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 2005. 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 "ISBTC" is used in this Article, such term shall refer only to the Indiana State Board of Tax Commissioners. Whenever the term "IBTR" is used in this Article, such term shall refer only to the Indiana Board of Tax Review. Whenever the term "IDSR" is used in this Article, such term shall refer only to the Indiana Department of State Revenue. Whenever the term "DLGF" is used in this Article, such term shall refer only to the Department of Local Government Finance. 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 General Assembly passed several pieces of legislation affecting various areas of state and local taxation, i.e., property taxes, local taxes, inheritance tax, and sales and use taxes. There are also several other changes noted in the miscellaneous section. The most significant changes were in the area of property taxes.

A. Property Tax

The General Assembly passed legislation providing that the special property tax valuation procedures for integrated steel mill equipment is only applicable to equipment in a mill which produces steel in a blast furnace in Indiana.[2]

Also, the General Assembly passed legislation requiring Lake County, East Chicago, Gary, and Hammond to make payments to Indiana in fiscal years 2006 through 2008 for property tax circuit breaker credits claimed against Indiana income taxes in 2001, 2002, and 2003, which were not reimbursed in subsequent

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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 Professor Jegen's Taxsite at www.iupui.edu/~taxsite/ and the Access Indiana website at http://www.accessindiana.org.

2. IND. CODE § 6-1.1-3-23 (2005).

years.[3] The statute requires the amounts for the unreimbursed credits to be deducted from supplemental Riverboat Admission Tax payments made from the Property Tax Replacement Fund.[4] This legislation also provides that in the future, the cost of providing this property tax circuit breaker will be paid back to these areas by adding the costs into the supplemental Riverboat Admission Tax payments made to each of these local units.[5]

The General Assembly also opted to place limits on both the Property Tax Replacement Credit ("PTRC") and the homestead credits. Included in the new limits are both a minimum amount that can be distributed for these credits and a maximum amount that the General Assembly can appropriate for these credits. The minimum distribution is equal to the total amount which was spent on these credits during 2002.[6] The maximum appropriation amount is the minimum distribution amount plus an amount equal to the revenue raised by 1% of the current 6% Indiana and sales and use tax rates. If the distribution is too low, then the law requires the Property Tax Replacement Fund ("PTRF") Board to increase homestead credit and PTRC rates in the following order:

(1) Homestead credits from 20% to up to 30%;
(2) School General Fund PTRC from 60% to up to 70%; and,
(3) Regular PTRC from 20% to up to amount needed to reach the minimum distribution.[7]

If Indiana's liability for these credits is too high for any year, then numbers one and two above would be proportionally reduced, but the homestead credits rate would remain unchanged.[8]

In addition, political subdivisions were granted the option of adopting an ordinance to provide a local homestead credit. This credit was established as an unfunded credit, and therefore, if allowed by a local government, would result in a loss of revenue to the political subdivision.[9]

Further, the same legislation that now allows adoption of a local option homestead credit also allows a credit for excessive residential property taxes.[10] This credit must be approved by the county fiscal body and can be granted for any qualified residential property[11] that the county chooses to make eligible for

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3. *Id.* § 4-33-13-5 (amended by 2005 Ind. Legis. Serv. P.L. 246-2005 (H.E.A. 1001) (West)); *id.* 6-3.1-20-7.

4. LEGIS. SERVS. AGENCY, FISCAL IMPACT STATEMENT HB1001, at 25 (2005) [hereinafter FISCAL IMPACT STATEMENT 1001], *available at* http://www.in.gov/legislative/bills/2005/PDF/FISCAL/HB1001.009.pdf. "[B]ased on income tax return data," these "credits totaled approximately $5.4 M in 2001; $7.1 M in 2002; and $6.8 M in 2003." *Id.*

5. *Id.*

6. IND. CODE §§ 6-1.1-20.9-2; 6-1.1-21-2, -2.5.

7. FISCAL IMPACT STATEMENT 1001, *supra* note 4, at 20.

8. *Id.*

9. IND. CODE § 6-1.1-20.4.

10. *Id.* § 6-1.1-20.6.

11. *Id.* § 6-1.1-20.6-4 ("As used in this chapter, 'qualified residential property' refers to any

the credit. The credit is to be allowed for the amount by which the property taxes exceed 2% of the assessed value of the qualified residential property. This credit was established as an unfunded credit, but the statute permits local governments to borrow money, over a term of five years or less, to make up the revenue loss from providing this property tax credit.[12]

The General Assembly passed legislation allowing a person who owns or wants to own a brownfield[13] to file a petition with the county auditor seeking a reduction or waiver of the delinquent tax liability. This legislation provides that the DLGF is to review these petitions, give notice of the DLGF's determination, and allow appeals of that determination by the IBTR.[14]

Also, the General Assembly passed legislation permitting a county library board to levy a property tax and distribute the tax to a private donation library under certain conditions. The only library board which currently meets the conditions of the statute is the Vanderburgh County Library Board.[15] The law would therefore allow

> the Vanderburgh County Library Board to levy a tax with a rate of not less than $.0067 nor more than $.0167 per $100 of assessed valuation. Currently, Evansville is responsible for levying the tax. The law does not reduce the city of Evansville's maximum levy by the amount that had been levied for the library.[16]

In another effort to provide property tax relief, the General Assembly passed legislation allowing a county fiscal body to provide a property tax credit over four years to a homestead that had an excessive tax increase in the last general reassessment.[17]

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of the following that a county fiscal body specifically makes eligible for a credit under this chapter in an ordinance adopted under section 6 of this chapter: (1) An apartment complex; (2) A homestead; (3) Residential rental property.").

12. *Id.* § 6-1.1-20.6-9.

13. According to the United States Environmental Protection Agency, "the term 'brownfield site' means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant." U.S. EPA, *Brownfields Cleanup and Redevelopment*, http://www.epa.gov/brownfields/glossary.htm (last visited July 7, 2006).

14. IND. CODE § 6-1.1-45.5.

15. *Id.* § 36-12-7-8.

16. LEGIS. SERVS. AGENCY, FISCAL IMPACT STATEMENT HB1120, at 22-23 (2005) [hereinafter FISCAL IMPACT STATEMENT 1120], *available at* http://www.in.gov/legislative/bills/2005/PDF/ FISCAL/HB1120.010.pdf.

17. *Id.* at 3.

> Under this provision, each county would be permitted to provide property tax credits to homeowners in 2005, 2006, 2007, and 2008 if: (1) the net property tax on the homestead in 2003, after all credits are applied, was more than twice the amount of the 2002 net tax (an increase of more than 100%), and (2) the increase in net tax was at least $500. Each year, the credit would equal the 2003 net tax increase multiplied by: 80%

The General Assembly also enacted legislation which directed the DLGF to develop instructions to determine the true tax value of certain mobile homes, which valuation must be the lesser of the values using the following: (1) the National Automobile Dealers Association Guide;[18] (2) the purchase price of a mobile home if the sale is of a commercial enterprise nature and the buyer and seller are not related by blood or marriage; or (3) sales data for generally comparable mobile homes.[19]

In addition, the General Assembly directed the DLGF to develop instructions for identifying the fair market value of computer application software so that the value can be deducted from the total cost of the property with which the software is combined and which is subject to assessment.[20]

Further, the General Assembly enacted a "property tax deduction for a building if materials made from coal combustion products are systematically used in the building's construction."[21]

The General Assembly enacted legislation that allows county treasurers, effective January 1, 2006, to optionally serve a written demand upon a county resident who is delinquent in the payment of personal property taxes annually, after May 10 but before October 31 of the *same* year. This is in addition to the written demand notice that is required to be sent after November 10 and before August 1 of the *succeeding* year.[22] This legislation also provided a new formula for a creditor who acquires personal property on which the creditor has a lien to pay a delinquency from the proceeds of the property's transfer. The law allows the creditor to first deduct any direct costs resulting from the transfer.[23]

Also, the General Assembly passed legislation allowing a taxpayer to file an abatement schedule with the taxpayer's personal property return. Previously, a taxpayer had to file a separate application for a property tax abatement. A copy of the abatement schedule must be forwarded to county and township assessors,

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> in 2005, 60% in 2006, 40% in 2007, and 20% in 2008. A county that wishes to provide the credits would have to adopt an ordinance before July 1, 2005. No application is required to receive the credit. The county auditor would identify the eligible homesteads and apply the credit. The entire 2005 credit could be applied to the tax installment that is due in November, 2005.

FISCAL IMPACT STATEMENT 1120, *supra* note 16, at 23.

18. These guides are available for purchase on the NADA Guides website, http://www.nadaguides.org.

19. IND. CODE § 6-1.1-31-7(b)(6) (2005).

20. *Id.* § 6-1.1-1-11. Note: "Under current DLGF assessment rules, computer application software owned by a business is considered intangible property and is not assessed except when cost of the application software cannot be separately identified because it is combined with the cost of property that is subject to assessment. In the case where the cost of the application software cannot be separately identified, no adjustment is made to the cost of the other asset(s) for reporting purposes." FISCAL IMPACT STATEMENT 1120, *supra* note 16, at 22.

21. FISCAL IMPACT STATEMENT 1120, *supra* note 16, at 3.

22. IND. CODE § 6-1.1-23-1(a).

23. *Id.* § 6-1.1-23-1(d).

who have the power to deny or alter the amounts submitted. If the schedule is not denied before March 1 of the following year, then the county auditor is required to apply the abatement in the amount claimed or the amount as altered by the township or county assessor. The taxpayer has forty-five days to appeal a denial or alteration to the abatement schedule as submitted.[24]

In addition, a new property tax deduction is available beginning with the March 2006 assessment if the taxpayer added to the assessed valuation of real property through development, redevelopment, or rehabilitation.[25] This deduction is also available for personal property purchased by the owner that was never before used by its owner in Indiana.[26] This real property deduction excludes "golf courses, country clubs, massage parlors, tennis clubs, racetracks, package liquor stores, residential property unless it is low income or in a residentially distressed area, or facilities for skating, racquet sport, hot tubs, suntans, retail food and beverage sales, automobile sales or service, or other retail facilities."[27] The amount of the deduction is "equal to 75% of the AV increase in the first assessment year, 50% in the second year, and 25% in the third year."[28] This statute also limits a property owner to no more than $2 million assessed value for real property deductions and no more than $2 million assessed value for personal property deductions.[29] A property owner is not allowed to claim this deduction in conjunction with other abatements.[30]

The General Assembly pushed back the starting date for the next general reassessment of real property by two years. The general reassessment, which was previously set to start on July 1, 2007, will now begin on July 1, 2009, and must be completed by March 1, 2011.[31]

Also, the General Assembly delayed the implementation of annual adjustments to real property tax assessments. These adjustments, which were to start with 2005 assessments, will now start with the 2006 assessments.[32] This legislation also allows the DLGF to employ professional appraisers to assist with these adjustments.[33] Also, the General Assembly amended the factors that must be included in the annual adjustment rule of the DLGF.[34] In addition, the DLGF

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24. LEGIS. SERVS. AGENCY, FISCAL IMPACT STATEMENT SB1, at 7 (2005) [hereinafter FISCAL IMPACT STATEMENT SB1], *available at* http://www.in.gov/legislative/bills/2005/PDF/FISCAL/SB0001.008.pdf.

25. IND. CODE §§ 6-1.1-12.1-5, -5.1, -5.4, -5.6.

26. *Id.* § 6-1.1-12.4.

27. FISCAL IMPACT STATEMENT SB1, *supra* note 24, at 7.

28. *Id.*

29. *Id.*

30. *Id.*

31. IND. CODE § 6-1.1-4-4 (2005).

32. *Id.* § 6-1.1-4-4.5.

33. *Id.* §§ 6-1.1-4-16, -17.

34. LEGIS. SERVS. AGENCY, FISCAL IMPACT STATEMENT SB327, at 1 (2005) [hereinafter FISCAL IMPACT STATEMENT SB327], *available at* http://www.in.gov/legislative/bills/2005/PDF/FISCAL/SB0327.008.pdf.

is required to: (1) review and certify the adjustments; (2) establish local deadlines for the adjustment determinations; (3) train assessors and county auditors in the verification of sales; and (4) approve the choice of an assessor not to hire professional appraisers to assist with the general reassessment.[35] The law also directs the DLGF to make the annual adjustment base rate for agricultural land $880 per acre for the 2005 and 2006 assessments.[36]

The General Assembly also passed legislation which requires the DLGF to adopt rules by July 1, 2006, to establish a statewide uniform and common property tax management system. The law requires a combination of the county auditor, county treasurer, and state computer systems for property tax assessment. The DLGF is also required to appoint an advisory committee with local assessors as members to assist in the implementation of the system.[37]

Further, the General Assembly authorized the DLGF to take over local assessment, reassessment, or annual adjustment activities. The DLGF, in order to conduct this takeover, must give at least sixty days notice and make a determination that the activities are not being performed properly.[38] The law also requires that this DLGF assessment be paid from the county assessment fund.[39]

In addition, the $10 filing fee for sales disclosure forms was extended for six years.[40] This law requires 40% of revenue from the fee in the Assessment Training and Administration Fund, instead of the state General Fund, and allows the IBTR to use money in that fund to conduct appeal activities.[41] This legislation also amended what is required to appear on the sales disclosure form and required sales disclosure forms to be submitted for property exempt from property taxes.[42] Also, the telephone number and name of the person who prepared the form is now required to appear on the sales disclosure form.[43]

The General Assembly also passed legislation which requires the IDSR to withhold a portion of the state property tax replacement and homestead credit distributions to a county if [44]:

> (1) The county assessor fails to forward sales disclosure forms to the DLGF in a timely manner;
> (2) Local assessors have not forwarded *Form 15* assessment information to the DLGF in a timely manner;
> (3) The county auditor fails to pay a contractor's bill under state-conducted assessment or reassessment;

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35. *Id.*
36. *Id.* § 6-1.1-1-3.1.
37. *Id.* § 6-1.1-31.5-3.5.
38. *Id.* §§ 6-1.1-4-31, -31.5, -31.6, -31.7.
39. *Id.* § 6-1.1-4-27.5.
40. FISCAL IMPACT STATEMENT SB327, *supra* note 34, at 2.
41. *Id.*
42. IND. CODE § 6-1.1-5-5.5.
43. *Id.*
44. *Id.* § 6-1.1-21-4.

(4) Local assessors have not transmitted parcel level assessment data to the DLGF by October 1;
(5) The county has not established a parcel number indexing system in a timely manner; or,
(6) A township or county official has not provided other required information to the DLGF in a timely manner.[45]

Also, legislation was adopted that prohibits an appraiser (or a technical advisor) who contracts with a township or county from representing taxpayers in an appeal, unless the appraiser's contract with the local unit is over and the appraiser was not directly involved with the taxpayer's issue while under contract.[46]

The General Assembly chose to allow retroactive property tax exemptions for: (1) a youth soccer association;[47] (2) a religious organization;[48] (3) a sorority;[49] and (4) a conservation organization.[50] These exemptions are meant to address specific situations for specific organizations that failed to properly apply or receive a property tax exemption (to which the organization would have been entitled) in the year in which the property taxes were assessed.

Additionally, the General Assembly passed legislation which allows a taxpayer to file an assessment registration notice with the county assessor or the area plan commission.[51]

The General Assembly set the term of a member of the Property Tax Assessment Board of Appeals ("PTABOA") at one year.[52]

The General Assembly also adjusted requirements for notice by the DLGF to taxpayers who object to local budgets and levies and established a procedure for resolution and appeal of property tax abatements.[53]

In the area of local property tax credits funded by appeal settlements, the General Assembly provided that the part of the money received from certain property tax settlements that is attributable to taxes imposed by a political subdivision may be used to provide property tax credits in the political subdivision to taxpayers other than taxpayers that paid the settlement.[54]

Also, in an effort to alleviate the shift of property taxes to homeowners resulting from the elimination of the inventory tax, the General Assembly extended (to June 2005) the time allowed for a county to start providing a

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45. FISCAL IMPACT STATEMENT SB327, *supra* note 34, at 10.
46. IND. CODE § 6-1.1-31.7-3.5.
47. 2005 Ind. Legis. P.L. 228-2005 (S.E.A. 327) § 35 (West).
48. *Id.* § 36-37.
49. *Id.* § 33.
50. *Id.* § 38.
51. IND. CODE § 6-1.1-5-15.
52. *Id.* § 6-1.1-28-1.
53. *Id.* § 6-1.1-17-13.
54. *Id.* §§ 6-3.5-7-25, -25.5, -26; 255 Ind. Legis. P.L. 199-2005 (S.E.A. 496) § 46 (West).

homestead credit funded from the County Economic Development Income Tax.[55] Also, a deduction from property taxes for inventory assessed in 2005 was extended.[56]

The General Assembly also authorized the fiscal body of a local unit of government to review a public library board's operating budget if the board is made up of a majority of appointed members (vs. elected) and has proposed a tax levy increase of over 5%.[57]

Further, the General Assembly passed legislation which set forth a new property tax assessment method for certain low income rental property.[58] Beginning with property taxes paid in 2007, this law sets the assessed value of low income rental housing that is eligible for Section 42 credits at the greater of (1) the amount determined under the income capitalization method or (2) the value that would result in taxes equal to 5% of the annual total gross rents for the property.[59] This provision's effect on the assessed value of low income housing is unknown at this time, but could result in an increase in the assessments of some properties.[60]

B. Local Taxation

The distribution formula of the Vanderburgh County Innkeeper's Tax was altered by the General Assembly in order to extend the deadlines when distributions would cease and the legislation specifically changed the distributions to the Convention Center Operating Fund and the Tourism Capital Improvement Fund.[61]

The General Assembly also adopted several changes to the way local option income taxes were redistributed to local units of government. The formula now excludes property taxes which were used to pay debt issued after June 2005 and includes the previous year's distribution to the local unit.[62] This legislation also allows the IDSR to make adjustments to certified distributions when a local unit increases the local option tax rate.[63]

Further, as a means to help fund the construction of a new stadium for the Indianapolis Colts, the General Assembly authorized Indianapolis to increase the rates of the following taxes: (1) the County Supplemental Auto Rental Excise Tax; (2) the County Innkeeper's Tax; (3) the County Food and Beverage Tax;

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55. LEGIS. SERVS. AGENCY, FISCAL IMPACT STATEMENT SB496, at 2 (2005) [hereinafter FISCAL IMPACT STATEMENT SB496], *available at* http://www.in.gov/legislative/bills/2005/PDF/FISCAL/SB0496.009.pdf.

56. IND. CODE § 6-1.1-12-41.

57. *Id.* §§ 6-1.1-17-20; 36-12-14.

58. *Id.* § 6-1.1-4-39.

59. *Id.* § 6-1.1-4-41.

60. *See id.*

61. *Id.* §§ 6-9-2.5-7 to -7.7.

62. *Id.* § 6-3.5-1.1-1.

63. *Id.* §§ 6-3.5-1.1-9, -12, -14, -15; 6-3.5-6-1.1, -17, -18; 6-3.5-7-11.

and (4) the County Admissions Tax.[64] This legislation also repealed the law which would have terminated the Marion County Food and Beverage Tax.

In addition, in an effort to spread out the cost of the Colts stadium, the General Assembly authorized the counties contiguous to Marion County and certain municipalities located in those counties, to adopt a Food and Beverage Tax.[65] These revenues are also dedicated to stadium funding.[66]

Further, Lake and Porter counties were authorized by the General Assembly to impose a 1% Food and Beverage Tax.[67] The revenue from these taxes is to be dedicated to the Northwest Indiana Regional Development Authority ("NIRDA").[68] Also, if Porter County increases its County Economic Development Income Tax ("CEDIT") rate, the first $3.5 million of the tax revenue that results each year from the rate increase must be used by the county to make the county's required transfer to NIRDA.[69] The legislation also authorized Lake and Porter counties to use CEDIT revenue to provide additional homestead credits for property taxes.[70]

In addition, the General Assembly authorized Howard County to increase the County Option Income Tax ("COIT") rate by 0.25% over the current maximum rate to operate a county jail or juvenile center.[71] Similarly, this legislation provided that Miami County could increase the COIT rate by 0.25% over the current maximum rate to finance a county jail.[72]

The General Assembly also allowed the Evansville city council to impose a Supplemental Auto Rental Excise Tax in Vanderburgh County,[73] and Tippecanoe County was permitted to increase its Innkeeper's Tax from 5% to 6%.[74] Additionally, Hendricks County was authorized to impose an Innkeeper's Tax to replace the Innkeeper's Tax it currently imposes under the Uniform Innkeeper's Tax Law.[75]

In addition, Wayne County and, under certain conditions, municipalities in Wayne County were authorized by the General Assembly to impose a Food and Beverage Tax.[76] The town of Avon and the city of Martinsville were also authorized to impose a Food and Beverage Tax.[77]

As an additional means to provide funding for the new Colts stadium and

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64. *Id.* §§ 6-9-8-3; 6–9-12-5; 6-9-12-8; 6-9-13-1, -2.
65. *Id.* §§ 6-9-35-1 to -16.
66. *Id.*
67. *Id.* § 6-9-36-8.
68. *Id.* §§ 6-9-36-1 to -8.
69. *Id.* § 6-3.5-7-13.1.
70. *Id.*
71. *Id.* § 6-3.5-6-28.
72. *Id.* §§ 6-3.5-6-27; 6-3.5-7-5.
73. *Id.* §§ 6-6-9.5-1 to -13.
74. *Id.* §§ 6-9-7-6, -7, -9.
75. *Id.* §§ 6-9-37-1 to -8.
76. *Id.* §§ 6-9-38-1 to -26.
77. *Id.* §§ 6-9-27-1 to -10.

convention center, the General Assembly authorized the Budget Director to increase the amount of Indiana tax revenue that is annually captured by the Marion County Professional Sports Development Area.[78] This law authorizes such Development Area to capture $11 million in addition to the previous tax revenue capture limitation of $5 million.[79] Among the tax revenues that can be captured are the Indiana sales and use taxes and the Indiana adjusted gross income tax.[80]

Also, the General Assembly directed Lake County to distribute 25% of the Admissions Tax revenue to the municipalities of Cedar Lake, Crown Point, Dyer, Griffith, Highland, Hobart, Lake Station, Lowell, Merrillville, Munster, New Chicago, St. John, Schererville, Schneider, Winfield, and Whiting.[81] The legislation provided that these municipalities may only use the revenue distributed by the county for infrastructure purposes.[82]

The General Assembly also passed legislation authorizing a civil taxing unit to use their distributive share of CEDIT for any lawful purpose.[83] Previously, CEDIT revenues could only be used for:

(1) replacement of lost property tax revenue from schools and taxing units due to the homestead credit;
(2) operation of public communications systems and computer facilities;
(3) operation of public transportation corporations;
(4) finance certain economic development project bonds;
(5) to fund certain redevelopment initiatives in Marion County; and,
(6) to make allocations of distributive shares to civil taxing units.[84]

Further, a county, city, or town may use COIT revenue for any lawful purpose.[85] Before passage of this law, COIT revenues could be used for several purposes including:

(1) county, city, or town economic or capital development projects;
(2) capital improvement plans;
(3) fund increased homestead credit due to the reduction of state and county inventory taxes; and
(4) maintenance of courthouse facilities.[86]

The General Assembly extended Henry County's authority to pay for capital improvements with Food and Beverage Tax revenues from December 31, 2004,

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78. *Id.* § 36-7-31-14.1.

79. *Id.*

80. *Id.*

81. *Id.* §§ 4-33-12.5-1 to -8. Note: this legislation was a codification of current practice in Lake County. *See* FISCAL IMPACT STATEMENT 1120, *supra* note 16, at 18.

82. IND. CODE § 4-33-12.5-8.

83. *Id.* § 6-3.5-7-13.1(b)(3).

84. *Id.*

85. *Id.* § 6-3.5-6-19.

86. *Id.*

to December 31, 2015.[87] This legislation also extended for the same period Henry County's authority to issue bonds or enter into leases or other obligations payable from Food and Beverage Tax revenues.[88] In amending these statutory provisions, the General Assembly also listed the unique characteristics of Henry County which allow for this localized type of legislation.[89]

The General Assembly also specified that Henry County may use the Food and Beverage Tax revenues to pay facility costs and authorized the use of other available resources to be pledged to bonds payable from Food and Beverage Tax revenues.[90] The new law provides that these bonds can only be issued for a term not to exceed twenty years.[91]

C. Inheritance Tax

The General Assembly adopted legislation automatically extending the due date for the Indiana inheritance tax return if the Internal Revenue Service allows an extension for a Federal Estate Tax return.[92] The extension for the Indiana return will be the same as the extension for the Federal return.[93]

Additionally, the General Assembly enacted legislation stating that, for the purpose of the inheritance tax:

> (1) an individual adopted as an adult shall be treated as the natural child of the adopting parent, if the adoption was finalized before July 1, 2004 (former law required an individual to be adopted before being emancipated in order to be treated as the natural child of the adopting parent);
> (2) a stepchild of the transferor is a Class A beneficiary, whether or not the stepchild is adopted by the transferor; and
> (3) a lineal descendant of a stepchild of a transferor, whether or not the stepchild is adopted by the transferor, is a Class A transferee.[94]

D. Sales and Use Tax

The General Assembly adopted statutory changes to conform Indiana's definition of tobacco to the requirements of the Streamlined Sales and Use Tax Agreement.[95] Also, sellers and certified service providers are allowed the same monetary allowances as provided in the Agreement.[96]

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87. *Id.* § 6-9-25-9.5.
88. *Id.*
89. *Id.* § 6-9-25-1.
90. *Id.* § 6-9-25-11.5.
91. *Id.*
92. *Id.* § 6-4.1-4-2.
93. *Id.*
94. *Id.* § 6-4.1-1-3.
95. *Id.* §§ 6-2.5-1-28; 6-2.5-5-20.
96. *Id.* § 6-2.5-11-10.

Additionally, the General Assembly established a partial sales tax exemption for purchases of cargo trailers and recreational vehicles if the trailer or vehicle was to be titled or registered for use in another state.[97] The exemption for these purchases is equal to the sales tax imposed in Indiana minus the sales tax that would have been imposed in the state of title or registration.[98] This exemption effectively allowed nonresident purchasers of cargo trailers and recreational vehicles to pay sales tax to Indiana at the same rate the nonresident would have paid had they purchased the item in their home state.[99]

The General Assembly also established a full sales tax exemption for aircraft that are purchased in Indiana to be titled or registered for use in another state.[100]

The General Assembly also made changes to and established new Indiana sales and use tax exemptions. Legislation was adopted that provides a sales and use tax exemption for tangible personal property that: (1) is leased, owned, or operated by a professional racing team; and (2) comprises any part of a professional motor racing vehicle, excluding tires and accessories.[101] This was a statutory expansion of this exemption, but the IDSR had previously been applying the exemption in this manner.[102]

The General Assembly also provided a refund of 50% of the sales taxes paid on transactions involving research and development equipment for fiscal year 2006 and fiscal year 2007.[103] Further, the General Assembly established a full sales tax exemption on research and development equipment beginning in fiscal year 2008.[104]

E. Miscellaneous

Businesses that operate on closed military bases receive tax incentives such as a sales tax exemption for utility purchases, a Corporate Adjusted Gross Income ("AGI") tax rate reduction, and an AGI tax credit for equity and debt financing.[105] In 2005, the General Assembly passed legislation which allows these same tax incentives for a business located in a "Qualified Military Base Enhancement Areas."[106] Qualified Military Base Enhancement Areas include certified technology parks located within a five mile radius of the Crane Naval Warfare Center.[107]

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97. *Id.* § 6-2.5-5-39.
98. *Id.*
99. *Id.*
100. *Id.*
101. *Id.* § 6-2.5-5-37; *see* FISCAL IMPACT STATEMENT SB1, *supra* note 24, at 3.
102. *Id.*
103. IND. CODE § 6-2.5-6-16.
104. *Id.* § 6-2.5-5-40.
105. *Id.* §§ 36-7-34-1 to -5.
106. *Id.*
107. LEGIS. SERVS. AGENCY, FISCAL IMPACT STATEMENT SB571, at 1 (2005) (explaining IND. CODE § 36-7-34 (2005)), *available at* http://www.ing.gov/legislative/bills/2005/PDF/FISCAL/

The Indiana Earned Income Tax Credit (which equals 6% of the Federal Earned Income Credit) was scheduled to sunset on December 31, 2005. The General Assembly extended the sunset date to December 31, 2011.[108]

The General Assembly also updated the Indiana tax code to include reference to certain Internal Revenue Code regulations.[109] This legislation requires that: "(1) 'Section 179 property' deductions in excess of $25,000 per year; and (2) 'Section 199' domestic production activities deductions allowed for federal income tax purposes be added back for state income tax purposes."[110]

The budget law also contained a provision to continue to use the 2006 formula for computing the county Hospital Care for the Indigent property tax levy through calendar year 2008.[111] Before passage of this provision, the law was set to change this formula in 2007.[112]

An emergency rule adopted by the Indiana Gaming Commission in April 2005 was voided by the General Assembly.[113] The rule was adopted to impose a transfer fee when the controlling interest in a riverboat license is transferred.[114] Under the emergency rule, the transfer fee would be equal to 1% of the adjusted gross wagering receipts generated during the preceding fiscal year by the riverboat being transferred.[115] The law also voided any other rule adopted after April 1, 2005, by the Indiana Gaming Commission that establishes a transfer fee for riverboat licenses, including operating permits.[116]

The Tax Amnesty Program was established in the 2005 session. This program allowed a waiver of unpaid interest, penalties, and fees upon payment of delinquent taxes during the amnesty period.[117] This legislation also allowed waiver of interest, penalties, and fees if the taxpayer paid the delinquent taxes in conformity with a payment plan established by the IDSR.[118] The amnesty period was required to be set by the IDSR, could last no longer than eight business weeks, and is required to end no later than July 1, 2006.[119]

The General Assembly increased the amount of Voluntary Remediation Tax Credits allowed in a state fiscal year to $2 million.[120] The period for which the credit may be claimed was extended to taxable years beginning before December

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SB0571.008.pdf.

108. IND. CODE § 6-3.1-21-10.

109. *Id.* §§ 6-3-1-3.5; 6-3-1-11; 6-1-3-33; 6-5.5-1-2; 6-5.5-1-20; 2005 Ind. Legis. Serv. P.L. 246-2005 (H.E.A. 1001) (West).

110. FISCAL IMPACT STATEMENT 1001, *supra* note 4, at 2.

111. IND. CODE § 12-16-14-3.

112. *Id.*

113. FISCAL IMPACT STATEMENT 1001, *supra* note 4, at 2.

114. *Id.*

115. *Id.*

116. *Id.*

117. IND. CODE § 6-8.1-3-17.

118. *Id.*

119. *Id.*

120. *Id.* § 6-3.1-23-15.

31, 2007.[121] This legislation also changed the entity that approves this credit to the Indiana Development Finance Authority.[122] This law also changed the calculation of the amount of the credit.[123]

Another tax incentive law passed by the General Assembly includes the Enterprise Zone ("EZ") Investment Deduction. This deduction allows a taxpayer who makes a qualified investment in EZ property[124] to obtain a deduction against the assessed value of the property.[125] The legislation also requires the EZ Investment deduction to be added to the calculation of the fee owed by the taxpayer to the EZ Fund.[126]

If Indiana becomes responsible for administering the Federal Unemployment Tax Act,[127] the General Assembly authorized the Department of Workforce Development to increase the unemployment tax from 3.1% to 3.5%.[128]

The General Assembly also passed a provision that required the Indiana Economic Development Council to begin administering the Economic Development for a Growing Economy Tax Credit and the Hoosier Business Investment Tax Credit on February 9, 2005, instead of July 1, 2005.[129]

In the 2005 session, the General Assembly extended from December 31, 2005, to December 31, 2011, the deadline for allowing the establishment of a new tax increment financing allocation area.[130] This legislation also provides that this deadline will be automatically extended unless the General Assembly enacts a statute that terminates the automatic extensions and sets a final deadline.[131]

Additionally, the General Assembly extended the deadline for a local unit of government to designate an area an economic revitalization area or an economic development project district from December 31, 2005, to December 31, 2011.[132]

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121. *Id.* § 6-3.1-23-16.

122. *Id.* § 6-3.1-23-5. Previously these credits were approved by the local fiscal body.

123. *Id.* § 6-3.1-23-6. The calculation results in a credit equal to the lesser of: (1) $200,000; or (2) the sum of the first $100,000 of qualified investment, plus 50% of the qualified investment over $100,000.

124. *Id.* § 6-1.1-45-7. Under the bill, qualified investment at an EZ location includes: (1) purchase of a building, new manufacturing or production equipment, or new computers and related office equipment; (2) costs associated with the repair, rehabilitation, or modernization of an existing building and related improvements; (3) onsite infrastructure improvements; (4) construction of a new building; and (5) costs associated with retooling existing machinery. FISCAL IMPACT STATEMENT 1120, *supra* note 16, at 21.

125. IND. CODE § 6-1.1-45-9.

126. FISCAL IMPACT STATEMENT 1120, *supra* note 16, at 7. "Businesses receiving EZ incentives must pay a fee equal to 1% of the incentives obtained by the business if the incentives exceed $1,000 during the year."

127. 26 U.S.C. §§ 3301-3311 (2000).

128. IND. CODE § 22-4-37-3.

129. FISCAL IMPACT STATEMENT 1120, *supra* note 16, at 5.

130. IND. CODE § 36-7-14-39.

131. *Id.* §§ 36-7-14-39; 36-7-15.1-26, -53.

132. *Id.* § 6-1.1-12.1-9.

These districts allow a local unit of government to provide property tax deductions and abatements for certain items and properties.[133] This law also repealed the geographic limitations for tax abatements for new logistical distribution equipment and new information technology equipment. Previously these abatements were only allowed for certain counties located along Interstate Highway 69.

The General Assembly passed legislation that prohibits the Alcohol and Tobacco Commission from issuing, renewing, or transferring any alcoholic beverage permit if the applicant has not paid Innkeeper's Taxes that are currently due.[134]

Legislation also passed which increased the qualified research expense credit from 10% to 15% on the first $1 million of investment for taxable years beginning after December 31, 2007.[135] The carryover term for this credit was also reduced from fifteen years to ten years.[136]

Also, the General Assembly elected to increase the aggregate amount of venture capital investment tax credits that may be awarded in a calendar year from $10 million to $12.5 million.[137] The carryover for this credit was also limited to five taxable years.[138] The law excludes certain debt financing of financial institutions from qualifying for credit.[139] Also, companies who are involved with professional motor vehicle racing were made eligible for this credit.[140]

The General Assembly established a headquarters relocation tax credit which provides a business that relocates its corporate headquarters to Indiana a credit against its state tax liability equal to 50% of the costs incurred in relocating the headquarters.[141]

The General Assembly also passed legislation allowing the Indiana Supreme Court to appoint a senior judge to serve on the Tax Court.[142]

The General Assembly established an income tax credit for biodiesel, blended biodiesel, and ethanol production.[143] The Indiana Economic

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133. *Id.* §§ 6-1.1-12.1-1, -2, -5.6; 6-1.1-39-2.

134. *Id.* § 7.1-3-21-15.

135. *Id.* § 6-3.1-4-2.

136. *Id.* §§ 6-3.1-4-1, -3, -7.

137. *Id.* § 6-3.1-24-9.

138. *Id.* § 6-3.1-24-12.

139. *Id.* §§ 6-3.1-24-3, -12.5. Note: this exclusion applies "to debt financing provided by a financial institution after May 15, 2005, if it is secured by a mortgage or other agreement that establishes a collateral or security position for the financial institution that is senior to collateral or security interests of other investors in the qualified company." FISCAL IMPACT STATEMENT SB1, *supra* note 24, at 5.

140. IND. CODE § 6-3.1-24-7.

141. *Id.* §§ 6-3.1-30-1 to -13.

142. *Id.* §§ 33-23-3-1,-4.

143. *Id.* §§ 6-3.1-27-1 to -13; 6-3.1-28-1 to -11.

Development Corporation is required to review and approve these credits.[144] The law set a cap of $20 million on the total number of credits that may be provided for all taxable years.[145] The credit can be carried over for six taxable years.[146]

The General Assembly extended the blended biodiesel retailer tax credit to dealers that distribute blended biodiesel at retail by means other than a metered pump.[147] This credit may not be taken after December 31, 2006.[148]

A taxpayer, who opens an integrated coal gasification power plant and agrees to use Indiana coal in the power plant is eligible to receive a tax credit under legislation adopted by the General Assembly. The credit is to be taken in installments over ten years and is equal to the sum of: (1) 10% of the first $500 million of qualified investment; plus (2) 5% of any qualified investment over $500 million.[149]

The General Assembly adopted several changes to the Economic Development for a Growing Economy ("EDGE") tax credit. The Indiana Economic Development Corporation ("IEDC"), in evaluation of EDGE credit applications, is required to

> determine whether the average compensation paid by the applicant during the applicant's previous fiscal year exceeds: (1) the average compensation paid to employees working in the same industry sector to which the applicant's business belongs within the county in which the applicant's business is located, if there is more than one business in that industry sector in the county; (2) the average compensation paid to employees working in the same industry sector to which the applicant's business belongs in Indiana, if the applicant's business is the only business in that industry sector in the county in which the applicant's business is located but there is more than one business in that industry sector in Indiana; or, (3) twice the federal minimum wage, if the applicant's business is the only business in Indiana in the industry sector to which the applicant's business belongs.[150]

Additionally, the IEDC is permitted to consider other wage comparisons in evaluating an EDGE credit application.[151]

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144. *Id.*

145. *Id.* §§ 6-3.1-27-9.5; 6-3.1-28-11.

146. *Id.* §§ 6-3.1-27-12; 6-3.1-28-9.

147. *Id.* § 6-3.1-27-3.2.

148. *Id.* § 6-3.1-27-10.

149. *Id.* §§ 6-3.1-29-1 to -21.

150. LEGIS. SERVS. AGENCY, FISCAL IMPACT STATEMENT SB414, at 1 (2005) [hereinafter FISCAL IMPACT STATEMENT SB414], *available at* http://www.in.gov/legislative/bills/2005/PDF/FISCAL/SB0414.009.pdf (explaining IND. CODE § 6-3.1-13-17 (2005)).

151. IND. CODE §§ 6-3.1-13-15.5, -21.

> The bill also provides that the IEDC may, in evaluating an EDGE credit application to create jobs in Indiana after December 31, 2005, consider whether the average wage paid by the applicant exceeds the average wage paid to: (1) all employees working in the

Further, when an EDGE credit is granted to retain existing jobs, an applicant is no longer required to provide evidence of a competing job site.[152] This legislation also reduced the number of employees, from 200 to seventy-five, which the applicant must employ.[153]

If a business receiving an EDGE credit is "located in a Community Revitalization Enhancement District (CRED) or Certified Technology Park (CTP), the political subdivision that created the CRED or CTP must have adopted an ordinance recommending a credit at least as large as the EDGE credit amount awarded by the IEDC."[154] Additionally, EDGE credits that are granted to businesses in a CRED or CTP are required to be deducted from the income tax increment amount the state pays to a CRED or CTP.[155] Also, in the statutory provisions concerning CTPs, this legislation set forth definitions for both the gross retail and income incremental amounts.[156]

Applicants for an EDGE credit must agree to maintain operations for at least two years after the last year in which a credit or carryover is claimed.[157] Previously an applicant had to agree to maintain operations in the state for a period twice as long as the term of the credit.[158] Also, the $5 million statewide annual cap on EDGE credits for job retention was extended through the 2006 and 2007 state fiscal years.[159]

The General Assembly authorized Department of Defense aerospace contractors to calculate the research expense tax credit in a different way. The calculation allows the contractor to multiply the difference between the contractor's qualified research expenses for the taxable year and 50% of the average of the contractor's qualified research expenses for the preceding three taxable years by a percentage to be determined by the IEDC that may not to

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same industry sector to which the applicant's business belongs in the county in which the applicant's business is located, if there is more than one business in that industry sector in the county; (2) all employees working in the same industry sector to which the applicant's business belongs in Indiana, if the applicant's business is the only business in that industry sector in the county in which the applicant's business is located but there is more than one business in that industry sector in Indiana; or (3) all employees working in the county in which the applicant's business is located, if the applicant's business is the only business in Indiana in the industry sector to which the applicant's business belongs.

FISCAL IMPACT STATEMENT SB414, *supra* note 150, at 1.

152. *Id.* at 2.

153. *Id.*; IND. CODE § 6-3.1-13-15.5.

154. FISCAL IMPACT STATEMENT SB414, *supra* note 150, at 2 (explaining IND. CODE § 6-3.1-13-15).

155. FISCAL IMPACT STATEMENT SB496, *supra* note 55, at 1.

156. IND. CODE §§ 36-7-13-2.6, -3.4; 36-7-32-6.5, -8.5.

157. FISCAL IMPACT STATEMENT SB414, *supra* note 150, at 2.

158. *Id.* §§ 6-3.1-13-19, -19.5.

159. *Id.* § 6-3.1-13-18.

exceed 10%.[160]

The General Assembly also added provisions to various statutes, which provisions require notice to be given to any taxing unit that is affected by the creation of a Community Revitalization Enhancement District or a Professional Sports Development Area.[161]

Previously, the Hoosier business investment tax credit was allowed for the lesser of the company's state tax liability growth or 30% of an investment which met certain conditions provided in statute. That amount was changed from 30% to a percentage to be determined by the IEDC, and the state liability tax growth option was deleted.[162] The percentage determined by the IEDC is not allowed to exceed 10%.[163] This legislation also removed the residency requirement for the credit.[164] The IEDC is also allowed to specify the carryover for this credit, but the carryover period may not exceed nine years.[165]

This legislation also contained provisions which added both of the following items to the list of allowable expenses for the Hoosier business investment tax credit: (1) distribution, transportation, and logistical distribution equipment; and (2) costs incurred before 2008 relating to motion picture or audio production.[166] The General Assembly also opted to limit a taxpayer to one state tax credit per project.[167]

II. INDIANA SUPREME COURT DECISIONS

The Indiana Supreme Court ("supreme court") rendered a variety of opinions from January 1, 2005, to December 31, 2005. The supreme court issued four opinions in the area of taxation, and all four decisions related to property tax.

1. Lake County Property Tax Assessment Board of Appeals v. BP Amoco Corp.[168]—In May of 1999, BP Amoco Corporation ("BP") filed an appeal seeking refund of taxes paid from 1995 to 1999 on its Lake County personal property, which it claimed were "illegal as a matter of law."[169] BP's "specific claim was that the county had 'systematically underassessed property in Lake County to [its] detriment.'"[170] At the time of this appeal, Indiana law only allowed challenges to assessments on this basis, but only in the year of assessment.[171] Therefore, the supreme court held that the 1995 through 1998

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160. *Id.* § 6-3.1-4-2.5.
161. *Id.* §§ 36-7-13-10.5, -12, -12.1, -13; 36-7-31-12; 36-7-31.3-11.
162. *Id.* § 6-3.1-26-14.
163. *Id.*
164. *Id.* § 6-3.1-26-18.
165. *Id.* § 6-3.1-26-15.
166. *Id.* §§ 6-3.1-26-5.5, -8.
167. *Id.* § 6-3.1-1-3.
168. 820 N.E.2d 1231 (Ind.), *reh'g denied* (Ind. 2005).
169. *Id.* at 1232.
170. *Id.*
171. Procedures for assessment are at IND. CODE § 6-1.1-15-1, and 50 IND. ADMIN. CODE 4.2-

appeals were properly dismissed.[172] BP attempted to appeal the 1995 through 1998 assessments on a "Form 133, Petition for Correction of Error," which allows an appeal of an assessment within three years of the date the taxes were first due and payable.[173] Neither the IBTR nor the Tax Court allowed BP to present evidence that the assessment was illegal as a matter of law using Form 133.[174] The property tax authorities dismissed BP's claim holding that the statute[175] allows retrospective relief on Form 133 if the *taxes* were illegal as a matter of law, but does not entitle relief on Form 133 if the *assessment* was illegal as a matter of law.[176] The Tax Court held that although the claims were not on the proper form, BP was entitled to an administrative hearing to attempt to support the allegations it had claimed on the incorrect forms.[177] The supreme court reversed the Tax Court, resting almost solely on its interpretation of Regulation 3-12.[178] The supreme court cited Regulation 3-12, which "explicitly states that 'these forms . . . are not to be used to challenge the methodology used in generating an assessment. There are appeal provisions for that purpose.'"[179] The supreme court found that since BP was "clearly challenging the methodology used in generating the assessment of its property"[180] its appeals for taxes paid in 1995 through 1998 were properly dismissed by the property tax authorities.[181]

2. Lake County Property Tax Assessment Board of Appeals v. U.S. Steel Corp.[182]—U.S. Steel ("USS") filed for a refund of property taxes it contended had been illegally imposed and overpaid for property taxes payable in 1995 through 1997.[183] USS filed using Form 133, Petition for Correction of Error and Form 17T, Petition for Refund.[184] USS claimed that local property tax officials had illegally reduced the assessed valuation of all other property in the taxing jurisdiction, therefore improperly imposing an inflated amount of property taxes on USS's property.[185] The IBTR dismissed USS's claim for lack of subject matter jurisdiction because the claim involved the county's tax rate.[186] The Tax Court rejected this view by the IBTR in holding that subject matter jurisdiction existed because the only question was whether Lake County's reduction of the

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3-3 (2005).

172. *Amoco*, 820 N.E.2d at 1232.

173. *Id.* at 1233.

174. *Id.*

175. IND. CODE § 6-1.1-15-12.

176. *Amoco*, 820 N.E.2d at 1233.

177. *Id.*

178. *Id.* at 1234-35 (citing 50 IND. ADMIN. CODE 4.2-3-12).

179. *Id.* at 1235 (quoting 50 IND. ADMIN. CODE 4.2-3-12(a)).

180. *Id.* at 1236.

181. *Id.* at 1237.

182. 820 N.E.2d 1237 (Ind.), *reh'g denied* (Ind. 2005).

183. *Id.* at 1238.

184. *Id.*

185. *Id.*

186. *Id.* at 1239.

assessed value was, as a matter of law, illegal.[187] The supreme court, in affirming in part and reversing in part, agreed that subject matter jurisdiction existed, but disagreed that the appeal by USS was properly filed.[188] The supreme court found that the taxes must be determined illegal as a matter of law in the year of assessment on Form 130.[189] Also, the supreme court agreed that a taxpayer could file a Form 133, Petition for Correction of Error to obtain an adjustment to an assessment or property tax refund only after a timely determination was made that the taxes were, as a matter of law, illegal.[190] Therefore, the supreme court held that dismissal by the IBTR of USS's appeal on Form 133 was proper because USS had not filed a Form 130 in the year of assessment to allow a determination that the taxes were illegal.[191]

3. State *ex rel.* Attorney General v. Lake Superior Court.[192]—Miller Citizens Corporation ("MCC") is a group of taxpayers from Lake County who challenged, in Lake Superior Court, the constitutionality of certain statutes passed in 2001 by the General Assembly.[193] These statutes, which applied only to Lake County, provided for a countywide reassessment to be conducted by the DLGF and private contractors selected by the DLGF.[194] The Lake Superior Court sided with MCC, holding the statutes unconstitutional, and enjoined the taxing authorities in Lake County from sending out the 2003 tax bills, which were already delayed.[195] The Indiana Attorney General filed for a writ of mandamus from the supreme court claiming that exclusive jurisdiction lay with the Tax Court and also filed an appeal of the preliminary injunction on the tax bills.[196] The supreme court stayed the injunction and then held that Lake Superior Court did not have jurisdiction.[197] The supreme court, in recognizing the "broad public interest"[198] in this case, chose to decide the merits of the claims presented.[199] The supreme court held that the statutes did violate "Article IV, Section 22, of the Indiana Constitution as special legislation,"[200] but also held that the injunction could not be sought because MCC waited too long to seek this equitable relief.[201] The

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187. *Id.*

188. *Id.* at 1240.

189. *Id.*

190. *Id.*

191. *Id.*

192. 820 N.E.2d 1240 (Ind.), *cert. denied sub nom.* Miller Citizens Corp. v. Carter, 126 S. Ct. 398 (2005).

193. *Id.* at 1243.

194. *Id.*

195. *Id.*

196. *Id.* at 1243-44.

197. *Id.* at 1244.

198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.*

supreme court relied solely on its decision in *State v. Sproles*[202] in responding to the jurisdictional questions. The supreme court did not agree with MCC's arguments that these laws violated article IV, section 23, article X, section 1, or article I, section 23 of the Indiana Constitution.[203] In analyzing the merits of the special legislation claims made by the MCC, the supreme court held that this was special legislation since Lake County was defined by population parameters in the bill, and the law itself was not rationally related to population and seemed to be derived from the troubled history of property taxation in Lake County.[204] The State argued that even if this is special legislation, article IV, section 22[205] did not apply since it was written "prohibiting local laws that 'provide for the assessment and collection of taxes.'"[206] The supreme court relied on its decision in the *Kinsey*[207] case, where the court held that "a law limited to a given county is prohibited unless "there are inherent characteristics of the affected locale that justify local legislation."[208] The supreme court found that Lake County's unique conditions of "widespread tax inequities and unusual violations" were enough to satisfy the holding in *Kimsey*.[209] The supreme court did not agree, citing the constitutional debates, which the supreme court held made it "clear that lack of uniform assessment practices was one of the principal concerns underlying" both article X, section I and article IV, section 22.[210] The supreme court held that the laws concerning assessment in Lake County did not violate article IV, section 23 "which requires that 'where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State.'"[211] The supreme court relied on its decision in the *Kimsey*[212] case, where the court held that "a law limited to a given county is prohibited unless 'there are inherent characteristics of the affected locale that justify local legislation.'"[213] The supreme court found that Lake County's unique conditions of "widespread tax inequities and unusual valuations" were enough to satisfy the holding in *Kimsey*.[214] The supreme court held that these Lake County statutes did not violate article X, section 1, which requires a "uniform and equal rate"[215] of assessment.[216] The supreme court rationalized that these statutes only required a different party to conduct the

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202. 672 N.E.2d 1353 (Ind. 1996).
203. *Lake Superior Court*, 820 N.E.2d at 1245.
204. *Id.* at 1247-48.
205. IND. CONST. art. IV, § 22.
206. *Lake Superior Court*, 820 N.E.2d at 1248 (quoting IND. CONST. art. IV, § 22).
207. City of South Bend v. Kinsey, 781 N.E.2d 683 (Ind. 2003).
208. *Lake Superior Court*, 820 N.E.2d at 1249 (citing *Kinsey*, 781 N.E.2d at 692).
209. *Id.* at 1250.
210. *Id.* at 1248.
211. *Id.* at 1249 (quoting IND. CONST. art. IV, § 23).
212. City of South Bend v. Kimsey, 781 N.E.2d 683 (Ind. 2003).
213. *Lake Superior Court*, 820 N.E.2d at 1249 (citing *Kimsey*, 781 N.E.2d at 692).
214. *Id.* at 1250.
215. IND. CONST. art. X, § 1.
216. *Lake Superior Court*, 820 N.E.2d at 1250.

assessment, but that the assessment would be conducted under the same rules as all other county assessments.[217] These statutes were found not to violate article I, section 23 by the supreme court because the inherent characteristics found for article IV, section 23 were enough to justify the classification under this provision as well.[218] MCC also claimed that they had a constitutional right to have local officials conduct their assessments, since local officials would better understand the area and the effects of their assessment.[219] The supreme court did not find a provision of the constitution which guaranteed assessment by locally elected officials.[220] The supreme court also dismissed the article I, section 21, "takings" argument as frivolous and dismissed the MCC's general arguments questioning the wisdom of the legislation which raised no constitutional issue.[221] The supreme court then held that even though this statute was unconstitutional, the General Assembly has since passed "curative legislation" which allows the DLGF to conduct or contract with a private party to conduct assessments in any county.[222] The supreme court found that the "curative legislation" made the 2002 reassessment valid.[223] In the end, the supreme court held the injunctive relief was improperly granted, both on the basis of laches and on the basis that injunctive relief now would be so inequitably trying for the government, that it could not be justified in this circumstance.[224] The supreme court vacated the preliminary injunction and remanded the case with instructions to dismiss for lack of jurisdiction.[225] Justice Rucker, dissenting in part, disagreed that the "curative legislation" was in fact intended to be curative.[226] He argued that since the legislation in 2004 specifically excluded the section regarding Lake County, it was specifically intended not to cure the 2001 legislation.[227] Justice Rucker also found that the best argument for MCC was that the taxes collected pursuant to these statutes were illegal as a matter of law.[228] Justice Rucker stated that these taxes were illegal as a matter of law since the statutes under which assessment for these taxes took place were unconstitutional.[229]

4. Department of Local Government Finance v. Commonwealth Edison Co. of Indiana.[230]—Commonwealth Edison Co. of Indiana ("Commonwealth"), an electric utility, asked the Indiana state property tax authorities to grant

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217. *Id.*
218. *Id.*
219. *Id.* at 1251.
220. *Id.*
221. *Id.*
222. *Id.* at 1252-54.
223. *Id.* at 1254.
224. *Id.* at 1255-56.
225. *Id.* at 1256.
226. *Id.* at 1259 (Rucker, J., concurring and dissenting).
227. *Id.*
228. *Id.*
229. *Id.* at 1260.
230. 820 N.E.2d 1222 (Ind.), *reh'g denied* (Ind. 2005).

Commonwealth property tax relief to its property in Lake County because they claimed residential property owners in Lake County paid less in property taxes than Indiana law required.[231] Commonwealth, as basis for its claim, provided a study which showed that the assessed valuation of residential property in Lake County was well below fair market value.[232] The supreme court held that the State property tax authorities properly dismissed Commonwealth's claim because Indiana law at the time of the assessments required that assessed value be based on the property's "true tax value"("TTV") rather than fair market value ("FMV").[233] Although this was the main holding in this case, the supreme court decided additional issues relating to Commonwealth's claim. The State argued that Commonwealth could not seek the relief of an "equalization adjustment" because Indiana law only allowed this remedy to be provided to a class of taxpayers.[234] The supreme court, relying on its decision in *Boehm v. Town of St. John*,[235] held that the statutes concerning utility distributable property[236] read together with the statutes for property taxpayers generally[237] did allow Commonwealth to contend that their property taxes were too high due to improper assessment of other property.[238] The supreme court pointed out that in *Town of St. John* the supreme court had allowed taxpayers to appeal their individual assessments to challenge the way all property was being assessed.[239] Commonwealth was therefore entitled to seek this relief.[240] Commonwealth next argued that since the State had provided this same relief on the same grounds, the State was precluded from denying these petitions.[241] The supreme court held that the instances of prior relief were settlements and to preclude denial of relief in this case would chill future settlements.[242] The supreme court also pointed to precedent disallowing use of equitable estoppel versus governmental entities.[243] The ISBTC originally denied Commonwealth's adjustments holding that since its equalization studies were based on FMV rather than TTV, the studies were irrelevant.[244] Commonwealth provided the studies to show that the ratio of their property's assessed value to the FMV was not uniform when compared with the ratio of other Lake County property's assessed value versus FMV.[245] The Tax

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231. *Id.* at 1224.
232. *Id.*
233. *Id.*
234. *Id.* at 1225.
235. 675 N.E.2d 318 (Ind. 1996).
236. IND. CODE § 6-1.1-8-30 (2005).
237. *Id.* § 6-1.1-15-1.
238. *Commonwealth Edison*, 820 N.E.2d at 1226.
239. *Id.*
240. *Id.* at 1227.
241. *Id.*
242. *Id.* at 1227-28.
243. *Id.* at 1228.
244. *Id.* at 1229.
245. *Id.*

Court held that Commonwealth was entitled to the adjustments because the equalization studies were sufficient to meet Commonwealth's burden of establishing a prima facie case on this issue.[246] Although the supreme court acknowledged the arguments against a TTV system, it nevertheless held that TTV was the measuring stick for determining uniformity of assessments at the time of the assessment at issue, and therefore FMV could not be used to measure the uniformity of the assessments in a particular area.[247]

III. INDIANA TAX COURT DECISIONS

The Tax Court rendered a variety of opinions from January 1, 2005, to December 31, 2005. Specifically, the Tax Court issued twenty-one published opinions, nine of which concerned Indiana real property tax matters. The remaining cases are divided as follows: five cases regarding Indiana sales and use tax; four cases involving income tax matters; two cases involving controlled substances excise tax; and one case involving inheritance tax. Each decision is summarized separately below.

A. Property Tax

1. Hurricane Food, Inc. v. White River Township Assessor.[248]—Hurricane Food, Inc. ("Hurricane") appealed the IBTR's determination valuing its real property for the March 2002 assessment date.[249] Hurricane owned a fast food restaurant in Johnson County, and the White River Township Assessor ("Assessor") valued the property at $634,200 ($297,300 for the land and $336,900 for the improvement).[250] The improvement was assigned an age of less than one year, a rating of "average," and not adjusted for physical depreciation.[251] Hurricane filed a Petition for Review of Assessment (Form 130) specifically claiming that the age should have been eight years on the improvement assessment, and the condition rating of "average" entitled Hurricane to a 35% physical depreciation adjustment.[252] The Property Tax Assessment Board of Appeals ("PTABOA") made no change to the assessment citing Hurricane's own admission that the purchase price for the property was $700,000 and finding "'th[at] sale price . . . is considered the [property's] best indication of value.'"[253] Hurricane then appealed to the IBTR, again challenging the age determination. The IBTR denied relief, holding that the assessed value was supported by market

246. *Id.*

247. *Id.* at 1230.

248. 836 N.E.2d 1069 (Ind. Tax Ct. 2005), *reh'g denied sub nom.* P/A Builders & Developers, LLC v. Jennings County Assessor, 842 N.E.2d 899 (Ind. Tax Ct. 2006).

249. *Id.* at 1071.

250. *Id.*

251. *Id.*

252. *Id.*

253. *Id.* (citing Cert. Admin. R. at 52-53).

data.[254] Hurricane then appealed to the Tax Court, and Hurricane had the burden to prove invalidity of the determination.[255] The Tax Court explained that real property was assessed (during the time at issue in this case) under a "true tax value system."[256] The Tax Court pointed out that this is not market value, but rather market value-in-use.[257] The Tax Court then went through the different methods an Assessor may use to arrive at this value.[258] The Assessor in this case admittedly used the cost approach and also adjusted the age to arrive at a value closer to the $700,000 purchase price, which was presumed to be the closest valuation of the market-in-use value.[259] The Tax Court reversed the PTABOA, finding that both the Assessor and the IBTR erred in including equipment purchased at $180,000 in reconciling the current assessment versus the purchase price.[260] The value of personal property was held to be separate and distinct from the value of real property.[261] Therefore the Tax Court held that the reconciliation of the assessment of Hurricane's improvement should have been compared to the purchase price of only the improvement.[262]

2. Fidelity Federal Savings & Loan v. Jennings County Assessor.[263]—Fidelity Federal Savings & Loan ("Fidelity") appealed the IBTR's valuation of Fidelity's improvement claiming it was too high.[264] Fidelity first filed a Form 130 with the Property Tax Assessment Board of Appeals.[265] PTABOA did not alter the assessment following Fidelity's appeal.[266] Fidelity's main claim was that they were entitled to a reduction of $10 per square foot for the assessment since the building on the property was without partitions.[267] Fidelity then filed with the IBTR, again claiming the negative interior partitioning adjustment, and the IBTR also denied relief.[268] Fidelity had the burden of proving that the IBTR's determination was invalid.[269] The Tax Court discussed the different methods of assessment used to arrive at the true tax value or market value-in-use.[270] The Tax Court reversed the IBTR, holding that Fidelity presented the prima facie evidence needed to shift the burden to the Assessor to rebut that

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254. *Id.*
255. *Id.* at 1072.
256. *Id.*
257. *Id.*
258. *Id.* at 1072-73.
259. *Id.* at 1073-74.
260. *Id.* at 1075.
261. *Id.*
262. *Id.*
263. 836 N.E.2d 1075 (Ind. Tax Ct. 2005).
264. *Id.* at 1078.
265. *Id.*
266. *Id.*
267. *Id.*
268. *Id.*
269. *Id.* at 1079.
270. *Id.*

evidence,[271] even though the Assessor did present rebuttal evidence about the sales price of a property which was vacant, remodeled, and sold as a bank.[272] The Tax Court held that the Assessor made only conclusions and presented no real evidence as to the actual similarities of the remodeled property and Fidelity's property.[273] The Tax Court also held that the Assessors are held to the same standard that taxpayer's are held in presenting evidence which walks "the Court through every element of" the relevant analysis.[274]

3. Kooshtard Property VI, LLC v. White River Township Assessor.[275]—Kooshtard Property VI ("Kooshtard") challenged the IBTR's valuation of Kooshtard's improvement.[276] Kooshtard claimed that its gas station, which was constructed in 1983 and remodeled in 1995 should have received a 37% physical depreciation adjustment rather than a 9% adjustment.[277] Kooshtard claimed that the Assessor erred in computing the effective age of the gas station at three years rather than seventeen years.[278] The Assessor rebutted this claim by arguing that Kooshtard's computation of effective age at seventeen years does not take into account the remodeling improvements in 1995 and that Kooshtard's methodology does not arrive at the true tax value or market value-in-use of the property.[279] The Tax Court agreed with the Assessor that Kooshtard had taken into account neither the remodeling improvements that took place in 1995 nor the possible need for a "tweak" in the assessment by the Assessor to better reflect the 2001 purchase price of the gas station.[280] Therefore the Tax Court held that by accounting for these factors Kooshtard had failed to present its prima facie case that the assessment was in error.[281]

4. Ennis v. Department of Local Government Finance.[282]—Frank Ennis ("Ennis") challenged the DLGF's valuation of his Lake County residence for the 2002 tax year.[283] The IBTR conducted a hearing in November 2004 and Ennis did not appear.[284] The IBTR then sent a letter to Ennis requesting a showing of why he did not appear and why his appeal should not be dismissed.[285] Ennis responded that his mail was sometimes mixed up with a neighbor's and that he did not receive the notice of hearing until December, and he requested a new

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271. *Id.* at 1082-83.
272. *Id.* at 1082.
273. *Id.*
274. *Id.*
275. 836 N.E.2d 501 (Ind. Tax Ct. 2005).
276. *Id.* at 503.
277. *Id.*
278. *Id.*
279. *Id.* at 505
280. *Id.* at 506.
281. *Id.*
282. 835 N.E.2d 1119 (Ind. Tax Ct. 2005).
283. *Id.* at 1120.
284. *Id.* at 1121.
285. *Id.*

hearing date.[286] The IBTR denied his appeal on the merits for failure to appear and present evidence to support the allegation of error in assessment.[287] Ennis requested an evidentiary hearing in front of the Tax Court.[288] Ennis claimed that the IBTR violated his right to due process by dismissing his claim when he did not receive the notice of hearing until after the hearing occurred.[289] The Tax Court disagreed and denied Ennis's request for an evidentiary hearing.[290] The Tax Court held that the IBTR did not abuse its discretion in dismissing the appeal.[291] The Tax Court also held that a timely notice sent "through the regular course of mail" is presumptively timely received, and Ennis conceded to timely mailing in his letter and did not present enough evidence to rebut the presumption that the notice was timely received.[292]

5. Howser Development LLC v. Vienna Township Assessor.[293]—Howser Development LLC ("Howser") appealed the Vienna Township Assessor's ("Assessor") decision not to apply the "development discount"[294] to Howser's land.[295] Howser originally purchased fourteen acres, but was subdividing the land as buyers were found.[296] The Assessor during the 2002 reassessment changed the classification of the land from agricultural to commercial.[297] Although the Property Tax Assessment Board of Appeals adjusted the assessment as a result of Howser's appeal, they did not change this classification.[298] Howser then appealed to the IBTR on Form 131, but the IBTR upheld the PTABOA's decision.[299] Howser next appealed to the Tax Court and claimed that under Indiana Code section 6-1.1-4-12's developer discount provision, the land in question should not have been reassessed until there was a change in title.[300] The statute[301] says that land

> must be reassessed upon the occurrence of any of three events: when land is subdivided into lots, when land is rezoned, or when land is put to a different use. The statute, however, also provides an exception to the rule: if the land is subdivided into lots *only*, the reassessment may not

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286. *Id.*
287. *Id.*
288. *Id.* at 1122.
289. *Id.*
290. *Id.* at 1123.
291. *Id.*
292. *Id.*
293. 833 N.E.2d 1108 (Ind. Tax Ct. 2005).
294. Under IND. CODE § 6-1.1-4-12 (2005).
295. *Howser Dev.*, 833 N.E.2d at 1108.
296. *Id.* at 1109.
297. *Id.*
298. *Id.*
299. *Id.*
300. *Id.* at 1110.
301. IND. CODE § 6-1.1-4-12 (2005).

> occur until the next assessment date following a change in title to the land. This exception is commonly referred to as the "developer's discount."[302]

The Assessor argued that the discount did not apply because the land was not subdivided into lots, and the land was rezoned.[303] Howser argued that although the land was not subdivided and was rezoned that the Tax Court's decision in *Aboite Corp. v. State Board of Tax Commissioners*[304] showed that Howser was within the intent for which the discount was provided.[305] The Tax Court in *Aboite* stated that this discount was meant to encourage developers to buy farmland, subdivide, and resell, and until the lots are sold the owner is able to reap the rewards of a lower assessment.[306] Howser argued that it only differed from *Aboite* in that it was subdividing as it found buyers and not in advance.[307] The Tax Court disagreed and affirmed the IBTR's valuation of Howser's property.[308] The Tax Court found that Howser was ignoring the fact that the land was also rezoned, so if exceptions were permitted, the Tax Court would itself be ignoring two requirements of the statute.[309] Also, the Tax Court found that in *Aboite*, although legislative intent was used to inform in that case, the final decision to disallow the discount rested solely on a straightforward application of the statutory exception.[310]

6. Shoopman v. Clay Township Assessor.[311]—Paul Shoopman ("Shoopman") appealed the determination of the IBTR for the valuation of his real property for the March 1, 1995, assessment date.[312] Shoopman argued that the IBTR erred in giving his home an "A+6" grade factor; rating his homesite land as "excellent"; and valuing the residual acreage as "residential excess."[313] Shoopman owned more than 100 acres in Hamilton County, and his home was located on the land.[314] The Tax Court pointed out that his home was "complete with an indoor swimming pool, movie theatre, and bowling alley[,] a boathouse, and several barns."[315] The land was assessed at more than $730,000 and the home was assessed at more than $1.4 million.[316] Shoopman's petition filed with

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302. *Howser Dev.*, 833 N.E.2d at 1110 (citing IND. CODE § 6-1.1-4-12).
303. *Id.*
304. 762 N.E.2d 254 (Ind. Tax Ct. 2001).
305. *Howser Dev.*, 833 N.E.2d at 1110.
306. *Id.* (citing *Aboite Corp.*, 762 N.E.2d at 257).
307. *Id.*
308. *Id.* at 1111.
309. *Id.*
310. *Id.*
311. 827 N.E.2d 662 (Ind. Tax Ct.), *review granted*, 841 N.E.2d 183 (Ind. 2005).
312. *Id.* at 663.
313. *Id.*
314. *Id.*
315. *Id.*
316. *Id.*

the IBTR claimed that his home should be "A+1", the homesite rated as "good," and the excess acreage should be classified as agricultural excess.[317] A hearing office for the IBTR made recommendations in line with the claimed adjustments asked for by Shoopman, but the IBTR rejected the recommendations and did not adjust the assessment in its final determination.[318] Shoopman appealed to the Tax Court, and the Clay Township Assessor ("Assessor") did not respond to Shoopman's arguments but rather asked that the Tax Court dismiss the case because the petition for judicial review was not timely filed and therefore the Tax Court lacked jurisdiction over the particular case.[319] The Tax Court held that the Assessor had waived the lack of jurisdiction argument because it was not raised at the earliest opportunity possible.[320] The Tax Court found that when the Assessor made a motion in December 2003 to dismiss improper parties, the motion to dismiss for lack of jurisdiction as to Shoopman should have been raised at that time.[321] The Tax Court further held that the Assessor's lack of response to any of Shoopman's arguments is "akin to failure to file a brief."[322] Therefore, the Tax Court held that if Shoopman showed the prima facie case that an error was made, this was enough to reverse the IBTR's determination.[323] The Tax Court held that Shoopman's evidence that the IBTR ignored the recommendations of its hearing officer was a prima facie showing of error, and therefore the Tax Court remanded the case for the IBTR to value the land as the hearing officer recommended.[324]

7. Knox County Property Tax Assessment Board of Appeals v. Grandview Care, Inc.[325]—Knox County Property Tax Assessment Board of Appeals appealed the IBTR's determination to grant Grandview Care, Inc. ("Grandview") a property tax exemption for its BridgePointe nursing home ("BridgePointe"), specifically the IBTR's holding that Bridgepointe qualified for the charitable purposes exemption under Indiana Code section 6-1.1-10-16.[326] BridgePointe is a nursing home in Vincennes with ninety-eight residents, and although they charge a monthly fee, they do not turn anyone away because they cannot pay the fee.[327] Grandview has also been classified by the Internal Revenue Service as a 501(c)(3) organization, and all BridgePointe residents must be at least fifty-five years old and/or mentally or physically disabled.[328] Grandview contracted with Trilogy Health Services, LLC ("Trilogy"), a for-profit company, to operate

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317. *Id.* at 664.
318. *Id.*
319. *Id.* at 665.
320. *Id.* at 666.
321. *Id.*
322. *Id.* (citing Hacker v. Holland, 575 N.E.2d 675, 676 (Ind. Ct. App. 1991)).
323. *Id.* at 667.
324. *Id.*
325. 826 N.E.2d 177 (Ind. Tax Ct. 2005).
326. *Id.* at 179.
327. *Id.* at 179-80.
328. *Id.* at 179 n.1 & n.2.

BridgePointe for a monthly fee of $17,000.[329] Trilogy was responsible for paying payroll, paying operating expenses, personnel matters, maintenance of buildings, etc.[330] Trilogy paid the payroll and operating expenses from Grandview's accounts as an authorized signatory.[331] PTABOA denied the charitable exemption, holding that the contract with Trilogy made BridgePointe a for-profit operation.[332] The IBTR held that since the purpose of BridgePointe is to provide housing and care to the elderly, which has been held by the Tax Court to be a charitable purpose, then Grandview is entitled to the charitable exemption whether it manages the BridgePointe facility itself or contracts with a management company.[333] PTABOA appealed to the Tax Court, claiming that the IBTR's determination was in error for three reasons.[334] Indiana Code section 6-1.1-10-16 provides "[a]ll or part of a building is exempt from property taxation if it is owned, occupied, and used . . . for educational, literary, scientific, religious or charitable purposes."[335] PTABOA claimed that Grandview was not affiliated with a religious organization, so there was "lack of an identifiable charity."[336] Next PTABOA claimed that Grandview may have owned, but did not "occupy" or "use" the property as required by the statute.[337] Lastly, PTABOA claimed that Grandview and Trilogy were operating this nursing home to generate a profit, which was clearly outside the intent of the exemption.[338] The Tax Court dismissed the first argument, holding that BridgePointe need only be owned, occupied, and used for a charitable purpose, and that neither BridgePointe nor Grandview were required to be affiliated with a religious organization to be entitled to the exemption.[339] Furthermore the Tax Court found that "Indiana courts have long recognized that providing care and comfort to the aged constitutes a charitable purpose."[340] The Tax Court also disagreed with the second argument set forth by PTABOA, holding that the entire building need not be solely occupied, owned, and used by Grandview, but,

> [s]tated differently: a piece of property must be owned for charitable purposes; a piece of property must be occupied for charitable purposes; a piece of property must be used for charitable purposes. Once these three elements have been met, regardless of by whom, the property can

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329. *Id.* at 180.
330. *Id.*
331. *Id.* at 180 n.3.
332. *Id.* at 180.
333. *Id.*
334. *Id.* at 181.
335. *Id.* (quoting IND. CODE § 6-1.1-10-16 (2005)).
336. *Id.*
337. *Id.*
338. *Id.*
339. *Id.* at 181-82.
340. *Id.* at 182.

be exempt from taxation.[341]

The Tax Court therefore held that BridgePointe was indeed owned, used, and occupied for a charitable purpose.[342]

The Tax Court then addressed PTABOA's third argument of profit motive.[343] The Tax Court found that PTABOA presented no probative evidence on this issue, but simply alerted the Tax Court to the fees paid to Trilogy and claimed a for-profit purpose on that fact, along with other unproven allegations.[344] The Tax Court held that "charitable" does not have to equal "free," and without evidence to support a profit motive BridgePointe was considered to be operated for a charitable purpose.[345] The Tax Court affirmed the determination of the IBTR that Grandview was entitled to the charitable property tax exemption.[346]

8. Wal Mart Stores, Inc. v. Wayne Township Assessor.[347]—Wal Mart Stores, Inc. ("Wal Mart") appealed the valuation by the Wayne Township Assessor ("Assessor") of Wal Mart's property for the 2001 tax year, and Wal Mart claimed that its improvements were entitled to obsolescence depreciation.[348] In Richmond, Wal Mart constructed a new supercenter directly behind its old store with plans to demolish the old store as soon as the new store was ready for business. Since both stores were still standing on March 1, 2001, the assessor assessed the new store at over $5.6 million and the old store at over $2.8 million.[349] The Property Tax Assessment Board of Appeals ("PTABOA") upheld both assessments.[350] Wal Mart in appealing to the IBTR claimed that the old store should receive a 95% obsolescence adjustment since it was demolished thirteen days after the assessment, and Wal Mart also claimed that the new store should receive a 25% obsolescence adjustment since it opened for business thirteen days after the assessment.[351] The IBTR denied an obsolescence adjustment for either building.[352]

The Tax Court first stated that "[o]bsolescence, which is a form of depreciation, is defined as a loss of [property] value and classified as either functional or economic."[353] Wal Mart was required to show the causes of the

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341. *Id.* at 183 (internal quotation marks omitted) (quoting Sangralea Boys Fund, Inc. v. State Bd. of Tax Comm'rs, 686 N.E.2d 954, 959 (Ind. Tax Ct. 1997)).

342. *Id.* at 184.

343. *Id.*

344. *Id.* at 184-85.

345. *Id.* at 185.

346. *Id.*

347. 825 N.E.2d 485 (Ind. Tax Ct. 2005).

348. *Id.* at 486.

349. *Id.* at 486-87.

350. *Id.* at 487.

351. *Id.*

352. *Id.*

353. *Id.* (internal quotation marks omitted and second alteration in original) (quoting Freudenberg-NOK Gen. P'ship v. State Bd. of Tax Comm'rs , 715 N.E.2d 1026, 1029 (Ind. Tax

alleged obsolescence and also quantify the amount of obsolescence to be applied to the property.[354] Wal Mart had to show actual loss of value, which the Tax Court stated, usually means loss of income generating ability, in a commercial context.[355] The Tax Court held that although Wal Mart may have had a meritorious claim, they did not show through probative evidence the actual loss in value, and therefore were not entitled to the adjustment.[356] The Tax Court found that merely stating that the store was obsolete because it was going to be demolished and therefore should get the 95% adjustment was "fatally deficient."[357]

The Tax Court also found that Wal Mart had not made a sufficient showing as to the entitlement of an obsolescence adjustment for the new store.[358] The Tax Court held that just because the building is empty or under construction does not in and of itself show a loss in actual value, and furthermore, a loss of value could not be shown by this evidence since the building's "useful life had not yet begun."[359] For these reasons the Tax Court denied Wal Mart's request for the obsolescence adjustments and affirmed the decision of the IBTR.[360]

9. Long v. Wayne Township Assessor.[361]—William and Dorothy Long ("the Longs") appealed the valuation of their property for the March 1, 2002, assessment date.[362] The Longs owned an apartment building in Indianapolis, which was assessed at $87,800 ($5400 of land, and $82,400 improvement).[363] The Longs believed the assessment was too high and appealed to the IBTR who affirmed the assessment.[364] The Longs filed an appeal with the Tax Court and both they and the IBTR, filed cross-motions for summary judgment.[365] The Longs' only contention was that the IBTR ignored evidence that the assessed value of their property far exceeded the market value.[366] The Wayne Township Assessor ("Assessor") claimed that the Longs' evidence had no probative value and therefore the Longs failed to make the required prima facie showing of invalidity.[367] The Longs submitted 200 pages of documentation of comparable properties with sales prices, a policy declaration from Auto-Owners Insurance showing the property was insured for $56,000 for 2003-2004, and an independent

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Ct. 1999)); *see also* 50 IND. ADMIN. CODE 2.2-10-7(e) (1996).

354. *Wal Mart Stores, Inc.*, 825 N.E.2d at 488.

355. *Id.*

356. *Id.* at 488-89.

357. *Id.*

358. *Id.* at 489.

359. *Id.*

360. *Id.* at 490.

361. 821 N.E.2d 466 (Ind. Tax Ct.), *trans. denied*, 831 N.E.2d 750 (Ind. 2005).

362. *Id.* at 467.

363. *Id.* at 468.

364. *Id.*

365. *Id.*

366. *Id.* at 468-69.

367. *Id.* at 469.

appraisal of the property from 2003.[368] The Tax Court stated that

> a taxpayer must offer probative evidence regarding the market value-in-use of the subject property, as well as the market value-in-use of comparable properties. For instance, a taxpayer's evidence may include "actual construction costs, sales information regarding the subject or comparable properties, appraisals that are relevant to the market value-in-use of the property, and any other information compiled in accordance with generally accepted appraisal principles." Nevertheless, such data must be reliable, reasonably comparable based on accepted appraisal standards, readily available to the assessor at the time the assessment was made, and reflect the property's January 1, 1999, replacement cost.[369]

The Tax Court held that the Longs had not met their burden of proof.[370] The Tax Court found that although the 200 pages of listings were a good start, the Longs erred in presenting their evidence to the IBTR by failing to show how these listed properties specifically compared to the subject property.[371] The Tax Court held that mere statements that the property was similar or comparable were nothing but conclusions.[372] The Longs claimed that their evidence as a whole was enough of a showing to allow the IBTR to make the needed comparisons, but the Tax Court dismissed this argument and held that "'[i]t is the taxpayer's duty to walk the [Indiana Board and this] Court through every element of [its] analysis.'"[373] The Tax Court also held that the Longs' evidence of the insurance and the appraisal were also not probative since the Longs failed to explain why these values were relevant to the subject property's value as of January 1, 1999 (the time at issue).[374] Therefore, the Tax Court granted summary judgment for the Assessor and affirmed the IBTR's determination.[375]

B. Sales and Use Tax

1. Haas Publishing Co. v. Indiana Department of State Revenue.[376]—Haas Publishing Company ("Haas") appealed the IDSR's assessment of use tax for 1998 through 2000 on its production costs, which Haas claimed were exempt because its publication was a "free distribution newspaper" under Indiana Code

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368. *Id.* at 470.

369. *Id.* at 469-70 (citing 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (2001)).

370. *Id.* at 470.

371. *Id.*

372. *Id.*

373. *Id.* (internal quotation marks omitted and alteration in original) (quoting Clark v. Dep't of Local Gov't Fin., 779 N.E.2d 1277, 1282 n.4 (Ind. Tax Ct. 2002)).

374. *Id.* at 471-72.

375. *Id.* at 472.

376. 835 N.E.2d 235 (Ind. Tax Ct. 2005), *trans. denied* (Ind. 2006).

section 6-25-5-31.[377] Haas is a Delaware corporation with its principal place of business in New York.[378] Haas published and distributed, free of charge, apartment guides for various cities throughout the United States.[379] These apartment guides were put in racks and dispensers for people to take free of charge at many stores and other facilities throughout the areas covered by the apartment guides.[380] The guides were published once a month with a consistent layout and numerous advertisements per issue.[381] The IDSR assessed use tax on the printing, equipment, and materials for the years at issue.[382]

Haas had to prove that statutory exemption requirements were met.[383] The Tax Court standard was to construe the exemption language against the taxpayer, but not so narrowly as to defeat application of the exemption.[384] The exemption in question applied to production costs incurred in publication of a free distribution newspaper.[385] The IDSR claimed this guide was not a free

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377. *Id.* at 235.
378. *Id.*
379. *Id.* at 236.
380. *Id.*
381. *Id.*
382. *Id.*
383. *Id.*
384. *Haas Publ'g*, 835 N.E.2d at 236.
385. *Id.* at 237 (citing IND. CODE § 6-2.5-5-31 (2005)).

> Sec. 31. (a) As used in this section, a "free distribution newspaper" means any community newspaper, shopping paper, shoppers' consumer paper, pennysaver, shopping guide, town crier, dollar stretcher, or other similar publication which:
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> (1) is distributed to the public on a community-wide basis, free of charge;
>
> (2) is published at stated intervals of at least once a month;
>
> (3) has continuity as to title and general nature of content from issue to issue;
>
> (4) does not constitute a book, either singly or when successive issues are put together;
>
> (5) contains advertisements from numerous unrelated advertisers in each issue;
>
> (6) contains news of general or community interest, community notices, or editorial commentary by different authors, in each issue; and
>
> (7) is not owned by, or under the control of, the owners or lessees of a shopping center, a merchant's association, or a business that sells property or services (other than advertising) whose advertisements for their sales of property or services constitute the predominant advertising in the publication.
>
> (b) The term "free distribution newspaper" does not include mail order catalogs or other catalogs, advertising fliers, travel brochures, house organs, theater programs, telephone directories, restaurant guides, shopping center advertising sheets, and similar publications.
>
> (c) Transactions involving manufacturing machinery, tools and equipment, and other tangible personal property are exempt from the state gross retail tax if the person acquiring that property acquires it for his direct use, or for his direct consumption as a material to be consumed, in the direct production or publication of a free distribution

distribution newspaper because it failed to meet three of the criteria listed in Indiana Code section 6-2.5-5-31(a).[386] Specifically, the IDSR claimed that the advertisers in the guides were related, the guides were books, and the guides did not publish community notices.[387] The Tax Court found that in defining free distribution newspaper in the statute, the legislature did not require that the publication had to be what is commonly understood to be a "newspaper."[388] The Tax Court found that no definition of "book" existed in the statute, and that the dictionary meanings were inconsistent.[389] The Tax Court therefore looked to case law to determine whether the guide was a book.[390] The Tax Court held that because the guides were not "complete in themselves" and that even if a series of successive issues were read together, they would still not be a complete publication, the guides were not books.[391]

The Tax Court next held that the advertisers in the guide were not related because they were not under common ownership which was stipulated by the parties.[392] The Tax Court rejected the IDSR's argument that the advertisers were related because the advertising itself was related.[393] Haas disputed the IDSR's third argument concerning community notices, claiming the guides contained many such notices including maps, information for newcomers, identification information for apartment showings, utility companies, and other services.[394] The IDSR asserted that community notices meant legal notices under the statute when read in conjunction with Indiana Code section 5-3-1-0.7.[395] The Tax Court rejected this argument because the two statutes referred to by the IDSR were not identical, were fourteen years apart, and made no mention that community notice equated to legal notice.[396] The Tax Court therefore reversed the IDSR and granted Haas the exemption.[397]

2. Miller Brewing Co. v. Indiana Department of State Revenue.[398]—Miller

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newspaper, or for incorporation as a material part of a free distribution newspaper published by that person.

(d) Transactions involving a sale of a free distribution newspaper, or of printing services performed in publishing of a free distribution newspaper, are exempt from the state gross retail tax if the purchaser is the publisher of the free distribution newspaper.

IND. CODE § 6-2.5-5-31.

386. *Id.*

387. *Id.*

388. *Id.* at 238.

389. *Id.* at 239.

390. *Id.*

391. *Id.* at 240.

392. *Id.*

393. *Id.* at 241.

394. *Id.*

395. *Id.* at 241-42 (citing IND. CODE § 6-2.5.5-31(a)(6) (2005)).

396. *Id.* at 242.

397. *Id.* at 243.

398. 831 N.E.2d 859 (Ind. Tax Ct.), *reconsideration denied*, 836 N.E.2d 498 (Ind. Tax Ct.

Brewing Company ("Miller") filed a summary judgment motion claiming that Miller's sales of products that were transported to Indiana purchasers by common carrier were not made in Indiana and therefore were not subject to Indiana adjusted gross income tax.[399] Miller is a Wisconsin corporation, and Miller sold products to customers in many states including Indiana.[400] The Indiana customers submitted purchase orders to Miller's headquarters in Milwaukee, and the products were prepared for pick up at one of Miller's breweries.[401] Miller's customers had three options:

> (1) they could pick up the products themselves using their own trucks; (2) they could arrange for a third-party common carrier to pick up the products and transport them; or (3) Miller could arrange for a common carrier to transport the products and the customers would reimburse Miller for the related charges. Regardless, the customers decided how to transport the goods as possession and title of the products transferred to them at the breweries.[402]

Miller originally included all of the sales to Indiana customers in its adjusted gross income calculation.[403] Miller then filed for a refund for the sales where the customers either picked up from Milwaukee or used a common carrier.[404] The IDSR refunded the amounts for the sales to Indiana customers who picked up the goods in Milwaukee, but denied the refund as to the sales involving common carrier shipment.[405] Miller then withdrew his claim for the sales where Miller arranged the common carrier shipment, and challenged only the sales where the Indiana customers arranged for common carrier shipment.[406]

The IDSR argued that since the recipients were in Indiana, the sales were in this state.[407] The IDSR relied on the statutes and regulations involved, which they claimed emphasized the location of the recipient.[408] The Tax Court held that since the customers contracted with the common carrier, the customers accepted delivery of the goods in Milwaukee.[409] The Tax Court reasoned that the common carrier, contracted by the customer, stood in the customer's shoes to accept delivery.[410] The Tax Court held that Miller did not need to include these sales in the numerator of their sales factor for the apportionment of income to Indiana,

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2005).

399. *Id.* at 859-60.
400. *Id.* at 860.
401. *Id.*
402. *Id.*
403. *Id.*
404. *Id.*
405. *Id.*
406. *Id.*
407. *Id.* at 861.
408. *Id.* (citing 45 IND. ADMIN. CODE 3.1-1-53 (1) (2005); IND. CODE § 6-3-2-2 (2005)).
409. *Id.* at 862.
410. *Id.*

and therefore were entitled to a refund.[411]

3. Carnahan Grain, Inc. v. Indiana Department of State Revenue.[412]—Carnahan Grain, Inc. ("Carnahan") appealed the assessment of additional sales and use tax by the IDSR for the 1999 and 2000 tax years.[413] Carnahan claimed that it was entitled to a public transportation exemption for equipment it predominantly used to transport tomatoes owned by third parties.[414] Carnahan also transports goods of its own with this equipment.[415] The IDSR assessed use tax on the semi-tractors, flatbed trailers, tubs and containers, repair parts and supplies for the trucks, fuel, a grader, and a skid loader.[416] The exemption at issue provided that property acquired for use in providing public transportation for persons or property is exempt from sales tax.[417] Public transportation is defined as moving, transporting, or carrying persons or property for consideration.[418] The taxpayer must be predominantly transporting goods of another to receive the exemption.[419] The IDSR argued that Carnahan, although transporting goods for others, was not engaged in transporting these goods as a primary business, and therefore was not entitled to the exemption.[420]

The IDSR relied on the Tax Court's decision in *Panhandle Eastern Pipeline Co. v. Indiana Department of State Revenue*,[421] in which the Tax Court required that the IDSR look at both the use of the property and the business of the taxpayer as a whole.[422] The Tax Court disagreed with the IDSR's interpretation, and cited *Indiana Waste*[423] and *Calcar*[424] to show when an examination of a taxpayer's business is relevant in these types of cases.[425] The Tax Court held that the business of the taxpayer is only relevant to determine whether, in proportion to the taxpayer's transporting of goods, the taxpayer is transporting predominantly the goods of others as opposed to goods the taxpayer owns.[426] Therefore, the Tax Court held that "because Carnahan predominantly used the property at issue for transporting agricultural commodities owned by third

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411. *Id.* at 863.
412. 828 N.E.2d 465 (Ind. Tax Ct. 2005).
413. *Id.* at 466.
414. *Id.*
415. *Id.*
416. *Id.*
417. *Id.* at 467 (citing IND. CODE § 6-2.5-5-27 (2005)).
418. *Id.* (citing 45 IND. ADMIN. CODE 2.2-5-61 (2005)).
419. *Id.*
420. *Id.*
421. 741 N.E.2d 816, 819 (Ind. Tax Ct. 2001).
422. *Carnahan Grain*, 828 N.E.2d at 468.
423. Ind. Waste Sys. of Ind., Inc. v. Ind. Dep't of State Revenue, 644 N.E.2d 960 (Ind. Tax Ct. 1994).
424. State, Dep't of Revenue v. Calcar Quarries, Inc., 394 N.E.2d 939 (Ind. App. 1979).
425. *Carnahan Grain*, 828 N.E.2d at 468-49.
426. *Id.* at 469.

parties, it [was] entitled to the public transportation exemption."[427]

4. Galligan v. Indiana Department of State Revenue.[428]—Thomas Galligan ("Galligan") appealed the IDSR, which assessed Galligan with the sales and use tax liabilities of Irish Park, Inc. ("IP") for 1993, 1994, and 1995.[429] Galligan claimed that collecting IP's tax liabilities from Galligan violated his due process rights, and Galligan also claimed the IDSR erred in imposing sales tax on certain IP transactions.[430] Galligan founded IP, but resigned in 1996 after becoming Mayor of Jeffersonville.[431] The IDSR audited IP and assessed the sales and use tax IP owed for the years at issue, but before the IDSR could collect, IP liquidated.[432] The IDSR then, under the "responsible officer statute"[433] attempted to collect the liabilities from Galligan.[434] The statute provides that an officer of a company that is a retail merchant can be held personally liable for the taxes, penalties, and interest which are liabilities of the company.[435]

Galligan claimed that his due process rights were violated because he did not receive proper notice of the assessment against IP and when he finally did receive notice, he was no longer an officer at IP, and no longer had access to documents or files from the liquidated company which were necessary to challenge the assessment.[436] The Tax Court stated that adequate notice is "'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'"[437] The Tax Court first reversed the IDSR's assessment of the 1993 liability against Galligan because the statute of limitations for imposing an assessment was three years from the end of the calendar year for which the return is filed.[438] Because Galligan did not receive notice of the IDSR's assessment against him for 1993 until October 1997, the statute of limitations had run.[439] The Tax Court presumed that when IP received notice in 1996, Galligan did not receive personal notice of the assessed liability.[440]

The Tax Court held that Galligan's due process rights were not violated for the 1994 and 1995 assessments because he was an officer of the company during those years and was presumed to have the duty to remit the taxes.[441] The Tax

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427. *Id.*
428. 825 N.E.2d 467 (Ind. Tax Ct.), *trans. denied*, 841 N.E.2d 180 (Ind. 2005).
429. *Id.* at 471.
430. *Id.* at 471-72
431. *Id.* at 472.
432. *Id.*
433. IND. CODE § 6-2.5-9-3 (2005).
434. *Galligan*, 825 N.E.2d at 472.
435. *Id.*
436. *Id.* at 473.
437. *Id.* at 472 (quoting Ball v. Ind. Dep't of State Revenue, 563 N.E.2d 522, 524 (Ind. 1990)).
438. *Id.* at 473 (citing IND. CODE § 6-8.1-5-1 (2005)).
439. *Id.* at 473-74.
440. *Id.* at 473.
441. *Id.* at 474.

Court found that Galligan was not required to have personal notice during the audit or even before his resignation because during 1994 and 1995 he was a responsible officer and therefore presumed to be on notice of his personal liability under statute.[442]

The Tax Court then examined the specific portions of the audit assessment which Galligan claimed were in error.[443] The Tax Court reversed the IDSR's assessment on delivery charges for dirt, sand, and rock.[444] The IDSR assessed these items because the invoices merely listed the items as "1 ton of sand" which the IDSR believed to be the sale of an item which is sales taxable.[445] Galligan claimed that these items were merely charges for delivery of dirt from other excavations which were never purchased for resale, and therefore exempt from sales tax.[446] The Tax Court sided with Galligan, because the IDSR did not rebut these allegations but merely claimed that more evidence was needed.[447] The Tax Court held that Galligan had made his prima facie showing since he was a responsible officer with personal knowledge, and therefore the IDSR needed to rebut this evidence rather than simply ask for more proof from Galligan.[448]

Galligan then claimed the IDSR erred in assessing sales tax on delivery charges because a common carrier essentially delivered the items through IP with F.O.B. at the final destination.[449] Because title never passed to IP, Galligan argued, these delivery charges were not taxable.[450] Because the IDSR again did not rebut this testimony but simply asked for more proof, the Tax Court held that the delivery charges were incurred as Galligan testified and therefore were not taxable.[451]

The Tax Court then reversed the IDSR's assessment of use tax for items on which Galligan had previously paid sales tax to other states.[452] The Tax Court reversed even though the IDSR claimed that a taxpayer is only entitled to a credit where the purchase is made in another state and brought back to Indiana.[453] The Tax Court held that the statute does not contain this restriction, and the IDSR may not enlarge the power conferred on it by the legislature.[454]

The Tax Court then addressed Galligan's claim that the IDSR erred in assessing use tax on charges for certain services.[455] The Tax Court addressed

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442. *Id.* at 475.
443. *Id.*
444. *Id.* at 476.
445. *Id.*
446. *Id.*
447. *Id.*
448. *Id.* 476-77.
449. *Id.* at 477-78.
450. *Id.* at 478.
451. *Id.*
452. *Id.* at 478-80.
453. *Id.* at 480.
454. *Id.* (citing IND. CODE § 6-2.5-3-5(a) (2005)).
455. *Id.* at 481.

each charge individually, reversing some and affirming some, depending upon whether the charges for services were part of a unitary transaction that would allow taxation under Indiana Code section 6-2.5-4-1.[456] Galligan also claimed that certain purchases that were assessed tax by the IDSR were purchases that became permanent parts of improvements for tax-exempt organizations.[457] The Tax Court held that without evidence other than the taxpayer's conclusory statements that these purchases were as claimed, no exemption can be granted.[458]

Galligan's final claim was that the IDSR erred in assessing use tax on items which appeared on IP's depreciation schedules because sales tax had been paid at the time these items were purchased.[459] Galligan provided invoices from many items not at issue for this claim, attempting to show customs and practices as to sales tax paid at the time of purchase.[460] The Tax Court affirmed the IDSR's assessment, holding that Galligan was required to provide the actual invoices for these items in order to avoid paying use tax.[461]

5. Carroll County Rural Electric Membership Corp. v. Indiana Department of State Revenue.[462]—Carroll County Rural Electric Membership Corporation ("REMC") appealed the determination of the IDSR that the purchase of a trade publication, *The Electric Consumer*, by REMC was subject to the state gross retail (sales) tax.[463] REMC claimed that this publication was a newspaper and therefore exempt from sales tax.[464] The IDSR also claimed that the Tax Court lacked subject matter jurisdiction because REMC did not seek a refund or seek to enjoin the collection of a tax, and therefore did not meet the requirements for an original tax appeal.[465] The Tax Court previously addressed and dismissed this argument,[466] and the supreme court declined to address the issue on interlocutory appeal, so the court declined to reconsider the issue.[467]

REMC was a member of the Indiana Statewide Association of Rural Electric Cooperatives ("Statewide").[468] Statewide was the publisher of *The Electric Consumer*, copies of which REMC purchased and distributed free of charge to its members.[469] The IDSR in a letter of finding found for REMC on the issue of taxes owed for 1995, 1996, and 1997, but found that going forward, *The Electric*

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456. *Id.* at 481-83.

457. *Id.* at 483-84.

458. *Id.* at 484.

459. *Id.* at 484-85.

460. *Id.* at 485.

461. *Id.*

462. 838 N.E.2d 564 (Ind. Tax Ct. 2005).

463. *Id.* at 565.

464. *Id.*

465. *Id.* at 565 n.1.

466. *Id.* (citing Carroll County REMC v. Ind. Dep't of State Revenue, 733 N.E.2d 44 (Ind. Tax Ct. 2000)).

467. *Id.*

468. *Id.* at 566.

469. *Id.*

Consumer was no longer going to be considered a newspaper and therefore sales tax would be assessed.[470] REMC appealed and had the burden of proving that *The Electric Consumer* was a newspaper and exempt from sales tax.[471]

The Tax Court listed the following factors for determining if a publication is a newspaper: "(1) commonly understood to be newspapers; (2) circulated among the general public; (3) published at stated short intervals; (4) entered or are qualified to be admitted and entered as second class mail matter at a post office in the county where published; and (5) printed for resale and are sold."[472] The IDSR argued that *The Electric Consumer* was not a newspaper because it failed to meet the first three conditions above.[473] The Tax Court disagreed and found that the first two conditions were met, and that failure to meet the third condition alone was not enough to disallow the newspaper exemption.[474] The Tax Court relied on the IDSR's examples of a newspaper from its own regulations in finding that *The Electric Consumer* was commonly understood to be a newspaper.[475] The Tax Court found that having less than a preponderance of advertising, authorization to carry legal advertising, and having a masthead which listed the publisher, editor, circulation, and place of publication all taken together showed that *The Electric Consumer* was commonly understood to be a newspaper.[476] The IDSR disagreed that *The Electric Consumer* was authorized to carry legal advertising, but the Tax Court found that even though *The Electric Consumer* could not carry legal notices under Indiana Code section 5-3-1-0.4, the fact that *The Electric Consumer* was authorized by the Indiana Utility Regulatory Commission to provide notice of REMC rate changes was enough to satisfy this condition.[477] Also, despite evidence of a memo by the editor referring to *The Electric Consumer* as a magazine and the fact that *The Electric Consumer* is published in color, the Tax Court found this publication to be a newspaper.[478] The Tax Court next found that the ability for any member of the general public to subscribe to *The Electric Consumer* was enough to satisfy the general circulation requirement.[479] The IDSR failed in its argument that in reality the subscribers were virtually all members of REMC.[480] The Tax Court then found that although monthly publication did not point toward *The Electric Consumer* being classified a newspaper, this condition was neutral and, standing alone, was not enough to deny the exemption.[481]

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470. *Id.*
471. *Id.*
472. *Id.*
473. *Id.* at 567.
474. *Id.* at 567-70.
475. *Id.* at 567 (citing 45 IND. ADMIN. CODE 2.2-5-26(g) (2005)).
476. *Id.*
477. *Id.* at 567-68.
478. *Id.* at 568-69.
479. *Id.* at 569.
480. *Id.*
481. *Id.* at 569-70.

C. Income Tax

1. Gundersen v. Indiana Department of State Revenue.[482]—Joe Gunderson ("Gunderson") appealed the IDSR's denial of his claims for refund of income taxes paid in 2000 and 2001.[483] The issue for the Tax Court was "whether the statute of limitation that applies to refund claims also applies to [Gunderson's] request to have excess tax payments applied toward future tax liabilities."[484] Because Gunderson filed his returns more than two years after the due date and was past the deadline for refunds in Indiana Code section 6-3-4-8(h), the IDSR denied his claim for refund.[485] Gunderson then asked that the overpayments be applied to his 2004 liability, and the IDSR, citing the same statute of limitations, denied his claim.[486] The Tax Court found that the IDSR's interpretation of the statute, which applied the statute of limitations to refunds as well as credits, was correct.[487] The Tax Court held that if the statute was applied as Gunderson interpreted it, the statute of limitation would be circumvented and would effectively make part of the statute meaningless.[488]

2. U-Haul International, Inc. v. Indiana Department of State Revenue.[489]—U-Haul International ("UHI") appealed assessment of gross income tax by the IDSR on 100% of certain rental receipts in 1988, 1989, 1993, 1994, and 1995.[490] UHI is a Nevada Corporation located in Arizona, and is part of the U-Haul System.[491] The system has four groups: "(1) Fleet Owners; (2) Rental Companies; (3) Rental Dealers; and (4) UHI. These four groups are bound together by a series of contractual relationships, with UHI controlling the form, terms, and conditions of each contract."[492] UHI receives fees and only fees from the other three groups for its services.[493]

> UHI never had an office, warehouse, retail outlet, or any other type of business location in Indiana, never owned any tangible property in Indiana, never had any employees located in Indiana, and never performed any services in Indiana. At all times, UHI conducted its business activities entirely at its headquarters in Phoenix, Arizona.[494]

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482. 831 N.E.2d 1274 (Ind. Tax Ct. 2005).
483. *Id.* at 1274.
484. *Id.*
485. *Id.* at 1274-75.
486. *Id.* at 1275.
487. *Id.* at 1276-77.
488. *Id.* at 1276.
489. 826 N.E.2d 713 (Ind. Tax Ct.), *review denied*, 841 N.E.2d 181 (Ind. 2005).
490. *Id.* at 714.
491. *Id.*
492. *Id.*
493. *Id.* at 715.
494. *Id.*

The IDSR tried to assess the rental companies, but when the Tax Court held that the rental companies were not liable for 100% of the receipts,[495] the IDSR then assessed UHI for the tax on the receipts.[496] The IDSR and UHI stipulated to these facts and filed cross motions for summary judgment.[497]

The Tax Court found that as a non-resident UHI was only liable for tax on income derived from sources within Indiana.[498] The Tax Court found that the critical transactions in this case all took place outside of Indiana because all of UHI's services were completely rendered wholly outside the State.[499] The IDSR claimed that they were not trying to tax the service fees received but rather were assessing tax on the portion of the rental receipts received by UHI from the rental companies within Indiana.[500] The IDSR argued that in *U-Haul I*[501] the Tax Court held that the rental companies were agents of the UHI and also that each member of the U-Haul System had a beneficial interest in a percentage of the rental receipts.[502] The Tax Court held that although UHI did have a beneficial interest in the rental receipts, UHI did not have a contractual interest specifically in the rental receipts, and therefore could not be considered to have income derived form sources within Indiana.[503] The Tax Court therefore granted UHI's motion for summary judgment.[504]

3. David R. Webb Co. v. Indiana Department of State Revenue.[505]—David R. Webb Company ("Webb") appealed the IDSR's assessment of Indiana's gross income tax on sales to out-of-state purchasers that the IDSR considered local transactions subject to the tax.[506] Webb is a Nevada Corporation with its principal place of business in Edinburgh, Indiana. Webb sold wood veneer which it manufactured to foreign (outside the United States) customers. These customers would send representatives to examine the veneer in Indiana, and would sign sales agreements with Webb.[507] The agreement would contain terms for either "C&F/CIF" or "FOB New York/FOB Miami." Webb, pursuant to the CIF sales agreements, would transport the veneer to a U.S. port from Edinburgh via common carrier, load it on a ship, pay the freight to the port, insure the veneer

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495. U-Haul Co. of Ind., Inc. v. Ind. Dep't of State Revenue (*U-Haul I*), 784 N.E.2d 1078 (Ind. Tax Ct. 2002).

496. *U-Haul Int'l*, 826 N.E.2d at 715.

497. *Id.*

498. *Id.* at 717.

499. *Id.*

500. *Id.*

501. U-Haul Co. of Ind., Inc. v. Ind. Dep't of State Revenue (*U-Haul I*), 784 N.E.2d 1078 (Ind. Tax Ct. 2002).

502. *U-Haul Int'l*, 826 N.E.2d at 717.

503. *Id.* at 718.

504. *Id.*

505. 826 N.E.2d 166 (Ind. Tax Ct. 2005).

506. *Id.* at 166-67.

507. *Id.*

for transport, and obtain a bill of lading from the ship owner. Webb, for the FOB agreements, would only quote the price of the veneer, and then at Webb's own expense and risk would be required to transport the veneer from Edinburgh to either New York or Miami.[508] The foreign customers would then take delivery at either the New York or Miami Port.

The Tax Court, in analyzing Webb and the IDSR's cross motions for summary judgment, stated that "so long as 'a local transaction is made the taxable event and that event is separate and distinct from the transportation or intercourse which is interstate commerce[,]' a state tax will not run afoul of the Commerce Clause [of the U.S. Constitution]."[509] The IDSR claimed that these sales were completed in Indiana, and therefore, under its regulations interpreting the exemption, were subject to gross income tax.[510] The IDSR specifically claimed that when the foreign customers came to Indiana to inspect the veneer, they accepted it when they signed the sales agreement.[511] Webb claimed that the precedent on this issue was clear and the sale was not complete until actual physical delivery was taken by the buyer.[512] The IDSR claimed that although precedent was clear that actual physical delivery was an event adequate enough to allow local taxation, it was not the only event which allowed the transaction to become local, and acceptance and inspection can also make the transaction taxable.[513] The Tax Court disagreed and, in granting Webb's motion for summary judgment, held that the IDSR's interpretation of delivery, acceptance, and inspection would be well outside the traditional view of these concepts as shown specifically in the Indiana Uniform Commercial Code.[514] The Tax Court pointed out that acceptance and inspection, as defined in Indiana Code section 26-1-2-513, do not occur until after delivery has taken place.[515] The Tax Court also held that the foreign customers were examining and contracting for the veneer rather than inspecting and accepting the goods while at the Edinburgh location.[516]

4. Kohl's Department Stores, Inc. v. Indiana Department of State Revenue.[517]—Kohl's Department Stores ("Kohl's") appealed the IDSR's denial of Kohl's claims for refund for income tax paid in 1997, 1998 and 1999.[518] Kohl's originally filed combined returns, but later filed amended returns

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508. *Id.*

509. *Id.* at 168-69 (quoting Int'l Harvester Co. v. Dep't of Treasury, 322 U.S. 340, 346 (1944) (alteration in original)).

510. *Id.* at 169 (referring to 45 IND. ADMIN. CODE 1-1-119 (2005)).

511. *Id.*

512. *Id.* (citing *Int'l Harvester*, 322 U.S. at 340).

513. *Id.* at 170.

514. *Id.* at 171.

515. *Id.* at 171-72.

516. *Id.* at 172.

517. 822 N.E.2d 297 (Ind. Tax Ct. 2005).

518. *Id.* at 298.

separately and made a claim for refund which was denied by the IDSR.[519] Kohl's and the IDSR filed cross motions for summary judgment and the sole issue for the Tax Court to decide was whether Kohl's needed permission from the IDSR to discontinue filing combined Indiana income tax returns.[520] The Tax Court granted Kohl's motion for summary judgment finding that, although the statute for filing a combined return does require the taxpayer to petition for permission from the IDSR to do so, there is no corresponding requirement of permission to discontinue filing combined returns.[521]

The Tax Court did not agree with the IDSR's claim that under this interpretation a taxpayer could reach back as far as it wished to seek refunds on this basis.[522] The Tax Court found that the statute of limitation for refunds only allowed a taxpayer to reach back three years.[523] The Tax Court further found that to read into the statute this requirement of permission to discontinue filing combined returns would require the Tax Court to assume that the legislature simply neglected to address a requirement that even the IDSR labels "critical."[524] Therefore, the Tax Court granted Kohl's motion for summary judgment.[525]

D. Controlled Substances Excise Tax

1. Newby v. Indiana Department of State Revenue.[526]—Gary M. Newby ("Newby") appealed the IDSR's assessment of controlled substance excise tax ("CSET").[527] Newby's motion for summary judgment claimed that double jeopardy precluded the assessment and that the assessment of CSET violated the plea agreement Newby had with the State.[528] In 1997, Newby was arrested and charged with possession of controlled substances at his residence and also charged with maintaining a common nuisance.[529] The Indiana Court of Appeals found the search warrant invalid and therefore the controlled substances inadmissible.[530] Newby then entered into a plea with the State to plead guilty to the common nuisance and hand over all the controlled substances seized, and the State agreed to drop all other charges and seek no further fines or forfeitures.[531] After the plea was accepted in 1999, the IDSR assessed CSET, penalties, and

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519. *Id.* at 299.
520. *Id.* at 298.
521. *Id.* at 299-300 (citing IND. CODE § 6-3-2-2(g) (2005)).
522. *Id.* at 300-01.
523. *Id.* at 301.
524. *Id.* at 301-02.
525. *Id.* at 302.
526. 826 N.E.2d 173 (Ind. Tax Ct. 2005).
527. *Id.* at 174.
528. *Id.*
529. *Id.*
530. *Id.* (citing Newby v. State, 701 N.E.2d 593, 604 (Ind. Ct. App. 1998)).
531. *Id.* at 174-75.

fees in the amount of $871,437.50 against Newby.[532]

Newby claimed that because possession of a controlled substance and common nuisance were the same offense, the assessment, which was punishment for possession, constituted double jeopardy.[533] The Tax Court held that federal double jeopardy did not apply because a person may commit a common nuisance without having possessed the controlled substance, and it is possession alone which allows assessment of the CSET.[534] The Tax Court then held that the actual evidence test for the Indiana double jeopardy analysis could not be applied because the guilty plea was entered before any evidence was presented.[535] Furthermore, the Tax Court found that since possession and common nuisance were not the same offense, the assessment of CSET was Newby's only jeopardy for the possession of a controlled substance.[536] The Tax Court then held that the assessment of CSET did not violate the plea agreement because the legislature clearly stated in the statute that CSET was in addition to any criminal penalties and forfeitures, and furthermore the Tax Court noted that the prosecutor can not bind the rights of the IDSR to assess the tax.[537] For these reasons the Tax Court denied Newby summary judgment and granted the IDSR's summary judgment motion.[538]

2. Barney v. Indiana Department of State Revenue.[539]—Chadd Barney ("Barney") appealed the IDSR's assessment of controlled substances excise tax ("CSET") against him.[540] Barney claimed that the exclusionary rule barred the use of Barney's admissions in a tax assessment proceeding, that the admissions were not sufficient evidence that Barney possessed the marijuana to which CSET was assessed, and that the IDSR did not properly allow for the weight of the marijuana in their assessment.[541] Barney was arrested for receiving a package of marijuana at a Grant County address, and during the post arrest interview he admitted to receiving twelve other packages at various addresses in Indiana.[542] The IDSR assessed CSET on Barney of more than $650,000.[543] The IDSR assessed the CSET based on the weight of the parcels Barney identified on the watch list and not from the actual weight of the marijuana because the parcels were not recovered.[544] The IDSR sustained Barney's protest on six of the twelve parcels because of lack of evidence to show actual possession, and originally

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532. *Id.* at 175.
533. *Id.*
534. *Id.* at 176.
535. *Id.* at 176-77.
536. *Id.* at 177.
537. *Id.* at 177 & n.4.
538. *Id.*
539. 823 N.E.2d 339 (Ind. Tax Ct. 2005).
540. *Id.* at 340.
541. *Id.*
542. *Id.*
543. *Id.*
544. *Id.* at 340 & n.1.

denied the protests with respect to the other six parcels. The IDSR later agreed to base its assessment on a reduced amount of three packages, again due to lack of sufficient evidence that the other three packages contained marijuana.[545]

Barney's exclusionary claim is based on his assertion that the evidence of the parcels was secured through duress and coercion and therefore a violation under *Miranda v. Arizona*.[546] The Tax Court held that it did not need to determine if a violation of *Miranda* occurred because the exclusionary rule does not apply to tax proceedings because the purpose of the rule, deterring police misconduct, is not served by applying it in a CSET case.[547] The Tax Court next sided with the IDSR in holding that once a proposed assessment of the CSET is made, the burden is on Barney to make a prima facie case. The Tax Court pointed out that "a taxpayer who claims he is not within the ambit of taxation bears the burden of proof."[548] The Tax Court found that Barney's only claim was that the evidence was secured under duress and coercion, and therefore he did not make his prima facie showing that the parcels assessed did not contain marijuana, and consequently the assessments were upheld.[549]

Barney then presented the IDSR's Letter of Finding ("LOF") on the assessment issued on September 29, 2000, and claimed the weights of the parcels listed individually in the LOF did not subtract the weight of the packaging from the weight on which the CSET was assessed.[550] The Tax Court found that the individual weights of the packages did not appear in the LOF but only on the parcel watch list, and the agent who prepared the assessment testified that he subtracted 1300 grams per package to account for the weight of the packaging materials.[551] Therefore the Tax Court held that without further evidence to support Barney's claim, the weights used in the IDSR's assessment were affirmed.[552]

E. Inheritance Tax

1. In re Estate of Wilson.[553]—Alice W. Thomas ("Thomas") appealed the Orange County Circuit Court's ("probate court") March 2004 redetermination of Indiana inheritance tax liability of her mother's Estate.[554] In 2001, Pearl Wilson ("Wilson") conveyed 397 acres, previously appraised at $637,000, to Thomas.

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545. *Id.* at 340 n.2.

546. *Id.* at 341 (citing Miranda v. Arizona, 384 U.S. 436 (1966)).

547. *Id.*

548. *Id.* at 341-42 (internal quotation marks omitted) (quoting Longmire v. Ind. Dep't of State Revenue, 638 N.E.2d 894, 898 (Ind. Tax Ct. 1994)).

549. *Id.* at 342.

550. *Id.*

551. *Id.*

552. *Id.*

553. 822 N.E.2d 292 (Ind. Tax Ct. 2005).

554. *Id.* at 293.

Wilson died twenty days later.[555] In March 2002, Thomas filed an inheritance tax return reporting no taxes due. The county appraiser reviewed the return[556] and forwarded it to the probate court, which entered an order that no inheritance tax was due.[557] In 2002, the IDSR "filed both a motion to set aside the probate court's order, pursuant to Indiana Trial Rule 60(B), and a 'Petition for Rehearing, Reappraisement and Redetermination of Inheritance and Transfer Tax'" to set aside the probate court's order after alleging that the valuation of the land should have been included in the taxable Estate in the amount of $637,000.[558] The IDSR claimed that more than $22,000 in inheritance tax was owed on the Estate. In 2003, following a hearing, the probate court determined that the estate owed inheritance taxes totaling $22,692.28, plus interest.[559]

Thomas claimed that the IDSR's Petition was untimely filed and the probate court lacked subject matter jurisdiction.[560] The IDSR claimed the Petition was filed on time, and if determined untimely, claimed that the circumstances in this case excused it from timely filing the Petition.[561] Indiana Code section 6-4.1-7-1 provides that a person who is not satisfied with an inheritance tax determination must file a petition for rehearing within 120 days after the determination.[562] Thomas claimed the plain language of the statute was clear.[563] The IDSR argued that the 120-day period did not begin until they received actual notice of the determination.[564] The Tax Court held that the Petition was not timely filed, stating that "[w]hen the language of a statute is plain and unambiguous, the court has no power to construe the statute for the purpose of limiting or extending its operation."[565]

Thomas claimed that if the Petition was not filed timely then the probate court lacked jurisdiction.[566] The IDSR claimed that once it became aware of the probate court's order, it filed a timely Indiana Trial Rule 60(B) motion which allows a party to have a judgment set aside for "reasons of mistake, surprise, or excusable neglect."[567] The Tax Court found that the probate court in its discretion could determine the presence of mistake, surprise, or excusable neglect, and therefore the Tax Court would only overturn the probate court's

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555. *Id.*

556. Pursuant to IND. CODE § 6-4.1-5-2 (2005).

557. *Thomas*, 822 N.E.2d at 293-94.

558. *Id.* at 294.

559. *Id.*

560. *Id.*

561. *Id.* at 294-95.

562. *Id.* at 295 (citing IND. CODE § 6-4.1-7-1 (2005)).

563. *Id.*

564. *Id.*

565. *Id.* (internal quotation marks omitted) (quoting F.A. Wilhelm Constr. Co. v. Ind. Dep't of State Revenue, 586 N.E.2d 953, 955 (Ind. Tax Ct. 1992)).

566. *Id.* at 295.

567. *Id.* at 296 (quoting IND. TRIAL R. 60(B)(1)).

decision if there was found to be abuse of discretion.[568] The Tax Court held that the probate court did not err in its redetermination of the Estate's inheritance tax liability since the IDSR could show surprise as well as the required showing that the case would have come out differently if tried on its merits.[569] The Tax Court held that the probate court is not the supervisor, enforcer, or collector of inheritance tax, but the IDSR is, and since the IDSR did not have actual notice that the Estate was being processed prior to the lapse of the 120-day period and could not therefore timely challenge the determination, the element of surprise applied in this case.[570]

568. *Id.*
569. *Id.* at 296-97.
570. *Id.*