

RECENT DEVELOPMENTS IN INDIANA TAXATION

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INTRODUCTION

The 113th General Assembly, the Governor of Indiana, the Indiana Supreme Court, and the Indiana Tax Court contributed changes to the Indiana tax laws in 2002. This Article highlights the major developments that occurred throughout the year.¹ Whenever the term “General Assembly” is used in this Article, such term shall refer only to the Indiana General Assembly. Whenever the term “State Board” is used in this Article, such term shall refer only to the Indiana State Board of Tax Commissioners. Whenever the term “Indiana Board” is used in this Article, such term shall refer only to the Indiana Board of Tax Review. Whenever the term “Department” is used in this Article, such term shall refer only to the Indiana Department of State Revenue. Whenever the term “Tax Court” is used in this Article, such term shall refer only to the Indiana Tax Court.

I. INDIANA GENERAL ASSEMBLY LEGISLATION

The 113th Indiana General Assembly passed a number of legislative changes affecting Indiana taxpayers. Many of these changes were executed to fine-tune existing tax laws. Significant policy changes occurred in the following major areas of taxation: gaming taxes; utility receipts tax; sales and use tax; state and local income taxes; inheritance tax; financial institution tax; special fuel tax; aircraft license excise tax; tobacco products taxes; tax administration; innkeepers’ tax; and, various other provisions.

A. Gaming Tax

The General Assembly redefined a marketing sheet used in charity gaming as additional information published about a wagering game that describes winnings² and required the marketing sheets to be maintained for the lesser of either six years or until the end of an audit in which such marketing sheets may be audited.³ Similarly, radio advertisements announcing charity gaming events are required to announce the name of the qualified organization conducting the

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1. 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-related information, visit the Access Indiana website at <http://www.accessindiana.org>.

2. IND. CODE § 4-32-6-16.5 (eff. July 1, 2003).

3. *See id.* § 4-32-13-6 (eff. July 1, 2003).

event along with that organization's license number.⁴

A licensed Indiana manufacturer or distributor is now required to provide the Department with a list of any bingo supplies, punchboards, or tip boards that are destroyed, discontinued, or rendered unusable.⁵ This list must include the quantity, description, and serial number of any items destroyed as well as the date upon which such items were destroyed. However, defective items are not to be listed therein.⁶ As a filing requirement, a licensed Indiana manufacturer or distributor is required to file a quarterly report with the Department listing their sales of supplies, devices, and equipment.⁷

It is now provided that the Indiana Administrative Orders and Procedures Act applies to protests and hearings to charity gaming held by the Department.⁸ The General Assembly also required that all manufacturers or distributors provide the Department with any requested records within 72 hours of such request.⁹

In addition, the General Assembly clarified that the excise tax imposed on gaming card sales of qualified organizations is to be 10% of the purchase price paid by that organization for pull tabs, punchboards, and tip boards,¹⁰ and that the gaming card excise tax is to be imposed upon the licensed distributor at the time when the supplies are actually distributed in Indiana.¹¹

The General Assembly further provided that if any employee or officer of a licensed manufacturer or distributor is a member of a civic or religious organization which holds a charity gaming license, that membership may not be construed as an affiliation with the organization's charity gaming operations.¹²

Changes were also made to the riverboat gaming tax law. For example, the riverboat admissions taxes were raised in Orange County to four dollars (\$4.00) per admission,¹³ and a riverboat which implements flexible scheduling during a fiscal year must now calculate its gaming tax liability from June 30, 2002 instead of from the time at which the flexible scheduling is actually implemented.¹⁴ To compensate for this change, two adjusting payments will be due in two equal installments on July 1, 2003 and July 1, 2004.¹⁵ Similarly, if a riverboat eliminates flexible scheduling during a fiscal year, then the gaming tax liability must be calculated as though flexible scheduling were in effect until the end of that fiscal year.¹⁶

4. *See id.* § 4-32-9-35 (eff. July 1, 2003).

5. *See id.* § 4-32-13-7 (eff. July 1, 2003).

6. *Id.*

7. *See id.* § 4-32-13-8 (eff. July 1, 2003).

8. *See id.* § 4-32-8-5.

9. *See id.* § 4-32-13-8 (eff. July 1, 2003).

10. *See id.* § 4-32-15-1 (eff. July 1, 2003).

11. *See id.* § 4-32-15-2 (eff. July 1, 2003).

12. *See id.* § 4-32-9-35 (eff. July 1, 2003).

13. *See id.* § 4-33-12-1 (eff. July 1, 2003).

14. *See id.* § 4-33-13-1.5 (retroactive to July 1, 2002).

15. *Id.*

16. *Id.*

B. Utility Receipts Tax

The General Assembly corrected an erroneous reference to the definition of the term "political subdivision" as well as various references to repealed gross income tax sections.¹⁷ Also, the section for underpayment of the estimated utility receipt taxes now provides that payments must be at least 20% of the final tax liability for the current taxable year or 25% of the tax liability for the previous year in order to avoid a penalty.¹⁸ Similarly, the penalty for underpayment is to be calculated separately from the penalty for underpayment of the adjusted gross income tax.¹⁹ The General Assembly also clarified that gross receipts received by a political subdivision for sewer and sewage services are exempt from the utility receipts tax.²⁰

C. Sales and Use Tax

The General Assembly made a number of clarifications of definitions and provided several new definitions to the sales and use tax law with respect to gross retail income, alcoholic beverages, candy, computers and computer software, dietary supplements, drugs, durable medical equipment, food and food ingredients, mobility enhancing equipment, prewritten computer software, prosthetic devices, and soft drinks. In making such clarifications, most of the following definitions make it clearer what types of property will be subject to the sales and use taxes and simplify the multi-state sales and use tax agreement, the "Streamlined Sales Tax Project".²¹ Additionally, the General Assembly eliminated a reference to the gross income tax section of the Indiana Code that has been repealed.²²

1. *Delivery Charges*.—Delivery charges and charges by a seller for the preparation and delivery of property to a location designated by a purchaser are now included in gross retail income.²³ These charges include, for example, transportation, shipping, postage, handling, crating, and packing.²⁴ However, coupons or other discounts that are allowed against such charges and are not reimbursed by third parties are not a part of gross retail income.²⁵

2. *Food and Other Ingested Goods*.—Now, "food and food ingredients" are defined as substances sold for ingestion or chewing by humans and that are

17. *See id.* § 6-2.3-1-12 (retroactive to Jan 1, 2003).

18. *See id.* § 6-2.3-6-1 (retroactive to Jan 1, 2003).

19. *See id.* § 6-3-4-4.1 (eff. April 2, 2003).

20. *See id.* § 6-2.3-4-3 (retroactive to Jan 1, 2003).

21. For comprehensive information concerning the Streamlined Sales Tax Project, visit the Project's website at <http://www.streamlinedsalestax.org>.

22. *See* IND. CODE § 6-2.5-6-13 (retroactive Jan., 2003).

23. *See id.* § 6-2.5-4-1 (eff. Jan. 1, 2004).

24. *Id.*

25. *See id.* § 6-2.5-1-5 (eff. Jan. 1, 2004).

consumed for their taste or nutritional value.²⁶ However, the term does not include alcoholic beverages, candy, dietary supplements, or soft drinks. "Alcoholic beverages" are defined as beverages containing one-half of one percent or more alcohol by volume.²⁷ "Candy" is defined to be the preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops, or pieces. However, the term does not include items containing flour or items requiring refrigeration.²⁸ "Dietary supplements" are defined as a product that is intended to supplement the diet, contains a vitamin, mineral, herb, amino acid, or other supplement, and is required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts" box on the label and as required under 21 CFR 101.36.²⁹ However, dietary supplements do not include tobacco products.³⁰ "Soft drinks" are defined as nonalcoholic beverages containing natural or artificial sweeteners.³¹ However, soft drinks do not include beverages containing milk or milk products, soy, rice, or similar milk substitutes or greater than 50% of vegetable or fruit juice by volume.³²

3. *Computers and Computer Software.*—The term "computer" is defined as an electronic device that accepts information in digital or similar form and manipulates the information for a result based on a sequence of instructions.³³ "Computer software is" defined as a set of coded instructions which is designed to cause a computer or automatic data processing equipment to perform a task.³⁴ The term "delivered electronically" is defined as delivered to the purchaser by means other than tangible storage media.³⁵ The term "prewritten computer software" is defined as computer software "not designed and developed by the author or other creator to the specifications of a specific purchaser."³⁶ Where there is a separate invoice or other statement of the price given to the purchaser for a modification or enhancement, the modification or enhancement is not prewritten computer software.³⁷ However, prewritten computer software does include any of the following: combinations of two or more prewritten computer software programs or prewritten parts of the programs; software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser; prewritten computer software or a prewritten part of the software that is modified or

26. *Id.* § 6-2.5-1-20 (eff. Jan. 1, 2004).

27. *Id.* § 6-2.5-1-11 (eff. Jan. 1, 2004).

28. *Id.* § 6-2.5-1-12 (eff. Jan. 1, 2004).

29. *Id.* § 6-2.5-1-16 (eff. Jan. 1, 2004).

30. *Id.*

31. *Id.* § 6-2.5-1-26 (eff. Jan. 1, 2004).

32. *Id.*

33. *Id.* § 6-2.5-1-13 (eff. Jan. 1, 2004).

34. *Id.* § 6-2.5-1-14 (eff. Jan. 1, 2004).

35. *Id.* § 6-2.5-1-15 (eff. Jan. 1, 2004).

36. *Id.* § 6-2.5-1-24 (eff. Jan. 1, 2004).

37. *Id.*

enhanced to any degree, where the modification or enhancement is designed and developed to the specifications of a specific purchaser.³⁸ Further, for modified or enhanced computer software with respect to which the programmer is not the author or creator, the person is considered to be the author to the extent of the modifications or enhancements.³⁹

4. *Drugs and Medical Devices.*—The term “drug” is defined as any substance recognized in the United States Pharmacopoeia as being intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease, or which is intended to affect the structure or any function of the body. However, the term does not include food or food ingredients, dietary supplements, or alcoholic beverages as defined above.⁴⁰ The term “prescriptions” are defined as an order or formula issued by a licensed practitioner.⁴¹ “Durable medical equipment” is defined as equipment and repair and replacement parts for equipment that: can stand repeated use; is used to serve a medical purpose; generally is not useful to a person in the absence of illness or injury; and, is not worn in or on the body.⁴² A “prosthetic device” is defined as a replacement, corrective, or supportive device worn on or in the body to artificially replace a missing part of the body, prevent or correct physical deformity, or support a weak or deformed part of the body.⁴³ “Mobility enhancing equipment” is defined as equipment primarily used to provide or increase the ability to move from one place to another and is not generally used by persons with normal mobility; however, it does not include a motor vehicle or equipment on a motor vehicle.⁴⁴

5. *Tangible Personal Property.*—“Tangible personal property” is defined as something that can be seen, weighed, measured, felt, or touched or in any other manner is perceptible to the senses including, but not limited to, electricity, gas, water, steam, and prewritten computer software.⁴⁵ The term “lease and rental” was defined as any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration and may include future options to purchase or extend. However, the term does not apply to secured financing agreements, purchase money mortgages, or the equipment requiring as a necessity an operator performing more than maintenance, inspections, or setting up the equipment.⁴⁶ Similarly, the General Assembly provided that subleasing is not classified as the rental or leasing of tangible personal property.⁴⁷

6. *Calling Services.*—“Post paid calling services” are defined as telecommunications services obtained by making a payment on a call-by-call

38. *See id.*

39. *Id.*

40. *See id.* § 6-2.5-1-17 (eff. Jan. 1, 2004).

41. *Id.* § 6-2.5-1-23 (eff. Jan. 1, 2004).

42. *See id.* § 6-2.5-1-18 (eff. Jan. 1, 2004).

43. *See id.* § 6-2.5-1-25 (eff. Jan. 1, 2004).

44. *See id.* § 6-2.5-1-22 (eff. Jan. 1, 2004).

45. *Id.* § 6-2.5-1-27 (eff. Jan. 1, 2004).

46. *See id.* § 6-2.5-1-21 (eff. Jan. 1, 2004).

47. *See id.* § 6-2.5-4-10 (eff. Jan. 1, 2004).

basis either through the use of a credit card, debit card or similar bankcard, or by charge made to a telephone number that is not associated with the origination or termination of the telecommunications service.⁴⁸ "Prepaid calling service" is defined as the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.⁴⁹

7. *Exemptions.*—In order to comply with the new additions and clarifications made to the sales and use tax definitions, the General Assembly made some technical changes to the exemptions and deductions under the sales and use taxes.

The agricultural exemption for the production of food now includes the production of food ingredients so long as the double direct test is met and the property is directly used in the direct production of food ingredients and the person acquiring the property is occupationally engaged in producing food ingredients.⁵⁰ Similarly, the General Assembly exempted from the sales tax food and food items which are sold without eating utensils provided that the seller of such items has a primary NAICS classification as a food manufacturer and is not a bakery.⁵¹ The General Assembly excluded from this exemption the following: candy, alcoholic beverages, soft drinks, food sold through a vending machine, food sold in a heated state or heated by the seller, two or more food ingredients mixed or combined by the seller for sale as a single item,⁵² and food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws.⁵³

The General Assembly clarified that both the purchase of durable medical equipment and prosthetic devices and the rental of durable medical equipment and other medical supplies are exempt from the sales tax.⁵⁴ With respect to the exemption for legend and non-legend drugs, the General Assembly made a technical change only.⁵⁵

In addition to the changes made to the exemptions provided for in the areas of agriculture, food and food production, and drug and medical equipment, the General Assembly also provided that the purchase of a new motor vehicle by one franchisee for the purpose of resale to another dealer franchise of the same

48. *See id.* § 6-2.5-12-10 (eff. Jan. 1, 2004).

49. *Id.* § 6-2.5-10-11 (eff. Jan. 1, 2004).

50. *See id.* § 6-2.5-5-1 Version b (eff. Jan. 1, 2004).

51. *See id.* § 6-2.5-5-20 Version a (eff. Jan. 1, 2004).

52. This does not include "food that is only cut, repackaged, or pasteurized by the seller, eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, subpart 3-401.11 of its Food Code so as to prevent food borne illnesses." *Id.*

53. *Id.* (not including packaging used to transport the food).

54. *See id.* § 6-2.5-5-19 Version a, Version b (eff. Jan. 1, 2004).

55. *See id.* § 6-2.5-5-19 (eff. Jan. 1, 2004).

vehicle trade name is exempt from the sales and use tax.⁵⁶ This same change exempts purchases of new motor vehicles by a franchisee when such vehicles are either purchased directly from the manufacturer or are purchased for the rental or leasing in that individual's ordinary course of business.⁵⁷

8. *Deductions.*—Similar to the changes made for exemptions to the sales and use taxes, the General Assembly added a provision to the bad debt deduction allowed against the sales and use taxes. The changes provide that the bad debt deduction does not include interest on the debt and that the amount of the deduction is to be determined in the manner which is provided by Section 166 of the Internal Revenue Code for bad debts. However, the deduction is to be adjusted in order to exclude: financing charges or interest; sales or use taxes charged on the purchase price; uncollectible amounts on property that remain in the possession of the seller until the full purchase price is paid; expenses incurred in attempting to collect any debt; and, repossessed property.⁵⁸ The bad debt deduction must be claimed in the period for which the receivable was written off and an individual may receive the deduction even if they are not required to file a federal income tax return.⁵⁹ If the amount of the bad debt deduction exceeds an retail merchant's taxable sales for a taxable period then the retail merchant is entitled to file for a refund pursuant to Indiana Code section 6-8.1-9. However, the deadline for such return will be tolled from the due date of the return in which period the uncollectible could have first been claimed.⁶⁰ Certified service providers assuming a retail merchant's filing responsibilities may claim, on behalf of the merchant, the bad debt deduction or refund, and in such a case, the credit or refund to the merchant is to be the entire amount deducted or refunded.⁶¹ Payments received on a previously claimed uncollectible receivable is to be first be applied proportionally to the taxable price of the property and the state gross retail tax or use tax thereon, and second, to interest, service charges, and any other charges.⁶² Finally retail merchants claiming the bad debt deduction for uncollectible receivables may allocate that receivable among the states⁶³ which are members of the Streamlined Sales and Use Tax Agreement if the books and

56. *See id.* § 6-2.5-5-8 (eff. July 1, 2003).

57. *Id.*

58. *Id.* § 6-2.5-6-9 (eff. Jan. 1, 2004).

59. *See id.*

60. *See id.*

61. *See id.*

62. *Id.*

63. Currently there are 41 participating states as well as the District of Columbia. The participating states are Alabama, Arizona, Arkansas, California, Connecticut, District of Columbia, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

records of the retail merchant support that allocation.⁶⁴

9. *Sourcing Rules*.—The General Assembly provided a number of changes aimed at clarifying the sourcing rules for retail merchants involved in retail transactions both within and outside of Indiana.

a. *Service provider of state*.—A section was added to the Indiana Code which provides that the Department of Administration and each purchasing agent for a state educational institution is to provide the Department with a list of every person who wants to enter into a contract to sell property or services to an agency or a state educational institution.⁶⁵ The Department is to notify the Department of Administration or the purchasing agent of the state educational institution if a person on the list does not have a registered retail merchant certificate or is delinquent in remitting or paying amounts due to the Department under this article.⁶⁶

Similarly, the General Assembly provided that any person who enters into a contract to provide property or services, or agrees to sell property to an agency or an institution of higher education is required to file an application for a retail merchant's certificate with the Department and thereby consents to be treated as if the person has a place of business in Indiana and will be further required to collect and remit the sales tax as provided by the statute.⁶⁷

b. *Call center operators*.—The General Assembly added a new section to the Indiana Code which provides that a person who has contracted with a call center operator for a telephone service does not have a duty to register as a retail merchant or to collect or remit sales tax if that individual's only tangible or intangible property within Indiana is located at the premises of the call center operator, is used to provide or assist directly with the provision of a telephone service as described in subsection (c), and not held for sale, shipment, or distribution in response to orders received as a result of a telephone service provided by the call center operator.⁶⁸ Further, any activities of any kind which are performed by or on behalf of the individual or performed by the call center operator, are not considered to be, or to create, an office, a place of distribution, a sales location, a sample location, a warehouse, a storage place, or other place of business maintained, occupied, or used in any way by the person.⁶⁹ Similarly, a call center operator with which a person has contracted for a telephone service is not be considered to be in any way a representative, an agent, a salesman, a canvasser, or a solicitor for the person.⁷⁰

c. *Telecommunications services*.—As for the sourcing rules for telecommunications services, the General Assembly created an entire chapter

64. See IND. CODE § 6-2.5-6-9 (eff. Jan. 1, 2004).

65. See *id.* § 6-2.5-4-14 (eff. July 1, 2003).

66. See *id.*

67. See *id.* § 6-2.5-8-10 (eff. July 1, 2003).

68. See *id.* § 6-2.5-8-12 (eff. July 1, 2003).

69. *Id.*

70. *Id.* (For purposes of this section, a telephone service includes soliciting orders by telephone, accepting orders by telephone, and making and receiving any other telephone calls.) *Id.*

devoted to determining the appropriate source for the imposition of the sales tax. Telecommunications services sold on a call-by-call basis will be sourced at each level of taxing jurisdiction where the call originates and terminates or at each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.⁷¹ Telecommunications services sold on a basis other than a call-by-call basis are sourced to the customer's place of primary use.⁷² However, mobile telecommunications, post paid and pre-paid calling services, and private communications services, whether sold on a call-by-call basis or otherwise, will have their own sourcing rules. The sales of mobile telecommunications services, other than air to ground radiotelephone service and prepaid calling service, is sourced to the customer's place of primary use as required by the Mobile Telecommunications Sourcing Act and Indiana Code section 6-8.1-15.⁷³ Sales of post paid calling services are sourced to the origination point of the telecommunications signal as first identified by either the seller's telecommunications system or information received by the seller from its service provider where the system used to transport such signals is not that of the seller.⁷⁴ Sales of prepaid calling services are sourced in the following manner. When the service is received by the purchaser at a business location of the seller, the sale is sourced to that business location. Otherwise the sale is sourced to the location where receipt by the purchaser occurs.⁷⁵ Sales of private communications services are sourced as follows. Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located. Services located entirely in one jurisdiction are sourced to that jurisdiction; services between two jurisdiction are sourced 50% to each level of jurisdiction; and for services sourced in more than one jurisdiction the sales are sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in such jurisdiction by the total number of customer channel termination points.⁷⁶

d. General personal property and services.—The General Assembly added a section to the Indiana Code to define the sourcing rules for the retail sale, lease, or rental of general personal property and services excluding the retail sale or transfer of watercraft, modular homes, manufactured homes, or mobile homes, and the retail sale only, i.e. not excluding the lease or rental, of motor vehicles, trailers, semi trailers, or aircraft that do not qualify as transportation equipment.⁷⁷ Specifically, the General Assembly provided that the retail sales of general personal property and services, excluding the above mentioned exclusions, will be sourced as follows. A product which is received by a purchaser at a business

71. See *id.* § 6-2.5-12-14 (eff. Jan. 1, 2004).

72. See *id.* § 6-2.5-12-15 (eff. Jan 1, 2004).

73. See *id.* § 6-2.5-12-16 (eff. Jan. 1, 2004).

74. *Id.*

75. *Id.*

76. See *id.*

77. See *id.* § 6-2.5-13-1 (eff. Jan. 1, 2004).

location of the seller will be sourced to that business location.⁷⁸ Products which are not received at the seller's business location will be sourced to the location where the purchaser received the property or service.⁷⁹ When the first two provisions fail to provide a sourcing location the sale will be sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.⁸⁰ If the previous three provisions are unsuccessful in establishing a sourcing location the sale will be sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.⁸¹ When none of the previous provisions apply the location will be determined by the address from which property was shipped.⁸²

For the lease or rental of property other than motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment the sourcing that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale; and subsequent periodic payments will be sourced to the primary property location for each period covered by the payment.⁸³ For a lease or rental not requiring recurring periodic payments, the payment is sourced the same as a retail sale as provided above.⁸⁴ The lease or rental of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment requiring periodic payments will be sourced to the primary property location.⁸⁵ A lease or rental not requiring recurring periodic payments will be sourced the same as a retail sale as provided above.⁸⁶ Similarly, the retail sale, including lease or rental, of transportation equipment will be sourced the same as a retail sale as provided above.⁸⁷

e. Multiple points of use.—The General Assembly provided an exemption for a multiple point of use exemption ("MPU exemption") for digital goods, computer software delivered electronically, or services that are to be available for use concurrently in multiple jurisdictions.⁸⁸ The MPU exemption applies to a business purchaser who is not the holder of a direct pay permit and knows at the time of its purchase that one of the above mentioned categories will be

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. *See id.* § 6-2.5-13-2 (eff. Jan. 1, 2004).

available in more than one jurisdiction.⁸⁹ The MPU exemption requires that a business purchaser with this knowledge is to deliver to the seller in conjunction with its purchase a form disclosing the MPU exemption, the effect of which will relieve the seller of all obligation to collect, pay, or remit the applicable tax and transfer such obligation on a direct pay basis.⁹⁰ A purchaser is allowed to use any consistent and uniform method of apportionment so long as such method is supported by that purchaser's business records as they exist at the time of the sale.⁹¹ Any initial MPU exemption form remains in effect as to all future sales by the seller to the purchaser until such time as the form is revoked in writing.⁹²

f. Direct mailer.—Similar in some respects to the MPU exemption, the General Assembly provided that a purchaser of direct mail that is not a holder of a direct pay permit is to provide to a seller in conjunction with the purchase either a direct mail form or information to show the jurisdictions to which the direct mail is delivered to recipients.⁹³ Much like the MPU exemption, the direct mail form relieves the seller of the obligation to pay, collect, or remit the applicable tax and transfers the duty upon the purchaser to remit the applicable tax on a direct pay basis.⁹⁴ However, if the purchaser provides the seller with information indicating the jurisdictions in which mail is to be delivered to recipients, then the seller retains the obligation to collect the tax according to such information.⁹⁵ Similarly, a direct mail form, once provided, is effective as to all future sales until such time as it is revoked in writing.⁹⁶

g. Hotel comps.—For retail merchants who furnish rooms or lodgings to individuals on a complimentary basis for less than thirty days at a location where lodgings are regularly furnished for consideration, the General Assembly requires that the merchant now compute its gross retail income as being inclusive of the gross retail income that would have been received from renting a comparable room or lodging on the date the complimentary room or lodging is provided.⁹⁷ Similarly, the retail tax is to be imposed upon such complimentary transactions.⁹⁸

As a filing requirement, the General Assembly requires that a retail merchant providing complimentary hotel rooms report to the Department, in addition to their sales tax return, a report listing the number of rooms or lodgings rented during the reporting period and the total amount of state gross retail taxes remitted with respect to the rooms or lodgings, and the number of complimentary rooms or lodgings provided during the reporting period and the total amount of

89. *See id.*

90. *See id.*

91. *See id.*

92. *See id.*

93. *See id.* § 6-2.5-13-3 (eff Jan. 1, 2004).

94. *See id.*

95. *See id.*

96. *See id.*

97. *See id.* § 6-2.5-4-4.5 (eff. Jan. 1, 2004).

98. *See id.*

state gross retail taxes remitted with respect to those rooms or lodgings.⁹⁹

D. State and Local Income Tax

1. *Adjusted Gross Income*.—The General Assembly eliminated reference to the gross income tax which was repealed in 2003 and incorporated reference changes contained within P.L. 1-2003.¹⁰⁰ Similarly, the General Assembly updated the Indiana Code sections providing for the Indiana Adjusted Gross Income to correspond to the federal definition of adjusted gross income as provided in the Internal Revenue Code.¹⁰¹ However, as an exception to this update, the bonus depreciation deduction (of 30% and 50%) for property placed in service after September 11, 2001 was excluded as it applies to individuals, corporations, trusts and estates, life insurance companies, and insurance companies.¹⁰² Similarly, the General Assembly added a definition for bonus depreciation to mean any depreciation allowance allowed in computing the taxpayer's federal adjusted gross income or federal taxable income that is attributable to the additional first-year special depreciation allowance (bonus depreciation) for qualified property allowed under Section 168(k) of the Internal Revenue Code.¹⁰³

The General Assembly established that employees of pass through entities are entitled to claim the enterprise zone employee tax deduction if they live and work within the enterprise zone.¹⁰⁴ It also clarified that a lottery prize payout made prior to June 30, 2002 for a lottery drawing held prior to July 1, 2002 will be exempt from taxation.¹⁰⁵ As stated above, the penalty for underestimating the adjusted gross income tax is no longer combined with the payments of the utility receipts tax.¹⁰⁶ If a federal modification is made to a taxpayer's federal or Indiana adjusted gross income, then the taxpayer is required to file an amended Indiana return within 120 days after such modification is made. The General Assembly also eliminated the quarterly withholding report that is required of an entity making an electronic fund transfer to pay its withholding tax remittance.¹⁰⁷

2. *Income Tax Credits*.—Along with making adjustments to the adjusted gross income tax, the General Assembly made a number of changes to the income tax credits. Also, a number of references to the gross income tax were deleted to the extent that such sections were deleted.¹⁰⁸ The General Assembly also clarified that taxpayers are not eligible for refunds of any unused income tax

99. *See id.* § 6-2.5-6-15 (eff. July 1, 2003).

100. *See id.* § 6-3-3-5, § 6-3-3-5.1, and § 6-3-3-10 (eff. April 2, 2003).

101. *See id.* § 6-3-1-11 (retroactive to Jan. 1, 2003).

102. *See id.* § 6-3-1-3.5 (retroactive to Jan. 1, 2003).

103. *Id.* § 6-3-1-33 (retroactive to Jan. 1, 2003).

104. *Id.* § 6-3-2-8 (eff. Jan. 1, 2003).

105. *Id.* § 6-3-2-14.1 (retroactive to July 1, 2002).

106. *See id.* § 6-3-4-4.1 (eff. April 2, 2003).

107. *See id.* § 6-3-4-8.1 (eff. July 1, 2003).

108. *Id.* § 6-3.1-18-8 (eff. April 2, 2003).

credits.¹⁰⁹

a. Income tax credit extensions.—The General assembly extended the following income tax credits. The research expense credit is extended until December 31, 2013.¹¹⁰ Also, the voluntary remediation tax credit is extended until December 31, 2005.¹¹¹

b. Community revitalization enhancement district tax credit.—Pass through entities were retroactively made eligible to receive the community revitalization enhancement tax credit.¹¹² However, a pass through entity as used in community revitalization enhancement tax credit section was defined as a corporation that is exempt from the adjusted gross income tax under Indiana Code section 6-3-2-2.8(2), a partnership, a limited liability company, or a limited liability partnership.¹¹³

c. Voluntary remediation tax credit.—As for the voluntary remediation tax credit, the General Assembly defined a legislative body as the city council if a voluntary remediation property is located in such city.¹¹⁴ Similarly, a legislative body is defined as the “county council” if such remediation property is located in that county and not in a city.¹¹⁵

The General Assembly added a provision to the definition of “qualified investment” such that costs incurred in Indiana due to the remediation of a brownfield, which are not paid from state financial assistance, will result in taxable income to any other Indiana taxpayer.¹¹⁶ Another provision was added allowing a taxpayer to carry back any unused voluntary remediation tax credit to the immediately preceding taxable year before the credit is initially claimed.¹¹⁷ Further, the voluntary remediation tax credit was extended until December 31, 2005.¹¹⁸

d. Venture capital investment tax credit.—The General Assembly added a provision retroactively entitling pass through entities to become eligible for the venture capital investment tax credit.¹¹⁹ Further, to be entitled to full 20% of the amount of the qualified investment capital provided to a qualified Indiana business,¹²⁰ a taxpayer must, in addition to providing such investment to a qualified Indiana business, provide the Department of Commerce with a proposed investment plan, which plan must be approved by the Department of

109. See *id.* § 6-3.1-24-12 (retroactive to Jan. 1, 2003).

110. *Id.* § 6-3.1-4-6 (eff. July 1 2003).

111. *Id.* § 6-3.1-23-16 (eff. Jan. 1, 2004).

112. See *id.* § 6-3.1-19-3 (retroactive to Jan. 1, 2003).

113. *Id.*

114. See *id.* § 6-3.1-23-1.5 (eff. Jan. 1, 2004).

115. See *id.*

116. See *id.* § 6-3.1-23-3 (eff. Jan. 1, 2004).

117. See *id.* § 6-3.1-23-11 (eff. Jan. 1, 2002) (This is in addition to the previous provision allowing for a five year carry forward of any unused voluntary remediation tax credit.).

118. *Id.* § 6-3.1-23-16 (eff. Jan. 1, 2004).

119. See *id.* § 6-3.1-24-5 (retroactive to Jan. 1, 2003).

120. See *id.* § 6-3.1-24-10.

Commerce and be executed within two years of the approval in order to be eligible for the credit.¹²¹ The filing must include: the name and address of the taxpayer; the name and address of each proposed recipient of the taxpayer's proposed investment; the amount of the proposed investment; a copy of the certification issued by the Department of Commerce that the proposed recipient is a qualified Indiana business; and, any other information required by the department of commerce.¹²² Accompanying the investment plan filing requirement is a provision prohibiting the Department of Commerce from certifying such plan if the total amount of credits will be in excess of ten million dollars in any one calendar year.¹²³ The taxpayer receiving an approval from the Department of Commerce for their investment plan must submit a copy of the certificate to the Department when filing their tax return and claiming the credit.¹²⁴ In addition, the Indiana General Assembly clarified that, while a taxpayer is not entitled to a credit for providing qualified investment capital to a qualified Indiana business after December 31, 2008, taking such action may not be construed to prevent a taxpayer from carrying over to a taxable year beginning after December 31, 2008, an unused tax credit attributable to an investment occurring before January 1, 2009.¹²⁵ Finally, the requirement that a qualified business must be a high growth company entering a new product area, that requires jobs requiring a postsecondary education, and has a substantial number of employees who ear at least 150% of Indiana per capita income was eliminated from the definition of qualified business.¹²⁶

e. Coal combustion product tax credit.—The General Assembly enacted a new section of the Indiana Code providing for the coal combustion product tax credit. “Coal combustion product” is defined as the byproducts resulting from the combustion of coal in a facility located in Indiana, including a fluidized bed boiler and includes boiler slag, bottom ash, fly ash, and scrubber sludge.¹²⁷ The coal combustion product tax credit applies to a taxpayer manufacturer that obtains and uses coal combustion products for the manufacturing of recycled components and is either a new business (an existing business that during a taxable year in which the taxpayer claims a credit, begins manufacturing recycled components) or an existing business that manufactures recycled components and during a taxable year in which the taxpayer claims a credit, increases acquisitions of coal combustion products by 10% of the year in which the most coal combustion products were obtained in any of the three previous taxable years immediately preceding the current taxable year.¹²⁸ “Recycled components” are defined as any goods of which coal combustion products constitute at least 15%

121. *See id.* § 6-3.1-24-6 (retroactive to Jan. 1, 2003).

122. *See id.* § 6-3.1-24-12.5 (retroactive to Jan. 1, 2003).

123. *See id.* § 6-3.1-24-9 (retroactive to Jan. 1, 2003).

124. *See id.* § 6-3.1-24-13 (retroactive to Jan. 1, 2003).

125. *See id.* § 6-3.1-24-9 (retroactive to Jan. 1, 2003).

126. *See id.*

127. *Id.* § 6-3.1-25.2-1 (eff. Jan. 1, 2004).

128. *See id.* § 6-3.1-25.2-2 (eff. Jan. 1, 2004).

by weight of the substances of which the unit is composed, including aggregates, fillers, cementitious materials, or any combination of aggregates, filler, or cementitious materials that are used in the manufacture of masonry construction products (including portland cement based mortar), normal and lightweight concrete, blocks, bricks, pavers, pipes, prestressed concrete products, filter media, and other products approved by the Center for Coal Technology Research established under Indiana Code section 4-4-30.¹²⁹

The coal combustion product tax credit is equal to \$2 per ton of coal combustion products used by a taxpayer if the taxpayer is a new manufacturer.¹³⁰ If the taxpayer is an existing manufacturer, then the coal combustion product tax credit only applies to the additional amount of coal combustion products used by the taxpayer.¹³¹ Further, the maximum amount of coal combustion product tax credit available for any taxpayer in a fiscal year is \$2 million or less.¹³² A taxpayer entitled to claim the coal combustion product tax credit may do so for each of ten consecutive taxable years, beginning with the taxable year in which the manufacturer first claims the credit.¹³³ However, a manufacturer is not entitled to carry over the excess to following taxable years nor is it entitled to carryback or refund any amount of unused tax credit.¹³⁴ A pass through entity is entitled to claim the coal combustion product tax credit.¹³⁵ To obtain a credit under this chapter, the manufacturer must file with the Department information that the Department determines is necessary for the calculation of the credit provided under this chapter.¹³⁶ The Department is to keep a list that includes the name of each manufacturer that receives a credit under this and the amount of each credit for the manufacturer in the taxable year.¹³⁷ The Department is further required to provide the list annually to the Center for Coal Technology Research.¹³⁸ However, a taxpayer that obtains a deduction for purchases of investment property by manufacturers of recycled components may not obtain a credit for coal combustion products in the same taxable year.¹³⁹

f. Hoosier business investment tax credit.—The General Assembly also enacted the hoosier business investment tax credit. Further, the General Assembly established the Economic Development for a growing Economy Board (EDGE).¹⁴⁰ The General Assembly provided that EDGE will be responsible for not only carrying out the duties of the economic development for a growing

129. *Id.* § 6-3.1-25.2-3 (eff. Jan. 1, 2004).

130. *See id.* § 6-3.1-25.2-5 (eff. Jan. 1, 2004).

131. *See id.*

132. *See id.*

133. *Id.* § 6-3.1-25.2-7 (eff. Jan. 1, 2004).

134. *Id.* § 6-3.1-25.2-8 (eff. Jan. 1, 2004).

135. *See id.* § 6-3.1-25.2-6 (eff. Jan. 1, 2004).

136. *Id.* § 6-3.1-25.2-9 (eff. Jan. 1, 2004).

137. *Id.*

138. *Id.*

139. *See id.* § 6-3.1-25.2-10 (eff. Jan. 1, 2004).

140. *See id.* § 6-3.1-13-12 (eff. July 1, 2003).

economy tax credit but also the duties of the hoosier business investment tax credit.¹⁴¹ The hoosier business investment tax credit is extended to qualified investments defined as the amount of a taxpayer's expenditures for any of the following: the purchase of new telecommunications, production, manufacturing, fabrication, assembly, extraction, mining, processing, refining, or finishing equipment; the purchase of new computers and related equipment; costs associated with the modernization of existing telecommunications, production, manufacturing, fabrication, assembly, extraction, mining, processing, refining, or finishing facilities; onsite infrastructure improvements; the construction of new telecommunications, production, manufacturing, fabrication, assembly, extraction, mining, processing, refining, or finishing facilities; costs associated with retooling existing machinery and equipment; and, costs associated with the construction of special purpose buildings and foundations for use in the computer, software, biological sciences, or telecommunications industry.¹⁴² However, the credit does not apply to property that can be readily moved outside Indiana.¹⁴³ A taxpayer making a qualified investment is entitled to credit in an amount equal to the lesser of 30% of the amount of the qualified investment, or the taxpayer's state tax liability growth.¹⁴⁴ The taxpayer may also carry forward any unused credit for a period of nine years.¹⁴⁵ Pass through entities are entitled to the hoosier business investment tax credit.¹⁴⁶

The EDGE board may enter into an agreement with a taxpayer for a credit when, after reviewing the taxpayer's application, the EDGE board determines that the applicant has conducted business in Indiana for at least one year, the applicant's project will raise the total earnings of applicant's Indiana employees, the applicant's project is economically sound and will benefit the people of Indiana by increasing opportunities for employment and strengthening the economy of Indiana, receiving the tax credit is a major factor in the applicant's decision to go forward with the project and not receiving the tax credit will result in the applicant not raising the total earnings of employees in Indiana, awarding the tax credit will result in an overall positive fiscal impact to the state, as certified by the budget agency using the best available data, the credit is not prohibited by section 19 of this chapter, and the average wage that will be paid by the taxpayer to its employees (excluding highly compensated employees) at the location after the credit is given will be at least equal to 150% of the hourly minimum wage in Indiana.¹⁴⁷ The EDGE Board is required to certify the amount of tax credit that is to be awarded, and that amount is to be limited to the amount of qualified investment that is directly related to expanding the workforce in

141. *See id.*

142. *See id.* § 6-3.1-26-8 (eff. July 1, 2003).

143. *See id.*

144. *See id.* § 6-3.1-26-14 (eff. July 1, 2003).

145. *Id.* § 6-3.1-26-15 (eff. July 1, 2003).

146. *See id.* § 6-3.1-26-11 (eff. July 1, 2003).

147. *See id.* § 6-3.1-26-18 (eff. July 1, 2003).

Indiana.¹⁴⁸ The EDGE Board is also required to enter into an agreement with the taxpayer prior to the taxpayer receipt of the credit.¹⁴⁹ Further, the taxpayer is required to submit to the Department a copy of the certificate verifying the amount of tax credit for the taxable year.¹⁵⁰ If the taxpayer fails to comply with this filing requirement, then an assessment may be allowed by the EDGE Board after the taxpayer has had an opportunity to explain such non-compliance.¹⁵¹ The hoosier business investment tax credit is not allowed for taxpayers who relocate jobs from one location in Indiana to another location in Indiana.¹⁵² Further, the credit is set to expire after December 31, 2005, however, that expiration does not prevent a taxpayer from carrying forward any credit awarded prior to January 1, 2006.¹⁵³

g. Biodiesel production facility tax credit.—The General Assembly created another tax credit for a taxpayer that produces biodiesel at a facility located in Indiana.¹⁵⁴ The credit is set equal to one dollar per gallon of biodiesel produced in Indiana and used to produce blended biodiesel and will be reduced by any subsidy or credit that the taxpayer is entitled to receive from the federal government.¹⁵⁵ Pass through entities¹⁵⁶ are eligible for the credit and the credit can be applied against the sales tax, the adjusted gross income tax, the financial institutions tax, and the insurance premiums tax.¹⁵⁷ The credit is limited to one million dollars for all taxpayers in all taxable years.¹⁵⁸

Similarly, a credit is provided for the producer of blended biodiesel at a facility located in Indiana.¹⁵⁹ The credit is equal to two cents per gallon of blended biodiesel produced in Indiana and, like the biodiesel production tax credit is to be reduced by the amount of any federal subsidy or credit that the taxpayer receives from the federal government.¹⁶⁰ Pass through entities¹⁶¹ are eligible for the credit, and the total credits for all taxpayers in all taxable years may not exceed one million dollars.¹⁶² The tax credit may be applied against the sales tax, adjusted gross income tax liability, financial institutions tax liability, and insurance premiums tax liability.¹⁶³

148. *See id.* § 6-3.1-26-20 (eff. July 1, 2003).

149. *See id.* § 6-3.1-26-21 (eff. July 1, 2003).

150. *See id.* § 6-3.1-26-22 (eff. July 1, 2003).

151. *See id.* § 6-3.1-26-23 (eff. July 1, 2003).

152. *See id.* § 6-3.1-26-19 (eff. July 1, 2003).

153. *See id.* § 6-3.1-26-26 (eff. July 1, 2003).

154. *See id.* § 6-3.1-27 (eff. Jan. 1, 2004).

155. *See id.* § 6-3.1-27-8 (eff. Jan. 1, 2004).

156. *See id.* § 6-3.1-27-11 (eff. Jan. 1, 2004).

157. *See id.* § 6-3.1-27-6 (eff. Jan. 1, 2004).

158. *See id.* § 6-3.1-27-8 (eff. Jan. 1, 2004).

159. *See id.* § 6-3.1-27-9 (eff. Jan. 1, 2004).

160. *See id.*

161. *See id.* § 6-3.1-27-11 (eff. Jan. 1, 2004).

162. *See id.* § 6-3.1-27-9 (eff. Jan. 1, 2004).

163. *See id.* § 6-3.1-27-6 (eff. Jan. 1, 2004).

The General Assembly also provided a similar tax credit for a dealer operating a service station in Indiana and selling blended biodiesel through a metered pump.¹⁶⁴ The credit is equal to one cent per gallon of blended biodiesel sold through the metered pumps and must be computed separately for each service station operated by the taxpayer.¹⁶⁵ The total amount of credits for all taxpayers for all taxable years may not exceed one million dollars.¹⁶⁶ The credit may be applied against the taxpayer's sales tax, adjusted gross income tax, financial institutions tax, and the insurance premiums tax liability.¹⁶⁷

The amount of all three of these credits may be carried forward to subsequent taxable years; however, the credits may not be carried back or refunded.¹⁶⁸ The Department is to prescribe the forms to be used in claiming the credit.¹⁶⁹

h. Ethanol production tax credit.—Similar to the biodiesel production tax credit, the General Assembly added the ethanol production tax credit which provides a credit for a facility located in Indiana and which is used to produce ethanol.¹⁷⁰ The ethanol production credit is available to facilities with a capacity to produce forty million gallons of ethanol per year as well as pre-existing facilities that increase their capacity by at least forty million gallons per year.¹⁷¹ The credit is equal to 12.5 cents per gallon of ethanol produced at the Indiana facility.¹⁷²

Pass through entities¹⁷³ are eligible for the credit and the credit may be applied against the sales tax, adjusted gross income tax, financial institutions tax, and the insurance premiums tax.¹⁷⁴ Taxpayers are entitled to carry forward the amount by which the credit exceeds the taxpayer's liability; however, the taxpayer is not entitled to a carry back or refund for any unused credit.¹⁷⁵ To claim the credit, the taxpayer must claim the credit on the taxpayer's Indiana tax return, provide a copy of the board's certificate finding that the facility is a qualified facility under pursuant to Indiana Code section 4-23-5.5-17, and submit to the Department all proof that the Department deems as necessary.¹⁷⁶

Similar to the biodiesel production tax credit, the total amount of credits allowed for a taxpayer in all taxable years may not exceed five million dollars and the total amount of credits for all taxpayers may not exceed ten million

164. *See id.* § 6-3.1-27-10 (eff. Jan. 1, 2004).

165. *See id.*

166. *See id.*

167. *See id.* § 6-3.1-27-6 (eff. Jan. 1, 2004).

168. *See id.* § 6-3.1-27-12 (eff. Jan. 1, 2004).

169. *See id.* § 6-3.1-27-13 (eff. Jan. 1, 2004).

170. *See id.* § 6-3.1-28 (eff. Jan. 1, 2004).

171. *See id.* § 6-3.1-28-3 (eff. Jan. 1, 2004).

172. *See id.* § 6-3.1-28-7 (eff. Jan. 1, 2004).

173. *See id.* § 6-3.1-28-8 (eff. Jan. 1, 2004).

174. *See id.* § 6-3.1-28-5 (eff. Jan. 1, 2004).

175. *See id.* § 6-3.1-28-9 (eff. Jan. 1, 2004).

176. *See id.* § 6-3.1-28-10 (eff. Jan. 1, 2004).

dollars in all taxable years.¹⁷⁷

3. *County Adjusted Gross Income Tax ("CAGIT")*.—The General Assembly added the following provisions to the CAGIT. Clay County may impose an additional CAGIT rate of one-fourth of one percent to finance, acquire, improve, renovate, or equip a county jail; and bond issued may be issued for 30 years.¹⁷⁸ The method for calculating the certified distribution for CAGIT revenues was changed too, so that the amount will be the amount received from that county for a taxable year ending before the calendar year in which the determination is made and reported on an annual return processed by the Department in the state fiscal year ending before July 1 of the calendar year in which the determination is made.¹⁷⁹ By August 2 of each year, the Department is to certify the amount determined above plus interest in the county's account that has accrued and has not been included in a certification made in a previous year.¹⁸⁰ The Department is to provide an informational summary of the calculations used to determine the certified distribution.¹⁸¹ Also, the Department is required to certify an amount less than the amount determined to have been collected if the Department determines that a reduced distribution is necessary to offset overpayments made in a previous calendar year.¹⁸² The Department may reduce the amount of the certified distribution over several years.¹⁸³ A county that initially imposes CAGIT in a year in which the Department makes a certification may adjust the distribution of a county to provide for a distribution in the immediately following calendar year.¹⁸⁴ The Department is required to adjust the certified distribution to provide the county with the distribution within ten months after the month in which additional revenue from the tax is initially collected.¹⁸⁵ The Department is also required to notify each county auditor of the balance in the county's adjusted gross income tax account as of the cutoff date specified by the budget agency.¹⁸⁶ Similarly, if the Department determines that a sufficient balance exists in a county's account, then the Department may make a supplemental distribution of such funds.¹⁸⁷

4. *County Option Income Tax ("COIT")*.—The General Assembly provided a number of changes to the method for calculating the certified distribution of COIT revenues. Also, a provision was added that the amount is to be the amount received from that county for a taxable year ending before the calendar year in which the determination is made and the amount is to be reported on an annual

177. *See id.* § 6-3.1-28-11 (eff. Jan. 1, 2004).

178. *See id.* § 6-3.5-1.1-3.3 (eff. Upon Passage).

179. *See id.* § 6-3.5-1.1-9 (eff. June 1, 2003).

180. *See id.*

181. *See id.*

182. *See id.*

183. *See id.*

184. *See id.*

185. *See id.*

186. *See id.* § 6-3.5-1.1-21 (eff. June 1, 2003).

187. *See id.* § 6-3.5-1.1-21.1 (eff. June 1, 2003).

return which is processed by the Department in the fiscal year ending before July 1 of the calendar year in which the determination is made.¹⁸⁸ Further, by August 2 of each year, the Department is to certify such amount plus interest in the county's account that has accrued and has not been included in a certification made in a previous year.¹⁸⁹ The Department is to provide a summary of the calculations used to determine the certified distribution.¹⁹⁰ Further, the Department is to certify an amount, which is less than the amount determined to have been collected, if the Department determines that a reduced distribution is necessary to offset overpayments made in a previous calendar year.¹⁹¹ Similarly, the Department may reduce the amount of the certified distribution over several years.¹⁹² A county that initially imposes COIT in a year in which the Department makes a certification may adjust the distribution of a county to provide for a distribution in the immediately following calendar year.¹⁹³ The Department is required to notify each county auditor by October 2 of each year of the balance in the county's COIT account as of the cutoff date as determined by the budget agency.¹⁹⁴ The Department may make a supplemental distribution to the county if the Department determines that a sufficient balance exists in a county's account as of October 2; the funds of such distribution will be deposited in the civil unit's rainy day fund.¹⁹⁵

5. *County Economic Development Income Tax ("CEDIT")*.—Similar to the changes made to the CAGIT and COIT the General Assembly provided a number of changes to the CEDIT. The General Assembly provided that the maximum combined CAGIT and CEDIT rate in Clay County may not exceed one and five-tenths percent if the county uses the funds for a new jail.¹⁹⁶ Similarly, it provided a provision permitting a county to increase its CEDIT rate by one-quarter of one percent if it operates a courthouse that is subject to a federal court order to comply with the Americans with Disabilities Act.¹⁹⁷ The Department is required to notify by October 2 of each year the balance in a county's special account as of the cutoff date set by the budget agency.¹⁹⁸ As seen above in the CAGIT and COIT, the General Assembly changed the method for calculating the certified distribution for CEDIT revenues. That is, the amount is to be the amount received from that county for a taxable year ending before the calendar year in which the determination is made and the amount is to be reported on an annual return processed by the Department in the state fiscal year ending before July 1 of the

188. *See id.*

189. *See id.*

190. *See id.*

191. *See id.*

192. *See id.*

193. *See id.*

194. *See id.* § 6-3.5-6-17.2 (eff. June 1, 2003).

195. *See id.* § 6-3.5-6-17.3 (eff. June 1, 2003).

196. *See id.* § 6-3.5-7-5 (eff. Upon Passage).

197. *See id.*

198. *See id.* § 6-3.5-7-10.5 (eff. June 1, 2003).

calendar year in which the determination is made.¹⁹⁹ Further, by August 2 of each year, the Department is to certify the amount, plus interest in the county's account that has accrued and has not been included in a certification made in a previous year.²⁰⁰ Also, the Department is to provide a summary of the calculations used to determine the certified distribution.²⁰¹ Further, the Department is to certify an amount less than the amount determined to have been collected if the Department determines that a reduced distribution is necessary to offset overpayments made in a previous calendar year.²⁰² Similarly, the Department may reduce the amount of the certified distribution over several years.²⁰³ A county that initially imposes CEDIT in a year in which the Department makes a certification may adjust the distribution of a county to provide for a distribution in the immediately following calendar year, and if so, the Department is to provide for a full transition to certification of distributions.²⁰⁴ The Department may make a supplemental distribution to the county if the Department determines that a sufficient balance exists in a county's account as of October 2, which such funds are to be deposited in the civil unit's rainy day fund.²⁰⁵

For Randolph County, the additional CEDIT rate previously enacted may be used for financing constructing, acquiring, renovating, and equipping buildings and apparatus for a volunteer fire department that provides services in any part of the county and the previous provision providing that the use of those funds is for renovation and equipping the county courthouse was eliminated.²⁰⁶ Similarly, the General Assembly provided the authority for a county council to impose an additional CEDIT rate to fund improvements to the county courthouse for court ordered improvements to comply with the Americans with Disabilities Act.²⁰⁷ The funds raised by such action are to be deposited in the county facilities revenue fund and the tax revenues raised from the additional tax may not be used for any other purpose.²⁰⁸ The effective date of such an adopted ordinance is to be determined as follows: if an ordinance is adopted before June 1 of a year, the tax rate takes effect on July 1 of that year; if the ordinance is adopted after May 31 of a year, then the tax rate takes effect on January 1 of the following year; and, if the county adopts the tax after May 31 effective January 1 of the following year, the then county is to receive its entire certified distribution for the year on November 1 of the year.²⁰⁹

199. *See id.* § 6-3.5-7-11 (eff. June 1, 2003).

200. *See id.*

201. *See id.*

202. *See id.*

203. *See id.*

204. *See id.*

205. *See id.* § 6-3.5-7-17.3 (eff. June 1, 2003).

206. *See id.* § 6-3.5-7-22.5 (eff. Upon Passage).

207. *See id.* § 6-3.5-7-27 (eff. Upon Passage).

208. *See id.*

209. *See id.*

E. Inheritance Tax

The General Assembly has now provided that a court order describing the fair market value of an estate is confidential.²¹⁰

F. Financial Institution Tax

The General Assembly deleted a reference to the already repealed gross income tax.²¹¹ Also, an exception for property placed in service after September 11, 2001 was added retroactively to the definition of adjusted gross income for the imposition of the financial institution tax.²¹² Further, the definition of "bonus depreciation" was added to mean an amount equal to that part of any depreciation allowance which was allowed in computing the taxpayer's federal taxable income that is attributable to the additional first-year special depreciation allowance (bonus depreciation) for qualified property allowed under Section 168(k) of the Internal Revenue Code.²¹³

G. Special Fuel Tax

A cross-reference was changed to account for the recodification of Title 10, State Policy, Emergency Management and Military Affairs.

H. Aircraft License Excise Tax

The General Assembly provided that an aircraft owned by a corporate air carrier headquartered within Indiana is not exempt from aircraft registration and excise tax.²¹⁴ It also provided retroactively that an aircraft which is eligible for the property tax deduction pursuant to Indiana Code section 6-1.1-12.3 is not exempt from the aircraft excise tax.²¹⁵ An internal reference to a penalty provision for failure to register and pay the sales tax in a timely manner was corrected.²¹⁶

I. Tobacco Products Tax

The General Assembly eliminated the requirement for a cigarette distributor to post a bond or a letter of credit if the distributor has been in good standing with the Department for a minimum of five consecutive years.²¹⁷ Further, cigarette distributors are now required to include an invoice with the shipment

210. *See id.* § 6-4.1-5-10 (eff. July 1, 2003).

211. *See id.* § 6-5.5-2-7 (eff. July 1, 2003).

212. *See id.* § 6-5.5-1-2 (retroactive to Jan. 1, 2003).

213. *See id.* § 6-5.5-1-20 (retroactive to Jan. 1, 2003).

214. *See id.* § 6-6-6.5-9 (eff. Jan. 1, 2004).

215. *See id.* § 6-6-6.5-12 (retroactive to Jan. 1, 2003).

216. *See id.* § 6-6-6.5-10 (eff. July 1, 2003).

217. *See id.* § 6-7-1-17 (eff. July 1, 2003).

or delivery of cigarettes to a retailer, and a duplicate of such invoice at the retailer's request, which invoice is required to be retained by such retailer for a minimum of two weeks.²¹⁸ Similarly, the Department now maintains the authority to suspend or revoke a tobacco product distributor's license for any failure to provide a retailer with an invoice and/or duplicate in accordance with the above.²¹⁹

J. Tax Administration

The General Assembly provided that if a county collects the innkeepers' tax, then the county treasurer has concurrent jurisdiction with the Department concerning audits, enforcement powers, and the authority to recover court costs and fees.²²⁰ It also provided that if the Department determines that a proposed assessment includes an individual who is not responsible for the tax liability, a new assessment may be issued naming the taxpayer that is responsible for the liability, and, further, that the time limitation for issuing assessments does not apply to this section.²²¹ The General Assembly eliminated the requirement imposed upon the Department to request vehicle ownership and registration information on the income tax returns filed annually by taxpayers.²²² Similarly, the requirement that the Department notify the bureau of motor vehicles concerning auto excise tax evasion from information gathered off annual tax returns was eliminated.²²³

K. Innkeepers' Tax

The General Assembly passed a number of provisions which affect the imposition of the Indiana Innkeepers' Tax in Indiana. The most important of these amend the various food and beverage tax statutes so as to provide a definition of "food sold for a to go or take out basis" which is consistent with the provisions which are now part of the sales and use tax statutes.²²⁴ Also, the Knox County Innkeepers' Tax was repealed and an uncoded section was added so that Knox County can continue its tax under the authority of the uniform innkeepers' tax.²²⁵ Further, Wayne County was granted the power to increase its innkeepers' tax by 1% to a maximum of 6%.²²⁶

218. *See id.* § 6-7-1-18 (eff. July 1, 2003).

219. *See id.* § 6-7-1-11 (eff. July 1, 2003).

220. *See id.* § 6-8.1-3-12 (eff. July 1, 2003).

221. *See id.* § 6-8.1-5-2.5 (eff. July 1, 2003). This provision is also known as the "innocent spouse" provision.

222. *See id.* § 6-8.1-6-5 (eff. July 1, 2003).

223. *See id.* § 6-8.1-7-1 (eff. July 1, 2003).

224. *See id.* § 6-9-12-3; § 6-9-20-4; IC 6-9-21-4; § 6-9-23-4; § 6-9-14-4; § 6-9-25-4; § 6-9-26-7; § 6-9-27-4; § 6-9-33-4 (eff. Jan. 1, 2004)

225. *See id.* § 6-9-5 (eff. July 1, 2003).

226. *See id.* § 6-9-10-6 (eff. Upon Passage).

II. INDIANA TAX COURT OPINIONS AND DECISIONS

During the period of October 1, 2002, to December 31, 2003, the Tax Court issued opinions and decisions pertaining to a variety of Indiana tax matters.²²⁷ However, for the most part, these opinions and decisions dealt with real property taxes. Specifically, the Tax Court issued forty-two published opinions and decisions, twenty-six of which dealt with Indiana real property tax matters. The remaining sixteen cases are divided as follows: two cases involve the Indiana tangible personal property tax; seven cases involve the Indiana sales and use taxes; five cases involve the Indiana income tax; one case involves the Indiana withholding tax; and one case involves the controlled substance excise tax. Each opinion and decision is summarized separately below. Whenever the term "State Board" is hereinafter used, such term shall refer to the Indiana State Board of Tax Commissioners. Whenever the term "Indiana Board" is hereinafter used, such term shall refer to the Indiana Board of Tax Review. In such opinions, both the term "State Board" and the term "Indiana Board" are used, because the problem was first submitted to the State Board, but by the time a governmental determination was made with respect to the matter, the State Board had been replaced by the Indiana Board.

A. *Indiana Property Taxes—Real Property Tax*

1. *Hamm v. Department of Local Government Finance*.²²⁸—Hamm is the owner of residential property in the Eagle Ridge subdivision located in Marion County, Indiana.²²⁹ Hamm appealed his assessment for the 1995 tax year assessing his neighborhood desirability rating as "excellent." The Marion County Board of Review denied Hamm's claim; and, thereafter, Hamm filed Form 131 Petition for Review of Assessment with the State Board. The State Board denied Hamm's claim and Hamm initiated an original tax appeal on June 1, 1999.²³⁰ Hamm's argument was that noise, a lack of adequate infrastructure, a difficult-to-access location, and destructive wildlife rendered a rating of "excellent" for his neighborhood improper.²³¹ The State Board countered Hamm's argument claiming that other features of the neighborhood are

227. This *Survey Article on Recent Developments of Indiana Taxation*, published annually in the *Indiana Law Review*, has previously been updated on an annual basis covering all developments in Indiana Taxation for the period of October 1, of year before the last taxable year, to September 30, of the last taxable year. To simplify the note writing process, the Survey will now be based on a calendar year. This note covers all Indiana tax developments in the Indiana General Assembly and the opinions and decisions of the Indiana Tax Court from October 1, 2002, to December 31, 2003. Future articles will cover Indiana Tax developments for the calendar period from January 1, of the year before the last taxable year, to December 31, of the last taxable year when looking back from the year in which the article is published.

228. 788 N.E.2d 440 (Ind. Tax Ct. 2003).

229. *Id.* at 442.

230. *Id.*

231. *Id.* at 443.

excellent.²³² In support of his argument, Hamm submitted the following evidence: that his neighborhood is subject to noise pollution from small airplanes landing at nearby Eagle Creek Airport and automobile race cars driving at the nearby Speedway Racetrack; that access to this neighborhood is restricted by a narrow one-lane road; and, that public transportation and public utilities are not available to his neighborhood.²³³ The Tax Court determined that all of Hamm's evidence established a prima facie case that a desirability rating of "excellent" for his neighborhood was improper.²³⁴ The burden then shifted to the State Board to rebut Hamm's probative evidence and, more specifically, why their evidence shifts the balance toward a rating of "excellent."²³⁵ The Tax Court determined that the State Board's evidence of secluded wooded lots located in a relative close proximity to major metropolitan areas was not a sufficient evidentiary basis to shift the balance from Hamm's presented evidence.²³⁶ Thus, the Tax Court reversed the State Board's denial of Hamm's 131 Petition and remanded the case to the State Board with instruction to refer the matter the Marion County Property Tax Board of Appeals.²³⁷

2. *Lindemann v. Wood*.²³⁸—The Lindemanns were the owners of a house in Marion County, Indiana.²³⁹ As a result of the 1995 general reassessment, the Lindemanns were assigned a grade of "B+2" on their home. The Lindemanns filed a Form 130 Petition for Review of Assessment with the Marion County Board of Review requesting that their grade be reduced.²⁴⁰ That appeal was denied and the Lindemanns appealed to the State Board. While on appeal, the Marion County Board of Review issued a second final determination reducing the Lindemanns' grade factor to B-1.²⁴¹ However, three years later, the Marion County Board of Review sent the Lindemanns notice that the grade of their house was raised back to a "B+2."²⁴² The Lindemanns again appealed to the State Board which appeal was denied. On April 15, 2002, the Lindemanns initiated an original tax appeal.²⁴³ The Lindemanns' argument was that, due to the Marion County Board of Review's second final determination lowering their grade factor, the Assessor is barred by doctrine of res judicata from raising the grade on their home prior to the next general reassessment or a change in circumstances.²⁴⁴ The Tax Court determined that the four-factor test required to

232. *Id.*

233. *Id.* at 443-44.

234. *Id.* at 444.

235. *Id.* at 445.

236. *Id.*

237. *Id.*

238. 799 N.E.2d 1230 (Ind. Tax Ct. 2003).

239. *Id.* at 1231.

240. *Id.*

241. *Id.* at 1232.

242. *Id.*

243. *Id.*

244. *Id.*

be met for estoppel of a subsequent action had been met in this instance. Specifically, the Tax Court determined that the Marion County Board of Review possessed the statutory jurisdiction to hear the Lindemanns' appeal; they acted in a judicial capacity by providing notice to the parties, taking evidence, and rendering their final determination; all parties had the opportunity to present evidence and testimony on the issues; and either side could have appealed the final determination to the State Board and ultimately the Tax Court.²⁴⁵ Consequently, the Tax Court determined that pursuant to the principles of res judicata, the Marion County Assessor's assessment raising the grade of the Lindemanns' home from a "B-1" to a "B+2" was barred by the Lindemanns' successful appeal of their assessment to the Marion County Board of Review three years prior.²⁴⁶

3. *Gridler v. Department of Local Government Finance*.²⁴⁷—The Griders were the owners of a home that they had build in Hamilton County, Indiana for the purpose of showcasing their antique collection.²⁴⁸ In an effort to better accentuate their antique collection, the Griders had the exterior of the home built to look like a nineteenth century stable and had the interior kept very simple leaving out most common amenities. The Griders' home was assessed a grade of "A+2" for the 1998 assessment date. The Griders challenged this assessment to the Hamilton County Property Tax Assessment Board of Appeals and were granted a grade factor of "A." Still displeased with this assessment, the Griders filed Form 131 Petition for Review of Assessment with the State Board and were denied relief following an administrative hearing held on the matter. The Griders initiated an original tax appeal on July 6, 2001.²⁴⁹ The Griders argument is that a grade factor of "A" is excessive and that the proper grade factor is a "C+2."²⁵⁰ In support of their contention, the Griders submitted, as evidence, photographs depicting the interior and exterior of the home and a photocopy of a record card for a property alleged to be comparable to their own.²⁵¹ Further, the Griders testified as to features either lacking or differing from those listed on the grade specification charts in the Indiana Administrative Code tit. 50 r. 2.2-7-6.²⁵² The Tax Court determined that the Griders presented probative evidence supporting their position on their grade, and therefore, the burden had switched to the State Board to rebut the Griders' evidence with evidence of their own substantiating a grade of "A."²⁵³ The Tax Court determined that the State Board's reliance on the testimony of local assessing officials was proper and given the record in its entirety, a reasonable person could find enough relevant evidence to support the

245. *Id.* at 1233.

246. *Id.*

247. 799 N.E.2d 1239 (Ind. Tax Ct. 2003).

248. *Id.* at 1240.

249. *Id.*

250. *Id.* at 1241.

251. *Id.* at 1242.

252. *Id.*

253. *Id.*

State Board's determination.²⁵⁴ Specifically, the Tax Court recognized that the Griders' home has features not present in the grade specification justifying the application of an "A" grade.²⁵⁵ Consequently, the Tax Court affirmed the State Board's final determination.²⁵⁶

B. Indiana Property Taxes—Business Real Property Tax

1. *Miller Village Properties Co., LLP v. Indiana Board of Tax Review*.²⁵⁷—Miller Village is the owner of apartment buildings in Gary, Indiana. Miller Village appealed its 1995 assessment to the State Board and the State Board held a hearing on Miller Village's appeal on December 6, 2000. However, the General Assembly abolished the State Board on December 31, 2002, and passed legislation effective January 1, 2002 establishing the Indiana Board of Tax Review as the "successor" to the State Board.²⁵⁸ Thus, in March 2002 the Indiana Board issued the final determination on Miller's case rather than the State Board.²⁵⁹ On May 13, 2002, Miller Village filed its original tax appeal to the Indiana Board's final determination; however, Miller Village named the Indiana Board as the sole respondent to that action.²⁶⁰ In its responsive pleadings, the Indiana Board alleged that Miller Village had failed to name the appropriate local government officials responsible for the original assessment as necessary parties to the proceeding and that as a result, the Tax Court lacked subject matter jurisdiction to over the case. On September 10, 2002, Miller Village filed a motion for leave to amend its complaint and include the necessary parties. Focusing on the Tax Court's statutory jurisdiction to hear original tax

254. *Id.* at 1244.

255. *Id.* at 1233.

256. *Id.* at 1244.

257. 779 N.E.2d 986 (Ind. Tax Ct. 2002).

258. To address this change, the Tax Court has henceforth included the following, or similar, language in its opinions:

The State Board of Tax Commissioners ("State Board") was originally the Respondent in this appeal. However, the legislature abolished the State Board as of December 31, 2001. 198 Ind. Acts 2001 § 119(b)(2). Effective January 1, 2002, the legislature created the Department of Local Government Finance ("DLGF"), *see* Indiana Code § 6-1.1-30-1.1 (West Supp. 2001)(eff. 1-1-02); 198 Ind. Acts 2001 § 66, and the Indiana Board of Tax Review ("Indiana Board"). IND. CODE § 6-1.5-1-3 (West Supp. 2001)(eff. 1-1-02); 198 Ind. Acts 2001 § 95. Pursuant to Indiana Code § 6-1.5-5-8, the DLGF is substituted for the State Board in appeals from final determinations of the State Board that were issued before January 1, 2002. IND. CODE § 6-1.5-5-8 (West Supp. 2001)(eff. 1-1-02); 198 Ind. Acts 2001, § 95. Nevertheless, the law in effect prior to January 1, 2002 applies to these appeals. *Id.* *See also* 198 Ind. Acts 2001 § 117. Although the DLGF has been substituted as the Respondent, this Court will still reference the State Board throughout this opinion.

259. *Miller Village*, 779 NE2d at 987.

260. *Id.* at 987.

appeals,²⁶¹ the Tax Court determined that Indiana Code section 33-3-5-11(a) limited its ability to hear an appeal in which the taxpayer failed to comply with any of the statutory requirements for filing an original tax appeal.²⁶² Thus, by only naming the Indiana Board in its appeal, Miller Village failed to comply with the requirements for initiating an original tax appeal pursuant to Indiana Code section 6-1.1-15-5(b), requiring that the petitioner set forth the identification of parties to any proceeding of the agency action.²⁶³ Further, the Tax Court determined that even if it granted Miller Village's motion to amend its petition, it could not relate back to the original forty-five days in which Miller Village had to initiate its original tax appeal to the Indiana Board's final determination.²⁶⁴ Consequently, the Tax Court denied Miller Village's motion for leave to amend its petition and granted the Indiana Board's motion to dismiss for failure to name the necessary parties.²⁶⁵

2. *Park Steckley I v. Department of Local Government Finance.*²⁶⁶—Park Steckley is the owner of two commercial parcels located in Washington Township, Hamilton County, Indiana.²⁶⁷ The parcels were contiguous and bordered by United States Highway 31 ("U.S. 31") to the east, a railroad line on the west, State Road 32 to the north, and 146th Street to the south; however, Park Steckley did not directly border U.S. 31.²⁶⁸ Instead, there was a small sliver of land separating Park Steckley's commercial land from U.S. 31. Pursuant to a Hamilton County land order,²⁶⁹ Park Steckley's land was assessed at \$180,000 per acre due to being located in the geographic area of "U.S. 31 Corr from 146th St to St. Rt 32" [sic].²⁷⁰ After having been denied relief from both the Hamilton County Board of Review and the State Board, Park Steckley initiated its original tax appeal on July 2, 2001. The Tax Court focused on the definition of "U.S. 31 Corridor" in determining whether the State Board properly valued Park Steckley's parcels pursuant to Hamilton County's land order. Park Steckley argued essentially that the sliver of land separating their property from directly bordering U.S. 31 took them out of the land order's definition of U.S. 31 Corridor.²⁷¹ Analyzing the statutory construction of the term "U.S. 31 Corridor", the Tax Court determined that the plain and ordinary meaning of the term

261. The Tax Court has "exclusive jurisdiction over any case that arises under the tax laws of [Indiana] and that is an initial tax appeal of a final determination." Indiana Code § 33-3-5-2(a).

262. *Miller Village*, 779 N.E.2d at 989.

263. *Id.*

264. *Id.* at 990.

265. *Id.*

266. 779 N.E.2d 1270 (Ind. Tax Ct. 2002).

267. *Id.* at 1271.

268. *Id.* at 1271-72.

269. This land order was promulgated by the Hamilton County land valuation commission pursuant to Indiana Code section 6-1.1-4-13-6 (1993) and was later adopted as a rule by State Board. *Id.* at 1272.

270. *Id.*

271. *Id.* at 1273.

“corridor” was “a . . . narrow passageway or route.”²⁷² Thus, Park Steckley’s land did not fit with in this meaning of “corridor.” Further, the State Board’s failed to present any evidence showing why Park Steckley’s land was comparable to the land under the definition of “U.S. 31 Corridor.”²⁷³ Therefore, the Tax Court reversed the State Board’s final determination and remanded the case to the State Board.

3. *Clark v. Department of Local Government Finance*.²⁷⁴—Clark is the owner of two apartment buildings, the Woods Property and the Salisbury Property (the “apartment buildings”). On March 1, 1993, the State Board assessed Clark’s apartment buildings giving them a C grade and a 5% obsolescence factor.²⁷⁵ In 1996, Clark appealed the State Board’s final determination and the Tax Court determined in favor of the taxpayer holding that “Clark presented a prima facie case showing that the C grade was excessive and improper and that the State Board had failed to quantify its award of a 5% obsolescence factor. Therefore, the Tax Court remanded the case to the State Board. On remand, the State Board issued its second final determination in which it increased the grade on Clark’s apartment buildings from a C to a C+ and denied any award of an obsolescence factor.”²⁷⁶ Clark appealed that final determination. The Tax Court upheld the State Board’s determination as to the increase in grade finding that Clark failed to carry his burden of proof on remand.²⁷⁷ Although Clark established a prima facie case at the first hearing of the Tax Court, the Tax Court determined that on remand it was Clark’s burden to present probative evidence that the grade given to the apartment buildings was improper or what the proper grade should have been.²⁷⁸ Instead, Clark did nothing, and therefore, Clark did not meet his burden of proof. However, the Tax Court overruled the State Board’s reduction of its earlier award of a 5% obsolescence adjustment for the apartment buildings. Clark did present evidence on the remand hearing as to the obsolescence of the apartment buildings. However, the Tax Court determined that the evidence presented was based upon assumptions and estimations that were themselves without any concrete basis making the whole calculation arbitrary and yielding no evidentiary basis.²⁷⁹ Although the Tax Court determined that Clark failed to carry the burden of quantifying the obsolescence on the apartment buildings, the Tax Court

272. *Id.* (quoting WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 512 (1981)).

273. *Id.* at 1274.

274. 779 N.E.2d 1277 (Ind. Tax Ct. 2002).

275. *Id.* at 1280.

276. *Id.* at 1281.

277. *Id.* at 1282.

278. *Id.* at 1281-82.

279. *Id.* at 1284. Further, the Tax Court indicated that Clark failed to distinguish whether his claim was for economic obsolescence or functional obsolescence. The court ruled that “accordingly, in all cases where the Indiana Board of Tax Review holds a hearing on a taxpayer’s claim of obsolescence after the date of this case, taxpayers are required to specify whether they are seeking economic or functional obsolescence, or both.” *Id.* at 1283.

ultimately held that on remand the State Board could not take action to reduce the obsolescence award as the Tax Court had remanded the case only for the purpose of allowing Clark to make a prima facie case quantifying the amount of obsolescence to which Clark was entitled.²⁸⁰

4. *Eastgate Partnership v. Department of Local Government Finance*.²⁸¹—Eastgate is the owner of the Marriott Inn located on two parcels of land in Warren Township, Marion County, Indiana between Interstate-70 and Interstate-465 on 21st Street. Eastgate appealed its 1989 reassessment to the State Board. In its final determination, the State Board valued Eastgate's land as a "Township-Other" assessing its primary land \$1.50 per square foot and its secondary land at \$1.05 per square foot.²⁸² Immediately thereafter, the Marion County Executive requested a rehearing pursuant to Indiana Code section 6-1.1-15-5(a), the result of which altered the Marion County Land Order for Warren Township increasing Eastgate's assessments \$1.50 to \$3.00 for its primary land and from \$1.05 to \$2.00 for its secondary land.²⁸³ After appeal and remand by the Tax Court and after the State Board issued its final determination, Eastgate initiated its original tax appeal on August 17, 1998. Eastgate argued that its property was located on 21st Street and that the Marion County Executive's land order only applied to Shadeland Avenue.²⁸⁴ Stated another way, Eastgate argued that, because the land order did not specifically refer to 21st Street, it should receive a designation of "township-other" and receive the benefit of the lower assessment. The Tax Court disagreed with Eastgate's reliance upon the earlier case of *The Precedent v. State Board of Tax Commissioners*²⁸⁵ which required the State Board to assess a taxpayer's lands, which were outside of the land described in a land order, as being "Township-Other."²⁸⁶ The Tax Court distinguished Eastgate's circumstances from those in *Precedent* due to the fact that Eastland fell squarely within the geographic area described in the land order as Shadeland Avenue south of I-70 to the Washington Street intersection.²⁸⁷ Thus, the Tax Court affirmed the State Board's final determination increasing Eastgate's assessment pursuant to the Marion County Land Order for Warren Township.

5. *Beta Steel Corp. v. Department of Local Government Finance*.²⁸⁸—Beta is in the business of steel milling in Portage Township, Porter County, Indiana. On March 27, 1996, there was an explosion inside of Beta's steel mill that ripped a hole through the roof of Beta's mill and caused extensive damage to nearly thirty surrounding businesses.²⁸⁹ As a result of the damage caused by the

280. *Id.* at 1284.

281. 780 N.E.2d 435 (Ind. Tax Ct. 2002).

282. *Id.* at 437.

283. *Id.*

284. *Id.* at 438.

285. 659 N.E.2d 701 (Ind. Tax Ct. 1995).

286. *Eastgate*, 780 N.E.2d at 439.

287. *Id.*

288. 780 N.E.2d 439 (Ind. Tax Ct. 2002).

289. *Id.* at 441.

explosion, 15% of Beta's real property and 20% of Beta's personal property were destroyed. Beta filed Form 137R petition for survey and reassessment with the State Board, which was denied by the State Board because the State Board determined that relative to the total value of all assessed property in Portage Township, a substantial amount of Beta's property had not been destroyed.²⁹⁰ Beta initiated an original tax appeal claiming that Indiana Code section 6-1.1-4-11 does not provide for a comparison between that property destroyed and the total assessed property value within that township for determining whether a "substantial amount" of property has been destroyed.²⁹¹ In deciding this case of first impression, the Tax Court agreed with Beta. Further, due to the fact that the State Board made its determination on Beta's Form 137R petition relative to the assessed property values of all property in Porter Township, that determination was arbitrary, capricious, and contrary to law.²⁹² In reviewing the statutory language of Indiana Code section 6-1.1-4-11, the Tax Court determined that the plain and ordinary meaning of "substantial amount" was synonymous with "substantial quantity" and not "substantial value" as the State Board asserted.²⁹³ Thus, the Tax Court held in favor of Beta and remanded the case to the State Board for a survey and reassessment.

6. *Commonwealth Edison Co. of Indiana, Inc. v. Department of Local Government Finance.*²⁹⁴—Commonwealth is the owner of a public utility producing electricity in Lake County, Indiana. In accordance with Indiana Code section 6-1.1-8-19, Commonwealth filed its annual statement of value with the State Board in which it requested an equalization adjustment for the tax years 1995 through 1998.²⁹⁵ The State Board denied the request and Commonwealth initiated an original tax appeal for each of the four taxable years at issue which were consolidated on October 19, 1998.²⁹⁶ Commonwealth argued that although its property was assessed at 33% of its full market value, other taxpayers in Lake County had historically been assessed at a percentage as low as 10% to 11% of their full market value. Therefore, Commonwealth claimed that it was entitled to an equalization adjustment.²⁹⁷ In support of its position, Commonwealth submitted as evidence at the administrative hearings a number of sales/assessment-ratio studies that Commonwealth had conducted with respect to Lake County and the problems involved in this case.²⁹⁸ The Tax Court agreed with Commonwealth and held that after Commonwealth had carried its burden

290. *Id.*

291. *Id.* at 442.

292. *Id.* at 443.

293. *Id.* at 442; see WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 72 (1981).

294. 780 N.E.2d 885 (Ind. Tax Ct. 2002).

295. *Id.* at 887.

296. *Id.*

297. *Id.* at 889.

298. *Id.* The study was prepared by a North Carolina consulting firm and consisted of a random sampling of 200 normal sales of property in Lake County during the years at issue and compared those sales figures to the full market value of the properties sold. *Id.*

of establishing a prima facie case for the equalization adjustment, which it did with the market study, that the burden then shifted to the State Board to rebut such evidence.²⁹⁹ However, the State Board failed to do so. Instead the State Board simply argued that quality of the evidence was not relative because the standard for property valuation was the true tax value and not market value. The Tax Court agreed but corrected the State Board's confusion as to what the true tax value meant. Specifically, the Tax Court determined that the fair market value is the presumable standard for valuing public utility assessments until the State Board is able to rebut such a presumption.³⁰⁰ Thus, the sales/assessment-ratio studies were determined to be an acceptable way to determine a uniform assessment.³⁰¹ The State Board next contended that, whether or not the market value is the proper way to determine the appropriateness of an equalization adjustment, Commonwealth's market study was unreliable.³⁰² However, the Tax Court disagreed and determined instead that Commonwealth's studies conformed to International Association of Assessing Officers guidelines as the prominent study to show market values, and to rebut such a strong presumption, the State Board must present substantial evidence showing what other options are available to taxpayers for such a determination.³⁰³

7. *Wittenberg Lutheran Village Endowment Corp. v. Lake County Property Tax Assessment Board of Appeals*.³⁰⁴—Wittenberg is a non-for-profit corporation affiliated with the Lutheran Church operating a retirement community in Crown Point, Indiana.³⁰⁵ The retirement community provides a wide variety of integrated services to provide for the care of retirees including an assisted living facility, a chapel, and four separate living centers providing various levels of care at each center. To facilitate the care of its inhabitants, Wittenberg provides therapists, dentists, podiatrists, and at-call nursing services. On December 5, 2002, the Lake County Property Tax Assessment Board of Appeals revoked Wittenberg's charitable exemption for the 1999 tax year arguing that Wittenberg was a traditional apartment complex and which no longer provided care to the ill or infirm.³⁰⁶ Wittenberg appealed this to the State Board, which denied Wittenberg's claim to the charitable exemption. Wittenberg initiated its original tax appeal on February 27, 2002. Wittenberg argued that the living center was designed to "provide a suitable environment for elderly person where they have peace, care and security in a Christian atmosphere."³⁰⁷ Essentially, Wittenberg's argument was that senior individuals require varying levels of care to address their individual needs as they age, that the living center's various

299. *Id.*

300. *Id.* at 890.

301. *Id.*

302. *Id.*

303. *Id.* at 891.

304. 782 N.E.2d 483 (Ind. Tax Ct. 2003).

305. *Id.* at 484.

306. *Id.* at 487.

307. *Id.* (quoting Pet'r Br. At 3).

accommodations were necessary to facilitate those needs, and that these factors constitute a charitable purpose. The Tax Court agreed and cited the earlier case of *Raintree Friends Housing, Inc. v. Indiana Department of State Revenue*³⁰⁸ as precedent of its holding. More specifically, the Tax Court determined that the needs of senior citizens go beyond mere financial needs or health care needs and extend as far as need for a sense of community and involvement.³⁰⁹ Further, the Tax Court determined that Wittenberg's living center met senior citizens needs for safety and security, sense of independence, and ability to function at an active level.³¹⁰ Consequently, the Tax Court held that Wittenberg's living center was owned, occupied, and used for a charitable purpose, and the final determination of the Indiana Board was not in accordance with the law.³¹¹

8. *Hamstra Builders, Inc. v. Department of Local Government Finance*.³¹²—Hamstra is the owner of building in Franklin County, Indiana which was assessed at \$130,400 by the Brookville Township Assessor for the tax years 1991 through 1994.³¹³ On November 8, 1994, Hamstra filed four Form 133 Petitions for Correction of Error claiming that it was entitled to a kit building adjustment for its building lowering the assessment by 50%. The Franklin County Board of Review denied the petitions and Hamstra appealed the decision to the State Board. The State Board denied Hamstra's appeal and Hamstra initiated an original tax appeal on November 22, 1996.³¹⁴ Hamstra argued that its probative evidence established a prima facie case that it was entitled to the kit adjustment, and therefore, the State Board's denial of its appeal was arbitrary. Hamstra's submitted the written testimony of its certified appraiser outlining the specifics of why Hamstra's building qualified for the kit adjustment.³¹⁵ The Tax Court determined that the written testimony was probative evidence, and therefore, the burden shifted to the State Board to prove why the submitted deviations from the basic kit model increased the building's cost so as to make it unqualified for the kit adjustment. In rebuttal of Hamstra's evidence, the State Board submitted photographs depicting four air conditioning units placed on the building's roof and asserted that the load produced from the weight of the units was inconsistent with the load specification for a kit building.³¹⁶ The Tax Court determined that the State Board's photographic evidence was insufficient to determination whether the building qualified for the kit adjustment. Consequently, the Tax Court reversed the State Board's final determination and remanded the case to the Indiana Board with instruction to apply the 50% kit building adjustment to

308. 667 N.E.2d 810 (Ind. Tax Ct. 1996).

309. *Wittenberg*, 782 N.E.2d at 489.

310. *Id.*

311. *Id.*

312. 783 N.E.2d 387 (Ind. Tax Ct. 2003).

313. *Id.* at 389.

314. *Id.* at 390.

315. *Id.* at 391.

316. *Id.* at 392.

Hamstra's building.³¹⁷

9. *Sollers Point Co. v. Department of Local Government Finance*.³¹⁸—Sollers Point ("Sollers") is the owner of an eighteen-story building in Vanderburgh County, Indiana.³¹⁹ The Vanderburgh County Board of Review assessed Sollers' building as a General Commercial Mercantile ("GCM") model and assigned a grade of "B+2" to the property. On January 2, 1996, Sollers appealed that determination arguing that its building had fewer partitions than were assumed in the GCM models and that a grade of "B+2" was excessive. The Vanderburgh Board of Review adjusted Sollers' building for the partitioning on the first floor and denied all other claims. Sollers filed Form 131 Petition for Review appealing the Vanderburgh Board of Review's determination to the State Board.³²⁰ The State Board denied Sollers' petition and Sollers initiated an original tax appeal on February 1, 2002. Sollers maintained that it was entitled to a reduction to the base rate of its building because it contained less partitioning than was assumed to exist in the GCM models used in its assessment.³²¹ The State Board countered Sollers' claim by asserting that the regulations provide that GCM models presume "typical" partitioning and Sollers' quality of partitioning is "typical." In deciding the issue of whether Sollers' partitioning was typical of the GCM base model, the Tax Court determined that the regulations address partitioning in terms of cost.³²² More specifically, the Tax Court determined that in arguing that their partitioning is not "typical", a taxpayer could argue that its cost per square foot for partitioning in its improvement is different from the "typical" cost per square foot assumed in the base model as a means to effectively carry its burden.³²³ The Tax Court determined that Sollers' evidence effectively established a cost difference of \$5.46 per square foot of floor space from the \$9.00 per square foot of floor space typical of partitioning assumed in the GCM base model regulations. Thus, the Tax Court held that Sollers met its burden of evidence and was entitled to a reduction in its base rate to account for the difference in the cost of partitioning. Next, the Tax Court decided the issue of whether Sollers was entitled to a reduction in its assessed grade from a "B+2" to a "C+1."³²⁴ Sollers argued that the State Board erroneously graded its property and that it was entitled to a grade of "C+1." Sollers Point presented evidence at the administrative hearing in the form of testimony of its independent tax assessor. This evidence consisted solely of the assessor's thoughts of what exterior and interior deficiencies were present, and therefore, why Sollers was entitled to the grade reduction.³²⁵ However, the

317. *Id.*

318. 790 N.E.2d 185 (Ind. Tax Ct. 2003).

319. *Id.* at 187.

320. *Id.*

321. *Id.* at 188.

322. *Id.*

323. *Id.* at 189.

324. *Id.* at 191.

325. *Id.*

Tax Court determined that the testimony presented was nothing more than conclusory statements, and without more probative evidence substantiating the assessor's beliefs, the burden of evidence had not been met.³²⁶ Thus, the Tax Court denied Sollers' claim for a grade reduction and upheld the State Board's final determination assessing Sollers' building with a grade of "B+2."³²⁷

10. *U.S. Steel Corp. v. Lake County Property Tax Assessment Board of Appeals*.³²⁸—U.S. Steel is a steel manufacturer operating a plant in Lake County, Indiana.³²⁹ On May 5, 1998, U.S. Steel filed 100 Form 133 Petitions for Correction of Error claiming that tax assessment for its property in the tax years 1994 through 1996 were illegal as a matter of law. More specifically, U.S. Steel argued that Lake County had illegally removed some \$210 million in total assessed value from the Lake County tax rolls, thus causing the county's tax rate to be overstated and forcing U.S. Steel to be overtaxed. The Lake County Property Tax Assessment Board of Appeals denied U.S. Steel's petitions and U.S. Steel appealed that denial to the State Board. In the Indiana Board's (the successor to the State Board) final determination denying U.S. Steel's claims, the Indiana Board determined that U.S. Steel was required to appeal the tax rate pursuant to Indiana Code section 6-1.1-17, and therefore, Form 133 was the wrong form to file for U.S. Steel's claim. On September 5, 2002, U.S. Steel initiated its original tax appeal.³³⁰ In deciding the issue of whether the Indiana Board erred in dismissing U.S. Steel's claim for lack of subject matter, the Tax Court determined that the Indiana Board was in error. Specifically, the Tax Court determined that the Indiana Board had the authority and duty to determine whether U.S. Steel's appeal concerned a budget or a levy because the appeal broadly addressed a budget-driven tax rate.³³¹ Thus, the Tax Court held that even by the Indiana Board's own admission, U.S. Steel's claim involved the assessed value of land in Lake County.³³² Next, the Tax Court decided the issues of whether U.S. Steel's claim was properly brought by using Form 133 and whether U.S. Steel should have first appealed the Lake County tax rate pursuant to Indiana Code section 6-1.1-17.³³³ The Tax Court determined that Indiana Code section 6-1.1-17 applied to ten or more citizens' rights to appeal a political subdivisions budget and not specifically the tax rate.³³⁴ Thus, U.S. Steel was not required to first appeal the tax rate because U.S. Steel's claim had nothing to do with the Lake County budget and to do so would not have resulted in a final determination that U.S. Steel could have appealed to the State Board.³³⁵ Turning

326. *Id.*

327. *Id.* at 192.

328. 785 N.E.2d 1209 (Ind. Tax Ct. 2003).

329. *Id.* at 1211.

330. *Id.*

331. *Id.*

332. *Id.* at 1213.

333. *Id.*

334. *Id.* at 1214.

335. *Id.*

to the Form 133 issue, the Tax Court determined that U.S. Steel's claim was that the Lake County assessor had exercised unlawful subjective discretion in removing tax value from the Lake County tax rolls.³³⁶ The Indiana Board argued that the removal of value from the Lake County tax rolls was itself an exercise of subjective discretion, and therefore, such removal could not be challenged on Form 133.³³⁷ However, the Tax Court disagreed and determined that the Indiana Board may not exercise its subjective discretion illegally and then invoke the exercise of that unlawful subjective discretion as a bar to a taxpayer's claim because no official was vested with the discretion to act unlawfully.³³⁸ Consequently, the Tax Court held that it was appropriate for U.S. Steel to state its claim using Form 133 as a matter of law.

11. *BP Amoco Corp. v. Lake County Property Tax Assessment Board of Appeals*.³³⁹—BP is one of the predominant oil and gas companies in the United States. As a part of its operations, BP owned real and personal property located in Lake County, Indiana. In 1999, BP filed 325 Form 133 Petitions for Correction of Error alleging that the Lake County property tax assessed upon its property for the 1995 through 1998 tax years was inequitable in comparison to other taxpayers in Lake County and therefore "illegal as a matter of law."³⁴⁰ BP requested a refund in the amount of nearly \$20,000,000 for an equalization adjustment in order to account for this disparity among taxpayers in Lake County. The Lake County Property Tax Assessment Board of Appeals denied BP's petitions for relief and BP appealed the denial of its claim to the State Board. In August 2002, the Indiana Board (the successor to the State Board) issued its final determination upholding the denial of BP's relief. On September 24, 2002, BP filed an original tax appeal. The Indiana Board argued that BP's use of Form 133 was limited to the correction of objective determinations, but the request for an equalization adjustment involved the tax assessor's subjective judgment.³⁴¹ Thus, the Indiana Board claimed that Form 133 was the wrong form to use for this challenge. However, the Tax Court disagreed and determined that the Indiana Board's disposition of BP's claim was in error for failure to hold a hearing pursuant to Indiana Code section 6-1.1-15-12(e).³⁴² Thus, the Tax Court remanded the case to the Indiana Board as a matter of procedure.³⁴³

12. *Goodhost, LLC v. Department of Local Government Finance*.³⁴⁴—Goodhost is the owner of the American Inn located at 82nd Street and Interstate 69 in Marion County, Indiana.³⁴⁵ The property is mainly low-income apartment

336. *Id.* at 1215.

337. *Id.* at 1214.

338. *Id.*

339. 785 N.E.2d 1216 (Ind. Tax Ct. 2003).

340. *Id.* at 1218.

341. *Id.* at 1219.

342. *Id.* at 1219-20.

343. *Id.* at 1220.

344. 786 N.E.2d 813 (Ind. Tax Ct. 2003).

345. *Id.* at 814.

housing consisting of nineteen two-story apartment units situated on approximately ten acres of land. Goodhost appealed its assessment to the Marion County Board of Review alleging its land assessment as a hotel/motel at \$2.50 per square foot was in error. The Marion County Board of Review denied the claim and Goodhost appealed to the State Board. After a hearing, the State Board denied Goodhost's claim. On October 23, 1998, Goodhost initiated an original tax appeal.³⁴⁶ Goodhost argued that its land should have been assessed as "apartment land" rather than "hotel/motel land" and that as a result, Goodhost was overtaxed with respect to the property.³⁴⁷ Goodhost's land was assessed pursuant to a "land order" in which the values of commercial, residential, and industrial lands are compiled in accordance to their true tax value. Thus, the Tax Court determined that Goodhost bore the burden of presenting probative evidence showing that either the land was assessed differently than comparable properties or the land was assessed under the wrong section of such land order. In either of the following showings, it is necessary for the Tax Court to view the land order that is the subject of the taxpayer's appeal. The Tax Court determined that Goodhost, bearing the burden of proof, failed to provide the Tax Court with a copy of the land order pursuant to which the land was assessed.³⁴⁸ Consequently, the Tax Court ruled that Goodhost was unable to reach the merits of Goodhost's claim, and therefore, the Tax Court affirmed the State Board's final determination.³⁴⁹

13. *Indian Industries, Inc. v. Department of Local Government Finance*.³⁵⁰— Indian is the owner of land and improvements in Evansville, Indiana.³⁵¹ Indian appealed its 1992 assessment by the Vanderburgh County Board of Review assessing the value of the property at \$794,230 by filing Form 131 Petition for Reassessment with the State Board. In Form 131, Indian claimed that it was entitled to an additional obsolescence adjustment due to the type of construction, plant layout, and functional utility of the plant. After a hearing on the issue, the State Board affirmed the previous denial of Indian's claim. Indian initiated its original tax appeal on January 3, 1997 and the Tax Court remanded the claim to the State Board for further proceedings. At a remand hearing, the State Board reduced the assessed value of Indian's assessment to \$686,430. Indian again initiated an original tax appeal challenging the State Board's final determination.³⁵² Indian alleges that it is entitled to a 70% obsolescence adjustment. A taxpayer seeking an obsolescence adjustment bears the burden of making a two-pronged showing.³⁵³ First, the taxpayer is required to identify specific factors responsible for a loss of value to its improvement, and second,

346. *Id.*

347. *Id.* at 815 (quoting Pet'r Br. at 2).

348. *Id.*

349. *Id.* at 816.

350. 791 N.E.2d 286 (Ind. Tax Ct. 2003).

351. *Id.* at 287.

352. *Id.* at 288.

353. *Id.*; see *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1238 (Ind. Tax Ct. 1998).

the taxpayer must quantify the amount of obsolescence to be applied to counter the loss of value.³⁵⁴ In support of its claim, Indian submitted an "Assessment Review and Analysis" listing a number of factors lacking in its improvement and argued that the lack thereof entitled Indian to an obsolescence adjustment to account for an economic disadvantage in the market.³⁵⁵ However, the Tax Court disagreed and determined that all Indian had done was provide the State Board with a list of possible causes for obsolescence with no sound calculations to determine the true impact of these disparities upon its property. Thus, the Tax Court determined that Indian failed to carry its burden of establishing and explaining its actual loss of value and was not entitled to a 70% obsolescence adjustment.³⁵⁶ Indian also claimed that the State Board erred in assessing a grade to all parts of Indian's property, and as such, Indian was entitled to a grade reduction.³⁵⁷ However, the Tax Court determined that Indian's evidence of the error in grade assessment were nothing more than conclusory statements, and without more probative evidence of how Indian calculated its reduced grade assessments and without evidence of how Indian's calculation differs from the State Board's calculation, Indian had not carried its burden of proof.³⁵⁸ Thus, the Tax Court denied Indian's claim for a reduction in grade. Finally, Indian argued that its land had been valued improperly in comparison to other similarly situated properties in Vanderburgh County.³⁵⁹ The Tax Court disagreed and determined that in a challenge of land valuation the taxpayer is required to submit a copy of the land order from which the subject property was assessed.³⁶⁰ Having failed to provide the Tax Court with such copy, the Tax Court denied Indian's request for relief and affirmed the State Board's final determination.³⁶¹

14. *Osolo Township v. Elkhart Maple Lane Associates L.P.*³⁶²—Maple Lane is the owner of a seventy-seven building apartment complex named Maple Lane in the Woods, located in Osolo Township, Elkhart County, Indiana. Maple Lane filed three Form 131 Petitions for Review of Assessment challenging its 2001 assessment. In each of the three petitions, Maple Lane claimed that the Elkhart Property Tax Assessment Board of Appeals had improperly classified the wooded areas located between apartment buildings and parking lots as "primary" lands.³⁶³ After a hearing on the matter, the Indiana Board issued a final determination reclassifying Maple Lane's wooded areas as "usable undeveloped."³⁶⁴ The Osolo Township Assessor appealed the Indiana Board's

354. *Id.*

355. *Id.*

356. *Id.* at 290.

357. *Id.* at 291.

358. *Id.*

359. *Id.* at 292.

360. *Id.*

361. *Id.*

362. 789 N.E.2d 109 (Ind. Tax Ct. 2003).

363. *Id.* at 110.

364. *Id.* at 111.

final determination claiming that, pursuant to the regulations, Maple Lane's wooded areas are "necessary support land", and therefore, should be classified as "primary lands."³⁶⁵ The Osolo Assessor's argument is essentially that, without the wooded lots, Maple Lane could not be "Maple Lane in the Woods" and would not have the same desirability to its inhabitants. In interpreting the regulatory meaning of the term "necessary support land," the Tax Court stated that the phrase is to be given its plain, ordinary, and usual meaning as presented in the dictionary.³⁶⁶ Thus, the Tax Court determined that the term "necessary" was defined to mean "that [which] cannot be done without . . . absolutely required: essential, indispensable."³⁶⁷ The term "support" was defined to mean "a means of livelihood, sustenance, or existence."³⁶⁸ Thus, the Tax Court determined that "necessary support land" meant "land that was absolutely required and essential to support the operation of, and continued functioning as, an apartment complex."³⁶⁹ Thus, the Tax Court reasoned that if the trees were removed from the property, Maple Lane could still operate effectively as an apartment complex, and therefore, the wooded lots were not "necessary support land."³⁷⁰ Further, the Tax Court gave great deference to the Indiana Board's administrative interpretation because the Indiana Board's interpretation was not inconsistent with the regulation itself.³⁷¹ Consequently, the Tax Court affirmed the Indiana Board's final determination reclassifying Maple Lane's wooded lots as "usable undeveloped."³⁷²

15. *O'Neal Steel v. Vanderburgh County Tax Assessment Board of Appeals*.³⁷³—O'Neal Steel is the owner of a steel mill located in Center Township, Vanderburgh County, Indiana.³⁷⁴ O'Neal Steel appealed its assessment for the 1996 through 1998 tax years. On their petitions, O'Neal Steel claimed that its building was assessed using the General Commercial Industrial pricing schedule and was entitled to a kit building adjustment reducing its tax amount by 50%. The Vanderburgh County Property Tax Assessment Board of Appeals denied O'Neal Steel's petitions, and O'Neal Steel appealed to the State Board. The State Board denied O'Neal Steel's relief, holding that the choice of pricing schedule requires an assessor's subjective intent. Therefore, Form 133 was an improper form to use for this complaint. O'Neal Steel initiated its original tax appeal on April 29, 2002.³⁷⁵ O'Neal Steel argued that it was entitled to the kit adjustment because the decision to apply the adjustment did not require

365. *Id.* at 112.

366. *Id.*

367. *Id.* (quoting WEBSTER'S THIRD NEW INT'L DICTIONARY 1511 (1981 ed.)).

368. *Id.* (quoting WEBSTER'S THIRD NEW INT'L DICTIONARY 2297 (1981 ed.)).

369. *Id.*

370. *Id.* at 113.

371. *Id.*

372. *Id.*

373. 791 N.E.2d 857 (Ind. Tax Ct. 2003).

374. *Id.* at 858.

375. *Id.* at 859.

a subjective determination. Therefore, Form 133 was the proper form to use for this type of a claim.³⁷⁶ The Tax Court disagreed and determined that, although the determination of whether to apply the kit adjustment appears to be relatively uncomplicated, it ultimately turns on judgment calls such as the interpretations of the improvement's made to O'Neal Steel's building.³⁷⁷ Alternatively, O'Neal Steel argued that the State Board Instructional Bulletin 92-1 approved and required the use of a 133 Petition to appeal the assessment of a kit building.³⁷⁸ Although the Tax Court agreed that, on its face, Instructional Bulletin 92-1 approved the use of Form 133 Petitions for kit building appeals, Instructional Bulletin 92-1 further limited the effects of that Bulletin to appeals for the 1995 assessment year due to a unique procedural error.³⁷⁹ Consequently, the Tax Court ruled that O'Neal Steel was not entitled to a kit adjustment through the filing of its Form 133 Petitions.

16. *Southworth v. Grant County Property Tax Assessment Board of Appeals*.³⁸⁰—Southworth is the owner of a commercial improvement located in Center Township, Grant County, Indiana. Southworth filed five Form 133 Petitions for Correction of Error with the Grant County Auditor for the 1997 through 2000 tax years. Southworth alleged that the improvement qualified for a kit building adjustment reducing the tax amount by 50%. The Grant County Tax Assessment Board of Appeals denied Southworth's claim and Southworth appealed that determination to the Indiana Board. The Indiana Board denied Southworth's petitions holding that the choice of pricing schedule requires an assessor's subjective intent. Therefore, Form 133 was an improper form to use for this complaint. Southworth initiated its original tax appeal on January 7, 2003.³⁸¹ The Tax Court agreed with the Indiana Board and determined that the decision to apply pricing schedules, including the kit building adjustment, turned on judgment calls of the assessor.³⁸² Thus, the Tax Court held that Form 133 was not the appropriate form for Southworth to present its claim for relief because the decision involved the subjective judgment of the assessor.³⁸³

17. *Community Hospital Foundation v. Department of Local Government Finance*.³⁸⁴—Community owns a hospital located in Lawrence Township, Marion County, Indiana. Community's property was situated in such a way that a ditch separated its parking lot from the street running adjacent to its property. Community appealed its tax assessment for the 1995 tax year claiming that the ditch on its property was improperly classified as "primary" land. The Marion County Board of Review denied Community's claim, and Community appealed

376. *Id.*

377. *Id.* at 860.

378. *Id.*

379. *Id.* at 861-62.

380. 791 N.E.2d 862 (Ind. Tax Ct. 2003).

381. *Id.* at 863.

382. *Id.* at 864.

383. *Id.*

384. 794 N.E.2d 1168 (Ind. Tax Ct. 2003).

that denial to the State Board.³⁸⁵ The State Board denied Community relief, and Community initiated its original tax appeal on November 12, 1998.³⁸⁶ Community argued that the ditch in front of its land should be reclassified as “unusable undeveloped.”³⁸⁷ In support of its claim, Community presented as evidence at the State Board hearing the testimony of its tax consultant. The testimony was that due to the slope of the ditch’s sides and the fact that the ditch was landlocked rendered it unusable for a commercial purpose.³⁸⁸ Aerial photographs and a plat map substantiating the testimonial evidence given by Community’s tax consultant accompanied the testimony.³⁸⁹ The Tax Court determined that Community’s testimony, accompanied with pictorial evidence, was sufficient to carry its burden of proof that a classification of “primary” for the ditch was improper.³⁹⁰ The burden then shifted to the State Board to rebut Community’s evidence. The State Board argued that the ditch was “necessary support land” to Community, and therefore, the land was classified appropriately as “primary” land. However, the Tax Court determined that, without evidence showing that Community could not use its primary land without the ditch, the State Board’s contention was insufficient.³⁹¹ Consequently, the Tax Court remanded the case to the Indiana Board with instructions to reclassify Community’s ditch as “unusable undeveloped.”³⁹²

18. *Indiana C.A.P. Directors Association v. Department of Local Government Finance*.³⁹³—CAP is an Indiana non-profit organization that acquired property located in Indianapolis, Indiana. CAP purchased the new property on August 25, 1998 and on April 28, 1999, filed Form 136 Application for Property Tax Exemption for the 1998 tax year as a charitable organization using the land for a charitable purpose. The Marion County Property Tax Assessment Board of Appeals denied CAP’s claim stating that CAP did not use the newly acquired land for a charitable purpose. CAP appealed that decision to the State Board which determined that CAP’s Form 136 was not timely filed, and therefore, CAP’s claim was barred. CAP initiated its original tax appeal on April 7, 2000.³⁹⁴ The Tax Court determined that Indiana Code section 6-1.1-11-3.5(a) was controlling, and under the plain, unambiguous, meaning of such section, CAP was required to file an application for tax exemption by May 15, 1998 for the 1999 tax year.³⁹⁵ Nevertheless, CAP argued that the application must be filed

385. *Id.* at 1169.

386. *Id.*

387. *Id.* at 1170.

388. *Id.* (quoting Stip. R. at 28).

389. *Id.* (quoting Stip. R. at 39 and 40).

390. *Id.*

391. *Id.*

392. *Id.* at 1171.

393. 797 N.E.2d 878 (Ind. Tax Ct. 2003).

394. *Id.* at 879.

395. *Id.* at 880.

in year the property taxes are due.³⁹⁶ However, the Tax Court pointed out that the consequences of position. The Tax Court pointed out that interpreting the statute the way CAP did would mean that taxpayers would apply for a tax exemption after the taxes had been calculated and notices mailed due to the fact that Indiana's taxes are assessed a year in arrears.³⁹⁷ Thus, the Tax Court read the applicable statute to require the filing of the exemption application in the year in which the property tax was assessed and not in the year the tax was due.³⁹⁸ Alternatively, CAP argued that the Marion County Property Tax Assessment Board of Appeals waived the timely filing issue by not properly addressing the issue when the MCPTABA initially denied CAP's application.³⁹⁹ The Tax Court disagreed and determined that, although the issue was not raised until the State Board's hearing, it was properly raised, and CAP's due process rights to review and rebut the State Board's disposition were met. Thus, the Tax Court denied CAP's relief and granted the State Board's motion for summary judgment.⁴⁰⁰

19. *Lacy Diversified Industries, Ltd. v. Department of Local Government Finance*.⁴⁰¹—Lacy is the owner of a building located on Monument Circle, Marion County, Indianapolis, Indiana. The building was constructed in 1924 and the building consisted of office space and parking garage on floors one through six and office space only on floors seven through nine. For the 1995 and 1996 tax years, the Center Township Assessor valued Lacy's property, assigning it a "B" grade, or "good" condition, and subject to a 15% obsolescence adjustment. Lacy appealed the Center Township Assessor's determinations to the Marion County Board of Review. The Marion County Board of Review denied all claims for relief and Lacy then filed two Form 131 Petitions for Review of Assessment with the State Board. After conducting a hearing on the matter, the State Board issued two final determinations in which it lowered Lacy's condition rating from "good" to "average" but denied all other relief. Still unsatisfied, Lacy initiated an original tax appeal on March 21, 2001.⁴⁰² Lacy first argued that a grade of "B" is excessive and should be reduced to a proper grade of "C+1."⁴⁰³ In support of its contention, Lacy submitted record cards and photocopies of photographs on six properties that Lacy claimed were similarly situated and comparable thereby to Lacy's building.⁴⁰⁴ Similarly, for comparison, Lacy submitted the record card and photograph of Lacy's building. In addition to the record cards and photographs, Lacy submitted the testimony of their building manager who testified at the administrative hearing as to his opinion of why Lacy's building and the other buildings are comparable. The Tax Court

396. *Id.*

397. *Id.*

398. *Id.*

399. *Id.* at 881.

400. *Id.*

401. 799 N.E.2d 1215 (Ind. Tax Ct. 2003).

402. *Id.* at 1218.

403. *Id.* at 1219.

404. *Id.* at 1220.

determined that the photographic evidence and testimony submitted together amounted to little more than conclusory statements and did not rise to the level of probative evidence.⁴⁰⁵ Further, that Tax Court stated it required “specific reasons . . . as to why a taxpayer believes a building is comparable, or why a building’s style is ‘moderately attractive’ as opposed to ‘architecturally attractive.’”⁴⁰⁶ The Tax Court determined that Lacy failed to do so in this instance, and therefore, the State Board’s requirement to support its final determination with substantial evidence was not necessary.⁴⁰⁷ Next, Lacy contended that the State Board erred in only lowering its condition rating to “average.” In support of its contention, Lacy submitted photographs illustrating some of the physical deterioration present in the building.⁴⁰⁸ Further, Lacy submitted a summary of actual costs incurred in the restoration and repair of physical deterioration determined in the building in the past.⁴⁰⁹ Despite this convincing evidence, the Tax Court determined that the evidence presented failed to provide a solid link between the physical deterioration and the age of the building.⁴¹⁰ Thus, the Tax Court reasoned the physical deterioration outlined at the administrative hearing could be the same, or significantly worse, than would normally be expected of a seventy year-old structure.⁴¹¹ Consequently, without providing the Tax Court this needed link, the Tax Court affirmed the State Board’s final determination.⁴¹² Finally, Lacy argued that Lacy is entitled to a 39% obsolescence adjustment and that the State Board erred in determining that the building was only entitled to a 15% obsolescence adjustment.⁴¹³ In support of its contention, Lacy submitted an income capitalization study of the building and a cost approach study to determine the fair market value of the building.⁴¹⁴ The income capitalization approach placed the fair market value of the building at \$3,218,036 using a 5% vacancy loss and an 11% return on net operating income. The cost approach calculated the replacement cost of the building after physical depreciation at \$5,268,592. Next, Lacy correlated the cost approach figures with those derived from the income capitalization study in order to show that the difference of \$2,050,556, or 39%, was directly attributable to obsolescence.⁴¹⁵ The Tax Court agreed, and despite the State Board’s contention that these approaches were not an appropriate means for quantifying obsolescence, the Tax Court determined that the State Board did not rebut Lacy’s *prima facie* showing nor deal with the probative evidence in a meaningful

405. *Id.* at 1221.

406. *Id.*

407. *Id.* at 1222.

408. *Id.*

409. *Id.*

410. *Id.* at 1223.

411. *Id.*

412. *Id.*

413. *Id.* at 1225.

414. *Id.* at 1224.

415. *Id.* at 1225.

manner.⁴¹⁶ Consequently, the Tax Court remanded the issue of obsolescence to the State Board in order to instruct the Center Township Assessor to award Lacy a 39% obsolescence adjustment for the building.

20. *Regency Canterbury, LP v. Department of Local Government Finance*.⁴¹⁷—Canterbury is the owner of an apartment complex located in Fort Wayne, Indiana. For the 2000 tax year, the apartment buildings located in Canterbury's apartment complex were assigned a grade of "C+1." Canterbury appealed the assessment to the Allen County Property Tax Assessment Board of Appeals which denied the appeal. Thereafter, Canterbury appealed that decision to the State Board.⁴¹⁸ After holding a hearing, the State Board issued a final determination which adjusted Canterbury's assessment to reflect deviations from the General Commercial Retail model; however, the State Board denied Canterbury's request for reduction in grade.⁴¹⁹ On November 21, 2001, Canterbury initiated an original tax appeal.⁴²⁰ Canterbury alleges that while the State Board's reduction in the base rate to the apartment buildings was proper, the State Board erred when it failed to similarly reduce the grade.⁴²¹ The State Board countered Canterbury's contention by citing the Tax Court's decision in *Clark v. State Board of Tax Commissioners*, in which it argued that the Tax Court "mandated [the] use of the unit-in-place tables for a base cost adjustment instead of a grade adjustment."⁴²² Thus, the State Board contended that, when a base rate adjustment had been made, the State Board was precluded from making an adjustment to the grade.⁴²³ However, the Tax Court determined that the State Board misinterpreted *Clark* and that such preclusion was unfounded.⁴²⁴ That is, the Tax Court determined that *Clark* stood for the position that when an improvement deviates from the base model, the deviations used for adjusting the base rate cannot be the same basis for adjustments to the grade.⁴²⁵ Thus, the Tax Court determined that Canterbury sought adjustments for the base rate and grade and cited separate and distinct deviations in support of each adjustment claimed.⁴²⁶ Consequently, the Tax Court held that the State Board erred in not considering Canterbury's appeal of the grade; and therefore, the Tax Court remanded the case to the State Board for review of that claim.⁴²⁷

416. *Id.*

417. 799 N.E.2d 1226 (Ind. Tax Ct. 2003).

418. *Id.* at 1227.

419. *Id.* at 1228.

420. *Id.*

421. *Id.*

422. *Id.* at 1229 (quoting *Clark*, 742 N.E.2d 46, 49 (Ind. Tax Ct. 2001)).

423. *Id.*

424. *Id.*

425. *Id.*

426. *Id.*

427. *Id.*

21. *Trinity School of Natural Health, Inc. v. Kosciusko County Property Tax Assessment Board of Appeals*.⁴²⁸—Trinity is the owner and operator of correspondence school offering courses in “natural health for personal enrichment and self-improvement.”⁴²⁹ Trinity owns, and the school is located, on two parcels of real property in Kosciusko County, Indiana.⁴³⁰ On May 14, 1998, Trinity filed an application for the educational purposes exemption against the imposition of the Indiana business real property taxes with the Kosciusko Property Tax Assessment Board of Appeals. After holding an administrative hearing on the issue, Trinity’s appeal was denied. Trinity filed Form 132 Petition for Review of Exemption with the State Board to appeal the decision. The State Board appealed the Kosciusko Property Tax Assessment Board of Appeal’s final determination, and Trinity initiated an original tax appeal on March 22, 2002.⁴³¹ Trinity asserted that its primary purpose was to teach courses in science, health, and nature and that the predominant use of its property is related thereto; and, therefore, Trinity qualifies for the educational purposes exemption.⁴³² The Tax Court agreed with Trinity and determined that in deciding whether a certain property’s predominant use is educational, the Tax Court considers the public benefits that come from that property’s use.⁴³³ In reviewing Trinity’s situation, the Tax Court compared it to a photography school which was successfully granted an educational purposes exemption in *State Board of Tax Commissioners v. Professional Photographers of America*.⁴³⁴ In making the comparison, the Tax Court determined that as required in *Professional Photographers*, Trinity relieved the State of Indiana’s burden to some extent with programs and courses related to those offered in tax-supported schools.⁴³⁵ Thus, the Tax Court reasoned that if Trinity were to stop providing lessons to students and grading tests, the program would no longer exist and tax-supported schools would be left to bear the burden of those students.⁴³⁶ Consequently, the Tax Court ruled that Trinity was entitled to the educational purposes exemption as their educational use of the property was predominantly (and not merely incidentally) used for educational purposes.⁴³⁷

22. *Meridian Towers East and West v. Washington Township Assessor*.⁴³⁸—Meridian is the owner of two apartment buildings located in Marion County, Indianapolis, Indiana.⁴³⁹ For the 1998 tax year, the Washington Township

428. 799 N.E.2d 1234 (Ind. Tax Ct. 2003).

429. *Id.* at 1235-36 (quoting Pet’r Br. at 2-3).

430. *Id.* at 1236.

431. *Id.*

432. *Id.*

433. *Id.* at 1237.

434. 268 N.E.2d 617 (Ind. Tax Ct. 1971).

435. *Trinity*, 799 N.E.2d at 1238.

436. *Id.*

437. *Id.*

438. 805 N.E.2d 745 (Ind. Tax Ct. 2003).

439. *Id.* at 476.

Assessor applied a 10% obsolescence adjustment to Meridian's buildings. Meridian appealed the assessment to the Marion County Board of Review and Meridian's claims were denied. Meridian appealed that denial to the State Board alleging that their buildings were entitled to additional obsolescence adjustments. After a hearing on the matter, the State Board issued its final determination denying Meridian's claim for relief. Meridian initiated an original tax appeal on June 3, 2002.⁴⁴⁰ Meridian argued that the State Board erred in upholding the Assessor's refusal to award additional obsolescence adjustments to its buildings because Meridian established a *prima facie* case showing that Meridian was entitled to such adjustments.⁴⁴¹ In support of its contention, Meridian presented a property tax assessment report that Meridian had ordered to be made with respect to their building from a Certified General Real Estate Appraiser.⁴⁴² That appraisal outlined how the location, lack of tenancy, and renovation needs had caused Meridian's buildings to suffer actual loss in value. The report went on to compare the fair market value of Meridian's buildings to other comparable buildings based on both the income capitalization approach and the cost approach to valuation.⁴⁴³ The Tax Court determined that, through the presentation of its appraisal and further quantifying how that fair market value derived therefrom amounted to an obsolescence adjustment of 74%, Meridian had established a *prima facie* case that they were entitled to such adjustment.⁴⁴⁴ Thus, the burden shifted to the Assessor to rebut Meridian's *prima facie* case by a showing of substantial evidence supporting its 10% obsolescence rating.⁴⁴⁵ However, the Tax Court determined that the Assessor utterly failed to present any evidence rebutting Meridian's showing or, in the alternative, to offer calculations substantiating the lower obsolescence adjustment.⁴⁴⁶ The evidence submitted in rebuttal consisted definitions of "net operating income" and a copy of the Indianapolis Business Journal's 1998 "Most Expensive Indianapolis-Area Apartment Communities" list.⁴⁴⁷ The Assessor's argument was essentially that Meridian failed to participate in the apartment listing and that net operating income was income *expected* but not income that was promised.⁴⁴⁸ However, despite the Assessor's failure to rebut Meridian's evidence quantifying the obsolescence adjustment of 74%, the Indiana Board upheld the Assessor award of lower obsolescence adjustment finding that the appraisal calculations were "severely flawed."⁴⁴⁹ This, the Tax Court determined, was in error as it was the Assessor's burden, and not the Indiana Board's, to rebut Meridian's *prima facie*

440. *Id.* at 477.

441. *Id.*

442. *Id.* at 478.

443. *Id.*

444. *Id.* at 479.

445. *Id.*

446. *Id.*

447. *Id.* at 480.

448. *Id.*

449. *Id.* (quoting Cert. Admin. R. 46-54).

showing. Consequently, the Tax Court held that the Indiana Board had exceeded its statutory authority pursuant to Indiana Code section 6-1.5-4-1(a) and the case was reversed and remanded to the Indiana Board with instructions to award Meridian's buildings a 74% obsolescence adjustment.⁴⁵⁰

23. *Muenich v. North Township Assessor*.⁴⁵¹—The Muenich's are the owners of two vacant parcels of land located in North Township, Lake County, Indiana. The land is primarily rented to local area businesses as parking lots for the business' employees. For the 1995 general reassessment year, the Muenich's land was assigned a base rate of \$200 per front foot on one lot and \$250 per front foot on the second lot in accordance with the Lake County Land Order used by local assessing officials.⁴⁵² However, the Lake County Land Order, promulgated pursuant to Indiana Code section 6-1.1-4-13.6, provided that the base rate would fall within the range of \$150 per front foot to \$200 per front foot.⁴⁵³ The Muenichs filed two Form 131 Petitions for Review of Assessment with the State Board challenging the assigned base rates. After holding a hearing on the matter, the State Board issued two separate final determinations in which it upheld the assessment on the first lot but reduced the assessment on the second lot to \$200 per front foot. Unhappy with the outcome, the Muenichs filed an appeal with the Tax Court on July 31, 2002.⁴⁵⁴ In the Tax Court, the Muenichs first asserted that the Lake County Land order was invalid on its face because the land order itself failed to list the classification factors for improvements specifically listed in Indiana Code section 6-1.1-31-6(a). The Tax Court disagreed and deferred to the Indiana Supreme Courts ruling in *State Board of Tax Commissioners v. Indianapolis Racquet Club, Inc.*⁴⁵⁵ The Tax Court determined that, in *Indianapolis Racquet Club*, the Supreme Court did not require land orders issued pursuant to Indiana Code section 6-1.1-31-6 to contain specifically the factors listed in Indiana Code section 6-1.1-31-6(a).⁴⁵⁶ Instead, the Tax Court determined that the Supreme Court ruled in favor of allowing the use of actual market sales data in lieu of those factors contained in Indiana Code section 6-1.1-31-6(a).⁴⁵⁷ Consequently, the Tax Court affirmed the Indiana Board's final determination as being in accordance with law.⁴⁵⁸ Next, the Muenichs argued that, because the assessed value of their lots exceeds the fair market value of the lots, the Lake County Land Order is invalid in its application.⁴⁵⁹ However, the Tax Court again deferred to the Supreme Court's ruling decision in *State Board*

450. *Id.*

451. 801 N.E.2d 783 (Ind. Tax Ct. 2003).

452. *Id.* at 784.

453. *Id.*

454. *Id.*

455. 743 N.E.2d 247 (Ind. 2001).

456. *Muenich*, 801 N.E.2d at 786, (quoting *Indianapolis Racquet Club*, 743 N.E.2d at 251).

457. *Id.*

458. *Id.*

459. *Id.*

of *Tax Commissioners v. Town of St. John*.⁴⁶⁰ Although the Tax Court determined that the 1995 assessment regulations provided for the “true tax value” of non-agricultural land to be its fair market value pursuant to *Town of St. John I*,⁴⁶¹ it nevertheless, had to defer to the Supreme Court’s judgment in *Town of St. John II*,⁴⁶² which held that individual taxpayers are not substantively entitled to individual assessments or consideration of independent property wealth as evidence in their individual tax appeals.⁴⁶³ Thus, the Tax Court determined that the Muenichs could not rely on their independent appraisals in order to show that the fair market value of their property was less than the assessed value.⁴⁶⁴ In the alternative, the Tax Court determined that the Muenichs should have appealed the land order directly by a showing that “(1) comparable properties were assessed and taxed differently than their own under the land order or (2) their land was improperly assessed under the wrong section of the land order.”⁴⁶⁵ Because the administrative record was devoid of such evidence, the Tax Court held that the Muenichs did not make a prime facie showing that the assessed value of their land was unsupported by substantial evidence.⁴⁶⁶

C. Indiana Property Taxes—Tangible Personal Property Tax

1. *Quaker Oats Co. v. Department of Local Government Finance*.⁴⁶⁷—Quaker Oats is a New Jersey Corporation with its principal place of business in Chicago, Illinois. For the 1999 tax year, Quaker Oats owned personal property (inventory) that was stored in a warehouse in Wayne Township, Marion County, Indiana. On April 27, 1999, Quaker Oats filed for an extension of time to file Form 103, which was due on May 15, 1999.⁴⁶⁸ The Marion County Assessor granted Quaker Oats a thirty-day extension, however, the extension stated that the “EXTENSION GRANTED UNTIL JUN[E] 14, 1999 . . .”⁴⁶⁹ Quaker Oats filed its Form 103 on June 15, 1999 claiming an interstate commerce exemption for the above mentioned inventory. The Marion County Assessor denied Quaker Oats’ exemption claim stating that the form was not timely filed.⁴⁷⁰ Quaker Oats appealed to the Marion County Property Tax Assessment Board of Appeals, and the Marion County Assessor’s ruling was affirmed. Quaker Oats appealed this ruling to the State Board, arguing that the claim was timely filed, i.e., it was filed within the thirty-day extension. The State Board held a hearing on the matter and

460. 702 N.E.2d 1034 (Ind. 1998) (*Town of St. John II*).

461. *Town of St. John v. State Bd. of Tax Comm’rs*, 665 N.E.2d 965, 967 (Ind. Tax Ct. 1996).

462. 702 N.E.2d 1034.

463. *Muenich*, 801 N.E.2d at 787.

464. *Id.*

465. *Id.*

466. *Id.*

467. 782 N.E.2d 1077 (Ind. Tax Ct. 2003).

468. *Id.* at 1079.

469. *Id.* at 1079-80 (quoting Admin. R. at 114).

470. *Id.* at 1080.

denied the claim affirming the original Marion County Property Tax Assessor Board of Appeal's determination. On May 4, 2001, Quaker Oats initiated an original tax appeal.⁴⁷¹ Quaker Oats argued that, regardless of the stamp stating that the extension expired on June 14, 1999, its Form 103 was timely filed within the expiration of that thirty-day extension.⁴⁷² The State Board countered Quaker Oats' contention by arguing that a thirty-day extension expired on June 14, as that was the date stamped on Quaker Oats' extension request.⁴⁷³ In support of its argument, the State Board cited Indiana Administrative Code title 50 rule 4.2-2-3 which provides that "[a] thirty (30) day extension (to June 14) may be granted provided an extension is request in writing prior to May 15 of the current year."⁴⁷⁴ The Tax Court agreed with Quaker Oats and determined that if the filing date of the form falls on a weekend or holiday, then the extension to June 14 would be less than thirty days and this would be in violation of Indiana Code section 6-1.1-3-7(b).⁴⁷⁵ Consequently, the Tax Court ruled that the State Board's regulation that all thirty-day extensions be granted only until June 14 was invalid as a matter of law.⁴⁷⁶ Thus, the Tax court reversed the State Board's determination and remanded the matter to the State Board with instructions to grant Quaker Oats the request Interstate Commerce Exemption.⁴⁷⁷

2. *Autoliv North America v. Department of Local Government Finance*.⁴⁷⁸—Autoliv is an Indiana Company with its principal place of business in Marion County, Indiana. Autoliv is in the business of manufacturing locking wheels for seatbelt assemblies. Autoliv filed a Business Tangible Personal Property Return for the March 1, 1996 assessment date for three interrelated tools and applications software that are utilized in its manufacturing process.⁴⁷⁹ Autoliv claimed that these tools and applications software were "special tools", and therefore, Autoliv was overassessed on the value of its business personal property. The State Board dispatched an auditor to audit Autoliv's property tax return and determined that the above-mentioned tools did not qualify for the "special tool" exemption. After a hearing, the State Board denied Autoliv's claim and affirmed the assessment finding that Autoliv had failed to present probative evidence entitling Autoliv to deduct the cost of the tools and software. On October 31, 1997, Autoliv initiated an original tax appeal.⁴⁸⁰ Autoliv argued that it submitted evidence of the cost of the tools and software to the State Board which was arbitrarily ignored⁴⁸¹ and that Autoliv submitted a copy of a letter to

471. *Id.*

472. *Id.* at 1080-81.

473. *Id.* at 1081.

474. *Id.* (quoting Ind. Admin. Code tit. 50, r. 4.2-2-3 (1996)).

475. *Id.* at 1082.

476. *Id.*

477. *Id.*

478. 784 N.E.2d 593 (Ind. Tax Ct. 2003).

479. *Id.* at 595.

480. *Id.*

481. *Id.* at 596.

the State Board from Autoliv's manufacturing manager stating the projected and estimated cost of the tools.⁴⁸² Similarly, Autoliv submitted a letter from a French employee stating the "approximate" software costs.⁴⁸³ The Tax Court determined that State Board's rule requires a taxpayer to report the "total cost" of producing or acquiring special tools and attach such report to Form 103.⁴⁸⁴ Thus, Autoliv's failure to provide any evidence of the actual acquisition cost of the special tools and application software was held to be a failure to provide sufficient evidence that Autoliv was entitled to deduct the costs from its assessments.⁴⁸⁵ Consequently, the Tax Court affirmed the State Board's final determination denying Autoliv's claim.⁴⁸⁶

D. Indiana Sales and Use Taxes

1. *Stump v. Indiana Department of State Revenue*.⁴⁸⁷—As a result of a work-related accident both of Mr. Stump's legs were amputated below the knee. In 1999, Mr. Stump received a prescription from his physician, purchased a van, and then had it modified to accommodate his handicap. Mr. Stump paid the sales tax on the purchase of the van and later filed a claim for refund with the Department claiming that Indiana Code section 6-2.5-5-18 exempted the purchase of the van from sales tax. The Department denied that claim and Mr. Stump initiated an original tax appeal on December 27, 2000. On October 2, 2000, Mr. Stump purchased another van to modify to accommodate his prescription handicap. However, on this occasion, Mr. Stump failed to pay any sales tax on the purchase. The Department assessed Mr. Stump sales tax, penalties, and interest on the purchase of the van. Mr. Stump appealed the assessment upon the same basis as the earlier claim for refund on the first van purchase. Similarly, the Department denied such claim for exemption. Mr. Stump initiated another original tax appeal and subsequently a unified motion for summary judgment in both cases.⁴⁸⁸ The Department argued, and the Tax Court agreed, that the Department's regulations only covered the medical equipment added to the vehicle pursuant to Stump's prescription for his handicap.⁴⁸⁹ Giving the term "directly" its plain, ordinary, and usual meaning in resolving any ambiguity over the statutory construction, the Tax Court looked to the Webster's Third New

482. *Id.*

483. *Id.* at 597.

484. *Id.* at 596; *see* Ind. Admin. Code tit. 50, r. 4.2-6-2(d)(1); *Standard Plastic Corp. v. Dep't of Local Gov't Fin.*, 773 N.E.2d 379 (Ind. Tax Ct. 2002).

485. *Autoliv*, 784 N.E.2d at 596-97.

486. *Id.*

487. 777 N.E.2d 799 (Ind. Tax Ct. 2002).

488. *Id.* at 800-01.

489. *Id.* at 801-02; *see* Ind. Admin. Code tit. 45, r. 2.2-5-28(h) "[t]he term 'medical equipment, supplies, and devices' [as used in Indiana Code § 6-2.5-5-18(a)] are those items, the use of which is directly required to correct or alleviate injury to [,] malfunction of, or removal of a portion of the purchaser's body."

Dictionary,⁴⁹⁰ which defined the term “directly” as “without any intervening agency or instrumentality or determining influence: without any intermediate step.”⁴⁹¹ Therefore, because Stump’s van required the extra step of modification and addition of instruments to accommodate his handicap, it could not be said to directly alleviate Mr. Stump’s condition.⁴⁹² The Tax Court denied Mr. Stump’s contention that his insurance carrier had never paid sales tax on previous purchases of handicap-modified vans because businesses often obtain sales tax exemption certificates only to later pay a self-assessed use tax in lieu of the sales tax.⁴⁹³ Similarly, the Tax Court denied Mr. Stump’s second contention that the Bureau of Motor Vehicles and Attorney General’s office assured him that the purchase of the second van would be tax exempt because neither of those authorities had the authority to make such an assurance.⁴⁹⁴

2. *1 Stop Auto Sales, Inc. v. Indiana Department of State Revenue*.⁴⁹⁵—1 Stop runs an automobile sales lot in Indiana, which sells vehicles on a “buy-here-pay-here” basis.⁴⁹⁶ Customers choosing to do so may enter into an installment contract with 1 Stop and pay no money down. Customers exercising this financing option are not charged sales tax on the purchase price of the vehicle. Instead, 1 Stop loans the customer the money then remits the amount of the sales tax due on the purchase along with the sales tax due on the first monthly loan payment to the Department. In October 1996, 1 Stop allocated itself a reduction for its monthly taxable sales to account for prior bad debts.⁴⁹⁷ Subsequently, the Department audited 1 Stop for the tax years 1994 through 1996 for its violation of taking a disallowed sales tax credit. 1 Stop was assessed an additional sale tax of \$131,625.95, plus interest of \$3407.84, which 1 Stop paid. 1 Stop filed a refund for each the audited tax years, claiming on each that 1 Stop was entitled to a sales tax refund for that portion of the receivables with respect to which a bad debt deduction was allowed for federal tax purposes. The Department denied all five claims, and 1 Stop initiated an original tax appeal on September 4, 1998.⁴⁹⁸ The Tax Court dismissed 1 Stop’s refund claim for the tax year of 1993 for lack of subject matter jurisdiction due to the fact that the claim was not filed until after the three year statute of limitation had expired.⁴⁹⁹ For the remaining four claims, the Department first contended that 1 Stop, as a retail merchant, was prohibited from absorbing or assuming a merchant’s sale tax pursuant to Indiana Code section 6-2.5-9-4, and therefore, 1 Stop is estopped

490. WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 641 (1981).

491. *Stump*, 777 N.E.2d at 802.

492. *Id.*

493. *Id.* at 803.

494. *Id.*

495. 779 N.E.2d 614 (Ind. Tax Ct. 2002).

496. *Id.* at 616.

497. *Id.* at 617.

498. *Id.*

499. See IND. CODE § 6-8.1-9-1(a).

from claiming the bad debt deduction.⁵⁰⁰ However, the Tax Court disagreed and determined that the plain and ordinary meaning of “to assume or absorb” was to accept the legal liability for the payment of the tax or to exclude it altogether from the price of the automobiles.⁵⁰¹ 1 Stop did neither of these and at all times the customer bore the legal liability for the sales tax. The Department’s second contention was that 1 Stop should be estopped from claiming the bad debt deduction for failure to claim such bad debt on their Form ST-108 Certificates pursuant to Indiana Code section 6-2.5-6-9.⁵⁰² However, the Tax Court again disagreed and determined that this section of the Indiana Code, at most, required 1 Stop to certify that the sales tax on the vehicle purchase price had been paid. Further, the Tax Court determined that the Department is not entitled to adapt the statutory law by enacting rules or regulations.⁵⁰³ Thus, 1 Stop complied with the requirements of the Indiana Code and was afforded the bad debt deduction pursuant to Indiana Code section 6-2.5-6-9(a).

3. *1 Stop Auto Sales, Inc. v. Indiana Department of Local Government Finance*.⁵⁰⁴—1 Stop requested a rehearing in the Tax Court after the Tax Court’s disposition of its request for a bad debt deduction.⁵⁰⁵ 1 Stop claimed that if its Indiana bad debt deduction must be equivalent to its federal bad debt deduction, then 1 Stop would receive no relief from its Indiana bad debt deduction pursuant to Indiana Code section 6-2.5-6-9(a)(3). Specifically, 1 Stop argued that under federal accounting procedures, 1 Stop was required to offset its federal bad debt deduction by the value of vehicles 1 Stop repossessed in the tax years 1994 through 1996, and because these amounts are equal, 1 Stop will receive no benefit for Indiana tax purposes.⁵⁰⁶ Because the General Assembly did not provide a definition for “written off” in its statutes, the Tax Court determined that the plain and ordinary meaning of “written off” in Indiana Code section 6-2.5-6-9(a)(3) means “[t]o remove [an asset] from the books, esp. as a loss or expense[.]”⁵⁰⁷ Similarly the term “deduct” means to subtract from gross income when calculating taxable income.⁵⁰⁸ Thus, the Tax Court held that for the purposes of Indiana’s bad debt statute, 1 Stop is entitled to a deduction in an amount equal to the amount of uncollectible Indiana receivables written off for federal tax purposes.⁵⁰⁹

500. *1 Stop*, 779 N.E.2d at 619.

501. *Id.*

502. *Id.* at 620.

503. *Id.*

504. 785 N.E.2d 672 (Ind. Tax Ct. 2003).

505. *Id.* at 673.

506. *Id.*

507. *Id.* at 674 (quoting BLACK’S LAW DICTIONARY 1603 (7th ed. 1999)).

508. *Id.*; see *Subaru-Isuzu Auto., Inc. v. Ind. Dep’t of State Revenue*, 782 N.E.2d 1071 (Ind. Tax Ct. 2003).

509. *1 Stop Auto Sales, Inc.*, 785 N.E.2d at 674.

4. *Grand Victoria Casino & Resort, LP v. Indiana Department of Local Government Finance*.⁵¹⁰—Grand Victoria is a Delaware limited partnership with its principle place of business in Chicago, Illinois.⁵¹¹ Grand Victoria was created on January 21, 1999, as a result of a merger between two sister companies, Grand Victoria II, Inc. and Grand Victoria Casino & Resort, LLC of Indiana. Prior to the merger, Grand Victoria II's predecessor in interest contracted with Hilton Joint Venture, a New Orleans company, for the purchase of a riverboat. Thereafter, Grand Victoria assigned the contract to Grand Victoria II, who delivered the riverboat to Rising Sun, Indiana and leased it to Grand Victoria Casino and Resort.⁵¹² As a result of the merger, Grand Victoria paid sales tax on the riverboat as a capital contribution from the merger. Similarly, Grand Victoria continued to pay sales tax with respect to purchases of: fuel; navigation equipment; maintenance, repair, and safety equipment; tickets; uniforms; supplies for the riverboat pilot house; lighting; bathroom supplies; and, heating and air conditioning equipment which Grand Victoria II had paid as the predecessor in interest to the riverboat. Grand Victoria filed four claims for refund with the Department, requesting a refund of sales tax in the total amount of \$3,688,949 for the 1996 through 1999 tax years. The Department denied all of Grand Victoria's claims for refund and on September 15, 2000, Grand Victoria initiated an original tax appeal.⁵¹³ First, Grand Victoria claimed that it was entitled to the public transportation exemption pursuant to Indiana Code section 6-2.5-5-27, and therefore, was exempt from sales tax with respect to its purchases of personal property and services for the riverboat.⁵¹⁴ However, the Tax Court determined that during the 1996 through 1999 tax years, Grand Victoria was required by Indiana gaming law to leave the docks before gaming could begin onboard.⁵¹⁵ Thus, the Tax Court reasoned, Grand Victoria could not be said to transport passengers for valid consideration due to the fact that a promise to do something already required by law has been held to be unenforceable.⁵¹⁶ Consequently, the Tax Court denied Grand Victoria's contention that Grand Victoria qualified for the public transportation exemption. Grand Victoria's second argument was that its purchases of satellite commercial broadcasts originating in Kentucky were exempt from sales tax as an interstate broadcast pursuant to Indiana Code section 6-2.5-4-6.⁵¹⁷ In viewing the clear language of the Indiana Code, the Tax Court concluded that the telecommunications services purchased by Grand Victoria were clearly interstate transmissions because both parties agreed that the transmissions originated in Kentucky. Thus, the Tax

510. 789 N.E.2d 1041 (Ind. Tax Ct. 2003).

511. *Id.* at 1042.

512. *Id.* at 1042-43.

513. *Id.* at 1043.

514. *Id.* at 1044.

515. *Id.*; see IND. CODE § 4-33-9-2 (1998).

516. *Grand Victoria*, 789 N.E.2d at 1044; see *Lincoln Operating Co. v. Gillis*, 114 N.E.2d 873 (Ind. 1953).

517. *Grand Victoria*, 789 N.E.2d at 1044.

Court granted Grand Victoria's request for a refund on the sales tax paid to the Department for those transmissions.⁵¹⁸ Next, Grand Victoria asserts that the transfer of the riverboat from Grand Victoria II to Grand Victoria as a capital contribution of the merger was not subject to Indiana sales tax because the transfer occurred without consideration and therefore could not be considered selling at-retail. The Department conceded this issue and the Tax Court granted Grand Victoria's motion for summary judgment thereon.⁵¹⁹ Alternatively, the Department countered Grand Victoria's contention that the riverboat was not subject to the Indiana sales tax by arguing that Grand Victoria's refund for the sales tax is offset by the amount of use tax that it really owes on the riverboat.⁵²⁰ More specifically, the Department asserts that the riverboat lost its exemption from the Indiana use tax as leased property when Grand Victoria II merged into Grand Victoria. Grand Victoria argued that during the 1999 tax year the riverboat was classified as real property pursuant to Indiana Code, and therefore, Grand Victoria was not subject to Indiana use tax with respect to this riverboat.⁵²¹ The Tax Court agreed with Grand Victoria and determined that because a riverboat licensed under Indiana Code section 4-33 is classified as real property pursuant to Indiana Code section 6-1.1-1-15(5), it is inherently excluded from the definition of personal property under Indiana Code section 6-1.1-1-11(a)(6).⁵²² However, the Tax Court determined that because Grand Victoria's riverboat was not licensed under Indiana Code section 4-33 immediately after the transfer, Grand Victoria was subject to Indiana use tax for the period of April 1996 to September 1996 because the riverboat did not meet the statutory definition of real property.⁵²³ Consequently, the Tax Court denied Grand Victoria's motion for summary judgment as to the refund of the sales tax on the transfer of the riverboat.⁵²⁴

5. *Trump Indiana, Inc. v. Indiana Department of Local Government Finance*.⁵²⁵—Trump is a Delaware corporation with its principal place of business in Gary, Indiana. In 1999, the Department audited Trump for the 1996 and 1997 tax years. As a result of the audit, Trump was assessed \$2,337,822.59 in sales tax for its purchase of a riverboat in 1996 and assessed nearly \$1.8 million in use tax of that riverboat in 1996 and 1997. Trump initiated its original tax appeal on January 8, 2002.⁵²⁶ Trump argued that it is a licensed operator of the riverboat pursuant to Indiana Code section 4-33, and therefore, the riverboat qualifies for the public transportation exemption under Indiana Code section 6-

518. *Id.* at 1045.

519. *Id.*

520. *Id.* at 1046.

521. *Id.*

522. *Id.* at 1046-47.

523. *Id.* at 1048.

524. *Id.*

525. 790 N.E.2d 192 (Ind. Tax Ct. 2003).

526. *Id.* at 194.

2.5-5-27.⁵²⁷ The Tax Court determined that to qualify for the public transportation exemption the Department requires that there be the transport of people or property for consideration.⁵²⁸ Further, the Tax Court determined that Trump was required by law to leave Indiana's dock before gaming could begin pursuant to Indiana Code section 4-33-2-9.⁵²⁹ Thus, the Tax Court ruled that because the law required Trump to leave the dock to comply with Indiana Gaming laws, it could not be said that its movement was "bargained-for consideration."⁵³⁰ Consequently, the Tax Court denied Trump's motion for summary judgment and ruled in favor of the Department. Next, Trump claimed that it was entitled to an equipment exemption for a hotdog bun warmer and microwave pursuant to Indiana Code section 6-2.5-5-3(b).⁵³¹ To qualify for the exemption, the Tax Court has required taxpayers to prove that the equipment was used to induce substantial chemical change in food, thereby transforming the food into a new marketable product.⁵³² However, the Tax Court determined that Trump was not entitled to the exemption due to the fact that by Trump's own admission the equipment was not used to alter the composition of the food but merely to keep it warm. Consequently, the Tax Court denied Trump's claim.⁵³³ Trump's next claim was that the Department erred in assessing a use tax with respect to the acquisition of the riverboat because the riverboat was classified as real property pursuant to statute, and therefore, Trump was not subject to the Indiana use tax. However, the Tax Court determined that the Indiana use tax only applied to personal property and the General Assembly classified riverboats as real property when the boats were licensed, pursuant to Indiana Code section 6-1.1-1-15(5). Thus, the Tax Court determined that Trump's riverboat was real property, and therefore, was not subject to the Indiana use tax.⁵³⁴ Finally, Trump contended that Trump should not be subject to the 10% negligence penalty which was proposed to be assessed with respect to Trump's sales and use tax deficiency because Trump acted reasonably in not withholding these taxes.⁵³⁵ In support of its claim, Trump argued that its claims for the transportation exemption and equipment exemption were reasonable, and therefore, Trump's failure to withhold the use tax was not negligent. However, the Tax Court disagreed and determined that Trump's claim for the transportation exemption ignored fundamental tenants of contract law, and there was enough regulatory and case law on equipment exemptions to indicate that equipment used to keep food warm did not qualify for the equipment exemption. Consequently, the Tax Court upheld the imposition of the Department's 10% penalty due to Trump's failure

527. *Id.* at 194-95.

528. *Id.* at 195.

529. *Id.*

530. *Id.*

531. *Id.* at 195-96.

532. *Id.* at 196.

533. *Id.*

534. *Id.* at 197.

535. *Id.*

to withhold the Indiana sales and use tax.⁵³⁶

6. *Howland v. Indiana Department of State Revenue*.⁵³⁷—Howland is the sole proprietor of Total Home Entertainment located in Whiteland, Indiana. Howland is in the business of selling and installing satellite dishes.⁵³⁸ In 1994, the Department conducted an audit of Howland's government, and consequently, the Department issued a notice of proposed assessment for approximately \$150,000 against Howland, citing his failure to collect and remit the sales tax on his installation of satellites dishes. Howland protested that assessment, but the Department denied Howland's position. On November 20, 1997, Howland initiated an original tax appeal.⁵³⁹ Howland argued that his installation services occurred only after he transferred title to the satellite to the customer.⁵⁴⁰ In support of his contention, Howland testified that he considered the transaction to be complete when the satellite was delivered to the customer.⁵⁴¹ To the contrary, the Tax Court determined that the evidence established that Howland's customers paid only one price for the purchase and installation of equipment; thus, title did not transfer to the customer until after the installation was complete.⁵⁴² Stated another way, Howland did not itemize the cost of the equipment and the cost of the services to the customers. Consequently, the Tax Court affirmed the Department's ruling that Howland's services were subject to the Indiana sales tax.

7. *North Central Industries, Inc. v. Indiana Department of State Revenue*.⁵⁴³—North Central is an Indiana Corporation located in Muncie, Indiana which is in the business of purchasing fireworks in bulk from foreign vendors and repackaging the fireworks for sale to Indiana consumers.⁵⁴⁴ North Central purchased a shrink-wrap machine in 1994 for the purpose of shrink-wrapping fireworks assortments. In 1997, the Department audited North Central and assessed North Central sales and use tax plus penalties for the shrink-wrapping machine in the amount of \$1988.15. North Central paid the tax and requested refund immediately thereafter, which the Department denied. On July 7, 1999, North Central initiated an original tax appeal.⁵⁴⁵ North Central claims that their purchase and use of the shrink-wrapping equipment is tax exempt pursuant to Indiana Code section 6-2.5-5-3(b) because it is equipment acquired for direct use in the direct production of other tangible personal property.⁵⁴⁶ Specifically, North Central argues that their rearrangement of fireworks into individualized

536. *Id.* at 198.

537. 790 N.E.2d 627 (Ind. Tax Ct. 2003).

538. *Id.* at 628.

539. *Id.*

540. *Id.* at 630.

541. *Id.* (quoting Trial Tr. at 35).

542. *Id.*

543. 790 N.E.2d 198 (Ind. Tax Ct. 2003).

544. *Id.* at 199.

545. *Id.*

546. *Id.* at 200.

packaging is the creation of tangible personal property because it creates new combinations different in form and variety than the fireworks packaged in bulk.⁵⁴⁷ The Tax Court determined that North Central's process does not create marketable products distinct from the fireworks as originally purchased in bulk.⁵⁴⁸ Instead, the Tax Court determined, North Central was in the business of rearranging existing fireworks, then adding labels and shrink-wrap.⁵⁴⁹ More importantly, the Tax Court emphasized the fact that regardless of the manner of packaging, North Central sold the same number of fireworks as were purchased in the first place, and therefore, North Central could not be said to be making a substantial change by placing the fireworks "in a form, composition, or character different from that in which [they were] acquired."⁵⁵⁰ Thus, the Tax Court denied North Central's claim and granted the Department's motion for summary judgment.

E. Indiana Income Taxes—Gross Income Tax

1. *Enterprise Leasing Co. v. Indiana Department of State Revenue.*⁵⁵¹—Enterprise is a non-Indiana based company operating automobile leasing companies out of Chicago, Illinois; Detroit, Michigan; Atlanta, Georgia; and St. Louis, Missouri. At no time did Enterprise maintain an office, warehouse, distribution center, employee, or any type of business location within Indiana.⁵⁵² The only contacts that Enterprise did have within Indiana were the leasing of automobiles to Indiana residents outside of Indiana and the long-term leasing of fleet automobiles to Indiana companies. However, pursuant to the fleet leases, the lessees at all times exercised the unitary control over the location of the leased vehicles and the car dealership from which to retrieve the fleet vehicles.⁵⁵³ In March 1995, the Department assessed the petitioner for gross income tax, adjusted gross income tax, supplemental net income tax, and interest and penalties for Enterprise's fiscal tax years July 31, 1984 through July 31, 1993. Enterprise protested the Department's assessment and the Department denied the protest. Enterprise initiated its original tax appeal on July 1, 1998.⁵⁵⁴ Enterprise's argument on summary judgment was that its gross income generated from the fleet lease agreements was not income derived from "sources within Indiana" as defined by Indiana Code section 6-2.1-2-2(a).⁵⁵⁵ To decide whether the income was derived from sources within Indiana, the Tax Court divided the

547. *Id.*

548. *Id.* at 201.

549. *Id.*

550. *Id.* at 201-02 (quoting Ind. Admin. Code tit. 45, r. 2.2-5-8(k)).

551. 779 N.E.2d 1284 (Ind. Tax Ct. 2002).

552. *Id.* at 1288.

553. *Id.* Further, the lessees are responsible for the repair, maintenance, insurance, licensing, and registration of the fleet vehicles. *Id.*

554. *Id.* at 1289.

555. *Id.*

issue into three sub-issues: the critical transaction test; the business situs test; and the tax situs test.⁵⁵⁶ Pursuant to this framework, the Tax Court must first isolate Enterprise's transaction giving rise to the gross income (the critical transaction). Next, the Tax Court must determine the taxpayer's business situs, which amounts to any physical presence within Indiana or in the alternative any significant business activities that would satisfy the physical presence test. Finally, in reviewing the above two tests, the Tax Court must decide whether or not Enterprise's critical transaction is related to the business situs in such a way as to satisfy the tax situs.⁵⁵⁷ The critical transaction in this instance was Enterprise's gross income derived from leasing vehicles to Indiana residents.⁵⁵⁸ The Tax Court determined that, because Enterprise had never had its commercial domicile within Indiana, the disposition of the business situs test would be determined by reviewing Enterprise's significant business activities within Indiana.⁵⁵⁹ The Department's argument on this issue was essentially that, because Enterprise leased vehicles to Indiana companies, the business situs test was satisfied pursuant to Indiana Administrative Code title 45, rule 1-1-49, providing that the "business situs" may be established through "[o]wnership, leasing, rental or other operation of income-producing property" in Indiana.⁵⁶⁰ The Tax Court disagreed and determined that the term "operation," as used in 45 IAC 1-1-49(6) had, as a matter of precedent, been in reference to an active participation in the ownership, leasing, and rental of income-producing property.⁵⁶¹ Thus, Enterprise's minimal active participation of shipping the vehicles into Indiana dealers for the Indiana customer's pick-up did not rise to the level necessary to establish a business situs within Indiana.⁵⁶² Similarly, the Tax Court determined that, even if a business situs were to be established between Enterprise and Indiana, the tax situs test would not be met.⁵⁶³ The test for establishing a tax situs is whether the activities conducted within Indiana are so related to the critical transaction and more than minimal, remote, or incidental to the transaction as a whole. Thus, the Tax Court determined that mere ownership of the leased vehicles located in Indiana, through no exclusive and active direction of those vehicles into Indiana, was not more than minimal and was remote and incidental to the lease transaction as a whole.⁵⁶⁴ Next, the Department contended that Enterprise was required to include all leased vehicles, located, titled, and registered within Indiana in the calculation for determining

556. *Id.*

557. *Id.* at 1290. If the transaction is too remote or incidental to the total transaction and very minimal, then the tax situs will not be found to be met. See *First Nat'l Leasing & Fin. Corp. v. Ind. Dep't of State Revenue*, 598 N.E.2d 640.

558. *Id.*

559. *Id.*

560. *Id.* at 1291 (quoting Ind. Admin. Code tit.45, r. 1-1-49(6)).

561. *Id.*

562. *Id.*

563. *Id.* at 1292.

564. *Id.*

their Indiana adjusted gross income tax and supplemental net income tax pursuant to Indiana Code section 6-3-2-2.⁵⁶⁵ In reviewing the statutory construction of Indiana Code section 6-3-2-2(c), the Tax Court agreed with Enterprise's contention that to be taxed under this section, the taxpayer must first own or rent the property at issue, and second, the property at issue must be used by the taxpayer in Indiana during the year in question.⁵⁶⁶ The Tax Court determined that had the legislature intended this section to be read as the Department argued, that two alternative requirements would have been worded as "that property is either owned or rented and used" not "owned and rented or used."⁵⁶⁷ Therefore, the Tax Court granted Enterprises' motion for summary judgment

2. *U-Haul Co. of Indiana, Inc. v. Indiana Department of State Revenue.*⁵⁶⁸—U-Haul is a part of the U-Haul Rental System conducting a moving equipment rental business in Indiana. The U-Haul Rental System is comprised of four groups of companies including fleet owners, rental companies, rental dealers, and U-Haul International.⁵⁶⁹ The petitioners in this case were U-Haul Co. of Indiana and a rental dealer in the U-Haul Rental System. Rental dealers were the link between the U-Haul Rental System and the end customer. The rental dealers were responsible for displaying and renting the equipment and ultimately collecting the payments from the consumer. However, pursuant to contracts with the U-Haul rental companies, rental dealers were apportioned a standard percentage of that gross income collected from customers and were at all times required to remit the entire amount collected to U-Haul International. By 1996, the Department had audited U-Haul on two separate occasions and issued proposed assessments against U-Haul for the tax years 1988 and 1989, and 1993 through 1995 (the "years at issue") for gross income tax, interest, and a penalty with respect to 100% of the rental income collected by U-Haul for the years at issue.⁵⁷⁰ In both instances, U-Haul protested the assessments, and in both instances, the Department denied those protests but waived the penalties. After having been denied a refund claim, U-Haul initiated an original tax appeal on January 6, 1998.⁵⁷¹ U-Haul contended that although U-Haul was acting as an agent on behalf of U-Haul International, U-Haul was not entitled to 100% of the gross income collected in that capacity, and therefore, U-Haul was only liable for the gross income tax to the extent that U-Haul was paid their standard contract

565. *Id.* at 1293.

566. *Id.* Indiana Code section 6-3-2-2-(c) provides in pertinent part that "The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the taxable year"

567. *Id.*

568. 784 N.E.2d 1078 (Ind. Tax Ct. 2002).

569. *Id.* at 1079-80.

570. *Id.* at 1080-81.

571. *Id.* at 1081.

apportionment therefrom. The Tax Court agreed and granted U-Haul's motion for summary judgment.⁵⁷² The Tax Court cited numerous sources in support of the granting of U-Haul's motion for summary judgment. First, the Tax Court determined "gross income" to be broadly defined by Indiana Code section 6-2.1-1-2(a) to mean "all gross receipts a taxpayer receives."⁵⁷³ Similarly, the Tax Court determined that such section defined the term "receives" to mean "(1) the actual coming into possession of, or the crediting to, the taxpayer of gross income; or (2) the payment of a taxpayer's expenses, debts, or other obligations by a third party for the taxpayer's direct benefit." Thus, the Tax Court reasoned that U-Haul had an agency relationship with U-Haul International and direct remittance of all gross receipts to U-Haul International meant that U-Haul did not have a beneficial interest in 100% of the rental income collected in Indiana.⁵⁷⁴ Further, the Tax Court looked to the Department's own regulations to support the concept that taxpayers acting in an agency capacity are treated merely as conduits for tax purposes, and therefore, U-Haul was not taxable on all gross receipts received by U-Haul.⁵⁷⁵ Thus, the Tax Court determined that because U-Haul was a true agent of U-Haul International and because U-Haul had no legal right to the rental receipts, it was not proper to assess the gross income on 100% of those receipts.⁵⁷⁶

3. *Subaru-Isuzu Automotive, Inc. v. Indiana Department of State Revenue*.⁵⁷⁷—Subaru is an Indiana corporation in the business of manufacturing automobiles. In 1999 and 2000, the Department audited Subaru for the 1994 through 1998 tax years. As a result of those audits, the Department issued two separate proposed assessments against Subaru for the 1997 and 1998 tax years claiming that Subaru had failed to add back the property taxes that had been capitalized as inventory costs for Subaru's federal taxes and that Subaru had erred in calculating its net operating loss deductions. Subaru protested the Department's proposed assessments and the Department denied both. Subaru subsequently initiated an original tax appeal.⁵⁷⁸ Subaru argued that because the federal tax laws appropriate inventory costs as exclusions from a taxpayer's gross income, Subaru's property taxes capitalized as inventory costs for federal tax purposes also qualify for an exclusion from gross income. Specifically, Subaru asserted that such capitalized costs are not deductions, but rather, they are exclusions for federal tax purposes, and therefore, are not subject to the federal deduction add-back provisions in Indiana Code section 6-3-1-3.5(b)(3).⁵⁷⁹ The Tax Court held that the definition of the term "deduction" as used in Indiana Code section 6-3-1-3.5(b)(3) means the same as a deduction under federal law,

572. *Id.* at 1084.

573. *Id.* at 1082 (quoting IND. CODE § 6-2.1-1-2(a) (1989)).

574. *Id.* at 1083.

575. *Id.*; see Ind. Admin. Code tit. 45, r. 1-1-54 (1992).

576. *U-Haul Co. of Ind.*, 784 N.E.2d at 1084.

577. 782 N.E.2d 1071 (Ind. Tax Ct. 2003).

578. *Id.* at 1073.

579. *Id.* at 1075.

no more, no less.⁵⁸⁰ Thus, the Tax Court determined that Subaru's contention was correct and, because federal law did indeed treat their capitalized property taxes as inventory exclusion, such property taxes were not subject to the add-back provisions of Indiana Code section 6-3-1-3.5(b)(3).⁵⁸¹ Next, Subaru argued that pursuant to Indiana Code section 6-3-2-2.6(b), it was only required to adjust its net operating loss deduction by applying the adjusted gross income modifications in the years in which Subaru actually incurred a net operating loss.⁵⁸² To the contrary, the Department argued that Subaru was required to adjust its net operating loss deduction by applying the adjusted gross income modifications for every year in which it uses a net operating loss deduction.⁵⁸³ The Tax Court agreed with Subaru. Specifically, the Tax Court determined that the Department's position was not substantiated by the clear and unambiguous meaning of Indiana Code sections 6-3-2-2.6(b) and 6-3-1-3.5(b), which require that corporations only apply the adjusted gross income modifications in calculating the net operating loss for the year in which the net operating loss was actually incurred.⁵⁸⁴ Consequently, the Tax Court reversed the Department's final determination on both the add-back issue and the net operating loss issue and remanded both issues to the Department for further proceedings.⁵⁸⁵

F. Indiana Income Taxes—Adjusted Gross Income Tax

1. *Ziegler v. Indiana Department of State Revenue*.⁵⁸⁶—Joseph Zeigler and five other individuals (the "Petitioners") filed for a refund of their Indiana income tax paid for the 1997, 1998, and 1999 tax years.⁵⁸⁷ Each of the Petitioners is a resident of Indiana and a retired federal government employee. The Petitioners claimed that, as a result of Indiana Code section 6-3-2-3.7, Federal Retirees who received any Federal Civil Service Annuity Income in excess of \$2000 per year were unfairly being assessed Indiana income taxes because retired State employees and other residents receiving Social Security benefits as retirement income were exempt from State income tax. In January 2001, the Petitioners filed a claim for refund with the Department.⁵⁸⁸ By May 2001, the Department had acknowledged the receipt of the Petitioners' claims for refund but had never issued a final determination. On April 19, 2002, the Petitioners initiated an original tax appeal.⁵⁸⁹ On October 22, 2002, the Petitioners filed a motion for partial summary judgment requesting that the Tax

580. *Id.* at 1076.

581. *Id.*

582. *Id.*

583. *Id.*

584. *Id.* at 1077.

585. *Id.*

586. 797 N.E.2d 881 (Ind. Tax Ct. 2003).

587. *Id.* at 883.

588. *Id.* at 883.

589. *Id.*

Court hold that they were entitled, as a matter of law, to present their claim as a class action lawsuit on behalf of all similarly situated Indiana residents pursuant to Indiana Code section 6-3-2-3.7.⁵⁹⁰ The Tax Court determined that the Petitioners' reliance on Indiana Code section 6-3-2-3.7 was misplaced, as Indiana Code section 6-8.1-9-7 clearly requires that every member of a prospective class to a class action lawsuit timely file a claim for refund with the Department.⁵⁹¹ Nonetheless, the Petitioners argued that they were entitled to present their claim as a class action regardless of the fact that members of that class had never filed a claim for refund because Indiana Code section 6-8.1-9-7 was in conflict with Indiana Trial Rule 23.⁵⁹² More specifically, the Petitioners claimed that the conflict acted as a bar to Indiana taxpayer's relief, and therefore, Indiana Code section 6-8.1-9-7 should be determined to be invalid.⁵⁹³ The Tax Court, however, determined that Trial Rule 23 and Indiana Code section 6-8.1-9-7 were not incompatible and both could apply in a given situation. Specifically, the Tax Court determined that Indiana Code section 6-8.1-9-7 did not act to bar individuals from bringing a class action pursuant to Trial Rule 23.⁵⁹⁴ Instead, the statute provided a means by which the Department could obtain jurisdiction over the claim against the imposition of the Indiana income tax.⁵⁹⁵ The Tax Court determined that, as a matter of policy, the requirement of the exhausting the refund procedure advanced by the statute promoted the natural progression of the claim to the Tax Court and acted to preserve both the Department's and the Tax Court's jurisdiction over the matter.⁵⁹⁶ Next, the Tax Court distinguished the Petitioners' reliance on *Clark v. Lee*.⁵⁹⁷ Specifically, the Tax Court determined that the Petitioner's reliance on *Clark* was misplaced because *Clark* was decided prior to the General Assembly's enactment of Indiana Code section 6-8.1-9-7.⁵⁹⁸ Consequently the Tax Court held that *Clark* was no longer controlling due to the enactment.⁵⁹⁹ Alternatively, the Petitioners argued that Indiana Code section 6-8.1-9-7 violated article I, sections 12 and 23 of the Indiana Constitution. First, the Petitioners argued that the burden imposed by requiring taxpayers to comply with Indiana Code section 6-8.1-9-7 was unconstitutionally violative of putative class members protected property interest in claiming their refund. Second, the Petitioners argued that Indiana Code section 6-8.1-9-7 unconstitutionally afforded an advantage to taxpayers filing a class action lawsuit under Indiana Code section 6-8.1-9-7 and to litigants filing a class action lawsuit under Trial

590. *Id.*

591. *Id.* at 885.

592. *Id.*

593. *Id.* at 886.

594. *Id.*

595. *Id.*

596. *Id.* at 886-87.

597. 406 N.E.2d 646 (Ind. 1980).

598. *Ziegler*, 797 N.E.2d at 887.

599. *Id.* at 888.

Rule 23.⁶⁰⁰ In both instances, the Tax Court rejected the arguments advanced by the Petitioners. In the first instance, the Tax Court determined that the exhaustion of administrative remedies required by Indiana Code section 6-8.1-9-7 did not prevent putative litigants from bringing a claim, but rather, it properly maintained the jurisdiction of the case for the Tax Court to properly dispose of when ripe for appeal.⁶⁰¹ Similarly, the Tax Court disposed of the Petitioners' second argument by finding that disparate treatment created by the requirement of administrative exhaustion was uniformly applicable to all Indiana taxpayers as that process was the only way in which a taxpayer could preserve the jurisdiction of the matter for the Tax Court to hear on appeal.⁶⁰² Further, the Tax Court determined that this disparate treatment was reasonably related to the State's interest in preserving the integrity of its revenue system. Consequently, the Tax Court denied the Petitioners' motion for partial summary judgment and granted the Department's motion for partial summary judgment.⁶⁰³

2. *Eibeck v. Indiana Department of State Revenue*.⁶⁰⁴—Eibeck is an Indiana resident who claimed zero income on his individual state income tax return for the 2000 tax year. Subsequently, the Department assessed Eibeck for unpaid taxes on his pension income received throughout the 2000 tax year which assessment Eibeck timely protested with the Department. After conducting a hearing on the matter, the Department issued a Letter of Findings denying Eibeck's protest. On October 23, 2002, Eibeck initiated an original tax appeal.⁶⁰⁵ Eibeck argued that the Department erred in assessing and collecting Indiana income tax on his pension income because Title 26 of the United States Code is not valid law. Specifically, Eibeck cited numerous Internet articles stating that Title 26 has not been enacted as positive law, and therefore, Indiana's taxation scheme is not law.⁶⁰⁶ However, the Tax Court determined that Eibeck's reliance on the positive law distinction was in error and only meant that Congress had not yet "reenacted the valid public laws contained in the United State Statutes at Large, which were then codified in the United States Code Under Title 26, into law in the codified form."⁶⁰⁷ Regardless of this distinction, the Tax Court determined that, pursuant to the Indiana Constitution, the General Assembly's decision to tax income is critical to Indiana's sovereignty, and therefore, the legitimacy of the General Assembly's enactment of the Adjusted Gross Income Tax Act of 1963 was constitutional.⁶⁰⁸ Thus, looking to the definition incorporated into the Adjusted Gross Income Tax Act, the Tax Court determined that "gross income" is "all income from whatever source derived, including (but

600. *Id.* at 889.

601. *Id.* at 888.

602. *Id.* at 889.

603. *Id.*

604. 799 N.E.2d 1212 (Ind. Tax Ct. 2003).

605. *Id.* at 1213.

606. *Id.*

607. *Id.* at 1213-14.

608. *Id.* at 1214; *see* IND. COST. art. X, § 8.

not limited to) . . . pensions.”⁶⁰⁹ Consequently, the Tax Court held that the income tax on Eibeck’s pension was supported by both the Indiana Code and the United States Code and affirmed the Department’s final determination denying Eibeck’s protest.⁶¹⁰

*G. Indiana Withholding Taxes: Hunt v. Indiana Department of State Revenue*⁶¹¹

Hunt is the sole shareholder of Hunt’s Health Care Center, Inc., a nursing home located in Fort Wayne, Indiana. In 1988, Hunt’s manager responsible for paying the withholding taxes to the Department quit. Subsequent to that employee’s absence, Hunt issued two checks to the Department for withholding taxes and deposited her own money into the corporation’s bank account to prevent the checks from bouncing.⁶¹² On, March 26, 1998, the Department issued notice to Hunt of withholding taxes due for 1988. Hunt protested the assessment and the Department denied that claim. On October 19, 1999, Hunt initiated her original tax appeal.⁶¹³ Hunt’s argument is that she was not an employee of the corporation responsible for paying the withholding taxes to the Department. The test that the Tax Court applied for imposing personal liability for unpaid withholding taxes was whether the individual was an officer, employee, or member of the company, and if so, whether or not that individual had the duty to remit the withholding taxes to the Department.⁶¹⁴ The Tax Court determined that by Hunt’s own admission, she had paid the corporation’s withholding taxes and deposited funds into the corporation’s bank account to prevent them from bouncing.⁶¹⁵ Taken together, these two facts were sufficient for the Tax Court to hold that Hunt was an officer who had the authority, and therefore the duty, to see that the withholding taxes were paid.⁶¹⁶ Alternatively, Hunt argued that the Department’s attempt to hold Hunt personal liable for the withholding taxes ten years after-the-fact is barred by the doctrine of laches. The elements of the doctrine of laches has been determined to be inexcusable delay in asserting a claim of right, an implied waiver arising from knowing acquiescence in existing conditions, and circumstances resulting in prejudice to the adverse party. The Tax Court determined that Hunt failed to establish a valid defense of the doctrine of laches, because she failed to satisfy the first element. Specifically, the Tax Court determined that because the Department had timely notified the corporation of the delinquent withholding taxes in 1988 and 1989, it could be inferred that Hunt, as then replacement manager, had constructive

609. *Id.* (quoting IND. CODE. § 6-3-1-8 (quoting 26 U.S.C. § 61(a)(11))).

610. *Id.*

611. 790 N.E.2d 630 (Ind. Tax Ct. 2003).

612. *Id.* at 631-32.

613. *Id.*

614. *Id.*

615. *Id.* at 633.

616. *Id.*

notice.⁶¹⁷ Consequently, the Tax Court affirmed the Department's final determination.⁶¹⁸

*H. Indiana Controlled Substance Excise Tax:
Ford v. Indiana Department of State Revenue*⁶¹⁹

Ford is an individual who plead guilty to possession of cocaine on December 20, 1993, which plea was accepted by the court on March 28, 1994. After the State charged Ford with possession of cocaine on September 3 1992, the Department assessed Ford with the Controlled Substance Excise Tax ("CSET") on December 7, 1992. Ford initiated an original tax appeal to the Department's final determination on Ford's protest to the CSET assessment.⁶²⁰ In general, Ford's argument was that the CSET hearing held by the Department effectively subjected Ford to double jeopardy for his conviction on charges of cocaine possession.⁶²¹ The Tax Court disagreed and determined that the Supreme Court of Indiana had clearly ruled that the assessment of the CSET is itself a judgment.⁶²² Thus, the CSET was actually the first jeopardy against Ford because it predated the plea acceptance by more than one year. Ford next asserted that the CSET assessment was void because he was denied a hearing until six years after his protest on the assessment. Reviewing Indiana Code section 6-8.1-5-1, the Tax Court determined that there is no remedy for a delay of a hearing and the law does not even explicitly define the timing for a hearing on a CSET assessment protest.⁶²³ Thus, Ford's claim was denied and the Department's assessment of the CSET upheld.⁶²⁴

617. *Id.*

618. *Id.* at 634.

619. 779 N.E.2d 1274 (Ind. Tax Ct. 2002).

620. *Id.* at 1276.

621. *Id.*

622. *Id.*; see *Bryant v. State*, 660 N.E.2d 290, 298-99 (Ind. 1995).

623. *Id.* 1277.

624. *Id.*

