

# RECENT DEVELOPMENTS IN INDIANA TAXATION

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## INTRODUCTION—SOME ABBREVIATION REFERENCES

This Article highlights the major tax developments which occurred throughout the calendar year of 2006.<sup>1</sup> Whenever the term “GA” is used in this Article, such term shall refer only to the 114th Indiana General Assembly. Whenever the term “Governor” is used in this Article, such term shall refer only to the Governor of Indiana who was serving in office during the 114th Indiana General Assembly. Whenever the term “Supreme Court” is used in this Article, such term shall refer only to the Indiana Supreme Court. Whenever the term Court of Appeals is used in this Article, such term shall refer only to the Indiana Court of Appeals. Whenever the term “Tax Court” is referred to in this Article, such term shall refer only to the Indiana Tax Court. Whenever the term “DLGF” is used in this Article, such term shall refer only to the Indiana Department of Local Government Finance. Whenever the term “BTR” is used in this Article, such term shall refer only to the Indiana Board of Tax Review. Whenever the term “SBTC” is used in this Article, such term shall refer only to the Indiana State Board of Tax Commissioners. Whenever the term “DOR” is used in this Article, such term shall refer only to the Indiana Department of State Revenue. Whenever the term “I.C.” is used in the text of this Article, such term shall refer only to the Indiana Code which is in effect at time of the publication of this Article. Whenever the term “ERA” is used in this Article, such term shall refer only to an Indiana Economic Revitalization Area. Whenever the term “PTRC” is used in this Article, such term shall refer only to the Indiana Property Tax Replacement Credits. Whenever the term “CAGIT” is used in this Article, such term shall refer only to the Indiana County Adjusted Gross Income Tax. Whenever the term “COIT” is used in this Article, such term shall refer only to the Indiana County Option Income Tax. Whenever the term “EDC” is used in this Article, such term shall refer only to the Indiana Economic Development Corporation. Wherever the term “CDC” is used in this Article, such term shall refer only to the Indiana Community Development Corporation. Whenever the

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1. For comprehensive information concerning the Indiana Tax Court, the Indiana Department of State Revenue, the Indiana State Board of Tax Commissioners, the Indiana Department of Local Government Finance, and a variety of other tax-related information, visit Professor Jegen’s Taxsite at <http://www.iupui.edu/-taxsite/> and the Access Indiana website at <http://www.accessindiana.org>.

term “RVCF” is used in this Article, such term shall refer only to an Indiana Regional Venture Capital Fund. Whenever the term “EDA” is used in this Article, such term shall refer only to an Indiana Economic Development Area. Whenever the term “CEDIT” is used in this Article, such term shall refer only to the Indiana County Economic Development Income Taxes. Whenever the term “EDIT” is used in this Article, such term shall refer only to the Indiana Economic Development Income Tax. Whenever the term “EDGE” is used in this Article, such term shall refer only to the Indiana Economic Development for a Growing Economy. Whenever the term “NIRDA” is used in this Article, such term shall refer only to the Northwest Indiana Regional Development Authority. Whenever the term “PTRF” is used in this Article, such term shall refer only to the Indiana Property Tax Reassessment Fund. Whenever the term “CIB” is used in this Article, such term shall refer only to the Indiana Capital Improvement Board.” Whenever the term “MOD” is used in this Article, such term shall refer only to a maritime opportunity district. Whenever the term “MDC” is used in this Article, such term shall refer only to a Indiana Metropolitan Development Commission.” Whenever the term “QIP” is used in this Article, such term shall refer only to Indiana Qualifying Industrial Property. Whenever the term “MBRAB” is used in this Article, such term shall refer only to the Indiana Military Base Reuse Authority Board. Whenever the term “BMV” is used in this Article, such term shall refer only to the Indiana Bureau of Motor Vehicles. Whenever the term “IRC” is used in this Article, such term shall refer only to the Internal Revenue Code which is in effect at the time of the publication of this Article. Whenever the term “AOPA” is used in this Article, such term shall refer only to the Indiana Administrative Orders and Procedures Act.

## I. INDIANA GENERAL ASSEMBLY LEGISLATION

The 114th GA 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.

Almost all cases which involve Indiana taxation are initially heard by the Tax Court. However, with respect to some cases, the Tax Court hears the case *de novo*, in which case the Tax Court hears the facts, and based on those facts, determines which law should be applied to such facts and what the result should be after making such application. With respect to other cases, the Tax Court sits as an appellate court and determines whether or not the prior trier of facts decision was supported by substantial evidence and whether or not the prior trier of facts properly applied the applicable law to such facts. In this latter case, the Tax Court must determine whether or not the decision of the prior trier of fact was supported by substantial evidence and whether or not such prior trier of fact’s decision was arbitrary, capricious, and an abuse of the prior trier of fact’s discretion. In general, the cases which are heard *de novo* by the Tax Court are those which originate in the DOR and the cases with respect to which the Tax Court sits as an appellate court are those which have been previously tried before the BTR. To emphasize this distinction, the DLGF inserts the following warning

at the end of most of its findings and final determinations:

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at [http://www.in.gov/judiciary/rules/trial\\_proc/index.html](http://www.in.gov/judiciary/rules/trial_proc/index.html). The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.<sup>2</sup>

The Tax Court is a court of limited jurisdiction.<sup>3</sup> Specifically, the Tax Court has exclusive jurisdiction over any case that arises under the tax laws of Indiana and that is an initial appeal of a final determination made by: (1) the DOR with respect to a listed tax (as defined in I.C. § 6-8.1-1-1); or (2) the BTR.<sup>4</sup> Such cases are referred to as "original tax appeals."<sup>5</sup> "The Tax Court has exclusive statewide jurisdiction over all original tax appeals, and venue of all original tax appeals shall lie only in the Tax Court."<sup>6</sup> The Tax Court also hears inheritance tax appeals of final determinations from the courts of probate jurisdiction<sup>7</sup> and certain appeals from the DLGF.<sup>8</sup> The Tax Court does not have jurisdiction over a case which is an appeal from a final determination made by the Indiana Gaming Commission under I.C. 4-32.2.<sup>9</sup> However, the Tax Court has jurisdiction over a case that is an appeal from a final determination made by the DOR concerning the gaming card excise tax established under I.C. § 4-32.2-10.<sup>10</sup> The Tax Court also has any other jurisdiction which is conferred by any other statute.<sup>11</sup> Thus, the Tax Court does not have jurisdiction over a case unless the case is an original

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2. *Berry, Inc. v. Wayne Twp. Assessor*, Nos. 49-900-02-1-7-1 and 49-901-03-1-7-1594 (Ind. Bd. of Tax Review Oct. 6, 2006).

3. IND. CODE § 33-26-3-1 (2004).

4. IND. CODE §§ 33-26-3-1, 6-1.5-5-7 (2006).

5. IND. CODE § 33-26-3-3 (2004); *see also* IND. TAX CT. R. 2.

6. IND. TAX CT. R. 13.

7. IND. CODE § 6-4.1-10-5 (2006).

8. IND. TAX CT. R. 6(B).

9. IND. CODE § 33-26-3-6(a) (2004).

10. *Id.* § 33-26-3-6(b).

11. *Id.* § 33-26-3-2.

tax appeal or the Tax Court has otherwise been specifically assigned jurisdiction by an Indiana statute.<sup>12</sup> A Tax Court judge hears each original tax appeal without the intervention of a jury<sup>13</sup> and all decisions of the Tax Court are required to be rendered in writing.<sup>14</sup>

### A. *Property Tax*<sup>15</sup>

The GA enacted a variety of changes to property tax legislation. For 2006 only, the Indiana property tax homestead credit is 28%, increased from 20%.<sup>16</sup> For 2006 taxes payable 2007, the standard deduction for the homestead credit is \$45,000, increased from \$35,000. This deduction returns to \$35,000 for assessment year 2007 payable 2008 and future years.<sup>17</sup> All counties must provide uniform property tax statements by 2008, expanding the pilot program that will now expire on January 1, 2008.<sup>18</sup> Counties must begin giving advance notice of proposed rate increases to taxpayers in 2009.<sup>19</sup> Taxpayers will have 45 days from receipt of the notice to request a preliminary conference to initiate an appeal of the current assessment.<sup>20</sup>

Counties have the option to authorize a “circuit breaker”<sup>21</sup> that limits residential property taxes to 2% of the property’s assessed value in 2007 (2006 and 2007 for Lake County).<sup>22</sup> In 2008 and 2009, the limit will be mandatory for all residential property.<sup>23</sup> In 2010 and thereafter, the cap is to apply to all

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12. *Id.* § 33-26-3-3.

13. *Id.* § 33-26-6-1; IND. TAX CT. R. 8(B).

14. IND. CODE § 33-26-6-7(a) (2004); IND. TAX CT. R. 10(A).

15. For an additional list of the property tax provisions which were enacted, during 2006, by the GA during 2006, see Memorandum from Ind. Dep’t of Local Gov’t Fin. to Political Subdivisions, County Auditors, Assessors, and Treasurers, and Twp. and Tr. Assessors (June 2006), [www.in.gov/dlgf/docs/2006LegislationMemoFinal060806.doc](http://www.in.gov/dlgf/docs/2006LegislationMemoFinal060806.doc).

16. IND. CODE § 6-1.1-20.9-2 (2006) (as amended by 2006 Ind. Legis. Serv. P.L. 162-2006 (H.E.A. 1001) § 14 (West)).

17. *Id.* § 6-1.1-12-37 (as amended by 2006 Ind. Legis. Serv. P.L. 162-2006 (H.E.A. 1001) § 1 (West)).

18. *Id.* § 6-1.1-22-8.1 (as added by 2006 Ind. Legis. Serv. P.L. 162-2006 (H.E.A. 1001) § 16 (West)).

19. *Id.* § 6-1.1-17-3 (as amended by 2006 Ind. Legis. Serv. P.L. 162-2006 (H.E.A. 1001) § 3 (West)).

20. *Id.* § 6-1.1-15-1 (as amended by 2006 Ind. Legis. Serv. P.L. 162-2006 (H.E.A. 1001) § 2 (West)).

21. Unlike most property tax “circuit breakers,” Indiana’s legislation makes no distinction between recipients based on income level. Instead, this legislation is simply a cap on all property taxes. See INST. ON TAXATION AND ECON. POLICY, PROPERTY TAX CIRCUIT BREAKERS, <http://www.itenpnet.org/pb10cb.pdf> (last visited June 30, 2007).

22. IND. CODE § 6-1.1-20.6-6 (2006) (as amended by 2006 Ind. Legis. Serv. P.L. 162-2006 (H.E.A. 1001) § 8 (West)).

23. *Id.* § 6-1.1-20.6-6.5(b) (as added by 2006 Ind. Legis. Serv. P.L. 162-2006 (H.E.A. 1001)

personal and real property.<sup>24</sup> A political subdivision may not increase its property tax levies nor borrow funds to make up for the reduction in property tax collections that will result from this credit.<sup>25</sup>

Effective January 1, 2006, land held as inventory by a developer may not be reassessed until the assessment date after the earlier of the date the land is transferred to a non-developer, the date construction begins on the land, or the date that a building permit is issued for construction on the land.<sup>26</sup> This applies even if the land in inventory is rezoned while the developer holds title to it.<sup>27</sup>

The GA added wildlands to the types of land that could be classified as forest for property tax purposes and repealed the classification for wildlife habitats.<sup>28</sup> It also defined the minimum number of timber-producing trees per acre (at least 400) required to classify land as a new forest plantation or native forest land.<sup>29</sup>

The GA made various changes to provisions concerning the courts. These affected the tax system in only minor ways. Excessive property tax levies in the first year of a new court's operation are limited to an estimate prepared by the taxing unit that operates the court.<sup>30</sup> The GA also listed valid operating costs of a court.<sup>31</sup>

Beginning January 1, 2007, the GA provided for a reduced penalty of 5% (instead of 10%) on late installments of Indiana property tax if the installment is paid within 30 days of the due date and the taxpayer is not liable for delinquent property taxes from previous years.<sup>32</sup> A county treasurer may, after July 1, 2006, waive a late payment penalty if the taxpayer or the taxpayer's representative requests waiver and provides written proof that the taxpayer or a member of the taxpayer's immediate family died within seven days prior to the installment due date. A taxpayer is also permitted an appeal of the treasurer's decision with a petition to the BTR.<sup>33</sup>

§ 9 (West)).

24. *Id.* § 6-1.1-20.6-6.5(c) (as added by 2006 Ind. Legis. Serv. P.L. 162-2006 (H.E.A. 1001)

§ 9 (West)).

25. *Id.* § 6-1.1-20.6-9.5 (as added by 2006 Ind. Legis. Serv. P.L. 162-2006 (H.E.A. 1001) § 13 (West)).

26. *Id.* § 6-1.1-4-12 (as amended by 2006 Ind. Legis. Serv. P.L. 162-2006 (H.E.A. 1001) § 1 (West)).

27. *Id.*

28. *Id.* §§ 6-1.1-6-1 to -27 (as amended by 2006 Ind. Legis. Serv. P.L. 66-2006 (S.E.A. 354 (West))). Properly classified land is subject to property taxation at the rate of \$1 per acre. *Id.* § 6-1.1-6-14.

29. *Id.* §§ 6-1.1-6-2(b), 6-1.1-6-3 (as amended by 2006 Ind. Legis. Serv. P.L. 66-2006 (S.E.A. 354) (West)).

30. *Id.* § 6-1.1-18.5-13 (as amended by 2006 Ind. Legis. Serv. P.L. 80-2006 (H.E.A. 1156 (West))).

31. *Id.*

32. *Id.* § 6-1.1-37-10 (as amended by 2006 Ind. Legis. Serv. P.L. 67-2006 (S.E.A. 355) § 11 (West)).

33. *Id.* § 6-1.1-37-10.7 (as added by 2006 Ind. Legis. Serv. P.L. 67-2006 (S.E.A. 555) § 12

Civil and school taxing units may now file a property tax levy appeal to offset a levy shortfall in the preceding year rather than only filing such appeals for the forthcoming year.<sup>34</sup> Appeals for the preceding year must be filed before March 1 of the year that the tax is due and must have the approval of the county fiscal body.<sup>35</sup>

Taxpayers have an additional month, until June 10, to file a statement to claim the Indiana mortgage deduction on real property or manufactured or mobile homes. If the taxpayer does not receive notice of an addition to assessed value by May 10, then the taxpayer has thirty days after the mailing date of the notice to claim the deduction. The deadline for taxpayers to notify the auditor of their ineligibility for the deduction is also June 10.<sup>36</sup>

Certain used equipment installed in an ERA or a MOD may qualify for a tax abatement if the equipment was not previously used in Indiana by the taxpayer applying for the abatement or an affiliated party. For any type of personal property to be eligible for an ERA, it must be acquired in an arms length transaction from an entity not related to the applicant.<sup>37</sup> In addition, certain vacant buildings located in an ERA area may qualify for a property tax abatement for up to two years if the building: has been vacant for at least a year; is occupied by its owner or a tenant of the owner; and is for commercial or industrial purposes.<sup>38</sup>

Personal property located in golf courses, country clubs, massage parlors, tennis clubs, racetracks, package liquor stores, residential property (other than low income), and other recreational facilities and retail facilities listed in I.C. § 6-1.1-12.1-3(e) does not qualify for the property tax investment deduction.<sup>39</sup>

Taxing units may impose a maximum ad valorem property tax levy that equals the actual levy rate it imposed in the preceding year plus one-half of the amount by which the previous year's authorized maximum rate exceeded the previous year's actual rate.<sup>40</sup>

Under previous law, the maximum levy in one year was equal to the actual levy imposed in the prior year, resulting in taxing units imposing the maximum

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(West)).

34. *Id.* § 6-1.1-18.5-12 (as amended by 2006 Ind. Legis. Serv. P.L. 67-2006 (S.E.A. 355) § 2 (West)).

35. *Id.*

36. *Id.* §§ 6-1.1-12.2, -4, -10.1, -12, -15, -17, -17.5, -17.8, -20, -24, -30, -35.5, -38 (as amended by 2006 Ind. Legis. Serv. P.L. 154-2005 (S.E.A. 260) §§ 11-23 (West)).

37. *Id.* § 6-1.1-12.1-1 (as amended by 2006 Ind. Legis. Serv. P.L. 154-2006 (S.E.A. 260) § 24 (West)).

38. *Id.* § 6-1.1-12.1-4.8 (as added by 2006 Ind. Legis. Serv. P.L. 154-2006 (S.E.A. 260) § 28 (West)).

39. *Id.* § 6-1.1-12.4-3 (as amended by 2006 Ind. Legis. Serv. P.L. 154-2006 (S.E.A. 260) § 37 (West)).

40. *Id.* § 6-1.1-18.5-1 (as amended by 2006 Ind. Legis. Serv. P.L. 154-2006 (S.E.A. 260) § 46 (West)).

levy so that they did not lose the authority in following years.<sup>41</sup> The new legislation partially alleviates the temptation for taxing units to impose levies that are not currently necessary in order to preserve their future taxing authority.<sup>42</sup> Taxing units may request a higher levy rate if the growth in the assessed value for a unit is more than 2% (down from 3%) higher than the six-year average growth factor.<sup>43</sup>

The GA authorized creation of a new property tax levy to fund emergency medical services provided by county hospitals.<sup>44</sup> The maximum levy for this purpose is the lesser of \$0.06 per \$100 of assessed value or a rate sufficient to meet the expenses of providing emergency medical services, but imposition of this levy may not increase a county's overall levy rate above the maximum authorized rate.<sup>45</sup>

The GA authorized counties, other than Marion County, to create housing programs by resolution in allocation areas that meet certain criteria.<sup>46</sup> A special tax may be levied to fund these housing programs.<sup>47</sup> Additional property tax revenues due to increases in the allocation area's assessed value over its assessed value before it was established would be deposited into a special fund to be used to promote rehabilitation of the area.<sup>48</sup>

The amount of assessed value of depreciable personal property that is eligible for tax abatement and is subject to the 30% minimum valuation limitation is specified for purposes of computing the deduction. This provision amended I.C. § 6-1.1-12.1-4.5 to add a new section that establishes a formula for determining the assessed value of depreciable personal property eligible for an ERA when the 30% floor is triggered.<sup>49</sup>

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41. *Id.*

42. See LEGIS. SERVS. AGENCY, FISCAL IMPACT STATEMENT SB260, at 7-8 (2006), available at <http://www.in.gov/legislative/bills/2006/PDF/FISCAL/SBO260.008.pdf>

43. *Id.* § 6-1.1-18.5-13 (as amended by 2006 Ind. Legis. Serv. P.L. 154-2006 (S.E.A. 260) § 47 (West)).

44. IND. CODE §§ 16-22-14-1 to -7 (2004) (as added by 2006 Ind. Legis. Serv. P.L. 154-2006 (S.E.A. 260) § 67 (West)).

45. *Id.*

46. *Id.* § 36-7-14-35 (as amended by 2006 Ind. Legis. Serv. P.L. 154-2006 (S.E.A. 260) § 71 (West)); *id.* § 36-7-14-47 (as added by 2006 Ind. Legis. Serv. P.L. 154-2006 (S.E.A. 260) § 75 (West)).

47. *Id.* § 36-7-14-46 (as added by 2006 Ind. Legis. Serv. P.L. 154-2006 (S.E.A. 260) § 74 (West)).

48. *Id.* § 36-7-14-48 (as added by 2006 Ind. Legis. Serv. P.L. 154-2006 (S.E.A. 260) § 76 (West)).

49. IND. CODE § 6-1.1-12.1-4.5 (2006) (as amended by 2006 Ind. Legis. Serv. P.L. 154-2006 (S.E.A. 260) § 27 (West)).

### B. Other Property Tax Legislation

In 2006, the GA also did the following things, all of which became law.

1. *Senate Enrolled Acts (SEA)*.—The GA added I.C. § 8-1.5-5-32 (effective March 15, 2006) that allows excluded cities and towns in a county containing a consolidated city (Marion County) to withdraw from a storm water special taxing district created by the consolidated district.<sup>50</sup>

The GA amended I.C. § 36-9-27-86 (effective January 1, 2006) requiring the county auditor to deliver to the county treasurer final costs for construction or reconstruction of a drain within 30 days of certification to the auditor.<sup>51</sup> This amendment also requires the treasurer to mail a ditch tax statement within 15 days of receipt of the duplicate from the auditor or add a statement to the first property tax installment.<sup>52</sup> This amendment also specifies that state or a political subdivision which owns property is not exempt from ditch assessments.<sup>53</sup> Further, this amendment requires the treasurer to send a list of delinquencies for ditch assessments on state owned property to the state land office.<sup>54</sup>

The GA added a non-code provision (effective January 1, 2006) specifying that Indiana is not entitled to a refund of an assessment paid by Indiana on a notice mailed before January 1, 2006.<sup>55</sup>

The GA amended and corrected I.C. § 6-1.1-4-28.5 (effective March 24, 2006) to specify that the monies in the PTRF may not be transferred or reassigned to any other fund and may not be used for any purpose other than those listed in the statute.<sup>56</sup>

The GA amended I.C. § 6-1.1-5.5-5 (effective March 24, 2006) to require the instructions for completing a sales disclosure form must list property tax benefits available to the purchaser.<sup>57</sup>

The GA amended I.C. § 6-1.1-5.5-6 (effective March 24, 2006) to state the county auditor may not accept a conveyance document unless it is accompanied by a sales disclosure containing all information required by section 5(a) of the statute.<sup>58</sup>

The GA amended I.C. § 6-1.1-8.5-8 (effective March 24, 2006) to prohibit local assessing officials from assessing QIP in Lake County.<sup>59</sup> The GA amended I.C. § 6-1.1-12-10.1 (effective March 24, 2006) to change the filing date for the over 65 years old deduction from May 10 to June 10.<sup>60</sup> The GA also amended

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50. 2006 Ind. Legs. Serv. P.L. 52-2006 (S.E.A. 71) § 1 (West).

51. *Id.* § 2.

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.* § 3.

56. 2006 Ind. Legis. Serv. P.L. 154-2006 (S.E.A. 260) § 2 (West).

57. *Id.* § 3.

58. *Id.* § 4.

59. *Id.* § 8.

60. *Id.* § 13.

I.C. § 6-1.1-12-12 (effective July 1, 2006) to change the filing date for the blind and disabled deduction from May 10 to June 10.<sup>61</sup> The GA amended I.C. § 6-1.1-12-15 (effective March 24, 2006) to change the filing date for the disabled veteran deduction from May 10 to June 10.<sup>62</sup> The GA further amended I.C. § 6-1.1-12-17 (effective March 24, 2006) to change the filing date for the surviving spouse of a veteran deduction from May 10 to June 10.<sup>63</sup> Finally, the GA amended I.C. § 6-1.1-12-17.5 (effective March 24, 2006) to change the filing date for the veteran of World War I deduction from May 10 to June 10.<sup>64</sup>

The GA amended I.C. § 6-1.1-12-17.8 (effective March 24, 2006) to change “his” to “individual” when referencing notification to the auditor of ineligibility for a deduction under chapter 12.<sup>65</sup>

The GA amended I.C. § 6-1.1-12-20 (effective January 1, 2006) to change the filing date for the rehabilitated residential property deduction from May 10 to June 10.<sup>66</sup> The GA also amended I.C. § 6-1.1-12-24 (effective January 1, 2006) to change the filing date for the rehabilitated property deduction from May 10 to June 10.<sup>67</sup> The GA amended I.C. § 6-1.1-12-30 (effective January 1, 2006) to change the filing date for the wind power device deduction from May 10 to June 10.<sup>68</sup> The GA amended I.C. § 6-1.1-12-35.5 (effective January 1, 2006) to change the filing date for the coal conversion system, hydroelectric power device, geothermal heating and cooling device, or coal combustion products deductions from May 10 to June 10.<sup>69</sup> Additionally, the GA amended I.C. § 6-1.1-12-38 (effective January 1, 2006) to change the filing date for the fertilizer storage improvement deduction from May 10 to June 10.<sup>70</sup>

The GA amended I.C. § 6-1.1-12.1-2 (effective March 24, 2006) to add a fourth standard and related wording which a designating body may establish in considering findings for an area to be considered an ERA.<sup>71</sup> The GA amended I.C. § 6-1.1-12.1-2.5 (effective March 24, 2006) to add language regarding new section 4.8.<sup>72</sup> This amendment also changed “his” to “the person” when referring to a person filing a remonstrance against an ERA designation.<sup>73</sup> The GA added I.C. § 6-1.1-12.1-5.3 (effective March 24, 2006) outlining processing of the deduction application for an ERA under new section 4.8.<sup>74</sup> The GA amended I.C.

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61. *Id.* § 14.

62. *Id.* § 15.

63. *Id.* § 16.

64. *Id.* § 17.

65. *Id.* § 18.

66. *Id.* § 19.

67. *Id.* § 20.

68. *Id.* § 21.

69. *Id.* § 22.

70. *Id.* § 23.

71. *Id.* § 25.

72. *Id.* § 26.

73. *Id.*

74. *Id.* § 29.

§§ 6-1.1-12.1-5.9, 6-1.1-12.1-9, 6-1.1-12.1-12, 6-1.1-12.1-14 (effective March 24, 2006) to add reference to new section 4.8.<sup>75</sup> Also, the GA amended I.C. § 6-1.1-12.1-8 (effective March 24, 2006) to require the county auditor to publish the total amount of ERAs granted on vacant buildings pursuant to new section 4.8.

Further, the GA added I.C. § 6-1.1-12.1-9.5 (effective January 1, 2006) to define a “clerical error” on an ERA as a mathematical error or omitted signatures.<sup>76</sup> This provision also allows the designating body, by resolution, to waive non-compliance with the following requirements with respect to an ERA: filing deadline of an application, statement of benefits or other document; and clerical error in an application, statement of benefits or other document.<sup>77</sup>

The GA amended I.C. § 6-1.1-12.1-11.3 (effective March 24, 2006) to add occupation of an eligible vacant building prior to certain actions required for an ERA as a reason for denial of the abatement.<sup>78</sup>

The GA amended I.C. § 6-1.1-12.4-3 (effective January 1, 2006) to clarify that personal property located at a facility listed in I.C. § 6-1.1-12.1-3(e) is not eligible for the investment deduction.<sup>79</sup>

The GA amended I.C. § 6-1.1-14-5 (effective March 24, 2006) to clarify that the DLGF may not issue an equalization order more than 12 months after the county auditor certifies the certificate of net assessed value.<sup>80</sup>

The GA amended I.C. § 6-1.1-17-0.5 (effective March 24, 2006) to allow the county auditor to reduce a taxing unit’s certified net assessed value for pending appeals.<sup>81</sup> This amendment also sets a maximum amount that can be withheld.<sup>82</sup>

The GA amended I.C. § 6-1.1-17-1 (effective March 24, 2006) to allow the county auditor to file an amended certificate of net assessed value with DLGF under certain circumstances.<sup>83</sup>

The GA added I.C. § 6-1.1-17-8.5 (effective March 24, 2006) to require the DLGF to review the budget, tax rate, and tax levy for any taxing unit for which the county auditor has filed an amended certificate of net assessed value.<sup>84</sup> This amendment also allows the county auditor to appeal to the DLGF to withhold an amount of assessed value greater than that allowable by I.C. § 6-1.1-17-0.5 from the certificate of net assessed value.<sup>85</sup> The GA also amended I.C. § 6-1.1-17-16 (effective July 1, 2006) to amend statutory cites giving the DLGF the authority

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75. *Id.* §§ 30, 31, 35-36.

76. *Id.* § 33.

77. *Id.*

78. *Id.* § 34.

79. *Id.* § 37.

80. *Id.* § 38.

81. *Id.* § 41.

82. *Id.*

83. *Id.* § 42.

84. *Id.* § 43.

85. *Id.*

to change a budget, tax rate, or tax levy.<sup>86</sup> This amendment also clarifies the reasons a taxpayer may appeal a budget, tax rate, or tax levy decision made by the DLGF.<sup>87</sup>

The GA amended I.C. § 6-1.1-18-12 (effective July 1, 2006) to add additional statutory cites for maximum rate cap adjustments for emergency medical services for counties and capital project funds for school corporations.<sup>88</sup>

The GA amended I.C. § 6-1.1-18.5-17 (effective January 1, 2006) to specify that “levy excess” for a civil taxing unit does not include delinquent property taxes collected in the current year that were assessed for a previous assessment date.<sup>89</sup> The GA amended I.C. § 6-1.1-19-1.7 (effective January 1, 2006) to specify that “levy excess” for a school corporation does not include delinquent property taxes collected in the current year that were assessed for a previous assessment date.<sup>90</sup>

The GA amended I.C. § 6-1.1-20.9-3 (effective March 24, 2006) to change the filing date for the homestead credit from May 10 to June 10.<sup>91</sup>

The GA amended I.C. § 6-1.1-30-6 (effective March 24, 2006) to change the attestation of a record of proceedings of the DLGF to be completed by a designee of the commissioner instead of a deputy commissioner.<sup>92</sup>

The GA added I.C. § 6-1.1-36-1.5 (effective July 1, 2006) to specify when a form is considered file by a due date under I.C. § 6-1.1 or I.C. § 6-1.5 (a “mailbox rule”).<sup>93</sup>

The GA amended I.C. § 6-1.1-36-12 (effective January 1, 2006) to eliminate the payment of a contractor’s fee for personal property auditing services from the gross amount of personal property taxes collected on undervalued or omitted personal property.<sup>94</sup> This amendment also adds a provision authorizing the county auditor to create a special non-reverting fund for the purpose of paying the contract fees without an appropriation.<sup>95</sup> Money remaining in the fund at the expiration of the contract after the contractor has been paid shall be distributed to the taxing units based on the rates then in effect.<sup>96</sup>

The GA amended I.C. § 6-1.1-37-10 (effective July 1, 2006) to add additional language specifying when a tax payment is considered paid by a due date (a “mailbox rule”).<sup>97</sup>

The GA amended I.C. § 6-1.1-39-5 (effective January 1, 2006) to require the

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86. *Id.* § 44.

87. *Id.*

88. *Id.* § 45.

89. *Id.* § 48.

90. *Id.* § 49.

91. *Id.* § 50.

92. *Id.* § 51.

93. *Id.* § 53.

94. *Id.* § 54.

95. *Id.*

96. *Id.*

97. *Id.* § 55.

DLGF to neutralize the base assessed value in an EDD after each annual adjustment.<sup>98</sup>

The GA added I.C. § 6-1.1-40-1.5 (effective January 1, 2006) to define an “affiliate” for the purposes of a deduction for personal property in a MOD.<sup>99</sup>

The GA amended I.C. § 6-1.1-40-4 (effective January 1, 2006) to require that for any type of personal property to be eligible for a MOD deduction, it must be acquired in an arms length transaction from an entity which is not an affiliate of the applicant.<sup>100</sup> This amendment also requires that to be eligible, the property must never have been used for any purpose in Indiana before its installation.<sup>101</sup>

The GA amended I.C. § 6-1.1-40-10 (effective July 1, 2006) to add a section (e) that establishes a formula for determining the assessed value of depreciable personal property eligible for a MOD when the 30% floor is triggered.<sup>102</sup>

The GA amended I.C. § 6-1.1-45-9 (effective July 1, 2006) to add a section (c) that requires the MBRAB to approve a deduction for a qualified investment made in an enterprise zone that is under the jurisdiction of a MBRAD.<sup>103</sup>

The GA added I.C. § 6-1.5-4-2 (effective March 24, 2006) to give the BTR and its administrative law judges the authority to: subpoena and examine witnesses; administer oaths; and subpoena and examine books or papers that are in the hands of any person.<sup>104</sup>

The GA amended I.C. § 6-1.5-5-2 (effective March 24, 2006) to clarify wording regarding local taxing units’ position in an appeal before the BTR.<sup>105</sup>

The GA amended I.C. § 8-1.5-5-32 (effective March 24, 2006) to change the word “district” to “municipality.”<sup>106</sup>

The GA amended I.C. § 8-22-3.5-11 (effective January 1, 2006) to require the DLGF to neutralize the base assessed value in an airport development zone after each annual adjustment.<sup>107</sup>

The GA amended I.C. § 20-44-3-2 (effective July 1, 2006) to specify that “levy excess” for a school corporation does not include delinquent property taxes collected in the current year that were assessed for a previous assessment date.<sup>108</sup>

The GA amended I.C. § 20-46-6-5 (effective July 1, 2006) to require DLGF to adjust the maximum rate for a school corporation’s capital project fund for the effects of a general reassessment.<sup>109</sup>

The GA amended I.C. § 36-7-14-39, I.C. § 36-7-15.1-26, I.C. § 36-7-15.1-53,

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98. *Id.* § 56.

99. *Id.* § 57.

100. *Id.* § 58.

101. *Id.*

102. *Id.* § 59.

103. *Id.* § 60.

104. *Id.* § 61.

105. *Id.* § 62.

106. *Id.* § 65.

107. *Id.* § 66.

108. *Id.* § 68.

109. *Id.* § 69.

I.C. § 36-7-30-25, I.C. § 36-7-30.5-30, I.C. § 36-7-32-19 (effective January 1, 2006) all to require the DLGF to neutralize the base assessed value in a TIF district after each annual adjustment.<sup>110</sup>

The GA added I.C. § 36-7-14-45 (effective July 1, 2006) to allow a redevelopment commission to establish a housing program allocation area by resolution.<sup>111</sup>

The GA added I.C. § 36-7-14-47 (effective July 1, 2006) which lists the findings a redevelopment commission must make in the resolution adopting a housing program.<sup>112</sup>

The GA granted a personal property ERA to a grey iron foundry located in Grant County (Atlas Foundry) for assessment years beginning in 2001.<sup>113</sup>

The GA granted a property tax exemption to a fraternity at Butler University for assessment years 2000 through 2003.<sup>114</sup>

The GA granted retroactive validation of a property tax exemption to Zionsville Youth Soccer for assessment years 1999 through 2003.<sup>115</sup>

The GA clarified that the expansion of eligibility for personal property ERA for equipment used in Indiana by a person other than the deduction applicant before it was installed in the ERA applies only to equipment installed and initially used after December 31, 2005.<sup>116</sup>

The GA allowed special fire districts with rapid assessed value growth to seek a maximum levy increase from DLGF.<sup>117</sup>

The GA granted retroactive validation of a sales tax exemption for Hartford City Little League for 2002 through 2005.<sup>118</sup>

The GA granted retroactive validation of a property tax exemption for the Madame Walker Theater for taxes payable in 2005.<sup>119</sup>

The GA allowed for 2005 taxes payable 2006, a personal property tax return filed up to 30 days late to be considered timely filed, and any exemptions claimed are not waived by the late filing.<sup>120</sup>

The GA raised the maximum levy for Jasper and Dubois Counties' libraries.<sup>121</sup>

The GA allowed Aqua Indiana to claim a credit against the 2007 property taxes for an error made on its 2005 distributable property return.<sup>122</sup>

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110. *Id.* §§ 72, 77-81.

111. *Id.* § 73.

112. *Id.* § 75.

113. *Id.* § 83 (non-code provision).

114. *Id.* § 84 (non-code provision).

115. *Id.* § 85 (non-code provision).

116. *Id.* § 86 (non-code provision).

117. *Id.* § 87 (non-code provision).

118. *Id.* § 88 (non-code provision).

119. *Id.* § 89 (non-code provision).

120. *Id.* § 90 (non-code provision).

121. *Id.* § 91 (non-code provision).

122. *Id.* § 93 (non-code provision).

The GA allowed Middlebury Township, Elkhart County, to seek a maximum levy increase to cover costs of emergency medical services.<sup>123</sup>

The GA required the DLGF to develop a recommendation to the legislative council to adjust maximum permissible levies for property taxes first due and payable after 2007.<sup>124</sup>

The GA allowed the DLGF to adopt temporary rules to implement the investment deduction found in I.C. § 6-1.1-12.4.<sup>125</sup>

The GA amended I.C. § 6-1.1-21-10 (effective January 1, 2007) to change the schedule for PTRC distribution from six monthly distributions to seven variable percentage monthly distributions annually.<sup>126</sup>

The GA added I.C. § 6-1.1-6-2.5 (effective July 1, 2006) to create “wildlands” as a new category of classified forest land.<sup>127</sup> Wildlands must contain one or more of the following:

- (1) Grasslands that are dominated by native grasses . . . .
- (2) Wetlands that support a prevalence of native vegetation . . . .
- (3) Early forest successional stands . . . . ;
- (4) Other lands [the DNR] determines is capable of supporting wildlife . . . .
- (5) A body of water.<sup>128</sup>

The GA amended I.C. § 6-1.1-6-3 (effective July 1, 2006) to require classified native forest land to have at least 1000 timber producing trees per acre.<sup>129</sup> The statute formerly required 400 trees per acre.<sup>130</sup> The GA amended I.C. § 6-1.1-6-3.5 (effective July 1, 2006) to clarify areas within classified forest land that are eligible for classification.<sup>131</sup> The GA amended I.C. § 6-1.1-6-5 (effective July 1, 2006) to add “wildlands” to the requirement that the classified parcel must contain at least 10 contiguous acres.<sup>132</sup>

The GA amended I.C. § 6-1.1-6-5.5 (effective July 1, 2006) to allow a taxpayer to file a revised application for classification.<sup>133</sup> It also added reference to “wildlands.”<sup>134</sup> The GA amended I.C. § 6-1.1-6-6 (effective July 1, 2006) to add “wildlands” to the requirement that the classified parcel may not have an improvement situated on it.<sup>135</sup> The GA amended I.C. § 6-1.1-6-7 (effective July

123. *Id.* § 94 (non-code provision).

124. *Id.* § 95 (non-code provision).

125. *Id.* § 96 (non-code provision).

126. 2006 Ind. Legis. Serv. P.L. 159-2006 (S.E.A. 345) § 1 (West).

127. 2006 Ind. Legis. Serv. P.L. 66-2006 (S.E.A. 354) § 2 (West).

128. *Id.*

129. *Id.* § 4.

130. *Id.*

131. *Id.* § 5.

132. *Id.* § 6.

133. *Id.* § 7.

134. *Id.*

135. *Id.* § 8.

1, 2006) to add “wildlands” to the requirement that the classified parcel may not have grazing or confined non-domestic animals on it.<sup>136</sup>

The GA amended I.C. § 6-1.1-6-9 (effective July 1, 2006) to allow the natural resources commission to adopt rules allowing a taxpayer to submit other means of describing and platting a parcel other than a registered land survey.<sup>137</sup>

The GA amended I.C. § 6-1.1-6-10 (effective July 1, 2006) to correct the spelling of “assessor” (sic) to “assessor.”<sup>138</sup> This section is also repealed in this bill.<sup>139</sup>

The GA amended I.C. § 6-1.1-6-11 (effective July 1, 2006) to include “wildlands” in the application process.<sup>140</sup>

The GA amended I.C. § 6-1.1-6-13 (effective July 1, 2006) to make minor technical changes.<sup>141</sup>

The GA amended I.C. §§ 6-1.1-6-14, -15, -16, -18, -19, -21, and -23 (effective July 1, 2006) to add the term “wildlands.”<sup>142</sup>

The GA amended I.C. § 6-1.1-6-20 (effective July 1, 2006) to add provision allowing a retroactive revised application.<sup>143</sup>

The GA amended I.C. § 6-1.1-6-24 (effective July 1, 2006) to add a penalty for withdrawal of land from classification after June 30, 2006 in an amount of \$100 per withdrawal plus \$50 per acre (unless DNR establishes a different amount by rule).<sup>144</sup> Seventy-five percent of this new penalty is transferred to the forest restoration fund and 25% goes into the county general fund.<sup>145</sup> This penalty is in addition to back taxes and the 10% interest already in the statute.<sup>146</sup>

The GA amended I.C. § 6-1.1-6-25 (effective July 1, 2006) to require the owner splitting a classified parcel to file new, separate applications for each parcel.<sup>147</sup> This amendment also requires the owner to disclose to a potential purchaser that the land is enrolled in a classified land program and the potential tax liabilities.<sup>148</sup>

The GA amended I.C. § 6-1.1-6-27 and I.C. § 6-1.1-6.2-15 (effective July 1, 2006) to add wildlands.<sup>149</sup>

The GA amended I.C. § 14-23-4-2 (effective July 1, 2006) to redefine

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136. *Id.* § 9.

137. *Id.* § 10.

138. *Id.* § 11.

139. *Id.*

140. *Id.* § 12.

141. *Id.* § 13.

142. *Id.* §§ 14-18, 20-21.

143. *Id.* § 19.

144. *Id.* § 22.

145. *Id.*

146. *Id.*

147. *Id.* § 23.

148. *Id.*

149. *Id.* §§ 24-25.

“merchantable timber.”<sup>150</sup>

The GA repealed the following:

- (1) I.C. § 6-1.1-6-10—Assessment required.
- (2) I.C. § 6-1.1-6-22—Withdrawal of application; appeals.
- (3) I.C. § 6-1.1-6-6.5—Assessment of certain wildlife habitats.
- (4) I.C. § 14-36-1-36—Land not classified as native forest land or forest plantations.<sup>151</sup>

The GA reclassified land classified as “wildlife habitat” under I.C. § 6-1.1-6.5 (repealed) to “wildlands” under I.C. § 6-1.1-6.<sup>152</sup>

The GA amended I.C. § 6-1.1-1-8 (effective July 1, 2006) to add I.C. § 6-1.1-37-10.7 to the definition of “general assessment provisions.”<sup>153</sup>

The GA amended I.C. § 6-1.1-19-2 (effective March 17, 2006) to specify that a school corporation must file an appeal for emergency financial relief with the DLGF for the ensuing calendar before September 20 of the calendar year immediately preceding the ensuing calendar year.<sup>154</sup> This amendment also allows a shortfall appeal to be filed (1) before December 31, or (2) before March 1 with the approval of the county fiscal body.<sup>155</sup> Further, this amendment requires the fiscal officer of the appealing school corporation to file a copy of the appeal petition with the county auditor and treasurer.<sup>156</sup>

The GA amended I.C. § 6-1.1-21-2 (effective March 17, 2006) to eliminate “on or before March 1” from the definition of the “Auditor’s abstract.”<sup>157</sup> This amendment also corrected the definition of “total county tax levy” to change the statutory cite for library capital project funds and art association funds.<sup>158</sup> Further, this amendment eliminated “on or before March 1” from the definition of “tax duplicate.”<sup>159</sup>

The GA amended I.C. § 6-1.1-22-3 (effective March 17, 2006) to add language requiring a county auditor who receives a copy of an appeal petition for levy relief or emergency financial relief filed with the DLGF to postpone preparation of the tax duplicate until the appeal is resolved.<sup>160</sup> If the tax duplicate has been prepared prior to receipt of the copy of the appeal, the county auditor must prepare a revised tax duplicate after the appeal is resolved.<sup>161</sup> The GA also amended I.C. § 6-1.1-22-5 (effective March 17, 2006) to add language requiring

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150. *Id.* § 28.

151. *Id.* § 30.

152. *Id.* § 32.

153. 2006 Ind. Legis. Serv. P.L. 67-2006 (S.E.A. 355) § 1 (West).

154. *Id.* § 3.

155. *Id.*

156. *Id.*

157. *Id.* § 4.

158. *Id.*

159. *Id.*

160. *Id.* § 5.

161. *Id.*

a county auditor who receives a copy of an appeal petition for levy relief or emergency financial relief filed with the DLGF to postpone preparing and filing of the abstract until the appeal is resolved.<sup>162</sup> If the abstract has been prepared prior to receipt of the copy of the appeal, the county auditor must prepare a revised abstract after the appeal is resolved.<sup>163</sup>

The GA amended I.C. § 6-1.1-22-9 (effective March 17, 2006) allowing a county treasurer who receives a copy of an appeal petition for levy relief or emergency financial relief filed with the DLGF prior to mailing of tax statements to either:

- (1) mail the tax statements without regard to the pendency of the appeal and, if the resolution of the appeal by the [DLGI] results in changes in levies, mail or transmit reconciling statements . . . ; or,
- (2) delay the mailing or transmission of statements . . . so that:
  - (A) the due date of the first installment . . . is delayed by not more than sixty (60) days past; and
  - (B) all statements reflect any changes in levies that result from the resolution of the appeal . . . .<sup>164</sup>

The reconciling statements referred to in (1) above must indicate: (1) the total amount due for the year; (2) the total amount of the installments paid to date; (3) any additional payments due from the taxpayer; and (4) any refunds due to the taxpayer.<sup>165</sup>

The GA amended I.C. § 6-1.1-22-9.5 (effective March 17, 2006) to specify only the county fiscal body has to approve a petition to the DLGF to modify property tax payment dates.<sup>166</sup> This amendment also eliminated the requirement that the county auditor and treasurer must also approve the petition.<sup>167</sup>

The GA amended I.C. § 6-1.1-22.5-6 (effective March 17, 2006) to prohibit provisional property tax statements from being used if the county auditor fails to deliver the abstract due to a levy appeal pending before DLGF.<sup>168</sup>

The GA amended I.C. § 6-1.1-37-9 (effective July 1, 2006) to clarify wording regarding interest charged when a change of assessment is made or increased after the property taxes were due.<sup>169</sup>

The GA amended I.C. § 14-33-10-3 (effective January 1, 2007) to apply the 5% interest rate as applies to unpaid property taxes to unpaid assessments for a

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162. *Id.* § 6.

163. *Id.*

164. *Id.* § 7.

165. *Id.*

166. *Id.* § 8.

167. *Id.*

168. *Id.* § 9.

169. *Id.* § 10.

conservancy district.<sup>170</sup>

The GA amended I.C. § 36-9-37-19 (effective January 1, 2007) to apply the 5% interest rate as applies to unpaid property taxes to unpaid municipal water utility assessments.<sup>171</sup>

The GA added a non-code provision that allows delayed property tax payments made in 2005 for assessment years 2002, 2003, and 2004, to be deducted from adjusted gross income for the purposes of the state income tax (effective January 1, 2006).<sup>172</sup>

2. *House Enrolled Acts (HEA)*.—The GA amended I.C. § 6-1.1-17-3 (effective July 1, 2006) to require, beginning in 2009, a political subdivision to complete its budget, tax levy, and proposed tax rate, and to publish and report this information to the county auditor before August 10 of the calendar year.<sup>173</sup> This amendment also requires the county auditor to send a notice to each taxpayer by August 10 outlining the current year's assessed value, property tax liability to each political subdivision, comparative property tax information for each political subdivision, and the date of the public hearing on each political subdivision's budget, rate, and levy.<sup>174</sup>

The GA amended I.C. § 6-1.1-21-3 (effective January 1, 2006) to require DLGF to make the certifications of eligible property tax replacement amount and homestead credits to the DOR based on the best information available at the time the certification is made.<sup>175</sup>

The GA amended I.C. § 6-1.1-20-10 (effective March 24, 2006) to prohibit a political subdivision from compelling an employee or student to promote a position on a petition or remonstrance on a bond or lease.<sup>176</sup> This amendment also prohibits: the staff and employees of a school corporation from identifying a student as the child of a parent/guardian who has taken a position on the petition or remonstrance; a person or organization that has a contract, or formal or informal arrangement with a school corporation, to spend monies to promote a position on the petition; and an attorney, architect, construction manager, or a financial advisor with respect to a controlled project to spend monies to promote a position on the petition.<sup>177</sup>

The GA added I.C. § 6-1.1-20-11 (effective July 1, 2006) to establish test for the validity of a signature on a document required for a petition and remonstrance procedure.<sup>178</sup>

The GA amended I.C. § 6-1.1-20.6-4 (effective March 24, 2006) to make the definition of “qualified residential property” (apartment complex, homestead, and

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170. *Id.* § 13.

171. *Id.* § 16.

172. *Id.* § 22.

173. *Id.* § 3.

174. 2006 Ind. Legis. Serv. P.L. 162-2006 (H.E.A. 1001) § 2 (West).

175. *Id.* § 4.

176. *Id.* § 5.

177. *Id.*

178. *Id.* § 6.

residential rental property) also apply to new property.<sup>179</sup>

The GA amended I.C. § 6-1.1-20.6-6 (effective March 24, 2006) to allow the county fiscal body to establish an excessive residential property tax credit for taxes due and payable before January 1, 2007 for Lake County and for taxes due and payable before January 1, 2008 for all other counties.<sup>180</sup>

The GA added a subsection to I.C. § 6-1.1-20.6-7 (effective March 24, 2006) to set the excessive property tax credit at 2% of gross assessed value for all real *and personal property* for taxes first due and payable after December 31, 2009.<sup>181</sup>

The GA amended I.C. § 6-1.1-20.6-8 (effective March 24, 2006) to not require any real or personal property owner to apply for the excessive property tax credit.<sup>182</sup>

The GA added a subsection to I.C. § 6-1.1-20.6-9 (effective March 24, 2006) to require the county auditor to notify each political subdivision in which the credit under this chapter is applied of the reduction for the political subdivision.<sup>183</sup>

The GA amended I.C. § 6-1.1-22-8 (effective July 1, 2006) to expire January 1, 2008.<sup>184</sup>

The GA added I.C. § 6-1.1-22-8.1 (effective July 1, 2006) to replace I.C. § 6-1.1-22-8 upon its expiration.<sup>185</sup> This amendment also requires the county treasurer to mail a tax bill in the form prescribed by the DLGF.<sup>186</sup> The form must include at least the following:

- (1) A statement of the taxpayer's current and delinquent taxes and special assessments.
- (2) A breakdown showing the total property tax and special assessment liability and the amount of the taxpayer's liability that will be distributed to each taxing unit in the county.
- (3) An itemized listing for each property tax levy, including:
  - (A) the amount of the tax rate;
  - (B) the entity levying the tax owed; and
  - (C) the dollar amount of the tax owed.
- (4) Information designed to show the manner in which the taxes and special assessments billed in the tax statement are to be used.
- (5) A comparison showing any change in the assessed valuation for the property as compared to the previous year.
- (6) A comparison showing any change in the property tax and special assessment liability for the property as compared to the previous

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179. *Id.* § 7.

180. *Id.* § 8.

181. *Id.* § 10.

182. *Id.* § 11.

183. *Id.* § 12.

184. *Id.* § 15.

185. *Id.* § 16.

186. *Id.*

- year. The information required under this subdivision must identify:
- (A) the amount of the taxpayer's liability distributable to each taxing unit in which the property is located in the current year; and
  - (B) the percentage change, if any, in the amount of the taxpayer's liability distributable to each taxing unit in which the property is located from the previous year to the current year.
- (7) An explanation of the following:
- (A) The homestead credit and all property tax deductions.
  - (B) The procedure and deadline for filing for the homestead credit and each deduction.
  - (C) The procedure that a taxpayer must follow to:
    - (i) appeal a current assessment; or
    - (ii) petition for the correction of an error . . . .
  - (D) The forms that must be filed for an appeal or a petition . . . .
- (8) A checklist that shows:
- (A) the homestead credit and all property tax deductions; and
  - (B) whether the homestead credit and each property tax deduction applies in the current statement for the property . . . .<sup>187</sup>

The GA amended I.C. § 6-3.5-7-5 (effective March 24, 2006) to set the maximum COIT and the EDIT rates for Scott County to not exceed 1.25% and the maximum CEDIT rate and the CAGIT rate for Jasper County not to exceed 1.5%.<sup>188</sup>

The GA amended I.C. § 6-3.5-7-26 (effective March 24, 2006) to provide that residential PTRC, in addition to homestead credits, may be paid from increased CEDIT to offset the loss of property taxes from the inventory deduction.<sup>189</sup>

The GA added I.C. §§ 6-9-39-1 to -9 (effective July 1, 2006) to create a county option dog tax not to exceed \$5.00 per taxable dog.<sup>190</sup> Twenty percent of the optional dog tax is sent to the state for canine research and education and the remaining 80% is retained by the county for various specified uses related to animal care.<sup>191</sup> The GA amended I.C. § 15-5-7-1 (effective July 1, 2006) to eliminate the triple damages award paid by owners of unlicensed dogs.<sup>192</sup> The GA added I.C. § 15-5-7-3 (effective July 1, 2006) to require the county to pay the

187. *Id.*

188. *Id.* § 33.

189. *Id.* § 34.

190. *Id.* § 36.

191. *Id.*

192. *Id.* § 37.

damages caused by attack or exposure by dogs to livestock and for post exposure treatment incurred by any person who is bitten by or exposed to a dog known to have rabies.<sup>193</sup>

The GA added I.C. § 6-15-5-7-4 (effective July 1, 2006) to outline the filing of a claim against a county under I.C. § 15-5-7-3.<sup>194</sup>

The GA amended I.C. § 20-45-1-21 (effective July 1, 2006) to change the definition of “total assessed value” for the purposes of the school adjustment factor used in the distribution of tuition support payments to schools.<sup>195</sup>

The GA amended I.C. § 20-45-3-6 (effective July 1, 2006) to clarify a school corporation’s target property tax rate used in the distribution tuition support payments to schools.<sup>196</sup>

The GA amended I.C. § 36-6-5-3 (effective July 1, 2006) to remove from assessment duties the administration of the dog tax.<sup>197</sup> The GA repealed I.C. §§ 15-5-9 and -10 (effective July 1, 2006) that allowed for the imposition of a dog tax and the treatment of dogs as personal property.<sup>198</sup>

The GA added a non-code provision that allows a county to adopt an ordinance allowing for a credit for excessive residential property taxes for property taxes first due and payable in 2006 if tax statements for 2006 have not yet been issued.<sup>199</sup> This section expired January 1, 2007 (effective March 24, 2006).<sup>200</sup>

The GA added a non-code provision that distributes money remaining in the state dog account on June 30, 2006 on a prorated basis of 50% to Purdue University School of Veterinary Science and Medicine and 50% to counties that paid the state from the counties’ dog funds.<sup>201</sup> This amendment also specifies how the counties’ share of the distribution may be spent (effective July 1, 2006).<sup>202</sup>

The GA added a non-code provision defining the “additional 2006 homestead credit” is the part of the homestead credit that exceeds 20% (effective March 24, 2006).<sup>203</sup> This amendment also states the definitions contained in I.C. §§ 6-1.1-1, 20.9, and 21 apply to the application of this credit.<sup>204</sup> Further, this amendment provides instructions to the county auditor as to how to administer the credit.<sup>205</sup>

The GA amended I.C. § 36-4-3-4.1 (effective July 1, 2006) to allow a town

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193. *Id.* § 38.

194. *Id.* § 39.

195. *Id.* § 44.

196. *Id.* § 46.

197. *Id.* § 48.

198. *Id.* § 49.

199. *Id.* § 50.

200. *Id.*

201. *Id.* § 51.

202. *Id.*

203. *Id.* § 57.

204. *Id.*

205. *Id.*

having a population of more than 15,000 or a town with a population more than 5000 but less than 6300 in a county with a total population of more than 100,000 but less than 105,000 to exempt newly annexed, contiguous, agriculturally zoned property from municipal property taxes if the ordinance is adopted before June 30, 2006.<sup>206</sup> If adopted after June 30, 2006, the amendment limits the exemption to ten years.<sup>207</sup> This amendment also requires the consent of the property owner to change zoning classification.<sup>208</sup>

The GA amended I.C. § 5-3-1-0.4 (effective March 24, 2006) to expand the definition of a “newspaper” that can be used for publication of notices.<sup>209</sup>

The GA amended I.C. § 5-3-1-2.3 (effective July 1, 2006) to specify that a tax adjustment board chart or DLGF budget order published by the county auditor in accordance with this chapter is valid even if it contains an error.<sup>210</sup> This amendment also allows the DLGF to correct an error or omission in the publication and requires the county auditor to publish the correction at the county’s expense.<sup>211</sup>

The GA amended I.C. § 6-1.1-17-5 (effective July 1, 2006) to require a municipality to set its budget, tax rate, and tax levy by September 30 each year.<sup>212</sup>

The GA amended I.C. § 6-1.1-17-16 (effective July 1, 2006) to allow the DLGF to correct the budget, tax rate, or tax levy if it was incorrectly published or omitted in the publication by the county auditor.<sup>213</sup> This amendment also allows a political subdivision two weeks, instead of one, to respond to the DLGF’s proposal to change a tax rate or levy.<sup>214</sup>

The GA amended I.C. § 6-1.1-22-8 (effective January 1, 2007) to allow the county treasurer to include on the tax bill the dollar amount of each special assessment owed.<sup>215</sup>

The GA amended I.C. § 6-1.1-22-11 (effective January 1, 2007) to increase the interest paid by a property tax lien holder to 10% from 6%.<sup>216</sup>

The GA added I.C. § 6-1.1-22-13.5 (effective January 1, 2007) to specify that a political subdivision acquires a lien on real property for all special assessments levied and all subsequent costs and penalties resulting from the special assessments.<sup>217</sup> The lien attaches on the installment due date of the year for which the special assessments are certified.<sup>218</sup> The lien is not affected by any

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206. 2006 Ind. Legis. Serv. P.L. 71-2006 (H.E.A. 1089) § 1 (West).

207. *Id.*

208. *Id.*

209. 2006 Ind. Legis. Serv. P.L. 169-2006 (H.E.A. 1102) § 1 (West).

210. *Id.* § 2.

211. *Id.*

212. *Id.* § 8.

213. *Id.* § 9.

214. *Id.*

215. *Id.* § 10.

216. *Id.* § 11.

217. *Id.* § 12.

218. *Id.*

sale or transfer of the real property.<sup>219</sup> The lien is superior to all other liens except property taxes.<sup>220</sup> A political subdivision may sue for settlement of the lien.<sup>221</sup>

The GA amended I.C. § 6-1.1-24-1.5 (effective January 1, 2007) to require that the county executive, instead of the MDC, prepare a list of properties that are vacant or abandoned and certify the list to the county auditor.<sup>222</sup>

The GA amended I.C. § 6-1.1-24-2.2 (effective January 1, 2007) to remove the provision allowing the filing of an affidavit by the owner of vacant or abandoned property to remove it from the tax sale because it is inhabitable under law.<sup>223</sup>

The GA amended I.C. § 6-1.1-24-3 (effective January 1, 2007) to add that notices mailed under this section and advertisement made under this chapter are considered sufficient notice of the intended application for judgment and of the sale of real property under the order of the court.<sup>224</sup>

The GA amended I.C. § 6-1.1-24-4(b) (effective January 1, 2007) to apply state-wide instead of just to a county having a consolidated city.<sup>225</sup>

The GA amended I.C. § 6-1.1-24-4.6 (effective January 1, 2007) to add wording to the county auditor's affidavit swearing that notice for application for judgment and order for sale was mailed by certified mail to the owners on the list.<sup>226</sup> This amendment also requires the county auditor to enter the name of at least one owner of each tract of real property, the dates of publications, and the mailing dates of the notices to the list attached to the affidavit.<sup>227</sup>

The GA amended I.C. § 6-1.1-24-4.7 (effective January 1, 2007) to require the final listing of the judgment and order for sale to contain the name of at least one of the owners of each tract of real property.<sup>228</sup>

The GA amended I.C. § 6-1.1-24-6.1 (effective January 1, 2007) to allow the county executive to offer to the public the certificates of sale acquired under I.C. § 6-1.1-24-6.<sup>229</sup>

The GA amended I.C. § 6-1.1-25-3 (effective January 1, 2007) to state that when real property that was sold under I.C. § 6-1.1-24-6.1 is redeemed, the county auditor will issue to the purchaser of a certificate stating the amount received for redemption minus an amount equal to the difference between the minimum bid and the amount for which the certificate sold.<sup>230</sup>

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219. *Id.*

220. *Id.*

221. *Id.*

222. *Id.* § 14.

223. *Id.* § 16.

224. *Id.* § 17.

225. *Id.* § 18.

226. *Id.* § 19.

227. *Id.*

228. *Id.* § 20.

229. *Id.* § 24.

230. *Id.* § 27.

The GA amended I.C. § 6-1.1-25-4 (effective January 1, 2007) to clarify the periods of redemption for real property.<sup>231</sup> This amendment also clarifies the powers of the county executive who has been issued a tax deed.<sup>232</sup>

The GA amended I.C. § 6-1.1-25-4.5 (effective January 1, 2007) to clarify eligibility to obtain a tax deed to real property.<sup>233</sup>

The GA amended I.C. § 6-1.1-25-4.6 (effective January 1, 2007) to add the county executive to the list of persons who may give notice of filing of a petition for tax deed.<sup>234</sup>

The GA amended I.C. § 12-20-21-2 (effective July 1, 2006) to clarify that township assistance money may not be commingled.<sup>235</sup>

The GA amended I.C. § 12-20-24-1 (effective July 1, 2006) to clarify the township trustee must appeal to the DLGF for the right to borrow money on a short term basis to fund township assistance services in the township.<sup>236</sup>

The GA amended I.C. § 12-20-24-5 (effective July 1, 2006) to address the decision of the DLGF for appeals brought under I.C. § 12-20-24-1.<sup>237</sup>

The GA amended I.C. § 12-20-24-6 (effective July 1, 2006) to allow the county commissioners or county council to only approve the repayment periods on loans approved under I.C. § 12-2-4.5 or 12-20-24 for loans they approved prior to June 30, 2006.<sup>238</sup>

The GA amended I.C. § 12-20-24-7 (effective July 1, 2006) to specify reasons why the county commissioners or council or DLGF may not approve a loan under I.C. § 12-2-4.5 or 12-20-24.<sup>239</sup>

The GA amended I.C. § 12-20-24-8 (effective July 1, 2006) to specify the approval time frames for permission to borrow money under this chapter.<sup>240</sup>

The GA amended I.C. § 12-20-25-30 (effective July 1, 2006) to change the applicable cite for the control board's supervision of the township trustee's administration of assistance loan from I.C. § 12-20-23 to I.C. § 12-20-24.<sup>241</sup>

The GA amended I.C. § 12-20-25-40 (effective July 1, 2006) to allow loans made under I.C. § 12-20-23 to be repaid after its repeal.<sup>242</sup>

The GA amended I.C. § 12-20-25-42 (effective July 1, 2006) to allow loans made under I.C. § 12-20-23-15 and 19 to be repaid after their repeal.<sup>243</sup>

The GA amended I.C. § 36-1-8-5 (effective March 24, 2006) to allow

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231. *Id.* § 28.

232. *Id.*

233. *Id.* § 29.

234. *Id.* § 30.

235. *Id.* § 35.

236. *Id.* § 36.

237. *Id.* § 37.

238. *Id.* § 38.

239. *Id.* § 39.

240. *Id.* § 40.

241. *Id.* § 41.

242. *Id.* § 42.

243. *Id.* § 43.

political subdivisions to transfer money into their rainy day fund at any time during the fiscal year.<sup>244</sup>

The GA added I.C. § 36-1-8-16 (effective July 1, 2006) to require that the first year's property taxes collected on real property disposed of by a county executive to be disbursed to the county executive for deposit in the county general fund, the redevelopment fund, the unsafe building fund, or the housing trust fund.<sup>245</sup>

The GA amended I.C. § 36-4-7-3 (effective July 1, 2006) to require compensation of each appointed officer, deputy and other employees of the city must be fixed not later than September 30 of each year.<sup>246</sup> This amendment also allows compensation to be increased or decreased by the city executive.<sup>247</sup>

The GA amended I.C. § 36-4-7-11 (effective July 1, 2006) to specify that if a city legislative body does not pass a budget and levy ordinance before October 1 of each year, the most recent annual appropriations and tax levy are continued for the ensuing budget year.<sup>248</sup>

The GA amended I.C. § 36-6-6-10 (effective July 1, 2006) to read that in a year in which there is not an election of members to the township legislative body, the township legislative body may, by unanimous vote, reduce the salaries of the township legislative body by any amount.<sup>249</sup>

The GA amended I.C. § 36-7-14-22.5 (effective July 1, 2006) to allow a redevelopment commission that acquired real property the right to dispose of real property not needed for a redevelopment activity.<sup>250</sup> This amendment also allows the commission to hold such real property for sale at a later date and this amendment allows the commission to rehabilitate or rent the property while it is being held and to enter into contracts to carry out these functions.<sup>251</sup> Further, this amendment allows the commission to extinguish all delinquent taxes, special assessments, and penalties.<sup>252</sup>

The GA amended I.C. § 36-7-17-3 (effective July 1, 2006) to eliminate the provision that allowed the agency responsible for regulating property to acquire property for urban homesteading or redevelopment purposes.<sup>253</sup>

The GA amended I.C. § 36-8-3-3 (effective July 1, 2006) to require the annual setting of compensation for police and fire departments and other appointees to be fixed by ordinance of the legislative body not later than September 30 of each year for the ensuing budget year.<sup>254</sup>

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244. *Id.* § 46.

245. *Id.* § 47.

246. *Id.* § 54.

247. *Id.*

248. *Id.* § 55.

249. *Id.* § 56.

250. *Id.* § 70.

251. *Id.*

252. *Id.*

253. *Id.* § 76.

254. *Id.* § 78.

The GA added I.C. § 36-9-39.1 (effective July 1, 2006) to allow a municipality to create a sewer improvement and extension fund and finance it through special assessments.<sup>255</sup>

Non-code provisions repealed the following:

- (1) County having a consolidated city; metropolitan development commission list; affidavit of owner (I.C. § 6-1.1-24-4.1);
- (2) Second offer for sale of property (I.C. § 6-1.1-24-5.5); and,
- (3) Distribution of proceeds of sale of certificates of sale; tax sale surplus fund; county auditor duty on assignment of certificate (I.C. § 6-1.1-24- 6.5).<sup>256</sup>

Non-code provisions also repealed the following:

- (1) Insufficient funds; county general fund appropriation (I.C. § 12-20-21-4);
- (2) County Borrowing for Township Assistance (I.C. § 12-20-23);
- (3) Transmittal of appeal; determination by county commissioners on township borrowing for assistance (I.C. § 12-20-24-2);
- (4) Decision of county commissioners; further determination by county council on township borrowing for assistance (I.C. § 12-20-24-3); and
- (5) Decision of county council; notification of township board; appeal to department on township borrowing for assistance (I.C. § 12-20-24-4).<sup>257</sup>

The GA added I.C. § 6-1.1-18.5-21 (effective March 20, 2006) to allow a civil taxing unit to determine the property tax levy limits imposed do not apply to all or part of levies imposed to repay a rainy day loan.<sup>258</sup>

The GA added I.C. § 6-1.1-19-13 (effective March 20, 2006) to allow a school corporation to determine whether the property tax levy limits imposed do not apply to all or part of levies imposed to repay a rainy day loan.<sup>259</sup>

The GA added I.C. § 6-1.1-21.9 (effective March 24, 2006) to establish a loan from the state rainy day fund to a taxing unit whose property tax collections are affected by the bankruptcy of a taxpayer that manufactures microelectronics.<sup>260</sup>

The GA broadened definition of “clerk,” “fiscal body,” and “legislative body” under I.C. §§ 36-1-2-4, 36-1-2-6, and 36-1-2-9, respectively.<sup>261</sup>

The GA added I.C. § 36-1.5-1-1 (effective March 24, 2006) evidencing intent to grant broad powers to enable political subdivisions to operate more efficiently

255. *Id.* § 82.

256. *Id.* § 83.

257. *Id.* § 84.

258. 2006 Ind. Legis. Serv. P.L. 114-2006 (H.E.A. 1124) § 1 (West).

259. *Id.* § 2.

260. *Id.* § 3.

261. 2006 Ind. Legis. Serv. P.L. 186-2006 (H.E.A. 1362) §§ 1-3 (West).

by reorganizing and cooperating.<sup>262</sup>

The GA added I.C. §§ 36-1.5-1-2, -3, -4, and -5 (effective March 24, 2006) which state that the complete authority for reorganization, cooperation, and transfer of duties between units is contained in I.C. § 36-1.5.<sup>263</sup> This addition also provides that no law, procedure, proceedings, publications, notices, consents, approvals, or acts outside of I.C. § 36-1.5 are required for reorganization, cooperation, or transfer.<sup>264</sup>

The GA added I.C. § 36-1.5-1-7 (effective March 24, 2006) which states that I.C. § 36-1.5 does not prohibit reorganization, cooperation, or transfer of duties under any other statute.<sup>265</sup>

The GA added I.C. § 36-1.5-3 (effective March 24, 2006) which requires submission of any ordinance for resolution to DLGF.<sup>266</sup> This change also requires DLGF to adjust the maximum permissible levies, rates, and budgets of reorganizing subdivisions.<sup>267</sup> The GA allowed judicial review of DLGF determinations under this chapter.<sup>268</sup>

The GA added I.C. § 36-1.5-4 (effective March 24, 2006) which provides procedure for reorganization by referendum.<sup>269</sup>

The GA added I.C. § 36-1.5-5 (effective March 24, 2006) which provides procedure for cooperative agreements and transfer of responsibilities.<sup>270</sup>

### *C. Local Taxation*

The GA passed legislation that allowed certain counties to use funds from CAGIT to operate and maintain jail facilities; juvenile court, detention, and probation facilities; other criminal justice facilities; and related buildings and parking facilities.<sup>271</sup> The only counties that meet the criteria are Elkhart and Marshall. The same legislation prevents Marshall County from using the CAGIT to pay for jail maintenance and operations once the bonds issued to pay jail construction are paid off.<sup>272</sup>

The GA extended Jackson County's authorization to impose an additional CAGIT to generate revenue for a jail and juvenile detention center until June 30, 2011.<sup>273</sup> Scott County may impose an additional COIT of up to 0.25% to finance

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262. *Id.* § 4.

263. *Id.*

264. *Id.*

265. *Id.*

266. *Id.*

267. *Id.*

268. *Id.*

269. *Id.*

270. *Id.*

271. IND. CODE § 6-3.5-1.1-2.8 (2006) (as amended by 2006 Ind. Legis. Serv. P.L. 147-2006 (S.E.A. 148) § 1 (West)).

272. *Id.*

273. *Id.* § 6-3.5-1.1-2.5 (as amended by 2006 Ind. Legis. Serv. P.L. 184-2006 (H.E.A. 1327))

construction and maintenance of criminal justice facilities.<sup>274</sup>

As part of the Major Moves initiative, the GA permitted eligible counties to use revenue from their EDIT to pay their contributions to the NIRDA if each county chooses to join the NIRDA.<sup>275</sup> Currently, the only county meeting the criteria is LaPorte County. The same legislation requires any revenue from an increase in that county's EDIT be used first to pay those contributions.<sup>276</sup>

The GA extended authorization for the Nashville Food and Beverage Tax to January 1, 2012, an extension of five years.<sup>277</sup> In addition, Martinsville may not initiate projects paid for using its Food and Beverage Tax after December 31, 2015, another five-year extension.<sup>278</sup> Howard County may impose up to a 5% lodging tax until January 1, 2014, after which time it may not exceed 4%.<sup>279</sup> Tippecanoe County must continue to pay a portion of the revenue from its innkeeper's tax to the CDC as a grant for a land lease in Prophetstown State Park through December 2012, a six-year extension.<sup>280</sup>

The GA authorized counties, cities, and towns that receive CEDIT to establish a local venture capital fund<sup>281</sup> and to cooperate with other counties, cities, or towns to form a regional venture capital fund<sup>282</sup> and to use CEDIT revenues to fund public or private entities for economic development projects.

Jasper County may increase its CAGIT rate by 0.15%, 0.20%, or 0.25% for capital expenditures related to correctional facilities and operation and maintenance of those facilities.<sup>283</sup> Scott County may impose a rate increase in its COIT instead of increasing property taxes for the benefit of its county jail.<sup>284</sup>

§ 5 (West)).

274. *Id.* § 6-3.5-6-29 (as added by 2006 Ind. Legis. Serv. P.L. 184-2006 (H.E.A. 1327) § 7 (West)).

275. *Id.* § 6-3.5-7-13.1 (as amended by 2006 Ind. Legis. Serv. P.L. 47-2006 (H.E.A. 1008) § 4 (West) and 2006 Ind. Legis. Serv. P.L. 137-2006 (H.E.A. 1380) § 11 (West)).

276. *Id.*

277. *Id.* § 6-9-24-9 (as amended by 2006 Ind. Legis. Serv. P.L. 184-2006 (H.E.A. 1327) § 9 (West)).

278. *Id.* § 6-9-27-9.5 (as amended by 2006 Ind. Legis. Serv. P.L. 184-2006 (H.E.A. 1327) § 10 (West)).

279. *Id.* § 6-9-16-6 (as amended by 2006 Ind. Legis. Serv. P.L. 167-2006 (H.E.A. 1025) § 2 (West)).

280. *Id.* § 6-9-7-7 (as amended by 2006 Ind. Legis. Serv. P.L. 167-2006 (H.E.A. 1025) § 1 (West)); see LEGIS. SERVS. AGENCY, FISCAL IMPACT STATEMENT HB 1025, at 2 (2006), available at <http://www.in.gov/legislative/bills/2006/PDF/FISCAL/HB1025.008.pdf>.

281. IND. CODE § 6-3.5-7-13.6 (2006) (as added by 2006 Ind. Legis. Serv. P.L. 137-2006 (H.E.A. 1380) § 13 (West)).

282. *Id.* § 6-3.5-7-13.5 (as added by 2006 Ind. Legis. Serv. P.L. 137-2006 (H.E.A. 1380) § 12 (West)).

283. *Id.* § 6-3.5-1.1-2.3 (as added by 2006 Ind. Legis. Serv. P.L. 162-2006 (H.E.A. 1001) § 28 (West)).

284. *Id.* § 6-3.5-6-29 (as added by 2006 Ind. Legis. Serv. P.L. 162-2006 (H.E.A. 1001) § 32 (West)).

#### D. Income Tax

Because of the delay in calculating property tax assessments in assessment years 2002, 2003 and 2004, the GA allowed an additional deduction from Indiana personal adjusted gross income tax in 2006 if taxpayers made payments for those taxable years in 2005 and did not previously deduct them in an earlier year. The allowable deduction for each assessment year remained at \$2500.<sup>285</sup>

The GA expanded the Indiana airport development zone income tax credit to include Delaware County.<sup>286</sup> The GA also decreased the minimum expenditure requirements for an airport zone in Vanderburgh County to the same levels as required in other counties with airport zones (except Marion County) and removed the maximum size limitation that applied only to Vanderburgh County.<sup>287</sup>

The GA incorporated the IRC as it was in effect on January 1, 2006.<sup>288</sup> This update incorporates the changes made by the Energy Tax Incentives Act of 2005, the Katrina Emergency Tax Relief Act of 2005, and the Gulf Opportunity Zone Act of 2005.<sup>289</sup> However, the GA limited the additional \$1500 personal exemption for dependents to those defined in I.C. § 6-3-1-1.5(c)(1)(B) as it was in effect on January 1, 2004.<sup>290</sup> That definition referred to a child under age 19 or a student under age 24. By incorporating the 2004 definition, the GA ignores the new federal distinction between qualifying children and qualifying relatives as dependents.<sup>291</sup>

The apportionment formula used to calculate the Indiana corporate adjusted gross income tax will change to a single sales factor over the next five years by shifting 10% each year from the combined property and payroll factors (currently 50%) to the sales factor (also currently 50%).<sup>292</sup> The new apportionment formula will be fully effective beginning in 2011.<sup>293</sup> Beginning in 2007, personal

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285. 2006 Ind. Legis. Serv. P.L. 67-2006 (S.E.A. 355) § 22 (West).

286. IND. CODE § 8-22-3.5-1(6) (2006) (as added by 2006 Ind. Legis. Serv. P.L. 124-2006 (S.E.A. 382) § 1 (West)); *see* LEGIS. SERVS. AGENCY, FISCAL IMPACT STATEMENT SB382, at 3 (2006) [hereinafter FISCAL IMPACT STATEMENT 382], *available at* <http://www.in.gov/legislative/bills/2006/PDF/FISCAL/SBO382.007.pdf>.

287. IND. CODE § 8-22-3.5-3 (2006) (as amended by 2006 Ind. Legis. Serv. P.L. 124-2006 (S.E.A. 382) § 4 (West)); *see* FISCAL IMPACT STATEMENT 382, *supra* note 286, at 2.

288. IND. CODE § 6-3-1-11 (2006) (as amended by 2006 Ind. Legis. Serv. P.L. 184-2006 (H.E.A. 1327) § 4 (West)).

289. LEGIS. SERVS. AGENCY, FISCAL IMPACT STATEMENT HB 1327, at 3 (2006), *available at* <http://www.in.gov/legislative/bills/2006/PDF/FISCAL/HB 1327.009.pdf>.

290. IND. CODE § 6-3-1-1.5 (2006) (as amended by 2006 Ind. Legis. Serv. P.L. 184-2006 (H.E.A. 1327) § 3 (West)).

291. *See* IRC § 152 (2000).

292. IND. CODE § 6-3-2-2 (2006) (as amended by 2006 Ind. Legis. Serv. P.L. 162-2006 (H.E.A. 1001) § 25 (West)).

293. *Id.*

property that is delivered or shipped to a purchaser in Indiana is considered a sale in Indiana, regardless of the f.o.b. point or other conditions of the sale.<sup>294</sup>

For taxable years beginning after June 30, 2006, a corporation is required to add back deductions taken on its federal income tax return for intangible expenses or directly related intangible interest expenses incurred in transactions with related parties.<sup>295</sup> A taxpayer filing a combined return must petition the DOR within 30 days after the end of its tax year to discontinue filing a combined tax return.<sup>296</sup>

The GA now permits a taxpayer to take a credit against Indiana personal adjusted gross income tax for contributions made to a College Choice 529 Education Savings Plan, effective January 1, 2007.<sup>297</sup> The non-refundable credit is equal to the lesser of 20% of the contribution made during the taxable year or \$1000.<sup>298</sup> Also, effective July 1, 2006, the Neighborhood Assistance tax credit is no longer available directly to individuals who provide community services.<sup>299</sup> Instead, it is available to taxpayers who contribute to neighborhood organizations that provide community services in economically disadvantaged areas or to economically disadvantaged households.<sup>300</sup>

#### *E. Inheritance Tax*

The GA took no substantive action in this area.

#### *F. Sales and Use Tax*

Indiana is a full member of the Streamlined Sales and Use Tax (“SST”) Agreement. Thus, the GA made a number of changes to Indiana sales tax law to harmonize the law with the SST Agreement. First, effective July 1, 2006, the term “direct mail” is defined as printed material (including accompanying tangible personal property) that is delivered to a mass audience or to addresses on a mailing list for which the recipient is not charged.<sup>301</sup> The term already appeared in the sales tax law, but had not been defined.<sup>302</sup> Also effective July 1,

294. *Id.*

295. *Id.* § 6-3-1-3.5(b)(9) (as added by 2006 Ind. Legis. Serv. P.L. 162-2006 (H.E.A. 1001) § 24 (West)).

296. *Id.* § 6-3-2-2.

297. *Id.* § 6-3-3-12 (as added by 2006 Ind. Legis. Serv. P.L. 192-2006 (H.E.A. 1029) § 4 (West)).

298. *Id.*

299. *Id.* § 6-3.1-9-2 (as amended by 2006 Ind. Legis. Serv. P.L. 181-2006 (H.E.A. 1261) § 45 (West)).

300. *Id.* § 6-3.1-9-1 (as amended by 2006 Ind. Legis. Serv. P.L. 181-2006 (H.E.A. 1261) § 44 (West)).

301. *Id.* § 6-2.5-1-6.5 (as added by 2006 Ind. Legis. Serv. P.L. 153-2006 (S.E.A. 258) § 2 (West)).

302. *See id.* § 6-2.5-13-3 (regarding sourcing of purchases of direct mail).

2006, the term “food and food ingredients” does not include tobacco products.<sup>303</sup> For retail transactions occurring after December 31, 2007, the definition of “bundled transactions” removes several categories of transactions from sales tax.<sup>304</sup> Specifically, the following types of bundled transactions are no longer subject to sales tax: (1) A bundled transaction in which the price of the product varies according to selections made by the purchaser;<sup>305</sup> (2) A bundled transaction in which the service is the main focus of the transaction and any tangible personal property is provided only because it is necessary to use of the service;<sup>306</sup> (3) A bundled transaction that combines taxable and exempt products and the taxable products make up between 10% and 50% of the total purchase price.<sup>307</sup> In addition, taking effect for retail transactions occurring after December 31, 2007, a retail merchant makes a retail transaction when the merchant sells tangible personal property in a bundled transaction.<sup>308</sup>

The GA amended a sales tax exemption that had been repealed in 2004 but reestablished in 2005.<sup>309</sup> The new statute exempts sales of cargo trailers and recreational vehicles to nonresident purchasers if they take the trailer or vehicle out of the state within 30 days of purchase and register it in a state that allows a reciprocal “drive-away” exemption for Indiana residents.<sup>310</sup> If the other state does not allow a reciprocal exemption, sales of cargo trailers and recreational vehicles are subject to Indiana sales tax.<sup>311</sup> A non-resident purchaser is no longer required to provide a copy of the out-of-state registration to the seller but must affirm, under penalties of perjury, that the trailer or vehicle will be registered out of state. The DOR is required to provide the information necessary to determine a purchaser’s eligibility for the exemption claimed to retail merchants in the business of selling cargo trailers and RVs.<sup>312</sup>

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303. *Id.* § 6-25-1-20 (as amended by 2006 Ind. Legis. Serv. P.L. 153-2006 (S.E.A. 258) § 3 (West)).

304. *See* LEGIS. SERVS. AGENCY, FISCAL IMPACT STATEMENT SB258, at 2 (2006), *available at* <http://www.in.gov/legislative/bills/2006/PDF/FISCAL/SBO258.008.pdf>.

305. IND. CODE § 6-2.5-1-11.5(c) (2006) (as added by 2006 Ind. Legis. Serv. P.L. 153-2006 (S.E.A. 258) § 1 (West)).

306. *Id.* § 6-2.5-1-11.5(d)(1) (as added by 2006 Ind. Legis. Serv. P.L. 153-2006 (S.E.A. 258) § 1 (West)).

307. *Id.* § 6-2.5-1-11.5(d)(3) (as added by 2006 Ind. Legis. Serv. P.L. 153-2006 (S.E.A. 258) § 1 (West)). Combination transactions in which the taxable products made up less than 10% of the total purchase price were already exempt from sales tax. *See id.* § 6-2.5-1-11.5(d)(2) (as added by 2006 Ind. Legis. Serv. P.L. 153-2006 (S.E.A. 258) § 1 (West)).

308. *Id.* § 6-2.5-4-15 (as added by 2006 Ind. Legis. Serv. P.L. 153-2006 (S.E.A. 258) § 4 (West)).

309. 2006 Ind. Legis. Serv. P.L. 81-2004 (H.E.A. 1365) (West); 2005 Ind. Legis. Serv. P.L. 195-2005 (S.E.A. 213) (West).

310. IND. CODE § 6-2.5-5-39(c)(5) (2006) (as amended by 2006 Ind. Legis. Serv. P.L. 92-2006 (S.E.A. 106) § 1 (West)).

311. *Id.*

312. *Id.* § 6-2.5-5-39(d)-(e) (as amended by 2006 Ind. Legis. Serv. P.L. 92-2006 (S.E.A. 106)

Indiana retail merchants will now have to renew their merchant's certificate every two years instead of holding a perpetual certificate.<sup>313</sup> The DOR must renew certificates within 30 days after expiration at no charge if the retail merchant has filed all Indiana Sales and Use Tax returns and paid all taxes.<sup>314</sup> However, the DOR may not renew the certificate of a merchant who has failed to remit Sales and Use Taxes.<sup>315</sup> The statute provides that the DOR must notify a delinquent retail merchant that it will not renew the merchant's certificate at least 60 days prior to the certificate's expiration date.<sup>316</sup> Certificates originally issued before December 1, 2006, expired on December 31, 2006.<sup>317</sup> Certificates originally issued after November 30, 2006, and before January 1, 2007, will expire on December 31, 2008.<sup>318</sup> However, the DOR may delay the expiration date for existing certificates for up to one year to cope more effectively with the increased workload.<sup>319</sup>

The GA added a deduction from Indiana sales tax for the retail sale of E85 fuel. The deduction is equivalent to \$0.10 per gallon of E85 sold during reporting periods from July 1, 2006, and July 1, 2008.<sup>320</sup> The maximum aggregate deduction for all merchants claiming the deduction for sales of E85 is \$2 million.<sup>321</sup> If the DOR determines that the amount of deductions allowed will exceed the cap, the DOR is required to publish in the Indiana Register a notice that the deduction is terminated after the date specified in the notice and that no additional deductions will be granted for transactions occurring after the date in the notice.<sup>322</sup>

For transactions occurring after January 1, 2007, an entity may not assign its sales tax remittance deduction to a non-affiliated entity.<sup>323</sup> The statute generally

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§ 1 (West)).

313. *Id.* § 6-2.5-8-1(f) (as amended by 2006 Ind. Legis. Serv. P.L. 111-2006 (S.E.A. 362) § 1 (West)); *see also id.* § 6-2.5-8-5 (as amended by 2006 Ind. Legis. Serv. P.L. 111-2006 (S.E.A. 362) § 1 (West)).

314. *Id.* § 6-2.5-8-1(f) (as amended by 2006 Ind. Legis. Serv. P.L. 111-2006 (S.E.A. 362) § 1 (West)).

315. *Id.* § 6-2.5-8-1(g) (as amended by 2006 Ind. Legis. Serv. P.L. 111-2006 (S.E.A. 362) § 1 (West)).

316. *Id.*

317. 2006 Ind. Legis. Serv. P.L. 111-2006 (S.E.A. 362) § 12 (West).

318. *Id.*

319. *Id.*

320. IND. CODE § 6-2.5-7-5(5)(c) (2006) (as amended by 2006 Ind. Legis. Serv. P.L. 122-2006 (S.E.A. 353) § 3 (West)).

321. *Id.* § 6-2.5-7-5(5)(d) (as amended by 2006 Ind. Legis. Serv. P.L. 122-2006 (S.E.A. 353) § 3 (West)).

322. *Id.*

323. *Id.* § 6-2.5-6-9(c) (as amended by 2006 Ind. Legis. Serv. P.L. 162-2006 (H.E.A. 1001) § 23 (West) and 2006 Ind. Legis. Serv. P.L. 184-2006 (H.E.A. 1327) § 2 (West)).

uses the IRS definition of related taxpayers<sup>324</sup> and an affiliated group<sup>325</sup> except that it changes the required percentage of control from 80% to 50%.<sup>326</sup> The exception also applies to two or more partnerships that have the same degree of ownership as the affiliated group.<sup>327</sup>

The motion picture industry is entitled to an exemption from sales tax for purchases of tangible personal property that the purchaser will directly use in the production of a motion picture in Indiana as long as the purchase occurs between January 1, 2007, and December 31, 2008.<sup>328</sup> Qualifying motion picture productions include feature length films, short features, independent or studio productions, documentaries, and television programs but do not include obscene motion pictures or television coverage of news or athletic events.<sup>329</sup> Pre-production, production and post-production activities qualify for the exemption, but personnel transportation, food and beverage service, lodging, and packaging materials do not qualify.<sup>330</sup>

The GA imposed a new excise tax called the Indiana utility services use tax on retail consumption of utility services in Indiana that are billed after June 30, 2006.<sup>331</sup> This tax complements the existing utility receipts. The utility services use tax is imposed at the same rate as the utility receipts tax<sup>332</sup>—currently 1.4%.<sup>333</sup> The person who consumes the utility services in Indiana is responsible for the utility services use tax,<sup>334</sup> although sellers of such services may register with the DOR to collect and remit the taxes on behalf of the consumers.<sup>335</sup> Utility services are exempt from the utility services use tax if they were subject to the utility services receipt tax.<sup>336</sup> In addition, the utility services use tax is not imposed on the portion of the transaction that was excluded, exempt, or subject to a deduction from the utility services receipt tax.<sup>337</sup> A taxpayer may take a

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324. I.R.C. § 267(b)(11) (2000).

325. *Id.* § 1504.

326. IND. CODE § 6-2.5-6-9(c) (2006).

327. *Id.*

328. *Id.* § 6-2.5-5-41 (as added by 2006 Ind. Legis. Serv. P.L. 137-2006 (H.E.A. 1380) § 3 (West)).

329. *Id.*

330. *Id.*

331. *Id.* § 6-2.3-5.5-1 (as added by 2006 Ind. Legis. Serv. P.L. 162-2006 (H.E.A. 1001) § 19 (West)).

332. *Id.* § 6-2.3-5.5-3 (as added by 2006 Ind. Legis. Serv. P.L. 162-2006 (H.E.A. 1001) § 19 (West)).

333. *Id.* § 6-2.3-2-2.

334. *Id.* § 6-2.3-5.5-6 (as added by 2006 Ind. Legis. Serv. P.L. 162-2006 (H.E.A. 1001) § 19 (West)).

335. *Id.* § 6-2.3-5.5-8 (as added by 2006 Ind. Legis. Serv. P.L. 162-2006 (H.E.A. 1001) § 19 (West)).

336. *Id.* § 6-2.3-5.5-4 (as added by 2006 Ind. Legis. Serv. P.L. 162-2006 (H.E.A. 1001) § 19 (West)).

337. *Id.*

credit against the utility services use tax for any utility services use tax paid to another state, but not for payment of general sales tax, purchase tax, or use tax.<sup>338</sup>

Related to the Major Moves projects, operators who purchase tangible personal property for incorporation into or improvement of a tollway or other public-private agreement project are entitled to the construction exemption from sales and use taxes.<sup>339</sup>

Effective July 1, 2006, a person who manufactures, fabricates, or assembles tangible personal property from materials either within or outside Indiana and who uses, stores, distributes, or consumes tangible personal property in Indiana is subject to the Indiana use tax.<sup>340</sup>

The GA exempted home energy transactions that occur between July 1, 2006, and June 30, 2007, from Indiana sales tax if the person acquiring the home energy does so through a home energy assistance program.<sup>341</sup> Further, the power subsidiary or public utility providing the home energy in such a transaction is not considered a retail merchant.<sup>342</sup>

### *G. Tax Procedure*

The DOR may require that a withholding agent make periodic deposits accompanied by an informational return if the DOR finds that the agent is not withholding, reporting, or remitting income taxes.<sup>343</sup>

The GA tightened the restrictions on the amount of time a person has to respond to a variety of DOR actions. A person now has to pay an assessment or file a written protest within 45 days (rather than 60 days) after the DOR mails a notice of proposed assessment.<sup>344</sup> A taxpayer has to appeal a DOR decision made in a letter of finding within 60 days (rather than 180 days) after the date the DOR issued the letter of finding if the taxpayer does not request a rehearing or from the date that the DOR denied the taxpayer's request for a rehearing. A letter of findings must also now include a supplemental letter of findings.<sup>345</sup>

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338. *Id.* § 6-2.3-5.5-5 (as added by 2006 Ind. Legis. Serv. P.L. 162-2006 (H.E.A. 1001) § 19 (West)).

339. IND. CODE § 8-15-3-23 (2004) (as amended by 2006 Ind. Legis. Serv. P.L. 47-2006 (H.E.A. 1008) § 31 (West)).

340. IND. CODE § 6-2.5-3-2(d) (2006) (as amended by 2006 Ind. Legis. Serv. P.L. 162-2006 (H.E.A. 1001) § 20 (West)).

341. *Id.* § 6-2.5-5-16.5 (as added by 2006 Ind. Legis. Serv. P.L. 162-2006 (H.E.A. 1001) § 22 (West)).

342. *Id.* § 6-2.5-4-5 (as amended by 2006 Ind. Legis. Serv. P.L. 162-2006 (H.E.A. 1001) § 21 (West)).

343. *Id.* § 6-3-4-8.1(c) (as amended by 2006 Ind. Legis. Serv. P.L. 111-2006 (S.E.A. 362) § 3 (West)).

344. *Id.* § 6-8.1-5-1(d) (as amended by 2006 Ind. Legis. Serv. P.L. 111-2006 (S.E.A. 362) § 4 (West)).

345. *Id.* § 6-8.1-5-1(h) (as amended by 2006 Ind. Legis. Serv. P.L. 111-2006 (S.E.A. 362) § 4 (West)).

Interest accrues on excess tax payments that are not refunded or applied to current or future tax liabilities from the date that the taxpayer files a claim for refund.<sup>346</sup>

The GA changed the procedure used by a public utility company to challenge the DLGF's distributable property assessment to the BTR. A public utility company has 10 days after receiving notice of the DLGF's tentative assessment to request a preliminary conference (rather than a formal hearing) with the DLGF.<sup>347</sup> The DLGF has the option to hold a conference.<sup>348</sup> A public utility company can appeal a final decision to the BTR, even if it did not object to the tentative assessment.<sup>349</sup>

Effective January 1, 2006, if an assessor discovers an error indicating that the taxpayer over-reported the assessment then the assessor must adjust the assessment to correct the error and process a refund or credit for any overpayment.<sup>350</sup> Changes cannot be made to reward unclaimed exemptions.<sup>351</sup>

Applications for exemptions from property tax that must accompany a personal property tax return must be filed no more than 30 days after the filing date for the personal property return, whether or not the filing date was extended.<sup>352</sup>

The GA gave authority to designating bodies to waive clerical and mathematical errors in tax abatement forms and noncompliance with filing dates.<sup>353</sup>

All members of a class in a class action suit against the DLGF must have complied with applicable statutory requirements before certification of the class.<sup>354</sup>

County auditors may adjust the certified assessed value for a taxing unit that is used in setting the tax rates in the following year in order to account for the anticipated effect of outstanding appeals regarding that assess value.<sup>355</sup> The

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346. *Id.* § 6-8.1-9-2(2)(c) (as amended by 2006 Ind. Legis. Serv. P.L. 111-2006 (S.E.A. 362) § 10 (West)).

347. *Id.* § 6-1.1-8-28 (as amended by 2006 Ind. Legis. Serv. P.L. 154-2006 (S.E.A. 260) § 5 (West)).

348. *Id.* § 6-1.1-8-29 (as amended by 2006 Ind. Legis. Serv. P.L. 154-2006 (S.E.A. 260) § 6 (West)).

349. *Id.* §§ 6-1.1-8-28 and -30 (as amended by 2006 Ind. Legis. Serv. P.L. 154-2006 (S.E.A. 260) §§ 5, 7 (West)).

350. *Id.* § 6-1.1-9-10 (as added by 2006 Ind. Legis. Serv. P.L. 154-2006 (S.E.A. 260) § 9 (West)).

351. *Id.*

352. *Id.* § 6-1.1-11-13 (as amended by 2006 Ind. Legis. Serv. P.L. 154-2006 (S.E.A. 260) § 10 (West)).

353. *Id.* § 6-1.1-12.1-9.5 (as added by 2006 Ind. Legis. Serv. P.L. 154-2006 (S.E.A. 260) § 33 (West)).

354. *Id.* § 6-1.1-15-15 (as amended by 2006 Ind. Legis. Serv. P.L. 154-2006 (S.E.A. 260) § 40 (West)).

355. *Id.* § 6-1.1-17-0.5 (as amended by 2006 Ind. Legis. Serv. P.L. 154-2006 (S.E.A. 260) §

reduction may not exceed the lesser of 2% of the assessable property in the taxing unit or the amount of any reduction in the previous year that resulted from successful appeals.<sup>356</sup> A county auditor may request approval from the DLGF for a larger reduction amount.<sup>357</sup>

The DLGF need no longer include instructions on how to calculate depreciation of real property or replacement cost of improvements in its rules.<sup>358</sup> In addition, the BTR need no longer provide notice of its final determinations directly to the affected taxing units.<sup>359</sup> Instead, the county auditor must notify the taxing units. In addition, the DLGF is no longer required to include cost and depreciation tables in the real property rule promulgated for a general reassessment.<sup>360</sup>

If the BTR fails to hold a hearing on a petition within the maximum allowed time, that failure does not constitute a final determination.<sup>361</sup> If the BTR does not hold a hearing or fails to issue a final determination, the petitioner may wait for the board to act or may request judicial review.<sup>362</sup> If the petitioner initiates a judicial proceeding and the BTR has not issued a determination, the Tax Court will hear the matter *de novo*.<sup>363</sup>

Local officials who are defendants in actions concerning original determinations that they made may, with written approval from the Indiana Attorney General, hire a private attorney (at local expense) to represent them before the Tax Court.<sup>364</sup>

#### *H. Tax Collection*

A county sheriff may no longer release a judgment arising from a tax warrant once the judgment is paid in full. Only the DOR may release such judgments.<sup>365</sup>

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41 (West)).

356. *Id.*

357. *Id.* § 6-1.1-17-8.5 (as added by 2006 Ind. Legis. Serv. P.L. 154-2006 (S.E.A. 260) § 43 (West)).

358. *Id.* § 6-1.1-31-6 (as amended by 2006 Ind. Legis. Serv. P.L. 154-2006 (S.E.A. 260) § 52 (West)).

359. *Id.* § 6-1.1-15-4 (as amended by 2006 Ind. Legis. Serv. P.L. 154-2006 (S.E.A. 260) § 39 (West)); *id.* § 6-1.5-5-2 (as amended by 2006 Ind. Legis. Serv. P.L. 154-2006 (S.E.A. 260) § 62 (West)).

360. *Id.* § 6-1.1-15-4; *id.* § 6-1.5-5-5 (as amended by 2006 Ind. Legis. Serv. P.L. 154-2006 (S.E.A. 260) § 63 (West)).

361. *Id.* § 6-1.5-5-6 (as amended by 2006 Ind. Legis. Serv. P.L. 154-2006 (S.E.A. 260) § 64 (West)).

362. *Id.*

363. *Id.*

364. *Id.* § 33-26-7-1 (as amended by 2006 Ind. Legis. Serv. P.L. 154-2006 (S.E.A. 260) § 70 (West)).

365. *Id.* § 6-8.1-8-2(g) & (l) (as amended by 2006 Ind. Legis. Serv. P.L. 111-2006 (S.E.A. 362) § 6 (West)).

A county sheriff may only continue collection activity on a tax warrant for more than 120 days if the DOR determines that the sheriff is collecting the warrant on a schedule that will result in the judgment being paid within one year and, new with this legislation, if the sheriff's tax warrant database is compatible with the DOR's database.<sup>366</sup>

The DOR may levy on unclaimed property if the apparent owner of the property is subject to a tax warrant.<sup>367</sup> The commissioner of the DOR may determine that an outstanding liability for taxes, interest, penalties, collection fees, sheriff's costs, clerk's costs, or fees in uncollectible but any judgment lien on those amounts survives such determination.<sup>368</sup>

The GA made a number of changes to the provisions regarding tax sales. The price of property sold at a tax sale now includes the greater of \$25 or the amount of postage and publication costs.<sup>369</sup> A county treasurer or county executive may certify to the county auditor a list of real property eligible for sale 51 days after the tax payment due date.<sup>370</sup> Property may be certified as eligible for sale after the fall tax installment if the county treasurer or county executive certifies that the property is vacant or abandoned. In the case of real property that is vacant or abandoned, the county executive must certify that fact to the county auditor not later than 61 days before the earliest date on which application for judgment and order for sale may be made.<sup>371</sup> This property must be offered in a different phase or day of a tax sale than other property.<sup>372</sup> A property may not be offered for sale more than 171 days after the date it is certified to the county auditor.<sup>373</sup> Persons who have violated the unsafe building law may not bid on property offered at a tax sale unless they are the owner of the property.<sup>374</sup> A purchase made by an ineligible bidder is subject to forfeiture if the bidder does not cure the circumstances that created the ineligibility.<sup>375</sup> A second tax sale is no longer allowed.<sup>376</sup> Property not sold at the first tax sale will be transferred to

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366. *Id.* § 6-8.1-8-3(d) (as amended by 2006 Ind. Legis. Serv. P.L. 111-2006 (S.E.A. 362) § 7 (West)).

367. *Id.* § 6-8.1-8-15 (as added by 2006 Ind. Legis. Serv. P.L. 111-2006 (S.E.A. 362) § 9 (West)).

368. *Id.* § 6-8.1-8-14 (as added by 2006 Ind. Legis. Serv. P.L. 111-2006 (S.E.A. 362) § 8 (West)).

369. *Id.* § 6-1.1-24-2 (as amended by 2006 Ind. Legis. Serv. P.L. 169-2006 (H.E.A. 1102) § 15 (West)).

370. *Id.* § 6-1.1-24-1 (as amended by 2006 Ind. Legis. Serv. P.L. 169-2006 (H.E.A. 1102) § 13 (West)).

371. *Id.*

372. *Id.* § 6-1.1-24-5 (as amended by 2006 Ind. Legis. Serv. P.L. 169-2006 (H.E.A. 1102) § 21 (West)).

373. *Id.*

374. *Id.* § 6-1.1-24-5.3 (as amended by 2006 Ind. Legis. Serv. P.L. 169-2006 (H.E.A. 1102) § 22 (West)).

375. *Id.*

376. *Id.* § 6-1.1-24-6 (as amended by 2006 Ind. Legis. Serv. P.L. 169-2006 (H.E.A. 1102) §

the county executive who may choose to transfer the property to a nonprofit organization to be used for the public good.<sup>377</sup> A county executive or MDC may hold, manage, develop, repair, maintain, improve, lease or enter into contracts to accomplish any of those functions for properties that did not sell for the minimum bid.<sup>378</sup>

### *I. Miscellaneous*

The GA changed the date of automatic validation to bonds and other obligations previously issued by government entities from March 15, 2000, to March 15, 2006.<sup>379</sup>

Counties and municipalities may now fund emergency warning systems using the Barrett Law.<sup>380</sup>

The GA made a number of changes regarding Indiana motor fuels tax. The \$0.01 per gallon tax credit for retail sale of blended biodiesel is available until December 31, 2010, instead of December 31, 2006.<sup>381</sup> The maximum credit available for ethanol production, biodiesel production and biodiesel blending is now \$50 million instead of \$20 million.<sup>382</sup> Finally, the GA extended the tax credit for integrated coal gasification power plants to investments in fluidized combustion bed technologies.<sup>383</sup>

The GA relaxed the requirements and extended deadlines for several tax credits. For applications filed after March 31, 2006, the EDGE credit is available to employers with at least 35 employees (down from 75) in Indiana.<sup>384</sup> The wage criteria for determining eligibility for the EDGE credit are modified, but not substantively.<sup>385</sup> Awards of the EDGE credit are capped at \$10 million for fiscal

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23 (West)).

377. *Id.* § 6-1.1-24-6.7 (as amended by 2006 Ind. Legis. Serv. P.L. 169-2006 (H.E.A. 1102) § 26 (West)).

378. *Id.* § 6-1.1-25-9 (as amended by 2006 Ind. Legis. Serv. P.L. 169-2006 (H.E.A. 1102) § 31 (West)).

379. IND. CODE § 5-1-1-1 (2005) (as amended by 2006 Ind. Legis. Serv. P.L. 184-2006 (H.E.A. 1327) § 1 (West)).

380. IND. CODE §§ 36-9-36-2, -37-11, -38-2 (2004) (as amended by 2006 Ind. Legis. Serv. P.L. 42-2006 (H.E.A. 1107) § 1 (West)).

381. IND. CODE § 6-3.1-27-10(d) (2006) (as amended by 2006 Ind. Legis. Serv. P.L. 122-2006 (S.E.A. 353) § 8 (West)).

382. *Id.* § 6-3.1-27-9.5 (as amended by 2006 Ind. Legis. Serv. P.L. 122-2006 (S.E.A. 353) § 7 (West)).

383. *Id.* § 6-3.1-29-15 (as amended by 2006 Ind. Legis. Serv. P.L. 122-2006 (S.E.A. 353) § 13 (West)).

384. *Id.* § 6-3.1-13-15.5 (as amended by 2006 Ind. Legis. Serv. P.L. 137-2006 (H.E.A. 1380) § 4 (West)).

385. *Id.* The company must pay the greater of 105% of the average wages paid by companies in the same industry and county, or 105% of the average wages paid by companies in the same industry within Indiana, or 200% of minimum wage. *Id.*

years 2006 and following, up from \$5 million.<sup>386</sup> The Headquarters Relocation Credit is available for taxable years beginning after 2005<sup>387</sup> for companies that have at least \$100 million in annual worldwide revenues (down from \$500 million) for the previous year<sup>388</sup> and that employ at least 75 people in Indiana.<sup>389</sup> The deadline for making a qualifying investment for the Hoosier Investment Credit is now January 1, 2012, instead of January 1, 2008.<sup>390</sup>

The GA limits the use of students and teachers in promoting a bond issue and prevents professionals who provide services to a project from promoting a bond issue for that project.<sup>391</sup> The GA also defines standards for determining the validity of signatures on a remonstrance petition.<sup>392</sup>

Motorboats that are registered in another state are not required to be registered or titled in Indiana if the owner pays the boat excise tax and certain fees, including a new \$2 fee paid to the BMV.<sup>393</sup>

### *J. Other Miscellaneous Tax Legislation*

1. *Utility Tax.*—I.C. § 6-2.3-3-11 (effective July 1, 2006) was added to the utility receipts tax to provide that furnishing utility services to an end user in Indiana, whether or not the utility services are delivered through the pipelines, transmission lines, or property of another person and the taxpayer providing the utility service is or is not a resident of Indiana, or transaction is subject to a deduction under the mobile telecommunications sourcing act.<sup>394</sup>

I.C. § 6-2.3-5.5 (effective July 1, 2006) was added to impose the utility services use tax on the consumption of utility services that are billed after June 30, 2006.<sup>395</sup> The tax is measured by the gross consideration received by the seller from the sale of the utility services, and is imposed at the rate of 1.4%.<sup>396</sup>

I.C. § 6-2.3-5.5-4 (effective July 1, 2006) was added to provide an exemption from the utility services use tax if the transaction is subject to the utility receipts

386. *Id.*

387. 2006 Ind. Legis. Serv. P.L. 137-2006 (H.E.A. 1380) § 17 (West).

388. IND. CODE § 6-3.1-30-2 (2006) (as amended by 2006 Ind. Legis. Serv. P.L. 137-2006 (H.E.A. 1380) § 8 (West)).

389. *Id.* § 6-3.1-30-8 (as amended by 2006 Ind. Legis. Serv. P.L. 137-2006 (H.E.A. 1380) § 9 (West)).

390. *Id.* § 6-3.1-26-26 (as amended by 2006 Ind. Legis. Serv. P.L. 137-2006 (H.E.A. 1380) § 7 (West)).

391. *Id.* § 6-1.1-20-10 (as amended by 2006 Ind. Legis. Serv. P.L. 162-2006 (H.E.A. 1001) § 5 (West)).

392. *Id.* § 6-1.1-20-11 (as added by 2006 Ind. Legis. Serv. P.L. 162-2006 (H.E.A. 1001) § 6 (West)).

393. *Id.* §§ 6-6-11-13; IND. CODE §§ 9-29-15-9, 9-31-3-2 (2004) (as amended by 2006 Ind. Legis. Serv. P.L. 46-2006 (H.E.A. 1331) § 1 (West)).

394. 2006 Ind. Legis. Serv. P.L. 162-2006 (H.E.A. 1001) § 18 (West).

395. 2006 Ind. Legis. Serv. P.L. 162-2006 (H.E.A. 1001) § 19 (West).

396. *Id.*

tax, the gross receipts from the transaction are not taxable under the utility receipts tax, the services are consumed for an exempt purpose under the utility receipts tax, or the services were consumed for the purpose for which a deduction is granted.<sup>397</sup>

I.C. § 6-2.3-5.5-5 (effective July 1, 2006) entitles a person to a credit against the utility services use tax imposed on the retail consumption of utility services equal to the amount of utility services use tax paid to another state.<sup>398</sup>

I.C. § 6-2.3-5.5-7 (effective July 1, 2006) provides that the DOR shall establish procedures for the collection of the utility services use tax from users, including deposit and reporting requirements.<sup>399</sup> Failure of a person to comply with the procedures is subject to the penalties imposed under I.C. § 6-8.1.<sup>400</sup>

I.C. §§ 6-2.3-5.5-8 to -10 (effective July 1, 2006) state that any seller of utility services may elect to register with the DOR to collect utility services use tax on behalf of persons liable for the tax imposed.<sup>401</sup> The person will pay the tax to the registered seller and the seller will collect the tax as an agent for the state.<sup>402</sup> The seller upon request of the consumer will issue a receipt to the consumer for the tax collected.<sup>403</sup> In all other cases, the person liable for the tax shall pay the tax directly to the DOR.<sup>404</sup>

I.C. § 6-2.3-5.5-11 (effective July 1, 2006) provides that if the DOR assesses the tax against a person for the person's consumption of utility services, and the person has already paid the tax to the seller, the person may avoid the tax if the person can produce a receipt or other evidence that the person paid the tax to the seller.<sup>405</sup>

2. *Sales and Use Tax.*—I.C. § 6-2.5-4-5 (effective July 1, 2006) was amended to provide that a business located in a county where the Crane military base is located will be considered to be a military base enhancement area and can receive a sales tax exemption for utility services.<sup>406</sup>

I.C. § 6-2.5-4-15 (effective July 1, 2006) was added to provide that a bundled transaction is a retail transaction for transactions occurring after December 31, 2007.<sup>407</sup>

I.C. § 6-2.5-5-16.5 (effective July 1, 2006) was added to provide that home energy assistance is exempt from the sales tax if the person acquiring the home energy acquires it after June 30, 2006 and before July 1, 2007.<sup>408</sup>

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397. *Id.*

398. *Id.*

399. *Id.*

400. *Id.*

401. *Id.*

402. *Id.*

403. *Id.*

404. *Id.*

405. *Id.*

406. *Id.* § 21.

407. 2006 Ind. Legis. Serv. P.L. 153-2006 (S.E.A. 258) § 4 (West).

408. 2006 Ind. Legis. Serv. P.L. 162-2006 (H.E.A. 1001) § 22 (West).

I.C. § 6-2.5-6-1 (effective July 1, 2006) was amended to provide that a Model 4 seller whose annual sales tax liability is less than \$1000 only has to file and remit on one annual return.<sup>409</sup>

I.C. § 6-2.5-6-9 (effective January 1, 2007) is amended to provide that the sales tax bad debt deduction is not assignable unless the individual or entity is part of the same affiliated group as defined in Section 1504(a)(2) of the IRC (except that the ownership percentage shall be determined using 50% instead of 80%).<sup>410</sup> The exception also applies to two or more partnerships that have the same degree of ownership as the affiliated group.<sup>411</sup>

I.C. § 6-2.5-6-11 (effective July 1, 2006) was amended to provide that a utility or other person who extends assistance to a heating assistance program may deduct from the retail merchant's sales tax payment an amount equal to the amount of assistance that was extended by the retail merchant to the heating assistance program.<sup>412</sup>

I.C. § 6-2.5-7-1 (effective July 1, 2006) was amended to change the definition of prepayment rate for calculating the sales tax on gasoline.<sup>413</sup>

I.C. § 6-2.5-7-14 (effective July 1, 2006) was amended to provide that the prepayment rate used in determining prepayment amounts of sales tax on gasoline may not exceed 125% of the prepayment rate used for the previous six month period.<sup>414</sup>

I.C. § 6-2.5-13-1 (effective July 1, 2006) was amended to provide that floral orders transmitted to another florist for delivery will be sourced to the florist that took the original order until January 1, 2008.<sup>415</sup>

3. *Adjusted Gross Income Tax.*—I.C. § 6-3-2-1.5 (effective July 1, 2006) was amended to provide that a corporation located in a county where the Crane military base is located is to be taxed on its income at a rate of 5% instead of 8.5%.<sup>416</sup>

I.C. § 6-3-2-20 (effective July 1, 2006) was added to establish the guidelines and requirements for a taxpayer to add back the amount of any intangible expenses or directly related intangible interest expenses to the taxpayer's taxable income.<sup>417</sup>

4. *Income Tax Credits.*—I.C. § 6-3.1-11.6-9 (effective July 1, 2006) was amended to provide that a business located in a county where the Crane military base is located is eligible for the military base investment cost tax credit.<sup>418</sup>

I.C. § 6-3.1-27-8 (effective upon passage) and I.C. § 6-3.1-27-9 (effective

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409. 2006 Ind. Legis. Serv. P.L. 153-2006 (S.E.A. 258) § 5 (West).

410. 2006 Ind. Legis. Serv. P.L. 162-2006 (S.E.A. 258) § 23 (West).

411. *Id.*

412. 2006 Ind. Legis. Serv. P.L. 181-2006 (H.E.A. 1261) § 43 (West).

413. 2006 Ind. Legis. Serv. P.L. 122-2006 (S.E.A. 353) § 2 (West).

414. 2006 Ind. Legis. Serv. P.L. 176-2006 (H.E.A. 1214) § 2 (West).

415. 2006 Ind. Legis. Serv. P.L. 153-2006 (S.E.A. 258) § 6 (West).

416. 2006 Ind. Legis. Serv. P.L. 180-2006 (H.E.A. 1259) § 4 (West).

417. 2006 Ind. Legis. Serv. P.L. 162-2006 (H.E.A. 1001) § 26 (West).

418. 2006 Ind. Legis. Serv. P.L. 180-2006 (H.E.A. 1259) § 5 (West).

January 1, 2006) are amended to imply that the credit awarded by the EDC for biodiesel production and the credit for blending biodiesel can be awarded at an amount that is less than the statutory limit.<sup>419</sup>

I.C. § 6-3.1-28-11 (upon passage) was amended to imply that the credit awarded by the EDC for ethanol production can be awarded at an amount that is less than the statutory limit.<sup>420</sup> Increases the maximum amount of credits allowed for an ethanol production plant from \$3 million to \$2 million if the production is less than 60,000,000 gallons in a taxable year or \$3 million if the production is greater than 60,000,000 gallons in a taxable year.<sup>421</sup>

I.C. § 6-3.1-29-15 (effective January 1, 2006) was amended to provide that an entity is qualified for the coal gasification income tax credit if the facility is dedicated to primarily serving Indiana retail electric utility consumers.<sup>422</sup> This section also provides that the fluidized bed combustion technology tax credit is 7% of the taxpayer's qualified investment for the first \$500 million invested, and 3% of the qualified taxpayer's investment that exceeds \$500 million.<sup>423</sup>

I.C. § 6-3.1-30-2 (effective January 1, 2006) was amended to provide that for a business to qualify for the headquarters relocation tax credit, the annual worldwide revenues had to be at least \$100 million (prior provision was \$500 million).<sup>424</sup>

I.C. § 6-3.1-30-8 (effective January 1, 2006) was amended to provide that a business must have at least 75 employees in Indiana to qualify for the headquarters relocation tax credit.<sup>425</sup>

5. *County Economic Development Income Tax.*—I.C. § 6-3.5-7-26 (upon passage) was amended to provide that a county has until June 1, 2006 (instead of April 1, 2006) to adopt an ordinance to impose an additional CREDIT rate to offset the effects of the elimination of the property tax on inventory.<sup>426</sup>

6. *Motor Fuel Tax.*—I.C. § 6-6-1.1-103 (effective January 1, 2006) was amended to define E85 as a fuel blend nominally consisting of 85% ethanol and 15% gasoline.<sup>427</sup>

I.C. § 6-6-1.1-515 (effective July 1, 2006) was added to provide that the administrator of the special tax division may require all reports required to be filed concerning the gasoline tax must be filed in an electronic format prescribed by the administrator.<sup>428</sup>

I.C. § 6-6-2.5-1 (effective July 1, 2006) was amended to provide that

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419. 2006 Ind. Legis. Serv. P.L. 122-2006 (S.E.A. 353) §§ 5-6 (West).

420. *Id.* § 9.

421. *Id.*

422. *Id.* § 13.

423. *Id.*

424. 2006 Ind. Legis. Serv. P.L. 137-2006 (H.E.A. 1380) § 8 (West).

425. *Id.* § 9.

426. 2006 Ind. Legis. Serv. P.L. 162-2006 (H.E.A. 1001) § 34 (West).

427. 2006 Ind. Legis. Serv. P.L. 122-2006 (S.E.A. 353) § 18 (West).

428. 2006 Ind. Legis. Serv. P.L. 176-2006 (H.E.A. 1214) § 3 (West).

biodiesel and blended biodiesel are not alternative fuels.<sup>429</sup>

I.C. § 6-6-2.5-1.5 (effective July 1, 2006) was amended to define biodiesel as a renewable, biodegradable, mono alkyl ester combustible liquid fuel derived from agricultural plant oils or animal fats that meets American Society for Testing and Materials specifications D6751-03a Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels, as well as other fuels of the same derivation capable of use in the generation of power for the propulsion of a motor vehicle, airplane or motorboat.<sup>430</sup> This section also defined blended biodiesel to be a blend of biodiesel with petroleum diesel fuel so that the volume percentage of biodiesel in the blend is at least 2%.<sup>431</sup>

I.C. § 6-6-2.5-3 (effective July 1, 2006) was amended so that the term blending does not include biodiesel or blended biodiesel.<sup>432</sup>

I.C. § 6-6-2.5-22 (effective July 1, 2006) was amended so that biodiesel and blended biodiesel are included in the definition of special fuel.<sup>433</sup>

I.C. § 6-6-2.5-72 (effective July 1, 2006) was added to provide that the administrator may require special fuel tax reports to be filed in an electronic format.<sup>434</sup>

I.C. § 6-6-4.1-4.8 (effective July 1, 2006) was amended to provide that in order to claim a proportional use credit for motor carrier fuel use taxes, the claim for the credit must be filed by the due date of the quarterly return for which the credit is being claimed.<sup>435</sup>

7. *Tax Administration.*—I.C. § 6-8.1-1-1 (effective July 1, 2006) was amended so that the utility services use tax is considered a listed tax-for tax administration purposes.<sup>436</sup>

I.C. § 6-8.1-3-18 (effective July 1, 2006) was repealed.<sup>437</sup> The section gave DOR employees full police powers to enforce the charity gaming statutes.<sup>438</sup>

I.C. § 6-8.1-4-4 (effective July 1, 2006) was amended to give the commissioner of the DOR the authority to deny any applications submitted by an operator of a commercial motor vehicle if the person has failed to file all returns and pay all taxes.<sup>439</sup>

I.C. § 6-8.1-8-2 (effective January 1, 2007) was amended to require the DOR to state on a demand notice the statutory authority for the DOR to levy against

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429. 2006 Ind. Legis. Serv. P.L. 122-2006 (S.E.A. 353) § 19 (West).

430. *Id.* § 20.

431. *Id.*

432. *Id.* § 21.

433. *Id.* § 22.

434. 2006 Ind. Legis. Serv. P.L. 176-2006 (H.E.A. 1214) § 4 (West).

435. *Id.* § 5.

436. 2006 Ind. Legis. Serv. P.L. 162-2006 (H.E.A. 1001) § 35 (West).

437. 2006 Ind. Legis. Serv. P.L. 91-2006 (S.E.A. 100) § 15 (West).

438. IND. CODE § 6-8.1-3-18 (2006), *repealed* by 2006 Ind. Legis. Serv. P.L. 91-2006 (S.E.A. 100) § 15 (West).

439. 2006 Ind. Legis. Serv. P.L. 176-2006 (H.E.A. 1214) § 6 (West).

a taxpayer's property held by a financial institution.<sup>440</sup> The amendment also provides that the sheriff in a county where a warrant has been filed does not have the authority to release the warrant.<sup>441</sup>

I.C. § 6-8.1-8-3 (effective January 1, 2007) was amended to require a county sheriff to return a tax warrant to the DOR even if a payment plan is established by the sheriff, unless the sheriff's electronic data base regarding tax warrants is compatible with the DOR's data base.<sup>442</sup>

I.C. § 6-8.1-8-14 (effective January 1, 2007) was added to allow the commissioner to declare an outstanding liability as uncollectible.<sup>443</sup> However, any lien created by the outstanding liability remains in place.<sup>444</sup>

I.C. § 6-8.1-8-15 (effective January 1, 2007) was added to allow the DOR to levy on the unclaimed property of the apparent owner by filing a claim with the Indiana Attorney General in accordance with procedures described in I.C. § 32-34-1-36.<sup>445</sup>

I.C. § 6-8.1-9-3 (effective January 1, 2007) was amended to provide that I.C. § 6-8.1-9 does apply to refund claims under the motor carrier fuel use tax.<sup>446</sup>

I.C. § 6-8.1-10-13 (effective July 1, 2006) was added to provide penalties if a person operates a commercial motor vehicle without required credentials or operates with altered credentials.<sup>447</sup>

8. *Non-Title Six Amendments.*—I.C. § 4-32 (effective July 1, 2006) was repealed.<sup>448</sup> This transfers the license and regulation of charity gaming from the DOR to the Indiana gaming commission.

I.C. § 7.1-3-26-9 (effective July 1, 2006) was added to allow out of state wineries to sell direct to the Indiana consumer.<sup>449</sup> This amendment requires the out of state winery to remit to the DOR all alcoholic beverage taxes and sales taxes on a monthly basis.<sup>450</sup>

I.C. § 8-15.5-8-2 (upon passage) was added to provide that income received by an operator under the terms of a public-private agreement is subject to taxation in the same manner as income received by other private entities (Indiana Toll Road).<sup>451</sup>

I.C. § 8-15.5-8-3 (upon passage) was added to provide that an operator or any other person purchasing tangible personal property for incorporation into or improvement of a structure or facility constituting or becoming part of the land

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440. 2006 Ind. Legis. Serv. P.L. 111-2006 (S.E.A. 362) § 6 (West).

441. *Id.*

442. *Id.* § 7.

443. *Id.* § 8.

444. *Id.*

445. *Id.* § 9.

446. *Id.* § 11.

447. 2006 Ind. Legis. Serv. P.L. 176-2006 (H.E.A. 1214) § 7 (West).

448. 2006 Ind. Legis. Serv. P.L. 91-2006 (S.E.A. 100) § 15 (West).

449. 2006 Ind. Legis. Serv. P.L. 165-2006 (H.E.A. 1016) § 34 (West).

450. *Id.*

451. 2006 Ind. Legis. Serv. P.L. 47-2006 (H.E.A. 1008) § 39 (West).

included in the toll road project is not exempt from the sales tax with respect to such purchase (Indiana Toll Road).<sup>452</sup>

I.C. § 8-15.7-7-2 (upon passage) was added to provide that an operator or any other person purchasing tangible personal property for incorporation into or improvement of a structure or facility constituting or becoming part of the land included in a project is entitled to an exemption from the sales and use tax for that tangible personal property (Interstate 69).<sup>453</sup>

I.C. § 8-15.7-7-3 (upon passage) was added to provide that income received by an operator under the terms of a public-private agreement is subject to taxation in the same manner as income received by other private entities (Interstate 69).<sup>454</sup>

I.C. § 9-13-2-78 (upon passage) was amended to provide that a person enrolled as a student truck driver of a truck driver training school, and has a legal residence in another state but is living in Indiana for the sole purpose of taking a course of study from a truck training school, and intends to return to his or her home state after completing his or her training will be considered an Indiana resident.<sup>455</sup>

I.C. § 9-24-6-5.5 (upon passage) was added to provide that a student of a truck driver training school and a truck driver training school are subject to rules adopted by the DOR.<sup>456</sup>

I.C. § 22-11-14-12 (effective June 1, 2006) was added to provide a public safety user fee of 5% on the retail sale of fireworks to be collected by the DOR and deposited in the state general fund.<sup>457</sup>

I.C. § 22-11-14-14 (effective June 1, 2006) was added to provide that an individual who is an individual retailer and has a duty to remit the public safety fee holds the public safety fee in trust for the state and is personally liable for the payment of the fee.<sup>458</sup>

I.C. § 22-11-14-15 (effective June 1, 2006) was added to require the fire prevention and building safety commission and the DOR to adopt rules to carry out this act.<sup>459</sup>

I.C. § 27-5.1-2-8 (effective January 1, 2006) was amended to provide that a farm mutual insurance company may elect to either pay the premium tax or the corporate adjusted gross income tax.<sup>460</sup>

I.C. § 36-7-31-14.1 (effective July 1, 2006) was amended to provide that the additional \$11 million that the capital improvement board receives from the sales tax and withholding tax does not terminate until January 1 of the year after the

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452. *Id.*

453. *Id.* § 40.

454. *Id.*

455. 2006 Ind. Legis. Serv. P.L. 188-2006 (H.E.A. 1300) § 2 (West).

456. *Id.* § 9.

457. 2006 Ind. Legis. Serv. P.L. 187-2006 (H.E.A. 1099) § 12 (West).

458. *Id.* § 14.

459. *Id.* § 15.

460. 2006 Ind. Legis. Serv. P.L. 162-2006 (H.E.A. 1001) § 47 (West).

year that no obligations are outstanding.<sup>461</sup>

9. *Non Code Provisions*.—Public Law 162-2006, Section 53 (upon passage) provides that the provision to require the add back of intangible expenses does not affect the legitimacy or illegitimacy of deductions claimed by the taxpayer for taxable years beginning before July 1, 2006.<sup>462</sup> It also provides that the DOR may adopt temporary rules to implement the intangible expense add back provisions.<sup>463</sup>

Public Law 162-2006, Section 55 (upon passage) provides that the DOR shall adopt temporary rules to implement the provisions of the utility services use tax, and the home energy assistance program sales tax exemption.<sup>464</sup>

Public Law 162-2006, Section 22 (upon passage) was added to require the DOR to carry out the provisions of the fireworks bill by issuing written guidelines.<sup>465</sup>

Public Law 137-2006, Section 17 (effective January 1, 2006) provides that the entire chapter (I.C. § 6-3.1-30) concerning the headquarters relocation tax credit takes effect on January 1, 2006 instead of January 1, 2007.<sup>466</sup>

Senate Bill No. 169, Section 1 (effective July 1, 2006) extends until August 1, 2007, the quality care assessment fee levied on health care facilities.<sup>467</sup>

Senate Bill No. 355, Section 22 (effective January 1, 2006) was added to permit an additional deduction in 2006 against adjusted gross income for the payment of delayed property taxes payable in 2005. Delayed property taxes include the 2002, 2003, and 2004 assessment years where the taxpayer was not delinquent in remitting the property tax to the county treasurer when the property tax was paid in 2005.<sup>468</sup>

Public Law 111-2006, Section 12 (effective July 1, 2006) provides authority for the DOR to adopt temporary rules to implement a staggered system of renewal for the retail merchant's certificate.<sup>469</sup>

## II. INDIANA SUPREME COURT DECISIONS

During 2006, the Supreme Court issued six opinions in the area of taxation, and all six decisions related to property tax.

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461. 2006 Ind. Legis. Serv. P.L. 120-2006 (S.E.A. 259) § 6 (West).

462. 2006 Ind. Legis. Serv. P.L. 162-2006 (H.E.A. 1001) § 53 (West).

463. *Id.*

464. *Id.* § 55.

465. 2006 Ind. Legis. Serv. P.L. 187-2006 (H.E.A. 1099) § 22 (West).

466. 2006 Ind. Legis. Serv. P.L. 137-2006 (H.E.A. 1380) § 17 (West).

467. S.B. 169, 114th Gen. Assem., 2d Reg. Sess. (Ind. 2006), available at [www.in.gov/legislative/bills/2006/SB/SB0169.1.htm](http://www.in.gov/legislative/bills/2006/SB/SB0169.1.htm).

468. S.B. 355, 114th Gen. Assem., 2d Reg. Sess. (Ind. 2006), available at [www.in.gov/legislative/bills/2006/SB/SB0355.1.htm](http://www.in.gov/legislative/bills/2006/SB/SB0355.1.htm).

469. 2006 Ind. Legis. Serv. P.L. 111-2006 (S.E.A. 362) § 12 (West).

A. Wayne County Property Tax Assessment Board of Appeals v. United Ancient Order of Druids—Grove #29<sup>470</sup>

In this opinion, the Supreme Court addressed an issue certified to it on interlocutory appeal from a case pending in the Tax Court.<sup>471</sup> The parties below disagreed as to how to calculate the time for filing the agency record in a property tax assessment appeal in accordance with both Tax Court Rule 3(E) and the AOPA.<sup>472</sup> Tax Court Rule 3(E) provides that the petitioner has 30 days after filing a petition for appeal to request a certified copy of the agency record and 30 days after receiving notice that the record was prepared to file with the Tax Court.<sup>473</sup> The relevant AOPA section provides that a taxpayer must file a certified copy of the agency record with the court within 30 days after filing a petition for appeal or within further time allowed by the court.<sup>474</sup> The Supreme Court rejected an argument that the two provisions, when read together, require the taxpayer to both request and file a certified copy of the record within 30 days after filing a petition for appeal.<sup>475</sup> It recognized that the AOPA provision provides that a record is timely filed if it is filed within 30 days or within additional time allowed by the court.<sup>476</sup> The Supreme Court considers Tax Court Rule 3(E) to be a blanket grant of additional time for all tax appeals.<sup>477</sup> To require individual hearings would place a very heavy burden on the Tax Court because extensions would usually be necessary due to the seasonal nature of property tax appeals.<sup>478</sup> The Supreme Court upheld the Tax Court's order that the time limits under Tax Court Rule 3(E) applied.<sup>479</sup>

B. Trinity Homes, LLC. v. Fang<sup>480</sup>

The Supreme Court reversed the trial court decision in this small claims contract case.<sup>481</sup> Fang purchased a lot in a subdivision from Trinity Homes on

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470. 847 N.E.2d 924 (Ind. 2006).

471. *Id.* at 925.

472. *Id.* at 926-27.

473. *Id.* at 926.

474. *Id.* at 926-27 (citing IND. CODE § 4-21.5-5-13(a) (2005)).

475. *Id.* at 927.

476. *Id.* at 928.

477. *Id.*

478. *Id.*

479. *Id.* The parties also disputed whether or not the petitioner was in compliance with Trial Rule 3(E). The BTR prepared an invoice for the taxpayer's request for a certified record that referred to preparation of the record as if it had not yet happened. The taxpayer disputes ever receiving this notice. Both the Tax Court and the Supreme Court held that receipt was immaterial because the terms of the invoice were insufficient to notify the taxpayer that the record had actually been prepared. *Id.* at 928 29.

480. 848 N.E.2d 1065 (Ind. 2006).

481. *Id.* at 1067, 1069.

March 3, 2000.<sup>482</sup> The purchase agreement included a provision that read, in part, “[Trinity Homes] agrees to pay first real estate installment due after settlement.”<sup>483</sup> Trinity Homes paid the property tax installments due in May and November 2000.<sup>484</sup> Those installments were for the 1999 assessment of the property, before Trinity subdivided the development into individual lots.<sup>485</sup> Fang’s lot was assessed individually in 2000, and he received a bill for the first installment of that assessment due in May 2001.<sup>486</sup> He paid the bill and requested reimbursement from Trinity Homes.<sup>487</sup> They refused so he filed an action in small claims court to recover the payment.<sup>488</sup> Fang argued that the installments that were paid in May and November 2000 were not on his property but on the development as a whole.<sup>489</sup> Therefore, those payments could not be the installment referred to in the purchase agreement.<sup>490</sup> Instead, because his property was only assessed for the first time in 2000, the May 2001 payment was the first installment due and Trinity Homes should have paid it.<sup>491</sup> Both the trial court and the Court of Appeals held that the contract provision was ambiguous and should be construed in favor of Fang.<sup>492</sup> The Supreme Court, however, disagreed that the provision was ambiguous.<sup>493</sup> The only question was whether or not the 1999 assessment (that Trinity paid in 2000) applied to Fang’s individual lot.<sup>494</sup> The court reasoned that it did, even though the lot was not individually assessed, because that lot (and the remainder of the entire tract of land) was subject to the lien acquired by the state on the 1999 assessment.<sup>495</sup> Rather than finding that Trinity Homes should have paid the May 2001 installment, it found that Fang unexpectedly benefited from Trinity Homes’s payment of the November 2001 installment - one more than it was required to pay.<sup>496</sup> The court reversed the lower court decision and ordered judgment for Trinity Homes.<sup>497</sup>

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482. *Id.* at 1067.

483. *Id.*

484. *Id.*

485. *Id.*

486. *Id.*

487. *Id.*

488. *Id.*

489. *Id.*

490. *Id.*

491. *Id.*

492. *Id.*

493. *Id.* at 1068.

494. *Id.* at 1069.

495. *Id.*

496. *Id.*

497. *Id.* A dissenting opinion also found the term to be unambiguous - but in favor of Fang. The dissent highlights the terms in the sales agreement that refer to property taxes on the “real estate”—defined as the individual lot in the same agreement. According to the terms of the agreement, Trinity Homes should have paid the May 2001 installment of property taxes.

C. *Bonney v. Indiana Finance Authority*<sup>498</sup>

In a decision concerning the “Major Moves” legislation, the Supreme Court addressed the constitutionality of a property tax exemption granted by statute to the company leasing the Indiana Toll Road from the state.<sup>499</sup> Prior to the Major Moves legislation, statutes required that if exempt property were leased to a party whose property was non-exempt, then the exempt property would also be subject to property taxes.<sup>500</sup> The plaintiffs in this case argued that a new statutory provision enacted by the GA that specifically exempted the lessee of the Indiana Toll Road<sup>501</sup> from paying property tax on the road was unconstitutional because it violated Article X, Section 1 of the Indiana Constitution.<sup>502</sup> That section requires that a property tax system be uniform and fair, and that the GA may exempt property being used for municipal purposes.<sup>503</sup> The taxpayers argued that past Supreme Court decisions required public ownership of the property as well as an acceptable use of the property before the property could be exempt from taxes.<sup>504</sup> However, the Supreme Court held that public ownership is not necessary because the Constitution defines classes of exempt property by its use.<sup>505</sup> Because the property will continue to be used in the same manner that it had been—as a public highway—it would continue to be eligible for an exemption from property taxes.<sup>506</sup>

D. *Alpha Psi Chapter of Pi Kappa Phi Fraternity, Inc.  
v. Auditor of Monroe County*<sup>507</sup>

The Supreme Court prohibited legislation that gave only three taxpayers an exemption from property tax deadlines that otherwise applied to everyone.<sup>508</sup> The taxpayers were all fraternity chapters located on the Bloomington campus of Indiana University.<sup>509</sup> Each of the three failed to file timely applications to exempt their Monroe County property from taxation, resulting in each chapter being assessed property taxes in 2000 and 2001, payable in 2001 and 2002.<sup>510</sup> In 2003, The GA passed a law that, by its terms, applied only to these three taxpayers and only for the tax years in which they failed to file a timely

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498. 849 N.E.2d 473 (Ind. 2006).

499. *Id.* at 486-88.

500. *Id.* at 486 (citing IND. CODE § 6-1.1-10-37 (2006)).

501. IND. CODE § 8-15.5-8-1 (2004).

502. *Bonney*, 849 N.E.2d at 487.

503. *Id.* (citing IND. CONST. art X, § 1).

504. *Id.* at 487-88.

505. *Id.* at 488.

506. *Id.*

507. 849 N.E.2d 1131 (Ind. 2006).

508. *Id.* at 1133.

509. *Id.*

510. *Id.*

application for exemption.<sup>511</sup> One of the taxpayers filed a refund claim, whereupon the county auditor filed this action for a declaratory judgment that the law was an invalid special law.<sup>512</sup> After a lengthy review of the history behind the constitutional probation on special laws,<sup>513</sup> the court addressed the merits of this case. The taxpayers argued that the law is general because it is not limited to a single locality, but applies to fraternities located on any of Indiana University's eight campuses.<sup>514</sup> However, the Supreme Court referred to an earlier decision where it stated that a "statute is general if it applies to all persons or places of a specified class throughout the state."<sup>515</sup> Because "property-owning fraternities and sororities" is the "smallest relevant class" that is eligible for an exemption from property tax, a statute that subdivides that class even further is necessarily special.<sup>516</sup> The taxpayers argued that they faced unique circumstances that justified the special law, including that the financial burden of paying the property tax assessments would increase already high education costs.<sup>517</sup> However, the Supreme Court held that the circumstances faced by these three taxpayers were no different than those faced by any other fraternity or sorority in the state and did not justify the special law.<sup>518</sup> The dissenting justice believed that the court's decision was a violation of the Separation of Functions Clause because the court substituted a test of its own making (whether or not a class was unique enough to warrant a special law) for the determination of the GA.<sup>519</sup>

#### E. Packard v. Shoopman<sup>520</sup>

The Supreme Court upheld a Tax Court decision<sup>521</sup> that, in addition to ruling on the merits of a property tax assessment, held that the taxpayer's failure to file a timely petition for review was not sufficient to deprive the Tax Court of jurisdiction unless the assessor objected to the timeliness in its first response to the petition.<sup>522</sup> Although there was some dispute in the Tax Court about which deadline applied because of multiple statutory amendments during the case proceedings, the assessor did not raise an objection to the timeliness of the petition until almost two years after first raising a motion to dismiss certain

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511. *Id.*

512. *Id.*

513. *Id.* at 1134-36.

514. *Id.* at 1136.

515. *Id.* (quoting *City of South Bend v. Kimsey*, 781 N.E.2d 683 (Ind. 2003)) (internal quotes omitted).

516. *Id.* at 1136-37.

517. *Id.* at 1138-39.

518. *Id.* at 1139.

519. *Id.* at 1139-40 (J. Sullivan, dissenting).

520. 852 N.E.2d 927 (Ind. 2006).

521. *Shoopman v. Clay Twp. Assessor*, 827 N.E.2d 662 (Ind. Tax Ct. 2005).

522. *Packard*, 852 N.E.2d at 928.

named respondents.<sup>523</sup> The assessor argued that a statute deprived the Tax Court of subject matter jurisdiction over a case if a taxpayer failed to comply with any statutory requirement when raising an appeal<sup>524</sup> and that subject matter jurisdiction could not be waived.<sup>525</sup> However, the Tax Court and the Supreme Court both held that a taxpayer's failure to timely file a petition was mere procedural error that could be waived if not raised at the first opportunity and not jurisdictional error that would prevent the Tax Court from hearing the case regardless of when the error was raised.<sup>526</sup>

*F. Department of Local Government Finance  
v. Roller Skating Rink Operators Ass'n*<sup>527</sup>

The Supreme Court reversed a 2005 Tax Court decision<sup>528</sup> that granted an educational-purpose exemption to a trade association for its office and storage buildings.<sup>529</sup> The association presents educational programs to its members during its convention and trade shows<sup>530</sup> and the association applied for an educational-purpose exemption for its office and buildings because the materials for the educational programs were stored in those buildings.<sup>531</sup> Although the educational programs offered by the association are not accredited, they provide training on topics that overlap those in the recreation management and business education programs offered by state schools.<sup>532</sup> Participants in the schools can earn credit for continuing education at the University of Wisconsin.<sup>533</sup> Both the Marion County Property Tax Assessment Board of Appeals and the SBTC denied the exemption.<sup>534</sup> However, the Tax Court granted the exemption, because the association's "property was predominantly used for educational purposes and that [its] use of the property was reasonably necessary to further its purpose of providing education."<sup>535</sup> The Supreme Court reviewed the Tax Court's decision *de novo* and determined that its reading of the educational exemption was "too expansive."<sup>536</sup> To qualify for the educational exemption, a taxpayer must not only

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523. *Id.* at 928-29.

524. *Id.* at 929.

525. *Id.*

526. *Id.* at 931-32.

527. 853 N.E.2d 1262 (Ind. 2006).

528. *Roller Skating Rink Operators Ass'n v. Dep't of Local Gov't Fin.*, 839 N.E.2d 831 (Ind. Tax Ct. 2005).

529. *Roller Skating Rink Operators Ass'n*, 853 N.E.2d at 1263.

530. *Id.*

531. *Id.*

532. *Id.* at 1264.

533. *Id.*

534. *Id.*

535. *Id.*

536. *Id.* at 1265. The DLGF also challenged the timeliness of the association's petition to the Tax Court, but the Supreme Court held that it had waived that objection by not raising it with the

provide education to others but also must “provide[] some public benefit.”<sup>537</sup> The Supreme Court reviewed a number of earlier decisions that, in its view, had properly granted an education exemption to programs at private schools, programs that provided training not otherwise available in public schools, and programs that only relieved the state of Indiana’s burden of education in a limited fashion.<sup>538</sup> However, each of those programs was “offered to the public and did not further the business objectives of the attendees.”<sup>539</sup> The Tax Court should have reviewed the SBTC’s decision for an abuse of discretion.<sup>540</sup> The Supreme Court found that the SBTC had not abused its discretion.<sup>541</sup> Rather, substantial evidence supported the SBTC’s conclusion that the training provided by the association to its members was incidental to its promotional activities and that the training did not provide a public benefit.<sup>542</sup> The association was denied the educational purpose exemption.<sup>543</sup>

### III. INDIANA TAX COURT DECISIONS

The Tax Court rendered a variety of opinions from January 1, 2006, to December 31, 2006. Specifically, the Tax Court issued 16 published opinions and decisions: 12 of which concerned the Indiana real property tax; three of which concerned the Indiana inheritance tax; and one of which concerned the riverboat wagering tax. A summary of each opinion and decision appears below.

#### A. *Property Tax*

1. *College Corner, L.P. v. Department of Local Government Finance*.<sup>544</sup>—College Corner, L.P. (“CCLP”) initiated this action on January 2, 2002, appealing the denial of a property tax exemption for the 2000 tax year.<sup>545</sup> CCLP is a limited partnership with one general partner, the Old Northside Foundation, Inc. (“ONF”), and one limited partner, the National City Community Development Corporation (“NCCDC”).<sup>546</sup> NCCDC is an Ohio for-profit corporation.<sup>547</sup> ONF is an Indiana not-for-profit corporation and is a 501(c)(3) charitable organization.<sup>548</sup> CCLP was formed to revitalize the College Corner area in the historic Old Northside of Indianapolis by rebuilding the area’s

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Tax Court. *Id.* at 1264.

537. *Id.* (citing State Bd. of Tax Comm’rs v. Ft. Wayne Sport Club, Inc., 258 N.E.2d 874, 881 (Ind. Ct. App. 1970)).

538. *Id.* at 1265-66.

539. *Id.* at 1266.

540. *Id.* at 1265.

541. *Id.* at 1267.

542. *Id.*

543. *Id.*

544. 840 N.E.2d 905 (Ind. Tax Ct. 2006).

545. *Id.* at 906-07.

546. *Id.* at 906.

547. *Id.*

548. *Id.*

infrastructure, renovating existing home and building new homes.<sup>549</sup> NCCDC contributed \$248,000 to the partnership that was used to secure mortgages on 17 parcels in the area.<sup>550</sup> In exchange for its investment, NCCDC was to receive a fixed 7% return on the amount which NCCDC advanced for each property redeveloped and sold.<sup>551</sup> CCLP filed applications for a property tax exemption for each of the 17 parcels for the 2000 tax year, claiming that it was “entitled to the charitable purposes exemption provided by I.C. § 6-1.1-10-16(a).”<sup>552</sup> The applications were denied by the Marion County Property Tax Assessment Board of Appeals and by the SBTC. The DLGF, which was substituted for the SBTC as respondent, argued that CCLP had not shown that its use of the property would provide “relief of human want” as required by Indiana law.<sup>553</sup> However, the Tax Court said that “the term ‘charity’ must be broadly construed and . . . encompass[ed] more than simply providing relief to the needy.”<sup>554</sup> CCLP presented a prima facie case demonstrating that its restoration of the College Corner area would result in a number of benefits to the community that meet charitable purposes: assistance in combating community deterioration, preservation of the historical character of the area, and relief of the government burden to provide and maintain infrastructure such as sidewalks and alleys.<sup>555</sup> The DLGF also argued that CCLP should not qualify for an exemption because NCCDC will earn a profit from its investment.<sup>556</sup> However, the statute language that grants a charitable purpose exemption from property tax does so for any type of entity which otherwise qualifies for the exemption, regardless of the entity’s profit motive.<sup>557</sup> In addition, the profit realized by NCCDC is secondary to its stated charitable purpose of revitalizing neighborhoods such as College Corner.<sup>558</sup> The Tax Court noted that the SBTC failed to address any of CCLP’s evidence of its charitable purposes and also ignored previous Indiana court decisions that have held that an organization’s profit motive does not determine whether or not it serves a charitable purpose.<sup>559</sup> The Tax Court reversed the SBTC’s final determination because it was “unsupported by substantial evidence, arbitrary, capricious, and . . . an abuse of discretion.”<sup>560</sup>

2. *Eckerling v. Wayne Township Assessor*.<sup>561</sup>—The Eckerlings initiated this

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549. *Id.* at 906-07.

550. *Id.* at 907.

551. *Id.*

552. *Id.*

553. *Id.* at 909.

554. *Id.*

555. *Id.* at 909-10.

556. *Id.* at 911.

557. *Id.*

558. *Id.*

559. *Id.* at 911-12.

560. *Id.* at 912.

561. 841 N.E.2d 674 (Ind. Tax Ct. 2006).

appeal of the 2002 assessment of their property on February 9, 2005.<sup>562</sup> The Eckerlings' land is located in Wayne Township, Marion County, Indiana, and has an improvement on the land that was originally built as a single-family residence but that is currently being used as an office.<sup>563</sup> There were no alterations made to the improvement to convert it from a single-family residence to an office.<sup>564</sup> The Wayne Township Assessor ("assessor") used the residential pricing guidelines in valuing the improvement.<sup>565</sup> The Eckerlings appealed the assessment arguing that the improvement should be valued according to commercial guidelines instead because it was being used as an office.<sup>566</sup> This appeal follows the BTR's final determination that upheld the assessment.<sup>567</sup> For a taxpayer to successfully seek reversal of a final determination of the BTR, the taxpayer must have submitted evidence regarding the error during the administrative hearing process that substantiates a prima facie case that an error occurred in the assessment.<sup>568</sup> The new assessment system assesses real property based on its market value-in-use.<sup>569</sup> The Tax Court explained that "a property's market value-in-use `may be thought of as the ask price of the property by its owner,'"<sup>570</sup> and lists three generally accepted appraisal techniques for calculating a property's market value-in-use: the cost approach, the sales comparison approach, and the income approach.<sup>571</sup> Because tax assessors are limited in their resources, the cost approach is the primary method for assessing real property in Indiana.<sup>572</sup> However, the cost method is not mandatory and failure to comply with the assessment guidelines is not an indication that the assessment is not a reasonable measure of the property's market value-in-use.<sup>573</sup> An assessment is presumed to be correct unless the taxpayer can prove otherwise.<sup>574</sup> The Eckerlings argued that the assessment should have reflected the improvement's current use as an office if it were to accurately reflect the improvement's market value-in-use.<sup>575</sup>

However, a taxpayer must show that the assessment is not an accurate reflection of the property's market value-in-use, not just that the assessor did not strictly adhere to the guidelines.<sup>576</sup> One way that a taxpayer can rebut the

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562. *Id.* at 674-75.

563. *Id.* at 674.

564. *Id.*

565. *Id.*

566. *Id.* at 674-75.

567. *Id.* at 675.

568. *Id.*

569. *Id.*

570. *Id.* (quoting IND. TAX COMM'RS, 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (2002)).

571. *Id.*

572. *Id.*

573. *Id.*

574. *Id.* at 676.

575. *Id.* at 678.

576. *Id.*

presumption that the assessment is correct is to provide a professional appraisal of the property, use information such as “actual construction costs, sales information regarding the subject or comparable properties,” or other information as long as the additional information was available to the assessor at the time of the assessment.<sup>577</sup> The Eckerlings did not provide any of this evidence, focusing instead on the alleged failure of the assessor to follow the guidelines.<sup>578</sup> This is not sufficient to rebut the presumption that the assessment was correct so the final determination of the BTR was affirmed.<sup>579</sup>

3. *PIA Builders & Developers, LLC v. Jennings County Assessor*.<sup>580</sup>—In this consolidated opinion, the Tax Court denied three substantially identical petitions for rehearing by separate taxpayers.<sup>581</sup> The taxpayers argued that: 1) assessing officials can only use the cost approach for assessing property; 2) the assessing officials in the cases at bar ignored that law and adjusted the assessments to more accurately reflect the properties’ market values-in-use; and 3) the Tax Court “endorsed the misapplication of the law” in making the rulings that it did.<sup>582</sup> The Tax Court reiterated what it “explained in great length” in the cases below: that the goal of the new assessment system in Indiana is to accurately reflect a property’s market value-in-use.<sup>583</sup> The assessment guidelines provide a variety of assessment approaches, including the cost approach.<sup>584</sup> Further, the guidelines state that the cost approach is merely a starting point for determining a property’s market value-in-use.<sup>585</sup> The old system of assessment considered an assessment to be accurate if the regulations were correctly applied while the new system focuses more on ensuring that the assessed value is actually correct than on strict application of regulations.<sup>586</sup> The Tax Court denied the petitions saying that under the new system, a taxpayer cannot argue form over substance but must show that the assessed value is not an accurate reflection of the property’s market value-in-use.<sup>587</sup>

4. *BP Products North America, Inc. v. Matonovich*.<sup>588</sup>—BP Products North America, Inc. (BP) owned land and improvements in Lake County, Indiana, and initiated this action on April 4, 2003, to appeal the BTA’s denial of its June, 2000, petitions for review of assessments made in 1999.<sup>589</sup> In June 2000, BP made 79 separate claims of review of assessments to the SBTC, claiming that its

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577. *Id.*

578. *Id.*

579. *Id.*

580. 842 N.E.2d 899 (Ind. Tax Ct. 2006).

581. *Id.* at 899-900.

582. *Id.* at 900.

583. *Id.*

584. *Id.*

585. *Id.*

586. *Id.*

587. *Id.* at 900-01.

588. 842 N.E.2d 901 (Ind. Tax Ct. 2006).

589. *Id.* at 902-03.

property was assessed at a higher value than other property in the county.<sup>590</sup> In its appeal to the SBTC, BP submitted a number of studies and reports that showed that property in Lake County was generally assessed at lower than fair market value while its property was assessed for more than its fair market value.<sup>591</sup> BP requested that its assessment be reduced by application of an equalization adjustment.<sup>592</sup> The SBTC denied the petitions for two reasons: equalization was a remedy available “only to a group, or class, of taxpayers, and not to an individual taxpayer;” and, even if equalization were available to BP as an individual taxpayer, the studies and reports it provided were irrelevant because they used an incorrect standard (fair market value) to measure uniformity.<sup>593</sup> While this case was pending before the Tax Court, the Supreme Court issued its opinion in *DLGF v. Commonwealth Edison Co. of Indiana*<sup>594</sup> in which it found “ample statutory authority allowed individual taxpayers to seek [equalization] adjustments . . . .”<sup>595</sup> In addition, the Supreme Court ruled that studies showing disparities in fair market value to challenge assessments based on fair market value were irrelevant for assessments prior to 2002 because the assessment system was based on a property’s “true tax value” (“TTV”).<sup>596</sup> In light of this ruling, the Tax Court requested additional briefs from the parties to determine if BP provided any evidence at the administrative hearing that could support its claim for an equalization adjustment.<sup>597</sup> BP admitted that its initial case was founded on calculations and data that the Supreme Court later held to be invalid.<sup>598</sup> However, it had also submitted a study that compared the assessments made by local township assessors to those made for the same properties by employees of the SBTC.<sup>599</sup> That study found that residential real property in North Township was under-assessed by 38%, commercial real property by 11%, and industrial real property by 8%.<sup>600</sup> BP claimed that it was entitled to a 38% equalization reduction in the assessment on its property.<sup>601</sup> However, the Tax Court referenced many prior decisions that made it clear that property could only be compared with similar property for purposes of determining uniformity and equality in the tax burden on the property.<sup>602</sup> The study that BP relied upon was solely concerned with the valuation of real property, while the evidence in BP’s 1999 assessment showed that over 80% of

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590. *Id.* at 902 n.2.

591. *Id.* at 903.

592. *Id.*

593. *Id.*

594. 820 N.E.2d 1222 (Ind. 2005).

595. *Id.* at 1226.

596. *BP*, 842 N.E.2d at 903.

597. *Id.*

598. *Id.* at 904.

599. *Id.* at 904-05.

600. *Id.* at 905.

601. *Id.* at 905 n.6.

602. *Id.* at 905-06.

the assessed value was attributable to personal property.<sup>603</sup> The Tax Court held that BP failed to show that its assessment was not uniform with assessments of other personal property and denied the appeal.<sup>604</sup>

5. *Bedford Apartments v. Jean*.<sup>605</sup>—Bedford Apartments (“Bedford”) initiated this action on October 30, 2003, appealing the 2001 assessment of its apartment complex located in Shawswick Township, Lawrence County, Indiana.<sup>606</sup> Bedford claimed that the Shawswick Township Assessor (“assessor”) failed to properly factor in the obsolescence in the property.<sup>607</sup> Bedford had failed to file a copy of the agency record with the Tax Court before oral arguments on September 10, 2004.<sup>608</sup> The Tax Court noted this, but continued to hear the oral arguments and took the failure to file the agency record under advisement.<sup>609</sup> Bedford filed a copy of the agency record on September 13, 2004, and the assessor moved to dismiss on September 17, 2004.<sup>610</sup> The assessor claimed that the Tax Court lacked subject matter jurisdiction to decide the claim because of Bedford’s failure to timely file the agency record under either the AOPA or the Tax Court’s Rule 3(E).<sup>611</sup> The AOPA requires that the petitioner submit a copy of the agency record within 30 days of filing the petition.<sup>612</sup> Rule 3(E) of the Tax Court requires that the petitioner submit a copy of the agency record within 30 days after receiving notification from the BTR that the record has been prepared.<sup>613</sup> Although the precise relationship of these two rules was under review by the Supreme Court at the time of this decision, the Tax Court said that its ruling on the motion to dismiss would not change regardless of the outcome of the Supreme Court case.<sup>614</sup> The assessor claimed that the Tax Court did not have subject matter jurisdiction over Bedford’s appeal because it failed to timely file the agency record.<sup>615</sup> The Tax Court disagreed because Bedford’s appeal met both of the jurisdictional requirements set forth in I.C. § 33-26-3-1; it was a challenge to the assessment of Indiana property tax and is an initial

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603. *Id.* at 906.

604. *Id.* at 906-07.

605. 843 N.E.2d 78, 79 (Ind. Tax Ct. 2006).

606. *Id.*

607. *Id.*

608. *Id.*

609. *Id.*

610. *Id.*

611. *Id.* at 79-80.

612. *Id.* at 80 n.1 (quoting IND. CODE § 4-21.5-5-14(a) (2005)).

613. *Id.* (quoting IND. TAX CT. R. 3(E)).

614. *Id.* The Supreme Court case referred to *Wayne County Property Tax Assessment Board of Appeals v. United Ancient Order of Druids—Grove #29*, 847 N.E.2d 924 (Ind. 2006), which was decided on May 18, 2006. The Supreme Court held that the two rules are not incompatible because the AOPA allows a court to authorize additional time and the Tax Court’s Rule 3(E) is such an authorized extension of time. *Bedford Apartments*, 843 N.E.2d at 80.

615. *Bedford Apartments*, 843 N.E.2d at 80.

appeal from a final determination made by the BTR.<sup>616</sup> However, the Tax Court noted that because it has “subject matter jurisdiction does not necessarily mean that it has jurisdiction over the particular case.”<sup>617</sup> “[T]he timely filing of the agency record goes to jurisdiction over a particular case, not subject matter jurisdiction.”<sup>618</sup> However, a party must raise the issue of jurisdiction over a particular case at the earliest possible opportunity or the issue is waived.<sup>619</sup> In this case, the assessor did not file a motion to dismiss until the case was nearly complete.<sup>620</sup> Because the motion to dismiss was not filed as early as it could have been and because there was no demonstrable delay caused by the error, the Tax Court denied the motion to dismiss.<sup>621</sup>

6. *Bakos v. Department of Local Government Finance*.<sup>622</sup>—The Bakoses initiated a second original tax appeal of the 2002 assessment of their real property on December 19, 2005.<sup>623</sup> This decision was on a motion to dismiss for lack of jurisdiction filed by the DLGF.<sup>624</sup> The Bakoses owned residential property in Lake County and challenged the assessment of its value, claiming that the square footage of their home was erroneously calculated and that their home’s assessed value was too high in comparison to other homes in the neighborhood.<sup>625</sup> The DLGF filed this motion to dismiss claiming that the Tax Court did not have jurisdiction over the appeal.<sup>626</sup> Although the DLGF raised several possible grounds for lack of jurisdiction, the Tax Court addressed only one: whether or not the Bakoses’ petition had been properly verified.<sup>627</sup> When the Tax Court has subject matter jurisdiction over a matter, as it did in this case, the appeal must adhere to the AOPA and the Tax Court Rules.<sup>628</sup> The Tax Court rules require that petitions be verified according to Indiana Trial Rule 11(B) which provided guidance for the content of an appropriate verification statement.<sup>629</sup> Although precise wording is not required, a verification statement must attest to the validity of the statements contained in a petition and must subject the petitioners to the penalties of perjury.<sup>630</sup> The Bakoses signed their petition, but did not attest to the truth of the representations made in it nor did

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616. *Id.*

617. *Id.* at 81.

618. *Id.*

619. *Id.*

620. *Id.*

621. *Id.*

622. 848 N.E.2d 377 (Ind. Tax Ct. 2006).

623. *Id.* at 378. The first appeal was remanded to the BTR at the request of both parties. The BTR again denied relief to the Bakoses, leading to this appeal. *Id.*

624. *Id.*

625. *Id.* at 377-78.

626. *Id.* at 378.

627. *Id.* at 378 n.5.

628. *Id.* at 379.

629. *Id.*

630. *Id.*

they subject themselves to the penalties of perjury.<sup>631</sup> Because they failed to do this within the time limit for filing an appeal of an agency action, the Tax Court did not have jurisdiction over this particular case.<sup>632</sup> The Tax Court granted the motion to dismiss.<sup>633</sup>

7. *Will's Far-Go Coach Sales v. Nusbaum*.<sup>634</sup>—Will's Far-Go initiated this appeal to challenge assessment of its business personal property for the 1995 and 1996 tax years on December 24, 2004.<sup>635</sup> Will's Far-Go sells its inventory in Fountain County and purchases much of its inventory from a wholesaler located in Elkhart County.<sup>636</sup> On the date of assessment for the two tax years in question, some of Will's Far-Go's inventory had not yet been transported from the wholesaler's location due to inclement weather conditions.<sup>637</sup> The wholesaler did not include that inventory on its personal property tax returns and indicated to the assessor that the property belonged to Will's Far-Go.<sup>638</sup> The assessor sent Will's Far-Go the necessary documents to file a personal property return for the property located in Elkhart County.<sup>639</sup> An employee of Will's Far-Go told the assessor that they had reported the property on the tax return submitted to Fountain County and that they did not believe that they were required to file a return in Elkhart County.<sup>640</sup> However, Will's Far-Go did not return any forms or documentation. The Tax Court called to the attention of the GA to some of the requirements that it felt were unnecessary but applied the law and rules as they were written.<sup>641</sup> The assessor in Elkhart County sent notices of assessment in 1995 and 1996 and later certified the taxes as delinquent (in 1997 and 1998).<sup>642</sup> Will's Far-Go filed Petitions for Correction of Error (Forms 133) with the Elkhart County Property Tax Assessment Board of Appeals ("PTABOA"), arguing that the taxes imposed were illegal because the inventory in question was not subject to the jurisdiction of the assessor in Elkhart County.<sup>643</sup> The PTABOA denied the request and Will's Far-Go appealed to the BTR.<sup>644</sup> In 2004, the BTR denied the appeal because the 133 forms were not timely filed, but it did not address the legality of the assessments.<sup>645</sup> Will's Far-Go then initiated on

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631. *Id.*

632. *Id.*

633. *Id.* The Tax Court also expressed its concern in a footnote over the number of recent cases that were dismissed from the Tax Court because of violations of procedural requirements.

634. 847 N.E.2d 1074 (Ind. Tax Ct. 2006).

635. *Id.* at 1075-76.

636. *Id.* at 1075.

637. *Id.*

638. *Id.*

639. *Id.*

640. *Id.*

641. *Id.*

642. *Id.*

643. *Id.*

644. *Id.*

645. *Id.* at 1076.

appeal.<sup>646</sup>

Will's Far-Go argued that the taxes were illegally assessed because personal property should be taxed in the location of its owner, unless it is permanently located elsewhere.<sup>647</sup> They argue that, because the inventory was awaiting transport to Fountain County, it should have been taxed there instead of being taxed at its temporary location in Elkhart County.<sup>648</sup> Will's Far-Go also argued that there is no time limit for filing a Form 133.<sup>649</sup> However, the Tax Court disagreed with Will's Far-Go and upheld the reasoning of the BTR.<sup>650</sup> Although it found that the statute and regulation that allow for correction of error was ambiguous about a time limit, the Tax Court looked to common law precedent and judicial rules of construction to give effect to the intent of the administrative agency and to avoid unjust or absurd results.<sup>651</sup> Generally, taxpayers who wish to challenge the legality of a tax pay the tax first, then file a Form 133 to challenge the assessment of the taxes and separately file a petition for a refund of taxes.<sup>652</sup> Will's Far-Go did not pay the assessed taxes and was therefore not claiming a refund. However, the Tax Court refused to allow Will's Far-Go to achieve the same result of being relieved of the burden of its tax assessment by not paying the taxes up-front.<sup>653</sup> To allow Will's Far-Go to challenge the legality of the assessed taxes for an infinite time because they did not pay the taxes before claiming a refund would penalize those taxpayers who do pay their taxes.<sup>654</sup> Will's Far-Go also argued that they would be penalized because the property had already been taxed in Fountain County.<sup>655</sup> However, the Tax Court refused to allow Will's Far-Go to just ignore the assessments from Elkhart County.<sup>656</sup> Will's Far-Go had plenty of notice and time to challenge the assessments but failed to do so in a timely manner.<sup>657</sup> The Tax Court upheld the decision of the BTR that the Forms 133 were not timely filed.<sup>658</sup>

8. *Krol v. Indiana Board of Tax Review*.<sup>659</sup>—The Krols initiated an appeal of the 2002 assessment of their commercial real property in Lake County on February 8, 2006.<sup>660</sup> This decision was on a motion to dismiss for lack of

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646. *Id.*

647. *Id.* at 1077 n.4.

648. *Id.*

649. *Id.*

650. *Id.*

651. *Id.* at 1077-78.

652. *Id.* at 1077.

653. *Id.* at 1078.

654. *Id.*

655. *Id.* at 1078 n.5.

656. *Id.* at 1078.

657. *Id.*

658. *Id.* at 1079.

659. 848 N.E.2d 1185 (Ind. Tax Ct. 2006).

660. *Id.* at 1186.

jurisdiction filed by the BTR.<sup>661</sup> The BTR claimed that the Tax Court lacked jurisdiction over this case because the Krols did not properly verify their petition and did not name the proper respondent.<sup>662</sup> The Tax Court confirmed that it did have subject matter jurisdiction over the case because the claim challenged the assessment of property tax and is an initial appeal of a final determination of the BTR.<sup>663</sup> The BTR argued that the petition failed to name the DLGF as a respondent as required by the Tax Court Rules.<sup>664</sup> Although the caption of the petition did not name the DLGF as a respondent, the petition's body and an attached copy of the final determination of the BTR both included the DLGF.<sup>665</sup> According to the Tax Court, that was "sufficient to identify the DLGF as a named respondent in accordance with the requirements of AOPA and Tax Court Rule 4."<sup>666</sup> The BTR also argued that the petition was not properly verified because it was verified by the Krols' attorney and not by the petitioners.<sup>667</sup> The Supreme Court's precedent<sup>668</sup> provides that an attorney may verify a petition on behalf of a corporation and the Court of Appeals extended the same reasoning to allow an attorney to verify a petition on behalf of an individual.<sup>669</sup> The Tax Court followed the reasoning of those earlier decisions in deciding "that because the AOPA, the Tax Court Rules, and the Trial Rules do not preclude an attorney from verifying a petition . . . the Krols' petition was properly verified."<sup>670</sup> The Tax Court denied the motions to dismiss and required the parties to correct the caption to properly reflect the DLGF as the named respondent.<sup>671</sup>

9. *Miller Beach Investments, LLC v. Department of Local Government Finance*.<sup>672</sup>—On February 24, 2006, Miller Beach initiated an appeal of four final determinations made by the BTR regarding assessments of its real property for the tax year 2002.<sup>673</sup> This decision was on a motion to dismiss for lack of jurisdiction filed by the DLGF.<sup>674</sup> The Tax Court first confirmed that it had subject matter jurisdiction over the appeals because the claims "challenge the

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661. *Id.*

662. *Id.*

663. *Id.* at 1187.

664. *Id.*

665. *Id.*

666. *Id.*

667. *Id.* at 1188.

668. *Id.* at 1189 (citing *Ind. Dep't of Pub. Welfare v. Chair Lance Serv., Inc.*, 523 N.E.2d 1373, 1377 (Ind. 1988)).

669. *Id.* (citing *Giles v. County Dep't of Pub. Welfare of Marion County*, 579 N.E.2d 653, 655 (Ind. Ct. App. 1991)).

670. *Id.*

671. *Id.* at 1190.

672. 848 N.E.2d 1190 (Ind. Tax Ct. 2006).

673. *Id.* at 1192. At the time of the assessments, James Nowacki owned the 20 parcels that were the subject of the final determinations. He initiated the appeals, but had sold the properties to Miller Beach before the BTR conducted the hearings on the appeals. *Id.* at 1192 n.1.

674. *Id.* at 1193.

assessment of Indiana's property tax and they request review of a final determination of the Indiana Board."<sup>675</sup> The DLGF argued that the Tax Court did not have jurisdiction over this particular case because Miller Beach had not sufficiently identified the agency action that it was appealing.<sup>676</sup> The DLGF suggested that, in order to meet the statutory requirement<sup>677</sup> that a petition identify the agency action, Miller Beach was required to attach a copy of the final determination to the appeal, as well as specifically identify the parcel and final determination in each of the four petitions.<sup>678</sup> However, the Tax Court noted that a copy of the final determination is not required and, because Indiana is a notice pleading state, "a petition's allegations are generally sufficient if they put a reasonable person on notice as to why the petitioner is suing."<sup>679</sup> The information included in the petitions was sufficient to notify the DLGF of which determinations were in question, especially when the "missing information, was included in notices of appearance that Miller Beach filed simultaneously with its petitions."<sup>680</sup> The Tax Court denied the DLGF's argument because the petitions were sufficient and because public policy requires that cases are determined on their merits whenever possible and not on technicalities.<sup>681</sup> The DLGF also argued that the petitions were not properly verified because Miller Beach's attorney verified them, not Miller Beach.<sup>682</sup> The DLGF did not suggest who might verify the petition on behalf of Miller Beach - a corporation and not a natural person.<sup>683</sup> The DLGF argued that allowing an attorney to verify a petition would lead to complacency on the part of the taxpayer and would reduce the taxpayer's personal responsibility.<sup>684</sup> However, while court rules define how a petition may be verified, they do not specify who may verify a petition.<sup>685</sup>

The Tax Court looked to a Supreme Court case that addressed who may verify petitions on behalf of a corporation under the predecessor statutes to the AOPA.<sup>686</sup> In that decision, the Supreme Court held that a corporation's attorney who had personal knowledge of the facts in the petition could verify the petition because the corporate attorney is an agent of the corporation and corporations cannot act other than through its agents.<sup>687</sup> The DLGF conceded that Miller

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675. *Id.* at 1192.

676. "[A] petition for judicial review must '[i]dentif[y] [] the agency action at issue, together with a copy, summary, or brief description of the agency action.'" *Id.* at 1193 (quoting IND. CODE § 4-21.5-5-7 (2005)).

677. *Id.*

678. *Id.* at 1193-94.

679. *Id.* at 1194.

680. *Id.*

681. *Id.*

682. *Id.* at 1194 n.5.

683. *Id.* at 1194.

684. *Id.* at 1195.

685. *Id.*

686. *Id.*

687. *Id.* (citing *Ind. Dep't of Pub. Welfare v. Chair Lance Serv., Inc.*, 523 N.E.2d 1373, 1377

Beach's attorney had personal knowledge of the facts contained in the petition.<sup>688</sup> Because of this and following the reasoning of the earlier Supreme Court decision, the Tax Court held that Miller Beach's attorney could verify the petitions.<sup>689</sup> The Tax Court denied the DLGF's motions to dismiss.<sup>690</sup>

10. *P/S, Inc. v. Indiana Department of State Revenue*.<sup>691</sup>—On March 24, 2004, P/S initiated an action as an appeal of the DOR's denial of its claim for refund of costs associated with its underground storage tank fees (UST-1 fees) for tax years 1995-2001.<sup>692</sup> This opinion was on cross motions for summary judgment.<sup>693</sup> P/S owned and operated underground storage tanks that were subject to the UST-1 fees beginning in 1995.<sup>694</sup> P/S did not register its tanks with the DOR until 1999.<sup>695</sup> The UST-1 fees were due annually on December 15th.<sup>696</sup> The DOR generally provided notice of the payment schedule by mailing a UST-1 return to all owners of underground storage tanks that were in use on the July 1 assessment date.<sup>697</sup> P/S claimed that it never received the annual returns, nor did it receive the demand notices that the DOR sent in April 2003.<sup>698</sup> Because it alleged a lack of notice, P/S claimed a refund of all interest, collection fees and clerk costs paid in addition to the UST-1 fees.<sup>699</sup> P/S first argued that it should not have to pay interest on the amounts due because it did not receive notice and was therefore not at fault for the late payment of the fees.<sup>700</sup> The Tax Court, however, clarified that interest is not a penalty and is not a punishment.<sup>701</sup> The DOR already had waived the penalties for the years at issue but was not allowed to waive interest.<sup>702</sup> Interest on the late payments began to accrue on December 15th of each year.<sup>703</sup> P/S also argued that the DOR should have had to pay the collection and clerk costs associated with the issuance of tax warrants because it would have paid the demand notices if it had received them.<sup>704</sup> However, the DOR proved that it sent the notices, raising the presumption that P/S received

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(Ind. 1988)).

688. *Id.*

689. *Id.* at 1195-96.

690. *Id.* at 1196.

691. 853 N.E.2d 1051 (Ind. Tax Ct. 2006).

692. *Id.* at 1051-52.

693. *Id.* at 1051.

694. *Id.* at 1052.

695. *Id.* at 1053.

696. *Id.*

697. *Id.* at 1052-53.

698. *Id.* at 1053. Of course, the DOR was not able to even send annual returns until after the tanks were registered in 1999. *Id.*

699. *Id.*

700. *Id.*

701. *Id.*

702. *Id.* at 1053-54.

703. *Id.* at 1054 n.4.

704. *Id.*

them.<sup>705</sup> P/S provided no proof that it did not receive the demand notices, only a statement that it had not.<sup>706</sup> After correcting a mathematical error in the collection fees assessed to P/S, the Tax Court granted the DOR's motion for summary judgment.<sup>707</sup>

11. *117 Republic, Ltd. Partnership v. Brown Township Assessor*.<sup>708</sup>—On October 13, 2005, the taxpayer initiated an appeal of the BTR's final determination of the value of its real property on the March 1, 2003, assessment date.<sup>709</sup> This decision was on the taxpayer's motion to have the case remanded to the BTR so that the taxpayer could present additional evidence that it had acquired after the administrative hearing.<sup>710</sup> During the administrative hearing, the taxpayer had claimed that the assessed value assigned to its property was higher than its market value-in-use.<sup>711</sup> To support its assertion, it offered proof of the purchase price it paid for the property in 2003 and what that price would have been in 1999, the valuation date.<sup>712</sup> After the hearing in December 2004, the taxpayer began to market the property for sale.<sup>713</sup> As part of that process, it had the property appraised in April 2005.<sup>714</sup> The taxpayer did not request to submit the appraisal to the Board as post-hearing evidence until August, nearly nine months after the hearing.<sup>715</sup> A few days later, the BTR denied the motion to admit the appraisal and issued a final determination upholding the assessment.<sup>716</sup> The taxpayer filed an appeal claiming that the BTR had abused its discretion by refusing to allow the appraisal as post-hearing evidence.<sup>717</sup> However, the BTR had a rule that will not allow post-hearing evidence unless the BTR requests it and it is submitted before the deadline imposed by the administrative law judge.<sup>718</sup> The Tax Court found that the taxpayer could have had the property appraised at any time, in fact had the appraisal for five months before requesting its submission, and was told at the hearing that no post-hearing evidence would be accepted.<sup>719</sup> Therefore, the Tax Court held that it was not an abuse of discretion for the BTR to refuse to hear the additional evidence and denied the taxpayer's motion for remand.<sup>720</sup>

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705. *Id.*

706. *Id.* at 1054-55.

707. *Id.* at 1055.

708. 851 N.E.2d 399 (Ind. Tax Ct. 2006).

709. *Id.* at 400.

710. *Id.*

711. *Id.*

712. *Id.*

713. *Id.*

714. *Id.*

715. *Id.*

716. *Id.* at 400-01.

717. *Id.* at 401-02.

718. *Id.* at 402 (citing 52 IND. ADMIN. CODE 2-8-8(a) (2004)).

719. *Id.*

720. *Id.* at 403.

12. *O'Donnell v. Department of Local Government Finance*.<sup>721</sup>—The taxpayers initiated an appeal of their 2002 real property assessment on October 1, 2005.<sup>722</sup> Their property was in a subdivision that straddles two different towns.<sup>723</sup> Properties in each town were assessed at different rates and using different neighborhood factors.<sup>724</sup> The taxpayers argued that their assessment was too high for a variety of reasons.<sup>725</sup> First, they claimed that the subdivision should be assessed at a single rate and neighborhood factor.<sup>726</sup> They also argued that an unfinished basement was inappropriately included in the living area of their home.<sup>727</sup> Finally, they pointed to allegedly comparable properties in the subdivision that were assessed at lower values.<sup>728</sup> The Tax Court dismissed all of these arguments because they did nothing to prove that the assessed value of the property was incorrect.<sup>729</sup> The taxpayers only questioned the methodology used by the assessor, not the result of the assessment.<sup>730</sup> The taxpayers did offer evidence of their 1997 home construction costs and their 2003 appraisal.<sup>731</sup> Had the taxpayers offered any trend analysis of these numbers that would indicate the relative value of the property in 1999, the evidence would have been probative.<sup>732</sup> However, the taxpayers suggested that the DLGF should make the calculations required to trend the numbers to 1999, a calculation that it makes every day.<sup>733</sup> The Tax Court disagreed, reminding the taxpayers of their “duty to walk the Indiana Board and [the] Court through every element of its analysis.”<sup>734</sup>

The Court dismissed the taxpayers’ claim for failure to state a prima facie case.<sup>735</sup>

### B. Inheritance Tax

1. *Estate of Young v. Indiana Department of State Revenue*.<sup>736</sup>—The estate initiated an action on April 15, 2005, appealing the probate court’s decision to

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721. 854 N.E.2d 90 (Ind. Tax Ct. 2006).

722. *Id.* at 92.

723. *Id.*

724. *Id.* at 94 n.4.

725. *Id.*

726. *Id.*

727. *Id.*

728. *Id.*

729. *Id.* at 95.

730. *Id.*

731. *Id.*

732. *Id.*

733. *Id.* In fact, the taxpayer stated that he didn’t “need to hold the [BTR’s] hands.” *Id.*

734. *Id.* (quoting *Fid. Sav. & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005)).

735. *Id.*

736. 851 N.E.2d 393 (Ind. Tax Ct. 2006).

reject its amended inheritance tax return and claim for refund.<sup>737</sup> The decedent was the life beneficiary of a trust that her husband had set up prior to his death in 1993.<sup>738</sup> Her husband's estate elected QTIP treatment for that trust and computed its inheritance tax liability as if the assets in the trust were exempt from taxation as a marital transfer.<sup>739</sup> The estate filed an initial inheritance tax return that included the assets of the trust as taxable property.<sup>740</sup> The probate court accepted the return as filed and entered an order for the inheritance tax due.<sup>741</sup> The DOR filed a Petition for Rehearing, Reappraisal and Redetermination of Inheritance and Transfer Tax alleging that the estate had incorrectly classified several beneficiaries and paid too little tax as a result.<sup>742</sup> While the petition was pending, the estate filed an amended inheritance tax return and claim for refund alleging that the husband's estate had not made a valid QTIP election so it was responsible for paying any tax due on the trust assets.<sup>743</sup> The estate also conceded that it had misclassified beneficiaries and that the inheritance tax would have to be adjusted to correct those errors.<sup>744</sup> The probate court rejected the amended return and claim for refund and entered an order to correct the amount of inheritance tax due.<sup>745</sup> The estate appealed the rejection of its claim for refund.<sup>746</sup> The estate argued that the QTIP election made by the husband's estate was not valid because it was not written on a separate piece of paper from the inheritance tax return, it was not phrased in the proper tense, and didn't indicate an understanding that the election was irrevocable.<sup>747</sup> The estate further argued that the decedent's trust was only subject to inheritance tax if the QTIP election made by the husband's estate was valid.<sup>748</sup> The Tax Court rejected these arguments for two reasons. First, the husband's estate was closed almost thirteen years before this estate claimed that the QTIP election was invalid.<sup>749</sup> The probate court determined at the time that the election was valid.<sup>750</sup> The claim for refund by this estate amounted to an impermissible collateral attack on that judgment.<sup>751</sup> Second, the purpose of the marital deduction and the QTIP statutes was to allow property to pass from the first spouse to the surviving spouse without being taxed because it would be taxed in the estate of the surviving

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737. *Id.* at 395.

738. *Id.* at 394.

739. *Id.*

740. *Id.*

741. *Id.*

742. *Id.*

743. *Id.* at 395.

744. *Id.* at 395 n.l.

745. *Id.* at 395.

746. *Id.*

747. *Id.* at 397.

748. *Id.*

749. *Id.*

750. *Id.*

751. *Id.*

spouse.<sup>752</sup> The Tax Court held that the validity of the QTIP election was now moot and that the assets of the trust would be subject to taxation as part of the decedent's estate.<sup>753</sup>

2. *Indiana Department of State Revenue v. Estate of Pickerill*.<sup>754</sup>—The DOR initiated an action on January 31, 2006, appealing a probate court decision that allowed the estate to calculate its inheritance tax obligation according to the terms of a family settlement agreement rather than the terms of the will.<sup>755</sup> The decedent's will left his estate to his three sons from a prior marriage.<sup>756</sup> His wife was not a beneficiary.<sup>757</sup> After the will was admitted to probate, the wife and the three sons negotiated a family settlement agreement that transferred a substantial portion of the estate to the wife in exchange for her waiver of her statutory right to take against the will.<sup>758</sup> The sons divided the remaining portion of the estate and waived their claims against the estate, except the right to claims against the estate for costs of administering the estate.<sup>759</sup> The estate filed an amended inheritance tax return claiming that the property transferred to the wife was non-taxable because it was a transfer to a surviving spouse under I.C. § 6-4.1-3-7(a).<sup>760</sup> The probate court accepted the amended return as filed and determined the amount inheritance tax the estate owed.<sup>761</sup> The DOR filed a Motion for Rehearing, Reappraisal and Redetermination of Inheritance and Transfer Tax with the probate court.<sup>762</sup> In its supporting brief, the DOR argued that under I.C. § 29-1-9-1, inheritance tax should be calculated on distributions under the terms of the will, not under the terms of the family settlement agreement.<sup>763</sup> The DOR's counsel did not show up for the hearing.<sup>764</sup> The estate argued that I.C. § 29-1-9-1 only applied in cases where a will contest or other claim or dispute was filed with the probate court.<sup>765</sup> The probate court found in favor of the estate and denied later motions from the DOR to continue the hearing that it had missed and to correct errors.<sup>766</sup> The DOR initiated an appeal, arguing that the statute did apply even though there was no formal controversy or contest between the family members.<sup>767</sup> Reviewing the probate court's order

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752. *Id.* at 397-98.

753. *Id.* at 398.

754. 855 N.E.2d 1082 (Ind. Tax Ct. 2006).

755. *Id.* at 1084.

756. *Id.* at 1083.

757. *Id.*

758. *Id.*

759. *Id.*

760. *Id.*

761. *Id.* at 1083-84.

762. *Id.* at 1084.

763. *Id.*

764. *Id.*

765. *Id.*

766. *Id.*

767. *Id.*

under a *de novo* standard, the Tax Court agreed with the DOR's argument.<sup>768</sup> It found that the language of the statute and the commentary to it clearly covered any differences between parties with an interest in an estate, whether or not the difference resulted in litigation.<sup>769</sup> The statute provides that family settlement agreements like this one are binding on all parties but may not "in any way impair the rights of creditors or of taxing authorities."<sup>770</sup> A family settlement agreement is a transfer of property rights between parties other than the decedent that takes place after a death.<sup>771</sup> Inheritance tax, however, is based on the transfers that take place at death from the decedent to the beneficiaries.<sup>772</sup> A family settlement agreement cannot change the way that inheritance tax is calculated.<sup>773</sup> The Tax Court reversed the probate court's judgment that the statute did not apply and remanded the case for recalculation of the inheritance tax due.<sup>774</sup>

3. *Estate of Dunnick v. Indiana Department of State Revenue*.<sup>775</sup>—The estate initiated an action on April 1, 2005, in response to a probate court order denying a marital deduction for all assets transferred to the decedent's wife.<sup>776</sup> At his death, the decedent was married, with three sons from a prior marriage.<sup>777</sup> The wife was not a beneficiary of the decedent's will or of an *inter vivos* trust that he had created before their marriage.<sup>778</sup> She filed a petition for her statutory allowance and an election to take against the will with the probate court.<sup>779</sup> The estate objected to the petitions, claiming that a prenuptial agreement barred the wife's claims against the estate.<sup>780</sup> The estate reached a settlement with the wife who then withdrew her election claims.<sup>781</sup> Under the terms of the settlement, the wife received more than twice as much as she would have received if she had pursued her statutory allowance and election to take against the will.<sup>782</sup> The estate filed an amended inheritance tax return that treated the entire amount transferred to the wife as non-taxable because of the marital deduction.<sup>783</sup> The DOR filed a Petition for Rehearing, Reappraisal and Redetermination of Inheritance and Transfer Tax, arguing that any settlement could not impair its

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768. *Id.*

769. *Id.* at 1085-86.

770. *Id.* at 1085 (quoting IND. CODE § 29-1-9-1 (2004)).

771. *Id.*

772. *Id.* at 1085-86.

773. *Id.* at 1086.

774. *Id.*

775. 855 N.E.2d 1087 (Ind. Tax Ct. 2006).

776. *Id.* at 1090.

777. *Id.* at 1088.

778. *Id.*

779. *Id.*

780. *Id.*

781. *Id.*

782. *Id.*

783. *Id.*

taxing ability pursuant to I.C. § 29-1-9-1.<sup>784</sup> Therefore, the estate should have calculated its inheritance tax by including only the value of the assets that the wife would have received under her election claim in the marital deduction.<sup>785</sup> The estate appealed the order of the probate court.<sup>786</sup> The estate challenged the probate court's jurisdiction to hear the DOR's petition claiming that it was not timely filed and that it failed to state specific grounds for requesting a rehearing.<sup>787</sup> The DOR filed its petition on a Monday, two days after the calculated deadline, which fell on a Saturday.<sup>788</sup> However, Indiana Trial Rule 6(A) extends deadlines that would otherwise end on a day when the courts are closed to the following business day.<sup>789</sup> The DOR filed its petition on the first business day after the end of the deadline period and it was therefore timely filed.<sup>790</sup> The Tax Court also held that the petition was not required to state specifically that the application of I.C. § 29-1-9-1 was at issue because the petition did give the estate sufficient notice that it would have to explain how it calculated its inheritance tax obligation.<sup>791</sup> The estate also challenged the applicability of I.C. § 29-1-9-1 to this case, claiming that the statute did not reach settlement agreements involving inter vivos trusts, prenuptial agreements, and elections.<sup>792</sup> However, the Tax Court found that the wife was attempting to establish her rights to the estate as an heir, as listed in I.C. § 29-1-9-1(c).<sup>793</sup> Such settlement agreements cannot reduce the taxing authority of the DOR.<sup>794</sup> The estate argued, in the alternative, that the wife's elections could have reached the trust assets, so the settlement agreement actually increased the amount of tax that the DOR could collect because it reduced the amount of assets that were transferred to the wife.<sup>795</sup> The Tax Court could not address the issue of whether or not her elections could have reached the trust assets because the estate did not raise the issue with the probate court.<sup>796</sup> However, the Tax Court did note that avoiding a reduction in inheritance taxes was only one purpose of I.C. § 29-1-9-1.<sup>797</sup> To argue that the statute would allow settlement agreements to alter the imposition of inheritance taxes as long as the taxes were increased would be unjust and unfair to the taxpayers.<sup>798</sup> The statute must apply equally to all

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784. *Id.* at 1090.

785. *Id.*

786. *Id.*

787. *Id.* at 1091.

788. *Id.*

789. *Id.*

790. *Id.*

791. *Id.* at 1092.

792. *Id.* at 1093.

793. *Id.*

794. *Id.*

795. *Id.*

796. *Id.* at 1094 n.10.

797. *Id.* at 1094.

798. *Id.*

settlement agreements that would otherwise alter the imposition of inheritance tax.<sup>799</sup>

*C. Riverboat Wagering Tax: RDI/Caesars Riverboat Casino, LLC  
v. Indiana Department of State Revenue*<sup>800</sup>

On September 3, 2004, Caesars appealed the calculation of its Riverboat Wagering Tax (RWT) for July 1, 2002, through June 30, 2003.<sup>801</sup> The opinion was on Caesar's motion for summary judgment, filed on January 27, 2000.<sup>802</sup> In 2002, the GA legalized flexible scheduling for riverboat casinos beginning July 1, 2002.<sup>803</sup> The same legislation implemented a graduated tax rate on the adjusted gross receipts of those riverboats that chose to implement flexible scheduling.<sup>804</sup> Riverboats that did not implement flexible scheduling continued to pay a flat rate of tax on their adjusted gross receipts.<sup>805</sup> The 2002 legislation originally applied the graduated tax rates to adjusted gross receipts beginning with the date that the casino implemented flexible scheduling.<sup>806</sup> Caesars implemented flexible scheduling on August 1, 2002.<sup>807</sup> Based on the 2002 statute, Caesars calculated its RWT for July 2002 at the flat tax rate.<sup>808</sup> Then, it began calculating the tax for the remaining eleven months according to the new graduated tax rates based solely on the adjusted gross receipts earned during those eleven months.<sup>809</sup> In 2003, the GA retroactively amended the statute to more clearly state how taxes should be calculated when a riverboat implemented flexible scheduling for only part of a year.<sup>810</sup> The DOR recalculated Caesars's tax liability using the amended statute and issued a proposed assessment to Caesars.<sup>811</sup> Caesars argued that the amendment imposed the graduated tax rates on a riverboat for an entire year, even when a riverboat had implemented flexible scheduling for only part of the year.<sup>812</sup> However, the Tax Court referred to the plain language of the statute and to a companion non-code provision to explain its interpretation of the amended statute.<sup>813</sup> When a riverboat began or ended flexible scheduling in the middle of a tax year, the appropriate graduated tax rate tier would be calculated using

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799. *Id.*

800. 854 N.E.2d 957 (Ind. Tax Ct. 2006), *trans. denied* (Ind. Feb. 22, 2007).

801. *Id.* at 958-59.

802. *Id.*

803. *Id.* at 958.

804. *Id.* at 959-60.

805. *Id.* at 959.

806. *Id.* at 960 (quoting IND. CODE § 4-33-13-1.5 (2005)).

807. *Id.* at 958.

808. *Id.* at 960.

809. *Id.*

810. *Id.* at 960-61.

811. *Id.* at 958, 962.

812. *Id.* at 962.

813. *Id.* at 963-65.

adjusted gross receipts from the entire year.<sup>814</sup> However, the graduated tax rate would only apply when flexible scheduling was in effect.<sup>815</sup> The flat tax rate would continue to apply when the riverboat did not use flexible scheduling.<sup>816</sup> Based on this interpretation of the statute, the Tax Court denied Caesars's motion for summary judgment and granted summary judgment to the DOR.<sup>817</sup>

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814. *Id.*

815. *Id.*

816. *Id.*

817. *Id.*

