §§ 6-5.5-2-2 (repealed 1999), 6-5.5-2-5 (repealed 1999).

receipts attributable to business transacted in Indiana under the former law.⁷⁶ The new law applies apportionment rules to all financial institutions by using Indiana receipts compared to total receipts, sourced by customer location.⁷⁷ The amended statute ensures that resident financial institutions are treated the same as nonresident financial institutions for purposes of the imposition of the financial institutions tax.⁷⁸ The Legislative Services Agency estimates that apportioning resident income will result in a net revenue loss of less than \$5 million annually from collections which totaled \$81.9 million in the fiscal year beginning October 1, 1999.⁷⁹ This amendment applies retroactively as of January 1, 1999.⁸⁰

G. Tax Administration

The General Assembly amended the law concerning the sale of real property when taxes or special assessments become delinquent.⁸¹ Under the amended law, persons, and agents of such persons, who are delinquent with respect to Indiana real property tax payments are prohibited from purchasing real property at a tax sale.⁸² The prohibition applies not only to persons who are delinquent in the payment of real property tax payments, but also to persons who are delinquent in the payment of special assessments, penalties, interest, or costs attributable to a prior real property tax sale.⁸³ If a person purchases real property that the person was not eligible to purchase, then the sale of the property is void.⁸⁴ Further, the appropriate county treasurer must apply the amount of the delinquent person's bid to the person's delinquent taxes and attempt to resell the real property.⁸⁵ This law was effective on July 1, 2000.⁸⁶

II. INDIANA SUPREME COURT OPINIONS AND DECISIONS

A. Subject Matter Jurisdiction of the Indiana Tax Court

In *State Board of Tax Commissioners v. Troy Montgomery*,⁸⁷ the Indiana Supreme Court granted the ISBTC's Petition for Review to address whether the

76. See *id.* § 6-5.5-2-3.

77. See *id.* § 6-5.5-4.

78. See *id.* §§ 6-5.5-2-1, 6-5.5-2-3, 6-5.5-2-4, 6-5.5-4-1.

79. See LEGISLATIVE SERVICES AGENCY, FISCAL IMPACT STATEMENT, available at http://www.state.in.us/serv/lisa_billinfo?year=2000&request=getBill&doctype=HB&docno=1003 (last visited Mar. 3, 2001).

80. See IND. CODE §§ 6-5.5-2, 6-5.5-4 (2000).

81. See *id.* § 6-1.1-24.

82. See *id.* § 6-1.1-24-5.3(a).

83. See *id.*

84. See *id.* § 6-1.1-24-5.3(c).

85. See *id.*

86. See *id.* § 6-1.1-24-5.3.

87. 730 N.E.2d 680 (Ind. 2000).

tax court had subject matter jurisdiction under the circumstances presented in this case.⁸⁸ The supreme court concluded that Troy Montgomery must exhaust all administrative remedies in order for the tax court to have subject matter jurisdiction.⁸⁹

The petitioners-below were Lake County, Indiana, on its own behalf and on behalf of property owners in Lake County, the Lake County Council, the Board of Commissioners of Lake County, and several individual members of the Council or the Board who sought to sue both in their official capacities and as taxpayers owning property in Lake County.⁹⁰ The petitioners-below brought suit in the tax court against the ISBTC, seeking a declaratory judgment that the Health Care for the Indigent program (HCI) violated article 10, section 1 and article 1, section 23 of the Indiana Constitution.⁹¹ Specifically, the petitioners sought a declaratory judgment from the tax court stating that the formula for calculating the HCI tax levy was unconstitutional.⁹²

The tax court had determined that a letter from the ISBTC did not constitute a final determination conferring subject matter jurisdiction, but nevertheless concluded that the tax court had jurisdiction because administrative remedies for challenging the HCI levy were inadequate, and therefore the parties were excused from pursuing them.⁹³ The tax court had also ruled that the governmental entities, with the exception of Lake County itself, lacked standing to contest the constitutionality of the HCI levy.⁹⁴ The tax court determined that Lake County was a proper party to the declaratory judgment action because if the petitioners succeeded, then the county would be forced to fund and administer the refund process.⁹⁵

The ISBTC then "sought rehearing, arguing that because Lake County could seek reimbursement from the State [of Indiana] for any refunds it would be forced to pay, the taxpayers' remedies were adequate and exhaustion should not be excused."⁹⁶ In a second opinion,⁹⁷ the tax court again concluded that it had subject matter jurisdiction and that administrative remedies available to the petitioners-below were inadequate and that exhaustion was therefore excused.⁹⁸

88. *See id.* at 681.

89. *See id.* at 684-85.

90. *See id.* at 680-81.

91. *See id.* at 681.

92. *See id.* at 682.

93. *See id.* at 683 (citing *Lake County Council v. State Bd. of Tax Comm'rs*, 706 N.E.2d 270, 275-77 (Ind. Tax Ct. 1999)).

94. *See id.* (citing *Lake County Council*, 706 N.E.2d at 279-81).

95. *See id.* (citing *Lake County Council*, 706 N.E.2d at 281).

96. *Id.*

97. *See id.* at 683 n.8 (stating that the tax court issued its original opinion on January 19, 1999, and granting reconsideration in light of the supreme court's intervening modification of *State Board of Tax Commissioners v. Mixmill Manufacturing Co.*, 702 N.E.2d 701 (Ind. 1998), as modified Feb. 5, 1999).

98. *See id.* (citing *Montgomery v. State Bd. of Tax Comm'rs*, 708 N.E.2d 936 (Ind. Tax Ct.

The tax court also concluded that reimbursement was too speculative.⁹⁹ The tax court subsequently certified its opinions for interlocutory review by the supreme court.¹⁰⁰

In deciding this case, the supreme court first evaluated whether the taxpayers failed to exhaust their administrative remedies and whether the taxpayers should be excused from pursuing these remedies on grounds of futility.¹⁰¹ The supreme court reviewed its holdings in analogous cases and observed that section 6-1.1-27-6(b) of the Indiana Code provides for repayment by Indiana of tax overpayments and applies generally to all taxes.¹⁰² The supreme court reasoned that the statutory scheme provides a workable mechanism for the county to recover from Indiana any required taxpayer refunds and that such mechanism avoids the difficulties that the tax court identified in reliance on the refund procedure as a remedy for unlawfully collected HCI taxes.¹⁰³ The supreme court concluded that a claim for refund could be presented and, if refused, would permit the petitioners-below to proceed to the tax court with their contentions. And, because the tax court had jurisdiction only to the extent granted by statute, the supreme court need not address whether or not the petitioners-below had standing to pursue their claim.¹⁰⁴ Therefore, the supreme court reversed the judgment of the tax court and remanded the case with instructions to dismiss the claim of the petitioners-below for declaratory relief against the ISBTC.¹⁰⁵

B. Indiana Financial Institutions Tax

In *Department of State Revenue v. Farm Credit Services of Mid-America, ACA*,¹⁰⁶ Farm Credit Services (taxpayer), an agricultural credit association,¹⁰⁷ claimed that it was "exempt from Indiana's Financial Institutions Tax under constitutional principles of intergovernmental tax immunity,"¹⁰⁸ but the supreme court concluded that the taxpayer was only partially exempt from the tax.¹⁰⁹

The supreme court found that the doctrine of intergovernmental tax immunity has its roots in *McCulloch v. Maryland*,¹¹⁰ in which the U.S. Supreme Court held

1999)).

99. See *id.* (citing *Montgomery*, 708 N.E.2d at 938).

100. See *id.*

101. See *id.* at 683-84.

102. See *id.* at 685.

103. See *id.*

104. See *id.* at 685-86.

105. See *id.* at 686.

106. 734 N.E.2d 551 (Ind. 2000).

107. The taxpayer is part of the Farm Credit System, which is "a nation-wide network of cooperative, borrower-owned banks and lending institutions that were established to provide affordable credit to farmers and ranchers." *Id.* at 552 (citing 12 U.S.C. § 2001 (1989)).

108. *Id.* at 551.

109. See *id.*

110. 17 U.S. (4 Wheat.) 316 (1819).

that the State of Maryland could not impose a tax on the Bank of the United States,¹¹¹ and in *Graves v. New York ex rel. O'Keefe*,¹¹² wherein the U.S. Supreme Court held that "intergovernmental tax immunity bars only those taxes imposed directly on one sovereign by another, or that discriminate against the sovereign to which [the taxes] apply."¹¹³ The Indiana Supreme Court found that more recent federal decisions suggest "that in determining tax status, a court must examine the nature of the instrumentality, and the activity being taxed."¹¹⁴ The supreme court found that while the designation "federal instrumentality" carried with it a strong possibility of tax immunity, the supreme court's inquiry must include an analysis of what the taxpayer "actually is."¹¹⁵

Next, the Indiana Supreme Court examined the nature of Agricultural Credit Associations (ACAs) and indicated that they were entities created by merging Federal Land Bank Associations (FLBAs) and Production Credit Associations (PCAs).¹¹⁶ The supreme court found that "FLBAs are federally chartered instrumentalities of the United States, offering long-term loans to farmers and farm-related businesses for land and other capital purchases."¹¹⁷ The supreme court also found that "[s]ince their inception, FLBAs have enjoyed immunity from state taxation"¹¹⁸ and that "PCAs are also 'federally chartered instrumentalities of the United States'; they are privately-owned, corporate financial institutions organized by ten or more farmers to provide short-term and intermediate loans to farmers."¹¹⁹

The supreme court recognized that "[u]nlike FLBAs, PCAs possess limited express tax immunity."¹²⁰ The supreme court also found that while both PCAs and FLBAs are privately owned and controlled, they are "considered 'government-sponsored entities' and have a preferred place in the nation's money markets, although debt issuances are not guaranteed by the United States."¹²¹

The supreme court then examined the statutory authorization to merge FLBAs and PCAs and found that while this statute authorizes such mergers, neither the statute nor the legislative history establishes what the tax implications are for the resulting ACA.¹²² The supreme court also found that the legislative

111. *See id.* at 436-37).

112. 306 U.S. 466 (1939).

113. *Farm Credit Servs. of Mid-Am., ACA*, 734 N.E.2d at 553 (citing *Graves*, 306 U.S. at 481-87).

114. *Id.* at 556.

115. *Id.* at 557.

116. *See id.*

117. *Id.* (citing 12 U.S.C. § 2091 (1989); H.R. REP. NO. 100-295(I), at 55 (1987), reprinted in 1987 U.S.C.C.A.N. 2723, 2727).

118. *Id.* (citing 12 U.S.C. § 2098 (1989)).

119. *Id.* (quoting 12 U.S.C. § 2071 (1989)).

120. *Id.*; see also 12 U.S.C. § 2077 (2000).

121. *Id.* at 558-59 (citing H.R. REP. NO. 100-295(I), at 55 (1987), reprinted in 1987 U.S.C.C.A.N. 2723, 2727).

122. *See id.* at 559 (citing 12 U.S.C. § 2279c-1 (2000)).

and regulatory history suggests that institutions created by mergers were deemed to retain the characteristics of the former entities.¹²³

The supreme court concluded that "a merged association, like an ACA, is not considered a new organizational entity, but rather a combination of the two previous entities."¹²⁴ The supreme court then examined the taxpayer's structure and determined that it reflected this definition of merger.¹²⁵ The supreme court determined that the taxpayer essentially "performs two distinct and seemingly autonomous functions: long-term mortgage lending through an FLCA and short-term lending through a PCA."¹²⁶ The supreme court observed that the U.S. "Congress has been very clear in its decision that long-term lending institutions, such as FLBAs and FLCAs, should enjoy immunity from state taxation."¹²⁷ Therefore, the supreme court concluded that "the FLCA or long-term mortgage lending portion of [the taxpayer's] operations should not be factored into a calculation of taxes owed by [the taxpayer] under Indiana's Financial Institution Tax."¹²⁸ The supreme court then addressed the PCA or short-term lending portion of the taxpayer's operations and reached a different conclusion. The court reasoned that due to the "characteristics of the entity and [the U.S.] Congress's removal of the exemption, [it could] not conclude that a PCA is 'an agency or instrumentality so closely connected to the Government' so as to afford it an exemption from state taxation."¹²⁹

The supreme court concluded that Indiana was entitled to tax that part of the taxpayer's "gross income derived from [its] short-term PCA operations, but not the income generated by long-term FLBA lending, which enjoys immunity from state taxation."¹³⁰ Accordingly, the supreme court reversed the decision of the tax court and remanded the case for "proceedings to determine the tax due on [the taxpayer's] PCA operations."¹³¹

III. INDIANA TAX COURT OPINIONS AND DECISIONS

During the period of October 1, 1999 through September 30, 2000, the opinions and decisions of the Indiana Tax Court were dominated by cases dealing with Indiana real property taxes. Specifically, the tax court rendered twenty-nine published opinions, fourteen of which concerned various Indiana real property tax issues. The remaining fifteen cases are divided as follows: two cases regarding the Indiana tangible personal property tax;¹³² two cases regarding the

123. *See id.* (citing 12 U.S.C. § 2279c-1(b)(2) (2000)).

124. *Id.* at 560.

125. *See id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.* at 561.

130. *Id.*

131. *Id.*

132. *See* IND. CODE §§ 6-1.1-2 to 6-1.1-2-7(b).

Indiana gross income tax;¹³³ two cases regarding the Indiana adjusted gross income tax;¹³⁴ one case regarding the Indiana sales and use taxes;¹³⁵ one case regarding the Indiana inheritance tax;¹³⁶ three cases regarding the Indiana controlled substances excise tax;¹³⁷ one case regarding the Indiana gaming card excise tax;¹³⁸ one case regarding the Indiana motor vehicle excise tax;¹³⁹ one case regarding a public lawsuit;¹⁴⁰ and one case regarding the payment of litigation expenses. Each case is set off separately below.

A. Indiana Property Taxes—Real Property Taxes

1. *Town of St. John v. State Board of Tax Commissioners*.¹⁴¹—In *Town of St. John*, the petitioners' requested the tax court to order the ISBTC to adopt and implement new real property assessment regulations by dates certain.¹⁴² The litigation in this case has continued for approximately seven years and has generated six published opinions, including two decisions by the Indiana Supreme Court.¹⁴³ In *St. John V*,¹⁴⁴ the immediately preceding litigation, the supreme court affirmed the tax court's determination in *St. John III*¹⁴⁵ that the cost schedules used in the ISBTC's real property assessment regulations violated the Property Taxation Clause of the Indiana Constitution.¹⁴⁶ The tax court subsequently entered an order requiring the ISBTC to implement a constitutional assessment system "as promptly as possible."¹⁴⁷ However, the court expressly reserved the right to set a specific date for the implementation of a remedy in its order.¹⁴⁸

Because the tax court determined that the ISBTC had not complied with its earlier order, the court determined that it was necessary to establish a deadline for adopting and implementing new, constitutional assessment regulations.¹⁴⁹

133. See *id.* §§ 6-2.1-1-0.5 to 6-2.1-8-7.

134. See *id.* §§ 6-3-1-1 to 6-3-7-5.

135. See *id.* §§ 6-2.5-1-1 to 6-2.5-10-2.

136. See *id.* §§ 6-4.1-1-1 to 6-4.1-10-6.

137. See *id.* §§ 6-7-3-1 to 6-7-3-20.

138. See *id.* § 4-32-15-1.

139. See *id.* §§ 6-6-5-1 to 6-6-5-16.

140. See *id.* §§ 34-13-5-1 to 34-13-5-12.

141. 729 N.E.2d 242 (Ind. Tax Ct. 2000) ("*St. John VII*").

142. See *id.* at 244.

143. See *id.* An overview of this case's procedural history can be found in *State Board of Tax Commissioners v. Town of St. John*, 702 N.E.2d 1034, 1035-36 (Ind. 1998) ("*St. John V*").

144. *St. John V*, 702 N.E.2d at 1034.

145. *Town of St. John v. State Bd. of Tax Comm'rs*, 690 N.E.2d 370, 382 (Ind. Tax Ct. 1997) ("*St. John III*").

146. See *St. John VII*, 729 N.E.2d at 244; see also IND. CONST. art. X, § 1.

147. *St. John VII*, 729 N.E.2d at 244.

148. See *id.*

149. See *id.* at 245.

Accordingly, the tax court ordered the ISBTC to take several actions within specific time periods. First, the ISBTC was ordered to “take the necessary steps to have new, constitutional assessment regulations promulgated and in effect on or by June 1, 2001.”¹⁵⁰ Second, the tax court declared that “real property in Indiana must be reassessed using constitutional regulations as of March 1, 2002.”¹⁵¹ The court emphasized that its “primary concern [was] to free all [Indiana] taxpayers from the burdens of having their properties assessed under an unconstitutional system.”¹⁵² Moreover, the tax court reasoned that in establishing a reassessment deadline, it had balanced the ISBTC’s concerns regarding the time needed to implement a constitutional system with the constitutional rights of Indiana taxpayers.¹⁵³ Third, the court required the ISBTC to submit monthly detailed status reports beginning July 1, 2000, until further order of the court.¹⁵⁴ The tax court required that the reports inform the court as to the ISBTC’s progress with respect to meeting the established deadlines.¹⁵⁵ It also required that the ISBTC provide a copy of each status report to the petitioners.¹⁵⁶ The tax court additionally held that the petitioners would be permitted to file a response to each status report.¹⁵⁷

The tax court declined the petitioners’ request that it appoint an independent commissioner to prepare new assessment regulations.¹⁵⁸ However, the court cautioned that should it find the ISBTC’s efforts deficient in any meaningful way, it would reconsider the petitioners’ suggestion to appoint an independent commissioner to draft new regulations, as well as any other appropriate relief.¹⁵⁹ The court also denied the petitioners’ requests to order the ISBTC to base its new regulations on objectively verifiable data and to adopt a single definition of property wealth.¹⁶⁰ In reaching its decision, the tax court reasoned that the ISBTC was guided by the prior decisions of both the supreme court and the tax court concerning the constitutional requirements of a system for assessment and

150. *Id.* at 246. (citing IND. CODE §§ 4-22-2-23 to 4-22-2-36 (statutes governing the rulemaking process)).

151. *Id.* The tax court referred to its finding in *Town of St. John v. State Board of Tax Commissioners*, 691 N.E.2d 1387, 1389 (Ind. Tax Ct. 1998) (“*St. John IV*”): “In our legal system, constitutional rights are a categorical imperative, not a goal to be accomplished in the future.” In *St. John IV*, the tax court ordered the ISBTC to “consider all competent real world evidence presented to the State Board by persons filing appeals on or after May 11, 1999.” *Id.* at 1390. The supreme court reversed this order in *St. John V*, 702 N.E.2d 1034, 1043 (Ind. 1998).

152. *Sr. John VII*, 729 N.E.2d at 246.

153. *See id.*

154. *See id.* at 247.

155. *See id.*

156. *See id.*

157. *See id.*

158. *See id.* “[Indiana Trial Rule 53(A)] allows the [Tax] Court, with the concurrence of the Supreme Court, to appoint a commissioner in a pending case.” *Id.*

159. *See id.* at 247-48.

160. *See id.* at 248.

taxation of property.¹⁶¹ The tax court deferred to the expertise of the ISBTC, allowing the ISBTC to determine how to adopt and implement new, constitutional assessment regulations by the deadlines imposed by the court.¹⁶²

Finally, the court ruled that, in the interim, the following standards would govern real property tax assessments in Indiana:

- (1) real property tax assessments shall be made in accordance with the current system;
- (2) any challenges to real property tax assessments shall be governed by existing law; and
- (3) real property tax assessments are not subject to challenge on the ground that the true tax value system violates the Indiana Constitution.¹⁶³

In a related proceeding, *Town of St. John v. State Board of Tax Commissioners*,¹⁶⁴ the tax court considered adopting and applying the private attorney general exception to the American rule regarding litigation expenses and considered ordering the ISBTC to pay the petitioners' attorneys' fees and costs associated with the proceedings.¹⁶⁵ The court reasoned that, given the extraordinary circumstances of the case, a fee award was both appropriate and justified.¹⁶⁶ Consequently, the tax court ordered the ISBTC to pay reasonable attorneys' fees and costs to the petitioners' counsel.¹⁶⁷

In reaching its decision on this issue of first impression, the court surveyed a wide array of case law and discussed the United States Supreme Court's view of the private attorney general exception, Indiana decisions recognizing the exception, the decisions of jurisdictions that have adopted and applied the exception, and the decisions of jurisdictions declining to adopt the exception.¹⁶⁸

The tax court first discussed the United States Supreme Court ruling, in *Alyeska Pipeline Service Co. v. Wilderness Society*.¹⁶⁹ The Supreme Court in *Alyeska Pipeline* held that federal courts could not award attorneys' fees using the private attorney general exception.¹⁷⁰ The Supreme Court explained that, under the American rule, "the prevailing litigant is ordinarily not entitled to

161. *See id.*

162. *See id.* at 250.

163. *Id.* at 251.

164. 730 N.E.2d 240 (Ind. Tax Ct. 2000).

165. *See id.* at 242. "The American rule is the 'requirement that each litigant must pay its own attorney's fees, even if the party prevails in the lawsuit,'" and the "traditional American rule ordinarily disfavors the allowance of attorneys' fees in the absence of statutory or contractual authorization" *Id.* at 242 n.1 (citations omitted).

166. *See id.* at 242.

167. *See id.* On September 15, 2000, the Indiana Supreme Court granted review for further consideration of this issue. *See Town of St. John v. State Bd. of Tax Comm'rs*, No. 49S10-0009-TA-541, 2000 Ind. LEXIS 926 (Sept. 15, 2000).

168. *See Town of St. John*, 730 N.E.2d at 242-56.

169. 421 U.S. 240 (1975).

170. *See id.*

collect a reasonable attorneys' fee from the loser."¹⁷¹ The tax court explained the Supreme Court's rejection of the private attorney general exception as follows:

(1) Congress has reserved the right to allow attorneys' fees only under certain circumstances; (2) specific exceptions to the American rule are expressly identified in statute; and (3) without legislative guidance, federal courts may not selectively create new exceptions to the American rule based upon the alleged importance of the public policies at issue.¹⁷²

Next, the tax court looked to the opinions and decisions of Indiana courts concerning the application of the American rule when deciding whether or not to award attorneys' fees. The court noted the Indiana Supreme Court's observation "that the 'right to recover attorney's fees from one's opponent does not exist in the absence of a statute or some agreement, though a court of equity may, under some circumstances, allow attorneys' fees to be paid out of a fund brought under its control.'"¹⁷³

The private attorney general exception was first recognized in Indiana by the court of appeals in *Saint Joseph's College v. Morrison, Inc.*¹⁷⁴ In *Saint Joseph's College*, the court of appeals held that certain limited exceptions to the American rule exist.¹⁷⁵ The court of appeals recognized three exceptions to the rule that each party must pay his own attorney fees: the obdurate behavior exception; the common fund exception; and, the private attorney general exception.¹⁷⁶ However, the court of appeals held that the private attorney general exception only applied where the party acting in the private attorney general capacity was authorized to do so by statute.¹⁷⁷

In sum, the tax court determined that the Indiana Supreme Court had not acknowledged the private attorney general exception to the American rule.¹⁷⁸ Moreover, the tax court observed that while the court of appeals had acknowledged the exception on various occasions, it had never supported an award of attorneys' fees using the exception.¹⁷⁹

The tax court then examined how other jurisdictions treat the private attorney general exception. First, the court reviewed the holdings of jurisdictions that had applied the exception to award attorneys' fees. In *Serrano v. Priest*,¹⁸⁰ the seminal case adopting the exception, the California Supreme Court identified

171. *Id.* at 247.

172. *Town of St. John*, 730 N.E.2d at 244.

173. *Id.* (quoting *Gavin v. Miller*, 54 N.E.2d 277, 280 (Ind. 1944)).

174. 302 N.E.2d 865, 870 (Ind. Ct. App. 1973). *See also* *Morgan County v. Ferguson*, 712 N.E.2d 1038 (Ind. Ct. App. 1999); *Downing v. City of Columbus*, 505 N.E.2d 841 (Ind. Ct. App. 1987).

175. *See id.*

176. *See id.*; *see also* *Ferguson*, 712 N.E.2d at 1044-45.

177. *See id.*; *see also* *Ferguson*, 712 N.E.2d at 1044-45.

178. *See* *Town of St. John*, 730 N.E.2d at 247.

179. *See id.*

180. 569 P.2d 1303 (Cal. 1977).

three basic factors to be considered in awarding fees under the private attorney general exception: "(1) the strength or societal importance of the public policy vindicated by the litigation, (2) the necessity for private enforcement and the magnitude of the resultant burden on the plaintiff, (3) the number of people standing to benefit from the decision."¹⁸¹ The tax court observed that "[s]tate courts have applied the private attorney general exception under various factual situations to enforce citizens' constitutional and statutory rights against violations of those rights committed by state and local governments."¹⁸² However, the court noted that those jurisdictions still adhere to the American rule and only rarely apply the private attorney general exception.¹⁸³ The tax court concluded that the award of attorneys' fees using the exception was always fact specific and that courts tend to weigh the three factors from *Serrano* in deciding whether to award fees.¹⁸⁴

Next, the tax court examined the rationales of the jurisdictions that have rejected the adoption and application of the private attorney general exception. The court referred to an opinion from the Supreme Court of New Mexico, *New Mexico Right to Choose/NARAL v. Johnson*.¹⁸⁵ In *Johnson*, the Supreme Court of New Mexico concluded that the state's constitutional jurisprudence did "not provide a basis for concluding that the American rule [was] 'so unworkable as to be intolerable.'"¹⁸⁶ The tax court summarized the exceptions discussed by the *Johnson* court as those "arising: (1) from a court's inherent powers to sanction the bad faith conduct of litigants and attorneys; (2) from certain exercises of a court's equitable powers; and (3) simultaneously from judicial and legislative powers."¹⁸⁷ The tax court concluded that courts refusing to adopt the private attorney general exception strictly adhere to the American rule and that tend to emphasize the lack of statutory authorization to award fees using the exception.¹⁸⁸ The court found that in applying the United States Supreme Court's rationale from *Alyeska Pipeline*, "these courts also express reluctance to weigh the relative societal importance of individuals' rights and legislative policies."¹⁸⁹

Although the tax court found some merit in the arguments rejecting the private attorney general exception, the court adopted and applied the exception and awarded attorneys' fees to the town of St. John.¹⁹⁰ The tax court reasoned that "[a]lthough the Indiana Supreme Court has yet to recognize the private attorney general exception, the Indiana Court of Appeals has recognized the

181. *Id.* at 1314.

182. *Town of St. John*, 730 N.E.2d at 251.

183. *See id.*

184. *See id.*

185. 986 P.2d 450 (N.M. 1999).

186. *Id.* at 454 (citation omitted).

187. *Town of St. John*, 730 N.E.2d at 252-53 (citation omitted).

188. *See id.* at 256.

189. *Id.*

190. *See id.*

exception no fewer than sixteen times since 1973.”¹⁹¹ Additionally, the tax court held that two disapproving Indiana courts never rejected the existence of the exception; rather, the courts rejected its application to the specific facts under consideration at the time.¹⁹²

In applying the private attorney general exception in *Town of St. John*, the court adopted the three-factor inquiry announced in *Serrano*.¹⁹³ First, the tax court concluded that the petitioners had “vindicated a constitutional principle of substantial importance.”¹⁹⁴ The court determined that the burden on the petitioners’ time and resources in prosecuting their constitutional challenge over the past seven years had been immense.¹⁹⁵ The court recognized that the petitioners were represented by the not-for-profit Indiana Civil Liberties Union (ICLU) and four private attorneys who had not collected any fees from the petitioners, but had incurred more than sixty thousand dollars in out-of-pocket expenses.¹⁹⁶ The court concluded that to dismiss the burden of the ICLU in many instances “would trivialize the efforts of counsel in enforcing the state constitution and would ignore the fact that, in many instances, only public interest firms or entities are prepared for and willing to challenge constitutional violations.”¹⁹⁷ Second, the court observed that the supreme court’s opinion underscored the need for private enforcement in the case when the supreme court concluded that the Property Taxation Clause did not “create a personal, substantive right of uniformity and equality. . . . It does not establish an entitlement to individual assessments for abstract evaluation of property wealth, nor does it mandate the consideration of independent property wealth evidence in individual assessments or tax appeals.”¹⁹⁸ Third, the tax court found that all Indiana citizens, either directly or indirectly, would potentially benefit from the outcome of this case.¹⁹⁹ The tax court agreed with the petitioners and found that the benefits of the litigation include: “(1) an end to arbitrary assessments; (2) abandonment of a self-referential system in favor of one using objectively verifiable data; (3) greater accuracy of assessments; (4) equality of assessments among various jurisdictions throughout the state; (5) equality of taxation among various classes of property; (6) improved assessment appeals; and (7) equity for

191. *Id.*

192. *See id.* One court stated: “We see nothing in the record which would indicate that [the exception] would apply in this case.” *Id.* (quoting *Downing v. City of Columbus*, 505 N.E.2d 841, 845 (Ind. Ct. App. 1987)). The other stated: “Here, there is no basis for an award of attorney fees or costs.” *Id.* (quoting *Morgan County v. Ferguson*, 712 N.E.2d 1038, 1045 (Ind. Ct. App. 1999)).

193. *See id.*

194. *Id.*

195. *See id.* at 257.

196. *See id.* at 258.

197. *Id.* at 259 (citing *Serrano v. Priest*, 569 P.2d 1310, 1316 (Cal. 1997) (“stating that denial of fees to attorneys in public interest firms would be ‘essentially inconsistent’ with the private attorney general theory”)).

198. *Id.* (quoting *St. John V*, 702 N.E.2d 1034, 1040 (Ind. 1998)).

199. *See id.*

taxing bodies."²⁰⁰ Since the petitioners fulfilled the three-pronged *Serrano* test, the tax court awarded them attorneys' fees under the private attorney general exception.²⁰¹

The tax court rejected the ISBTC's claim of sovereign immunity.²⁰² The court also rejected the ISBTC's contentions that "fee-shifting is a legislative matter, that the General Assembly knows how to and has enacted numerous fee-shifting statutes and that adopting the exception will result in problematic ranking of rights between allegedly fee-meriting and non-fee-meriting claims."²⁰³ The tax court also declared that it would not deny an appropriate fee award in the case "out of fear that it will be asked to exercise its analytical skills in future cases to determine whether those particular cases reflect equally extraordinary circumstances."²⁰⁴ Finally, the court rejected the ISBTC's contention that even if the private attorney general theory was recognized and adopted, the theory did not apply in that case.²⁰⁵ Nonetheless, the court found that a constitutional taxation and assessment system would benefit all real property taxpayers, including both business and residential property owners.²⁰⁶ The court reiterated: "In our legal system, constitutional rights are a categorical imperative."²⁰⁷ In sum, the tax court determined that the private attorney general exception should be recognized, and awarded reasonable attorneys' fees and costs to the petitioners.²⁰⁸

2. *Rinker Boat Co. v. State Board of Tax Commissioners*.²⁰⁹—Rinker Boat Co., the owner of a boat manufacturing plant located in Kosciusko County, Indiana, challenged the ISBTC's denial of adjustments in assessing real property tax against Rinker Boat Company, Inc. (taxpayer).²¹⁰ The tax court affirmed the final determination of the ISBTC in part, reversed in part, and remanded the case to the ISBTC for a determination of the type of heating, lighting, interior partitions, and exterior walls (of which the taxpayer's building consisted) and for a determination of the appropriate obsolescence factor to be applied to the taxpayer's building.²¹¹

The first issue the tax court addressed was the ISBTC's contention that the

200. *Id.* at 259-60.

201. *See id.* at 260.

202. *See id.* The ISBTC cited article X, section three, of the Indiana Constitution, which provides: "No money shall be drawn from the Treasury, but in pursuance of appropriations made by law." *Id.*

203. *Id.* at 261.

204. *Id.* at 263.

205. *See id.*

206. *See id.*

207. *Id.* at 263-264 (citation omitted).

208. *See id.*

209. 722 N.E.2d 919 (Ind. Tax Ct. 1999).

210. *See id.* at 920.

211. *See id.* at 925-26.

taxpayer used the wrong ISBTC form to challenge the assessment.²¹² Specifically, the ISBTC refused to consider the taxpayer's Petition for Correction of Error (ISBTC Form 133), which dealt with the heating, lighting, interior partitions, and exterior walls of the taxpayer's building, because the ISBTC believed that the issues raised by the taxpayer on that form could only be considered on a Petition for Review of Assessment (ISBTC Form 131).²¹³ The tax court agreed with the ISBTC's statements concerning the uses of each of these forms; however, the tax court found that the type of the heating and lighting equipment, the amount of interior partitions, and the composition of the exterior walls of the taxpayer's building were objective determinations, and therefore, could be raised on an ISBTC Form 133.²¹⁴

Having disposed of the above procedural issue, the tax court next considered whether or not the ISBTC substantively erred when the ISBTC assessed the taxpayer's property as having certain types of heating, lighting, interior partition walls, and exterior walls. Contrary to its final determination, the ISBTC conceded that the taxpayer used unit heaters instead of forced-air heating equipment, the taxpayer used fluorescent rather than high-intensity lighting, the ISBTC assessed the taxpayer for nonexistent partitioning, and the composition of the exterior walls of the taxpayer's building was not the composition on which the ISBTC's assessment was based.²¹⁵ Consequently, the tax court held that each of the above-referenced determinations by the ISBTC was arbitrary and capricious.²¹⁶ Moreover, the court found that each assessment was an error as a matter of law that could be corrected on an ISBTC Form 133.²¹⁷ The tax court remanded these issues to the ISBTC and indicated that upon remand, the taxpayer has the "burden of proof to ascertain the cost of each component described above based on the regulations."²¹⁸ The tax court found that if the cost must be accounted for by grade or other subjective factors, then the appeal must fail with respect to such items, because then, review of the ISBTC Form 133 would require a subjective judgment, which is not permitted.²¹⁹ However, the tax court held that the grade and other subjective factors concerning the taxpayer's

212. *See id.* at 921. The taxpayer filed a Form 133 Petition for Correction of Error in order to challenge the ISBTC's assessment of the taxpayer's heating, lighting, interior partitions, and exterior walls. In addition, the taxpayer filed a Form 131 Petition for Review of Assessment in order to challenge the same assessment, to challenge the ISBTC's classification of the taxpayer's building, and to challenge the ISBTC's adjustment for obsolescence depreciation. *See id.*

213. *See id.*; *see also* IND. CODE § 6-1.1-15-12 (2000); *Barth, Inc. v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 806 (Ind. Tax Ct. 1998) (holding that only objective errors may be corrected on an ISBTC Form 133).

214. *See Rinker Boat Co.*, 722 N.E.2d at 922.

215. *See id.* at 922-23.

216. *See id.*

217. *See id.* at 923.

218. *Id.* at 923-24.

219. *See id.* at 924.

building could be used if necessary on remand.²²⁰

The tax court then considered the taxpayer's challenges to both the classification of the taxpayer's building and the ISBTC's finding of no obsolescence on the taxpayer's Form 131.²²¹ The tax court found that because a Form 131 may require a subjective determination by the ISBTC, the ISBTC is given a great deal of discretion.²²² Notwithstanding this deference, the court held that the ISBTC must provide some reasoning to support its determination.²²³ The court also found that the ISBTC is "obligated to consider evidence presented by the taxpayer and to deal with that evidence in a meaningful manner."²²⁴ The tax court noted: "In order to successfully challenge a final determination, the taxpayer will usually have to offer a competing view, along with evidence to support that view, of what the assessment should be."²²⁵ The court concluded that in order to meet this burden, "a taxpayer must present a prima facie case supported by probative evidence."²²⁶

Next, the tax court considered the interior features of the taxpayer's building. The tax court found that the ISBTC assessed the taxpayer's building as a light manufacturing facility as opposed to a small shop facility despite the fact that the taxpayer's building seemed to more closely resemble the small shop model.²²⁷ However, the tax court found that the taxpayer failed to present any additional evidence comparing the remaining attributes of its building with each model and therefore did not carry its burden of proof on the issue.²²⁸ Consequently, the tax court affirmed the ISBTC's classification of the taxpayer's building as a light manufacturing facility.²²⁹

Finally, the tax court considered the taxpayer's challenge to the ISBTC's application of a zero obsolescence factor to the taxpayer's building. The court explained that the determination of obsolescence is a two-step inquiry, and noted that the appealing party must first identify the causes of obsolescence and then quantify the amount of obsolescence to be applied.²³⁰ The court held that "[f]unctional obsolescence is either something that buyers are unwilling to pay for or a deficiency that causes the property to lose value when compared to a more modern replacement."²³¹ The tax court found that functional obsolescence works as a penalty against the property's value, and provided several examples of functional obsolescence, including "a poor ratio of land to building area,

220. *See id.*

221. *See id.*

222. *See id.*

223. *See id.*

224. *Id.*

225. *Id.*

226. *Id.*

227. *See id.*; *see also* IND. ADMIN. CODE tit. 50, r. 2.2-11-1 (2001).

228. *See id.*

229. *See id.*

230. *See id.* at 925.

231. *Id.* *See also* IND. ADMIN. CODE tit 50, r. 2.2-10-7 (2001).

inadequate parking, truck or railroad loading or unloading facilities and poor proportion of office, rental or manufacturing, and warehouse space."²³²

The tax court contrasted the evidence presented by the taxpayer with the ISBTC's claim that no deduction was allowed for obsolescence because the ISBTC "felt that [the taxpayer's] building was being operated for its intended purpose of boat building."²³³ The tax court held that in order to establish a prima facie case, a taxpayer must introduce evidence "sufficient to establish a given fact and which if not contradicted will remain sufficient."²³⁴ The tax court indicated that "[o]nce the taxpayer does so, it is then incumbent upon the [ISBTC] to rebut this evidence and support its decision with substantial evidence."²³⁵ The tax court observed that while some of the taxpayer's evidence may have appeared to be the mere identification of factors that cause obsolescence, the taxpayer had done more than make bare allegations, and therefore, met its prima facie case requirements.²³⁶ Moreover, the tax court found that "the [ISBTC] has neither rebutted the evidence offered by [the taxpayer] nor dealt with it in a meaningful manner."²³⁷ As a result, the tax court remanded this issue to the ISBTC.²³⁸

3. *Indianapolis Racquet Club, Inc. v. State Board of Tax Commissioners.*²³⁹—In *Indianapolis Racquet Club, Inc.*, the owner of an indoor and outdoor tennis facility and the owner of an office building complex, both located in Marion County, Indiana, challenged the validity of the ISBTC's assessments of their real property. Indianapolis Racquet Club, Inc. (IRC) and Racquet Square Associates, Ltd. (RSA) (taxpayers) presented two issues for consideration by the tax court, which arose from the assessment of three individual parcels consisting of eight outdoor tennis courts, sixteen indoor tennis courts and associated facilities, and three single-story office buildings.²⁴⁰ In this case, the tax court reversed the ISBTC's final assessment determinations and remanded the case to the ISBTC because the relevant statutory factors were not considered by the ISBTC when it classified the property.²⁴¹ In addition, the court instructed the ISBTC to apply the model that most closely resembled the tennis facility and to recalculate the reproduction costs of the tennis facility based upon the proper model.²⁴²

The tax court referred to *Indianapolis Historic Partners v. State Board of*

232. *Id.*

233. *Id.*

234. *Id.* (quoting *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1233 (Ind. Tax Ct. 1998)).

235. *Id.*

236. *See id.*

237. *Id.*

238. *See id.*

239. 722 N.E.2d 926, 928 (Ind. Tax Ct. 2000) remanded by 743 N.E.2d 247 (Ind. 2001).

240. *See id.* at 929.

241. *See id.* at 941.

242. *See id.*

Tax Commissioners, where the tax court held that the Property Tax Clause of the Indiana Constitution requires "(1) uniformity and equality in assessment, (2) uniformity and equality as to rate of taxation, and (3) a just valuation for taxation of all property. . . . The purpose of these constitutional requirements is to distribute the burden of taxation upon principles of uniformity, equality, and justice."²⁴³ The court also observed that the General Assembly has charged the ISBTC with interpreting Indiana's property tax laws and ensuring that all property assessments are made as prescribed by law.²⁴⁴ Specifically, the tax court observed that section 6-1.1-31-6 of the Indiana Code provides mandatory guidelines for the ISBTC to follow when establishing rules governing the assessment of real property.²⁴⁵ The court found that in fulfilling its duties, the ISBTC is afforded a great deal of discretion and that part of exercising its discretion is promulgating land valuation orders, which are administrative rules.²⁴⁶

The tax court held that the taxpayers had to show that the land valuation commission's classification of the real property was improper.²⁴⁷ The court reviewed the statutory language and concluded that the most logical interpretation of section 6-1.1-31-6 of the Indiana Code was that the General Assembly intended for the ISBTC to consider all the listed factors, including land orders, when promulgating a rule.²⁴⁸ Therefore, the court found that:

[I]n placing a particular parcel within a specific category of a land valuation order, the [ISBTC], in either approving or modifying the land order or in reviewing an assessment on appeal, must consider these statutory factors: acreage, lots, size, location, use, productivity or earning capacity, applicable zoning provisions, and accessibility to highways, sewers, and others public services or facilities.²⁴⁹

The final factor of the above-referenced statutory provision allows the ISBTC to consider "any other factor that the [State Board] determines by rule is just and proper."²⁵⁰

The tax court reviewed the evidence in the case and concluded that because the listed factors were not considered by the ISBTC, it was necessary to remand the issue of whether the parcels were properly classified.²⁵¹ The court instructed that on remand the ISBTC must determine, upon considering all factors required by section 6-1.1-31-6 of the Indiana Code, the appropriate classification of the

243. *Id.* at 931 (quoting *Indianapolis Historic Partners v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1224, 1228 (Ind. Tax Ct. 1998)).

244. *See id.* at 931; *see also* IND. CODE § 6-1.1-35-1 (2000).

245. *See Indianapolis Racquet Club, Inc.*, 722 N.E.2d at 931.

246. *See id.*

247. *See id.* at 932.

248. *See id.* at 933.

249. *Id.*

250. *Id.* (quoting IND. CODE § 6-1.1-31-6(a)(1)(ix) (1989)).

251. *See id.* at 935.

parcels.²⁵² Moreover, the court held that the ISBTC must determine the appropriate base rate within the proper classification.²⁵³

The next issue addressed in *Indianapolis Racquet Club* was whether the base rate for ninety percent of the taxpayers' indoor tennis facility was correctly determined using the General Commercial Mercantile (GCM) health club model instead of the General Commercial Industrial (GCI) light warehouse model.²⁵⁴ The tax court emphasized that "IRC was entitled to have its property assessed using the correct cost schedule."²⁵⁵ However, the court noted that a classification for taxation purposes is valid when it rests on a reasonable basis of actual difference between those included and those excluded.²⁵⁶ Moreover, the court noted that because a building may not conform perfectly with model specifications, a hearing officer must use subjective judgment to decide which model the building most closely resembles, and that the hearing officer is allowed some discretion in selecting which model to use.²⁵⁷

The tax court found that "IRC had an affirmative duty to present evidence showing that the [ISBTC] abused its discretion in selecting the health club model."²⁵⁸ The court found that IRC established that ninety percent of the tennis facility in dispute lacked a substantial number of features described in the health club model.²⁵⁹ Consequently, the court held that the ISBTC's application of the health club model to ninety percent of the tennis facility under consideration was not supported by substantial evidence.²⁶⁰ In fact, the court found that the evidence showed the tennis facility's features better matched those of the light warehouse model than those of the health club model.²⁶¹ Therefore, the tax court determined that IRC had carried its burden of showing that the ISBTC "abused its discretion by applying the wrong model in assessing the tennis facility."²⁶² The court also concluded that the ISBTC "abused its discretion by applying the health club model in determining the tennis facility's reproduction cost."²⁶³ Upon remand, the court instructed the ISBTC to "apply the model that most closely resembles the physical structure of the tennis facility area being considered and recalculate the facility's reproduction costs based upon that model."²⁶⁴

In sum, the tax court advised that, on remand, RSA had the burden of going

252. *See id.*

253. *See id.*

254. *See id.*

255. *Id.* at 937.

256. *See id.*

257. *See id.*

258. *Id.* at 939.

259. *See id.*

260. *See id.*

261. *See id.*

262. *Id.*

263. *Id.* at 941.

264. *Id.*

forward with probative evidence about the proper classification of the parcels and the proper base rate to be assigned the parcels.²⁶⁵ The tax court also found that IRC must present “probative evidence concerning the appropriate model to use in calculating the base rate for the [ninety percent] of its indoor tennis facility at issue, including but not limited to evidence regarding the proper grade to be assigned the [indoor tennis facility].”²⁶⁶

4. *CDI, Inc. v. State Board of Tax Commissioners.*²⁶⁷—CDI, Inc., the owner of a truck warehouse located in Vigo County, Indiana, sought an adjustment to its real property tax assessment.²⁶⁸ In this case, the tax court ruled against the property owner and affirmed the final determinations of the ISBTC.²⁶⁹

The first issue was whether the ISBTC exceeded its legislative authority in conducting a hearing because the ISBTC failed to issue a letter of appointment to its hearing officer. There was no evidence in the record that CDI, Inc. (taxpayer) objected (at the administrative level) to the hearing officer’s authority to hear the taxpayer’s appeal.²⁷⁰ Thus, the tax court held that the taxpayer had waived the issue and could not raise it for the first time before the tax court.²⁷¹

The tax court also found that the taxpayer failed to point to probative evidence of record that indicated what the correct grade should be or whether the structure was a kit building. Therefore, the tax court rejected the taxpayer’s arguments concerning the grade assigned to the warehouse and kit building adjustments.²⁷² The court held that “[w]hen a taxpayer contests the grade assigned an improvement, the taxpayer must offer probative evidence concerning the alleged assessment error.”²⁷³ The tax court determined that “[w]here the taxpayer fails to provide the [ISBTC] with probative evidence supporting its position on the grade issue, the [ISBTC’s] duty to support its final determination with substantial evidence is not triggered.”²⁷⁴ In addition, the court explained that “a taxpayer must provide the [ISBTC] with probative evidence as to whether an improvement qualifies as a kit building.”²⁷⁵ The court advised that “with the

265. *See id.*

266. *Id.*

267. 725 N.E.2d 1015 (Ind. Tax Ct. 2000).

268. *See id.* at 1017.

269. *See id.* at 1022.

270. *See id.* at 1018.

271. *See id.*

272. *See id.* at 1019; *see also* IND. ADMIN. CODE tit. 50, r. 2.2-10-3 (2000).

273. *CDI, Inc.*, 725 N.E.2d at 1019.

274. *Id.*

275. *Id.* The court referred to a previous decision where it held:

[I]t is incumbent upon the taxpayer to offer evidence tending to show the improvement qualifies for the kit adjustment. If the taxpayer fails to do so, the taxpayer’s claim fails. This is not an onerous burden. . . . Instructional Bulletin 91-8 outlines a large number of specific characteristics of kit buildings. Accordingly, it should not be difficult for taxpayers to identify those characteristics in an improvement alleged to qualify for the kit adjustment.

issue of grade, the [ISBTC] is not required to support its denial of the kit building adjustment until the taxpayer comes forward with probative evidence demonstrating that it is entitled to the adjustment.²⁷⁶

The tax court found that in this case the taxpayer failed to present probative evidence regarding either the grade assignment or kit building adjustments for the warehouse.²⁷⁷ Therefore, the court held that the ISBTC had no duty to refute the taxpayer's arguments with a competing view.²⁷⁸ Consequently, the court did not consider whether substantial evidence supported the ISBTC's grading of the warehouse or its refusal to grant the warehouse a kit building adjustment.²⁷⁹

Finally, the tax court declined to address the merits of the taxpayer's argument concerning the use of a particular economic life table in determining the warehouse's physical depreciation.²⁸⁰ The court held that a taxpayer may not secure the reversal of a final determination regarding a structure's physical depreciation simply by alleging an inadequacy in the regulations governing physical depreciation in general and the selection of the appropriate economic life table specifically.²⁸¹ Rather, the taxpayer must offer probative evidence regarding the purported error.²⁸² Because the taxpayer failed to present probative evidence regarding which economic life table is applicable, the court held that "the [ISBTC's] duty to develop and support a competing view of the proper assessment was never triggered."²⁸³

5. *Kemp v. State Board of Tax Commissioners.*²⁸⁴—In *Kemp*, the owners of residential real estate located in LaPorte County, Indiana, appealed the ISBTC's denial of their request to lower the assessed value of their residence.²⁸⁵ The tax court ruled against the property owners and affirmed the ISBTC's final determination.²⁸⁶

The tax court first addressed whether the ISBTC exceeded its legislative authority in conducting a hearing without having first issued a letter of appointment to its hearing officer. The tax court found that there was no evidence in the record that the Kemps (taxpayers) had objected to the hearing

Id. (citing *Whitley Prods., Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1121 (Ind. Tax Ct. 1998)).

276. *Id.* at 1020.

277. *See id.* at 1021.

278. *See id.*

279. *See id.*

280. *See id.* at 1021-22.

281. *See id.* at 1022.

282. *See id.*

283. *Id.* *See also* *Whitley Prods., Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119-20 (Ind. Tax Ct. 1998); *King Indus. Corp. v. State Bd. of Tax Comm'rs*, 699 N.E.2d 338, 343 (Ind. Tax Ct. 1998).

284. 726 N.E.2d 395 (Ind. Tax Ct. 2000).

285. *See id.* at 398.

286. *See id.* at 404.

officer's authority at the administrative level to hear the taxpayers' appeal.²⁸⁷ Thus, the court held that the taxpayers waived the issue and could not raise it for the first time in their original tax appeal.²⁸⁸

The tax court next addressed whether the ISBTC properly assigned a "B" grade to the taxpayers' residence. The court reviewed the assignment of grades under the true tax value system in Indiana and noted that "improvements are assigned various grades based on their materials, design and workmanship."²⁸⁹ The court found that "the grades represent multipliers that are applied to the base reproduction cost of an improvement,"²⁹⁰ and further explained that "[w]hen contesting the grade assigned an improvement, a taxpayer must offer probative evidence concerning the alleged assessment error."²⁹¹ The tax court held that "a taxpayer's conclusory statements do not constitute probative evidence concerning the grading of the subject improvement."²⁹² The court also held: "Mere references to photographs or regulations, without explanation, do not qualify as probative evidence."²⁹³ The court explained that when the taxpayer fails to provide the ISBTC with probative evidence supporting its position on the grade issue, the ISBTC's duty to support its final determination with substantial evidence is not triggered.²⁹⁴

After a review of the evidence presented in the case, the tax court found that the taxpayers failed to submit probative evidence on the issue of grade to the ISBTC.²⁹⁵ Moreover, the court found that the opinion testimony presented in the case amounted to conclusory statements that did not qualify as probative evidence.²⁹⁶ The court explained that the ISBTC had no duty to make the taxpayers' case for them and that it was the taxpayers' obligation to substantiate their claims with probative evidence before the ISBTC, but because the taxpayers failed to do so, they did not meet their burden of production.²⁹⁷ Therefore, the tax court held that the duty of the ISBTC to substantiate its final determination on the grade issue was never triggered.²⁹⁸

The final issue addressed in *Kemp* was whether the ISBTC's regulations, as applied to the assessment of the taxpayers' property, produced an inequitable and unjust assessment in violation of the Property Tax Clause of the Indiana Constitution.²⁹⁹ The tax court found that a taxpayer must present specific

287. *See id.* at 399.

288. *See id.*

289. *Id.* at 400. *See also* IND. ADMIN. CODE, tit. 50, r. 2.2-10-3 (2001).

290. *Kemp*, 726 N.E.2d at 400.

291. *Id.*

292. *Id.*

293. *Id.*

294. *See id.*

295. *See id.* at 401.

296. *See id.*

297. *See id.*

298. *See id.*

299. *See id.* at 401-02.

evidence that the assessment is unconstitutional as applied to the taxpayer for the challenge to succeed.³⁰⁰ The court acknowledged that an application of regulations in an unconstitutional manner by the ISBTC constitutes an abuse of discretion.³⁰¹

In making its determination, the tax court considered whether the taxpayers were entitled to an obsolescence adjustment for their home.³⁰² The court explained that obsolescence is the "diminishing of a property's desirability and usefulness brought about by either functional inadequacies or overadequacies inherent in the property itself, or adverse economic factors external to the property."³⁰³ The court observed that the regulations recognize both functional and economic obsolescence³⁰⁴ and explained: "Functional obsolescence is caused by internal factors. Economic obsolescence is caused by external factors."³⁰⁵ The tax court explained that the determination of obsolescence is a two-step process requiring an assessor to identify causes of obsolescence first and then quantify the amount of obsolescence to be applied.³⁰⁶ The tax court noted that the regulations indicate that, "[o]bsolescence depreciation is seldom applied to residential dwellings. There must be an extremely abnormal circumstance involved with a residential dwelling before obsolescence depreciation applies."³⁰⁷ The tax court required that in order to obtain an obsolescence adjustment, the taxpayers had the burden to produce evidence showing that their home suffered from an extremely abnormal circumstance.³⁰⁸

The tax court found that the taxpayers failed to introduce any evidence at the administrative hearing showing that an extremely abnormal circumstance was present in their home that justified application of an obsolescence adjustment.³⁰⁹ Further, the tax court found that the taxpayers failed to identify any causes of obsolescence.³¹⁰ Therefore, the tax court held that the ISBTC correctly denied

300. *See id.* at 402.

301. *See id.*

302. *See id.*

303. *Id.* (quoting IND. ADMIN. CODE., tit. 50, r. 2.2-1-40 (1996)).

304. *See id.* (citing IND. ADMIN. CODE., tit. 50, r. 2.2-10-7(e) (1996)).

305. *Id.* (quoting IND. ADMIN. CODE., tit. 50, r. 2.2-10-7(e) (1996)).

Functional obsolescence has numerous possible causes, including: (1) inefficient floor plans; (2) unnecessary or superadequate construction; (3) inadequate parking; and (4) mechanical inadequacy. Possible causes of economic obsolescence include: (1) inoperative or inadequate zoning ordinances; (2) deed restrictions; and (3) market acceptability of the product or devices for which the property was constructed or is currently used.

Id. (citing *Pedcor Invs.-1990-XIII L.P. v. State Bd. of Tax Comm'rs*, 715 N.E.2d 432, 435 (Ind. Tax Ct. 1999)).

306. *See id.*

307. *Id.* (quoting IND. ADMIN. CODE, tit. 50, r. 2.2-7-9(d) (1996)).

308. *See id.*

309. *See id.* at 402-03.

310. *See id.* at 403.

the taxpayers an obsolescence adjustment for their home.³¹¹

The taxpayers also failed to persuade the tax court that a sales ratio study based on market values could validly demonstrate the alleged inequity of Indiana's system of assessments.³¹² The tax court found that "the [ISBTC] is required to deal with a taxpayer's evidence in a meaningful manner, but only if the evidence has probative value."³¹³ In this case, the court found that the taxpayers failed to demonstrate that the market data study they presented was relevant in determining their assessment's correctness.³¹⁴ Therefore, the tax court held that the ISBTC did not abuse its discretion by refusing to consider the market data study.³¹⁵ The court observed that the market data study "was the only evidence provided by the [taxpayers] supporting their constitutional claim. Without it, [the taxpayers] lacked any specific evidence showing that the [ISBTC's] regulations, as applied, violated their rights to a uniform and equal assessment under the Indiana Constitution."³¹⁶ Therefore, the tax court rejected the taxpayers final claim.³¹⁷

6. *Bernacchi v. State Board of Tax Commissioners*.³¹⁸—In *Bernacchi*, the owners of residential real estate located in LaPorte County, Indiana, appealed the final determination of the ISBTC denying their request to lower the assessed value of their residence.³¹⁹ In this case, the tax court affirmed the ISBTC's final determination in this case.³²⁰

The first issue the tax court addressed was whether the ISBTC exceeded its legislative authority in conducting a hearing in this matter without issuing a letter of appointment to its hearing officer. The tax court concluded that there was no evidence in the record that the Bernacchis (taxpayers) objected to the hearing officer's authority at the administrative level to hear the taxpayers' appeal.³²¹ Thus, the tax court held that the taxpayers waived the issue and could not raise it for the first time in its original tax appeal.³²²

Next, the tax court addressed whether the ISBTC board properly assigned a "B" plus two grade to the taxpayers' residence. After a review of the evidence presented in this case, the tax court found that the taxpayers failed to submit probative evidence on the issue of grade to the ISBTC and that in the absence of probative evidence, the taxpayers failed to meet their burden of production.³²³

311. *See id.*

312. *See id.*

313. *Id.* at 404.

314. *See id.*

315. *See id.*

316. *Id.*

317. *See id.*

318. 727 N.E.2d 1133 (Ind. Tax Ct. 2000).

319. *See id.* at 1134.

320. *See id.* at 1138.

321. *See id.* at 1135.

322. *See id.*

323. *See id.* at 1136.

Therefore, the tax court held that the ISBTC's duty to substantiate its final determination on the issue of grade was never triggered and affirmed the final determination of the ISBTC with respect to the grade assigned to the taxpayers' residence.³²⁴

The final issue addressed in *Bernacchi* was whether the ISBTC's regulations, as applied to the assessment of the taxpayers' property, produced an inequitable and unjust assessment in violation of the Property Tax Clause of the Indiana Constitution.³²⁵ The tax court held that "[i]n order for such a challenge to succeed, a taxpayer must present specific evidence that an assessment is unconstitutional as applied to him."³²⁶ In analyzing this issue, the court first considered whether the taxpayers were entitled to an obsolescence adjustment for their residence. To obtain an obsolescence adjustment, the taxpayers had a burden to produce evidence showing that their residence suffered from an extremely abnormal circumstance.³²⁷ In the instant case, the tax court found that the taxpayers provided no such evidence.³²⁸ Therefore, the court held that the ISBTC correctly denied the taxpayers' request for an obsolescence adjustment.³²⁹

The court also found that the taxpayers failed to persuade the court of any inequity of assessments made under Indiana's property taxation system.³³⁰ The only evidence presented by the taxpayers supporting their constitutional challenge failed, and without it "there was no specific evidence showing that the [ISBTC's] regulations, as applied, violated [the taxpayers'] rights to a uniform and equal assessment under the Indiana Constitution."³³¹ Therefore, the tax court found that the ISBTC did not abuse its discretion with respect to the taxpayers' final claim.³³²

7. *Alcoils, Inc. v. State Board of Tax Commissioners*.³³³—*Alcoils, Inc.* (taxpayer), the owner of property located in Whitley County, Indiana, sought review of three ISBTC Form 133 petitions that were allegedly filed by the taxpayer but never received by the ISBTC.³³⁴ In addition, the taxpayer appealed a final determination of the ISBTC with respect to adjustments for grade and obsolescence depreciation.³³⁵ The tax court affirmed the ISBTC with respect to the Form 133 petitions and affirmed in part and reversed in part the ISBTC's

324. *See id.* at 1137.

325. *See id.* at 1134-45; *see also* IND. CONST. art. X, § 1 ("The General Assembly shall provide, by law, for a uniform and equal rate of property assessment and taxation . . .").

326. *Id.* at 1137 (citation omitted).

327. *See id.*

328. *See id.*

329. *See id.* at 1138.

330. *See id.*

331. *Id.*

332. *See id.*

333. 727 N.E.2d 795 (Ind. Tax Ct. 2000).

334. *See id.* at 796.

335. *See id.* at 797.

final determination concerning the grade and obsolescence adjustments.³³⁶ Thus, the case was remanded for further proceedings.³³⁷

First, the tax court discussed the proper filing of an ISBTC Form 133 and reviewed *Indiana Sugars, Inc. v. State Board of Tax Commissioners*.³³⁸ In *Indiana Sugars*, the taxpayer filed a petition for the Enterprise Zone Business Personal Property Tax Credit³³⁹ by first class mail, but the petition was never received by the Lake County Auditor.³⁴⁰ The tax court pointed out that no statutes dealing with filing procedures of the ISBTC existed.³⁴¹ Finding that such statutes did exist for the IDSR, the tax court analogized between the two agencies with respect to their filing procedures.³⁴² Applying the IDSR's statutes in *Indiana Sugars*, the tax court observed that the IDSR considers a document filed if it is deposited in the United States mail before the filing deadline.³⁴³ In *Alcoils*, the tax court credited the testimony of the taxpayer's representative concerning the mailing of the taxpayer's ISBTC Form 133 petitions and concluded that, based on *Indiana Sugars*, the taxpayer timely filed its ISBTC Form 133 petitions.³⁴⁴ The court stated: "Pursuant to *Indiana Sugars*, a taxpayer merely needs to file via first class mail."³⁴⁵ Therefore, the court found that the ISBTC Form 133 petitions in this case were properly filed.³⁴⁶

Next, the tax court reviewed the statutory jurisdictional prerequisites of tax court consideration of a case.³⁴⁷ The court held that "the [ISBTC] may not cure a failure on the part of lower taxation authorities to comply with the statutory prerequisites of a valid assessment by way of its ability to correct any assessment error in taxpayer-initiated petitions."³⁴⁸ The Indiana Supreme Court previously addressed this issue in two companion cases. In *State Board of Tax Commissioners v. Mixmill Manufacturing Co.*,³⁴⁹ the supreme court held that when a County Board of Review fails to act upon a taxpayer's Form 131 within the statutory time frame, the tax court lacks jurisdiction to hear the case.³⁵⁰ However, the supreme court stated that taxpayers may bring a mandamus action in a court of general jurisdiction to compel the County Board of Review to act

336. *See id.*

337. *See id.*

338. 683 N.E.2d 1383 (Ind. Tax Ct. 1997).

339. *See* IND. CODE. § 6-1.1-20.8-1 (2000).

340. *See Indiana Sugars, Inc.*, 683 N.E.2d at 1384.

341. *See id.* at 1385.

342. *See id.* at 1385-86; *see also* IND. CODE §§ 6-8.1-6-3(a)(1), -3(b) (1998) (IDSR filing statutes).

343. *See Indiana Sugars, Inc.* at 1386 (citing IND. CODE § 6-8.1-6-3(b) (1998)).

344. *See Alcoils, Inc. v. State Bd. of Tax Comm'rs*, 727 N.E.2d 795, 798 (Ind. Tax Ct. 2000).

345. *Id.* at 798-99.

346. *See id.* at 799.

347. *See id.*

348. *Id.*

349. 702 N.E.2d 701 (Ind. 1998).

350. *See id.* at 705.

on its petition.³⁵¹ The Indiana Supreme Court reached the same conclusion with respect to ISBTC Form 133 in *State Board of Tax Commissioners v. L.H. Carbide Corp.*³⁵² With facts similar to those in *Alcoils*, the supreme court held that when a County Board of Review fails to act on an ISBTC Form 133, the tax court does not have jurisdiction to hear the case.³⁵³ As in *Mixmill*, the supreme court stated that a taxpayer may bring a mandamus action in a court of general jurisdiction against the county officials to compel action on the petitions.³⁵⁴

Based on the above-discussed holdings of the supreme court, the tax court in *Alcoils* concluded that although the taxpayer in this case timely filed its ISBTC Forms 131, the ISBTC did not have the requisite jurisdiction to hear the case because the County Board of Review had not acted upon the taxpayer's ISBTC Forms 133.³⁵⁵ Consequently, the tax court dismissed the taxpayer's ISBTC Form 133 case due to lack of jurisdiction.³⁵⁶

The tax court then addressed whether the ISBTC erred when it denied the taxpayer certain adjustments for the grade assigned to its real property. Buildings are graded according to the quality of their workmanship, materials, and design, and a "C" grade is given to a "moderately attractive building that conforms with the base specifications used to develop the pricing schedule."³⁵⁷ By contrast, a grade of "B" is given to "an architecturally attractive building with good quality materials and workmanship throughout."³⁵⁸ In this case, the ISBTC raised the grade of the taxpayer's building from a "C" to a "B" because the taxpayer used above-average materials in the building.³⁵⁹ The tax court noted that "slight additions to the basic kit model can be accounted for by simply raising the grade . . . because none of the variations affects the actual structure of the building itself."³⁶⁰ However, the court advised that "[a] kit building can . . . lose its status as such if it displays such extant characteristics that the structure could no longer be considered economical."³⁶¹

351. *See id.*

352. 702 N.E.2d 706 (Ind. 1998).

353. *See id.* at 707.

354. *See id.* In *Alcoils* the tax court noted:

These cases are not to be confused with [Indiana Code section] 6-1.1-15-4(e)(1), which states that a failure by the [ISBTC], not the [Board of Review], to act upon the determination within 180 days shall be treated as a final determination. In these cases, this Court possesses jurisdiction, since the statute treats the [ISBTC]'s inaction as a final assessment determination.

Alcoils, Inc. v. State Bd. of Tax Comm'rs, 727 N.E.2d 795, 799, n.6 (Ind. Tax Ct. 2000).

355. *See Alcoils, Inc.*, 727 N.E.2d at 799.

356. *See id.*

357. *Id.* at 800. *See also* IND. ADMIN. CODE tit. 50, r. 2.2-10-3(a)(3) (1996).

358. *Alcoils, Inc.*, 727 N.E.2d at 800. *See also* IND. ADMIN. CODE, tit. 50, r. 2.2-10-3(a)(3) (1996).

359. *See Alcoils, Inc.*, 727 N.E.2d at 800.

360. *Id.*

361. *Id.*

After considering the proffered evidence, the tax court found that the taxpayer's evidence was insufficient to overcome the ISBTC's final determination on the issue.³⁶² The court stated:

Where a taxpayer alleges that its building qualifies for the kit adjustment, the allegation itself . . . puts the grade assigned to the building at issue. Consequently, it would be nonsensical to refuse to allow the [ISBTC] to adjust the grade of the buildings if the kit adjustment is deemed to be warranted."³⁶³

The tax court concluded that the ISBTC awarded the kit adjustment and raised the grade to compensate for modifications.³⁶⁴ The tax court found that the taxpayer was required to present probative evidence in support of this contention, but failed to do so.³⁶⁵ Thus, the tax court upheld the ISBTC's final determination on the issue of grade.³⁶⁶

Next, the tax court addressed whether the ISBTC erred when it denied the taxpayer an obsolescence factor comparable to the obsolescence factor allowed for an allegedly similar property.³⁶⁷ The court considered the taxpayer's claims and indicated that "bare allegations" do not constitute the prima facie case needed to trigger the ISBTC's duty to refute the taxpayer's evidence.³⁶⁸ The court stated that "[a] taxpayer who does not present evidence of similar properties assessed differently cannot complain to this Court that the State Board failed to consider similar properties."³⁶⁹ Therefore, the court concluded that the taxpayer failed to establish a prima facie case concerning its relationship to the allegedly similar property.³⁷⁰

Finally, the tax court considered whether the ISBTC correctly denied the taxpayer's request for a ten percent obsolescence depreciation adjustment after the taxpayer identified forms of alleged functional obsolescence in its building.³⁷¹ The ISBTC did not grant any obsolescence to the subject property.³⁷² However, the tax court found that since the taxpayer identified the forms of functional obsolescence its building suffered, it was entitled to a remand on the issue.³⁷³ The court instructed that, upon remand, the taxpayer would be required to

362. *See id.*

363. *Id.* at 801-01 (quoting *Barth, Inc. v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 807 (Ind. Tax Ct. 1998)).

364. *See id.* at 801.

365. *See id.*

366. *See id.*

367. *See id.*

368. *Id.* at 801.

369. *Id.* (quoting *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 689 N.E.2d 765, 771-72 (Ind. Tax Ct. 1997)).

370. *See id.*

371. *See id.*

372. *See id.*

373. *See id.* at 802.

“identify, quantify, and support its determination of functional obsolescence with probative evidence.”³⁷⁴ The ISBTC would then be required to deal with the taxpayer’s evidence in “a meaningful manner.”³⁷⁵

8. *WRC Co. v. State Board of Tax Commissioners.*³⁷⁶—WRC Co. (taxpayer), the owner of real property located in Perry County, Indiana, asked the tax court to review a final assessment determination made by the ISBTC.³⁷⁷ The tax court ruled against the taxpayer and affirmed the final assessment determination of the ISBTC.³⁷⁸

First, the tax court considered whether the ISBTC applied the correct influence factor to land owned by the taxpayer.³⁷⁹ “Land values in a given neighborhood are determined through the application of a Land Order.”³⁸⁰ Land orders are developed by collecting and analyzing comparable sales data for a neighborhood.³⁸¹ An entity known as the County Land Valuation Commission studies the sales data for the neighborhood and subsequently recommends a range of values for properties there.³⁸² ISBTC then sets the final values in a “land order.”³⁸³

The tax court explained that “[i]nfluence factors may be used by both the assessor and the [ISBTC] to adjust the values for properties that possess certain features that make those properties unique.”³⁸⁴ It further found that the assessor must identify deviations from the norm in the subject property to apply an influence factor.³⁸⁵ “These deviations are expressed as a percentage that reflects the composite effect of the factor or factors that influence the value.”³⁸⁶ The court also noted that in original tax appeals, each assessment and each tax year stands alone.³⁸⁷ Moreover, the court found that because the taxpayer’s land received a particular negative influence factor in one year does not necessarily indicate the appropriate influence factor for a subsequent reassessment.³⁸⁸ The

374. *Id.*

375. *Id.*

376. 729 N.E.2d 1067 (Ind. Tax Ct. 2000), available at No. 49T10-9809-TA-115, 2000 Ind. Tax LEXIS 19, at *1 (May 23, 2000).

377. *See id.* at *1.

378. *See id.*

379. *See id.* at *3.

380. *Id.* *See also* IND. ADMIN. CODE tit. 50, r. 2.2-4-10(a)(9) (1996) (discussing coding for influence factors).

381. *See WRC Co.*, 2000 Ind. Tax LEXIS 19, at *3; *see also* IND. CODE § 6-1.1-4-13.6 (1998); IND. ADMIN. CODE, tit. 50, r. 2.2-4-10 (1996).

382. *See WRC Co.*, 2000 Ind. Tax LEXIS 19, at *3-*4; *see also* IND. CODE § 6-1.1-4-13.6 (1998).

383. *WRC Co.*, 2000 Ind. Tax LEXIS 19, at *4; *see also* IND. CODE § 6-1.1-4-13.6 (1998).

384. *WRC Co.*, 2000 Ind. Tax LEXIS 19, at *4.

385. *See id.*

386. *Id.* (citing IND. ADMIN. CODE, tit. 50, r. 2.1-2-1).

387. *See id.* at *6.

388. *See id.*

tax court reasoned that since the taxpayer failed to establish a prima facie case, the ISBTC had no duty to rebut the taxpayer's claim.³⁸⁹ Consequently, the tax court affirmed the findings of the ISBTC on this issue.³⁹⁰

Next, the court considered "whether the [ISBTC] erred when it did not classify the taxpayer's building as a kit building."³⁹¹ The ISBTC distributes an instructional bulletin which discusses various aspects of kit buildings.³⁹² One feature is that "[k]it buildings are generally lightweight and are made of inexpensive materials."³⁹³ The court emphasized that the instructional bulletin provides: "[I]f the additional features of the kit building result in the building no longer being economical, it cannot qualify for the kit adjustment,"³⁹⁴ and reiterated that the ISBTC instructional bulletin "directs the inquiry to a quantification of how much a deviation from the basic kit model increases the cost of the improvement being assessed."³⁹⁵ The tax court referred to *Morris v. State Board of Tax Commissioners*,³⁹⁶ where the court reversed the ISBTC's final determination that a building failed to qualify as a kit building because it possessed a brick wall.³⁹⁷ In *Morris*, the court stated that the existence of brick walls does not automatically disqualify a building from kit building status.³⁹⁸ However, unlike the structure in *Morris*, the taxpayer's building in *WRC* was covered entirely with brick veneer.³⁹⁹ The tax court held that although the taxpayer's building possessed most of the characteristics found in kit buildings, the fact that the building was entirely covered with brick veneer removed it from the economical category in which kit buildings were found.⁴⁰⁰ Therefore, the court held in favor of the ISBTC on this issue.⁴⁰¹

9. *Sterling Management-Orchard Ridge Apartments v. State Board of Tax Commissioners*.⁴⁰²—In *Sterling Management*, the owner of an apartment complex located in Kosciusko County, Indiana, appealed the ISBTC's final determination denying its request to lower the assessed value of its property.⁴⁰³

First, the tax court considered whether the ISBTC improperly assessed a retaining wall on the taxpayer's property. To prove that the ISBTC's assessment of the retaining wall was improper, the court required the taxpayer to

389. See *id.* at *7.

390. See *id.*

391. *Id.* at *1.

392. See *id.* at *7; see also Instructional Bulletin 91-8 (1991).

393. *WRC Co.*, 2000 Ind. Tax LEXIS 19, at *7.

394. *Id.* at *8 (citing Instructional Bulletin 91-8, at 7).

395. *Id.*

396. 712 N.E.2d 1120 (Ind. Tax Ct. 1999).

397. See *id.* at 1123.

398. See *id.* at 1124.

399. See *WRC Co.*, 2000 Ind. Tax LEXIS 19, at *9.

400. See *id.* at *10.

401. See *id.*

402. 730 N.E.2d 828 (Ind. Tax Ct. 2000)

403. See *id.* at 832.

submit evidence of probative value to the [ISBTC] showing that the retaining wall in question was not present, was present but added no value as an improvement over and above the curing contribution considered in the site valuation or was present and had a value different from its assessed value.⁴⁰⁴

The court reviewed the evidence presented at trial and determined that the evidence failed to prove the absence of a retaining wall.⁴⁰⁵ Assuming the retaining wall was present, the court felt that the testimony did not constitute probative evidence as to what value should have been assigned to the wall.⁴⁰⁶ The court further held that statements offered by the taxpayer did not constitute probative evidence regarding either the existence or value of the retaining wall.⁴⁰⁷ Therefore, the tax court concluded that the ISBTC's duty to support its final determination with substantial evidence was not triggered, and the taxpayer's argument did not demonstrate that the ISBTC's final determination was arbitrary and capricious.⁴⁰⁸ Consequently, the tax court affirmed the final determination of the ISBTC concerning the assessment of the retaining wall.⁴⁰⁹

Next, the tax court considered whether the ISBTC's valuation of iron fencing on the taxpayer's property, where the ISBTC's assessment regulations did not assign values to such fencing. The court observed that "[u]nder Indiana's ascertainable standards rule, all administrative decisions must be in accord with previously stated, ascertainable standards."⁴¹⁰ The ascertainable standards rule ensures that administrative decisions are "fair, orderly and consistent rather than irrational and arbitrary."⁴¹¹ Under the ascertainable standards rule, the relevant standards "must be written with sufficient precision to give fair warning as to what factors an agency will consider in making an administrative decision. Moreover, standards should also be readily available to those who have potential contact with the administrative body."⁴¹²

The tax court concluded that the ISBTC violated the ascertainable standards rule in this case because the ISBTC's assessment regulations failed to provide standards with respect to the valuation of iron fencing, and there was no previously announced standard for the ISBTC to apply when assessing the iron fencing.⁴¹³ Additionally, the tax court found that the taxpayer lacked any

404. *Id.* at 834.

405. *See id.*

406. *See id.*

407. *See id.* at 834-35.

408. *See id.*

409. *See id.*

410. *Id.* at 836 (quoting *Boaz v. Bartholomew Consol. Sch. Corp.*, 654 N.E.2d 320, 323 (Ind. Tax Ct. 1995)).

411. *Id.* at 836-37 (quoting *Garcia v. State Bd. of Tax Commr's*, 694 N.E.2d 794, 796 (Ind. Tax Ct. 1998) (citation omitted)).

412. *Id.* at 837.

413. *See id.*

warning that the ISBTC would rely upon market information to assess the fencing.⁴¹⁴ The court also emphasized that the ISBTC's standards were not readily available to the taxpayer.⁴¹⁵ Accordingly, the tax court found that the ISBTC's assessment of the taxpayer's iron fencing was arbitrary and capricious, reversed the ISBTC's final determination on the issue of the valuation of the iron fencing, and remanded to the ISBTC.⁴¹⁶ The court instructed the ISBTC "to conduct a hearing on this issue, during which it shall accept and consider any objectively verifiable evidence submitted by [the taxpayer] as to the iron fencing's value."⁴¹⁷

The final issue that the tax court considered in *Sterling* was whether the ISBTC assigned the correct grade to the taxpayer's apartment complex.⁴¹⁸ The tax court concluded that because the taxpayer failed to identify any probative evidence of record indicating what the correct grade should be, it need not address whether or not the ISBTC's decision was supported by substantial evidence.⁴¹⁹ The court found that the taxpayer's submissions both to the ISBTC and to the court did not constitute probative evidence.⁴²⁰ In addition, the court found that "questions as to definitions do not constitute probative evidence on the issue of grade" and that "the taxpayer should offer specific evidence tied to the various descriptions of grade classifications."⁴²¹ In the absence of the taxpayer presenting probative evidence as to grade, the ISBTC was not required to support its final determination on the issue with substantial evidence.⁴²² Therefore, the tax court affirmed the ISBTC's final determination on the issue of grade.⁴²³

10. *Plainfield Elks Lodge No. 2186 v. State Board of Tax Commissioners.*⁴²⁴—In *Plainfield Elks Lodge No. 2186*, the owner of property consisting of a golf course, swimming pool, and lodge house located in Hendricks County, Indiana, appealed the final assessment determination of the ISBTC denying the owner a property tax exemption.⁴²⁵ In this tax appeal, the Plainfield Elks Lodge No. 2186 (taxpayer) raised only the issue of whether the taxpayer's property met the "charitable purpose" requirements of sections of 6-1.1-10-16(a) to -36.3(a) of the Indiana Code.⁴²⁶ The court defined the pivotal

414. *See id.*

415. *See id.*

416. *See id.* at 838.

417. *Id.*

418. *See id.* at 832.

419. *See id.* at 838.

420. *See id.* at 839.

421. *Id.* at 839-40.

422. *See id.* at 840.

423. *See id.*

424. 733 N.E.2d 32 (Ind. Tax Ct. 2000).

425. *See id.* at 33.

426. *See id.* In its discussion of the case, the court found that the requirements of the relevant provisions of the Indiana Code are strictly construed against the taxpayer, as are other tax exemption statutes. However, the court cautioned that such provisions should not be construed so

inquiry in the case as whether the use of the property furthered exempt purposes.⁴²⁷

Section 6-1.1-10-16(a) of the Indiana Code stated that "a building is exempt from property tax if it is owned, occupied and used by a person for educational, literary, scientific, religious or charitable purposes."⁴²⁸ Section 6-1.1-10-36.3(a) further states that "a property is predominately used during the year for one or more of the above purposes if it is used or occupied more than [fifty percent] of the time."⁴²⁹ The tax court found that if this test is met, the property is entitled to an exemption proportional to the amount of time it was used for the exempt purposes.⁴³⁰ Therefore, in order to receive the exemption, the taxpayer had to prove that its property was predominately used for charitable purposes.⁴³¹

The tax court explained that in analyzing the test, the term charity would be defined in its broad constitutional sense, as is applied to the use of any property alleged to be exempt from property taxation.⁴³² The court also acknowledged that the Indiana Supreme Court has analyzed an organization's time and monetary contributions together when deciding whether or not to grant a property tax exemption.⁴³³ In addition, the court referred to *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*,⁴³⁴ where it determined that "the rationale behind the exemption is that a present benefit to the general public exists from the operation of the charitable institution sufficient to justify the loss of tax revenue."⁴³⁵ The tax court also observed that the supreme court has ruled that an organization may make a small profit, yet still retain its exempt status.⁴³⁶

In this case, the tax court found that when combined with the taxpayer's monetary donations, the property was predominately - but not solely - used for charitable purposes.⁴³⁷ Therefore, the tax court concluded that the taxpayer was entitled to an exemption and that the ISBTC abused its discretion by failing to grant the taxpayer a property tax exemption.⁴³⁸ The court reversed the final

narrowly as to defeat or frustrate the legislature's purpose. *See id.* at 34.

427. *See id.* at 34.

428. *Id.*

429. *Id.*

430. *See id.*; *see also* IND. CODE § 6-1.1-10-36.3(b)(3).

431. *See Plainfield Elks Lodge No. 2186*, 733 N.E.2d at 34; *see also* IND. CODE §§ 6-1.1-10-16(a), 6-1.1-36.3(a).

432. *See Plainfield Elks Lodge No. 2186*, 733 N.E.2d at 34.

433. *See id.* at 35 (citing *State Bd. of Tax Comm'rs v. Fraternal Order of Eagles, Lodge No. 255*, 521 N.E.2d 678, 681 (Ind. 1988)).

434. 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990).

435. *Plainfield Elks Lodge No. 2186*, 733 N.E.2d at 35.

436. *See id.* at 35-36; *see also* *State Bd. of Tax Comm'rs v. Indianapolis Lodge No. 17, Loyal Order of Moose, Inc.*, 200 N.E.2d 221, 225 (Ind. 1964) (holding taxpayer entitled to exemption, despite small profit made from dining room).

437. *See Plainfield Elks Lodge No. 2186*, 733 N.E.2d at 36.

438. *See id.*

determination of the ISBTC, which denied the taxpayer a property tax exemption, and remanded the case with instructions to determine the appropriate exemption.⁴³⁹

11. *New Castle Lodge No. 147, Loyal Order of Moose, Inc. v. State Board of Tax Commissioners*.⁴⁴⁰—In *New Castle Lodge No. 147*, a fraternal organization that owned a lodge building located in Henry County, Indiana, appealed the final determination of the ISBTC denying it a property tax exemption.⁴⁴¹ Specifically, *New Castle Lodge No. 147, Loyal Order of Moose, Inc.* (taxpayer) requested a determination of whether or not the taxpayer's property was predominately used for charitable purposes under sections 6-1.1-10-16(a) and 6-1.1-10-36.3(a) of the Indiana Code.⁴⁴² Therefore, the tax court indicated that the pivotal question in this case was whether or not the use of the property furthered exempt purposes.⁴⁴³

The tax court noted that in *Plainfield Elks Lodge No. 2186*,⁴⁴⁴ it held that the taxpayer was entitled to a partial exemption, while in *Alte Salems Kirche*,⁴⁴⁵ it held that the taxpayer was entitled to a 100% exemption.⁴⁴⁶ The tax court noted that as stated in both the statute and in *Plainfield Elks Lodge No. 2186*, entitlement to an exemption depends upon whether the property is being used for charitable purposes more than fifty percent of the time.⁴⁴⁷ The tax court observed that if this test was met, the property was entitled to an exemption in proportion to the amount of time it was used for charitable purposes.⁴⁴⁸ The tax court noted that in *Plainfield Elks Lodge No. 2186*, it found that the combination of the Elks' monetary and in-kind donations to the local community were enough to qualify it for a partial exemption.⁴⁴⁹

In its review of the case, the tax court considered *Indianapolis Elks Building Corp. v. State Board of Tax Commissioners*,⁴⁵⁰ where the court of appeals held

439. *See id.*

440. 733 N.E.2d 36 (Ind. Tax Ct.), *vacated by* 741 N.E.2d 1260 (Ind. 2000).

441. *See id.* at 38.

442. *See id.* The tax court found that like other tax exemption statutes, the requirements of section 6-1.1-10-36.3(a) of the Indiana Code are strictly construed against the taxpayer. However, the tax court cautioned that this statutory provision is not to be construed so narrowly that the legislature's purpose in enacting it is defeated or frustrated.

443. *See id.* at 38-39.

444. 733 N.E.2d at 32.

445. *Alte Salems Kirche, Inc. v. State Bd. of Tax Comm'rs*, 733 N.E.2d 40, 44 (Ind. Tax Ct. 2000).

446. *See New Castle Lodge No. 147, Loyal Order of Moose, Inc.*, 733 N.E.2d at 39.

447. *See id.*; *see also* IND. CODE § 6-1.1-10-36.3(a); *Plainfield Elks Lodge No. 2186*, 733 N.E.2d at 34.

448. *See New Castle Lodge No. 147, Loyal Order of Moose, Inc.*, 733 N.E.2d at 39; *see also* IND. CODE § 6-1.1-10-36.3(b)(3).

449. *See New Castle Lodge No. 147, Loyal Order of Moose, Inc.*, 733 N.E.2d at 39; *see also Plainfield Elks Lodge No. 2186*, 733 N.E.2d at 36.

450. 251 N.E.2d 673, 683 (Ind. Ct. App. 1969).

that the taxpayer did not qualify for the exemption when only three percent of its gross income was donated to charity.⁴⁵¹ The tax court also considered *State Board of Tax Commissioners v. Fraternal Order of Eagles, Lodge No. 255*,⁴⁵² where the supreme court held that a taxpayer's contributions were not enough to entitle it to an exemption.⁴⁵³ The tax court opined that the determination of an organization's exempt status does not turn on the percentage of its gross income used for charitable, educational or other benevolent purposes.⁴⁵⁴ Instead, a building's exempt status actually turns on whether or not the property was predominately used for the above-mentioned purposes more than fifty percent of the time.⁴⁵⁵ The tax court also observed that the statute contemplated that a charitable organization's property could be used for some social purposes and still receive the exemption.⁴⁵⁶ The tax court found that the taxpayer in this case used its property predominately, though not solely, for charitable purposes.⁴⁵⁷ Consequently, the tax court held that the ISBTC abused its discretion by failing to grant the taxpayer an exemption.⁴⁵⁸ Therefore, the tax court reversed the final determination of the ISBTC and remanded the case to the ISBTC with instructions to determine the appropriate exemption allowed by section 6-1.1-10-36.3(b)(3) of the Indiana Code.⁴⁵⁹

12. *Alte Salems Kirche, Inc. v. State Board of Tax Commissioners*.⁴⁶⁰—In *Alte Salems Kirche*, the owner of property consisting of a church building, a mobile home, and a barn located in Posey County, Indiana, appealed the final assessment determination of the ISBTC denying it a property tax exemption.⁴⁶¹ *Alte Salems Kirche, Inc.* (taxpayer) raised the issue of whether the taxpayer met the "charitable purpose" requirements of sections 6-1.1-10-16(a) and 6-1.1-10-36.3(a) of the Indiana Code.⁴⁶² The tax court found that the taxpayer met the statutory requirements and was therefore entitled to an exemption.⁴⁶³

The court indicated that the church was officially non-denominational, and

451. See *New Castle Lodge No. 147, Loyal Order of Moose, Inc.*, 733 N.E.2d at 39.

452. 521 N.E.2d 678, 681 (Ind. 1988)

453. See *New Castle Lodge No. 147, Loyal Order of Moose, Inc.*, 733 N.E.2d at 39.

454. See *id.*

455. See *id.*; see also IND. CODE § 6-1.1-10-36.3(a).

456. See *New Castle Lodge No. 147, Loyal Order of Moose, Inc.*, 733 N.E.2d at 40; see also

IND. CODE § 6-1.1-10-36.3(a).

457. See *New Castle Lodge No. 147, Loyal Order of Moose, Inc.*, 733 N.E.2d at 40.

458. See *id.*

459. See *id.*

460. 733 N.E.2d 40 (Ind. Tax Ct. 2000).

461. See *id.* at 42.

462. See *id.* As in *Plainfield Elks Lodge No. 2186*, the tax court indicated that the requirements of section 6-1.1-10-36.3(a) are strictly construed against the taxpayer and again cautioned that the provision was not to be construed so narrowly that the legislature's purpose in enacting it is defeated or frustrated. See *id.* at 43.

463. See *id.* at 44.

that people of various faiths often worshiped there.⁴⁶⁴ It further observed that for several years the ISBTC granted the taxpayer a property tax exemption.⁴⁶⁵ However, in its final determination, the ISBTC denied the taxpayer a property tax exemption.⁴⁶⁶

The court indicated that the pivotal inquiry was whether the use of the property furthered exempt purposes.⁴⁶⁷ Section 6-1.1-10-36.3(b)(2) of the Indiana Code states that "if property is predominately used for religious or charitable purposes by a church or religious society, then it is completely exempt from taxation."⁴⁶⁸

The ISBTC found the taxpayer's evidence of comparable properties irrelevant to the taxpayer's case and failed to consider it an abuse of discretion.⁴⁶⁹ In so holding, the court looked to its previous ruling in *Foursquare Tabernacle Church of God in Christ v. State Board of Tax Commissioners*,⁴⁷⁰ where it determined that "the rationale behind the charitable purpose exemption was that a present benefit to the general public exists from the operation of the charitable institution sufficient to justify the loss of tax revenue."⁴⁷¹ The tax court observed that the Alte Salem Kirche church was available twenty-four hours a day, seven days a week for prayer, meditation or other religious purposes and also considered the educational and religious uses of the property.⁴⁷² The court held that the taxpayer's church building was entitled to the property tax exemption.⁴⁷³

In addition to the church building, the taxpayer owned a mobile home and barn, which were also denied exemptions by the ISBTC. The tax court indicated that "property must be reasonably necessary for the maintenance of, and not just related to, the exempt purposes of the charitable organization."⁴⁷⁴ The court determined that the use of the barn for storage and uses of the mobile home were reasonably necessary to the maintenance of the church, and thus, should have been allowed property tax exemptions as well.⁴⁷⁵

In summary, the tax court found that the taxpayer "used its property

464. *See id.* at 42.

465. *See id.*

466. *See id.* In a prior review of the case, the tax court found that the ISBTC failed to consider all the evidence presented and remanded the case for further consideration. Following the remand, the ISBTC issued its final determination affirming the ISBTC's earlier decision to deny the exemption. *See id.*

467. *See id.* at 43.

468. *Id.*

469. *See id.*

470. 550 N.E.2d 850, 854 (Ind. Tax Ct. 1990).

471. *Alte Salems Kirche, Inc.*, 733 N.E.2d at 44 (citing *Foursquare Tabernacle Church of God in Christ*, 550 N.E.2d at 854).

472. *See id.*

473. *See id.*

474. *Id.* (citing *St. Mary's Med. Ctr. v. State Bd. of Tax Comm'rs*, 534 N.E.2d 277, 279 (Ind. Tax Ct. 1989) *aff'd*, 571 N.E.2d 1247, 1249 (Ind. 1991)).

475. *See id.*

predominately for religious, charitable and educational purposes during the relevant tax year.⁴⁷⁶ Consequently, the tax court held that in denying the taxpayer a property tax exemption the ISBTC abused its discretion.⁴⁷⁷ Therefore, the tax court reversed the final determination of the ISBTC and remanded the case with instructions to grant the taxpayer a one hundred percent property tax exemption on its building, its mobile home, and its barn.⁴⁷⁸

13. *Fleet Supply, Inc. v. State Board of Tax Commissioners*.⁴⁷⁹—Fleet Supply, Inc. (taxpayer), the owner of a building located in Howard County, Indiana, appealed from a final determination of the ISBTC to apply a forty-year life expectancy table when calculating the physical depreciation allowed on a building it owned.⁴⁸⁰ In this case, the tax court affirmed the ISBTC's final determination.⁴⁸¹

The tax court explained that “[p]hysical depreciation is determined by the combination of age and condition.”⁴⁸² The tax court observed that based on the construction of a structure either a twenty, thirty, forty, fifty, or a sixty-year table is used to depreciate the structure.⁴⁸³ The tax court noted that while light pre-engineered buildings are depreciated under the thirty-year table, all fire-resistant buildings not listed elsewhere in the regulations are depreciated under the forty-year table.⁴⁸⁴

The tax court observed that the only evidence presented by the taxpayer to establish its prima facie case consisted of two photographs showing the exterior of its building, a closing statement that reflected the taxpayer's subsequent sale of the building, and trial testimony from the taxpayer's representative.⁴⁸⁵ The tax court concluded that the photographs did not constitute probative evidence in this case.⁴⁸⁶ Also, the tax court indicated that the taxpayer's closing statement reflecting a subsequent sale did not assist the taxpayer's case because Indiana does not use market value when assessing property.⁴⁸⁷ Observing its familiar

476. *Id.*

477. *See id.*

478. *See id.*

479. 740 N.E.2d 598 (Ind. Tax Ct. 2000).

480. *See id.* at 599.

481. *See id.*

482. *Id.* at 600 (citing IND. ADMIN. CODE tit. 50, r. 2.1-5-1 (1992) (codified in present form at *id.*, r. 2.2-10-7 (1996))).

483. *See id.* (citing IND. ADMIN. CODE tit. 50, r. 2.1-5-1 (1992) (codified in present form at *id.*, r. 2.2-10-7 (2001))).

484. *See id.*

485. *See id.*

486. *See id.*

487. *See id.* at 600-01; *see also* *Kemp v. State Bd. of Tax Comm'rs*, 726 N.E.2d 395, 403 (Ind. Tax Ct. 2000) (holding Indiana does not value property based on its market value, rather the assessed value of property is based on its reproduction cost as determined by the ISBTC's regulations).

maxim that each tax year stands alone, the tax court also held that the taxpayer's evidence was faulty because it dealt with a tax year not in question.⁴⁸⁸ The tax court indicated that in the absence of substantiating information, the testimony proffered by the taxpayer amounted to mere allegations that did not support the taxpayer's case.⁴⁸⁹ Accordingly, the tax court found that the taxpayer failed to establish a prima facie case concerning the alleged invalidity of the taxpayer's assessment and that the ISBTC was not required to rebut any of the taxpayer's evidence.⁴⁹⁰ As a result, the tax court affirmed the final determination of the ISBTC in this case.⁴⁹¹

14. *Quality Stores, Inc. v. State Board of Tax Commissioners*.⁴⁹²—Quality Stores, Inc. (taxpayer), the owner of a building located in Hamilton County, Indiana, appealed the final determination of the ISBTC to apply a forty-year life expectancy table when calculating the physical depreciation allowed on a building it owned.⁴⁹³ In this case, the tax court affirmed the ISBTC's final determination.⁴⁹⁴

The tax court observed that the only evidence presented by the taxpayer to make its prima facie case consisted of an appraisal study (study) that among other things contained photographs showing the exterior and interior of the taxpayer's building.⁴⁹⁵ The tax court reviewed the other contents of the study and noted that generally accepted appraisal techniques may be used to help determine physical depreciation in the absence of guidance from the regulations, but when the regulations are clear, as they were in this case, the regulations govern.⁴⁹⁶ Also, the tax court rejected the study because it dealt with figures that were not relevant to the tax year at issue in this case.⁴⁹⁷ The tax court concluded that neither the study nor the submitted photographs constituted probative evidence in this case.⁴⁹⁸ The tax court also held that the testimony proffered by the taxpayer did not help its case because it amounted to nothing more than bare allegations that did not constitute probative evidence.⁴⁹⁹ Therefore, the tax court found that the taxpayer failed to establish a prima facie case concerning its assessment and that the ISBTC was not required to rebut any of the taxpayer's evidence.⁵⁰⁰ As a result, the tax court affirmed the ISBTC's final

488. See *Fleet Supply, Inc.*, 740 N.E.2d at 601.

489. See *id.*

490. See *id.*

491. See *id.*

492. 740 N.E.2d 939 (Ind. Tax Ct. 2000).

493. See *id.* at 940.

494. See *id.*

495. See *id.* at 942.

496. See *id.*

497. See *id.*

498. See *id.*

499. See *id.* at 943.

500. See *id.*

determination.⁵⁰¹

B. Indiana Property Taxes—Tangible Personal Property Taxes

1. *Graybar Electric Co. v. State Board of Tax Commissioners.*⁵⁰²—Graybar Electric Co. (taxpayer), an electric company with an office located in Lake County, Indiana, appealed from a final determination of the ISBTC, in which it denied the taxpayer's claim for the Enterprise Zone Business Personal Property Tax Credit⁵⁰³ (EZ Credit) based on the untimeliness of the taxpayer's application.⁵⁰⁴ Specifically, the taxpayer requested a determination of whether the ISBTC possessed the authority to consider the taxpayer's application for the EZ Credit when it was not filed timely. In this case, the tax court reversed the ISBTC's final determination.⁵⁰⁵

As background, the tax court explained that Lake County allows a property tax credit for "enterprise zone inventory," which is inventory located within an enterprise zone on the assessment date.⁵⁰⁶ The tax court noted that the purpose of the credit is to encourage capital investment in the enterprise zone area in order to create jobs.⁵⁰⁷ The tax court found that in order to obtain the credit, the taxpayer was required to apply to both the Lake County Auditor and the ISBTC.⁵⁰⁸ The tax court noted the additional requirement that the taxpayer should file its application within the time period required by section 6-1.1-20.8-2 of the Indiana Code.⁵⁰⁹

The tax court considered whether *State Board of Tax Commissioners v. New Energy Co. of Indiana*,⁵¹⁰ should control the outcome of this case.⁵¹¹ The tax

501. See *id.*

502. 723 N.E.2d 491 (Ind. Tax Ct. 2000).

503. See IND. CODE § 6-1.1-20.8-1 (2000).

504. See *Graybar Electric Co.*, 723 N.E.2d at 491.

505. See *id.*

506. *Id.*

507. See *id.*

508. See *id.*; see also IND. CODE § 6-1.1-20.8-2 (2000).

509. See *Graybar Electric Co.*, 723 N.E.2d at 491; see also IND. CODE § 6-1.1-20.8-2 (2000).

(A person that timely files a personal property return under Indiana Code section 6-1.1-3-7(a) for an assessment year must file the application between March 1 and May 15 of that year in order to obtain the credit in the following year. A person that obtains a filing extension under Indiana Code section 6-1.1-3-7(b) for an assessment year must file the application between March 1 and June 14 of that year in order to obtain the credit in the following year.)

510. 585 N.E.2d 38 (Ind. Ct. App. 1992).

511. See *Graybar Electric Co.*, 723 N.E.2d at 494. In *New Energy*, the ISBTC relied on section 6-1.1-12.1-5.5(a) of the Indiana Code when it denied an application for a deduction from assessed valuation for new manufacturing equipment in economic revitalization area based on the untimely filing of the application. The trial court ruled that despite the language of the statute, the ISBTC had the authority to hear a late-filed application and remanded the case to the ISBTC for further consideration, and the court of appeals affirmed. The tax court noted that while opinions

court found that in *Graybar*, the ISBTC presented a similar argument to the one asserted in *New Energy*—that section 6-1.1-20.8-2 of the Indiana Code operates as an implied waiver if a credit application is filed late.⁵¹² The tax court reasoned that while a deduction is allowed in one instance and a credit in another, both concepts serve to reduce a taxpayer's tax liability.⁵¹³ Therefore, the tax court determined that the *New Energy* holding applied to *Graybar*.⁵¹⁴

The tax court then considered whether or not the language contained in section 6-1.1-20.8-2 of the Indiana Code created a condition precedent.⁵¹⁵ The tax court compared the language of section 6-1.1-20.8-2 of the Indiana Code with the language in section 6-1.1-12.1-5.5 of the Indiana Code and rejected the ISBTC's assertion that the statutory language creates a condition precedent.⁵¹⁶

Even though the taxpayer's EZ Credit application was filed late, the tax court determined that the ISBTC had the authority to consider the application and that the ISBTC should not have dismissed the application for lack of jurisdiction.⁵¹⁷ However, the tax court did not render a decision on the merits of the taxpayer's application.⁵¹⁸ The tax court instructed that, on remand, the ISBTC was to consider the merits of the taxpayer's application and noted that while the ISBTC was required to consider the taxpayer's application, the tax court's decision did not necessarily require that the ISBTC grant it.⁵¹⁹ In summary, the tax court reversed the final determination of the ISBTC, denying the taxpayer an EZ Credit based on the taxpayer's untimely filing of the EZ Credit application, and remanded the case to the ISBTC.⁵²⁰

2. *W.H. Paige & Co. v. State Board of Tax Commissioners*.⁵²¹—*W.H. Paige & Co.* (taxpayer), engaged in the business of selling and leasing musical instruments, challenged the final determination of the ISBTC that assessed the taxpayer a twenty percent undervaluation penalty for failing to file the required personal property tax returns on musical instruments it leased to its customers.⁵²² The sole issue presented for the tax court's consideration in this case was whether "interpretive differences" existed between the taxpayer and the ISBTC regarding the applicability of personal property tax that precluded the imposition

and decisions of the court of appeals are not binding authority in the tax court, they can be considered as persuasive authority. See *New Energy Co.*, 585 N.E.2d at 40.

512. See *Graybar Electric Co.*, 723 N.E.2d at 494.

513. See *id.* at 495.

514. See *id.*; see also *New Energy Co.*, 585 N.E.2d at 40.

515. See *Graybar Electric Co.*, 723 N.E.2d at 494. The court explained that a condition precedent is either a condition that must be performed before an obligation becomes binding or a condition that must be fulfilled before the duty to perform an existing obligation arises.

516. See *id.*

517. See *id.* at 496.

518. See *id.*

519. See *id.*

520. See *id.*

521. 732 N.E.2d 269 (Ind. Tax Ct. 2000).

522. See *id.*

of the undervaluation penalty.⁵²³ In this case, the tax court affirmed the final determination of the ISBTC.⁵²⁴

The tax court explained that the Indiana tangible personal property tax system is a self-assessment system and is, therefore, relies heavily on full disclosure and accurate reporting.⁵²⁵ The tax court also reviewed the language of section 6-1.1-37-7(e) of the Indiana Code, which specifically provides for the assessment of a twenty percent undervaluation penalty.⁵²⁶ The tax court found that the purpose of the undervaluation penalty is to ensure a complete disclosure of all information required by the state board on the prescribed self-assessment personal property form.⁵²⁷ The tax court also found that complete disclosure enables the township assessor, county board of review, and the ISBTC to carry out their statutory duties of examining returns each year to determine if they substantially comply with the rules of the ISBTC.⁵²⁸ On the other hand, the tax court noted that this statutory provision was not intended to impose a penalty on a person who makes a complete disclosure of the information required on the assessment return form.⁵²⁹ The tax court recognized that an exception to the mandatory penalty exists only if the taxpayer has complied with all of the requirements for claiming a deduction, an exemption, or an adjustment for abnormal obsolescence or permanently retired equipment.⁵³⁰ The tax court found that if such deduction, exemption, or adjustment is denied, the "increase in assessed value that results from [the] denial of the deduction, exemption or adjustment" is not considered to be an undervaluation, rather it is considered to be an "interpretive difference" not subject to the penalty.⁵³¹ However, the tax court held that all other amounts "not fully disclosed through omission or undervaluation . . . are subject to the twenty percent penalty."⁵³² The court further explained that the term "interpretive difference," as defined in the regulations, does not mean any disagreement or misunderstanding between the taxpayer and the ISBTC.⁵³³ Instead, the tax court found that the regulations limit

523. *Id.* The tax court previously reviewed the undisputed facts of this case and found that the lease agreements, which the taxpayer entered into under its monthly rent-to-own program, did not grant the taxpayer a security interest in the musical instruments. The tax court held that the taxpayer was liable for the tangible personal property tax on the musical instruments because the taxpayer remained owner of the musical instruments for purposes of imposing the tangible personal property tax and because the taxpayer's leases were terminable at will by the lessee.

524. *See id.*

525. *See id.* at 270.

526. *See id.* at 271.

527. *See id.*; *see also* IND. ADMIN. CODE tit. 50, r. 4.2-2-10(d) (2000).

528. *See W.H. Paige & Co.*, 732 N.E.2d 269.

529. *See id.*

530. *See id.*; *see also* IND. CODE § 6-1.1-37-7(e) (2000).

531. *W.H. Paige & Co.*, 732 N.E.2d at 271-72. *See also* IND. ADMIN. CODE tit. 50, r. 4.2-2-10(d) (2000).

532. *W.H. Paige & Co.*, 732 N.E.2d at 272.

533. *See id.*; *see also* IND. ADMIN. CODE tit. 50, r. 4.2-2-10(d) (2000).

the situations in which the term "interpretive difference" applies.⁵³⁴

The tax court observed that in *Rogers v. State Board of Tax Commissioners*,⁵³⁵ it ruled that the ISBTC improperly imposed the undervaluation penalty on the taxpayer because the taxpayer's undervaluation resulted from "interpretive differences" concerning a personal property tax adjustment.⁵³⁶ Moreover, the tax court stated that the "increase in assessed value resulting from the state board's denial of the adjustment is not subject to penalty."⁵³⁷ Similarly, the tax court referred to *Monarch Steel Co. v. State Board of Tax Commissioners*,⁵³⁸ where it held that the nature and length of the litigation concerning the applicability of the interstate commerce exemption for business personal property assessments established "interpretive differences" that precluded imposition of the penalty against the taxpayer for undervaluation of its inventory.⁵³⁹ The tax court found that unlike the taxpayers in *Rogers* and *Monarch Steel*, the taxpayer in *W.H. Paige & Co.* did not comply with the requirements of section 6-1.1-37-7(e) of the Indiana Code and rule 4.2-2-10(c) of title 50 of the Indiana Administrative Code.⁵⁴⁰

The tax court determined that the taxpayer misunderstood the taxpayer's agreements to be sales with security interests instead of leases and consequently omitted the musical instruments that it leased from its personal property tax return resulting in an undervaluation that exceeded five percent of the value that should have been reported on the return.⁵⁴¹ The tax court indicated that this situation did not fall within the statutory exceptions to the mandatory undervaluation penalty and it was not considered to be an "interpretive difference."⁵⁴² Therefore, the tax court held that section 6-1.1-37-7(e) of the Indiana Code was triggered and that the twenty percent undervaluation penalty must be applied.⁵⁴³

C. Indiana Gross Income Tax

1. *Uniden American Corp. v. Department of State Revenue*.⁵⁴⁴—Uniden American Corp. (taxpayer) appealed the final determination of the IDSR that partially denied the taxpayer's protest of the IDSR's proposed assessment of

534. See *W.H. Paige & Co.*, 732 N.E.2d at 272; see also IND. ADMIN. CODE tit. 50, r. 4.2-2-10(d) (2000).

535. 565 N.E.2d 398, 400 (Ind. Tax Ct. 1991).

536. See *W.H. Paige & Co.*, 732 N.E.2d at 272; see also *Rogers*, 565 N.E.2d at 403.

537. See *W.H. Paige & Co.*, 732 N.E.2d at 272.

538. 611 N.E.2d 708, 710 (Ind. Tax Ct. 1993).

539. See *W.H. Paige & Co.*, 732 N.E.2d at 272; see also *Monarch Steel*, 611 N.E.2d at 715.

540. See *W.H. Paige & Co.*, 732 N.E.2d at 272.

541. See *id.*

542. See *id.*; see also IND. ADMIN. CODE, tit. 50, r. 4.2-2-10 (2000).

543. See *W.H. Paige & Co.*, 732 N.E.2d at 272-73.

544. 718 N.E.2d 821 (Ind. Tax Ct. 1999)

Indiana gross income tax.⁵⁴⁵ The sole issue considered by the tax court was whether certain interstate sales of the taxpayer's products were subject to the Indiana gross income tax.⁵⁴⁶

The tax court observed that although the taxpayer was incorporated under the laws of Indiana and filed Indiana corporate income tax returns for the relevant taxable years, the taxpayer's commercial domicile was in Texas.⁵⁴⁷ The taxpayer engaged in the interstate sale and distribution of consumer and commercial electronic products such as cellular telephones, pagers, two-way radios, cordless telephones and marine radios.

The tax court found that the taxpayer shipped the taxpayer's products from locations outside of Indiana to in-state customers (Indiana destination sales).⁵⁴⁸ The tax court noted that the standard sales terms between the taxpayer and its customers with respect to the Indiana destination sales provided for delivery F.O.B. the taxpayer's warehouse, with title and risk of loss passing to the buyer upon delivery by the taxpayer to the carrier.⁵⁴⁹ The tax court held that "these sales did not originate from, were not channeled through, and were not otherwise associated with or facilitated by any Indiana situs of the taxpayer."⁵⁵⁰

The tax court observed that section 6-2.1-1-2(a)(1) of the Indiana Code defines "[g]ross income" in part as "all the gross receipts a taxpayer receives . . . from trades, businesses, or commerce."⁵⁵¹ However, the tax court noted that section 6-2.1-1-2(c)(6) of the Indiana Code provides the following exclusion from the definition of gross income:

(c) [t]he term "gross income" does not include: . . . (6) gross receipts received by corporations incorporated under the laws of Indiana from a trade or business situated and regularly carried on at a legal situs outside Indiana or from activities incident to such trade or business (including the disposal of capital assets or other properties which were acquired and used in such trade or business).⁵⁵²

The tax court noted that as applied to a taxpayer, the term "receipts" is defined as "the gross income in cash notes, credits, or other property that was received by the taxpayer or a third party for the taxpayer's benefit."⁵⁵³ The tax court explained that Indiana imposes a gross income tax pursuant to section 6-2.1-2-2 of the Indiana Code, 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 income derived from activities or businesses or any other sources within Indiana

545. See *id.* at 822-23.

546. See *id.* at 823.

547. See *id.*

548. See *id.*

549. See *id.*

550. *Id.*

551. *Id.* at 824. See also IND. CODE § 6-2.1-1-2(a)(1).

552. *Uniden Am. Corp.*, 718 N.E.2d at 821. See also IND. CODE § 6-2.1-1-2(c)(6).

553. *Uniden Am. Corp.*, 718 N.E.2d at 821. See also IND. CODE § 6-2.1-1-10.

by a taxpayer who is not a resident or a domiciliary of Indiana.⁵⁵⁴ The tax court further explained that a taxpayer's "taxable gross income" includes all gross income not exempted, less all permitted deductions.⁵⁵⁵

The taxpayer contended that the plain language of section 6-2.1-1-2(c)(6) of the Indiana Code prohibited the imposition of the gross income tax upon the Indiana destination sales.⁵⁵⁶ The tax court indicated that if the language of the relevant statutory text was ambiguous, then the tax court would resolve all doubts in favor of the taxpayer.⁵⁵⁷ The tax court then reviewed the statute and found that a plain and ordinary reading of section 6-2.1-1-2(c)(6) of the Indiana Code suggests that the taxpayer's income from the Indiana destination sales is not subject to the gross income tax.⁵⁵⁸ The tax court opined that the crucial inquiry in its determination was whether or not the gross receipts received by the taxpayer from the Indiana destination sales were derived from a trade or business situated and regularly carried on at a legal situs outside Indiana.⁵⁵⁹ The tax court determined that the taxpayer's income from the Indiana destination sales was derived from trade or business activities taking place and carried on at a legal situs beyond Indiana's borders.⁵⁶⁰ The tax court found that under section 6-2.1-1-2(c)(6), nontaxable gross receipts include those from a trade or business situated and regularly carried on at a legal situs outside Indiana or from activities incident to such trade or business, and that this statute does not require that the gross receipts qualifying for the exclusion be received from sources outside Indiana.⁵⁶¹ The tax court concluded that the statutory language effectively ignored the "source" of a resident Indiana corporation's gross receipts.⁵⁶²

The tax court looked to *Indiana-Kentucky Electric Corp. v. Department of State Revenue*,⁵⁶³ where the tax court interpreted the meaning of the term "sources" as the term is used in section 6-2.1-2-2(a)(2) of the Indiana Code. The tax court noted that it had explicitly established a three-part test for determining whether or not income is derived from an Indiana source (tax situs):

[T]he court must: (1) isolate the transaction giving rise to the income, the critical transaction; (2) determine whether [the out-of-state taxpayer] has a physical presence in the taxing state or has significant business activities within the taxing state, a "business situs;" and, (3) determine whether the Indiana activities are related to the critical transaction and are more than minimal, not remote or incidental to the total transaction,

554. See *Uniden Am. Corp.*, 718 N.E.2d at 821. See also IND. CODE § 6-2.1-2-2.

555. *Uniden Am. Corp.*, 718 N.E.2d at 821. See also IND. CODE § 6-2.1-1-13.

556. See *Uniden Am. Corp.*, 718 N.E.2d at 821.

557. See *id.* at 825.

558. See *id.*

559. See *id.*

560. See *id.*

561. See *id.* at 826.

562. See *id.* at 826-27.

563. 598 N.E.2d 647, 663 (Ind. Tax Ct. 1992).

the "tax situs."⁵⁶⁴

The tax court found that the term sources, as used in section 6-2.1-2-2(a)(2), was intentionally retained by the legislature in the recodified gross income tax imposition statute and its meaning had been refined by the tax court.⁵⁶⁵

The tax court concluded that the IDSR's interpretation of section 6-2.1-1-2(c)(6) would result in dissimilar applications of the same concept (the sources of gross receipts) in two related gross income tax statutes.⁵⁶⁶ Because the tax court endeavors to construe statutes to prevent absurd results it found that section 6-2.1-1-2(c)(6) of the Indiana Code excludes the gross receipts generated by the taxpayer's Indiana destination sales from the definition of gross income.⁵⁶⁷

In sum, the tax court held that the IDSR erroneously subjected the taxpayer's gross receipts from its Indiana destination sales to Indiana's gross income tax.⁵⁶⁸ Therefore, the tax court reversed the final determination of the IDSR.⁵⁶⁹

2. *Policy Management Systems Corp. v. Department of State Revenue*⁵⁷⁰—In *Policy Management Systems Corp.*, a corporate taxpayer challenged the final determination of the IDSR finding that the taxpayer owed Indiana gross income tax.⁵⁷¹ In this case, Policy Management Systems Corp. (taxpayer) requested that the tax court determine whether the money the taxpayer receives from customers, as reimbursements for advances the taxpayer makes on behalf of its customers to various state agencies in order to obtain motor vehicle reports (MVRs),⁵⁷² is subject to Indiana's gross income tax.⁵⁷³ In sum, the tax court held that this form of taxpayer income, reimbursements for advances to third parties on behalf of customers, is not subject to Indiana's gross income tax.⁵⁷⁴ The tax court remanded the case to the IDSR with instructions to sustain the taxpayer's protest on this issue.⁵⁷⁵

The tax court indicated that "although the taxpayer was incorporated under the laws of South Carolina and maintained its principle [sic] offices in South Carolina," the taxpayer also maintained a service bureau in Indiana during the

564. *Uniden Am. Corp.*, 718 N.E.2d at 828 (quoting *Indiana-Kentucky Elec. Corp.*, 598 N.E.2d at 663).

565. *See id.* at 828.

566. *See id.*

567. *See id.*

568. *See id.* at 828-29.

569. *See id.* at 829.

570. 720 N.E.2d 20 (Ind. Tax Ct. 1999).

571. *See id.* at 21.

572. An MVR is "a confidential history of accidents, operating violations and other information maintained by a state government agency for each individual licensed as a motor vehicle operator by that agency." *Id.* at 21-22.

573. *See id.*; *see also* IND. CODE 6-2.1-2-2 (2001) (defining gross income tax).

574. *See Policy Management*, 720 N.E.2d at 27.

575. *See id.*

relevant tax years.⁵⁷⁶ One of the taxpayer's services included retrieving MVRs and transmitting them to its customers. The tax court noted that the taxpayer's customers pay a fixed fee for each MVR obtained by the taxpayer. The taxpayer's customers also agree to reimburse the taxpayer the cost of assessments by government agencies incurred while retrieving the information.⁵⁷⁷

With respect to the imposition of Indiana's gross income tax, "the taxpayer's beneficial interest in income is central to the receipt of gross income."⁵⁷⁸ The taxpayer asserted that it was the agent for its customers, the purported principals, in processing MVRs.⁵⁷⁹ The tax court noted that, "[r]eimbursements to an agent for amounts advanced or paid to third parties substantively represent 'pass throughs' of income and therefore are not taxable to the agent."⁵⁸⁰ The tax court then contrasted the agency concept with its observation that reimbursements of a taxpayer's *own* expenses are receipts of gross income to the taxpayer.⁵⁸¹ The tax court also found that the IDSR's regulations recognize the non-taxability of an agent's receipts.⁵⁸²

Because the taxpayer had the burden to prove that the reimbursements were not subject to Indiana's gross income tax, the tax court determined that in order to prevail, the taxpayer must first demonstrate that it acted as an agent for its customers in processing MVRs and then show that it received the reimbursements as payment for advances to third parties on behalf of customers.⁵⁸³ The tax court determined that "a party claiming the existence of an agency relationship must prove the following three elements: '(1) a manifestation of consent by the principal to the agent, (2) an acceptance of the authority by the agent, and (3) control exerted by the principal over the agent.'"⁵⁸⁴

In this case, the tax court concluded that the first two elements of the above test were met because the signatures of representatives from both the taxpayer and its customers on the processing agreements represented both the consent of individual customers to the taxpayer's agency status and the taxpayer's acceptance of the agency relationship.⁵⁸⁵ However, the tax court found that whether the customer-principal exerted sufficient control over the taxpayer-agent to create an agency relationship was in dispute.⁵⁸⁶ The tax court found that while the principal's control need not be complete, "the principal's control cannot

576. *Id.* at 21.

577. *See id.*

578. *Id.* at 23 (citation omitted). *See also* IND. CODE § 6-2.1-2-2 (2001).

579. *See Policy Management*, 720 N.E.2d at 23.

580. *Id.* (citation omitted).

581. *See id.*

582. *See id.*; *see also* IND. ADMIN. CODE tit. 45, r. 1-1-54 (2001).

583. *See Policy Management*, 720 N.E.2d at 23.

584. *Id.* (citation omitted).

585. *See id.* at 24.

586. *See id.*

simply consist of the right to dictate the accomplishment of a desired result."⁵⁸⁷

The tax court reviewed the contract terms in this case and determined that the taxpayer's customers had the right to dictate several aspects the retrieval process.⁵⁸⁸ In addition, the taxpayer lacked any flexibility to control the disposition of the MVRs once retrieved.⁵⁸⁹ The tax court also noted that the taxpayer could only retrieve the requested information with its own system, unless customers agreed to an alternate method.⁵⁹⁰ The tax court focused on the fact that the taxpayer's customers retained the power to exercise these rights.⁵⁹¹

The tax court also found that it would be inefficient for the taxpayer to require its customers to pay state agencies directly for MVR requests because of the high volume of requests.⁵⁹² The tax court opined that while the Indiana "gross income tax is applicable regardless of any profit being involved . . . the lack of a profit, when considered together with the efficiency" promoted by the taxpayer's fee arrangement with customers and its billing methods, supported the taxpayer's claim that it was acting as an agent when retrieving requested MVRs for customers.⁵⁹³

The tax court first determined that the taxpayer acted as the agent for its customers, with respect to the processing of the MVR requests, and next considered whether the reimbursements were truly advances by the taxpayer to third parties on behalf of the taxpayer's customers.⁵⁹⁴ The tax court reviewed the relevant contract terms, as well as the conduct of the taxpayer and its customers, and concluded that the plain language of the contracts indicated that the reimbursements represented "pass throughs" of income.⁵⁹⁵ The tax court reasoned that the payments were reimbursements for the taxpayer's advances to various government agencies and not for the taxpayer's own operating expenses.⁵⁹⁶ Moreover, the tax court found that the taxpayer lacked a beneficial interest in the reimbursements.⁵⁹⁷ Therefore, the tax court concluded that the taxpayer met its burden to show that its income from agency reimbursements was not subject to the Indiana gross income tax.⁵⁹⁸

587. *Id.*

588. *See id.* at 25.

589. *See id.*

590. *See id.*

591. *See id.*

592. *See id.* at 26.

593. *Id.* (citation omitted).

594. *See id.*

595. *See id.* at 26-27.

596. *See id.* at 27.

597. *See id.*

598. *See id.*

D. Indiana Adjusted Gross Income Tax

1. *Wabash, Inc. v. Department of State Revenue*.⁵⁹⁹—Wabash, Inc. (taxpayer), a manufacturing corporation, appealed from a final determination of the IDSR finding that it erroneously included the taxpayer's parent company, Kearney-National Inc. (KN), on the taxpayer's consolidated tax return.⁶⁰⁰ Additionally, the IDSR raised the issue of whether the apportionment method used by the taxpayer to calculate its taxes was correct.⁶⁰¹ The tax court found in favor of the taxpayer on both issues.⁶⁰²

The tax court found that the taxpayer is a wholly-owned subsidiary of Kearney-National Holdings II (KNH II), a Delaware corporation doing business in Indiana.⁶⁰³ KNH II is likewise a wholly-owned subsidiary of Kearney-National Holdings (KNH), a Delaware holding company of KN that lacked Indiana connections. Both companies were housed under the corporate umbrella of KN, which was headquartered in New York. KN considered the acquisition of the Coto Corporation (Coto), and after completing an acquisition study to examine the benefits that Coto could bring to KN, KN acquired Coto. After the merger, all of the taxpayer's operations moved to Coto's plant located in Rhode Island. Thereafter, the taxpayer filed its Indiana adjusted gross income and its supplemental net income tax returns as a consolidated return, listing the taxpayer, KNH II, KNH and KN as corporations. The IDSR determined that KN was erroneously included in the taxpayer's tax return.⁶⁰⁴

The tax court commenced its discussion of this case by addressing the inclusion of KN on the taxpayer's return. Because the tax court found that KN's activities rose above mere solicitation,⁶⁰⁵ KN did business in Indiana,⁶⁰⁶ KN generated two million dollars worth of sales attributable to Indiana, and KN had Indiana-sourced income,⁶⁰⁷ the tax court concluded that KN was properly included in the taxpayer's return under section 6-3-4-14 of the Indiana Code.⁶⁰⁸

Next, the tax court considered whether the apportionment formula used by the taxpayer to calculate its taxes was correct. The tax court found that because the IDSR raised this issue, it had the burden of proving that the taxpayer's Indiana income did not fairly reflect Indiana-sourced income.⁶⁰⁹ As background, the tax court explained that in section 6-3-2-2(b) of the Indiana Code, the standard apportionment formula multiplies a company's business income by the

599. 729 N.E.2d 620 (Ind. Tax Ct. 2000).

600. *See id.* at 621.

601. *See id.*

602. *See id.*

603. *See id.*

604. *See id.* at 621-22.

605. *See* 15 U.S.C. §§ 381-384 (2000).

606. *See* IND. ADMIN. CODE tit. 45, r. 3.1-1-38(7) (2001).

607. *See* IND. CODE § 6-3-2-2 (2001).

608. *See Wabash, Inc.*, 729 N.E.2d at 624; *see also* IND. CODE § 6-3-4-14 (2000).

609. *See Wabash, Inc.*, 729 N.E.2d at 624.

total of its property, payroll and sales factors divided by three to determine the tax (standard formula).⁶¹⁰ The tax court found that if the stated method fails to fairly represent Indiana-sourced income, the regulations also authorize the IDSR or a taxpayer (upon obtaining a ruling from the IDSR) to use another method that produces a more equitable allocation and apportionment of a taxpayer's income.⁶¹¹

The tax court observed that previous rulings of the United States Supreme Court, the IDSR and the tax court have recognized that the standard method is the method often used by related corporations to compute their state income taxes.⁶¹² For example, in *Container Corp. of America v. Franchise Tax Board*,⁶¹³ the United States Supreme Court "not only affirmed the standard formula but also stated that it has become a benchmark against which other apportionment formulas are judged."⁶¹⁴ The Supreme Court further found that "the standard formula gained wide approval because the property, payroll and sales factors reflect a large share of the activities by which value is generated."⁶¹⁵ Therefore, the tax court concluded that the standard formula could be used unless the IDSR proved that the income attributed to Indiana from using that formula was out of proportion to the amount of business transacted in Indiana.⁶¹⁶

The tax court observed that the IDSR has acknowledged that the standard formula is the most accepted and recognized method of computing a company's taxes.⁶¹⁷ The tax court reasoned that it should give great weight to the IDSR's longstanding interpretation of its own regulation unless that interpretation would be inconsistent with the regulation itself.⁶¹⁸ The tax court found that the IDSR has also reiterated its preference for the standard method in a series of revenue rulings where the taxpayer sought to use the stacked method.⁶¹⁹

610. See *id.* at 625; see also IND. CODE § 6-3-2-2(b) (2001); IND. ADMIN. CODE, tit. 45, r. 3.1-1-39 (1988).

611. See *Wabash, Inc.*, 729 N.E.2d at 625.

612. See *id.*

613. 463 U.S. 159 (1983).

614. *Wabash, Inc.*, 729 N.E.2d at 625.

615. *Id.* See also *Container Corp. of Am.*, 463 U.S. at 183.

616. See *Wabash, Inc.*, 729 N.E.2d at 626.

617. See *id.* at 625; see also IND. ADMIN. CODE, tit. 45, r. 3.1-1-37,-45 (2001) (stating that the IDSR will depart from the standard formula only if the use of such formula works a hardship or injustice upon the taxpayer, results in an arbitrary division of income, or in other respects does not fairly attribute income to Indiana).

618. See *Wabash, Inc.*, 729 N.E.2d at 626.

619. See *id.*; see also Rul. 81-4381 GIT (May 29, 1981) ("The Indiana Department of Revenue has consistently required that a consolidated return use a combined three-factor apportionment formula as the fairest method of reflecting the income derived from Indiana sources."); Rul. 84-6943 ITC (October 3, 1986) ("The basic premise behind a consolidated income tax return is that the group is treated as a single corporation [A] combined three-factor formula is employed to fairly reflect the income derived from Indiana sources."); Rul. 90-0114 ITC (November 13, 1990) ("The Indiana Department of Revenue forms [] do not provide for the

In this case, the tax court held that the IDSR failed to show how the standard formula employed by the taxpayer unfairly reflected the taxpayer's Indiana-sourced income and that it was appropriate for the taxpayer to use the standard formula.⁶²⁰

2. *Rockland R. Snyder v. Department of State Revenue*.⁶²¹—In *Snyder*, an individual taxpayer appealed the IDSR's denial of his protest challenging the constitutionality of Indiana's adjusted gross income tax on his wages.⁶²² In this case, the tax court addressed whether wages are income for the purpose of calculating Indiana's adjusted gross income tax.⁶²³

Rockland R. Snyder (taxpayer), an Indiana resident, filed Indiana individual income tax returns, in which he acknowledged having received wages, but declared that his wages did not constitute income. In addition, the taxpayer claimed refunds for all state income taxes withheld by his employer during the relevant tax years. The IDSR subsequently assessed the taxpayer for each year's unpaid adjusted gross income taxes.⁶²⁴

In evaluating *Snyder*, the tax court reviewed *Richey v. Department of State Revenue*,⁶²⁵ in which the tax court held that "[t]he constitutional legitimacy of the general assembly's decision to tax income is beyond dispute. The right to tax is a crucial attribute of sovereignty."⁶²⁶ The tax court also observed that article IX, section 8 of the Indiana Constitution provides: "The general assembly may levy and collect a tax upon income, from whatever source derived, at such rates, in such manner, and with such exemptions as may be prescribed by law."⁶²⁷ The tax court held that pursuant to the Adjusted Gross Income Tax Act of 1963 (Act),⁶²⁸ the General Assembly has imposed an adjusted gross income tax.⁶²⁹ The tax court found that the Act adopts the definition of "adjusted gross income" as the term applies to all individuals, from section 62 of the Internal Revenue Code,⁶³⁰ with certain modifications,⁶³¹ and the Act adopts the definition of "gross income" from section 61(a) of the Internal Revenue Code.⁶³²

calculation of income as described by the taxpayer. . . . There are no provisions for separate calculations with a single consolidation to determine Indiana taxable income.").

620. See *Wabash, Inc.*, 729 N.E.2d at 626.

621. 723 N.E.2d 487 (Ind. Tax Ct. 2000)

622. See *id.*

623. See *id.*

624. See *id.*

625. 634 N.E.2d 1375, 1376 (Ind. Tax Ct. 1994).

626. *Snyder*, 723 N.E.2d at 488 (quoting *Richey*, 634 N.E.2d at 1376 (citing *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819))).

627. *Snyder*, 723 N.E.2d at 488 (citing IND. CONST. art. IX, § 8).

628. See IND. CODE § 6-3-1-1.

629. See *Snyder*, 723 N.E.2d at 488; see also IND. CODE § 6-3-2-1 (2000).

630. See 26 U.S.C. § 62 (2001).

631. See *Snyder*, 723 N.E.2d at 488; see also IND. CODE § 6-3-1-3.5(a) (2001).

632. See *Snyder*, 723 N.E.2d at 489; see also 26 U.S.C. § 61(a) (2000); IND. CODE § 6-3-1-8 (2001).

Given the Internal Revenue Code's definitions for both adjusted gross income and gross income; the common definition of the terms; an overwhelming body of case law by the United States Supreme Court and the federal circuit courts; and, the tax court's opinions and decisions, the tax court concluded that wages are income for the purpose of computing Indiana's adjusted gross income tax.⁶³³ Consequently, the tax court found that, as a matter of law, the taxpayer's wages were subject to Indiana's adjusted gross income tax and affirmed the final determination of the IDSR.⁶³⁴

E. Indiana Gross Retail and Use Taxes

In *Carroll County Rural Electric Membership Corp. v. State Board of Tax Commissioners*,⁶³⁵ an Indiana rural electric membership corporation challenged the IDSR's final determination granting the taxpayer's protest for certain prior tax years but finding that the taxpayer's publication would be subject to the Indiana gross retail (sales) and use taxes prospectively.⁶³⁶ In this case, the IDSR asked the tax court to determine whether the tax court had jurisdiction to hear a taxpayer's appeal from a final determination where the IDSR sustained the taxpayer's protest but determined that the taxpayer's future purchases would not be exempt from the Indiana sales and use taxes.⁶³⁷

Each month, Carroll County Rural Electric Membership Corporation (taxpayer) purchased a publication and distributed the publication to all of its members. The IDSR determined that the subject publication failed to meet all of the regulatory requirements to be considered a newspaper and that consequently, future purchases and use of the publication would no longer be exempt from the sales tax.⁶³⁸

The tax court reviewed fundamental principles of subject matter jurisdiction and found that every action has three jurisdictional elements: jurisdiction of the subject matter; jurisdiction of the person; and, jurisdiction of the particular case.⁶³⁹ The tax court found that the general scope of authority conferred upon the tax court is governed by section 33-3-5-2(a)(1) of the Indiana Code.⁶⁴⁰ The tax court noted that this statutory provision provides that the tax court is a court of limited jurisdiction, having "exclusive jurisdiction over any case that arises under the tax laws of [Indiana] and that is an initial appeal of a final determination" made by the IDSR.⁶⁴¹ The tax court concluded that because the taxpayer challenged the IDSR's assessment and collection of Indiana's sales and

633. See *Snyder*, 723 N.E.2d at 491.

634. See *id.*

635. 733 N.E.2d 44 (Ind. Tax Ct. 2000).

636. See *id.* at 46.

637. See *id.*

638. See *id.*; see also IND. CODE § 6-2.5-5-17 (2000) (newspaper exemption).

639. See *Carroll County*, 733 N.E.2d at 47.

640. See *id.*; see also IND. CODE § 33-3-5-2(a)(1) (2001).

641. *Carroll County*, 733 N.E.2d at 47 (quoting IND. CODE § 33-3-5-2(a)(1) (2001)).

use taxes and because the taxpayer appealed from a final determination issued by the IDSR, the taxpayer's appeal fell within the jurisdiction of the tax court.⁶⁴²

Next, the tax court addressed the ripeness issue raised by the IDSR. The tax court observed that when ruling upon a ripeness challenge, it must consider both the fitness of the issues for judicial decision and any hardship imposed on the parties by withholding court consideration.⁶⁴³ In this case, the tax court found a sufficient factual basis for the taxpayer's challenge: whether or not the taxpayer's publication qualified as a newspaper.⁶⁴⁴ Consequently, the tax court concluded that the substantive issue in the case was fit for judicial decision.⁶⁴⁵

Next, the tax court considered the IDSR's allegation that the taxpayer failed to state a claim upon which relief could be granted.⁶⁴⁶ The tax court noted that "jurisdiction over the particular case refers to the right, authority, and power to hear and determine a specific case within the class of cases over which a court has subject matter jurisdiction."⁶⁴⁷ The tax court determined that the taxpayer had completed the statutory requirements to bring this appeal.⁶⁴⁸ In summary, the tax court found that the IDSR failed to demonstrate that the tax court lacked jurisdiction over this particular case and denied the IDSR's motion to dismiss.⁶⁴⁹

F. *Indiana Inheritance Taxes*

In *Department of State Revenue, Inheritance Tax Division v. Estate of Riggs*,⁶⁵⁰ the Inheritance Tax Division of the IDSR appealed a probate court's order denying the IDSR's petition to redetermine the inheritance taxes owed by the transferees of real and personal property owned by Robert E. Riggs (decedent).⁶⁵¹ The sole issue presented for the tax court's consideration in this case was whether the transferees of a decedent who died prior to the effective date of an amendment increasing an exemption to the state's inheritance tax were entitled to the increased exemption.⁶⁵² The tax court reversed the probate court's decision and remanded the case with instructions to grant the IDSR's request for a redetermination of the inheritance taxes owed by the transferees.⁶⁵³

The decedent died testate while residing in Henry County, Indiana. The decedent's last will and testament bequeathed or devised his entire estate to his

642. *See id.*

643. *See id.* at 48.

644. *See id.* at 49.

645. *See id.*

646. *See id.* at 49-50; *see also* IND. TR. 12(B)(6) (2001).

647. *Carroll County*, 733 N.E.2d at 50 (quoting *Adler v. Adler*, 713 N.E.2d 348, 352 (Ind. Ct. App. 1999) (citation omitted)).

648. *See id.*; *see also* IND. CODE § 33-3-5-11(a) (2001).

649. *See Carroll County*, 733 N.E.2d at 50.

650. 735 N.E.2d 340 (Ind. Tax Ct. 2000).

651. *See id.* at 341-42.

652. *See id.* at 342.

653. *See id.* at 347.

three children (transferees). After opening the decedent's estate (estate), the estate petitioned the probate court seeking a determination as to whether the transferees were entitled to the one hundred thousand dollar exemption provided for by section 6-4.1-3-10 of the Indiana Code.⁶⁵⁴ The probate court entered an order allowing the requested exemption.⁶⁵⁵ The IDSR then filed a petition, pursuant to section 6-4.1-7-1 of the Indiana Code, requesting that the probate court grant a rehearing for the purpose of redetermining the amount of inheritance tax due.⁶⁵⁶ The probate court conducted a rehearing and later entered an order denying the IDSR's petition.⁶⁵⁷

The tax court explained that at the time of the decedent's death, Indiana's inheritance tax statutes imposed a tax on the privilege of succeeding to certain property rights of deceased persons.⁶⁵⁸ The tax court noted that the inheritance tax is imposed on the transfer of ownership of the property as opposed to being imposed on the property itself.⁶⁵⁹ In addition, the tax court observed that the inheritance tax is a lien on the property transferred by the decedent, whereby generally, the tax accrues and the lien attaches at the time of the decedent's death.⁶⁶⁰ The tax court found that the Indiana inheritance tax statutes are based upon the ownership theory, which has two requirements for imposition of the tax: (1) a transfer from a decedent, (2) of an interest in property that the decedent owned at death.⁶⁶¹

The tax court explained that the General Assembly has provided for various exemptions to the inheritance tax, including the one at issue in this case.⁶⁶² The tax court noted that the amended exemption provided that the "first one hundred thousand dollars (\$100,000) of property interests transferred to a Class A transferee under a taxable transfer or transfers is exempt from the inheritance tax."⁶⁶³ However, at the time of the decedent's death, adult children were entitled to a five thousand dollar exemption.⁶⁶⁴ The tax court observed that while the General Assembly subsequently enacted legislation increasing the exemption, the legislation was silent with respect to whether the amended exemption was effective for transfers of decedents dying before its effective date.⁶⁶⁵ However,

654. *See id.*; *see also* IND. CODE § 6-4.1-3-10 (2000).

655. *See Riggs*, 735 N.E.2d at 342.

656. *See id.*; *see also* IND. CODE § 6-4.1-7-1 (2000).

657. *See Riggs*, 735 N.E.2d at 342.

658. *See id.*; *see also* IND. CODE §§ 6-4.1-2-1 to -4.1-2-7 (2000).

659. *See Riggs*, 735 N.E.2d at 342.

660. *See id.*; *see also* IND. CODE § 6-4.1-8-1 (2000).

661. *See Riggs*, 735 N.E.2d at 343.

662. *See id.*; *see also* IND. CODE §§ 6-4.1-3-1 to -4.1-3-12 (2000).

663. *Riggs*, 735 N.E.2d at 343 (quoting IND. CODE § 6-4.1-3-10 (2000)).

664. *See id.* The Indiana Code provided that the "first five thousand dollars (\$5,000) of property interests which a transferor transfers to each of his children, who is at least twenty-one (21) years of age at the time of the transferor's death, under a taxable transfer or transfers is exempt from the inheritance tax." IND. CODE § 6-4.1-3-9.5 (2000) *repealed* by P.L. 254-1997(ss), § 37.

665. *See Riggs*, 735 N.E.2d at 343; *see also* P.L. 254-1997(ss), § 9.

the tax court concluded that there was no need to interpret the exemption, because it was neither unclear nor ambiguous.⁶⁶⁶ The tax court observed that in both its current and pre-amendment forms, the exemption clearly was applicable at the time property interests were “transferred . . . under a taxable transfer or transfers.”⁶⁶⁷ Therefore, the tax court determined that for purposes of applying the exemption, the pivotal finding for the probate court was the time of transfer of the decedent’s assets.⁶⁶⁸ The tax court held that if the transfer of property took place before the effective date of the amended exemption, then only the pre-amendment amount was available to the transferees.⁶⁶⁹

The tax court explained that in Indiana, a decedent’s death marks the point when his property transfers to his beneficiaries.⁶⁷⁰ The tax court found that section 29-1-7-23 of the Indiana Code provides that “[w]hen a person dies, his real and personal property[] passes to persons to whom it is devised by his last will . . . ; but it shall be subject to the possession of the personal representative.”⁶⁷¹ Therefore, because the decedent’s assets were transferred under the pre-amendment exemption amount, that amount is all that the beneficiaries could claim.⁶⁷²

The tax court rejected the estate’s argument that the General Assembly intended to apply the amended exemption retroactively.⁶⁷³ The tax court noted that Indiana jurisprudence does not favor retroactive application of statutes and amendments.⁶⁷⁴ However, the tax court noted that exceptions to the general rule exist and that retroactive application may be permitted where the new legislation only changes a mode of procedure or where a statute is remedial.⁶⁷⁵ The court found that to decide whether a statute is remedial, the tax court will examine, among other things, the alleged defect or mischief that a statute or amendment seeks to cure.⁶⁷⁶ The tax court reviewed the amended exemption and determined that it should only be applied prospectively, as it was neither procedural nor remedial in nature.⁶⁷⁷ Moreover, the tax court found no evidence suggesting that the General Assembly intended to make the exemption’s amendment retroactive.⁶⁷⁸ The tax court also refused the estate’s argument that the General Assembly’s silence was an expression of its intention to apply the amendment to

666. See *Riggs*, 735 N.E.2d at 343.

667. *Id.* See also IND. CODE § 6-4.1-3-10 (2000).

668. See *Riggs*, 735 N.E.2d at 343.

669. See *id.*

670. See *id.*

671. *Id.* at 343-44. See also IND. CODE § 29-1-7-23 (2000).

672. See *Riggs*, 735 N.E.2d at 344.

673. See *id.*

674. See *id.*

675. See *id.*

676. See *id.*

677. See *id.* at 345.

678. See *id.*

the exemption retroactively.⁶⁷⁹ The tax court found that the estate failed to demonstrate a strong and compelling reason to apply the amendment retroactively.⁶⁸⁰ Therefore, the tax court declined to apply the amended exemption retroactively.⁶⁸¹

In sum, the tax court ruled that because the decedent died approximately seven months before the effective date of the amendment increasing the exemption's value, the increased exemption amount was not available to the transferees in determining their inheritance taxes.⁶⁸² The tax court also found that the probate court erred in denying the IDSR's request for a redetermination of the inheritance taxes.⁶⁸³ As a result, the tax court reversed the decision of the probate court and remanded the case to the probate court with instructions to redetermine the inheritance taxes owed by the transferees.⁶⁸⁴

G. Indiana Controlled Substance Excise Tax

1. *Hurst v. Department of State Revenue*⁶⁸⁵—In *Hurst*, an individual taxpayer challenged the IDSR's finding that the taxpayer owed controlled substance excise tax (CSET).⁶⁸⁶ In this case, Gary G. Hurst (taxpayer) raised two issues for the tax court's review.⁶⁸⁷ First, the taxpayer asked the tax court to determine whether or not he possessed or received delivery of a substance alleged to be marijuana so as to place him within the purview of the CSET statute.⁶⁸⁸ Second, he requested a finding of whether the substance was actually marijuana.⁶⁸⁹ In this case, the tax court reversed the CSET assessment against the taxpayer.⁶⁹⁰

In *Hurst*, the taxpayer was charged with the crime of conspiracy to deal marijuana in an amount greater than ten pounds.⁶⁹¹ The IDSR subsequently filed a jeopardy finding and a jeopardy assessment notice and demand against the

679. See *id.* at 346.

680. See *id.*

681. See *id.*

682. See *id.* at 346-47.

683. See *id.* at 347.

684. See *id.*

685. 721 N.E.2d 370 (Ind. Tax Ct. 1999).

686. See *id.* at 371.

687. See *id.*

688. See *id.*; see also IND. CODE § 6-7-3-5 (2000).

689. See *Hurst*, 721 N.E.2d at 371.

690. See *id.* at 376.

691. See *id.* at 372; see also IND. CODE § 35-48-4-10 (a)(1)(D) (2000). This charge was ultimately dismissed by the state. The taxpayer eventually pled guilty to the charge of possession of marijuana (under 30 grams), a class A misdemeanor, which was based on the discovery of a small amount of marijuana inside the taxpayer's home after the State Police performed a search. The subject CSET assessment did not include the marijuana that was found in the taxpayer's home. See *Hurst*, 721 N.E.2d at 372; see also IND. CODE § 35-48-4-11(1) (2000).

taxpayer alleging that the taxpayer owed CSET and penalties. After the IDSR issued its findings denying the taxpayer's written protest challenging the CSET assessment, the taxpayer initiated this original tax appeal with the tax court.⁶⁹²

First, the tax court considered whether the taxpayer possessed or received delivery of the substance alleged to be marijuana, thereby making him liable under the CSET statute.⁶⁹³ The tax court reviewed the CSET statute along with related statutes and determined that in order to be liable under the CSET statute, a taxpayer was required to manufacture, possess, or serve as an actor in the actual or constructive transfer of a controlled substance.⁶⁹⁴ The tax court reviewed the evidence in the case and found no evidence implicating the taxpayer in the manufacture of a controlled substance.⁶⁹⁵ The tax court focused its analysis on whether the taxpayer either possessed, received, or delivered or organized delivery of the subject substance.⁶⁹⁶ The tax court disagreed with the IDSR's assertion that the evidence allowed for the reasonable inference that the taxpayer either received delivery of the marijuana or organized the delivery of the marijuana.⁶⁹⁷ The tax court also concluded that the evidence presented in the case failed to demonstrate the taxpayer's participation in the delivery of the marijuana.⁶⁹⁸

Next, the tax court analyzed the issue of possession of a controlled substance and opined that possession may be actual or constructive.⁶⁹⁹ The tax court found that the majority of the alleged marijuana was confiscated by law enforcement personnel and stored at an Indiana State Police post prior to the taxpayer's alleged possession.⁷⁰⁰ In addition, the tax court determined that there was no evidence that would prove that the taxpayer had the intent or the ability to exercise control over the marijuana.⁷⁰¹ The tax court also found no evidence that the taxpayer leased the delivery vehicle; that the taxpayer drove the delivery vehicle; or, that the taxpayer knew what was stored inside the delivery vehicle prior to his arrest and communication with the Indiana State Police.⁷⁰²

The tax court emphasized that although it did not believe that the taxpayer encountered the driver of the vehicle carrying the marijuana by mere coincidence, the taxpayer's liability for the CSET was not established partly because the Indiana State Police arrested the taxpayer quickly, thereby hampering his activity with respect to the marijuana.⁷⁰³ The tax court indicated that it was

692. See *Hurst*, 721 N.E.2d at 372.

693. See *id.* at 373.

694. See *id.*; see also IND. CODE § 6-7-3-5 (2000).

695. See *Hurst*, 721 N.E.2d at 373.

696. See *id.*

697. See *id.*

698. See *id.* at 374.

699. See *id.*

700. See *id.* at 375.

701. See *id.* at 376.

702. See *id.*

703. See *id.*

“not persuaded by a preponderance of the evidence that [the taxpayer] either orchestrated or received delivery of the marijuana or that [the taxpayer] possessed the requisite intent or ability to maintain dominion and control over the marijuana in question.”⁷⁰⁴ The tax court concluded that as a result of its reversal of the CSET assessment, it was not necessary to discuss the identity of the substance because the issue was moot.⁷⁰⁵

2. *Hall v. Department of State Revenue*.⁷⁰⁶—In *Hall*, individual taxpayers challenged the IDSR’s finding that the taxpayers owed CSET.⁷⁰⁷ In this case, the tax court considered whether or not the Halls (taxpayers) possessed the marijuana in question, making them liable under the CSET statute.⁷⁰⁸

Both of the taxpayers were arrested and were issued CSET assessments for unpaid taxes.⁷⁰⁹ Keith Hall was convicted of Class D felony marijuana possession, while all charges against Mary Hall were dropped.⁷¹⁰ The tax court determined that the CSET was a punishment subject to the constraints of the Double Jeopardy Clause⁷¹¹ and that the imposition of the CSET after a criminal conviction violated the Double Jeopardy Clause.⁷¹² Therefore the tax court ordered the CSET assessment against Keith Hall vacated.⁷¹³ Conversely, the tax court held that because Mary Hall suffered no previous criminal prosecution or punishment, the Double Jeopardy argument did not apply to her and that her CSET assessment would not be vacated.⁷¹⁴

On appeal, the supreme court ruled that the CSET assessment against the taxpayers did not violate the Double Jeopardy Clause, the taxpayers’ rights to procedural due process, or their privileges against self-incrimination.⁷¹⁵ The supreme court reasoned that the CSET assessment in Keith Hall’s case did not violate the Double Jeopardy clause because it was assessed prior to the criminal action, which was the second jeopardy.⁷¹⁶ The taxpayers next filed a motion to vacate and dismiss the CSET assessment with the tax court on equitable double jeopardy, cruel and unusual punishment, and disproportionality grounds.⁷¹⁷ The

704. *Id.*

705. *See id.*

706. 720 N.E.2d 1287 (Ind. Tax Ct. 1999).

707. *See id.* at 1288.

708. *See id.*

709. *See id.*; *see also* IND. CODE 6-7-3-5 (2000).

710. *See* IND. CODE § 35-48-4-11 (2000); *Hall*, 720 N.E.2d at 1288; *see also* *Hall v. Dep’t of State Revenue*, 641 N.E.2d 694 (Ind. Tax Ct. 1994) *aff’d in part and rev’d in part*, 660 N.E.2d 319 (Ind. 1995) [hereinafter *Hall I*].

711. *See* U.S. CONST. amend. V.

712. *See id.*; *see also* *Hall I*, 641 N.E.2d at 695.

713. *See Hall*, 720 N.E.2d at 1289.

714. *See id.*

715. *See id.*; *see also* *Hall v. Dep’t of State Revenue*, 660 N.E.2d 319, 321-22 (Ind. 1995) [hereinafter *Hall II*].

716. *See Hall*, 720 N.E.2d at 1289; *see also* *Hall II*, 660 N.E.2d at 321.

717. *See Hall*, 720 N.E.2d at 1289.

tax court overruled and denied the taxpayers' motion.⁷¹⁸ It found that the issue of excessive fines was premature and possibly irrelevant because, at that time, the tax court did not determine whether or not the taxpayers were liable for the CSET tax.⁷¹⁹

The tax court observed that in this case, there was no question of possession with respect to Keith Hall as he had admitted to possessing the marijuana.⁷²⁰ The tax court then addressed whether or not Mary Hall possessed the marijuana involved in this case under the CSET statute.⁷²¹ Based on the facts of the case, the tax court determined that the pivotal inquiry was whether or not the application of the common law doctrine of constructive possession to the facts in this case demonstrated that Mary Hall constructively possessed the marijuana.⁷²² The tax court analyzed the factors and concluded that the facts and evidence presented failed to show that Mary Hall had the ability or the intent to exercise dominion and control over the marijuana and that the evidence confirmed that she lacked constructive possession.⁷²³

The tax court noted that it was "in no way expressing that it has full confidence in Mary Halls' purported innocence."⁷²⁴ However, the tax court reiterated that the facts and evidence and any inferences drawn from them did not establish the intent as well as the ability to exercise dominion and control over the marijuana.⁷²⁵ Consequently, the tax court affirmed the IDSR's finding that Keith Hall was liable for the CSET assessment.⁷²⁶ However, the tax court reversed the CSET assessment with respect to Mary Hall.⁷²⁷

3. *Adams v. Department of State Revenue.*⁷²⁸—In *Adams*, an individual taxpayer challenged the IDSR's finding that the taxpayer owed CSET.⁷²⁹ In this case, the tax court considered whether the exclusionary rule of evidence applied rendering the CSET assessment invalid.⁷³⁰ The CSET assessment against Adams (taxpayer) was based upon cocaine possessed by the taxpayer discovered in a safe deposit box. Prior to the CSET assessment, the taxpayer was charged with dealing in cocaine, a class A felony,⁷³¹ and for possession of cocaine, a class C

718. *See id.*; *see also* Hall v. Dep't of State Revenue, No. 49T10-9306-TA-00036 (Ind. Tax Ct. July 6, 1998) (unpublished order denying motion to vacate) [hereinafter *Hall III*].

719. *See Hall*, 720 N.E.2d at 1289.

720. *See id.* at 1291.

721. *See id.*

722. *See id.*

723. *See id.* at 1292.

724. *Id.*

725. *See id.*

726. *See id.*

727. *See id.*

728. 730 N.E.2d 840 (Ind. Tax Ct. 2000), *trans. granted, vacated* by No. 49T10-0011-TA-628, 2000 Ind. LEXIS 1098 (Ind. Nov. 3, 2000).

729. *See id.* at 841; *see also* IND. CODE § 6-7-3-13 (2000).

730. *See Adams*, 730 N.E.2d at 841.

731. *See* IND. CODE § 35-48-4-1(b).

felony.⁷³² In its review of the criminal case, the tax court found that the trial court ruled that Indiana “violated the [taxpayer’s] rights under both the state and federal constitutions when it seized the cocaine.”⁷³³ The tax court indicated that one day after the CSET assessment was prepared, the trial court granted Indiana’s motion to dismiss the criminal charges against the taxpayer as a result of a ruling to suppress the evidence.⁷³⁴

In its analysis, the tax court discussed the application of the exclusionary rule to CSET cases.⁷³⁵ The court of appeals previously dealt with the same taxpayer, the same search and the same cocaine in *Adams v. State*.⁷³⁶ The tax court noted that in that case, the taxpayer, as a criminal defendant, was charged with possession of and dealing in cocaine.⁷³⁷ The tax court explained that discovery of the subject cocaine in the taxpayer’s house resulted from a search warrant that was based on evidence that was later suppressed.⁷³⁸ The court of appeals held that “[f]ourth Amendment protections, *specifically*, the exclusionary rule apply to the CSET when a search warrant has been based on *judicially determined illegally seized evidence*.”⁷³⁹ Further, the tax court observed that the court of appeals disqualified the seizure of the cocaine found in the taxpayer’s house based on the fruit of the poisonous tree doctrine.⁷⁴⁰ The tax court agreed with the court of appeals’ decision that extended the exclusionary rule to Indiana’s CSET when the assessment is clearly based on judicially determined illegally seized evidence.⁷⁴¹

As a result, the tax court reversed the IDSR’s assessment determination that the taxpayer owed CSET.⁷⁴² Moreover, the tax court ordered the IDSR to immediately refund to the taxpayer any amounts previously collected and applied to the subject CSET assessment.⁷⁴³

H. Indiana Gaming Card Excise Tax

In *Muncie Novelty Co. v. Department of State Revenue*,⁷⁴⁴ Muncie Novelty Co. (taxpayer) challenged the IDSR’s finding that the taxpayer owed gaming card excise tax (GCET).⁷⁴⁵ In addition, the taxpayer appealed a civil penalty levied

732. See *Adams*, 730 N.E.2d at 841; see also IND. CODE § 35-48-4-1(b)(1).

733. *Adams*, 730 N.E.2d at 842.

734. See *id.*

735. See *id.*

736. 726 N.E.2d 390 (Ind. Ct. App. 2000).

737. See *Adams*, 730 N.E.2d at 843.

738. See *id.*

739. *Id.* (quoting *Adams*, 726 N.E.2d at 395).

740. See *id.*

741. See *id.*

742. See *id.* at 843-44.

743. See *id.* at 844.

744. 720 N.E.2d 779 (Ind. Tax Ct. 1999).

745. See *id.*

against it by the IDSR for failure to keep adequate records of the taxpayer's sales of gaming items.⁷⁴⁶ The tax court found in favor of the IDSR with respect to both of the above issues and affirmed the final determination of the IDSR.⁷⁴⁷ The tax court remanded the case to the IDSR for a calculation of the amount of the tax, penalty and interest due.⁷⁴⁸

The tax court explained that "the General Assembly enacted the Charity Gaming Act (Act) to allow charitable and other non-profit organizations to conduct games of chance in order to raise funds for those organizations."⁷⁴⁹ The tax court also found that the legislature subsequently amended the Act to shift enforcement powers under it from the Indiana Secretary of State to the IDSR.⁷⁵⁰

The taxpayer in this case manufactured and distributed gambling devices that were shipped across the United States and sold to both qualified and not qualified organizations.⁷⁵¹ In order to conduct a charity gaming event, a qualified organization is required to obtain a license from the IDSR.⁷⁵² And, all qualified organizations are required to purchase their gambling devices from a licensed supplier such as the taxpayer.⁷⁵³ When a qualified organization purchases gambling devices from the taxpayer, the taxpayer was required to charge the qualified organization the ten percent GCET.⁷⁵⁴ Alternatively, the tax court noted that if a not-qualified organization purchased gambling devices from the taxpayer, a five percent sales tax was imposed on the transaction.⁷⁵⁵

The tax court determined that when a customer purchased an item from the taxpayer, the taxpayer's employees inquired as to whether the customer was purchasing on behalf of a qualified organization.⁷⁵⁶ If so, the taxpayer charged the GCET; but if not, the taxpayer charged the sales tax.⁷⁵⁷ However, some of the taxpayer's customers often preferred to pay the taxpayer with cash and some customers suggested to the taxpayer that no invoices be created for the

746. *See id.* at 780.

747. *See id.*

748. *See id.* at 783.

749. *Id.* at 780. *See also* Act of Mar. 16, 1990, Pub. L. No. 32, § 13-15, 1990 Ind. Acts 1122, 1129-33.

750. *See Muncie Novelty Co.*, 720 N.E.2d at 780; *see also* Act of Feb. 26, 1992, Pub. L. No. 24, §§ 45-58, 1992 Ind. Acts 1960, 1992-2017; IND. CODE § 4-32-15-1 (2000) (imposing an excise tax of ten percent on sales of pull-tabs, punchboards and tip boards (gambling devices)).

751. *See Muncie Novelty Co.*, 720 N.E.2d at 780; *see also* IND. CODE § 4-32-6-20 (2000) (defining a qualified organization).

752. *See Muncie Novelty Co.*, 720 N.E.2d at 780; *see also* IND. ADMIN. CODE, tit. 45, r. 18-2-1 (2001) (explaining the application process for a qualified organization).

753. *See Muncie Novelty Co.*, 720 N.E.2d at 780; *see also* IND. ADMIN. CODE, tit. 45, r. 18-3-2 (2001) (defining an allowable event).

754. *See Muncie Novelty Co.*, 720 N.E.2d at 780; *see also* IND. ADMIN. CODE, tit. 45, r. 18-5-2 (2001) (explaining requirements for imposing excise tax).

755. *See Muncie Novelty Co.*, 720 N.E.2d at 780.

756. *See id.*

757. *See id.*

transactions.⁷⁵⁸ The tax court found that in such situations, the taxpayer charged the customers sales tax instead of GCET.⁷⁵⁹

In order to determine what amount of tax to charge, it is necessary to know who the taxpayer's Indiana customers are because otherwise, neither the taxpayer or IDSR could conduct an audit to determine the correct amount of tax.⁷⁶⁰ The tax court found that in the absence of this information, the IDSR presumes that the taxpayer's cash sales are to qualified customers.⁷⁶¹

Next, the tax court considered whether it was reasonable to assess the ten percent GCET when the taxpayer did not provide any information identifying its cash-paying customers as required by the regulations.⁷⁶² The tax court rejected the taxpayer's assertion that it identified cash paying customers from past sales and that it honored customer requests to remain anonymous.⁷⁶³ The tax court also rejected the taxpayer's contention that it had no tools available to determine the status of its Indiana customers.⁷⁶⁴ Consequently, the tax court concluded that the taxpayer knew the identity of its "unidentified customers," and that the taxpayer had the opportunity and the ability to easily ascertain whether such customers were qualified.⁷⁶⁵ As a result, the tax court concluded that it was reasonable for the IDSR to presume that all of the unidentified customers were qualified and owed the ten percent GCET, thereby making the taxpayer liable for the GCET on all sales to its unidentified customers.⁷⁶⁶

Next, the tax court addressed the assessment of a civil penalty against the taxpayer for failure to comply with the reporting requirements discussed above.⁷⁶⁷ Sections 4-32-12-2 and -3 of the Indiana Code authorize the IDSR to impose civil penalties upon either a qualified organization or an individual.⁷⁶⁸ The IDSR fined the taxpayer less than the maximum amount.⁷⁶⁹ The tax court held that while it did not find that the taxpayer's violation of the reporting requirements found in section 4-32-12-3 of the Indiana Code constituted a fraud on the IDSR, the taxpayer's conduct undermined the public confidence in the

758. *See id.*

759. *See id.*

760. *See id.* at 781.

761. *See id.*

762. *See id.*

763. *See id.* at 781-82.

764. *See id.* The tax court noted that the IDSR maintained a list of qualified Indiana organizations which was readily available to the taxpayer. The tax court also noted that the taxpayer could also have communicated directly with the IDSR concerning the status of a particular customer. *See id.*

765. *Id.* at 782.

766. *See id.*; *see also* IND. ADMIN. CODE, tit. 45, r.18-4-2 (2001) (mandating that licensed manufacturer must keep detailed records).

767. *See Muncie Novelty Co.*, 720 N.E.2d at 782.

768. *See id.*; *see also* IND. CODE §§ 4-32-12-2, -3 (2000).

769. *See Muncie Novelty Co.*, 720 N.E.2d at 782.

IDSR.⁷⁷⁰ The tax court concluded that the fine imposed was not excessive and was, therefore, reasonable.⁷⁷¹

I. Indiana Motor Vehicle Excise Tax

In *Bruns v. Department of State Revenue*,⁷⁷² spouses challenged the final determination of the IDSIR assessing the motor vehicle excise tax (MVET).⁷⁷³ In this case, the tax court considered whether or not Dr. and Mrs. Bruns (taxpayer) were liable for payment of the MVET assessed against the taxpayer by the IDSIR.⁷⁷⁴

Dr. Bruns was a physician employed in Indiana who maintained a permanent residence in Illinois. His driver's license and license plates were issued in Illinois, he voted in Illinois, and paid income taxes as an Illinois resident. Due to his employment, Dr. Bruns drove to Indiana on Monday mornings to begin his work week and during the week, he would sometimes stay overnight in a rooming house located in Indiana. The taxpayer returned to his domicile in Illinois on Friday nights.⁷⁷⁵

First, the tax court addressed liability under the MVET statute and indicated that the determining factor to trigger liability was whether a person lived in Indiana.⁷⁷⁶ The tax court explained that excise taxes such as the MVET are levies on an activity or event.⁷⁷⁷ The tax court also explained that an excise tax includes taxes sometimes designated by statute or referred to as privilege taxes.⁷⁷⁸ Indiana imposes an annual license excise tax on vehicles required to be registered in Indiana under the motor vehicle laws of the state.⁷⁷⁹ The statute requires that "[w]ithin sixty (60) days of becoming an Indiana resident, a person must register all motor vehicles owned by the person" that will be operated on Indiana roads.⁷⁸⁰ The tax court also referred to another statute that in part defines an Indiana resident as: "a person who has been living in Indiana for at least one hundred eighty-three (183) days during a calendar year and who has a legal residence in another state."⁷⁸¹

The tax court observed that in *Croop v. Walton*,⁷⁸² the Indiana Supreme Court

770. See *id.*; see also IND. CODE § 4-32-12-3 (2000).

771. See *Muncie Novelty Co.*, 720 N.E.2d at 783.

772. 725 N.E.2d 1023 (Ind. Tax Ct. 2000).

773. See *id.* at 1025; see also IND. CODE §§ 6-6-5-1 to -16 (2000) (describing the motor vehicle excise tax).

774. See *Bruns*, 725 N.E.2d at 1025.

775. See *id.*

776. See *id.* at 1026.

777. See *id.*

778. See *id.*

779. See *id.*; see also IND. CODE §§ 6-6-5-2, -6 (2000).

780. *Bruns*, 725 N.E.2d at 1026 (quoting IND. CODE § 9-18-2-1 (2000)).

781. *Id.* (quoting IND. CODE § 9-13-2-78(1) (2000)).

782. 157 N.E. 275 (Ind. 1927).

dealt with facts similar to those in *Bruns*. In *Croop*, the supreme court determined that "when a person has residences in different states, that person is taxable at the original domicile, *unless* opening of the second home involved abandonment of the original domicile."⁷⁸³ And, with regard to residency, the supreme court has held that a "contextual determination [should] be made by a court upon a consideration of the individual facts of any case."⁷⁸⁴

Accordingly, the tax court determined that the issue of MVET liability in this case would hinge on the evidence presented by the parties.⁷⁸⁵ After reviewing the evidence, the tax court concluded that the taxpayer submitted uncontroverted evidence that, although his car was in an Indiana parking garage for a period greater than 183 days, he in fact was not present in Indiana for the requisite 183 days or for a period greater than 4,392 hours.⁷⁸⁶ The tax court reasoned that even if the taxpayer's occupation of the Indiana rooming house amounted to living in Indiana, the evidence before it was that the taxpayer was not present in Indiana for at least 183 days.⁷⁸⁷ Moreover, the tax court held that absent any statute allowing dual registration of one car in two states, it would not require the taxpayer to violate the laws of his home state by registering his car in Indiana.⁷⁸⁸ The tax court held that rather than being subject to the MVET statute, the taxpayer would be subject to section 9-18-2-2 of the Indiana Code, which allows a nonresident to operate a vehicle on Indiana roads without registering the vehicle or paying the MVET if the vehicle is properly registered in the jurisdiction where the nonresident resides.⁷⁸⁹

The tax court concluded that the taxpayer was a resident of Illinois and only worked as an employee in Indiana.⁷⁹⁰ The tax court reasoned that based on section 9-18-2-2 of the Indiana Code, the legislature did not intend to force multiple taxation on people whose vehicles were properly registered in other states.⁷⁹¹ Therefore, the tax court reversed the final determination of the IDSR that the taxpayer was liable for the MVET.⁷⁹²

J. Indiana Public Lawsuit

In *Graber v. State Board of Tax Commissioners*,⁷⁹³ residents and real

783. *Bruns*, 725 N.E.2d at 1027 (citing *Croop*, 157 N.E. at 277-78).

784. *Id.* (quoting *In Evrard*, 333 N.E.2d 765, 768 (Ind. 1975) (establishing clarification of laws regarding voting and residency)).

785. *See id.* at 1028.

786. *See id.*

787. *See id.*

788. *See id.*; *see also* 625 ILL. COMP. STAT. 5/3-401(a) (2000) (stating that it shall be unlawful for any owner of a vehicle to allow that vehicle to be driven without being registered).

789. *See Bruns*, 725 N.E.2d at 1028; *see also* IND. CODE § 9-18-2-2 (2000).

790. *See Bruns*, 725 N.E.2d at 1028.

791. *See id.*

792. *See id.* at 1029.

793. 727 N.E.2d 802 (Ind. Tax Ct. 2000).

property owners (petitioners) of five townships in Daviess County, Indiana, challenged the decision of the ISBTC to approve a lease agreement for a new elementary school building between the North Daviess Community School Corporation (School Corporation) and the North Daviess School Building Corporation.⁷⁹⁴ The tax court decided that the petitioners would be required to post a bond in order to continue prosecuting this public lawsuit.⁷⁹⁵ In order to avoid posting a bond, the petitioners must present sufficient evidence showing that the ISBTC's approval was arbitrary and capricious, an abuse of discretion, unsupported by substantial evidence or, in excess of statutory authority.⁷⁹⁶

The legislature has directed the ISBTC to consider several factors when determining whether to approve a school building construction project (and by implication the approval of a lease for a newly constructed school building) including: the current and proposed square footage of school building space per student; enrollment patterns within the school corporation; the age and condition of the current school facilities; the cost per square foot of the school building construction project; the effect that completion of the school building construction project would have on the school corporation's tax rate; and, any other pertinent matter.⁷⁹⁷ The controlling statute does not require the ISBTC to assign greater weight to any one of the listed factors nor does the ISBTC have to consider any single factor dispositive in reaching its decision.⁷⁹⁸ However, as the tax court cautioned, the ISBTC must actually consider each of the listed factors and failure to do so constitutes an abuse of discretion by the ISBTC.⁷⁹⁹

The petitioners contended that the ISBTC failed to consider the sixth of the above-listed factors concerning any other "pertinent matter."⁸⁰⁰ However, the tax court found that the ISBTC considered both the alleged soil and wastewater problems with the proposed construction site, and the educational needs of Amish students within the school district.⁸⁰¹ Therefore, the tax court determined that the petitioners failed to present evidence showing that the ISBTC failed to consider the listed statutory factors.⁸⁰²

The tax court held that the petitioners could have shown that a substantial issue for trial existed by presenting evidence that, despite having considered the proper factors, the ISBTC's approval was nevertheless arbitrary and capricious, constituted an abuse of discretion, was not supported by substantial evidence or exceeded statutory authority.⁸⁰³ However, the tax court concluded that the

794. *See id.* at 804.

795. *See id.* at 810.

796. *See id.* at 806.

797. *Id.* at 806-07. *See also* IND. CODE § 6-1.1-19-4.2 (2000).

798. *See Graber*, 727 N.E.2d at 807.

799. *See id.*

800. *Id.* at 808.

801. *See id.*

802. *See id.*

803. *See id.*

petitioners did not make such a showing.⁸⁰⁴

The tax court referred to its previous holding in *Boaz v. Bartholomew Consolidated School Corp.*,⁸⁰⁵ where it held that “[t]he decision to implement [educational programs] is one properly delegated to the local school corporation, the Indiana Department of Education, and the State Board of Education.”⁸⁰⁶ In that case, the tax court further determined that, “[i]t is not the function of the State Board to pass judgment on the implementation of educational programs. Rather, the State Board is to analyze the School Corporation’s need for capital construction in light of the School’s educational programs.”⁸⁰⁷

In the instant case, the tax court found that the petitioners did not produce evidence demonstrating that the ISBTC abused its discretion or acted arbitrarily or capriciously in approving the subject lease agreement.⁸⁰⁸ Therefore, the tax court concluded that the petitioners did not show that a substantial issue for trial existed with respect to the school corporation’s choice to build a single elementary school building.⁸⁰⁹

Next, the tax court evaluated whether the petitioners demonstrated that a substantial issue for trial existed concerning the soil and wastewater at the proposed construction site.⁸¹⁰ The tax court accepted the ISBTC’s reasoning that the Board of Trustees for the North Daviess Community Schools could be trusted to employ competent professionals to address soil and wastewater concerns.⁸¹¹

The tax court concluded that the evidence presented by the petitioners did not raise substantial issues for trial.⁸¹² Accordingly, the tax court held that the petitioners would be required to post a sufficient bond pursuant to section 34-13-5-7 of the Indiana Code.⁸¹³ Finally, the tax court considered the amount of the bond and noted the school corporation’s estimate of costs for a one-year delay in completing the new elementary school building.⁸¹⁴ Given the lack of conflicting information from the petitioners and noting the speculation inherent in such a calculation, the tax court found that the bond amount requested by the School Corporation was reasonable.⁸¹⁵

As a result, the tax court ordered the petitioners to post bond with surety in the amount requested by the School Corporation and to submit the bond to the tax court for approval within ten days from the date of the tax court’s order.⁸¹⁶

804. *See id.*

805. 654 N.E.2d 320 (Ind. Tax Ct. 1995).

806. *Graber*, 727 N.E.2d at 808 (citing *Boaz*, 654 N.E.2d at 325-26).

807. *Id.* (citing *Boaz*, 654 N.E.2d at 325-26).

808. *See id.* at 809.

809. *See id.*

810. *See id.*

811. *See id.*

812. *See id.*

813. *See id.*; *see also* IND. CODE § 34-13-5-7 (2000).

814. *See Graber*, 727 N.E.2d at 809-10.

815. *See id.* at 810.

816. *See id.*

The tax court held that if the required bond was not filed within ten days from the date of the tax court's order, the present case would be dismissed pursuant to section 34-13-5-7(c) of the Indiana Code.⁸¹⁷

817. *See id.*; *see also* IND. CODE § 34-13-5-7(c) (2000).