

RECENT DEVELOPMENTS IN INDIANA TAXATION SURVEY 2009

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INTRODUCTION: SOME REFERENCES USED IN THIS ARTICLE

This Article highlights the major tax developments that occurred through the calendar year of 2008. Whenever the term “GA” is used in this Article, such term refers only to the 115th General Assembly. Whenever the term “Governor” is used in the Article, such term refers only to the Governor of Indiana who was serving in office during the 115th General Assembly. Whenever the term “Tax Court” is referred to in this Article, such term refers only to the Tax Court. Whenever the term “DLGF” is used in this Article, such term refers only to the Indiana Department of Local Government Finance. Whenever the term “IBTR” is used in this Article, such terms refers only to the Indiana Board of Tax Review. Whenever the term “SBTC” is used in this Article, such term refers only to the Indiana State Board of Tax Commissioners. Whenever the term “Department” is used in this Article, such term refers only to the Indiana Department of State Revenue. Whenever the term “IC” or “Indiana Code” is used in this Article, such term refers 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 refers only to an Indiana Economic Revitalization Area. Whenever the term “CAGIT” is used in this Article, such term refers only to the Indiana County Adjusted Gross Income Tax. Whenever the term “COIT” is used in the Article, such term refers only to the Indiana County Option Income Tax. Whenever the term “LOIT” is used in this Article, such term refers only to the Local Option Income Tax. Whenever the term “IEDC” is used in this Article, such term refers only to the Indiana Economic Development Corporation. Whenever the term “CEDIT” is used in this Article, such term refers only to the Indiana County Economic Development Income Taxes. Whenever the term “IEDIT” is used in this Article, such term refers only to the Indiana Economic Development Income Tax. Whenever the term “BMV” is used in this Article, such term refers only to the Indiana Bureau of Motor Vehicles. Whenever the term “IRC” is used in this Article, such term refers 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 refers only to the Indiana Administrative Orders and Procedures Act. Whenever the term “CBTCPR” is

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used in this Article, such term refers only to the County Board of Tax and Capital Projects. Whenever the term "PTABOA" is used in this Article, such term refers only to a Property Tax Assessment Board of Appeals.

I. ENACTMENTS OF NEW STATUTES AND AMENDMENTS TO EXISTING STATUTES

The 115th GA passed several pieces of legislation affecting various areas of state and local taxation including changes to: property taxes; income taxes; sales and use taxes; and tax procedures.

A. *Property Tax Statutory Provisions and Related Statutory Provisions*

The GA amended the definition of "assessing official" at IC 6-1.1-1-1.5 to include a "county assessor."¹

The GA amended IC 6-1.1-1-8.4 to add a definition of "inventory."² The new definition includes "items that qualify as inventory through 50 IAC 4.2-5-1," such as tangible personal property held for sale in the ordinary course of business and property which is used in the production or processing of property to be sold.³

The GA amended IC 6-1.1-1-11 to modify the definition of "personal property."⁴ As a result, the definition now includes property that is held as an investment or "depreciable personal property."⁵ However, the definition excludes "inventory."⁶

The GA amended IC 6-1.1-2-7 to exempt "inventory" from assessment and taxation⁷ and the amended portion was made retroactive to January 1, 2008.⁸

The GA amended IC 6-1.1-4-17 to modify the procedures for real property assessment.⁹ The section now grants county assessors (subject to the approval of the DLGF) the authority to employ "professional appraisers as technical advisors for assessments in all townships in the county."¹⁰ The decision of a county assessor "to not employ" a professional appraiser is also subject to approval by the DLGF.¹¹

The GA amended IC 6-1.1-4-19.5 to state that, in developing contracts used for "securing professional appraising services" the DLGF must include in the

1. 2008 Ind. Acts 2362.

2. *Id.* at 2362-63.

3. *Id.* at 2363.

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.* at 2364.

8. *Id.*

9. *Id.* at 2374.

10. *Id.*

11. *Id.*

contracts a provision stating that the DLGF is a party to the contract.¹²

The GA amended IC 6-1.1-4-28.5.¹³ The section now states that money assigned to a “property reassessment fund” through IC 6-1.1-4-27.5 may now be used to fund “payments to assessing officials and hearing officers for county property tax assessment boards of appeals.”¹⁴

The GA amended the “Assessed Value Deductions and Deduction Procedures” portion of the Indiana Code to include new definitions that are applicable to IC 6-1.1-12.¹⁵ For example, IC 6-1.1-12-37 now includes definitions for “dwelling” and “homestead.”¹⁶ In addition, effective January 1, 2009, IC 6-1.1-12-37 requires the DLGF to “adopt” rules or guidelines for applying the deduction which is allowable through that section.¹⁷ The new section also states that a county auditor may not grant “an individual or a married couple” a deduction if: (1) the individual or married couple has claimed the deduction on more than one application, and (2) the two applications claim the deduction for different property.¹⁸

The GA added a new section to IC 6-1.1-12-37.5.¹⁹ Through the new section, a person entitled to a standard deduction for real property through IC 6-1.1-12-37, the standard deduction for homesteads, is also entitled to a “supplemental deduction.”²⁰ The supplemental deduction is to be applied after the standard deduction, “but before the application of any other deduction, exemption, or credit.”²¹ The supplemental deduction is equal to 35% of the assessed value of the property that is not more than \$600,000, plus 25% of the assessed value of the property that exceeds \$600,000.²²

The GA amended IC 6-1.1-15-1 to grant taxpayers the ability to have the PTABOA review “either or both” the taxpayer’s assessment of tangible property or a deduction which is authorized by the statute.²³

The GA amended the “Tax Increment Replacement” portion of IC 6-1.1-21.2-12.²⁴ The section now applies if the tax increment replacement amount in an allocation area is greater than zero.²⁵ After a public hearing, a governing body may (1) impose a special assessment on property owners in the area to raise an amount that does not exceed the tax increment replacement, (2) impose a tax on

12. *Id.* at 2376.

13. *Id.* at 2380-81.

14. *Id.* at 2381.

15. *See id.* at 2413.

16. *Id.*

17. *Id.* at 2415.

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.* at 2446.

24. *Id.* at 2549.

25. *Id.*

all taxable property in the district of the governing body to raise an amount that does not exceed the tax increment replacement amount, and (3) reduce the base assessed value of property to an amount that increases the tax increment revenues in the area to an amount that does not exceed the tax increment replacement amount.²⁶ After the proposal of the governing body is submitted to the legislative body of the unit that established the district, the legislative body can reduce the assessment, increase the assessment, or choose to take no action.²⁷ Any person who files a written remonstrance with the governing body, and is "aggrieved" by the action taken, has ten days after the action to object.²⁸ Further, if such remonstrating person wishes to proceed further with respect to this matter, then such remonstrator must file an action in the circuit or superior court.²⁹ However, the only ground with respect to which a remonstrator may object "is whether the proposed special assessment or tax will help achieve the redevelopment of economic development objectives for the allocation area or honor its obligations related to the allocation area."³⁰ The judgment of the circuit or superior court is conclusive unless an appeal is taken.³¹

The GA added new section IC 6-1.1-21.2-16.³² If the tax increment replacement amount for an allocation area in a district is less than zero, then that district's governing body "shall increase the base assessed value of property in the allocation area" to an amount that will bring the tax increment replacement amount to zero.³³

The GA added another new section at IC 6-1.1-22.5-18.5.³⁴ This new section allows county councils to adopt an ordinance that will allow taxpayers to make installment payments with their "Provisional Property Tax Statements." The ordinance must give taxpayers the option of paying the tax due under the reconciling statement by installment due dates set forth in the ordinance.³⁵ For any delinquent amount of real or personal property taxes, the section imposes a penalty of 5% of the delinquent amount.³⁶ Further, the new section makes it clear that a county council does not need approval from the DLGF in order to adopt the ordinance.³⁷

The GA also added new section IC 6-1.1-30-17.³⁸ The section provides that, upon request of the DLGF, the Department and the auditor of state shall withhold

26. *Id.* at 2550.

27. *Id.*

28. *Id.* at 2551.

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.* at 2552.

33. *Id.*

34. *Id.* at 2567.

35. *Id.*

36. *Id.* at 2567-68.

37. *Id.* at 2568.

38. *Id.* at 2583.

a percentage of CAGIT, COIT, and CEDIT from a county under certain circumstances.³⁹ The percentage to be withheld is determined by the DLGF.⁴⁰ The DLGF must give thirty days written notice to the auditor of state before any monies are withheld.⁴¹ The reasons for withholding distributions from counties relate to not providing the DLGF information in a timely and proper manner and failing to pay a bill for services related to services rendered by the DLGF.⁴²

The GA amended IC 6-1.1-35-1 to state that the DLGF shall “conduct operational audits of the offices of assessing officials” to make sure they are complying with statutory and regulatory assignments in an “effective, efficient, and productive manner.”⁴³

The GA amended IC 6-1.1-45-9 to provide that a person who makes a “qualified investment” at an enterprise zone location is only entitled to a deduction under the section if the deduction is approved by the local fiscal or legislative body in the unit.⁴⁴

The GA amended both IC 6-1.1-15-1⁴⁵ and IC 6-1.1-15-3⁴⁶ to provide that a taxpayer is not required to have an appraisal in order to initiate a review or prosecute the review of the assessment of the taxpayer’s tangible property.

IC 6-3.1-11-19, which was retroactive and took effect July 1, 2008, makes a technical change to the industrial recovery site tax credit repealing the language concerning the property tax credit for inventory.⁴⁷

Public Law 146-2008, section 828 provides an income tax deduction for property taxes paid in 2008 that would have been due in 2007, if the county had sent the bills out in a timely manner.⁴⁸ The amount of the deduction is the amount of property taxes paid in 2008, less any amount paid in 2007 for 2007 that were not due until 2008.⁴⁹

The GA amended IC 6-1.1-5.5-10 to state that a person commits a Class C felony if a person knowingly and intentionally “falsifies the value of transferred property” or “omits or falsifies any information required to be provided in the sales disclosure form.”⁵⁰

B. State Adjusted Gross Income Tax Statutory Provisions

Public Law 131-2008, section 62 provides that the provision to update the

39. *Id.* at 2583-84.

40. *Id.* at 2584.

41. *Id.* at 2585.

42. *Id.* at 2584-85.

43. *Id.* at 2592.

44. *Id.* at 2615-16.

45. *Id.* at 3.

46. *Id.* at 4.

47. *Id.* at 2631-32.

48. *Id.* at 3093-94.

49. *Id.*

50. *Id.* at 2177.

Indiana Code to coincide with the IRC takes effect for taxable years beginning after December 31, 2007.⁵¹

Public Law 131-2008, section 63 provides that the definition of Indiana adjusted gross income contained in IC 6-3-1-3.5 takes effect for taxable years beginning after December 31, 2007.⁵²

Public Law 131-2008, section 77 provides that estimated tax payments computed by nonresident aliens allowing for one personal exemption, and employers withholding adjusted gross income tax from nonresident aliens allowing for one personal exemption when calculating the amount of tax to be withheld applies to taxable years beginning after December 31, 2008.⁵³

IC 6-3-1-3.5 provides that the federal tax rebate distributed in 2008 will not be considered adjusted gross income in Indiana.⁵⁴

IC 6-3-1-11 provides that the definition of Indiana adjusted gross income is amended to coincide with the federal definition used in the IRC.⁵⁵

IC 6-3-2-6 increases the renter's income tax deduction from \$2500 to \$3000.⁵⁶

IC 6-3-2-13 changes the reference to the port commission to the ports of Indiana within the maritime opportunity district tax deduction.⁵⁷

IC 6-3-3-12 provides that if a person makes a nonqualified withdrawal from a 529 savings account and is not required to file an annual Indiana income tax return, then the Department has the authority to issue a demand notice to the person. This section also provides that a withdrawal from the college choice 529 education savings plan transferred to another qualified tuition program is a nonqualified withdrawal.⁵⁸

IC 6-3-4-1.5 provides that a professional preparer is not required to file a return in an electronic format if the taxpayer requests in writing that the return not be filed electronically. After December 31, 2010, a professional preparer that does not comply with electronic filing procedures will be subject to a penalty of \$50 for each return not filed in an electronic format with a maximum penalty of \$25,000 per year.⁵⁹

Public Law 131-2008, section 80 provides that the amendments concerning the ability of a taxpayer to opt out of electronic filing when the return is completed by a professional preparer applies to returns filed after December 31, 2008.⁶⁰

IC 6-3-4-4.1 provides that an estimated tax payment made by a nonresident

51. *Id.* at 1997.

52. *Id.*

53. *Id.* at 2013.

54. *See id.* at 1930.

55. *Id.* at 1935-36.

56. *Id.* at 2627.

57. *Id.* at 1439-40.

58. *Id.* at 1936-38.

59. *Id.* at 1939.

60. *Id.* at 2014.

alien must be computed by applying only one personal exemption regardless of the total number of exemptions the person may claim on the taxpayer's annual return.⁶¹ IC 6-3-4-4.1 provides that an individual filing an estimated tax return must designate an amount that represents state adjusted gross income tax liability, and an amount that represents estimated local option income tax liability.⁶²

IC 6-3-4-8 provides that an employer withholding taxes for a nonresident alien is required to limit the number of exemptions claimed to one per employee.⁶³

IC 6-3-4-15.7 requires a person who requests withholding of adjusted gross income tax from an annuity, pension, or retirement plan to designate the amount that represents state adjusted gross income tax and the amount that represents local option income tax. The Department is required to adopt guidelines to assist taxpayers in making the required designations.⁶⁴

IC 6-3-4-16 provides that for individual income tax returns filed after December 31, 2010, the Department will implement a system of crosschecks between the employer W-2 forms and the individual taxpayer's W-2 forms.⁶⁵

IC 6-3-4-17 provides that after December 31, 2010, the Department and the Office of Management and Budget shall develop a quarterly report that summarizes the amount reported to and processed by the Department for individual estimated tax and monthly withholding by employers for each county.⁶⁶ The report shall be distributed to the county auditors within forty-five days after the end of the calendar quarter.⁶⁷

IC 6-3-7-3 provides that 100% of the individual income tax will be deposited in the state general fund.⁶⁸

IC 6-3.1-21-6 increases the earned income tax credit from 6% of the federal credit to 9% of the federal credit.⁶⁹ IC 6-3.1-21-6 also provides that a nonresident taxpayer claiming the earned income tax credit is required to apportion the amount of the credit on the same basis that Indiana income is apportioned.⁷⁰

IC 6-3.1-29-19 allows non-Indiana coal to be used in a coal gasification power plant if the taxpayer certifies to the IEDC that partial use of other coal will result in lower rates for Indiana retail utility customers.⁷¹

61. *Id.* at 1939-40.

62. *Id.*

63. *Id.* at 1942.

64. *Id.* at 2629-30.

65. *Id.* at 2630.

66. *Id.* at 2630-31.

67. *Id.* at 2631.

68. *Id.*

69. *Id.* at 2632.

70. *Id.* at 1946.

71. *Id.* at 1047.

IC 6-3.1-32 creates a media production expenditure income tax credit.⁷² A qualified media production includes a feature length film, music video, television series, digital media production, and an advertising message broadcast on television or radio.⁷³ The definition does not include television coverage of the news or an athletic event. Expenses that qualify for the credit include: salaries and wages to Indiana residents, costs for a story, costs for locations, sets, and wardrobes, editing costs, facility and equipment rental, food and lodging, and legal services.⁷⁴ Qualified expenses do not include payments of wages and salaries to a director, producer, screenwriter, or an actor unless the individual is a resident of Indiana.⁷⁵ Qualified expenditures that are at least \$100,000 for a movie or television series, or \$50,000 for any other type of media production are entitled to a refundable tax credit.⁷⁶ If the total qualified production expenditures are less than \$6,000,000 in a taxable year, then the income tax credit is 15% of the qualified expenditures.⁷⁷ If the total qualified production expenditures exceed \$6,000,000 in a taxable year, the amount of the credit is a percentage determined by the IEDC multiplied by the amount of qualified production expenditures in the taxable year. A taxpayer that is going to claim a credit must, before making the qualified production expenditures, apply to the IEDC for approval of the credit.⁷⁸ The maximum amount of tax credits that may be approved by the IEDC may not exceed \$5,000,000 in a taxable year for all taxpayers.⁷⁹ If the amount of the credit exceeds the taxpayer's tax liability for the taxable year, then the taxpayer is entitled to a refund of the excess.⁸⁰ A taxpayer receiving the credit must file a tax return for the first five years that the taxpayer has income from the qualified media production for which the tax credit was granted.⁸¹ Income from the qualified media production is apportioned to Indiana based on the income of the corporation multiplied by a percentage equal to the amount of qualified expenditures for which the tax credit was granted, divided by the total production expenditures for the qualified media production.⁸² The credit cannot be awarded for any taxable year beginning after December 31, 2011.⁸³

IC 6-3.1-32-9 provides that the media production income tax credit is limited to \$5,000,000 for all taxpayers in a state fiscal year.⁸⁴

72. *Id.* at 2-8.

73. *Id.* at 3.

74. *Id.*

75. *Id.* at 4.

76. *Id.*

77. *Id.*

78. *Id.* at 4-5.

79. *Id.* at 6.

80. *Id.*

81. *Id.*

82. *Id.* at 7.

83. *Id.*

84. *Id.* at 1946.

IC 6-3.1-32-11 provides that if a taxpayer has more than \$6,000,000 in qualified media production expenditures, then the IEDC is to determine the amount of credit that the taxpayer is eligible to claim within the \$5,000,000 limitation established for all taxpayers.⁸⁵

IC 6-3.1-32-13 provides that the maximum movie production tax credit that can be claimed for projects approved by the IEDC is eliminated because of the total limitation of \$5,000,000 for all projects.⁸⁶

Public Law 131-2008, section 81 provides that the increase in the earned income tax credit, and the penalty for an individual who fails to file a return even if no remittance is due, applies to taxable years beginning after December 31, 2008.⁸⁷

IC 6-8.1-10-5 provides that a person who makes a payment by credit card, debit card, or EFT where the payment is not honored when presented through normal banking channels, is subject to the same penalties as a taxpayer whose check payment is not honored by a financial institution.⁸⁸

IC 6-8.1-10-3.5 provides that if a person fails to file an individual income tax return where no remittance is due, the person is subject to a penalty of \$10 per day for each day the return is late, to a maximum of \$500.⁸⁹

C. County Adjusted Gross Income Tax Statutory Provisions

Public Law 1-2008, section 9 extends the deadlines for imposition of CAGIT to December 31, 2007, from the original deadline of August 1, 2007, depending on the date the ordinance is adopted if it is adopted after August 1, 2007.⁹⁰

IC 6-3.5-1.1-9 requires the budget agency to provide to a county council a summary of calculations concerning the amount of CAGIT reported on individual income tax returns processed by the Department during the previous fiscal year, adjustments for over distributions in prior years, adjustments for clerical or mathematical errors in prior years, adjustments for tax rate changes, and the amount of the excess account balances to be distributed.⁹¹

IC 6-3.5-7-18 requires employers to report the amount of county tax attributable to each county each time the employer remits the tax withheld.⁹²

IC 6-3.5-1.1-25 provides that if a county adopts a rate of 0.25% for levy relief and property tax replacement credits combined or singly, then the county can adopt a rate not to exceed 0.25% for public safety.⁹³

IC 6-3.5-1.1-26 authorizes Lake County to adopt CAGIT for property tax

85. *Id.* at 1946-47.

86. *Id.* at 1947.

87. *Id.* at 2014.

88. *Id.* at 1978.

89. *Id.* at 1977.

90. *Id.* at 12-13.

91. *Id.* at 2633-34.

92. *Id.* at 2688.

93. *Id.* at 2643.

levy reduction or property tax replacement credits.⁹⁴ The tax revenue can be distributed to a municipality based on the tax collected from the taxpayers located in the municipality and if it is collected from taxpayers in an unincorporated area, then the revenue shall be distributed to the unincorporated area of the county and used for property tax replacement credits.⁹⁵ The Lake County revenue can also be split so that 60% is used for property tax replacement credits and 40% is used for levy reduction.⁹⁶

IC 6-8.1-10-5 provides that a person who makes a payment by credit card, debit card, or EFT where the payment is not honored when presented through normal banking channels, the person is subject to the same penalties as a taxpayer whose check payment is not honored by a financial institution.⁹⁷

IC 6-8.1-10-3.5 provides that if a person fails to file an individual income tax return where no remittance is due, the person is subject to a penalty of \$10 per day for each day the return is late, to a maximum of \$500.⁹⁸

D. County Option Income Tax Statutory Provisions

Public Law 1-2008, section 9 extends the deadlines for imposition of COIT to December 31, 2007 from the original deadline of August 1, 2007, if the ordinance is adopted after August 1, 2007.⁹⁹

IC 6-3.5-6-17 requires the budget agency to provide a county council a summary of calculations concerning the amount of COIT reported on individual income tax returns processed by the Department during the previous fiscal year, adjustments for over distributions in prior years, adjustments for clerical or mathematical errors in prior years, adjustments for tax rate changes, and the amount of the excess account balances to be distributed.¹⁰⁰

IC 6-3.5-7-18 requires employers to report the amount of county tax attributable to each county each time the employer remits the tax withheld.¹⁰¹

IC 6-3.5-6-31 provides that if a county adopts a rate of 0.25% for levy relief and property tax replacement credits combined or singly, the county can adopt a rate not to exceed 0.25% for public safety.¹⁰²

IC 6-3.5-6-32 authorizes Lake County to adopt COIT for property tax levy reduction or property tax replacement credits. The tax revenue can be distributed to a municipality based on the tax collected from the taxpayers located in the municipality; and if it is collected from taxpayers in an unincorporated area, the revenue shall be distributed to the unincorporated area of the county and used for

94. *Id.* at 2647.

95. *Id.* at 2647-48.

96. *Id.* at 2648.

97. *Id.* at 1978.

98. *Id.* at 1977.

99. *Id.* at 12-13.

100. *Id.* at 2655-56.

101. *Id.* at 2688.

102. *Id.* at 2666.

property tax replacement credits. The Lake County revenue can also be split so that 60% is used for property tax replacement credits and 40% is used for levy reduction.¹⁰³

IC 6-8.1-10-5 provides that a person who makes a payment by credit card, debit card, or EFT where the payment is not honored when presented through normal banking channels, the person is subject to the same penalties as a taxpayer whose check payment is not honored by a financial institution.¹⁰⁴

IC 6-8.1-10-3.5 provides that if a person fails to file an individual income tax return where no remittance is due, the person is subject to a penalty of \$10 per day for each day the return is late, to a maximum of \$500.¹⁰⁵

E. Local Option Income Tax Statutory Provisions

Public Law 146-2008, section 846 extends the dates for adoption and implementation of LOIT rates in 2008 to be used for property tax relief, levy limits and public safety.¹⁰⁶ The following chart provides the dates for adoption and implementation of the tax rates:

ADOPTION	IMPLEMENTATION
Before Oct. 1, 2008	Oct. 1, 2008
Oct. 1 to Oct. 15, 2008	Nov. 1, 2008
Oct. 16 to Nov. 15, 2008	Dec. 1, 2008
Nov. 16 to Dec. 31, 2008	Jan. 1, 2009

IC 6-3.5-7-18 requires employers to report the amount of county tax attributable to each county each time the employer remits the tax withheld.¹⁰⁷

IC 6-3.5-6-31 provides that if a county adopts a rate of 0.25% for levy relief and property tax replacement credits combined or singly, the county can adopt a rate not to exceed 0.25% for public safety.¹⁰⁸

IC 6-8.1-10-5 provides that a person who makes a payment by credit card, debit card, or EFT where the payment is not honored when presented through normal banking channels, the person is subject to the same penalties as a taxpayer whose check payment is not honored by a financial institution.¹⁰⁹

IC 6-8.1-10-3.5 provides that if a person fails to file an individual income tax return where no remittance is due, the person is subject to a penalty of \$10 per day for each day the return is late, to a maximum of \$500.¹¹⁰

103. *Id.* at 2671-72.

104. *Id.* at 1978.

105. *Id.* at 1977.

106. *Id.* at 3101.

107. *Id.* at 2688.

108. *Id.* at 2666.

109. *Id.* at 1978.

110. *Id.* at 1977.

F. County Economic Development Income Tax Statutory Provisions

IC 6-3.5-7-11 requires the budget agency to provide to a county council a summary of calculations concerning the amount of CEDIT reported on individual income tax returns processed by the Department during the previous fiscal year, adjustments for over distributions in prior years, adjustments for clerical or mathematical errors in prior years, adjustments for tax rate changes, and the amount of the excess account balances to be distributed.¹¹¹

G. Utility Receipts Tax Statutory Provisions

The GA amended IC 6-2.3-3-5 to provide that the sale of natural gas to a generator of electricity for use by the purchaser in generating electricity for resale is exempt from the utility receipts tax and the utility services use tax.¹¹²

H. Sales And Use Tax Statutory Provisions

IC 6-2.5-1-16.2 defines digital audio works as the fixation of a series of musical, spoken, or other sounds, including ring tones.¹¹³

IC 6-2.5-1-16.3 defines digital audiovisual works as a series of related images that, when shown in succession, impart an impression of motion.¹¹⁴

IC 6-2.5-1-16.4 defines digital books as works that are generally recognized as books.¹¹⁵

IC 6-2.5-1-18 adds repair and replacement parts as components used in conjunction with durable medical equipment.¹¹⁶

IC 6-2.5-1-26.5 defines specified digital products as digital audio works, digital audio visual works, and digital books.¹¹⁷

IC 6-2.5-2-2 increases the sales tax rate from 6% to 7%, and lists the amount of tax to be collected for transactions that are less than \$1.07.¹¹⁸

IC 6-2.5-4-16 provides that when a person transfers specified digital products to an end user, the person is a retail merchant making a retail transaction that is subject to sales tax.¹¹⁹ An end user does not include a person who receives a product transferred electronically for further commercial broadcast, rebroadcast, transmission, retransmission, licensing distribution, or exhibition of a product to another person.¹²⁰ The section also provides that the sales tax only applies to the rental of an aircraft and not to the cost of flight instruction when a person rents

111. *Id.* at 2679.

112. *Id.* at 1923.

113. *Id.* at 928.

114. *Id.*

115. *Id.*

116. *Id.* at 929.

117. *Id.*

118. *Id.* at 2621.

119. *Id.* at 929.

120. *Id.*

an aircraft used in conjunction with flight instruction services.¹²¹

IC 6-2.5-5-41 amends the sales tax exemption for motion pictures to eliminate the definition of a motion picture and insert the term “qualified media production,” which includes a feature length film, television series, digital media production, audio recording or music video, or advertising message broadcast on radio or television. The definition does not include television coverage of the news or a sporting event. The amendment also provides that an expenditure is not eligible for the sales tax exemption if the expenditure qualifies for, and is used to claim, an income tax credit.¹²² IC 6-2.5-5-41 also provides that the sales tax exemption for media production expenditures is extended until December 31, 2011.¹²³

IC 6-2.5-5-43 provides that the sale of gambling games to taverns are exempt from the sales tax.¹²⁴

IC 6-2.5-6-1 provides that if a retail merchant’s annual sales tax liability is less than \$1,000, then the retail merchant is only required to file an annual return. A person who remits sales tax by electronic funds transfer is required to file a monthly return instead of a quarterly recap.¹²⁵

IC 6-2.5-6-7 requires a retail merchant to pay to the Department 7% of the retail merchant’s gross retail income.¹²⁶

IC 6-2.5-6-8 provides that a retail merchant’s income exclusion ratio is the total gross retail income from transactions that are less than \$.08 divided by the total gross retail income for the tax year from all retail transactions.¹²⁷

IC 6-2.5-6-10 states that for reporting periods beginning after June 30, 2008, the collection allowance is reduced to 0.73% if the annual sales tax liability is less than \$60,000; 0.53% if the annual sales tax liability is greater than \$60,000 and less than \$600,000; and 0.26% if the annual sales tax liability exceeds \$600,000.¹²⁸

IC 6-2.5-7-3 increases the sales tax rate to 7% when it is applied against the price of gasoline before the addition of state and federal taxes.¹²⁹

IC 6-2.5-7-5 provides that when a retail merchant reports the sales tax for the sales of gasoline, in order to determine the amount of sales tax to be reported, the retail merchant shall multiply the gross receipts by 6.54%.¹³⁰ Gross receipts includes the sales tax, but excludes state and federal gasoline and special fuel taxes.¹³¹

121. *Id.* at 1923.

122. *Id.* at 1924.

123. *Id.*

124. *Id.* at 1408.

125. *Id.* at 1924-26.

126. *Id.* at 2621.

127. *Id.* at 2621-22.

128. *Id.* at 2622.

129. *Id.* at 2622-23.

130. *Id.* at 2623-24.

131. *Id.*

IC 6-2.5-7-5.5 changes an internal reference to reflect a change due to a recodification of the statute concerning agricultural commodities.¹³²

IC 6-2.5-8-1 makes a technical change concerning reporting to the county assessor if there is no township assessor.¹³³

IC 6-2.5-10-1 changes the distribution of the sales tax to provide the following deposits of sales tax revenue: 99.178% to the general fund, 0.67% to the public mass transportation fund, 0.029% to the industrial rail service fund, and 0.123% to the commuter rail service fund.¹³⁴

IC 6-2.5-13-1 provides that until December 31, 2009, the sourcing of floral orders transmitted to another florist for delivery is sourced to the location of the florist that originally takes the floral order from the purchaser.¹³⁵

Public Law 131-2008, section 78 provides that for reporting periods beginning after December 31, 2008, a retail merchant whose annual sales tax liability that is less than \$1,000 is only required to file an annual return.¹³⁶

I. Recreational Vehicle Excise Tax Statutory Provisions

IC 6-6-5.1 creates an excise tax on recreational vehicles and truck campers. The excise tax replaces the personal property tax that the owner of the vehicle is required to pay.¹³⁷

IC 6-8.1-1-1 adds the RV excise tax as a listed tax.¹³⁸

IC 6-8.1-5-2 provides that if a person fails to pay the RV excise tax the person is considered to have failed to file a return for purposes of penalties imposed by the Department.¹³⁹

IC 6-8.1-7-1 provides that the Department can release information to the BMV concerning evasion of the RV excise tax if the information is used for enforcement and collection purposes. Confidential information may be revealed upon request from the chief law enforcement officer of a state or local law enforcement agency, when the information is to be kept confidential and used for official purposes.¹⁴⁰

IC 6-8.1-10-4 provides that if a person fails to pay the RV excise tax, the person commits a Class A misdemeanor.¹⁴¹

J. Cigarette Tax Statutory Provisions

IC 6-7-1-17 provides that a cigarette distributor must be current on all listed

132. *Id.* at 446.

133. *Id.* at 2626.

134. *Id.* at 2626-27.

135. *Id.* at 932.

136. *Id.* at 2013-14.

137. *Id.* at 1950.

138. *Id.* at 1970.

139. *Id.* at 1972.

140. *Id.* at 1975.

141. *Id.* at 1977-78.

taxes to have the distributor's license issued or renewed. If a distributor is purchasing cigarette stamps on credit, then the payment shall be made by electronic funds transfer.¹⁴²

IC 22-14-7-0.5 to -31 provides that beginning July 2009 all cigarettes must be tested and certified for fire safety.¹⁴³ The Department may inspect markings on the cigarette packaging to ensure that they have been tested and certified for fire safety.¹⁴⁴ Cigarettes that are sold or offered for sale that do not comply with the performance measures are subject to forfeiture.¹⁴⁵ Cigarettes that are seized by a law enforcement officer or the state fire marshal shall be turned over to the Department to be destroyed.¹⁴⁶

K. Miscellaneous Tax Statutory Provisions and Other Tax Statutory Provisions

IC 6-8-12-1 provides that the NCAA is added to the NFL as an eligible entity to receive tax incentives if Indianapolis hosts a qualified event.¹⁴⁷

IC 6-8-12-2 provides that the Men's or Women's Final Four are added to the Super Bowl as eligible qualified events for which the state will provide tax incentives.¹⁴⁸

IC 6-8-12-3 provides that salaries and wages paid to employees of the NCAA that are normally subject to adjusted gross income tax will continue to be subject to adjusted gross income tax, even if the salaries and wages are paid in connection with an NCAA Final Four event.¹⁴⁹

IC 6-9-40 authorizes Steuben County to adopt an ordinance to impose a 1% food and beverage tax. The tax is effective after the last day of the month that succeeds the month in which the ordinance was adopted. One half of the revenue will be distributed to the city of Angola and the remainder is to be used by the county. The revenue from the tax can be used for infrastructure improvements, park and recreation improvements, police and law enforcement purposes, and bond obligations for any infrastructure improvements.¹⁵⁰

IC 4-35-8-3 provides that the tax revenue from the slot machines at horse race tracks is to be deposited in the state general fund instead of in the property tax reduction trust fund, which has been eliminated.¹⁵¹

IC 4-36-1-1 to -9-7 authorizes taverns to sell pull tabs, tip boards,

142. *Id.* at 1969.

143. *Id.* at 1192.

144. *Id.* at 1200.

145. *Id.* at 1199-1200.

146. *Id.* at 1199.

147. *Id.* at 1969.

148. *Id.*

149. *Id.* at 1970.

150. *Id.* at 1415-18.

151. *Id.* at 2339.

punchboards, and conduct raffles.¹⁵² Taverns, manufacturers, and distributors are required to be licensed by the alcohol and tobacco commission before they can conduct gaming or sell gaming equipment.¹⁵³ Applicants for a license must receive a tax clearance from the Department and may not be on the most recent tax warrant list.¹⁵⁴ An excise tax is imposed on the distribution of gambling games in the amount of 10% of the price paid by the retailer that purchases the games.¹⁵⁵ The entity distributing the pull tabs, punchboards, or tip boards is liable for the tax.¹⁵⁶ The Department will establish procedures for the distributor to account for the amount of tax collected, the number of games sold, the receipts for the sale of the games, and the address of each retailer that purchased games from the distributor in the previous calendar month.¹⁵⁷ All taxes are required to be remitted on a monthly basis.¹⁵⁸ The Department shall prescribe the forms and reports required to be filed and the contents of the reports.¹⁵⁹ The Department is authorized to audit a licensee at any time.¹⁶⁰ The Department shall deposit all taxes in the general fund.¹⁶¹

IC 6-8.1-1-1 provides that the type II gambling game excise tax is a listed tax.¹⁶²

L. Other Tax Administration Statutory Provisions

IC 6-8.1-1-1 repeals the reference to the municipal option income tax in the listed taxes.¹⁶³

IC 6-8.1-7-1 changes a reference from the county office of family and children to the local office of the division of family resources.¹⁶⁴

IC 6-8.1-8-8.7 provides that any person acting on behalf of the Department is not liable for any action taken in good faith to collect the Department's levy unless the action is contrary to the Department's direction, or the person acts with deliberate ignorance or disregard of the truth.¹⁶⁵

IC 6-8.1-9-1 changes a reference to an internal code cite.¹⁶⁶

152. *Id.* at 1394-1408.

153. *Id.* at 1397.

154. *Id.* at 1398-99.

155. *Id.* at 1399-1400.

156. *Id.*

157. *Id.* at 1408.

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.* at 1408-09.

163. *Id.* at 2712.

164. *Id.* at 2714.

165. *Id.* at 2112.

166. *Id.* at 1977.

II. INDIANA TAX COURT OPINIONS AND DECISIONS

The Indiana Tax Court published fifteen opinions and decisions during 2008. Four of the cases dealt with the sales and use taxes, four cases dealt with the income taxes, two cases dealt with the property taxes, two cases dealt with the inheritance tax, two cases dealt with state and local governments, and one case dealt with the financial institutions tax.

A. Sales and Use Tax Cases

1. *Brambles Industries, Inc. v. Indiana Department of State Revenue*.¹⁶⁷—In *Brambles*, the Tax Court was presented with the question of whether a manufacturers' lease payment to the Petitioner were exempt from Indiana's sales tax under either the sale for resale exemption or the nonreturnable container exemption.¹⁶⁸ The Petitioners also contended that taxing the lease payments in question violated the Equal Protection Clause of the federal constitution and the Privileges and Immunities Clause of the state constitution.¹⁶⁹

Brambles Industries (Chep) filed claims for refund of the Indiana sales tax on behalf of numerous manufacturers who leased pallets from Chep.¹⁷⁰ The manufacturers paid state sales tax on those lease payments.¹⁷¹ The manufacturers authorized Chep to seek refunds on the lease payments, and Chep, in turn, agreed to distribute any refund to the manufacturers.¹⁷²

The Tax Court explained how the leasing transactions were structured:

During the years at issue, the manufacturers leased shipping pallets from Chep. Pursuant to their lease agreements, the manufacturers could only use the pallets to ship their products to those retailers who had separate agreements with Chep for the return of the pallets. When the manufacturers shipped their products to those retailers, they were required to notify Chep as to the quantity and location of the pallets.¹⁷³

Pursuant to IC 6-2.5-2-1, the Indiana sales tax was imposed on the above referenced transaction.¹⁷⁴ The Tax Court found that “[t]here is no dispute here that the manufacturers’ leasing of pallets from Chep is a retail transaction.”¹⁷⁵ However, the manufacturers claimed that two Indiana exemptions from the state sales tax were applicable to their transactions.¹⁷⁶

a. *Sale for resale exemption*.—Indiana law exempts certain transactions

167. 892 N.E.2d 1287 (Ind. Tax Ct. 2008).

168. *Id.* at 1288.

169. *Id.*

170. *Id.* at 1289.

171. *Id.*

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.* (citing IND. CODE § 6-2.5-4-10(a) (2006)).

176. *Id.*

involving tangible property from the state's sales tax "if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of the person's business."¹⁷⁷ Additionally, "in order to show entitlement to the sale for resale exemption, the taxpayer must demonstrate that it received itemized consideration for the item."¹⁷⁸ The Tax Court noted that, "separate bargaining must occur between the customer and the taxpayer for the exchange of that particular item."¹⁷⁹ Because the Petitioner did not meet its burden of proving the elements of the exemption (specifically that the manufacturers received itemized consideration for the pallets), the Tax Court stated that the lease transactions did not qualify for the sale for resale exemption.¹⁸⁰

b. Nonreturnable container exemption.—Indiana law exempts from the state sales tax "[s]ales of . . . empty containers . . . if the person acquiring the . . . containers acquires them for use as nonreturnable packages for selling the contents the he adds."¹⁸¹ The Department argued in *Brambles* that the containers were "returnable" and thus not subject to the exemption.¹⁸² Petitioner argued that the containers should be treated as "nonreturnable" because they were not returned to the manufacturers—but instead to Chep.¹⁸³ Therefore, the Tax Court needed to determine to whom containers must be returned in order to qualify for the exemption.¹⁸⁴

The Tax Court explained that neither Indiana's definition of "return," nor the dictionary definition required "that the container go back to the person from whom it was immediately acquired in order to be considered 'returned.'"¹⁸⁵ The Tax Court stated that it was enough that the pallets were returned to an earlier possessor (in this case Chep) in order to be classified as "returnable" rather than "nonreturnable."¹⁸⁶ Because the pallets were returned to an earlier possessor, the Tax Court held that the leasing transactions did not qualify for the nonreturnable container exemption.¹⁸⁷

c. Constitutional argument.—The manufacturers argued that there "would be a possible equal protection problem" under the federal and state constitution if the Department denied the sale for resale exemption claim, "on the basis that no resale occurred because title and ownership of the pallets remained with Chep

177. *Id.* (citing IND. CODE § 6-2.5-5-8(b) (2006)).

178. *Id.* at 1290 (citing *Miles, Inc. v. Ind. Dep't of State Revenue*, 659 N.E.2d 1158, 1165 (Ind. Tax Ct. 1995)).

179. *Id.* (citing *Miles*, 659 N.E.2d at 1165); *see also* *Greensburg Motel Assocs. v. Ind. Dep't of State Revenue*, 629 N.E.2d 1302, 1305-06 (Ind. Tax Ct. 1994).

180. *Brambles*, 892 N.E.2d at 1290.

181. IND. CODE § 6-2.5-5-9(d) (2006).

182. *Brambles*, 892 N.E.2d at 1290.

183. *Id.*

184. *Id.*

185. *Id.* at 1291.

186. *Id.*

187. *Id.*

at all times.”¹⁸⁸ However, the sale for resale exemption was denied on a different, non-constitutional basis. Therefore, the Tax Court determined that the constitutional argument set forth by Petitioner failed.¹⁸⁹

2. SAC Finance, Inc. v. Indiana Department of State Revenue.¹⁹⁰—In *SAC Finance*, the Tax Court addressed whether a finance company was entitled to a bad-debt deduction through IC 6-2.5-6-9 with respect to the installment contracts the finance company purchased from a used car dealership.¹⁹¹

Superior Auto, a used car dealership, sold vehicles in Fort Wayne, Indiana.¹⁹² When individuals purchased vehicles from Superior Auto, the transaction was usually financed through an installment contract.¹⁹³ The installment contract would include both the price of the vehicle and the amount of state sales tax imposed on the transaction.¹⁹⁴ SAC bought installment contracts from Superior Auto.¹⁹⁵ Superior Auto assigned its rights and interests in the installment contracts to SAC in exchange for 70% of the balance of the contracts.¹⁹⁶ After some of the vehicle purchasers defaulted on their contracts, SAC filed a refund claim with the Department for the sales tax that had already been remitted on the uncollectible accounts.¹⁹⁷

The Department allowed a refund, but only allowed 70% of the amount requested.¹⁹⁸ “[T]he Department denied the other 30% of the claim on the basis that it represented the ‘discount’ SAC received when it purchased the installment contracts.”¹⁹⁹

After agreeing that SAC was entitled to a refund, the Tax Court was presented the question: what amount of refund was proper?²⁰⁰ The answer depended on how much SAC was allowed to write off as uncollectible debt for federal tax purposes.²⁰¹ The Tax Court ultimately held that SAC could not write off more than what it paid for the installment contracts.²⁰² In reaching its conclusion, the Tax Court looked to section 166 of the IRC and Treasury Regulation section 1.166-1(d).²⁰³ The Tax Court found the following language

188. *Id.*

189. *Id.*

190. 894 N.E.2d 1116 (Ind. Tax Ct. 2008), *trans. denied*.

191. *Id.* at 1117.

192. *Id.*

193. *Id.*

194. *Id.*

195. *Id.*

196. *Id.* at 1118.

197. *Id.*

198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.* at 1119 (citing *Ind. Dep’t of Revenue v. 1 Stop Auto Sales, Inc.*, 810 N.E.2d 686, 690 (Ind. 2004)).

202. *Id.* at 1121.

203. *Id.* at 1119.

instructive: "A purchaser of accounts receivable which become worthless during the taxable year shall be entitled under section 166 to a deduction which is based upon the price he paid for such receivables but not upon their face value."²⁰⁴

Thus, the Tax Court affirmed the decision of the Department and held that SAC was only entitled to a refund in the amount it actually paid for the installment contracts.²⁰⁵

3. *Home Depot U.S.A., Inc. v. Indiana Department of State Revenue.*²⁰⁶—In *Home Depot*, the Tax Court was presented with the question of whether Home Depot, a national home improvement retailer, was entitled to a refund of the sales tax which Home Depot remitted on purchases made by customers who used private label credit cards at the retailer's stores, but then defaulted on their accounts with the finance companies who owned and operated the private label credit card program.²⁰⁷

Home Depot sought to claim a bad debt deduction for the accounts that its financing companies were unable to collect.²⁰⁸ At issue in the case were the structured agreements between Home Depot and its financing companies. Pursuant to the terms of the contracts, Home Depot made private label credit card applications available to customers in its stores.²⁰⁹ Home Depot then submitted the completed application forms to the financing companies, which processed the applications and issued credit cards to approved applicants.²¹⁰ The financing companies agreed to be responsible for all servicing of the credit cards, including billing and collection.²¹¹ Perhaps the most important term of the agreements stated: "All credit losses on Accounts shall be solely borne at the expense of [the finance companies] and shall not be passed on to [Home Depot]."²¹²

"With respect to the . . . credit card accounts that had been defaulted upon and were therefore uncollectible, the finance companies claimed 'bad debt' deductions on their federal income tax returns, pursuant to section 166 of the [IRC]."²¹³ On its federal income tax return, Home Depot deducted the service fees it paid to the financing companies attributable to accounts the financing companies were unable to collect.²¹⁴ Home Depot deducted the service fees as a business expense under section 162 of the IRC.²¹⁵

Home Depot filed a claim with the Department seeking a refund of the sales tax which Home Depot had remitted during the period at issue on purchases

204. *Id.* at 1120 (citing Treas. Reg. § 1.166-1(d)(2)(i)(b) (2006)).

205. *Id.* at 1121.

206. 891 N.E.2d 187 (Ind. Tax. Ct. 2008), *trans. denied.*

207. *Id.* at 187-88.

208. *Id.* at 189.

209. *Id.* at 188.

210. *Id.*

211. *Id.*

212. *Id.*

213. *Id.* at 188-89.

214. *Id.* at 189.

215. *Id.*

made by customers who used their private label credit cards but then defaulted with the finance companies.²¹⁶ The Department denied the refund claim because the finance companies, not Home Depot, claimed the bad debt deduction on the federal returns.²¹⁷ In upholding the Department's decision, the Tax Court stated: "[W]hen a retail merchant computes its bad debt deduction under Indiana Code § 6-2.5-6-9, it is limited to deducting that portion of the amount of its receivables equal to the amount actually written off for federal income tax purposes."²¹⁸

Because Home Depot had not claimed a bad debt deduction through section 166 on its federal income tax return, Home Depot was not entitled to a bad debt deduction through IC 6-2.5-6-9.²¹⁹

4. *Allied Collection Service, Inc. v. Indiana Department of State Revenue.*²²⁰—In *Allied*, the question before the Tax Court was whether Allied was involved in a retail unitary transaction subject to the use tax when it purchased collection letters from an out-of-state vendor.²²¹ The matter was before the Tax Court on the parties cross-motions for summary judgment.²²²

Allied, a licensed collection agency, is located in Columbus, Indiana.²²³ For the taxable years at dispute, Allied was hired by several healthcare providers to collect on patients' delinquent accounts.²²⁴ To facilitate collection, Allied employed Dantom Systems, Inc. (Dantom). Dantom, which was located in Livonia, Michigan, produced debt collection letters for Allied.²²⁵ These letters complied with federal and state compliance standards because they provided clear notice that they were from a debt collector.²²⁶ The Allied/Dantom agreement set forth the following arrangement:

Allied electronically transmitted to Dantom collection letter templates and databases of accounts receivable information (i.e., names, addresses, amounts due, etc.). In turn, Dantom processed the information and incorporated it into the letter templates. Dantom then printed the letters, placed them in the addressed envelopes with pre-addressed reply envelopes, affixed postage, and mailed the letters.²²⁷

Allied was billed by Dantom on a monthly basis.²²⁸ The monthly bills included

216. *Id.*

217. *Id.*

218. *Id.* at 191 (citing *Ind. Dep't of Revenue v. 1 Stop Auto Sales, Inc.*, 810 N.E.2d 686, 690 (Ind. 2004)).

219. *Id.*

220. 899 N.E.2d 69 (Ind. Tax Ct. 2008).

221. *Id.* at 70.

222. *Id.* at 71.

223. *Id.* at 70.

224. *Id.*

225. *Id.*

226. *Id.*

227. *Id.*

228. *Id.*

a single charge which was reached after using a formula based on the total number of letters printed by Dantom.²²⁹

The Department determined that Allied should have paid use tax when Allied purchased the letters from Dantom.²³⁰ Specifically, the Department concluded that Allied was responsible on the entire amount of the use tax arising from the sale of the letters.²³¹ Although, Dantom sold Allied both the letters and a service, the monthly bills sent to Allied did not separate the charges for each.²³² It was the Department's position that the sales of the letters were "retail unitary transactions" and subject to use tax assessment in their entirety.²³³ As a consequence, the Department issued a use tax assessment of \$7,180.77.²³⁴ Allied appealed the Department's findings and the Tax Court heard arguments on the parties' cross-motions for summary judgment.²³⁵

When it was before the Tax Court, Allied did not dispute that its transactions with Dantom were "retail unitary transactions."²³⁶ Under Indiana law: "A unitary transaction is a transaction that 'includes all items of personal property and services which are furnished under a single order or agreement and for which a total *combined* charge or price is calculated.'"²³⁷

Instead, Allied claimed that the services rendered in the transactions were not taxable.²³⁸ The Tax Court, however, explained the general rule that "services rendered in retail unitary transactions are taxable *only if* the transfer of property and the rendition of services are inextricable and indivisible."²³⁹ The Tax Court further stated: "[I]f services are performed before the property is transferred, the transaction is inextricable and wholly subject to the tax. In contrast, if the services are provided after the property is transferred, the transaction is divisible, meaning that the sale of property is taxed but not the services."²⁴⁰ In *Allied*, however, the Tax Court determined that the transfer of property and services rendered were concurrent.²⁴¹ Therefore, the Tax Court looked to other factors such as Dantom's business records, the nature of Dantom's business, and the nature of the specific transactions to determine whether the transactions were divisible.²⁴²

Allied claimed that it was entitled to summary judgment because the services

229. *Id.*

230. *Id.* at 71.

231. *Id.*

232. *Id.*

233. *Id.*

234. *Id.*

235. *Id.*

236. *Id.* at 72.

237. *Id.* (quoting IND. CODE § 6-2.5-1-1(a) (2006)).

238. *Id.*

239. *Id.*

240. *Id.* (citations omitted).

241. *Id.*

242. *Id.* at 72-73.

rendered in the subject transactions were divisible.²⁴³ To support its contention, Allied argued that Dantom's overall business structure was aimed at providing services.²⁴⁴ The Tax Court found that none of the evidence established that the transactions were divisible.²⁴⁵

The Department claimed it was entitled to summary judgment because its designated evidence showed that the subject transactions involved tangible property and services which were inextricable and indivisible.²⁴⁶ The Tax Court found that like Allied's designated evidence, the Department's evidence failed to establish whether the subject transactions were divisible.²⁴⁷

Because the Tax Court determined that neither party established whether the subject transactions were inextricable and indivisible, the Tax Court held that a schedule for pre-trial matters would be issued in a separate order.²⁴⁸

B. *Income Tax Cases*

1. *Wiles v. Indiana Department of State Revenue*.²⁴⁹—In *Wiles*, the issue before the Tax Court was whether the Petitioner's claim for a refund was barred by their agreement with the Department through Indiana's Tax Amnesty Program (Amnesty Program).²⁵⁰

In 2005, the Department issued six Notices of Proposed Assessment (Proposed Assessments) to Megan Wiles in her capacity as Chairman of the Board of Inter-Cultural Services of Hamilton County, Inc. (ICS).²⁵¹ The Department's Proposed Assessments were based on a reasonable belief that ICS had not withheld the proper amount of state and local income tax from its employee's wage payments.²⁵² After the Department's Proposed Assessments, totaling \$2,250 (excluding penalties and interest), went unpaid, even after the Department issued Demand Notices and Warrants of Collection of Tax to ICS, Megan Wiles paid ICS's tax liability under an agreement pursuant to the Amnesty Program.²⁵³ The liability was paid from a joint account of Greg and

243. *Id.* at 73.

244. *Id.* Allied supported its motion for summary judgment with (1) an affidavit from Allied's general manager, (2) a copy of the proposed assessments for the taxable years at issue, (3) a copy of the Allied/Dantom agreement, and (4) a copy of a letter from Dantom's CEO to Allied's general manager. *Id.*

245. *Id.* at 73-74. The letter from Dantom's CEO was inadmissible hearsay that lacked trustworthiness and the other documents were both conclusory and self-serving. *Id.*

246. *Id.* at 74.

247. *Id.* at 75.

248. *Id.*

249. 881 N.E.2d 105 (Ind. Tax Ct. 2008).

250. *Id.*

251. *Id.* at 105-06.

252. *Id.* at 106.

253. *Id.*

Megan Wiles.²⁵⁴ Citing the terms of the Amnesty Program, the Department denied the Wiles' claim for refund of tax filed in 2006.²⁵⁵

Indiana's general assembly adopted the Amnesty Program in 2005.²⁵⁶ The program allowed taxpayers with delinquent tax liabilities to pay their overdue taxes to the Department without interest, costs or other penalties associated with the delinquent tax.²⁵⁷ In exchange, taxpayers agreed to waive their right to protest the assessment or file a refund claim with the Department.²⁵⁸

Mr. and Mrs. Wiles argued that a refund was proper, despite the terms of the Amnesty Program, because ICS had no paid employees during the taxable period in which the Department assessed a withholding obligation.²⁵⁹ The Wiles claimed that the Amnesty agreement should be rescinded because both they and the Department made a "mutual mistake of fact" with respect to any withholding obligation ICS incurred for the taxable period at issue.²⁶⁰

The Tax Court disagreed with the Wiles.²⁶¹ The Tax Court found that when Megan Wiles "voluntarily paid ICS' tax liability under the Amnesty Program, she agreed to be bound by the terms of the agreement, which provided, inter alia, that she would not file a claim for refund of the tax paid."²⁶²

2. *Riverboat Development, Inc., v. Indiana Department of State Revenue.*²⁶³—In *RDI*, the Tax Court decided that a Kentucky S-corporation, which owned a minority membership interest in an Indiana corporation, was not subject to Indiana's withholding requirements through IC 6-3-4-13(a).²⁶⁴

Riverboat Development, Inc. (RDI) was a "Kentucky S-corporation with its principal place of business in Louisville, Kentucky."²⁶⁵ For the taxable years at issue, "RDI owned a minority membership interest in RDI/Caesars Riverboat Casino LLC (Caesars), an Indiana corporation that owned and operated a riverboat gambling casino and hotel resort in Elizabeth, Indiana."²⁶⁶ RDI did not conduct any business in Indiana, and had no ties to Indiana other than its membership interest in Caesars.²⁶⁷

For the taxable years in question, "Caesars was treated as a partnership for federal and state income tax purposes."²⁶⁸ As a partnership, Caesars' income,

254. *Id.*

255. *Id.*

256. *Id.*

257. *Id.*

258. *Id.*

259. *Id.*

260. *Id.* at 107.

261. *Id.*

262. *Id.*

263. 881 N.E.2d 107 (Ind. Tax Ct.), *trans. denied*, 898 N.E.2d 1220 (Ind. 2008).

264. *Id.* at 108.

265. *Id.*

266. *Id.*

267. *Id.*

268. *Id.*

losses, deductions, and credits were passed through and taxed to its individual members.²⁶⁹ As an S-corporation, RDI's income, losses, deductions, and credits were also passed-through and taxed to its individual members.²⁷⁰

The Department contended that RDI was subject to Indiana's withholding requirements because it had derived income from an Indiana source, specifically from the Caesars riverboat and hotel in Elizabeth, Indiana.²⁷¹ The Department contended that RDI should have withheld \$2.3 million in taxes from its shareholders based on the income derived from the riverboat and hotel.²⁷² RDI argued that its income was derived from an intangible source—its membership interest in Caesars.²⁷³ Income derived from an intangible source is only subject to Indiana taxation if the taxpayer is commercially domiciled in Indiana.²⁷⁴ The Tax Court determined that RDI, “is clearly not commercially domiciled in Indiana.”²⁷⁵ Therefore, because the only contact RDI had with Indiana was its ownership interest in Caesars, the specific question before the Tax Court was whether RDI's ownership interests were personal property, derived from sources within Indiana.²⁷⁶

The Tax Court concluded that RDI's ownership interests were an intangible income source and were not subject to the withholding requirements of IC 6-3-4-13(a).²⁷⁷ The Tax Court noted that IC 23-18-1-10 defined a “membership interest in a limited liability company as ‘a member's economic rights in the limited liability company.’”²⁷⁸ The Tax Court further noted that IC 23-18-6-2, defined the interest of a member in a limited liability company as “personal property.”²⁷⁹ More specifically, however, the Tax Court noted that the membership interest was “intangible personal property”²⁸⁰ because they lacked “a physical existence” and could not be “seen, weighed, measured, felt, or touched.”²⁸¹ Because RDI's income was derived from an intangible source, and RDI was not commercially domiciled in Indiana, RDI's income from its membership interests in Caesars was not subject to IC 6-3-4-13(a).²⁸²

3. *Lacey v. Indiana Department of State Revenue*.²⁸³—In *Lacey*, the Indiana

269. *Id.*

270. *Id.* at 109 n.4.

271. *Id.* at 109.

272. *Id.*

273. *Id.* at 109-10.

274. *Id.* at 110

275. *Id.* at 111

276. *Id.* at 110.

277. *Id.* at 110-11.

278. *Id.* at 110 (quoting IND. CODE § 23-18-1-10 (2007 & Supp. 2008)).

279. *Id.* (citing IND. CODE § 23-18-6-2 (2007 & Supp. 2008)).

280. *Id.* at 110-11 (citing *Rhoades v. Ind. Dep't of State Revenue*, 774 N.E.2d 1044, 1048 (Ind. Tax Ct. 2002)).

281. *Id.* at 111 (citations omitted).

282. *Id.*

283. 894 N.E.2d 113 (Ind. Tax Ct. 2008), *trans. denied*.

Tax Court was presented with the question of whether the compensation that Lacey received from his private employer was subject to income taxation.²⁸⁴

During the taxable year at issue, Lacey was employed by, and received compensation from, Adecco.²⁸⁵ Adecco issued a W-2 reporting Lacey's wages and withholding.²⁸⁶ Lacey argued that Adecco did not understand the concept of income taxation through the IRC.²⁸⁷ As an Indiana resident, Lacey filed an Indiana income tax return, but reported negative income and sought a refund of the state and county taxes withheld by his employer.²⁸⁸ The Department denied Lacey's claim for refund and notified him that he owed \$577.65 in state income tax.²⁸⁹

Under the state constitution, the Tax Court explained, "[t]he general assembly may levy and collect a tax upon income, from whatever source derived, at such rates, in such manner, and with such exemptions as may be prescribed by law."²⁹⁰ Under its constitutional authority, the general assembly enacted the Adjusted Gross Income Tax Act of 1963 (Act).²⁹¹ The Act defines "adjusted gross income" as the IRC has defined the term in Section 62.²⁹² Under Section 62, the Tax Court explained, "'adjusted gross income' is . . . gross income minus . . . [certain] deductions."²⁹³ The Act additionally incorporates the IRC's definition of "gross income" set forth at IRC Section 61: "'[G]ross income is all income from whatever source derived, including (but not limited to) . . . compensation for services."²⁹⁴

Lacey specifically argued that his compensation from Adecco was not subject to taxation because it was not wages or taxable income.²⁹⁵ Lacey's logic for the proposition that his compensation was not "wages" was:

- (1) the computation of adjusted gross income is based on the definition of wages found in sections 3121 and 3401 of the Internal Revenue Code;
- (2) these sections, however, apply only to privileged workers, i.e. individuals who either receive benefits from the federal government, or who live in federal territories or possessions;
- (3) Lacey is not a privileged worker because he works in the private sector;

284. *Id.* at 1114.

285. *Id.* at 1113.

286. *Id.*

287. *Id.*

288. *Id.*

289. *Id.* at 1113-14.

290. *Id.* at 1114 (quoting IND. CONST. art. 10, § 8).

291. *Id.*; see also IND. CODE § 6-3-1-1 to -33 (2006).

292. *Lacey*, 894 N.E.2d at 1114.

293. *Id.* (quoting I.R.C. § 62 (2006)).

294. *Id.* (quoting I.R.C. § 61 (2006)).

295. *Id.*

- (4) The compensation Lacey received therefore does not constitute wages subject to taxation.²⁹⁶

Lacey's logic to support the proposition that his compensation was not "income" consisted of the following:

- (1) a person's labor is an individually property right;
- (2) the income tax is an "excise tax [based] upon the conduct of businesses in a corporate capacity";
- (3) for purposes of taxation, individuals are not corporations;
- (4) individuals cannot have profit or gain when they exchange their labor for compensation, rather the exchange represents the fair market value of the individual's labor;
- (5) to be subject to taxation, income must be evidenced by a gain or profit;
- (6) Lacey, as an individual employed in the private sector, does not have income subject to taxation.²⁹⁷

The matter was before the Tax Court on the Department's motion for judgment on the pleadings and Lacey's motion to reconsider.²⁹⁸ In its motion the Department argued that there were no genuine issues of material fact before the Tax Court and that Lacey could not succeed under the facts and allegations set forth in his motion to reconsider.²⁹⁹ In granting the Department's motion and denying Lacey's, the Tax Court stated:

Federal courts have repeatedly, albeit implicitly, rejected the argument that wages as defined in sections 3121 and 3401 of the Internal Revenue Code can only be earned by those workers who have received a federal "privilege." Likewise, numerous federal courts have also rejected the claim that "money received in compensation for labor is not taxable[.]" Thus, both of Lacey's claims are incorrect as a matter of law.³⁰⁰

Therefore, the Tax Court held that Lacey's wages were subject to Indiana's income tax.³⁰¹

4. *U-Haul Co. of Indiana v. Indiana Department of State Revenue*.³⁰²—In *U-Haul*, the Tax Court was presented with the questions of whether the Department timely mailed its proposed assessment of the additional gross income tax owed by U-Haul and whether the Department's retroactive imposition of income tax was proper.³⁰³

296. *Id.*

297. *Id.* at 1114-15.

298. *Id.* at 1113-14.

299. *Id.*

300. *Id.* at 1115 (citations omitted).

301. *Id.* at 1116.

302. 896 N.E.2d 1253 (Ind. Tax Ct. 2008).

303. *Id.* at 1254.

“The U-Haul Rental System (U-Haul System), rents assorting moving equipment to the public for use throughout the United States and Canada.”³⁰⁴ U-Haul System is composed of: “(1) Fleet Owners, (2) Rental Companies, (3) Rental Dealers, and (4) U-Haul International (UHI).”³⁰⁵ U-Haul System’s four groups were bound together by contractual relationships, with UHI controlling the terms and conditions of each.³⁰⁶

U-Haul Indiana is an Indiana corporation that serves as a Rental Company with U-Haul System.³⁰⁷ “The Rental Companies merchandise and supervise the maintenance and repair of the rental equipment. The Rental Companies are responsible for establishing and servicing Rental Dealers for the U-Haul System[, and] . . . [t]he Rental Companies receive a percentage of the gross rental income collected by Rental Dealers located in their territories.”³⁰⁸ For the taxable years at issue, U-Haul Indiana filed a timely consolidated gross income tax return with U-Haul Leasing and Sales Company (U-Haul Leasing).³⁰⁹ Based upon a Letter of Findings issued by the Department in March 1986, U-Haul Indiana’s return reported that U-Haul Leasing’s gross income tax liability was zero.³¹⁰

After an audit of U-Haul Indiana, the Department concluded that U-Haul Leasing owed income tax for the taxable years at issue.³¹¹ The Department then assessed U-Haul Indiana with additional gross income tax liabilities for 1999, 2000, and 2001.³¹² In April 2003, U-Haul Indiana protested the assessments, but in February 2006, the Department issued a Letter of Findings affirming the assessments for the taxable years at issue.³¹³ In March 2006 U-Haul Indiana filed an original tax appeal.³¹⁴ The matter was heard before the Tax Court on both U-Haul’s and the Department’s motions for summary judgment.³¹⁵ The issues before the Tax Court were: “[1] Whether the Department timely mailed its proposed assessment to U-Haul Indiana for the year ending March 31, 1999 (the 1999 tax year); and [(2)] Whether the Department’s retroactive imposition of gross income tax, based on its admitted change in interpretation of tax, was proper.”³¹⁶

a. The 1999 proposed assessment.—The Tax Court noted, that for the 1999 tax year, there was a three-year statute of limitations for the Department to issue a proposed assessment beginning, “after the latest of the date the return is filed[]

304. *Id.*

305. *Id.*

306. *Id.*

307. *Id.* at 1255.

308. *Id.* at 1254.

309. *Id.* at 1255.

310. *Id.*

311. *Id.*

312. *Id.* at 1255 n.3.

313. *Id.* at 1255.

314. *Id.*

315. *Id.*

316. *Id.* at 1254.

or . . . the due date of the return.”³¹⁷ The parties agreed that U-Haul Indiana filed its 1999 tax return on or before January 15, 2000.³¹⁸ Therefore, the Tax Court noted, the Department was required to send its proposed assessment with respect to U-Haul’s additional tax liability on or before January 15, 2003.³¹⁹

U-Haul Indiana claimed that it had “neither received, nor was aware of, the 1999 proposed assessment until it was ‘furnished’ with a copy of that assessment in August 2005.”³²⁰ The Tax Court explained that the affidavit created a rebuttable presumption as to the Department’s non-mailing of the 1999 proposed assessment.³²¹ The Tax Court found, however, that the Department’s designated evidence with respect to its “conformance with its routine business practices” rebutted the presumption of non-mailing.³²²

To rebut the presumption of non-mailing, the Department submitted the depositions of three Department employees “who were directly involved with the processing of U-Haul Indiana’s 1999 proposed assessment.”³²³ The three employees testified as to what the Department’s normal business practices were regarding the mailing of proposed assessments.³²⁴ The employees explained:

[W]hen a proposed assessment is printed, its print date is usually different from its issuance date because the Department’s computer system automatically assigns each assessment with an issuance date that is three to seven days beyond its print date. After the proposed assessment is printed, a copy of the original is made and is placed in the taxpayer’s file. The proposed assessment is then mailed.

. . . U-Haul Indiana’s 1999 proposed assessment was printed on December 19, 2002, and bore an issuance date of December 23, 2002. Furthermore, Ms. Hendy, the person responsible for mailing the 1999 proposed assessment, made a copy of the original and placed it in U-Haul Indiana’s file. Although Ms. Hendy did not recall actually placing the 1999 proposed assessment in the mail, she indicated that she must have because she had a copy of that assessment in her files and it was not returned in the mail.³²⁵

The Tax Court noted the general rule that “[e]vidence of the routine practice of an organization is relevant to prove that the conduct of the organization on a particular occasion was in conformity with the routine practice.”³²⁶ The Tax

317. *Id.* at 1255-56 (quoting IND. CODE § 6-8.1-5-2(a)(1) (2006)).

318. *Id.* at 1256.

319. *Id.*

320. *Id.*

321. *Id.*

322. *Id.*

323. *Id.*

324. *Id.*

325. *Id.* at 1256-57.

326. *Id.* at 1257 (citing IND. EVID. R. 406).

Court determined that the Department's evidence lead to "the reasonable inference that it timely mailed the 1999 proposed assessment."³²⁷ The Tax Court therefore reserved the issue of whether or not the 1999 proposed assessment was timely mailed for trial.³²⁸

b. The Department's change of interpretation.—For the taxable years in dispute, Indiana law stated that "[n]o change in the [D]epartment's interpretation of a listed tax may take effect before the date the change is . . . adopted in a rule . . . or published in the Indiana Register . . . if the change would increase a taxpayer's liability for a listed tax."³²⁹ U-Haul Indiana claimed specifically that the Department's 2006 Letter of Findings was in direct opposition to its 1986 Letter of Findings.³³⁰ In the 1986 Letter of Findings, the Department determined that "U-Haul Leasing was not subject to gross income tax."³³¹

The Department admitted to changing its position with respect to its interpretation of the listed tax.³³² However, the Department claimed that its change in interpretation was permissible under the Indiana Administrative Code because U-Haul Indiana had "omitted a material fact and asserted materially different facts" from the facts which the Department relied upon in the 1986 Letter of Findings.³³³ The Department alternatively argued that a change in its interpretation was permitted due to changes in applicable case law.³³⁴

The Department argued that "U-Haul Indiana had withheld the fact that the Rental Companies were agents of UHI for over twenty years."³³⁵ The Department supported this claim by referencing five Letters of Findings issued between 1980 and 1997 which lacked any reference to an agency relationship.³³⁶ U-Haul Indiana responded to the Department's argument with a 1979 letter which discussed the agency relationship between the Rental Companies and UHI for almost eight pages.³³⁷ The Tax Court found, therefore, that the Department's change in interpretation of the listed tax, from its position in the 1986 Letter of Findings, was improper.³³⁸

The Department also claimed that the Tax Court's decision in *First National Leasing and Financial Corp. v. Indiana Department of State Revenue*³³⁹ in 1992 allowed the Department to change its position articulated in the 1986 Letter of

327. *Id.*

328. *Id.*

329. IND. CODE § 6-8.1-3-3(b) (2006).

330. *U-Haul*, 896 N.E.2d at 1257-58.

331. *Id.* at 1258.

332. *Id.*

333. *Id.* (citing 45 IND. ADMIN. CODE 15-3-2(d)(2) (West 2009)).

334. *Id.*

335. *Id.*

336. *Id.*

337. *Id.* at 1259.

338. *Id.*

339. 598 N.E.2d 640 (Ind. Tax Ct.1992).

Findings.³⁴⁰ The Department argued that *First National Leasing*: “[R]equired the Department to change its focus from the location of the taxpayer to the location of the critical transaction when determining whether a taxpayer has a tax situs within the state.”³⁴¹

The Tax Court noted, however, that before *First National Leasing* the Department was required “to focus upon the location of the critical transaction—the activity giving rise to the income—as opposed to the location of the taxpayer.”³⁴² Therefore, the Tax Court noted, “*First National Leasing* did not change Indiana law.”³⁴³ The Tax Court, therefore, rejected the Department’s argument that the Department was permitted to change its interpretation from the 1986 Letter of Findings because applicable case law had changed Indiana law.³⁴⁴

C. Property Tax Cases

1. *Izaak Walton League of America v. Lake County Property Tax Assessment Board of Appeals*.—In *IWL*, the issue before the Tax Court was whether the Izaak Walton League of America (IWL) was entitled to a charitable purposes exemption from the real property tax, with respect to 30 acres of wetlands and water which IWL owned and maintained in Lake County, Indiana.³⁴⁵

As a not-for-profit organization, IWL dedicated itself, “to the preservation of natural resources within the United States and educating the public with respect to utilizing and enjoying those natural resources.”³⁴⁶ IWL claimed that the thirty acres of wetlands and water which IWL owned was entitled to an exemption from Indiana’s property tax because such property was used for a charitable purpose.³⁴⁷ IWL supported its position with two arguments: (1) that the property was exempt through IC 6-1.1-10-16(c)(3), and (2) that the property was entitled to an exemption on equitable grounds.³⁴⁸

In resolving whether or not IWL’s property was entitled to an exemption from the property tax, the Tax Court discussed Indiana’s property tax scheme.³⁴⁹ The Tax Court noted that all tangible property is subject to property taxation in the State of Indiana.³⁵⁰ However, the Indiana constitution provides that the Indiana general assembly may exempt from property taxation any property,

340. *U-Haul*, 896 N.E.2d at 1259.

341. *Id.*

342. *Id.*

343. *Id.*

344. *Id.* at 1260.

345. *Izaak Walton League of Am. v. Lake County Prop. Tax Assessment Bd. of Appeals*, 881 N.E.2d 737, 739 (Ind. Tax Ct. 2008).

346. *Id.*

347. *Id.* at 740.

348. *Id.*

349. *Id.*

350. *Id.*

“being used for municipal, educational, literary, scientific, religious, or charitable purposes”³⁵¹ and through its constitutional authority, the Indiana General Assembly enacted IC 6-1.1-10-16(d) which provides that all, or part, of a building is exempt from property taxation if the property is used for charitable purposes and if certain other conditions are met.³⁵²

IWL relied on IC 6-1.1-10-16(c), which, as amended by the Indiana General Assembly in 2003, states that land would be exempt if the land were: “[O]wned by a nonprofit entity established for the purpose of retaining and preserving land and water for their natural characteristics . . . [provided the land] does not exceed five hundred (500) acres[] and is not used by the nonprofit to make a profit.”³⁵³

In denying IWL’s exemption request, both the Lake County PTABOA and the IBTR relied on the 2000 version of IC 6-1.1-10-16.³⁵⁴ Under the 2000 version of IC 6-1.1-10-16(d), the IBTR determined that an exemption was not proper.³⁵⁵ Therefore, the specific question before the Tax Court was whether the 2000 or 2003 version of IC 6-1.1-10-16 applied to IWL’s exemption request.

IWL argued that the 2003 version of IC 6-1.1-10-16 applied because when the PTABOA issued its denial in 2004 the 2003 version was in effect.³⁵⁶ The Tax Court, however, determined that IWL was incorrect in relying on the 2003 version of the statute.³⁵⁷ The Tax Court stated: “Statutes and statutory amendments are to be given prospective effect only, unless the legislature has unambiguously and unequivocally intended retroactive effect as well.”³⁵⁸ As the party seeking an exemption, IWL had the burden of showing that the 2003 statute was to have retroactive effect.³⁵⁹ IWL sought to meet its burden through the text of a 2005 non-code section.³⁶⁰ The Tax Court, however, determined that IWL did not comply with the requirement of the non-code provision.³⁶¹ Under subsection (c) of the non-code provision, IWL was required to file two separate exemption applications.³⁶² Because IWL did not comply with the statutory procedures for obtaining an exemption, the Tax Court held that IWL had waived its right to an exemption.³⁶³

As stated previously, IWL also argued that it was entitled to an exemption on equitable grounds; specifically through the doctrines of legislative

351. *Id.* (quoting IND. CONST. art. 10, § 1(a)(1)).

352. *Id.*

353. *Id.* (quoting IND. CODE § 6-1.1-10-16(c)(3) (2006)).

354. *Id.*

355. *Id.*

356. *Id.* at 740-41.

357. *Id.* at 741.

358. *Id.*

359. *Id.*

360. *Id.*

361. *Id.* at 742.

362. *Id.* at 741-42.

363. *Id.* at 742.

acquiescence, equitable estoppel, and laches.³⁶⁴

Under the doctrine of legislative acquiescence, the Tax Court stated that IWL needed to show “(1) there is a longstanding administrative interpretation of ambiguous statutory language (2) to which the legislature is presumed to have acquiesced because it has not made a subsequent change to that statutory language.”³⁶⁵ The Tax Court disagreed with IWL’s argument. The Tax Court stated that, “[e]ven assuming the language of the 2000 version . . . was ambiguous, the non-code section specifically required a taxpayer like IWL to reapply for exemption.”³⁶⁶ Therefore, IWL’s argument based on the doctrine of legislative acquiescence failed.³⁶⁷

IWL also argued it was entitled to an exemption based on equitable estoppel.³⁶⁸ The Tax Court cited the elements of equitable estoppel as:

(1) a representation or concealment of material fact; (2) made by a person with knowledge of the fact and with the intention the other party act upon it; (3) to a party ignorant of the fact; (4) which induces the other party to rely or act upon it to his detriment.³⁶⁹

The Tax Court explained the general rule of equitable estoppel claims against government entities and its exception:

Equitable estoppel cannot ordinarily be applied against government entities. The reason for this general rule is twofold. If the government could be estopped, then dishonest, incompetent or negligent public officials could damage the interests of the public. At the same time, if the government were bound by its employees’ unauthorized representations, then government itself, could be precluded from functioning.

However, application of the doctrine against the government is not absolutely prohibited. The exception to the general rule exists where the public interest would be threatened by the government’s conduct³⁷⁰

The Tax Court held that IWL had not met the elements of equitable estoppel or offered a public policy reason favoring, “estoppel sufficient to *counter and outweigh* the general rule as well.”³⁷¹

IWL’s last equitable argument was based on the doctrine of laches.³⁷² IWL

364. *Id.*

365. *Id.*

366. *Id.* at 743 (footnote omitted).

367. *Id.*

368. *Id.*

369. *Id.* (citing *Hi-Way Dispatch, Inc. v. Ind. Dep’t of State Revenue*, 756 N.E.2d 587, 598-99 (Ind. Tax Ct. 2001)).

370. *Id.* (citing *Hi-Way Dispatch*, 756 N.E.2d at 588-99).

371. *Id.* at 743 (emphasis added).

372. *Id.* at 744.

argued that the PTABOA should have denied IWL's exemption request prior to 2000, and therefore, had waived its right to deny the exemption request for the year at issue.³⁷³ The Tax Court noted that the Indiana Supreme Court had already rejected a laches argument with respect to the collection of taxes: "[T]he taxing authorities of the state . . . could not by failing to do their duty, or by any act or failure to act, waive the right and duty of the state to assess and collect taxes for the years following."³⁷⁴ By rejecting IWL's laches argument the court effectively held that IWL was not entitled to a charitable purposes exemption for the year at issue.³⁷⁵

2. Cedar Lake Conference Ass'n v. Lake County Property Tax Assessment Board of Appeals.³⁷⁶—In *Cedar Lake*, the question before the Tax Court was whether a not-for-profit corporation was entitled to a religious purposes exemption from Indiana's real property tax.³⁷⁷

Cedar Lake Conference Association (Cedar Lake) owned and operated the Cedar Lake Bible Conference Center RV Park and Campground in Cedar Lake, Indiana.³⁷⁸ Cedar Lake owned two adjacent parcels, totaling approximately 71 acres, 27.678 of which were in dispute.³⁷⁹ The disputed acres consisted of a "bathhouse, soccer fields, an archery range, walking trails, an RV park, campgrounds, and a prayer garden."³⁸⁰ Cedar Lake claimed it used the acres at issue "to promote Christian principles to youth and adults in a camp environment."³⁸¹

In determining whether the disputed acreage should be exempt from taxation, the Tax Court explained the Indiana General Assembly's authority to exempt certain real property from taxation through IC 6-1.1-10-16.³⁸² Under that code section, "[a]ll or part of a building is exempt from property taxation if it is owned, occupied, and used . . . for . . . religious . . . purposes."³⁸³ The Tax Court noted that the exemption would generally extend to the land on which the building was situated, as well as the personal property contained therein.³⁸⁴

Indiana law places the burden of proving an exemption on the taxpayer.³⁸⁵ Therefore, with respect to a property tax exemption, the taxpayer must present probative evidence during the administrative hearing "that not only demonstrates that it owns, occupies, and uses its property for an exempt purpose, but also that

373. *Id.*

374. *Id.* (quoting *Walgreen Co. v. Gross Income Tax Div.*, 75 N.E.2d 784, 787 (Ind. 1947)).

375. *Id.*

376. 887 N.E.2d 205 (Ind. Tax Ct.), *trans. denied*, 898 N.E.2d 1228 (Ind. 2008).

377. *Id.* at 206.

378. *Id.*

379. *Id.* at 206-07.

380. *Id.*

381. *Id.* at 207.

382. *Id.* at 207-08.

383. *Id.* (quoting IND. CODE § 6-1.1-10-16(a) (2006)).

384. *Id.*

385. *Id.*

the exempt purpose is the property's predominate use.³⁸⁶

In *Cedar Lake*, the IBTR did not dispute that Cedar Lake owned and occupied the disputed acreage for religious purposes.³⁸⁷ The IBTR, however, held that Cedar Lake failed to demonstrate that the disputed property "was predominately used for religious purposes."³⁸⁸ The IBTR defended its conclusion because Cedar Lake did not provide "documentation with a breakdown of the time spent on [] religious [] and . . . nonreligious activities."³⁸⁹ Before the Tax Court, Cedar Lake argued that the IBTR's decision was not supported by substantial evidence.³⁹⁰

To support its position, Cedar Lake pointed specifically to an "Affidavit of RV Park Use" and an "RV Park Income Report."³⁹¹ The Tax Court held that these documents "established that 67.2% of the RV Park's income was attributable to the property's use by 'affiliated' individuals and 32.8% of its income was attributable to the property's use by 'non-affiliated' individuals."³⁹² Therefore, the Tax Court found that the IBTR's decision was not supported by substantial evidence.³⁹³

Although some recreational activities took place on the disputed acreage, the Tax Court explained that such activities did not necessarily mean the use of the property was not in furtherance of religious purposes.³⁹⁴ Viewed in its entirety the Tax Court held the evidence and testimony proved that Cedar Lake predominately used the dispute acreage for religious purposes.³⁹⁵ Therefore, the IBTR's final determination was reversed and Cedar Lake was allowed a charitable exemption for the disputed acreage.³⁹⁶

D. Financial Institution Tax Cases

1. *MBNA America Bank v. Indiana Department of State Revenue*.³⁹⁷—In *MBNA*, the Tax Court was presented with the question of whether or not the Commerce Clause of the United States Constitution requires an out-of-state national bank to have a physical presence in the State of Indiana in order for it to be subject to the state Financial Institutions Tax (FIT).³⁹⁸

MBNA is a national bank whose principal place of business for the taxable

386. *Id.*

387. *Id.*

388. *Id.*

389. *Id.* (internal quotations omitted).

390. *Id.*

391. *Id.*

392. *Id.*

393. *Id.*

394. *Id.* at 209.

395. *Id.*

396. *Id.*

397. 895 N.E.2d 140 (Ind. Tax Ct. 2008).

398. *Id.* at 141.

years at issue was Delaware.³⁹⁹ MBNA had issued Visa and MasterCard credit cards to consumers throughout the State of Indiana.⁴⁰⁰ For the taxable years at issue, MBNA did not have any place of business within Indiana, nor did any MBNA employees enter the state on business.⁴⁰¹ Indiana consumers of MBNA's credit cards were solicited either through telephone or mail communications.⁴⁰² MBNA extended credit to Indiana consumers and collected interest and fees from them during the years in dispute.⁴⁰³

Based on the above facts, the Department sought payment of the state FIT from MBNA.⁴⁰⁴ MBNA paid the proposed FIT assessment in full and requested a refund for the amount paid.⁴⁰⁵ The Department denied MBNA's refund request.⁴⁰⁶

The Tax Court explained that the Commerce Clause prohibits states from imposing taxes on out-of-state businesses unless the business has a "substantial nexus" with the taxing state.⁴⁰⁷ Before the Tax Court, the Department argued that MBNA's "economic presence" in Indiana satisfied the Commerce Clause's "substantial nexus" requirement.⁴⁰⁸ It was MBNA's contention, however, that "economic presence" was not enough to satisfy the "substantial nexus" requirement.⁴⁰⁹ MBNA contended that it must have a physical presence in Indiana in order to be subject to the state FIT.⁴¹⁰ MBNA argued that the Department, in denying its refund request, ignored two important United States Supreme Court decisions.⁴¹¹ *National Bellas Hess v. Department of Revenue of Illinois*⁴¹² and *Quill Corp. v. North Dakota*.⁴¹³ In determining whether MBNA was subject to Indiana's FIT, the Tax Court had to determine whether the Supreme Court's decisions in *Bellas Hess* and *Quill* governed and, if not, whether MBNA's economic presence in Indiana created a substantial nexus under the Commerce Clause.⁴¹⁴

In *Bellas Hess*, the U.S. Supreme Court explained that an out-of-state vendor is not required to remit *use tax* when its only activity in the state is through the

399. *Id.*

400. *Id.*

401. *Id.*

402. *Id.*

403. *Id.*

404. *Id.*

405. *Id.*

406. *Id.*

407. *Id.*

408. *Id.* at 142.

409. *Id.*

410. *Id.*

411. *Id.*

412. 386 U.S. 753 (1967), *overruled in part by* *Quill Corp. v. N.D.*, 504 U.S. 298 (1992).

413. 504 U.S. 298 (1992).

414. *MBNA*, 895 N.E.2d at 142.

mail or common carrier.⁴¹⁵ The physical presence requirement, for the purposes of *sales and use taxes*, was reaffirmed by the Supreme Court in *Quill*.⁴¹⁶ Therefore, MBNA argued that *Bellas Hess* and *Quill* prohibited the State of Indiana from imposing FIT based solely on its economic presence within the State.

The Tax Court disagreed and stated:

[T]his Court finds that the Supreme Court has not extended the physical presence requirement beyond the realm of sales and use taxes. Thus, *Bellas Hess* and *Quill* do not control the outcome of this case. Accordingly, the Supreme Court has left the door open for this Court to determine, as a matter of first impression, whether an economic presence can also satisfy the substantial nexus requirement for purposes of the FIT.⁴¹⁷

Because it was a matter of first impression in Indiana, the Tax Court looked to other states that had already decided whether economic presence was sufficient to create a substantial nexus for taxes, other than sales or use taxes, under the Commerce Clause.⁴¹⁸ The Tax Court noted that two state courts had already analyzed whether the imposition of tax on the income of a company, “who issued credit cards in the taxing state, but did not have a physical presence therein” was allowed under the Commerce Clause.⁴¹⁹

In *J.C. Penney National Bank v. Johnson*,⁴²⁰ the Tennessee Court of Appeals determined that *Bellas Hess* and *Quill* governed and a franchise tax could not be imposed without the company’s physical presence in Tennessee.⁴²¹ In reaching its decision the Tennessee court stated that it was not within its duty to determine whether franchise or excise taxes should be treated any differently than sales or use taxes under the Commerce Clause.⁴²²

When confronted with the same question, however, the Supreme Court of West Virginia reached the opposite result.⁴²³ In *Tax Commissioner of West Virginia v. MBNA America Bank*,⁴²⁴ the Court stated that the physical presence requirement articulated in *Bellas Hess* and affirmed in *Quill* only applies to sales and use taxes.⁴²⁵

The Tax Court found the West Virginia Supreme Court’s reasoning

415. *Bellas Hess*, 386 US. at 757-58.

416. *Quill*, 504 U.S. at 316-17.

417. *MBNA*, 895 N.E.2d at 143.

418. *Id.*

419. *Id.*

420. 19 S.W.3d 831 (Tenn. Ct. App. 1999).

421. *Id.* at 839.

422. *Id.*

423. *See MBNA*, 895 N.E.2d at 143.

424. 640 S.E.2d 226 (W. Va. 2006), *cert. denied*, *FIA Card Servs. v. Tax Comm’r of W. Va.*, 127 S. Ct. 2997 (2007).

425. *Id.* at 232.

persuasive. The Tax Court noted the four reasons the West Virginia Court gave for reaching its conclusion: (1) *Quill*'s reaffirmation of the physical presence requirement articulated in *Bellas Hess* was really based on *stare decisis*, (2) *Quill* expressly limited its holding to sales and use taxes, (3) the collection of sales and use taxes places a greater burden on interstate commerce than what is required for franchise taxes, and (4) the physical presence test is a "poor measuring stick of an entity's true nexus with a state" with respect to franchise and income taxes.⁴²⁶

Therefore, the Tax Court adopted the reasoning of the West Virginia Supreme Court and held that MBNA's economic presence in Indiana created a substantial nexus within Indiana for purpose of the state FIT.⁴²⁷

E. State And Local Government Cases

1. *Perry v. Indiana Department of Local Government Finance*.⁴²⁸—In *Perry*, the Tax Court was presented with the question of whether the DLGF erred in approving emergency and equipment loans that had been passed in two resolutions authorizing Madison Township to incur indebtedness to support its firefighting operations.⁴²⁹

On March 21, 2007, the Madison Township Board (Board) authorized an emergency loan, "not to exceed \$700,000.00, in order to fund the fire department's operating expenses through the end of the year."⁴³⁰ Additionally, the Board authorized an equipment loan, "not to exceed \$650,000.00, so that the township could replace one of its two fire engines, replace one of its two ambulances, and purchase related equipment for those emergency vehicles."⁴³¹ On March 30, 2007, the Petitioners filed objections to the Board's activities with the Morgan County Auditor, stating the proposed loans were "unnecessary and unwise."⁴³²

After conducting two separate hearings on the objections, the DLGF approved both loans. The DLGF did, however, modify the amount of the emergency loan to \$409,000.⁴³³ On appeal of the DLGF's findings before the Tax Court, the Petitioners argued that the DLGF erred in approving the loan requests by ignoring "substantial evidence [demonstrating] that the loans constituted unnecessary expenditures."⁴³⁴ Specifically, Petitioners argued that no emergency existed which would require an emergency loan, and the equipment loan was unnecessary because the Board had not demonstrated a need

426. *MBNA*, 895 N.E.2d at 143-44 (quoting *Tax Comm'r*, 640 S.E.2d at 234).

427. *Id.* at 144.

428. 892 N.E.2d 1281 (Ind. Tax Ct. 2008).

429. *Id.* at 1282.

430. *Id.*

431. *Id.*

432. *Id.*

433. *Id.*

434. *Id.* at 1283.

for new equipment.⁴³⁵

a. The emergency loan.—Indiana law provides that, “[e]ach township shall annually establish a township firefighting fund which is to be the exclusive fund used by the township for the payment of costs attributable to providing fire protection or emergency services.”⁴³⁶ If, however, a township board determines that an emergency exists which will require the expenditure of additional funds not originally included in the budget estimate, “it may issue a special order . . . authorizing the executive to borrow a specified amount of money sufficient to meet the emergency.”⁴³⁷ The Indiana General Assembly has defined “emergency” as, “a situation that could not reasonably be foreseen and that threatens the public health, welfare, or safety and requires immediate action.”⁴³⁸

The Board authorized the emergency loan after concluding that the original budget was inadequate “to finance firefighters['] salaries, FICA, health insurance[,] and other essential operating expenses.”⁴³⁹ Petitioners argued that the township’s firefighting fund was insufficient to cover firefighting expenses due to the Board’s “poorly-timed” decision to transition the fire department from “paid stand-by” status to “career/full-time” status—not because of any ongoing emergency.⁴⁴⁰ Petitioners argued that the fire department had been adequately staffed under the paid stand-by system, and that there was nothing to suggest continuing to operate under the same system would pose “an immediate threat to the public’s safety.”⁴⁴¹

At the hearing before the DLGF, the Madison Township fire chief articulated why the original 2007 firefighting budget was inadequate:

First, at four personnel per station per day, the fire stations were understaffed, pursuant to federal guidelines, for fighting fires. Second, given that the number of home-response volunteer firefighters has been gradually decreasing over the years (consistent with a national trend), the fire department must hire career firefighters to fill that void in manpower; offering career firefighters “paid stand-by” is not a competitive wage. Third, because the number of emergency medical runs within the township increased nearly 300% between 2000 and 2006, a second paramedic must be hired. Finally, Madison Township has seen exponential population growth over the last five years and there is no expectation that the growth will cease.⁴⁴²

Supported by the above evidence, the Tax Court held that the DLGF did not err in approving the emergency loan. The Tax Court stated:

435. *Id.*

436. IND. CODE § 36-8-13-4(a) (2007 & Supp. 2008).

437. *Id.* § 36-6-6-14(b).

438. *Id.* § 36-1-2-4.5.

439. *Perry*, 892 N.E.2d at 1283.

440. *Id.* at 1283-84.

441. *Id.* at 1284.

442. *Id.* at 1284-85 (internal citations omitted).

The decision as to how to best provide firefighting services within the township is one that properly lies with the local fire department and the Board. Consequently, they have a great deal of discretion in implementing policies that best meet the needs of the citizens of the township as a whole.⁴⁴³

b. The equipment loan.—Indiana law authorizes a township to “[p]urchase firefighting and emergency services apparatus and equipment for the township . . . to provide services within the township.”⁴⁴⁴ Petitioner argued that the Board overstepped its authority in purchasing new fire equipment.⁴⁴⁵ Petitioners contended that the Board merely *wanted* the equipment, and did not demonstrate that the department needed the equipment to adequately protect township citizens.⁴⁴⁶

The Tax Court, however, found that the Board did demonstrate a need for new equipment within the fire department.⁴⁴⁷ Before the DLGF the Board presented evidence that the proceeds of the equipment loan would be spent to replace a fire engine which was one year away from its life expectancy.⁴⁴⁸ The engine cost the township “\$20,000 annually in repairs and maintenance and was actually out of service for 87 days in 2006 due to repairs.”⁴⁴⁹ The Board also presented evidence demonstrating a need to replace a ten-year old ambulance with 117,000 miles on it.⁴⁵⁰ The ambulance cost \$10,000 annually to maintain.⁴⁵¹ The Madison Township fire chief explained “that the great population growth in Madison Township, the ‘run load’ of the fire engines has doubled within the last couple of years, and the training hours on those vehicles has quadrupled. Similarly, the number of ambulance runs has tripled since 2000.”⁴⁵²

The Tax Court held that a “reasonable mind” would accept this evidence as adequate to support the DLGF’s finding that Madison Township needed new firefighting equipment.⁴⁵³

2. *Clark-Pleasant Community School Corp. v. Department of Local Government Finance.*⁴⁵⁴—In *Clark-Pleasant*, the Tax Court was presented with the question of whether the DLGF’s rejection of a lease agreement between the Clark-Pleasant Community School Corporation (School Corporation) and the Clark Pleasant Middle School Building Corporation (Building Corporation) was

443. *Id.* at 1285.

444. IND. CODE § 36-8-13-3(a)(1) (2007 & Supp. 2008).

445. *Perry*, 892 N.E.2d at 1285.

446. *Id.*

447. *Id.*

448. *Id.*

449. *Id.*

450. *Id.* at 1285-86.

451. *Id.* at 1286.

452. *Id.* (internal citations omitted).

453. *Id.*

454. 899 N.E.2d 762 (Ind. Tax Ct. 2008).

an abuse of discretion.⁴⁵⁵

The School Corporation was located in Johnson County, Indiana.⁴⁵⁶ Beginning in 2005, the School Corporation's overcrowded high school began using portable classrooms to accommodate student needs.⁴⁵⁷ The School Corporation projected its total enrollment (comprised of one high school, one middle school, one intermediate school, and four elementary schools) to increase by another "350 to 400 new students per year for the next ten years."⁴⁵⁸ Based on this projection, the School Corporation commissioned a task force comprising both school staff and members of the community to develop a construction plan that would accommodate the School Corporation's growth.⁴⁵⁹ The task force met twenty-two times and the School Corporation conducted six public forums to gather input on how to best handle the situation.⁴⁶⁰ The School Corporation ultimately decided to convert some of its buildings, renovate others, and construct a new middle school in order to meet the district's needs.⁴⁶¹ The School Corporation proposed to spend \$60,000,000 to make the changes.⁴⁶²

The School Corporation conducted a public hearing on the proposed changes, at which time, two people spoke out against the project.⁴⁶³ The School Corporation voted unanimously to proceed with the changes.⁴⁶⁴ A remonstrance was attempted by those opposed to the project, but the process failed.⁴⁶⁵ The School Corporation then decided to move forward with its changes, and entered into a lease agreement, whereby the School Corporation would pay the Building Corporation an annual rental payment for twenty-seven years.⁴⁶⁶ The School Corporation petitioned the DLGF to approve the lease agreement. Upon receipt, the DLGF referred the petition to the School Property Tax Control Board for its recommendation.⁴⁶⁷

The School Property Tax Control Board conducted a hearing on the matter in which both opponents and proponents of the lease agreement were heard.⁴⁶⁸ The School Property Tax Control Board ultimately recommended that the DLGF approve the lease.⁴⁶⁹

The Commissioner of the DLGF then sent letters to each member of the

455. *Id.* at 765.

456. *Id.* at 763.

457. *Id.*

458. *Id.*

459. *Id.*

460. *Id.*

461. *Id.*

462. *Id.*

463. *Id.*

464. *Id.*

465. *Id.* at 764.

466. *Id.*

467. *Id.*

468. *Id.*

469. *Id.*

School Corporation's board.⁴⁷⁰ In the letters, the board members were urged to meet with the remonstrators "to bridge the gap" of disagreement.⁴⁷¹ However, the School Corporation did not do so.⁴⁷² Shortly thereafter the DLGF rejected the lease agreement between School Corporation and Building Corporation.⁴⁷³

Before the Tax Court, the School Corporation argued that the DLGF's decision to reject the lease agreement was "not supported by the evidence" and therefore constituted an abuse of discretion.⁴⁷⁴ The DLGF argued that it "was within its statutory discretion to deny" the lease agreement.⁴⁷⁵

The Tax Court noted that "[w]hen the DLGF reviews school construction projects, it does so as a tax specialist."⁴⁷⁶ The Tax Court explained that the function of the DLGF is "not to pass judgment on how a school corporation chooses to educate its students" but rather the DLGF should analyze the need for "capital construction in light of its chosen educational programs and policies."⁴⁷⁷ The DLGF, the Tax Court explained, is required to consider several factors when determining whether or not to approve a project:

- (1) The current and proposed square footage of school building space per student.
- (2) Enrollment patterns within the school corporation.
- (3) The age and condition of the current school facilities.
- (4) The cost per square foot of the school building construction project.
- (5) The effect that completion of the school building construction project would have on the school corporation's tax rate.
- (6) Any other pertinent matter.⁴⁷⁸

The Tax Court found that the School Corporation presented, to both the public and the School Property Tax Control Board, evidence addressing each of the factors.⁴⁷⁹ The Tax Court concluded that the DLGF had denied the lease for four reasons:

- (1) the cost of [the construction] was too high compared to other

470. *Id.*

471. *Id.*

472. *Id.*

473. *Id.*

474. *Id.* at 765.

475. *Id.*

476. *Id.* at 764.

477. *Id.*

478. *Id.* at 765. (citing IND. CODE § 20-46-7-11 (2007 & Supp. 2008)).

479. *Id.*

projects;

(2) the growth in the new home construction market was slower than anticipated;

(3) the school district's current tax rate is too high; and

(4) the School Corporation did not modify the proposed project to address the remonstrators' concerns.⁴⁸⁰

The Tax Court held, however, that none of the DLGF's four reasons were supported by the evidence.⁴⁸¹

To reach its conclusion that the cost of the proposed project was too high, the DLGF looked at only four other middle schools built in 2007. The Tax Court held that such a comparison, "without any further explanation," did not allow for the conclusion the DLGF reached.⁴⁸² The Tax Court also stated that the DLGF improperly relied on a newspaper article to determine that the growth of the new home market was slower than the School Corporation anticipated.⁴⁸³ The Tax Court noted that evidence that new homes may be built at a slower than expected pace did not "rebut the School Corporation's evidence that enrollment is still projected to increase."⁴⁸⁴ The Tax Court additionally noted that the DLGF had determined that the school district's tax rate was too high without providing "an accurate comparison" of other tax rates.⁴⁸⁵ Finally, the DLGF "went too far" in basing its decision to deny the lease agreement because the School Corporation did not adhere to the Commissioner's request and "bridge the gap" of disagreement with the remonstrators.⁴⁸⁶

The Tax Court stated that it "will give deference to whatever factor or reason the DLGF bases its final determination on as long as the DLGF's reasoning is supported by substantial evidence."⁴⁸⁷ The Tax Court explained that "substantial evidence" is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion"⁴⁸⁸ and held that the DLGF's decision to deny the project proposal was not supported by substantial evidence.⁴⁸⁹ Therefore, the Tax Court remanded the case to the DLGF for a final determination consistent with its holding.⁴⁹⁰

480. *Id.* at 767.

481. *Id.*

482. *Id.*

483. *Id.*

484. *Id.*

485. *Id.* at 768.

486. *Id.*

487. *Id.* at 765.

488. *Id.* (quoting *Amax Inc. v. State Bd. of Tax Comm'rs*, 552 N.E.2d 850, 852 (Ind. Tax Ct. 1990)).

489. *Id.* at 769.

490. *Id.*

F. Inheritance Tax Cases

1. *Indiana Department of State Revenue, Inheritance Tax Division v. Miller (Miller I)*.⁴⁹¹—In *Miller I*, the Tax Court was presented with the question of whether or not the Vanderburgh Superior Court (probate court) abused its discretion in granting the Department's motion for extension of time to file its notice of appeal from the probate court's decision.⁴⁹²

On February 2, 2000, Virgil Miller passed away.⁴⁹³ On October 6, 2000, his "Estate filed an Indiana inheritance tax return with the probate court reporting that no inheritance tax was due."⁴⁹⁴ On October 25, 2000, the probate court issued an order accepting the Estate's inheritance tax return.⁴⁹⁵ The Department filed a "Petition for Rehearing, Reappraisal and Redetermination of Inheritance and Transfer Tax" (Department's Petition) alleging that the Estate actually owed \$200,000 of inheritance taxes as a result of an improper distribution of certain trust assets.⁴⁹⁶ The probate court held a hearing on April 25, 2006, in which it was determined that the assets in dispute had been properly distributed by the Estate.⁴⁹⁷ The probate court, therefore, denied the Department's Petition.⁴⁹⁸

Also, on April 25, 2006, the probate court requested that the estate prepare an entry "reflecting its statement and submit that entry to the Department for its review."⁴⁹⁹ The clerk of the probate court made a record of the hearing on the Chronological Case Summary (CCS).⁵⁰⁰ On May 1, 2006, the Department received the estate's proposed entry, "and had no objections thereto."⁵⁰¹ On May 3, 2006, the proposed entry was approved and signed by the probate court.⁵⁰² However, the probate court's CCS failed to indicate that the clerk "mailed a copy of the signed entry to either the Estate or the Department."⁵⁰³

On June 20, 2006, the Department's counsel telephoned the probate court and learned that the entry had been approved and signed on May 3, 2006.⁵⁰⁴ On June 21, 2006, the Department requested an extension to file a notice of appeal of the probate court's determination on the basis that it never received the signed

491. 894 N.E.2d 286 (Ind. Tax Ct.), *reh'g granted*, 897 N.E.2d 545 (Ind. Tax Ct. 2008), *trans. denied*.

492. *Id.* at 287.

493. *Id.*

494. *Id.* at 287-88.

495. *Id.* at 288.

496. *Id.*

497. *Id.*

498. *Id.*

499. *Id.*

500. *Id.*

501. *Id.*

502. *Id.*

503. *Id.*

504. *Id.*

entry of May 3, 2006.⁵⁰⁵ On June 27, 2006, the probate court granted the Department's request.⁵⁰⁶ The Estate then filed a "Motion to Correct Error," which the probate court subsequently denied.⁵⁰⁷

The Tax Court reviewed the probate court's decision with respect to the application of Trial Rule 72(E) under an "abuse of discretion" standard and noted the general rule with respect to the time frame that a losing party has in order to appeal a probate court's final judgment concerning inheritance tax.⁵⁰⁸ The Tax Court stated that the losing party must file: "[A] Notice of Appeal with the [probate] court clerk within thirty (30) days after the entry of a Final Judgment."⁵⁰⁹ The Tax Court further noted that a losing party's failure to file a notice of appeal within thirty days does not necessarily preclude a right to appeal.⁵¹⁰ Under Indiana Trial Rule 72(E), a party may be allowed additional time to perfect an appeal:

When the mailing of a copy of the entry by the Clerk is not evidenced by a note made by the Clerk upon the [CCS], the Court, upon application for good cause shown, may grant an extension of any time limitation within which to contest such ruling, order or judgment to any party who was *without actual knowledge*.⁵¹¹

Therefore, through Trial Rule 72(E), additional time to appeal is not granted when the CCS indicated that notice was mailed or when the losing party had actual knowledge of the court's ruling.⁵¹² The estate argued that the Department obtained actual knowledge of the court's ruling when the probate court orally rendered the judgment at the April 25, 2006 hearing.⁵¹³ The Department argued that the decision of the probate court did not become final until the court signed the judgment on June 20, 2006.⁵¹⁴ Thus, the Tax Court had to determine whether the probate court issued a final judgment at the April 25, 2006 hearing, and if so, whether the Department had actual knowledge of the judgment sufficient to preclude additional time to appeal under Trial Rule 72(E).⁵¹⁵

In determining whether the probate court disposed of all the claims to all the parties at the April 25, 2006 hearing, the Tax Court found the following exchange instructive:

[COURT]: I don't see any reason to . . . set aside the distribution or the

505. *Id.*

506. *Id.*

507. *Id.*

508. *Id.*

509. IND. APP. R. 9(A)(1).

510. *Miller I*, 894 N.E.2d at 289.

511. IND. TRIAL R. 72(E).

512. *See id.*

513. *Miller I*, 894 N.E.2d at 289.

514. *Id.*

515. *Id.*

work that was done We'll show that the State's [Petition] is denied. Show that the . . . Trusts were properly handled, . . . and distribution made. How long will it take you [to] close this Estate up, do you think?

[ESTATE]: I'm not sure what all else would be involved. I'm not sure I'm understanding your question, sir.

[COURT]: Oh, I guess you have the right to appeal this decision if you wish to.

[DEPARTMENT]: Yes.

[COURT]: Are you planning to do that?

[DEPARTMENT]: Yes, Your Honor.

[COURT]: Okay we'll show the appeal . . . how much time do you need for the appeal?

[DEPARTMENT]: Uh, I would . . . I would get the, uh, notice of appeal in within thirty days, Your Honor.

[COURT]: That's fine. Okay, anything else? Will you prepare the entry, then?

[ESTATE]: Sure. Yes, Your Honor.⁵¹⁶

The Tax Court found that the above exchange evidenced that the probate court rendered a final judgment at the April 25, 2006 hearing because: (1) the issue of whether or not the trust assets were properly distributed was decided, (2) the Department indicated it wished to appeal the decision, (3) when asked if there were any additional issues for the probate court to consider neither party raised another issue, (4) the estate was asked to prepare an entry of the decision, and (5) on April 25, 2006, the clerk of the probate court entered a notation in the CCS stating that the Department's Petition had been denied by the probate court.⁵¹⁷

The Tax Court also held that the Department had actual knowledge of the April 25, 2006 final judgment.⁵¹⁸ Therefore, the probate court abused its discretion under Trial Rule 72(E) to grant the Department additional time to file its appeal and the Tax Court dismissed the Department's appeal.⁵¹⁹

2. Indiana Department of State Revenue, Inheritance Tax Division v. Miller

516. *Id.* at 289-90.

517. *Id.* at 290.

518. *Id.* at 290-91.

519. *Id.* at 291.

(Miller II).⁵²⁰—In *Miller II*, the Tax Court considered the Department's Petition for Rehearing with respect to the Tax Court's prior opinion issued on October 6, 2008.⁵²¹ In *Miller II*, the Tax Court affirmed the prior opinion, *Miller I*, in its entirety.⁵²²

In *Miller I*, the Tax Court found that the probate court abused its discretion in granting the Department additional time to file a notice of appeal under Indiana Trial Rule 72(E), when the Department had actual knowledge of the final judgment prior to requesting an extension.⁵²³ *Miller I* was issued on October 6, 2008.⁵²⁴ On November 5, 2008, the Department filed a petition for rehearing asserting, as it did in *Miller I*, that the Department did not have actual knowledge of the probate court's final judgment rendered on April 25, 2006, because the judgment was not reduced to writing and signed by the probate court on that date.⁵²⁵ The Department's petition for rehearing also claimed that *Miller I* "not only alters the manner in which appeals were commenced but also conflicts with *Collins v. Covenant Mutual Insurance Co.*"⁵²⁶

The Tax Court noted that a proper petition for rehearing affords the court the "opportunity to correct its own omissions or errors."⁵²⁷ A petition for rehearing is not supposed to ask the court to simply re-examine the issues which were decided against the party filing the petition.⁵²⁸ Therefore, the Tax Court denied the Department's petition with respect to its first claim, because the Department simply asked the court to re-examine the issues decided against it in *Miller I*.⁵²⁹

The Tax Court granted the Department's petition for rehearing "for the sole purpose of clarifying" *Miller I*.⁵³⁰ In its petition, the Department claimed that *Miller I* altered "the manner by which the appellate time clock commences."⁵³¹ The Department claimed that post-*Miller I* the rendering of an oral judgment would trigger the appellate time clock.⁵³² The Tax Court found, however, that the Department confused the issue decided in *Miller I*.⁵³³ The Tax Court noted that "the time to initiate an appeal usually commences when the ruling, order, or judgment is entered into the [Record of Judgments and Orders (RJO)]."⁵³⁴ The Tax Court explained further:

520. 897 N.E.2d 545 (Ind. Tax Ct. 2008), *trans. denied*.

521. *Id.* at 545-46.

522. *Id.* at 547.

523. *Id.* at 545.

524. *Id.*

525. *Id.* at 545-46.

526. *Id.* at 546 (citing *Collins v. Covenant Mut. Ins. Co.*, 644 N.E.2d 116 (Ind. 1994)).

527. *Id.* (quoting *Griffin v. State*, 763 N.E.2d 450, 450-51 (Ind. 2002)).

528. *Id.* (citing *Griffin*, 763 N.E.2d at 450-51).

529. *Id.*

530. *Id.*

531. *Id.*

532. *Id.*

533. *Id.*

534. *Id.* (citing *Smith v. Deem*, 834 N.E.2d 1100, 1109-10 (Ind. Ct. App. 2005)).

The issue of when the Department's period for filing its notice of appeal commenced, however, was not the issue that the Estate presented to this Court on cross-appeal. Rather, the issue the Estate presented to this Court on cross-appeal was whether the probate court properly granted the Department additional time to file its notice of appeal despite the fact that it had obtained actual knowledge of the judgment before it was entered into the RJO.⁵³⁵

Because the Tax Court treated the issues separately in *Miller I*, and only considered whether additional time was proper, *Miller I* did not alter the manner in which the appellate time clock commences.⁵³⁶

The Tax Court also disagreed with the Department's argument that *Miller I* conflicted with *Collins*.⁵³⁷ *Collins* established that Indiana Trial Rule 72(E) was the "sole vehicle" for a party to obtain an extension of time to file a notice of appeal.⁵³⁸ The Department argued that all it was required to show under *Collins* is that the probate court's CCS did not show that the judgment had been mailed to the Department.⁵³⁹ The Tax Court said:

[T]he Department's construction of Indiana Trial Rule 72(E) invites the Court to ignore the portions of the Rule referring to good cause, lack of actual knowledge of the judgment, and reliance upon incorrect representations by Court personnel. Those portions of the Rule reflect what the Rule intends to prevent—the "forfeiture of appellate rights due to expiration of time caused by [an] attorney's *ignorance of the existence of a ruling or order*."⁵⁴⁰

Because the *Miller I* court determined that the Department had actual knowledge of the judgment of the probate court, the Tax Court rejected the Department's interpretation of Trial Rule 72(E).⁵⁴¹

535. *Id.*

536. *Id.*

537. *Id.* at 547.

538. *Id.* (citing *Collins v. Covenant Mut. Ins. Co.*, 644 N.E.2d 116, 117 (Ind. 1994)).

539. *Id.*

540. *Id.* (quoting *Markle v. Ind. State Teachers Ass'n*, 514 N.E.2d 612, 613 (Ind. 1987)).

541. *Id.*

