

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 2009. Whenever the term “GA” is used in this Article, such term refers only to the 116th Indiana 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 116th General Assembly. Whenever the term “Tax Court” is referred to in this Article, such term refers only to the Indiana 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, 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, such term refers only to the Indiana Department of State Revenue. Whenever the term “IC” or “Indiana Code” is used, such term refers only to the Indiana Code in effect at time of the publication of this Article. Whenever the term “ERA” is used, such term refers only to an Indiana Economic Revitalization Area. Whenever the term “CAGIT” is used, 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, such term refers only to the Indiana Economic Development Corporation. Whenever the term “CEDIT” is used, such term refers only to the Indiana County Economic Development Income Taxes. Whenever the term “IEDIT” is used, 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, 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 used, such term refers only to the County Board of Tax and Capital Projects.

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Whenever the term “PTABOA” is used in this Article, such term refers only to a Property Tax Assessment Board of Appeals.

I. INDIANA GENERAL ASSEMBLY LEGISLATION

The 116th GA passed several pieces of legislation affecting various areas of state and local taxation including property taxes, sales and use taxes, state income taxes, and local taxes.

A. Property Tax

The GA enacted a variety of changes to property tax legislation. But most of the amendments to the property tax laws are technical, and it takes an individual knowledgeable about property taxes to fully understand these amendments.

The GA made some minor administrative adjustments to the type of information that must be included on a sales disclosure form. The GA amended IC 6-1.1-5.5-5 to require that the sales disclosure form must include whether or not the transferee is using the form to claim one or more deductions under IC 6-1.1-12-44.¹ The GA further amended the statute to require that, if the transferee uses the sales disclosure form to claim a standard deduction under IC 6-1.1-12-37, the sales disclosure form must include sufficient instructions to permit a party to terminate that standard deduction.² The GA also amended IC 6-1.1-12-43(c)(2) to reflect this requirement.³

The GA also provided the county auditor additional power to terminate deductions if a taxpayer fails to comply with certain requirements. The GA amended IC 6-1.1-12-17.8 to give the county auditor discretion to terminate a deduction under IC 6-1.1-12-37 for assessment dates after January 15, 2012, if the individual seeking a deduction failed to comply with IC 6-1.1-22-8.1-b(9) before January 1, 2013.⁴ In order to terminate the deduction, the county auditor must mail notice of the termination to the last known address of the person liable for the property tax or to the last known address of the most recent owner of the property.⁵ The GA also amended the statute to require an individual who has become ineligible for the standard deduction under IC 6-1.1-12-37 to notify the auditor of that ineligibility.⁶ The GA further amended the statute to allow cooperative housing corporations to continue to receive a deduction under IC 6-1.1-12-37 for the current calendar without filing a statement if the cooperative housing corporation continues to remain eligible for the deduction.⁷ Along the same line, the GA amended the statute to allow an individual who was eligible

1. 2009 Ind. Acts 727.

2. *Id.*

3. *Id.* at 737.

4. *Id.* at 728.

5. *Id.*

6. *Id.*

7. *Id.* at 730.

for a homestead credit to remain eligible without filing a statement to that effect.⁸ But the law gave the county auditor discretion to terminate the deduction for assessment dates after January 15, 2012, if a new statement is not filed.⁹ The deduction may be reinstated if the taxpayer provides proof that the taxpayer is eligible.¹⁰

The GA amended IC 6-1.1-12-37 to change the definition of homestead in order to limit it to an individual's principal place of residence located in Indiana, which the individual owns, is buying on contract, or is entitled to occupy as a tenant-stockholder.¹¹ The GA further amended the statute to specifically exclude property owned by corporations, partnerships, LLCs, or other entities not described in the primary definition.¹² The GA also amended the statute to require taxpayers to file a statement to claim the deduction.¹³ This statement must include the parcel number, city, town or township, name of any other location of property owned by the applicant or applicant's spouse, applicant's name, and last five digits of applicant's or applicant's spouse's social security number.¹⁴ Furthermore, the GA amended the statute to require the taxpayer to notify the auditor of any change in the property's use that would effect the property's eligibility for the deduction.¹⁵ Finally, the GA amended the statute to require the DLGF to provide county auditors with access to the homestead property database.¹⁶

The GA amended IC 6-1.1-22-8.1 to require the county treasurer to send the taxpayer an explanation of the homestead credit under IC 6-1.1-20.4 and 6-3.5-6-13.¹⁷ The GA further amended the statute to require the county treasurer to provide the taxpayer with a statement that must be returned by the taxpayer to the county auditor with the taxpayer's verification of eligibility for the homestead credit.¹⁸ Failure to comply on the part of the taxpayer could result in the loss of the credit.¹⁹ The GA also amended the statute to allow this notice to be sent by electronic mail if the county adopts an authorizing ordinance.²⁰ In order to allow this to occur, the GA further amended the statute to require the DLGF to create a form to implement and explain the electronic mail option.²¹

On a minor note, the GA amended IC 6-1.1-22-9.7 to change the term

8. *Id.*

9. *Id.* at 731.

10. *Id.*

11. *Id.* at 731-32.

12. *Id.* at 732.

13. *Id.* at 733.

14. *Id.* at 733-34.

15. *Id.* at 734-35.

16. *Id.* at 735.

17. *Id.* at 743.

18. *Id.* at 744-45.

19. *Id.* at 745.

20. *Id.* at 746.

21. *Id.* at 746-47.

“checking account” to “account of the taxpayer that is held by a financial institution” throughout the statute.²²

Further, the GA amended IC 6-1.1-22.5-6 to allow the transmission of provisional statements of the county auditor via electronic mail.²³ Along the same line, the GA amended IC 6-1.1-22.5-8 to require that provisional statements include a checklist that shows all homestead credits and property tax deductions.²⁴ The GA further amended the statute to require the county auditor to include information in the provisional statement explaining the penalties a taxpayer could face for failing to update the taxpayer’s information if a credit or deduction no longer applies.²⁵

The GA passed new legislation that requires a taxpayer to make a payment of the additional taxes owed within thirty days if a property is not eligible for a deduction.²⁶ This new legislation also requires each county to establish a non-reverting land fund into which these payments will be deposited.²⁷ Funds deposited into the non-reverting land fund should be treated as miscellaneous revenue and cannot be considered in the budget for the county auditor.²⁸

The GA also passed new legislation that provides an owner of a model residence with a deduction of fifty percent of assessed value of the model residence as of the 2008 assessment date.²⁹ The property owner must file a statement with the county auditor in order to claim this deduction.³⁰

Moreover, the GA amended IC 6-1.1-4-4 to provide that for the “general assessment that begins after July 1, 2010, the assessed value of real property shall be based on the estimated true tax value of the property on the assessment date that is the basis for taxes payable in the year following [reassessment].”³¹ Similarly, the GA amended IC 6-1.1-4-4.5 to provide that “[f]or assessment dates after December 31, 2009, an adjustment in the assessed value of real property under [IC 6-1.1-4-4.5] shall be based on the estimated true tax value of the property on the assessment date.”³² The GA amended IC 6-1.1-4-13.6 to set a deadline of March 1 of each year for the Property Tax Board of Appeals to hold a hearing on a county’s general reassessment.³³ The GA also amended 6-1.1-4-22 to require that a notice of assessment must include a notice alerting taxpayers of the opportunity to appeal an assessment.³⁴

22. *Id.* at 750-56.

23. *Id.* at 757.

24. *Id.* at 758.

25. *Id.* at 758-59.

26. *Id.* at 762.

27. *Id.*

28. *Id.* at 763.

29. *Id.* at 1729.

30. *Id.* at 1730.

31. *Id.* at 1363-64.

32. *Id.* at 1364-65.

33. *Id.* at 1365.

34. *Id.* at 1366.

With regard to tangible personal property, the GA amended IC 6-1.1-15-1 to require a taxpayer to file a notice to obtain review of tangible personal property by the county board no later than May 10 or forty-five days after the tax statement is mailed by the county treasurer regardless of whether or not the assessing official changed the assessment.³⁵

Finally, the GA amended IC 6-1.1-22-8.1 to require the county treasurer to include an explanation that a property tax appeal “requires evidence relevant to the true tax value of the taxpayer’s property as of the assessment date.”³⁶

B. Sales and Use Tax

The GA made a number of minor changes to the Indiana Code with regard to Indiana’s sales and use taxes. The GA made some changes to ensure that Indiana complied with the Streamlined Sales and Use Tax Agreement of which Indiana is a full member, while other changes were administrative in nature.

With regard to the Streamlined Sales and Use Tax Agreement, the GA changed the sales tax definition of “gross retail income” to coincide with the Agreement.³⁷

The GA also amended IC 6-2.5-3-6 to make watercraft that are documented vessels and registered with the Coast Guard subject to the use tax.³⁸

The GA amended IC 6-2.5-5-8 to require that aircraft lease revenue must equal 7.5% of the value of the aircraft, but if the leased aircraft is predominately used in public transportation, it is exempt from the sales tax.³⁹ This provision applies retroactively to January 1, 2008.⁴⁰

The GA also amended IC 6-2.5-5-13 to provide a sales tax exemption for cable equipment used at a headend or similar facility operated by a person furnishing video services.⁴¹

In addition, the GA amended IC 6-2.5-5-18 and 6-2.5-5-19.5 to allow for a sales tax exemption for glucose-monitoring equipment and devices whether or not the items are prescribed for the patient.⁴² The GA also repealed the sales tax exemption for media production expenditures.⁴³

In an effort to take advantage of new technology, the GA amended IC 6-2.5-6-1 to require retailers that register as retail merchants after December 31, 2009, to file returns and remit sales and use tax payments through the Department’s online tax filing system (INtax).⁴⁴ Along this same line, the GA amended IC 6-

35. *Id.* at 1367.

36. *Id.* at 1374-75.

37. *Id.* at 2468-70.

38. *Id.* at 2470.

39. *Id.* at 2472.

40. *Id.*

41. *Id.* at 2473-74.

42. *Id.* at 2474-75.

43. *Id.* at 2855.

44. *Id.* at 2476.

2.5-7-10 to require taxpayers that collect prepaid sales tax from motor fuel retailers to make their semi-monthly remittance and reporting of sales and use taxes through the Department's electronic filing system.⁴⁵

The GA added IC 6-2.5-6-17 to require a retail merchant that is a consignee to collect and remit the sales tax based on the gross retail income of the consignment sale.⁴⁶

In an effort to both encourage alternative fuel use and offer the State Budget Agency some flexibility, the GA amended IC 6-2.5-7-5 to eliminate the \$1 million annual cap on the E85 deduction that may be claimed and allow the State Budget Agency to determine the amount of the annual cap.⁴⁷ The statute requires the agency—before August 1 of each year—to estimate whether there are sufficient funds available to provide the deduction and, if there are not, the program can be suspended for the subsequent calendar year.⁴⁸ The E85 deduction will be granted only for retail sales occurring from January 1 through March 31 of a calendar year.⁴⁹ The State Budget Agency has authority to suspend the deduction during the reporting period if it is determined that sufficient funds are not available.⁵⁰

In an effort to offer the state some flexibility, the GA amended IC 6-2.5-7-14 to require the Department to adjust the prepaid sales tax rate for gasoline semi-annually, and more often than semi-annually, if the average retail price of gasoline changes by more than twenty-five percent from the last determination.⁵¹ The amended statute further provides that the calculation for such adjustment to the prepayment rate will be based on eighty percent of the average price instead of ninety percent of the average price of gasoline before all taxes.⁵²

The GA amended IC 6-2.5-11-10 to require the Department to provide notification of a sales tax rate change at least thirty days in advance of the change.⁵³ If sufficient notice is not provided, or the seller cannot be liable for failure to collect at the new rate.⁵⁴ The law provides an exception if the seller fraudulently fails to collect at the new rate.⁵⁵

The GA amended IC 6-2.5-12-15 to require the sourcing of Internet access and telecommunications ancillary services to the customer's place of primary use.⁵⁶ The GA also amended IC 6-2.5-13-1 to make permanent the sourcing of floral wire delivery orders to the florist that takes the original order by

45. *Id.* at 2477.

46. *Id.* at 718.

47. *See id.* at 1546.

48. *Id.* at 1546-47.

49. *See id.*

50. *Id.*

51. *Id.* at 2478.

52. *Id.*

53. *Id.* at 2479-80.

54. *Id.*

55. *Id.* at 2480.

56. *Id.*

eliminating the sunset provision in current statute.⁵⁷

C. Adjusted Gross Income Tax

During 2009, the GA clarified a number of issues with regard to Indiana's adjusted gross income tax. The GA amended IC 6-3-1-3.5 to provide certain items of income be included within Indiana adjusted gross income in areas where the Indiana Code is decoupled from the IRC.⁵⁸ Items now required to be added back into adjusted gross income include the following: unemployment compensation excluded from federal gross income; the amount of income excluded from income for the discharge of debt on a qualified principal residence; income from the deferral of income arising from business indebtedness discharged in connection with the reacquisition after December 31, 2008; income attributed to bonus depreciation for restaurant property and retail improvements; income excluded for qualified disaster assistance property; income attributable to Section 179C to expense costs for refinery property; income attributable to expensing film or television production; and income of any taxpayer that treated a loss from the sale or exchange of Fannie Mae or Freddie Mac as an ordinary loss.⁵⁹ These changes were to be applied retroactively to January 1, 2009.⁶⁰

The GA enacted a statute to provide an income tax deduction for property taxes paid in 2009 that would have been payable in 2008 if the property tax bills had been issued in a timely manner.⁶¹ This measure was also to be applied retroactively to January 1, 2009.⁶²

The GA amended IC 6-3-1-11 to define the IRC for purposes of the Indiana Code to be the IRC in effect on February 17, 2009.⁶³ This measure was also to be applied retroactively to January 1, 2009.⁶⁴

The GA amended IC 6-3-1-34.5 to provide that "a listed property trust or other foreign real estate investment trust that is organized in a country that has a tax treaty with the United States Treasury Department governing the tax treatment of these trusts" is not a "captive real estate investment trust" for purposes of the real estate investment trust add back.⁶⁵ This was a technical change, and was to be applied retroactively to January 1, 2008.⁶⁶

The GA added a definition of a "pass through entity" for purposes of the

57. *Id.* at 2483.

58. *See id.* at 57-69.

59. *Id.* at 2467-88.

60. *Id.* at 2483.

61. *See id.* at 2500-01.

62. *Id.* at 2500.

63. *Id.* at 2501.

64. *Id.*

65. *Id.* at 2502.

66. *See id.*

adjusted gross income tax.⁶⁷ This measure was also to be applied retroactively to January 1, 2009.⁶⁸

The GA amended IC 6-3-2-2 to clarify that income derived from a pass through entity shall be treated “as if the person, corporation, or pass through entity that received the income ha[s] directly engaged in the income producing activity” in Indiana.⁶⁹ This measure was also to be applied retroactively to January 1, 2009.⁷⁰

The GA amended both IC 6-3-2-2.5 and 6-3-2-2.6 to provide that the federal provision for a corporation or person with a net operating loss that is carried back by a qualified small business shall be limited to two years instead of five years and the carry back for a qualified disaster loss shall be limited to five years.⁷¹ These measures were also to be applied retroactively to January 1, 2009.⁷²

The GA also amended IC 6-3-2-8 and 6-3-3-10 to delete the definition of “pass through entity” as it applied to the enterprise zone employee tax deduction and the enterprise zone employer tax credit because the term has been defined in IC 6-3-1-35.⁷³ These measures were also to be applied retroactively to January 1, 2009.⁷⁴

The GA enacted a statute to provide an income tax deduction for a solar-powered roof vent or fan.⁷⁵ The maximum deduction is limited to \$1,000 per taxpayer per taxable year. This measure was also to be applied retroactively to January 1, 2009.⁷⁶

The GA amended IC 6-3-2-10 to require that the amount of unemployment compensation excluded from federal gross income be added back into an individual’s adjusted gross income when calculating the Indiana tax deduction for unemployment compensation.⁷⁷ This measure was also to be applied retroactively to January 1, 2009.⁷⁸

The GA amended IC 6-3-3-12 to define the term “contribution” for purposes of the 529 education savings plan tax credit in order to exclude bonus points credited to the owner’s account for purchases made.⁷⁹ The term was also defined in a manner that excluded money transferred from other qualified tuition programs under Section 529 of the IRC.⁸⁰

67. *See id.* at 2503.

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.* at 2509-12.

72. *Id.* at 2509, 2511.

73. *See id.* at 2514, 2517.

74. *Id.* at 2514, 2517.

75. *See id.* at 2515.

76. *Id.*

77. *Id.* at 2515-16.

78. *Id.* at 2515.

79. *Id.* at 2520.

80. *Id.*

The GA amended IC 6-3-4-8.1 to require any registered entity withholding employees' wages after December 31, 2009 to remit and report withholding payments through the Department's online tax filing program.⁸¹

Finally, the GA amended IC 6-3-4-8.2 to impose the same withholding requirements for winnings at a horse racing casino that are in place for withholding on winnings at a riverboat casino.⁸²

D. Income Tax Credits

The GA passed legislation that clarified the application of certain tax credits, granted some new opportunities for tax credits, and eliminated the availability of some tax credits.

The GA amended IC 6-3.1-4-2 to provide a taxpayer with an alternative method of claiming the qualified research expense credit.⁸³

The GA also extended the Hoosier Business Investment Tax Credit to December 31, 2013.⁸⁴ This tax credit would have otherwise expired on December 31, 2011.⁸⁵

The GA amended IC 6-3.1-29-19 and enacted IC 6-3.1-29-20.7 to authorize the Indiana Finance Authority (IFA) to purchase tax credits awarded to a taxpayer that has sold synthetic natural gas to the IFA.⁸⁶ The IFA may pay the taxpayer for the credits over a twenty-year period.⁸⁷

The GA enacted a statute that provides an income tax credit for contributions to any scholarship-granting organization participating in a school scholarship program.⁸⁸ The credit applies to contributions made in taxable years beginning after December 31, 2009, and the total amount of credits that may be awarded in a fiscal year may not exceed \$2.5 million.⁸⁹

The GA amended IC 6-3.1-31.9-1 to include vehicles that operate on ultra-low sulfur diesel or biodiesel fuel within the scope of the Hoosier alternative fuel vehicle manufacturer income tax credit.⁹⁰ The GA also addressed the fuel vehicle manufacturer income tax credit by amending IC 6-3.1-31.9-2 to limit the credit for the manufacture of alternative fuel vehicles to passenger cars and light trucks with a gross vehicle weight of 8500 pounds or less.⁹¹

Finally, the GA amended IC 6-3.1-32-9 to limit the maximum amount of media production tax credits that may be allowed in a state fiscal year to no more

81. *Id.* at 2523.

82. *Id.* at 2523-24.

83. *Id.* at 2525.

84. *Id.* at 2525-26.

85. *Id.*

86. *Id.* at 2526-28.

87. *Id.* at 2528.

88. *See id.* at 2528-30.

89. *Id.* at 2530.

90. *Id.* at 2530-31.

91. *Id.* at 2531.

than \$2.5 million.⁹²

E. Local Taxation

1. *Local Option Income Tax.*—The GA amended IC 6-3.5-1.1, 6-3.5-6, and 6-3.5-7 to provide that the budget agency shall certify the local option income tax distributions to counties instead of the Indiana Department of Revenue.⁹³

In a non-code provision, the GA provided that in 2009, a county may adopt an additional COIT rate at any time before November 1, 2009.⁹⁴

The GA enacted IC 6-3.5-1.1-11.5, 6-3.5-6-18.6 and 6-3.5-7-16.5 to require a county auditor to distribute funds from the CAGIT no more than ten days after the county treasurer receives these funds from the state in order to address an emergency situation.⁹⁵

2. *Marion County Auto Rental Tax.*—The GA amended IC 6-6-9.7-7 to allow Marion County to increase the supplemental auto rental excise tax by two percent after January 1, 2013, and before March 1, 2013, and deposit the revenue from the increase in the sports and convention facilities operating fund.⁹⁶

F. Inheritance and Estate Tax

In an effort to provide the Department with more time to collect the inheritance tax, the GA amended IC 6-4.1-8-1 to extend the lien that attaches at the time of the decedent's death from five years to ten years.⁹⁷ The lien is released when the inheritance tax is paid or it is determined that no inheritance tax return is required to be filed.⁹⁸

The GA also amended IC 6-4.1-8-5 to require the person making payment to an estate because of a personal injury occurring before the decedent's death to notify the Department.⁹⁹ The notification must be made within ten days of the payment of the damages.¹⁰⁰

Finally, the GA added a provision to IC 6-4.1-10-1 to provide that interest on an inheritance tax refund claim will not be paid until ninety days after the later of the date the refund claim is filed or the inheritance tax return is received by the Department.¹⁰¹ The previous law required interest to be paid ninety days after the refund claim was filed.¹⁰²

92. *Id.*

93. *Id.* at 2534-64.

94. *Id.* at 2862.

95. *Id.* at 336-37.

96. *Id.* at 2589.

97. *Id.* at 2564.

98. *Id.*

99. *Id.* at 1448.

100. *Id.*

101. *Id.* at 2565.

102. *Id.*

G. Financial Institutions Tax

The GA amended the definition of adjusted gross income for the financial institutions tax under IC 6-5.5-1-2 to provide that certain income be added back to correspond to the decoupling from the IRC.¹⁰³ This measure was to be applied retroactively to January 1, 2009.¹⁰⁴

H. Vehicle and Gasoline Excise Taxes

1. *Gasoline Tax.*—The GA amended IC 6-6-1.1-606.5 to provide relief from the tax “if a shipment of gasoline is legitimately diverted from the represented destination state after the shipping paper has been issued by a terminal operator or if a terminal operator failed to cause proper information to be printed on the shipping paper.”¹⁰⁵ In order to obtain this relief, the Department must be notified of the diversion before it occurs.¹⁰⁶ This amendment changed the language in order to be consistent with the language in the special fuel tax.¹⁰⁷

2. *Motor Carrier Fuel Use Tax.*—The GA amended IC 6-6-4.1-12 to require motor carriers to apply for their annual International Fuel Tax Agreement permits by September 1 in order to receive the permits by January 1.¹⁰⁸

The GA amended IC 6-6-4.1-13 to allow a person to obtain a repair and maintenance permit to move an unregistered motor vehicle from a quarry or mine to a maintenance or repair facility.¹⁰⁹ The cost of this type of permit is \$40 per year.¹¹⁰

3. *Commercial Vehicle Excise Tax.*—The GA amended IC 6-6-5.5-1 to redefine base revenue as the Commercial Vehicle Excise Tax (CVET) collected in the fiscal year of the preceding calendar year. This definition includes a “road tractor” in the definition of commercial vehicle for purposes of the commercial vehicle excise tax.¹¹¹

The GA amended IC 6-6-5.5-7 to provide that the annual CVET rate be determined by multiplying the base revenue times 105%.¹¹² This measure was to be applied retroactively to January 1, 2009.¹¹³

The GA amended IC 6-6-5.5-19 to provide that as of January 1, 2009, the CVET distribution will be based on the amount of tax collected during the previous fiscal year multiplied by a taxing unit’s percentage.¹¹⁴ Furthermore, the

103. *Id.* at 2565-68.

104. *Id.* at 2565.

105. *Id.* at 2571.

106. *Id.*

107. *See id.*

108. *Id.*

109. *Id.* at 2574.

110. *Id.*

111. *Id.* at 2578.

112. *Id.* at 2579.

113. *Id.*

114. *Id.* at 2581.

GA amended IC 6-6-5.5-20 to provide that, as of January 1, 2009, a county's CVET distribution will be the county's distribution percentage multiplied by the amount of CVET deposited in the CVET fund in the preceding calendar year.¹¹⁵

I. Aircraft Excise Tax

The GA amended IC 6-6-6.5-23 to require an airport owner to report all aircraft based at an airport.¹¹⁶ Failure to include an aircraft in the report will result in a civil penalty of \$100 for each aircraft that an airport owner fails to report.¹¹⁷

J. Cigarette Tax

The GA amended IC 6-7-1-28.1 to change the distribution of the cigarette tax so that 5.74% goes to the state retiree health benefit trust fund and eliminates the amount used to reimburse the general fund for the tax credit for employer-provided health benefit plans.¹¹⁸ The legislature also amended this statute to increase the percentage of cigarette tax going to the general fund from 53.68% to 54.5%.¹¹⁹

K. Tax Administration

To administer more effectively the various tax provisions of the Indiana Code, the GA amended a number of statutes.

The GA amended IC 6-8.1-3-4 to provide that the reporting of information in an electronic format is included in the Department's authority when furnishing forms used in administering the various taxes.¹²⁰

The GA also granted the Department the power to use statistical sampling when auditing taxpayers.¹²¹ Both the taxpayer and the Department must agree on the sampling method.¹²²

The GA amended IC 6-8.1-3-16 to require the Department to compile a list of retail merchants whose certificate has not been renewed or whose registration has been revoked by the Department.¹²³ The list must be published on the Department's Web site.¹²⁴

The GA codified a previously non-code provision concerning Indiana's

115. *Id.* at 2582.

116. *Id.* at 2587-88.

117. *Id.*

118. *Id.* at 2591-92.

119. *Id.*

120. *Id.* at 2593.

121. *Id.* at 2593-94.

122. *Id.*

123. *Id.* at 2596-97.

124. *Id.* at 2597.

membership in the Multistate Tax Commission.¹²⁵

The GA also enacted new legislation requiring the Department cooperate with the Department of Labor, the Worker's Compensation Board, and the Department of Workforce Development concerning suspected improper classification of an individual as an independent contractor by a contractor.¹²⁶ The sharing of information must begin after December 31, 2009, and the information shared between the agencies must remain confidential.¹²⁷

The GA amended IC 6-8.1-5-2 to allow an erroneously issued refund check from the Department to be recovered through the assessment procedures of the Department.¹²⁸ In order to do so, the assessment must be issued within two years of the refund or within five years if the refund was obtained through fraud or misrepresentation by the taxpayer.¹²⁹

The GA amended IC 6-8.1-6-4.5 to require the rounding to the nearest dollar on an income tax return.¹³⁰

The GA enacted legislation to require the DLGF, the budget agency, and the Department to determine the amount of adjusted gross income and the number of taxpayers that reside in a city or town.¹³¹ The reporting is required to begin January 1, 2011.¹³²

The GA amended IC 6-8.1-7-1 to provide that the Department's confidentiality statute does not apply to the release of information concerning the beer excise tax, including brand and package type information.¹³³

The GA enacted new legislation to allow the Department to require a person on a payment plan for sales and withholding taxes to make periodic payments by electronic funds transfer.¹³⁴ The electronic funds transfer may be made through an automatic withdrawal from the person's account at a financial institution.¹³⁵

The GA amended IC 6-8.1-9-2 to provide a credit over the next ten years for income tax paid by nonresident shareholders during tax years 2005 through 2008.¹³⁶ The credit will be applied against future liabilities of the taxpayer.¹³⁷ The statute also requires the taxpayer to prove under a penalty of perjury that they have reported income to their home state equal to the income attributable to the amount of credit or refund granted.¹³⁸

125. *Id.* at 249.

126. *Id.* at 1714.

127. *Id.* at 1713.

128. *Id.* at 2598.

129. *Id.*

130. *Id.* at 2599.

131. *Id.*

132. *Id.*

133. *Id.* at 2602.

134. *Id.* at 2603.

135. *Id.*

136. *Id.* at 2605-06.

137. *Id.* at 2605.

138. *Id.* at 2606.

The GA amended IC 6-8.1-10-2.1 in order to clarify that a partnership or trust that fails to withhold on nonresident shareholders will be subject to a penalty of twenty percent.¹³⁹ This language already existed for an S corporation.¹⁴⁰

Finally, the GA amended IC 6-8.1-10-5 to allow the Department to require all future payments of a taxpayer to be remitted with guaranteed funds if the person is assessed a 100% bad check penalty and the Department cannot collect in full.¹⁴¹

L. Innkeepers' and Food and Beverage Taxes

In order to assist Marion County in paying for its sports facilities and convention center, the GA amended IC 6-9-8-3 to authorize Marion County to increase the innkeepers' tax by one percent and deposit the increased revenue into the sports and convention facilities operating fund.¹⁴² The GA also amended IC 6-9-13-2 to authorize Marion County to increase the admissions tax by four percent, but only between January 1, 2013, and March 1, 2013.¹⁴³ Marion County is authorized to deposit the increased revenue into the sports and convention facilities operating fund.¹⁴⁴

The GA enacted IC 6-9-41 in order to allow Monroe County to adopt an ordinance imposing a one percent food and beverage tax.¹⁴⁵ The tax could take effect January 1, 2010, if an ordinance was adopted before December 1, 2009.¹⁴⁶ The county auditor must distribute the funds to the city or county from which they were collected.¹⁴⁷

The GA also added IC 6-9-42 in order to allow a city to impose a youth sports complex admissions tax of five percent to be used for funding infrastructure costs and payment of principal and interest on bonds issued by the city to finance infrastructure improvements.¹⁴⁸ The tax is to be collected by the city imposing the tax.¹⁴⁹

M. Other Provisions

The GA also passed a number of other provisions affecting various aspects of tax policy. For instance, the GA enacted IC 8-24, which authorizes a regional transportation district income tax in LaPorte, Porter, Lake, and St. Joseph

139. *Id.* at 2608.

140. *Id.*

141. *Id.* at 2609.

142. *Id.* at 2610-11.

143. *Id.* at 2611.

144. *Id.* at 2612.

145. *Id.* at 1882.

146. *Id.*

147. *Id.* at 1885.

148. *Id.* at 2612-16.

149. *Id.* at 2613-14.

counties.¹⁵⁰ This tax is not to exceed 0.25%.¹⁵¹

The GA also enacted IC 20-51 to allow for the creation of a school scholarship program that awards scholarships to students.¹⁵² The statute also provides for a tax credit when contributions are made to a scholarship-granting organization.¹⁵³ A non-code provision included in this legislation authorized the Department to adopt emergency rules to implement the school scholarship program provided for under IC 20-51.¹⁵⁴

The GA also enacted a new statute that limits the maximum allocation to the Allen County professional sports development area to \$3 million per year instead of \$5 per person in the county.¹⁵⁵

In order to assist Marion County in paying for its sports facilities and convention center, the GA amended IC 36-7-31-6 to provide that an expansion of the Marion County Professional Sports Development Area will only include revenue from the sales tax, adjusted gross income tax, and county option income tax.¹⁵⁶ The expanded area must be within the boundary of Illinois Street, Maryland Street, and Washington Street, and includes hotels, motels, or a multi-brand complex.¹⁵⁷ Tax revenue from the expanded area must be deposited into the sports and convention facilities operating fund.¹⁵⁸

The GA amended IC 36-7-31.3-10 to require that for taxes attributable to a professional sports and convention development area the first \$2.6 million must be transferred to the county treasurer for deposit in the supplemental coliseum improvement fund.¹⁵⁹ Any remaining funds shall be deposited into the joint county-city capital improvement board in the county.¹⁶⁰

The GA also passed several non-code provisions including one that removes the requirement that the Department assist in administering the quality assessment fee on health facilities.¹⁶¹ This provision is retroactive to October 1, 2008.¹⁶² Another non-code provision required the Department to conduct a study of the feasibility of changing the design and method for verifying, tracking, and tracing cigarette stamps, and report the findings to the Legislative Services Agency by November 1, 2009.¹⁶³ Finally, the GA enacted a non-code provision that provides that a city or town that made estimated gross income tax payments

150. *Id.* at 2639-73.

151. *Id.* at 2666.

152. *Id.* at 2724-28.

153. *Id.*

154. *Id.* at 2870.

155. *Id.* at 1888-89.

156. *Id.* at 2802-03.

157. *Id.* at 2803.

158. *Id.* at 2810.

159. *Id.* at 2891.

160. *Id.*

161. *See id.* at 2865.

162. *Id.*

163. *Id.* at 2877.

at the same time it paid the utility receipts tax is eligible for a refund of the estimated gross income tax payment made.¹⁶⁴

II. INDIANA TAX COURT DECISIONS

The Tax Court rendered a variety of opinions from in 2009. Specifically, the Tax Court issued fifteen published opinions and decisions, twelve of which concerned the Indiana real property tax,¹⁶⁵ two of which concerned Indiana sales and use tax,¹⁶⁶ and one of which concerned the utility receipts tax.¹⁶⁷ The Tax Court also issued thirteen unpublished opinions, ten of which concerned Indiana real property tax,¹⁶⁸ one of which concerned Indiana sales and use tax,¹⁶⁹ one of which concerned Indiana corporate income tax and one of which concerned Indiana personal income tax.¹⁷⁰ A summary of each opinion and decision appears below.

A. Real Property Tax

1. *Lake County Assessor v. U. S. Steel Corp.*¹⁷¹—The Lake County Assessor, the Calumet Township Assessor, and the Lake County PTABOA (“Lake County”) sought to appeal the final determination of the IBTR with regard to the valuing of U. S. Steel Corporation’s (U. S. Steel) real property as of the March 1, 2001 assessment date.¹⁷² U. S. Steel owned and operated an integrated steel manufacturing plant, otherwise known as the Gary Works, in Calumet Township, Lake County, Indiana. The plant, constructed in 1906, had been significantly modified over the years to accommodate new technologies in the steelmaking industry. As of the March 1, 2001 assessment date, the Gary Works plant comprised of 3155 acres of land and over 700 buildings containing fifteen million-plus square feet. The Calumet Township Assessor assigned the Gary Works plant an assessed value of \$269,801,300: \$59,582,900 of land and \$210,218,400 of improvements.¹⁷³ In order to reach this assessed value, the Assessor applied a \$23,112,230 functional adjustment obsolescence.¹⁷⁴ U. S. Steel filed an appeal with the PTABOA claiming the assessment was too high.¹⁷⁵ The board denied the appeal and U. S. Steel filed an appeal with the IBTR claiming that the Gary Works plant deserved a larger obsolescence adjustment

164. *Id.* at 2597-98.

165. *See infra* Part II.A.

166. *See infra* Part II.B.

167. *See infra* Part II.E.

168. *See infra* Part II.A.

169. *See infra* Part II.B.

170. *See infra* Part II.D.

171. 901 N.E.2d 85 (Ind. T.C.), *trans. denied*, 919 N.E.2d (Ind. 2009).

172. *Id.* at 86.

173. *Id.*

174. *Id.*

175. *Id.* at 87.

and that “the presence of environmental contamination” justified a reduction in value.¹⁷⁶ During the hearing before the IBTR, U. S. Steel presented two means of quantifying the amount of obsolescence it believed was present in its property. The first comprised of three separate parts: part one used a “change-in-pricing” method, part two used an “excess operating cost” method, and part three utilized a “business enterprise value” method.¹⁷⁷ U. S. Steel’s second “obsolescence calculation quantified the total amount of obsolescence present in its property . . . by comparing the property’s market value as determined by the Marshall & Swift cost approach with its market value as determined by a sales comparison approach.”¹⁷⁸ For its land, U. S. Steel “presented evidence demonstrating that the portion of the Grand Calumet River running through its property was environmentally contaminated as of the assessment date and what it subsequently spent to remediate that contamination.”¹⁷⁹ The IBTR found that U. S. Steel “had prima facie demonstrated that its improvements were entitled to both functional and economic obsolescence adjustments, as it had both identified the causes of obsolescence from which its property suffered and then quantified the amount of obsolescence present using generally accepted appraisal techniques.”¹⁸⁰ The IBTR also found that U. S. Steel “had prima facie demonstrated that its land was entitled to a reduction in value—equivalent to the amount it spent in its remediation efforts—to account for the environmental contamination.”¹⁸¹

Lake County appealed to the Tax Court alleging five issues. The first issue was whether the IBTR erred when it admitted U. S. Steel’s Excess Cost Report because it was not “scientifically reliable.”¹⁸² The second issue was whether the IBTR “erred when it failed to discount U. S. Steel’s total functional obsolescence award.”¹⁸³ The third issue was whether the IBTR erred when it failed to find that the sales comparison approach “was invalid because it utilized bankruptcy sales in” reaching a conclusion.¹⁸⁴ The fourth issue was whether the IBTR “erred when it held that U. S. Steel was entitled to an obsolescence adjustment at all, given the result of “the business enterprise value” calculation.¹⁸⁵ Lake County lastly challenged whether the IBTR erred in reducing the assessed value of U. S. Steel’s land.¹⁸⁶

As to the first issue, the court held that “generally recognized appraisal techniques are acceptable methods by which to quantify obsolescence in Indiana’s pre-2002 assessment system,” and the method utilized by U. S. Steel

176. *Id.*

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.* at 87-88.

183. *Id.* at 88.

184. *Id.*

185. *Id.*

186. *Id.*

was a generally recognized appraisal technique for calculating functional obsolescence.¹⁸⁷ As to the second issue, the court found that the IBTR erred in determining that the stipulated value of improvements represented the improvements' value before any reduction for obsolescence.¹⁸⁸ As to the third issue, the court held that the IBTR did not abuse its discretion in allowing U. S. Steel to use bankruptcy sales in determining the market value of its own property.¹⁸⁹ As to the fourth issue, the court found that the IBTR did not abuse its discretion with regard to its finding that U. S. Steel had prima facie demonstrated the existence of economic obsolescence of its property using a generally recognized appraisal technique.¹⁹⁰ As to the final issue, the court held that U. S. Steel failed to make a prima facie case that it was entitled to a negative influence factor simply based on the amount of funds U. S. Steel had expended in an attempt to remediate the environmental contamination.¹⁹¹

2. *Rohrman v. Tippecanoe County Assessor*.¹⁹²—IBSTR issued a final determination affirming the Tippecanoe County PTABOA's valuation of several parcels of his land as of the March 1, 2004 and 2005 assessment dates.¹⁹³ Robert V. Rohrman appealed.¹⁹⁴ Rohrman named the Fairfield Township Assessor as the respondent.¹⁹⁵ Eleven days later, after the forty-five-day appeal period had expired, Rohrman filed an amended petition solely to change the respondent from the Fairfield Township Assessor to the Tippecanoe County Assessor.¹⁹⁶ The Assessor filed a timely appearance, answer, and a motion to dismiss the appeal.¹⁹⁷ The Assessor sought to have Rohrman's appeal dismissed because it invoked neither the court's subject matter jurisdiction nor personal jurisdiction.¹⁹⁸ The Assessor argued that Rohrman failed to properly name her as the respondent and serve her within forty-five days from the date of the IBTR's final determination.¹⁹⁹ The court held that Rohrman's failure to name the Assessor in his original petition was "not the type of error that implicates [the] Court's subject matter jurisdiction."²⁰⁰ Rather, it was a procedural error that could prevent the court "from *exercising* its jurisdiction."²⁰¹ Furthermore, the court found that although the general rule required that a new defendant to a claim be

187. *Id.* at 89.

188. *Id.* at 91.

189. *Id.* at 92.

190. *Id.* at 93.

191. *Id.* at 94.

192. 901 N.E.2d 95 (Ind. T.C. 2009).

193. *Id.* at 96.

194. *Id.*

195. *Id.*

196. *Id.*

197. *Id.* at 96-97.

198. *Id.* at 97.

199. *Id.*

200. *Id.*

201. *Id.*

added before the running of the statute of limitations, Trial Rule 15(C) provided an exception and Rohrman had met the requirements of that exception.²⁰²

3. *Coombes v. Washington Township Assessor*.²⁰³—Todd and Dawn Coombes challenged the final determination of the IBTR regarding the value of their real property as of the March 1, 2003 assessment date.²⁰⁴ The controversy arose because sometime after the March 1, 2002 general reassessment. Vacant rural land just southeast of the intersection of 161st Street and Carey Road in Carmel, Indiana, a new subdivision—the Bridgewater Club—was platted.²⁰⁵ In January 2003, the Coombeses purchased a 2.3-acre lot in Bridgewater for \$695,000. For the March 1, 2003 assessment, the Washington Township Assessor assigned the lot \$627,000 assessed value. The Coombeses subsequently filed an appeal with the Hamilton County PTABOA, claiming that the assessment should be \$150,000.²⁰⁶ The PTABOA affirmed the original assessment. Coombes then filed an appeal with the IBTR claiming that the “assessment should be ‘no more than’ \$207,000.”²⁰⁷

The IBTR conducted a hearing during which the Coombeses made two new arguments. First, they claimed that the lot should have been assessed at \$42,000.²⁰⁸ In the alternative, they claimed that their lot should have been assessed at \$513,663 due to the application of a trending factor.²⁰⁹ The IBTR issued a final determination in which it held that the assessed value of the land in question should have been \$598,000.²¹⁰ Furthermore, the IBTR agreed with the Coombeses “in that the application of a trending factor to the \$695,000 contract price was the best method to determine the land’s January 1, 1999 market value-in-use.”²¹¹ The Coombeses timely filed an appeal to the Tax Court.

On appeal, the Coombeses presented only one issue, arguing that the IBTR’s final determination was erroneous because the IBTR failed to recognize that, in assessing the lot, local assessing officials violated the Coombeses’ procedural due process rights.²¹² Specifically, the Coombeses argued that in 2002 (before the Coombeses purchased the land), “the applicable 2002 neighborhood valuation form provided that unplatted, vacant rural land located just southeast of the intersection of 161st Street and Carey Road in Carmel, Indiana was to be assessed at \$35,000 for the first acre and \$5,300 per acre beyond that.”²¹³ The Coombeses also argued that local assessing officials were required to amend the

202. *Id.* at 97-98.

203. 901 N.E.2d 1180 (Ind. T.C. 2009).

204. *Id.* at 1180.

205. *Id.* at 1180-81.

206. *Id.* at 1181.

207. *Id.*

208. *Id.*

209. *Id.*

210. *Id.*

211. *Id.*

212. *Id.* at 1182.

213. *Id.*

values set forth in the 2002 neighborhood valuation form if officials believed some other value more accurately reflected the 2003 value.²¹⁴ The Coombeses further argued that before amending the form, local assessing officials should have first given notice and an opportunity to be heard to affected taxpayers.²¹⁵ The court held that the 2002 neighborhood valuation form contained a “catch-all” provision under which Bridgewater and the Coombeses’ lot could be assessed in 2003.²¹⁶ Local assessing officials duly promulgated this form, and therefore did not violate the Coombeses’ due process rights.²¹⁷

4. *Curtis v. Calumet Township Assessor*.²¹⁸—Raymond L. Curtis challenged the final determinations of the IBTR upholding the Calumet Township Assessor’s assessments of the two parcels of land in Gary, Indiana, owned by Curtis during the 1998, 1999, and 2000 tax years.²¹⁹ The parcels were classified as commercial parking lots. For each of the years at issue, Parcel #1 (referred to in the opinion as parcel 29) was valued at \$21,300, and Parcel #2 (referred to in the opinion as parcel 35) was valued at \$19,200.²²⁰ Curtis filed Petitions for Correction of Error first with the Lake County PTABOA, and then with the IBTR.²²¹ The IBTR upheld each of the assessments.²²² Curtis then initiated an original appeal with the Tax Court. The parties filed cross-motions for summary judgment based on the sufficiency of the evidence supporting the IBTR’s final determinations.²²³

Curtis presented two arguments in support of reversing the IBTR’s final determinations. First, he argued that his procedural due process rights were violated during the administrative process because the Administrative Law Judge (ALJ) either lost or mishandled some of his evidence, and he was not provided a hearing on the assessment of Parcel #2.²²⁴ Second, he asserted that, contrary to the IBTR’s conclusion, he had *prima facie* established that his parcels had been erroneously assessed.²²⁵

As to the mishandling of evidence, the court found that all of the evidence that had allegedly been lost or mishandled was contained within the record.²²⁶ As to the failure to hold a hearing on Parcel #2, the court found that the administrative hearing transcript unequivocally indicated that Curtis was

214. *Id.*

215. *Id.*

216. *Id.* at 1183.

217. *Id.* at 1183 n.7.

218. No. 71T10-0704-SC-21, 2009 WL 567209 (Ind. T.C. Mar. 5, 2009).

219. *Id.* at *1.

220. *Id.* at *2.

221. *Id.*

222. *Id.*

223. *Id.*

224. *Id.*

225. *Id.* at *3.

226. *Id.* at *2.

provided an opportunity to challenge the assessment.²²⁷

As to the second issue, Curtis asserted that the IBTR made a series of errors in affirming his assessments, including: “(1) the assessments were increased without adequate notice; (2) the parcels were improperly classified; (3) the assessments required adjustments to reflect a loss in value caused by inverse condemnation; (4) the assessments included ‘charges’ for improvements located on other parcels; and (5) the assessments contained mathematical errors.”²²⁸ With regard to the adequate notice assertion, the court found substantial evidence based on the record did not support this argument.²²⁹ As to the improper classification of the parcels, the court found that despite the fact Curtis did not use the parcels as commercial parking lots, the Assessor did not err in classifying the parcels as commercial parking lots.²³⁰ As to the loss of value due to inverse condemnation, Curtis argued that both the Assessor and the IBTR failed to recognize that several inverse condemnation tactics caused his parcels to be worthless.²³¹ But the court found that a taxpayer who seeks to have an influence factor applied to his land must submit probative evidence as to the land’s deviation from the norm during the administrative hearing.²³² Curtis failed to provide such evidence.²³³ As to the excess charges for improvements, the court found that Curtis failed to produce prima facie establish that his assessments were improper for this reason.²³⁴ The property record cards for the two parcels were not included within the record, and the court could therefore not determine whether or not the assessments actually included charges for improvements.²³⁵ Finally, as to Curtis’s assertion that a mathematical error rendered the assessments on the two parcels to be invalid, the court found no mathematical error after reviewing the record.²³⁶ Based on the court’s findings, Curtis’s motion for summary judgment was denied, and the Assessor’s cross-motion for summary judgment was granted.²³⁷

5. *M.D. Curtis Management Co. v. Indiana Board of Tax Review*.²³⁸—*M.D. Curtis Management Co.* appealed the final determination of the IBTR with regard to the assessments of Curtis Management’s real property for the 2001, 2002, and 2003 tax years.²³⁹ During the tax years at issue, Curtis Management owned a

227. *Id.* at *3.

228. *Id.*

229. *Id.* at *4.

230. *Id.*

231. *Id.*

232. *Id.* at *5.

233. *Id.*

234. *Id.* at *6.

235. *Id.*

236. *Id.*

237. *Id.*

238. No. 45T10-0707-SC-39, 2009 WL 580396 (Ind. T.C. Mar. 5, 2009).

239. *Id.* at *1.

parcel of land located on Indianapolis Boulevard in East Chicago, Indiana.²⁴⁰ Before September 13, 2001, a building on the parcel contained both general retail space and apartment units.²⁴¹ On September 13, 2001, a fire severely damaged the building.²⁴² For the 2001 tax year, the assessed value of Curtis Management's real property was \$7,270, but for both the 2002 and 2003 tax years Curtis Management's land was assessed at \$33,700.²⁴³ Curtis Management challenged the assessed values by filing Petitions for Correction of Error, first with the Lake County PTABOA, and then with the IBTR.²⁴⁴ The IBTR held a hearing on Curtis Management's Petition, but neither the Lake County Assessor nor anyone one representing the Assessor appeared at the hearing.²⁴⁵ Throughout the hearing, Curtis Management argued that its assessments should be adjusted to reflect its "property's loss in value due to both the presence of obsolescence in his building and the various abnormalities that had impacted his land."²⁴⁶ The IBTR timely issued its final determination in which it concluded that Curtis Management "failed to demonstrate that his building was entitled to an obsolescence adjustment or that his land was entitled to an influence factor adjustment."²⁴⁷

On appeal to the Tax Court, the court identified two major issues: whether or not Curtis Management's procedural due process rights were violated during the administrative process; and whether or not the IBTR improperly made its final determination.²⁴⁸ On the issue of whether or not Curtis Management's due process rights were violated, Curtis Management claimed that the ALJ "who conducted the administrative hearing imposed an unreasonable time restraint on the hearing," and that the IBTR did not "submit or transcribe the audio tape recordings" admitted into evidence during the administrative hearing.²⁴⁹ But the court found that Curtis Management was the only party that appeared for the administrative hearing and that the ALJ had provided more than enough time for Curtis Management to present its case.²⁵⁰ Furthermore, the court found that the IBTR did not have a duty to transcribe the audiotapes that were submitted into evidence.²⁵¹ Whether or not the IBTR's final determination was improper, the court found that the evidence presented by Curtis Management was insufficient to demonstrate that the parcel in question should have received an obsolescence

240. *Id.*

241. *Id.*

242. *Id.*

243. *Id.*

244. *Id.*

245. *Id.*

246. *Id.*

247. *Id.*

248. *Id.* at *2-3.

249. *Id.* at *2.

250. *Id.*

251. *Id.*

adjustment or that it should have received an influence factor adjustment.²⁵² More specifically, the court found that Curtis Management needed to demonstrate that there was a specific link between the “property’s actual loss of value and the causes of obsolescence and negative influences.”²⁵³

6. *Kooshtard Property VIII, LLC v. Shelby County Assessor*.²⁵⁴—Kooshtard Property VIII, LLC appealed the final determination of the IBTR which affirmed the 2002 assessment of its real property.²⁵⁵ Kooshtard owned 8.97 acres of land along State Road 44 in Shelbyville, Indiana.²⁵⁶ In March 2002, Kooshtard’s land was assigned an assessed value of \$1,047,000.²⁵⁷ In arriving at this assessed value, the Addison Township Assessor designated one acre as “primary” giving it a base rate value of \$250,000; the remaining 7.97 acres were designated “undeveloped usable” with a base rate of \$200,000 per acre.²⁵⁸ In addition, the Assessor assigned the undeveloped but usable acreage a fifty percent negative influence factor.²⁵⁹ Kooshtard assumed that the negative influence factor was to account for the land’s unique size and shape.²⁶⁰ Kooshtard challenged the assessment with the Shelby County PTABOA, arguing that the land’s assessed value should be reduced to account for the fact that a power line easement encumbered the land.²⁶¹ The PTABOA rejected this argument, and Kooshtard appealed its assessment to the IBTR.²⁶² The IBTR conducted an administrative hearing on Kooshtard’s appeal in a timely manner.²⁶³ Kooshtard argued to the IBTR that its land was entitled to two separate negative influence factors of fifty percent: one for its land’s size and shape, and the other for the power line easement.²⁶⁴ The IBTR rejected Kooshtard’s argument.²⁶⁵ On appeal to the Tax Court, Kooshtard presented one issue: whether or not the IBTR erred in affirming the application of only one negative influence factor of fifty percent to Kooshtard’s land.²⁶⁶

On appeal, Kooshtard argued that the IBTR, in affirming the application of one negative influence factor of fifty percent, ignored the fact that local assessing officials actually approved the application of two negative influence factors of

252. *Id.* at *4.

253. *Id.*

254. 902 N.E.2d 913 (Ind. T.C. 2009).

255. *Id.* at 913.

256. *Id.* at 914.

257. *Id.*

258. *Id.*

259. *Id.*

260. *Id.*

261. *Id.*

262. *Id.*

263. *Id.*

264. *Id.*

265. *Id.*

266. *Id.*

fifty percent.²⁶⁷ The court found the administrative record clear on the point that the negative influence factor adjustment was actually based on the power line encumbrance.²⁶⁸ Furthermore, the court found that Kooshtard failed to establish a direct link between the unique size and shape of the parcel and a reduction in its value.²⁶⁹ Based on these findings, the court held that the IBTR did not err when it held that Kooshtard was not entitled to a second negative influence factor of fifty percent due to the land's size and shape.²⁷⁰

7. *Barker v. Johnson County Assessor*.²⁷¹—Susan Barker challenged the final determination of the IBTR with regard to the assessment of her real property for the 2002 tax year.²⁷² The property in question was located on U.S. Highway 31 in Edinburgh, Indiana, and included four industrial warehouse buildings.²⁷³ For the 2002 tax year, the Johnson County Assessor valued one of the warehouses using the General Commercial Industrial light warehouse model for valuing improvements and assigned it a D-1 grade.²⁷⁴ Barker appealed this assessment to the Johnson County PTABOA and later to the IBTR.²⁷⁵ She argued that her warehouse should have been assessed using the General Commercial Kit (GCK) model.²⁷⁶ The IBTR issued a final determination in which it agreed with Barker that the warehouse should have been assessed using the GCK model and ordered a reassessment.²⁷⁷ On remand, the Assessor assessed the warehouse using the GCK model and changed the grade from D-1 to C.²⁷⁸ Barker believed the reassessment was still too high, and again appealed to the PTABOA and then to the IBTR.²⁷⁹ After hearing evidence on this second appeal, the IBTR determined that Barker did not present sufficient evidence to establish that the reassessment had been incorrect.²⁸⁰ Barker filed an original appeal with the Tax Court asserting that the IBTR erred when it determined that she did not present probative evidence to prima facie establish that her assessment was incorrect.²⁸¹

The court considered the evidence presented by Barker to the IBTR regarding the difference between the assessed value of the warehouse in question and its

267. *Id.* at 915.

268. *Id.*

269. *Id.* at 916.

270. *Id.*

271. No. 49T10-0711-TA-68, 2009 Ind. Tax LEXIS 9 (Ind. T.C. Apr. 22, 2009).

272. *Id.* at *1.

273. *Id.*

274. *Id.* at *1-2.

275. *Id.* at *2.

276. *Id.*

277. *Id.*

278. *Id.* at *3.

279. *Id.* at *3-4.

280. *Id.* at *4.

281. *Id.*

fair market value-in-use.²⁸² The court found that Barker had provided sufficient evidence as to why her property was comparable to other similar properties.²⁸³ The court also found that “the assessed value of the office portion of Barker’s warehouse was never in dispute,” and therefore it was not necessary for Barker to provide evidence as to the value of the office portion of her building.²⁸⁴ Based on these findings, the court held that Barker had prima facie established that the replacement cost new of the warehouse as calculated by the Assessor was incorrect.²⁸⁵ The Assessor also failed to offer any evidence to rebut Barker’s prima facie case.²⁸⁶ But the court held that although Barker had demonstrated that the assessment was incorrect, she had not provided sufficient evidence with regard to the grade of the warehouse and therefore was not entitled to the additional depreciation that would accompany a grade change.²⁸⁷

8. *St. George Serbian Orthodox Church v. Lake County Property Tax Assessment Board of Appeals*.²⁸⁸—*St. George Serbian Orthodox Church* challenged the final determination of the IBTR regarding its denial of a property tax exemption for the 2001 and 2002 tax years.²⁸⁹ In 2000, *St. George*, an Indiana not-for-profit corporation, applied for and received a property tax exemption on its property in Schererville, Indiana.²⁹⁰ *St. George’s* property consisted of its church, a priest’s residence, a garage, a community hall, and the 73.2 acres of land upon which those improvements stood.²⁹¹ In 2001, *St. George* built a 39,000 square foot cultural center.²⁹² In 2003, *St. George* filed two applications with the Lake County PTABOA seeking a religious purposes exemption on the cultural center for the 2001 and 2002 tax years.²⁹³ The PTABOA denied both applications asserting that they had not been timely filed.²⁹⁴ *St. George* subsequently appealed to the IBTR.²⁹⁵ *St. George* presented two arguments to the IBTR in support of its position that it should retain its tax-exempt status.²⁹⁶ First, it claimed that because its property had received a full exemption in 2000, it was not required to file another exemption application until 2002 pursuant to IC 6-1.1-11-3.5(a).²⁹⁷ In the alternative, *St. George* argued that

282. *Id.* at *6-14.

283. *Id.* at *11.

284. *Id.*

285. *Id.* at *12.

286. *Id.*

287. *Id.* at *13-14.

288. 905 N.E.2d 539 (Ind. T.C. 2009).

289. *Id.* at 540.

290. *Id.*

291. *Id.*

292. *Id.*

293. *Id.*

294. *Id.*

295. *Id.*

296. *Id.*

297. *Id.*

its due process rights had been violated because it had not been properly notified of the increase in its assessment resulting from the newly constructed cultural center.²⁹⁸ The IBTR ultimately upheld PTABOA's decision.²⁹⁹ In doing so, the IBTR explained that the exemption St. George had in place for the 2000 tax year did not cover the newly constructed building and St. George was therefore required to file exemption applications for the 2001 and 2002 tax years.³⁰⁰ In addition, the IBTR found that St. George had received sufficient notice of the tax assessment.³⁰¹ St. George filed an appeal with the Tax Court challenging the decision that St. George's cultural center was not entitled to the religious purposes exemption for the 2001 and 2002 tax years.³⁰² In support of this position, St. George argued that the recent enactment of a "retroactive amendment to Indiana Code § 6-1.1-11-3," meant that its exemption applications for the 2001 and 2002 tax years were timely filed.³⁰³ The court held that this non-code section provided clear evidence that the legislature intended to allow taxpayers until January 1, 2008, to file their exemption applications for the tax years after 2000.³⁰⁴

9. *Lake County Property Tax Assessment Board of Appeals v. St. George Serbian Orthodox Church*.³⁰⁵—The Lake County PTABOA challenged the final determination of the IBTR that granted St. George Serbian Orthodox Church ("St. George") a property tax exemption for the 2003 tax year.³⁰⁶ St. George is an Indiana not-for-profit corporation that owns and operates a "Church-School Congregation" (Parish) in Schererville, Indiana.³⁰⁷ St. George's property consisted of its church, a priest's residence, a garage, a community hall, a cultural center, and the 73.2 acres of land upon which those improvements stood.³⁰⁸ Much like *St. George Serbian Orthodox Church v. Lake County Property Tax Assessment Board of Appeals*,³⁰⁹ which was decided by the Tax Court on the same day, this case involved the 39,000 square foot cultural center that contained church administration offices, conference rooms, and a banquet facility.³¹⁰ St. George used the cultural center for church events, but the banquet facility was available to the public for rent.³¹¹ In March 2003, St. George filed an application with the PTABOA requesting a religious purposes exemption on

298. *Id.*

299. *Id.* at 541.

300. *Id.*

301. *Id.*

302. *Id.*

303. *Id.*

304. *Id.* at 542.

305. 905 N.E.2d 536 (Ind. T.C. 2009).

306. *Id.* at 536.

307. *Id.* at 537.

308. *Id.*

309. 905 N.E.2d 539 (Ind. T.C. 2009); *see supra* notes 288-304.

310. *See St. George*, 905 N.E.2d at 537.

311. *Id.*

the cultural center for the 2003 tax year.³¹² In August 2006, the PTABOA denied St. George's application because it believed the cultural center was predominantly used as a commercial banquet hall.³¹³ St. George timely filed a Petition for Review with the IBTR.³¹⁴ After conducting a hearing, the IBTR reversed the PTABOA and held that St. George's cultural center was entitled to the requested exemption.³¹⁵

The PTABOA filed an appeal with the Tax Court arguing that the IBTR erred when it determined that St. George prima facie demonstrated that its cultural center qualified for the religious purposes exemption as provided in IC 6-1.1-10-16.³¹⁶

In its decision, the court noted that the taxpayer bears the burden of proving that it is entitled to the exemption it seeks and that the IBTR had held that St. George met this burden.³¹⁷ The court also noted that the PTABOA had failed to rebut this evidence during the administrative hearing.³¹⁸ The court found that PTABOA was essentially challenging the nature of the evidence submitted by St. George during the administrative hearing.³¹⁹ But the PTABOA failed to demonstrate to the court that there was probative evidence in the administrative record that affirmatively demonstrated that St. George did not predominately use its cultural center for religious purposes.³²⁰ The PTABOA did not meet its burden, and therefore the court affirmed the decision of the IBTR.³²¹

10. *Charwood LLC v. Bartholomew County Assessor.*³²²—Charwood LLC challenged the IBTR final determinations that upheld the Bartholomew County PTABOA interim reassessments of their real property for the 2003 tax year.³²³ Charwood owned twenty-seven parcels of land and numerous improvements in Columbus Township, Bartholomew County, Indiana.³²⁴ Sometime after they received their property tax bills for the 2002 assessment year, each of the Petitioners received a letter explaining that the PTABOA would be reviewing the assessed values of the properties and that Charwood was welcome to send a representative to discuss the assessments.³²⁵ Charwood's representative, Milo E. Smith, appeared at this hearing and presented several exhibits in support of each

312. *Id.*

313. *Id.*

314. *Id.*

315. *Id.*

316. *Id.* at 538.

317. *Id.*

318. *Id.*

319. *Id.*

320. *Id.* at 539.

321. *Id.*

322. 906 N.E.2d 946 (Ind. T.C. 2009).

323. *Id.* at 947.

324. *Id.*

325. *Id.*

of the properties' 2002 assessed values.³²⁶ Soon thereafter, the PTABOA issued Notifications of Final Assessment Determinations that effectively increasing the assessed values of the Petitioners' properties for the 2003 tax year.³²⁷ Charwood timely filed a Petition for Review with the IBTR.³²⁸ During their final pre-hearing conference, the parties agreed that the matter could be resolved based on their stipulated facts and briefs.³²⁹ As such, the IBTR's ALJ vacated the previously scheduled administrative hearing and instead instituted a briefing schedule.³³⁰ In their brief, Charwood, relying on IC 6-1.1-4-25 and 6-1.1-9-1, claimed that each of their properties' 2002 assessed values should have remained unaltered because none of their properties had experienced a physical change or a change in use between the 2002 and the 2003 tax years.³³¹ Specifically, they argued that the two statutes authorized interim reassessments only in instances where a property had either been physically altered or put to a different use.³³² The IBTR upheld the interim reassessments, finding that the "plain language of Indiana Code § 6-1.1-4-25 involved an assessor's recordkeeping duties only, [and] did not limit or condition the PTABOA's interim reassessment authority to intermittent property changes."³³³ The IBTR also determined that IC 6-1.1-9-1 authorized the PTABOA to reassess undervalued property in any year where the PTABOA believed that property had become undervalued.³³⁴ Charwood filed an appeal with the Tax Court arguing that the PTABOA's 2003 interim reassessments were not authorized under IC 6-1.1-9-1.³³⁵

In rendering a decision, the court looked first to the plain language of IC 6-1.1-9-1, which provided:

If a township assessor . . . , county assessor, or county property tax assessment board of appeals believes that any taxable tangible property has been omitted from or undervalued on the assessment rolls or the tax duplicate for any year or years, the official or board shall give written notice under . . . IC 6-1.1-4-22 of the assessment or increase in assessment.³³⁶

The court held that the statute did not limit an assessing official to only reassessing real property between general reassessments when the property had been physically changed or put to a different use.³³⁷ Rather, the court held that

326. *Id.*

327. *Id.*

328. *Id.*

329. *Id.* at 948.

330. *Id.*

331. *Id.*

332. *Id.*

333. *Id.*

334. *Id.* at 949.

335. *Id.*

336. *Id.* (quoting IND. CODE § 6-1.1-9-1 (Supp. 2009)).

337. *Id.* at 949-50.

an assessing official's belief that the subject property has been undervalued constitutes the condition precedent to the execution of an interim reassessment under IC 6-1.1-9-1, and, within the context of IC 6-1.1-9-1, undervalued property could have resulted from factors unrelated to physical changes or changes in the use of the property.³³⁸ The court cited several cases, including *Damon Corp. v. State Board of Tax Commissioners*,³³⁹ which recognized assessing officials' interim reassessment authority under IC 6-1.1-9-1.³⁴⁰ Finally, the court held that Charwood's claim that IC 6-1.1-9-1 and 6-1.1-4-25 were in conflict was misplaced.³⁴¹ Because the assessed value of real property in Indiana prior to 2002 bore no relation to any external, objectively verifiable standard of measure, but after 2002 real property assessment in Indiana included such external verifiable data, the court reasoned that Charwood's properties could have been undervalued as of the 2003 tax year despite the fact that none of their properties had been physically changed or put to a new use after the 2002 tax year.³⁴² Therefore, the court concluded that the IBTR's final determinations were proper.

11. *White v. Greene County Assessor*.³⁴³—Leonard White challenged the final determination of the IBTR upholding the assessment of his Greene County, Indiana real property by the Beech Creek Township Assessor for the March 1, 2006 assessment date. To determine the value of White's 91.22 acres of land, "the Assessor classified the land as 'commercial' because he believed the property was being used as a mobile home park."³⁴⁴ White subsequently challenged the assessment of his land with the Greene County PTABOA. The PTABOA denied White's request for relief. White then filed a timely appeal with the IBTR. At the administrative hearing before the IBTR, White explained that, pursuant to IC 16-41-27-5, which defines a mobile home community, his property was not a mobile home park. White also presented the testimony of an expert witness who explained that the condition of any mobile homes was such that the land should be assessed as vacant.³⁴⁵ The IBTR affirmed the assessment. In doing so, the IBTR acknowledged that the Assessor may have misclassified White's land, but "White failed to demonstrate that his assessment was inaccurate despite the misclassification."³⁴⁶

White filed a timely appeal with the Tax Court asserting that the IBTR erred in affirming the Assessor's assessment of his land. Specifically, White argued that the IBTR erred when it failed to give the expert testimony presented by White the appropriate weight or credibility.³⁴⁷ The court noted that a taxpayer

338. *Id.* at 950.

339. 738 N.E.2d 1102, 1107 (Ind. T.C. 2000).

340. *Charwood LLC*, 906 N.E.2d at 950.

341. *Id.* at 951.

342. *Id.*

343. No. 84T10-0807-TA-50, 2009 WL 1605808 (Ind. T.C. June 9, 2009).

344. *Id.* at *1.

345. *Id.*

346. *Id.*

347. *Id.* at *2.

attempting to rebut the accuracy of an assessment “may present evidence as to its land’s market value-in-use as calculated under the sales comparison approach.”³⁴⁸ But the court found that White’s expert used sales of vacant properties in and around Greene County despite the fact White’s property is not a single, vacant parcel of land.³⁴⁹ The court further noted that White had “subdivided and sold the majority of the acreage to numerous people” who used “their individual tracts as either residential homesites or places to locate storage facilities and junk.”³⁵⁰ Based on these facts, the court found that White’s expert “failed to use comparable properties in estimating the market value-in-use of White’s property” and therefore the IBTR properly upheld the assessment.³⁵¹

12. *Oaken Bucket Partners, LLC v. Hamilton County Property Tax Assessment Board of Appeals.*³⁵²—Oaken Bucket Partners, LLC, an Indiana limited liability company, challenged the “final determination of the [IBTR] which denied its property tax exemption application for the 2004 tax year.”³⁵³ Oaken Bucket owned a two-story, multi-tenant office building, situated on the northeast corner of I-69 and Hague Road in Fishers, Indiana. For the 2004 tax year, Oaken Bucket leased 28,000 square feet of its building to Heartland Church, Inc.³⁵⁴ The other portions of the building were initially leased to other for-profit entities. All of the lessees—“under [the] terms of the triple net leases—paid an annual base rent and certain other expenses including property taxes to [Oaken Bucket].”³⁵⁵ In May 2004, Oaken Bucket timely filed an exemption application with the Hamilton County PTABOA seeking a charitable/religious purposes exemption on the portion of its building leased to Heartland. The PTABOA denied the application based on the belief that Oaken Bucket realized a profit on the leased property.³⁵⁶ In July 2004, Oaken Bucket filed a Petition for Review of Exemption with the IBTR. At the administrative hearing, Oaken Bucket argued that the Heartland space qualified for a charitable/religious purposes exemption, as it was owned, occupied, and predominately used for charitable/religious purposes. Specifically, “Oaken Bucket claimed that the mere fact that it leased the majority of its building to Heartland demonstrated that it owned the Heartland space for charitable/religious purposes.”³⁵⁷ A Heartland representative testified “that Heartland: provided two weekly Sunday worship services” and other church-related programs and

348. *Id.*

349. *Id.*

350. *Id.*

351. *Id.*

352. 909 N.E.2d 1129 (Ind. T.C. 2009), *clarified on reh’g*, 914 N.E.2d 868 (Ind. T.C. 2009), *vacated*, 2010 Ind. LEXIS 215 (Ind. Mar. 11, 2010).

353. *Id.* at 1131.

354. *Id.*

355. *Id.*

356. *Id.*

357. *Id.*

activities.³⁵⁸ Oaken Bucket further claimed, and the testimony of a Heartland representative supported, that Oaken Bucket charged Heartland below market rent.³⁵⁹ In response, the PTABOA asserted that Oaken Bucket's ownership and use of the space had little to do with religion or benevolence and more to do with investment/profit-generating purposes based on the terms of the triple net lease.³⁶⁰ The IBTR timely "issued its final determination in which it concluded that Oaken Bucket had 'failed to prove that it own[ed] and use[d] the Heartland space in a predominately exempt (religious or charitable) manner.'"³⁶¹ Specifically, the IBTR found that Oaken Bucket for the most part charged market rent for the Heartland space and therefore "failed to demonstrate that its property was 'owned or used for anything other than investment [purposes].'"³⁶² Oaken Bucket then initiated a timely appeal to the Tax Court.

On appeal, Oaken Bucket argued that the IBTR erred when it determined that Oaken Bucket's real property was neither owned nor predominately used for religious/charitable purposes during the 2004 tax year. The court noted that the taxpayer bears the burden of establishing that it is entitled to the charitable/religious purposes exemption it seeks and that the taxpayer need not show a unity of ownership, occupancy, and use in order to fulfill that burden.³⁶³ Rather, the court noted, the taxpayer must present probative evidence during the IBTR hearing which demonstrates that its property is owned for exempt purposes, occupied for exempt purposes, and predominately used for exempt purposes.³⁶⁴ In reaching a conclusion whether or not Oaken Bucket had met this burden, the court addressed three interrelated questions:

(1) whether the [IBTR's] conclusion that Oaken Bucket owned and used the Heartland space for investment purposes only is supported by substantial evidence; (2) whether the [IBTR's] conclusion that Oaken Bucket charged Heartland market rent is supported by substantial evidence; and, if not, (3) whether Oaken Bucket prima facie demonstrated that it fulfilled the ownership and use requirements of Indiana Code § 6-1.1-10-16.³⁶⁵

As to the first issue, the court noted that the "evaluation of whether property is owned, occupied, and predominately used for an exempt purpose is a fact sensitive inquiry" with "no bright-line tests."³⁶⁶ The court then found that the PTABOA could only allege that a desire to generate profits drove Oaken Bucket's execution of the Heartland space leases and factual evidence did not

358. *Id.* at 1131-32.

359. *Id.* at 1132.

360. *Id.* at 1132-33.

361. *Id.* at 1133.

362. *Id.*

363. *Id.* at 1134.

364. *Id.*

365. *Id.*

366. *Id.*

support these allegations.³⁶⁷

As to the second issue, the court found that the evidence on market rent for triple net leases presented by the PTABOA to the IBTR did not rebut Oaken Bucket's prima facie evidence of actual market rent.³⁶⁸ Therefore, the IBTR's conclusion as to market rent was not supported by substantial evidence.³⁶⁹ As to the third issue, the court noted that "when a unity of ownership, occupancy, and use is lacking . . . , both entities must demonstrate that they possess their own exempt purposes, but they need not demonstrate that they both directly used the property in furtherance of those purposes."³⁷⁰ Therefore, the court held that Oaken Bucket's failure to provide the religious activities had no bearing upon the grant of exemption in this case, because Heartland consistently conducted a variety of religious activities within the space.³⁷¹ The court further found that "the evidence in the record [did] not indicate that Oaken Bucket's desire to profit was any more predominate than its desire to provide Heartland with an appropriate space through which it could further" its religious mission.³⁷² Finally, the court held that "Oaken Bucket's charging of below market rent signified that it owned the Heartland space for a charitable purpose" in that it allowed Oaken Bucket to assist Heartland with the furtherance of Heartland's religious purposes.³⁷³ Furthermore, the court held "that Oaken Bucket owned and used the Heartland space in a manner that differed from that of everyday landlords."³⁷⁴ Based on the court's determination with regard to these three issues, the court reversed the final determination of the IBTR and remanded the case for further proceedings.

13. *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor.*³⁷⁵—Jamestown Homes of Mishawaka, Inc., an Indiana not-for-profit corporation, challenged the final determination of the IBTR, which had denied Jamestown a property tax exemption for the 2005 tax year. Jamestown's stated purpose in its articles of incorporation, was "[t]o provide housing on a mutual ownership basis, in the manner and for the purpose provided in Section 221(d)(3) of Title II of the National Housing Act, as amended."³⁷⁶ Under Section 221(d)(3), "the federal government insured and subsidized low-interest rate loans to private developers in order to promote the construction of affordable housing for low to moderate-income families."³⁷⁷ Jamestown used this financing to construct a 160-unit, multi-family apartment complex in Mishawaka, Indiana.

367. *Id.* at 1135.

368. *Id.* at 1136.

369. *Id.*

370. *Id.* at 1137.

371. *Id.*

372. *Id.*

373. *Id.*

374. *Id.* at 1138.

375. 909 N.E.2d 1138 (Ind. T.C. 2009).

376. *Id.* at 1139.

377. *Id.*

In exchange for receiving the benefits of this program, Jamestown agreed to be subject to several restrictions, including a requirement that the apartments be available for rent “only to those individuals whose annual income was at or below 95% of the area median income” as established by the U.S. Department of Housing and Urban Development (HUD).³⁷⁸ Jamestown also agreed to charge rents at fixed rates designed to cover the property’s operating costs and debt service only.³⁷⁹

In April 2005, “Jamestown filed two Applications For Property Tax Exemption claiming that its land, improvements, and the personal property contained therein were entitled to the charitable purposes exemption provided by Indiana Code § 6-1.1-10-16.”³⁸⁰ The PTABOA denied the applications. Jamestown timely filed an appeal with the Indiana Board.³⁸¹ At the administrative hearing, “Jamestown argued that its property was entitled to the exemption because the provision of ‘safe, decent and affordable housing for persons of lower income who could not otherwise afford such housing’ is a charitable purpose.”³⁸² In support of its position, Jamestown introduced evidence that the rent it charged was below market rents charged for comparable units.³⁸³ The IBTR ultimately affirmed the PTABOA’s denial of the exemption finding that “while Jamestown rented its apartments to low and moderate-income tenants at below market rents, it was not because of any charitable purpose or intent of its own; rather, it did so as a condition of its agreement with the federal government.”³⁸⁴ Furthermore, the IBTR found that the mortgage insurance/interest subsidy provided to Jamestown shifted the financial burden of providing the low-cost housing to the federal government, and that “Jamestown had not relieved the government of any burden sufficient to shift Jamestown’s property tax liability to the taxpayers.”³⁸⁵ Jamestown timely filed an appeal with the Tax Court arguing that the IBTR erred when it determined that Jamestown’s apartment complex did not qualify for the charitable purposes exemption provided in IC 6-1.1-10-16.

On appeal, Jamestown specifically argued that it had met the twin burden of proving that through the property’s use, there was evidence of charitable acts and also that through those charitable acts, a benefit inured to the public sufficient to justify the tax exemption.³⁸⁶ Specifically, Jamestown argued that by providing affordable housing to moderate and low-income individuals it helped to alleviate the housing shortage that had been previously identified by the federal government, and it provided this affordable housing with no expectation of

378. *Id.*

379. *Id.* at 1139-40.

380. *Id.* at 1140.

381. *Id.*

382. *Id.*

383. *Id.*

384. *Id.*

385. *Id.*

386. *Id.* at 1141.

financial gain and in compliance with the numerous regulations prescribed by HUD.³⁸⁷ The court found that the issue of “whether housing, owned by a not-for-profit corporation who receives governmental subsidies so that it may rent to moderate/low-income individuals at below market rates, is property used for a charitable purpose—[was] one of first impression in this state.”³⁸⁸ The court found that the holding in *Mountain View Homes, Inc. v. State Tax Commission*³⁸⁹ was particularly instructive and persuasive because it was based on a factual situation and exemption provision similar to the issues identified in this case.³⁹⁰

In *Mountain View Homes*, the Supreme Court of New Mexico was called upon to decide whether or not property, used by a nonprofit corporation to provide low rent apartments to low-income families, was used for charitable purposes.³⁹¹ In holding that the apartments were not eligible for New Mexico’s charitable purposes exemption, the Supreme Court of New Mexico reasoned that although the activity was not undertaken for profit and had beneficial aspects, the property used in an operation such as low-income housing would not have been considered charitable when the New Mexico constitution was adopted.³⁹² The Supreme Court of New Mexico further reasoned that the tenants were “required to pay for the premises occupied by them with the rentals being fixed so as to return the amount estimated as being necessary to pay out the project.”³⁹³ The Supreme Court of New Mexico found no evidence that the public was relieved of any expense in comparison with the loss of tax revenue.³⁹⁴

The Tax Court adopted as its own, the reasoning provided in the New Mexico case. The court found that the administrative record in this case revealed that Jamestown rented “its apartments to moderate and low-income individuals for below market rates.”³⁹⁵ But the court found no evidence “indicating that Jamestown’s tenants [were] permitted to occupy their apartments when they [were] unable to pay their rent.”³⁹⁶ Finally, the court found no evidence “that Jamestown ha[d] lessened the burden of government in meeting the need for affordable housing” because the government essentially bore the risk through its mortgage insurance and interest subsidy.³⁹⁷ Based on this reasoning, the court upheld the holding of the IBTR.

14. *Moffett v. Department of Local Government Finance*.³⁹⁸—George M. Moffett (“Moffett”) challenged the final determination of the DLGF regarding

387. *Id.* at 1142.

388. *Id.*

389. 427 P.2d 13 (N.M. 1967).

390. *Jamestown Homes*, 909 N.E.2d at 1142-43.

391. *Mountain View Homes*, 427 P.2d at 17.

392. *Id.* at 16.

393. *Id.* at 17.

394. *Id.*

395. *Jamestown Homes*, 909 N.E.2d at 1141.

396. *Id.* at 1144.

397. *Id.*

398. No. 49T10-0810-TA-58, 2009 WL 4884334 (Ind. T.C. Aug. 19, 2009).

the granting of modified approval of the proposed lease rental agreement between the Union-North United School Corporation and the Union-North United School Building Corporation. The School Corporation served a district in north central Indiana which encompasses a portion of both St. Joseph and Marshall Counties.³⁹⁹ It operated two school buildings, one elementary school and one junior/senior high school. The sixth grade was taught in several portable classrooms adjacent the elementary school since 1999.⁴⁰⁰ In 2007, the School Corporation created a committee to help it in developing a construction plan that would best help the current students and the anticipated enrollment growth. After conducting a public hearing, the School Corporation decided to pursue a plan that included renovating the elementary school, constructing a new intermediate school, and renovating the existing high school. The total cost for the proposed project was estimated at about \$20 million.⁴⁰¹ Shortly after approval was granted, opponents of the proposed project initiated a remonstrance process, which ultimately failed.⁴⁰² In July 2008, the School Corporation petitioned the DLGF to approve the execution of the lease between the School Corporation and the Building Corporation. The DLGF referred the petition to the School Property Tax Control Board for its recommendation. After a public hearing, the Control Board recommended unanimously that the DLGF approve the lease rental agreement.⁴⁰³ The DLGF issued a final determination in which it approved a modified lease rental agreement. Moffett timely filed an appeal with the Tax Court arguing that the DLGF was in error.⁴⁰⁴

The court noted that the standard of review for a DLGF final determination regarding a school construction project was abuse of discretion on the part of the DLGF, and the court must rely heavily upon the written findings of the DLGF in support of its final determination.⁴⁰⁵ In this case, the court found that the DLGF had failed to make findings of fact and to provide any reasoning of any kind in reaching its decision. Therefore, the court remanded the case back to the DLGF so that it could enter specific findings of fact.⁴⁰⁶

15. *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor.*⁴⁰⁷—The court previously issued an opinion on this case in *Jamestown I.*⁴⁰⁸ In “that opinion, the Court affirmed the [IBTR’s] final determination that held that Jamestown Homes of Mishawaka, Inc. . . . was not entitled to a property

399. *Id.*

400. *Id.*

401. *Id.*

402. *Id.*

403. *Id.*

404. *Id.* at *2.

405. *Id.* at *3.

406. *Id.* at *5.

407. 914 N.E.2d 13 (Ind. T.C. 2009), *trans. denied*, 2010 Ind. LEXIS 234 (Ind. Mar. 11, 2010).

408. *See Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor*, 909 N.E.2d 1138 (Ind. T.C. 2009), *trans. denied*, 2010 Ind. LEXIS 234 (Ind. Mar. 11, 2010).

tax exemption on apartments it leased to low/moderate income individuals for below-market rent.”⁴⁰⁹ Jamestown filed a Petition for Rehearing requesting the court reconsider its holding in light of the court’s decision in *Oaken Bucket Partners, LLC v. Hamilton County Property Tax Assessment Board of Appeals*,⁴¹⁰ which was issued on the same day as *Jamestown I*.⁴¹¹ In *Oaken Bucket*, the court held that the petitioner was entitled to an exemption on property it leased to a church for below-market rent.⁴¹² Based on this holding, Jamestown argued that the holding in *Jamestown I* was irreconcilable due to the similar facts in both cases.⁴¹³ In this case, the court distinguished *Oaken Bucket* by noting that “there was no question that the subject property was occupied and used” for exempt purposes.⁴¹⁴ The court further noted that each exemption case is unique and that “the determination that *Oaken Bucket*’s property was entitled to an exemption was based on all the facts as they were presented in that case.”⁴¹⁵ Jamestown’s property was not entitled to an exemption based on the facts as Jamestown presented them.⁴¹⁶ In its Petition for Rehearing, Jamestown asked the court to remand the case to the IBTR for further review and to address other issues of material facts. The court found that it had committed no error that would require remand to the IBTR.⁴¹⁷ Lastly, Jamestown argued that the court strayed from applying the well-established test for determining “whether property qualifies for a charitable purposes exemption and applied a whole ‘new’ test.”⁴¹⁸ The court disagreed holding that it did not apply a new test but instead demonstrated the insufficiency of the evidence presented by Jamestown in the original administrative hearing.⁴¹⁹

16. *Oaken Bucket Partners, LLC v. Hamilton County Property Tax Assessment Board*.⁴²⁰—The court previously issued an opinion on this case in *Oaken Bucket I*.⁴²¹ In that opinion, the court held that “a portion of *Oaken Bucket Partners, LLC*’s . . . real property qualified for a charitable/religious purposes exemption under Indiana Code § 6-1.1-10-16 during the 2004 tax year.”⁴²² The Hamilton County PTABOA and the Hamilton County Assessor

409. *Jamestown Homes*, 914 N.E.2d at 14.

410. 909 N.E.2d 1129 (Ind. T.C. 2009); see *supra* notes 352-74.

411. *Jamestown Homes*, 914 N.E.2d at 14.

412. *Jamestown Homes*, 909 N.E.2d at 1134.

413. *Jamestown II*, 914 N.E.2d at 14.

414. *Id.* at 14-15.

415. *Id.* at 15.

416. *Id.*

417. *Id.*

418. *Id.* at 16.

419. *Id.*

420. 914 N.E.2d 868 (Ind. T.C. 2009), *trans. granted*, 2010 Ind. LEXIS 215 (Ind. Mar. 11, 2010).

421. See *Oaken Bucket Partners, LLC v. Hamilton County Prop. Tax Assessment Bd. of Appeals*, 909 N.E.2d 1129 (Ind. T.C. 2009).

422. *Oaken Bucket Partners, LLC*, 914 N.E.2d at 869.

filed a Petition for Rehearing arguing that “the court committed reversible error when it failed to find that Oaken Bucket had been prejudiced”; and also “that the court’s decision in *Oaken Bucket I* conflict[ed] with the cases of *Travelers’ Insurance Company v. Kent*⁴²³ and *Spohn v. Stark*, 197 Ind. 299, 150 N.E. 787 (Ind. 1926).”⁴²⁴ As to the issue of whether or not the court committed reversible error when it failed to find that Oaken Bucket had been prejudiced, the court looked to the plain language of IC 33-26-6-4 which provides, in part, that judicial relief is only available if the person seeking such relief has been prejudiced. The court found that IC 33-26-6-4 is not ambiguous, and that “[n]othing within [it] suggests that a party may only be harmed when it suffers a financial loss.”⁴²⁵ Furthermore, the court found that a final determination of the IBTR may be prejudicial to the party that seeks its reversal, and therefore the court had not committed reversible error on this issue.⁴²⁶ As to the contention that the court’s previous decision conflicted with the holdings in *Travelers’ Insurance Co.*⁴²⁷ and *Spohn*,⁴²⁸ the court held that no conflict existed.⁴²⁹ In support of this holding, the court noted that in *Sangrlea Boys Fund, Inc. v. State Board of Tax Commissioners*,⁴³⁰ the court found that a unity of ownership, occupancy, and use was not necessary in order to qualify for an exemption under IC 6-1.1-10-16.⁴³¹ The court further noted that in *Oaken Bucket I* it had explained that a lack of unity of ownership, occupancy, and use forced both entities to demonstrate that they possessed their own exempt purposes, but they did not need to demonstrate that they both directly used the property in furtherance of those purposes.⁴³² Finally, the court reiterated that the “evaluation of whether property is owned, occupied, and predominately used for an exempt purpose is a fact sensitive inquiry” and that “the totality of the evidence established that Oaken Bucket possessed its own charitable purpose and that its property was both occupied and predominately used for religious purposes.”⁴³³ The court therefore affirmed its previous decision in *Oaken Bucket I*.

17. *Sandin Trust v. Michigan Township Assessor*.⁴³⁴—The R. Keith Sandin Trust (R. Keith Sandin, Trustee) challenged the final determination of the IBTR which had upheld the Michigan Township Assessor’s interim assessments of his property for the 2004 and 2005 tax years. Sandin owned residential property in

423. 50 N.E. 562 (Ind. 1898).

424. *Oaken Bucket Partners, LLC*, 914 N.E.2d at 869.

425. *Id.*

426. *Id.* at 869-70.

427. 50 N.E. 562 (Ind. 1898).

428. 150 N.E. 787 (Ind. 1926).

429. *Oaken Bucket Partners, LLC*, 914 N.E.2d at 871.

430. 686 N.E.2d 954 (Ind. T.C. 1997).

431. *Oaken Bucket Partners, LLC*, 914 N.E.2d at 870.

432. *Id.* at 870-871.

433. *Id.* at 871 (quoting and citing *Oaken Bucket Partners LLC v. Hamilton County Prop. Tax Assessment Bd. of Appeals*, 909 N.E.2d 1129, 1134-35 (Ind. T.C. 2009)).

434. No. 49T10-0811-TA-63, 2009 WL 4350702 (Ind. T.C. Dec. 2, 2009).

the Duneland Beach neighborhood of Michigan City, Indiana, which was valued at a base rate of \$672 per front foot.⁴³⁵ Assessing officials applied this rate to Sandin's property and came up with a total assessed value of \$1,256,200. For the 2004 and 2005 tax years, the base rate for the Duneland Beach neighborhood increased to \$5000 per front foot, and as a result, the total assessed value of Sandin's property increased to \$1,729,900.⁴³⁶ Sandin appealed to the LaPorte County PTABOA, which affirmed the assessments. Sandin then timely filed an appeal with the IBTR. The parties stipulated to drop the valuation issue with regard to Sandin's 2004 and 2005 assessment appeals pending before the Board, and therefore, neither party planned to offer appraisal evidence and no inspection of Sandin's property was required.⁴³⁷ After to this stipulation, the only remaining issue to be decided by the Board was whether the township assessor was authorized under Indiana law to change the assessment for the 2004 and 2005 assessment years to a value different than the value finally determined for the March 1, 2002 assessment date.⁴³⁸ Sandin argued at the administrative hearing that IC 6-1.1-9-1 only provided an assessing official with the authority to reassess a property between general reassessments if the official had a reasonable belief, founded upon objectively verifiable data, that the property was undervalued. Furthermore, Sandin argued that in his case the Assessor's belief that his property was undervalued was neither reasonable nor supported by objectively verifiable data.⁴³⁹ The IBTR upheld the Assessor's interim assessments of Sandin's property, and Sandin timely filed an appeal with the Tax Court. On appeal, Sandin argued that the Assessor was not authorized under Indiana law to change his property assessment in 2004 and 2005 to a value different from its 2002 assessed value.

On appeal, Sandin argued that the Assessor did not have "a *reasonable* belief that his property was undervalued."⁴⁴⁰ First, he argued that the Assessor's belief as to the undervaluing of his property was based on the Assessor's subjective opinion that some properties in the neighborhood were not valued correctly.⁴⁴¹ Therefore, Sandin asserted that the Assessor was required to offer objectively verifiable evidence that would justify this subjective belief. The administrative record showed that the increase in the Duneland Beach neighborhood base rate from \$672 per front foot to \$5000 per front foot was based on the Assessor's personal belief that the land all along Lake Shore Drive had been incorrectly valued in the 2002 general reassessment.⁴⁴² The Assessor formulated his belief because the 2002 general reassessment of property in the Duneland Beach neighborhood was derived by using the same front foot base rate, whether the

435. *Id.* at *1.

436. *Id.*

437. *Id.*

438. *Id.*

439. *Id.* at *3-4.

440. *Id.* (emphasis in original).

441. *Id.* at *2.

442. *Id.*

property was lakeside, hillside, or even further inland. As a thirty-year resident of the area, “common sense” told the Assessor that such a valuation was improper.⁴⁴³ Furthermore, the Assessor explained that while hearing and resolving taxpayer appeals related to the 2002 general reassessment, he received information, which indicated to him that the land along the Lake Shore Drive corridor was undervalued.⁴⁴⁴ Finally, the Assessor explained that in 2004, the LaPorte County Assessor’s office had hired Nexus Group, a property tax consulting firm, to advise it on numerous assessment issues, including land valuation. Nexus Group issued a report recommending that the base rate for Duneland Beach should be \$5000 per front foot.⁴⁴⁵ In response, Sandin argued that the Assessor’s reliance on the Nexus report was improper because the Assessor did not fully understand how Nexus arrived at its \$5000 per front foot recommendation and because the data relied upon by Nexus in formulating this rate was based on unreliable evidence.⁴⁴⁶ The court ultimately held that it was sufficient for the Assessor to rely on his experience—both as a resident and as an assessing official—to formulate a belief that properties along Lake Shore Drive were valued incorrectly and this belief was sufficient to authorize an interim assessment of those properties he believed to be undervalued under IC 6-1.1-9-1.⁴⁴⁷

18. *Big Foot Stores LLC v. Franklin Township Assessor*.⁴⁴⁸—Big Foot Stores LLC challenged the IBTR’s final determinations, which upheld the 2003 interim assessments of Big Foot’s property by the Franklin Township Assessor, the Mill Township Assessor, the Pleasant Township Assessor, and the Grant County Assessor. In “the 2003 tax year, Big Foot owned three convenience stores . . . and one office building in Grant County, Indiana.”⁴⁴⁹ In December 2005, the Assessors issued “Notices of Assessment By Assessing Officer” for the 2003 tax year.⁴⁵⁰ The notices informed Big Foot that the properties were reassessed due to sales disclosure forms that suggested that the properties had been previously undervalued. In January 2006, Big Foot petitioned Grant County PTABOA for review. Big Foot alleged that the 2003 interim assessments were not uniform and equal, and “requested that the properties’ 2002 assessments be reinstated.”⁴⁵¹ The PTABOA denied each of Big Foot’s petitions and Big Foot timely filed four Petitions for Review with the IBTR. At the joint administrative hearing, Big Foot once again requested that its 2002 assessments be reinstated because it “believed that the interim assessments were not only not uniform or

443. *Id.*

444. *Id.*

445. *Id.*

446. *Id.*

447. *Id.* at *3.

448. 919 N.E.2d 621 (Ind. T.C. 2009).

449. *Id.* at 621.

450. *Id.* at 622.

451. *Id.*

equal, but unauthorized as well.”⁴⁵² The IBTR upheld the interim assessments in their entirety, finding that the assessments were “authorized under Indiana Code § 6-1.1-9-1, and [therefore] concluded that because Big Foot failed to present any probative evidence as to the actual market values-in-use of its properties, the Assessors’ interim assessments should be upheld.”⁴⁵³ Big Foot timely filed four appeals, which were consolidated pursuant to the Indiana Rules of Appellate Procedure, and the court granted this motion. On appeal, Big Foot argued that the IBTR erred in upholding Big Foot’s 2003 interim assessments.⁴⁵⁴

Big Foot provided the court with two arguments in support of its assertion that the IBTR erred in upholding the 2003 interim assessments of its real. First, Big Foot claimed that interim assessments may be made only when there has been a change to the property that increases or decreases its value.⁴⁵⁵ Big Foot alternatively “argued that its interim assessments were improper because they were essentially the result of ‘sales chasing,’ ‘selective reappraisals,’ or ‘spot assessments.’”⁴⁵⁶ As to Big Foot’s first argument, the Assessors contended that IC 6-1.1-9-1 authorized the interim assessments because the sales disclosure forms had caused them to believe that the properties were undervalued.⁴⁵⁷

Based on the court’s previous holding in *Charwood LLC v. Bartholomew County Assessor*,⁴⁵⁸ the court found that the Assessors “were authorized under Indiana Code § 6-1.1-9-1 [to conduct interim assessments], despite the fact that none of the properties had experienced physical changes or changes in use.”⁴⁵⁹ As to Big Foot’s argument in the alternative that the interim assessments were actually “spot assessments,” the Assessors asserted that although spot assessments are highly disfavored in Indiana, they did not selectively reassess Big Foot’s property.⁴⁶⁰ Instead, the Assessors adjusted Big Foot’s assessments because of Big Foot’s filing sales disclosure forms that plainly showed that Big Foot’s property was undervalued.⁴⁶¹ The court found this issue to be one of first impression in Indiana, but decided not to analyze the issue because this particular case could be resolved on other grounds.⁴⁶² Therefore, the court held that the Assessors had failed to demonstrate to the IBTR that the June 19, 2002 and July 16, 2003 sales prices of Big Foot’s properties “were related to the values [of those properties] as of January 1, 1999.”⁴⁶³ The court reversed the final determinations of the IBTR and remanded the cases to the IBTR for further

452. *Id.*

453. *Id.*

454. *Id.* at 622-23.

455. *Id.*

456. *Id.* at 623.

457. *Id.* at 624.

458. 906 N.E.2d 946, 951 (Ind. T.C. 2009); *see supra* notes 322-42.

459. *Big Foot Stores LLC*, 919 N.E.2d at 624.

460. *Id.*

461. *Id.* at 625.

462. *Id.*

463. *Id.* at 626.

proceedings.

19. *Robey v. Fairfield Township Assessor*.⁴⁶⁴—Wayne Robey challenged Fairfield Township Assessor's assessment of his real property for the 2004 and 2005 tax years.⁴⁶⁵ Robey owned residential real property in Lafayette, Indiana, assessed at \$42,800, which Robey believed was an incorrect amount.⁴⁶⁶ The IBTR found that Robey had failed to "prima facie demonstrate that his assessment was incorrect."⁴⁶⁷ Robey timely filed an appeal with the Tax Court arguing that the IBTR's final determination was improper.

Robey argued that during the administrative hearing he had demonstrated, with probative evidence, that his property's assessed value was incorrect. Robey specifically claimed that he had presented four different types of evidence demonstrating that his land assessment was improper. This evidence included a value-in-use method using comparable properties, a land comparison method, evidence that his house should have received a condition rating of fair, and, finally, a linear interpolation method.⁴⁶⁸ As to the value-in-use method, Robey argued that his assessment violated article 10, section 1 of the Indiana Constitution because it was not uniform and equal. The court rejected this argument finding that the evidence presented by Robey during the administrative hearing on this issue was not objectively verifiable data but rather his own subjective opinion of the value of a comparable property.⁴⁶⁹ As to Robey's land comparison method, he presented such evidence at the administrative hearing wherein he essentially obtained a value by applying a two-part formula where

first, he divided the quotient of his property's assessed value and its frontage by its depth factor to ascertain its effective front foot value (the EFFV); then, he multiplied his property's frontage, depth factor, and the EFFV of the designated base lot to ascertain his property's purported market value-in-use.⁴⁷⁰

Robey based these calculations on the premise that "(1) the assessed value assigned to each of the selected parcels was correct; (2) that those assessed values contained no adjustments for influence factors; and (3) that one of the parcels was the base lot."⁴⁷¹ The court found that land comparison method did not demonstrate that the Assessor had incorrectly assessed the land.⁴⁷² As to Robey's contention that his house should have received a condition rating of fair, Robey argued that he established that the Assessor erred in assigning his house a condition rating of "average" because a condition rating of "fair" more

464. No. 49T10-0708-TA-42, 2009 WL 4668740 (Ind. T.C. Dec. 9, 2009).

465. *Id.* at *1.

466. *Id.*

467. *Id.*

468. *Id.*

469. *Id.* at *2.

470. *Id.* at *3.

471. *Id.* (footnote omitted).

472. *Id.*

accurately reflected its physical condition.⁴⁷³ The court noted that the market value-in-use of an improvement must reflect the presence of any physical depreciation, but the court held that the totality of Robey “failed to relate the condition of his house to sufficient market data for his neighborhood” and therefore Robey’s evidence was not persuasive.⁴⁷⁴ Finally, as to Robey’s linear interpolation method of valuation, the court found Robey’s attempts to base his assessment on past purchases prices to be unpersuasive. Specifically, the court held that Robey’s linear interpolation method ignored the actual workings of the market because it failed to take into account the fact that real property is more likely to appreciate or depreciate at differing rates, rather than at a constant rate over a twenty-year period.⁴⁷⁵ Based on these holdings, the court affirmed the decision of the IBTR.

20. *Moffett v. Indiana Department of Local Government Finance*.⁴⁷⁶—On September 11, 2009, the DLGF approved a “proposed lease rental agreement between the Union-North United School Corporation and the Union-North United School Building.”⁴⁷⁷ The School Corporation served a district that covered parts of both St. Joseph and Marshall Counties.⁴⁷⁸ In 2008, George M. Moffett (“Moffett”) filed an appeal with the Tax Court challenging the DLGF’s final determination. The court remanded the matter to the DLGF on August 19, 2009 “with instructions to enter specific findings of fact upon which its original final determination was based.”⁴⁷⁹ Almost a month later, on September 11, 2009, Moffett challenged DLGF’s final determination.

The court noted that “[w]hen the DLGF reviews school construction projects, it does so as a tax specialist.”⁴⁸⁰ IC 20-46-7-11 requires the DLGF to consider several factors when considering approving such a construction project including the current and proposed square footage, enrollment patterns, age and condition of current facilities, effect of the construction project on the school corporation’s tax rate, and other pertinent matters.⁴⁸¹ The court further noted that in considering these factors, “DLGF is not required to assign greater weight to any one of the statutorily listed factors, nor is it required to consider any single factor dispositive . . . ; in fact, it need not even base its ultimate decision on them.”⁴⁸² The court noted that it appeared that the DLGF approved the project after considering each of the statutory imposed factors. On appeal, Moffett argued that the DLGF’s final determination would “result in financial difficulty and

473. *Id.*

474. *Id.* at *4.

475. *Id.* at *4-5.

476. No. 49T10-0810-TA-58, 2009 Ind. Tax LEXIS 60 (Ind. T.C. Dec. 16, 2009).

477. *Id.* at *1.

478. *See supra* notes 398-400 for additional facts relating to the school.

479. *Moffett*, 2009 WL 4885334 at *3-4.

480. *Id.* at *3-4.

481. *Id.* at *5-6.

482. *Id.* at *6 (citations omitted).

[excessive] taxation” due to the current state of the economy.⁴⁸³ Furthermore, Moffett argued that “[t]he tax burden resulting from the proposed project [would not be] fairly or equitably distributed between the taxpayers of St. Joseph County and the taxpayers of Marshall County; [and] [t]he School Corporation misled the DLGF into approving the project by giving it false and inaccurate information.” With respect to the current state of the economy, the court found that, “despite economic conditions, more taxpayers decided that they were willing to finance the project than not.”⁴⁸⁴ With respect to the unfair distribution of the tax burden, the court found that Moffett had failed to demonstrate that either property in Union Township, St. Joseph County has been assessed at a different rate than property in North Township, Marshall County, or that the property of the taxpayers in Union Township was subject to a different tax rate than the property of the taxpayers in North Township.⁴⁸⁵ Finally, as to Moffett’s claim that the School Corporation misled the DLGF, the court found that Moffett had failed to demonstrate to the court that there was “probative evidence in the administrative record that demonstrated that the DLGF’s reasoning was not supported by substantial evidence.”⁴⁸⁶ The court concluded that all Moffett had demonstrated was that he did not think the proposed project was a good idea, but he failed to demonstrate that the DLGF’s final determination was not supported by substantial evidence or not in accordance with the law.⁴⁸⁷

21. *Klosinski v. Department of Local Government Finance*.⁴⁸⁸—This matter came before the court when Michael H. and Phyllis J. Klosinski filed a petition with the Tax Court, challenging the DLGF approval and certification of the Cordry Sweetwater Conservancy District’s (CSCD) budgets and tax levies for the 2007 and 2008 tax years.⁴⁸⁹ The Klosinskis asserted in their petition “that the CSCD’s levies were illegal as a matter of law because the taxes were not used to accomplish the CSCD’s stated purposes” and the DLGF did not have the authority to approve the tax levies.⁴⁹⁰ In response, the DLGF filed a motion to dismiss for lack of subject matter jurisdiction and a motion for judgment on the pleadings. As to the motion to dismiss, the DLGF argued that the court lacked subject matter jurisdiction because the Klosinskis had not exhausted the appropriate administrative remedies before filing their petition with the Tax Court and therefore they had no final determination from any administrative agency upon which to appeal.⁴⁹¹ The court found that “[w]hile the Klosinskis contend that they were challenging the propriety of the DLGF’s approval and certification of the CSCD’s 2008 budget/tax levy, they were actually attacking

483. *Id.* at *8.

484. *Id.* at *10.

485. *Id.* at 12-13.

486. *Id.* at 14-15.

487. *Id.* at 16.

488. No. 49T10-0909-TA-50, 2009 WL 4876790 (Ind. T.C. Dec. 17, 2009).

489. *Id.* at *1.

490. *Id.*

491. *Id.* at *3-4.

the propriety of the CSCD's 2008 budgetary appropriations.⁴⁹² Therefore, the court held that the "Klosinskis were required to pursue their claim in accordance with the provisions of Indiana Code §§ 14-33-9-1 and 6-1.1-17 et seq."⁴⁹³ In failing to exhaust all administrative remedies, the Klosinskis could not appeal to the Tax Court because there was no final determination upon which to appeal.⁴⁹⁴ As to the motion for judgment on the pleadings, the DLGF asserted that judgment on the pleadings was appropriate because of the Klosinskis failure to exhaust the applicable administrative remedies.⁴⁹⁵ The court agreed holding that "the Klosinskis' challenge to the CSCD's budget should have been funneled through the adjudicatory channels provided under Indiana Code §§ 14-33-9-1 and 6-1.1-17 et seq."⁴⁹⁶ Therefore, the court granted both the motion to dismiss and the motion for judgment on the pleadings.⁴⁹⁷

22. *Elliott v. Dunning*.⁴⁹⁸—Donald F. Elliott, Jr. challenged "the final determination of the [IBTR] which had upheld the Marshall County Assessor's assessment of his real property for the 2006 tax year."⁴⁹⁹ Elliott owned three parcels of residential real property along Lake Maxinkuckee near Culver, Indiana. Two of the parcels were on the lake and not subject to an appeal; however, one parcel, described as Parcel 13, had no direct view of, or access to, Lake Maxinkuckee.⁵⁰⁰ Elliott appealed Parcel 13's assessment of \$209,900 for the 2006 tax year, to the Marshall County PTABOA, which subsequently denied this appeal. Elliott timely filed a Petition for Review with the IBTR, asserting that "the assessed value of Parcel 13 should be \$69,968."⁵⁰¹ After the IBTR upheld the Assessor's assessment, Elliott timely filed an appeal with the Tax Court arguing that he had prima facie demonstrated that his land assessment was incorrect.

On appeal, the court noted that "both Elliott and the Assessor designated Parcel 1 as the front lot to Parcel 13 . . . during the administrative hearing."⁵⁰² The court further noted that the parties had also agreed that Parcel 13 was a rear lot.⁵⁰³ Based on these facts, the issue in dispute on appeal concerned the "application of the seven-step formula contained in Indiana's assessment guidelines by which the depth factor of a rear lot should be determined."⁵⁰⁴ Specifically, Elliott argued that the Assessor had misapplied the first step in this

492. *Id.* at *2.

493. *Id.*

494. *Id.*

495. *Id.*

496. *Id.*

497. *Id.*

498. No. 49T10-0812-TA-69, 2009 WL 4981025 (Ind. T.C. Dec. 23, 2009).

499. *Id.* at *1.

500. *Id.*

501. *Id.* at *2.

502. *Id.*

503. *Id.*

504. *Id.* (citation omitted).

formula regarding the overall depth of the rear lot. “Elliott assert[ed] that the use of the word ‘overall’ signal[ed] that the effective depths of both the front and rear lots must be added together in order to ascertain the overall depth of the rear lot,” and therefore the effective depth of Parcel 13 was 345 feet.⁵⁰⁵ Elliott used this figure when applying the seven-step formula to determine his proposed assessed value. Conversely, the Assessor argued that the formula proposed by the guidelines did not require the summation of both lots, and that any differences between the Assessor’s figures and Elliott’s was simply the result of a “mathematical error and a misunderstanding of the formula.”⁵⁰⁶ The court found that Elliott’s claim presented “an issue of regulatory construction: . . . regarding the meaning of the word ‘overall’ within the context of the guidelines’ formula.”⁵⁰⁷ Specifically, the court held that the “practical effect of the Assessor’s application of the formula produc[ed] an unjust and absurd result.”⁵⁰⁸ The court further held that Elliott’s interpretation and application of the formula mirrored the assessment data in both the depth factors and assessed values.⁵⁰⁹ Based on these findings, the court held that Elliott had prima facie demonstrated that the assessment of Parcel 13 was incorrect and the case was remanded to the IBTR to take actions consistent with the court’s opinion.⁵¹⁰

B. Sales and Use Tax

1. *Belterra Resort Indiana, LLC v. Indiana Department of State Revenue.*⁵¹¹—Belterra Resort Indiana, LLC appealed the Department proposed use tax assessment. Belterra, a Nevada corporation, owned and operated the Belterra Casino Resort in Switzerland County, Indiana. In September 1999, Pinnacle Entertainment, Inc., parent of Belterra, contracted with Alabama Shipyard, Inc. to construct the riverboat casino.⁵¹² Approximately a year later, title to and possession of the riverboat casino was conveyed to Pinnacle at Alabama Shipyard’s dock in Mobile, Alabama. Pinnacle paid no Alabama sales tax on this transaction. On July 25, 2000, the title to the riverboat casino was transferred to Belterra while the boat was in international waters. In the written consent to transfer the [boat], “Pinnacle’s Board of Directors provided that the transfer of the boat was a capital contribution for which no consideration was received.”⁵¹³ At the time of the transfer, Pinnacle owned a ninety-seven percent interest in Belterra and after Belterra began operations, Pinnacle acquired the

505. *Id.*

506. *Id.* at *3.

507. *Id.*

508. *Id.*

509. *Id.* at *4.

510. *Id.* at *4-5.

511. 900 N.E.2d 513 (Ind. T.C. 2009).

512. *Id.* at 514.

513. *Id.*

remaining interest in Belterra.⁵¹⁴ In 2002, the Department audited the sales and use tax book of Belterra for 2000 tax year and issued a proposed use tax assessment against Belterra on its acquisition of the riverboat casino. Belterra timely protested the proposed assessment, and such protest was denied after a proper hearing.⁵¹⁵ Belterra timely filed an appeal with the Tax Court arguing that the acquisition of its riverboat casino should not be subject to use tax because it had not acquired the boat in a retail transaction. The parties filed cross motions for summary judgment requesting relief.

The court noted that Indiana's use tax is "imposed on the storage, use, or consumption of tangible personal property that was acquired in a retail transaction regardless of the location of that transaction."⁵¹⁶ Belterra argued on appeal that the acquisition was not a retail transaction because the riverboat casino was not acquired for consideration.⁵¹⁷ But the Department "argue[d] that Belterra owe[d] the tax because the [riverboat casino] was acquired in a retail transaction (albeit by someone other than Belterra), no sales tax was paid on the transaction, and the boat was subsequently used in Indiana."⁵¹⁸ In the alternative, the Department argued that the transfer of the remaining three percent of Belterra's stock to Pinnacle or when it agreed to operate the boat as a casino.⁵¹⁹ Lastly, "the Department contend[ed] that the transaction at . . . [as] 'little more than an empty formality'" designed to avoid tax."⁵²⁰ The court rejected the Department's assertion that Belterra did not acquire the riverboat casino in a retail transaction. The court further found that the Department had failed to provide any evidence that Belterra had given the three percent of Belterra's stock in exchange for the riverboat casino.⁵²¹ As to the Department's final argument, the court noted that the subject transaction may seem suspicious, but the court found that Belterra had provided a sufficient explanation that the structure of the transaction was necessary due to Pinnacle's access to capital and credit resources.⁵²² Based on these findings, the court held that the transaction was not subject to the use tax and Belterra was entitled to summary judgment.⁵²³

2. *Cincinnati SMSA Limited Partnership v. Indiana Department of State Revenue*.⁵²⁴—*Cincinnati SMSA Limited Partnership and New Cingular Wireless PCS, LLC and Westel-Milwaukee, LLC (CSLP)* appealed the Department's "denial of their claims for refund of gross retail tax paid during [] 2000 and

514. *Id.* at 514-15.

515. *Id.* at 515.

516. *Id.* (citing IND. CODE § 6-2.5-3-2(a) (2006)).

517. *Id.*

518. *Id.*

519. *Id.*

520. *Id.*

521. *Id.*

522. *Id.* at 516-17.

523. *Id.*

524. No. 49T10-0409-TA-45, 2009 WL 2579438 (Ind. T.C. Aug. 21, 2009).

2001.”⁵²⁵ During 2000 and 2001, CSLP provided services to mobile phone subscribers within Indiana, including selling “bundled” calling plans. For a flat monthly fee, CSLP provided these customers a pre-determined number of airtime minutes. In an effort “to provide seamless cellular telephone coverage to their customers,” CSLP executed several “‘Inter-carrier Roamer Service Agreements’ with other cellular service providers.”⁵²⁶ Under these roaming agreements when a CSLP customer used a cell phone outside of CSLP’s coverage area, the foreign carrier would provide service. “In exchange, CSLP agreed to bill their customers for the roaming charges, including all applicable state and local taxes; collect the payments from their customers; and then remit those payments to the” other cellular service provider.⁵²⁷ In November 2002, CSLP sought a refund of \$1,753,586.51 for the sales tax they had remitted to the Department related to their Indiana customer’s roaming cellular telephone calls. In August 2004, the Department denied some, but not all, of CSLP’s claims.⁵²⁸ CSLP timely filed an appeal with the Tax Court, and shortly thereafter filed a motion for summary judgment.

The parties essentially presented two arguments with regard to the motion for summary judgment. First, the Department argued that “the original and supplemental affidavits of Robert Landau and Mark Mercer should be disregarded pursuant to the *Blinn/McCullough* Rule.” The court noted that under the *Blinn/McCullough* Rule if the “evidence before a court raises a genuine issue as to an affiant’s credibility, it would be improper ‘to base summary judgment solely on such a self-serving affidavit.’”⁵²⁹ Specifically, the Department maintained that *Blinn/McCullough* Rule applied because the affidavits of Landau and Mercer contained inconsistencies as to both of the affiant’s employment histories and their statements on CSLP’s refund calculations.⁵³⁰ The court, however, found that any inconsistencies with respect to the employment histories in Landau and Mercer’s original affidavits had been rectified by their supplemental affidavits. The court further found that “the affidavits did not contain inconsistencies with respect to CSLP’s refund calculations.”⁵³¹ Accordingly, the court held that the *Blinn/McCullough* Rule did not apply in this case.

CSLP asserted, on the other hand, that it had demonstrated that the Department erred in concluding that CSLP was not entitled to a refund of Indiana sales tax for 2000 and 2001. Specifically, CSLP argued that by remitting too much sales tax, they were entitled to summary judgment. CSLP claimed the “bundled” calling plans contained both charges in advance for the pre-set number

525. *Id.* at *1.

526. *Id.*

527. *Id.*

528. *Id.*

529. *Id.* at *2 (quoting *Insuremax Ins. Co. v. Bice*, 879 N.E.2d 1187, 1190 (Ind. Ct. App. 2008)).

530. *Id.*

531. *Id.* at *3.

of airtime minutes, and charges in arrears for airtime minutes used beyond those provided under the plans.⁵³² CSLP argued that they were entitled to a refund because the Department insisted on CSLP paying the sales tax “up-front” before the “bundled” minutes were even used, and this practice resulted in CSLP paying a tax on the same airtime minutes a second time when they paid the other cellular service providers for their provision of roaming services.⁵³³ In support of this argument, CSLP submitted the affidavits of Robert Landau and Mark Mercer discussed earlier. The court found that the only evidence CSLP has submitted to substantiate their claim of entitlement to a \$1.7 million refund was their affiants’ testimony, and CSLP did not provide any actual “calculations, analyses, reports, or other underlying data to support that number.”⁵³⁴ The court further noted that the reliability of Landau’s and Mercer’s testimony had been called into question by Department. Therefore, the court held that there was a genuine issue as to the actual amount of CSLP’s overpayment of tax, and CSLP’s motion for summary judgment had to be denied.⁵³⁵

3. *Ameritech Publishing, Inc. v. Indiana Department of State Revenue*.⁵³⁶— A similar case came before the court previously in *Ameritech Publishing, Inc. v. Indiana Department of State Revenue (API I)*.⁵³⁷ *API I* was issued nearly four years ago, and the court held that, during a portion of the 1998 through 2003 tax years, Ameritech Publishing, Inc.’s (API) out-of-state purchases and its in-state use of telephone directories were not subject to Indiana use tax.⁵³⁸ The court ordered as a result the Department to refund API over \$2.5 million.⁵³⁹ During the time of the *API* litigation, API filed another claim requesting an additional refund of \$1,320,374.57 for taxes paid on items of issue in the first case from the October 1, 2003 through the December 31, 2005. In April 2008, the Department denied API’s claim. API timely filed an appeal with the Tax Court arguing that API’s use of its telephone directories in Indiana should not be subject to Indiana’s use tax. Both parties filed cross-motions for summary judgment.⁵⁴⁰

The court noted that in *API I*, it had held “that API’s purchases of paper and printing services and its use of telephone directories were not subject to Indiana use tax.”⁵⁴¹ The court in *API* noted three reasons why API was not subject to use tax:

(1) while API acquired the paper at retail, it was consumed entirely in

532. *Id.*

533. *Id.*

534. *Id.* at *4.

535. *Id.* at *5.

536. 916 N.E.2d 752 (Ind. T.C. 2009).

537. No. 49T10-0305-TA-26 (Ind. T.C. Oct. 19, 2006), *trans. denied*, 869 N.E.2d 451 (Ind. 2007).

538. *Ameritech Publ’g, Inc.*, 916 N.E.2d at 752.

539. *Id.* at 753.

540. *Id.*

541. *Id.* at 754.

the out-of-state production process and, therefore, never used it in Indiana; (2) API did not acquire tangible personal property when it purchased printing services; and (3) API used its telephone directories in Indiana, it did not acquire them in a retail transaction.⁵⁴²

In *API*, the Department presented three arguments in support of summary judgment. First, the Department argued that this case presents distinct facts from the key precedent cited in *API I*, namely *Morton Buildings, Inc. v. Indiana Department of State Revenue*.⁵⁴³ Second, the Department argued that RR Donnelley was a “manufacturer/commercial printer and not just a service provider; and finally that, as a commercial printer, RR Donnelley necessarily acquires tangible personal property . . . in order to resell that property to its customers in the form of printed materials.”⁵⁴⁴ The court rejected the Department’s first argument with regard to application of *Morton* finding that, as was the case in *API I*, the court found the holding of *Morton* to be instructive, not simply due to its facts.⁵⁴⁵ Furthermore, the court found that the “relevant inquiry continue[d] to be whether the two conditions of IC 6-2.5-3-2 were satisfied.”⁵⁴⁶ Specifically, the court looked to “whether API acquired tangible personal property in a retail transaction; and, if so, whether API used, stored, or consumed that tangible personal property in Indiana.”⁵⁴⁷ The court further found that the Department’s final two arguments sought to subject API to Indiana’s use tax due to API contractual relationship with a commercial printer.⁵⁴⁸ The court affirmed its holding in *API I*, however, stating that a retail transaction will not be found to exist merely due to the status of the players.⁵⁴⁹ The court further found that API was entitled to judgment as a matter of law because the material facts and the Department’s arguments were the same as those resolved in *API I*.⁵⁵⁰

C. Corporate Income Tax: *Wendt LLP v. Indiana Department of State Revenue*⁵⁵¹

On January 5, 2007, Wendt LLP filed a “Petition to Set Aside Final Determination of the Indiana Department of Revenue” with the Tax Court. Wendt appealed the Department’s Letter of Findings that was issued on September 11, 2006. On September 11, 2008, Wendt moved to amend its Petition for the sole purpose of clarifying that its appeal covers the 2001-04 tax

542. *Id.* (citing *Ameritech Publ’g, Inc. v. Ind. Dep’t of State Revenue*, 855 N.E.2d (Ind. T.C. 2006)).

543. 819 N.E.2d 913 (Ind. T.C. 2004).

544. *Ameritech Publ’g, Inc.*, 916 N.E.2d at 754.

545. *Id.*

546. *Id.*

547. *Id.* at 755-56.

548. *Id.* at 756.

549. *Id.*

550. *Id.* at 757.

551. No. 02T10-0701-TA-2, 2009 WL 396034 (Ind. T.C. Feb. 17, 2009).

years. The Department filed an objection to this Motion to Amend. The court found that Wendt's petition covered the 2002-04 tax years.⁵⁵² The court also found that Wendt's appeal covered the 2001 tax year. Therefore, the court held that there was no need for Wendt to amend its Petition to include the purportedly omitted years.⁵⁵³

The Department made procedural motions regarding Wendt's motion to amend to include the 2001 tax year and also moved to strike certain exhibits and paragraphs included with Wendt's motion to amend because they "violated Indiana Rule of Evidence 408 by referring to confidential aspects of the parties' settlement discussions."⁵⁵⁴ In response, Wendt argued that Rule 408 was inapplicable because Wendt had not referred to the parties' settlement discussions to show that the Department had erroneously denied its claims. Instead, Wendt asserted that it had only referred to them to demonstrate that the Department knew that Wendt's petition covered the 2001-2004 tax years.⁵⁵⁵ The court held that Wendt had referenced the parties' settlement discussions for the proper purpose of demonstrating that Wendt's challenge of the 2001-04 tax years was properly before the court.⁵⁵⁶

*D. Personal Income Tax: Lacey v. Indiana Department of State Revenue*⁵⁵⁷

On June 12, 2009, Lyle Lacey appealed to the Tax Court. The Department moved to dismiss Lacey's complaint under Indiana Trial Rule 12(B)(6) on August 4, 2009. Lacey's complaint alleged that he did not owe Indiana adjusted gross income tax for the 2007 tax year because he owed no federal income tax.⁵⁵⁸ The Department contended that the court should dismiss the Lacey Complaint because there was no basis for a claim regarding Lacey's federal income tax liability in the Tax Court. The court held that the Department's contention was essentially accurate, but the court did have the authority to analyze federal law to the extent the legislature had referentially incorporated federal law in the Indiana Adjusted Gross Income Tax Act of 1963.⁵⁵⁹ Based on this holding, the court denied the Department's motion dismiss on this claim.⁵⁶⁰

Lacey's complaint also set forth three other general claims. First, Lacey argued that under both the Seventh Amendment of the U.S. Constitution and article 1, section 20 of the Indiana Constitution, he was entitled to have his original tax appeal heard by a jury. Second, Lacey contended that although jurisdiction of the case was with the Tax Court, the Tax Court judge could not

552. *Id.* at *1.

553. *Id.*

554. *Id.*

555. *Id.* at *2.

556. *Id.*

557. 2009 Ind. Tax LEXIS 45 (Ind. T.C. Oct. 26, 2009).

558. *Id.* at *3.

559. *Id.*

560. *Id.* at *6.

rule on the case because he had a conflict of interest. Finally, the complaint argued “that the Department violated the separation of powers provision of Indiana’s Constitution when its administrative law *judge* conducted an administrative hearing on Lacey’s protest.”⁵⁶¹ The court rejected all of Lacey’s arguments and granted the Department’s motion to dismiss on these claims.⁵⁶²

*E. Utility Receipts Tax: Enhanced Telecommunications Corp. v. Indiana Department of State Revenue*⁵⁶³

Enhanced Telecommunications Corp. (ETC) challenged the Department imposition of Indiana’s utility receipts tax (URT) on certain monies it received during the years 2003, 2004, and 2005.⁵⁶⁴ ETC, a small telecommunications company headquartered in Sunman, Indiana, provided telephone equipment and services, cellular phone equipment, cable services, and internet services to its Indiana customers.⁵⁶⁵ ETC provided its customers with local telephone service only, but also facilitated long distance calls made by, and to, its customers. ETC also benefitted from Federal Communications Commission and Indiana Utility Regulatory Commission authorization by which the company could “offset, or recover, some of the costs of operation.”⁵⁶⁶ This system permits ETC to charge subscribers for a portion of their line costs associated with long distance call activity. During 2003, 2004, and 2005, ETC billed its subscribers for these line costs and the line costs were separately stated on ETC’s bills. Second, ETC received subsidy distributions from the Universal Service Fund (USF), as well as from an equivalent IURC fund.⁵⁶⁷ For 2003, 2004, and 2005, ETC filed an Indiana Utility Receipts Tax Return with the Department and paid all tax due in conjunction with each return. The Department audited those returns and determined that ETC had underreported its URT liability. Specifically, the Department determined that ETC had failed to report the various distributions it received as gross receipts subject to the URT.⁵⁶⁸ ETC protested the proposed assessments and sent a letter to the Department claiming that the money it collected during the years at issue in the form of government subsidies should not have been reported as gross receipts subject to the URT. ETC further “claimed that between this error and its protest of the proposed assessments, it was actually entitled to a URT refund totaling \$24,348.46.”⁵⁶⁹ The Department denied ETC’s protest after an administrative hearing on the issue.⁵⁷⁰ ETC timely filed an appeal

561. *Id.* at *3-4. (emphasis in original)

562. *Id.* at *7.

563. 916 N.E.2d 313 (Ind. T.C. 2009).

564. *Id.* at 313.

565. *Id.* at 313-14.

566. *Id.* at 314.

567. *Id.* at 315.

568. *Id.*

569. *Id.* at 316.

570. *Id.*

with the Tax Court arguing that the money ETC collected from its customers in “subscriber line charges” (SLC) and “federal universal service contribution recoveries” (FUSCR) were not subject to the URT, and that the distributions ETC received through various federal and state subsidy programs were not subject to the URT.⁵⁷¹

The court first dealt with the issue of whether the money ETC collected in SLCs and FUSCRs should have been subject to the URT. In dealing with this issue, the court first analyzed whether the SLCs and FUSCRs should be excluded from ETC’s gross receipts as “fees” or “surcharges.”⁵⁷² The court noted that the legislature had not defined the terms “fees” and “surcharges” for purposes of URT, and the court gave those words their plain, ordinary and usual meaning, as defined in the dictionary.⁵⁷³ Based on the dictionary definitions of these terms, the court held that the SLCs and FUSCRs were “fees” or “surcharges” because they were charges that were in addition to and separate from ETC’s charges for its basic monthly service. Therefore, the court held the money ETC collected in SLCs and FUSCRs was excluded from its gross receipts for purposes of the URT.⁵⁷⁴

Next, the court analyzed whether or not the distributions ETC received through various federal and state subsidy programs should be subject to the URT. The court first looked to the definition of the term “gross receipts.” The court looks to IC 6-2.3-3-3 which defines the term “gross receipts” as essentially any legal settlement.⁵⁷⁵ The court next looked to how the Indiana Code used the term “settlement.” The court found that the term “settlement” with regard to the government subsidies were not legal settlements, and therefore “they [did] not qualify as gross receipts pursuant to Indiana Code § 6-2.3-3-3.”⁵⁷⁶ The court further found that the government subsidies clearly did not meet the terms of IC 6-2.3-3-10 because they were used to offset the general costs of overall line use and maintenance.⁵⁷⁷

Finally, the court addressed two other, more general arguments made by Department to support its taxation of ETC’s charges and distributions. Department argued that the charges and distributions are gross receipts because ETC receives them. The court, however, found that ETC’s receipt of the SLCs, FUSCRs, and distributions were not received in consideration for the retail sale of utility services for consumption and therefore not subject to the URT.⁵⁷⁸ In its final argument, the Department claimed that the intent of the legislature in creating the URT in 2002, was “to increase tax revenues from utility companies,” and ETC’s charges and distributions should be included in gross receipts in order

571. *Id.* at 313.

572. *Id.* at 317.

573. *Id.*

574. *Id.*

575. *Id.* at 319.

576. *Id.*

577. *Id.*

578. *Id.* at 320.

to further that goal.⁵⁷⁹ The court noted, however, that the State's power to tax is contingent upon the occurrence of a specific event as prescribed by the applicable statutes. Based on this observation, the court held that to the extent ETC has demonstrated that its SLCs, FUSCRs, and government subsidies did not fall within the meaning of "taxable gross receipts" for purposes of the URT, the items failed to meet the requirements of the statute.⁵⁸⁰

The court concluded that the SLCs, FUSCRs, and the other government subsidies should not be subject to the URT.

579. *Id.*

580. *Id.* at 320-21.

