1991 Developments In Indiana Taxation

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INTRODUCTION

On the surface, 1991 was a relatively quiet year for Indiana tax law. No major legislation was enacted, no common theme emerged, no tax court rules were changed, and with the exception of the *Indiana Department of Revenue v. Felix*[1] intangibles tax case, tax issues drew little attention. This is reflected by the brevity of this year's Article. After analyzing in detail one important change in the Indiana Rules of Appellate Procedure affecting tax cases, this year's Article simply highlights various decisions dealing with diverse subjects.

I. APPELLATE RULE 18

The most significant development in Indiana taxation came with the enactment of Rule 18 of the Indiana Rules of Appellate Procedure.[2] This Rule addresses the mechanics for appealing from the Indiana Tax Court to the Indiana Supreme Court. Some background is necessary to understand fully the consequences of the Rule.

Prior to the creation of the tax court in 1986, tax cases were heard by the county circuit courts. Appeals from decisions of the circuit courts were taken directly to the Indiana Court of Appeals as for any other case.[3] Further review from the Indiana Supreme Court was allowable in the court's discretion under its transfer jurisdiction.

With the creation of the Indiana Tax Court, the legislature put the work of all the circuit courts into one specialized tax forum in order

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1. 571 N.E.2d 287 (Ind. 1991), *cert. denied*, 60 U.S.L.W. 3154 (U.S. Feb. 18, 1992).

2. IND. R. APP. P. 18.

3. *See, e.g.*, IND. CODE § 6-8.1-9-1 (1988).

to promote uniformity in tax adjudication.[4] The legislature then streamlined the next level of appeal by providing, in Indiana Code section 33-3-5-15, that "decisions of the tax court may be appealed directly to the supreme court."[5] The legislature thus removed the Indiana Court of Appeals from the tax arena, opting instead to have tax cases appealed to and decided by the state's highest court.

The tax court's enabling statute is silent on how such an appeal is to be taken, however. In a 1987 case, the State Board of Tax Commissioners sought to appeal a decision from the tax court and formally asked the supreme court for guidance.[6] The court announced the following order:

> This Court now orders that appeals of final orders from the Indiana Tax Court shall be filed in the Indiana Supreme Court under the following guidelines: Counsel for appellant shall file a motion to correct errors and praceipe [sic], in the Tax Court, in accordance with T.R. 59 and A.R. 2(A). The Record of Proceedings and briefs shall be filed in the Indiana Supreme Court in accordance with A.R. 3(B) and A.R. 8.1, respectively. Pre-Appeal Statements under A.R. 2(C) shall not be filed. Normal rules for preparation of the Record and briefs shall apply.[7]

Thus, the supreme court would act much as the court of appeals does in routine appeals.

This procedure changed with the adoption of Indiana Rule of Appellate Procedure 18. Some time during 1990, work began on a draft of Rule 18. The authors of this Article are unaware of who initiated the effort to alter this area of tax practice or why the Rule was cast the way it reads. All that is known in the way of "legislative history" is that the Tax Court Liaison Committee of the Indiana State Bar, which is comprised of several leading Indiana tax practitioners and a representative of the Indiana Attorney General's office, was supplied with a draft copy of Rule 18 in late 1990. The Committee sought imput from practitioners and prepared an eighteen page report concerning the Rule.[8] Although the Tax Court Committee Report welcomed the centralization

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4. *See, e.g.*, Indiana Dep't of State Revenue v. Caylor-Nickel Clinic, P.C., No. 49S009107-TA-S94, slip op. at 4 (Ind. Mar. 6, 1992).

5. IND. CODE § 33-3-5-15 (1988).

6. State Bd. of Tax Comm'rs v. Fraternal Order of Eagles Lodge No. 255, No. 80S05-8703-TA-00349 (Ind. April 21, 1987).

7. *Id.* at 1.

8. REPORT OF THE TAX COURT LIAISON COMMITTEE CONCERNING PROPOSED RULE MODIFYING APPELLATE PROCEDURE IN TAX COURT CASES (Dec. 4, 1990) [hereinafter TAX COURT COMMITTEE REPORT] (copy on file with John R. Maley).

of procedures for appeal to the supreme court into one rule, it noted concern over one aspect of Rule 18 discussed later in this Article.

As with many rule changes from the Indiana Supreme Court, the court announced the enactment of Rule 18 without notice to the bar or the public and without any public hearing. The Rule was enacted on June 4, 1991, and became effective on January 1, 1992. Rule 18 makes significant changes to the rights and procedures for appealing adverse decisions of the Indiana Tax Court.

Rule 18 provides that a petition for rehearing may, but need not, be filed in the tax court prior to seeking further review.[9] If rehearing is sought, the petition must be filed within twenty days of the adverse final order.[10] The Rule then provides that any party "adversely affected by a final decision of the tax court shall have a right to petition the Supreme Court for review."[11]

This right, however, is not the same one that existed prior to January 1, 1992. Under prior law, a full appeal was taken to the supreme court; there was no discretion for the supreme court to decline review. With Rule 18, this practice changed. The Rule confirms this by providing that a "petition for review" can be filed with the supreme court within thirty days of the tax court final order.[12] The petition can be based on one or more of six different errors,[13] which are almost identical to the possible bases for a petition to transfer a case from the Indiana Court of Appeals to the Indiana Supreme Court under Indiana Rule of Appellate Procedure 11(B).[14]

Thus, the petition for review, which cannot exceed five pages in length[15] and which may be accompanied by a brief not to exceed ten pages,[16] is much like the transfer petition in that it need not be granted. Indeed, Indiana Rule of Appellate Procedure 18(E)(2) confirms that there is no right of review by providing, "*If* the Supreme Court grants the petition for review, the appellant shall have thirty (30) days to file an additional brief not to exceed fifty (50) pages."[17] The conditional language of this section clearly indicates that the supreme court has altered Indiana

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9. IND. R. APP. P. 18(A).
10. IND. R. APP. P. 18(B).
11. IND. R. APP. P. 18(C).
12. IND. R. APP. P. 18(C),(D).
13. IND. R. APP. P. 18(D)(2)(a)-(f).
14. It should be noted that in the transfer context, the supreme court has held that it has the power to grant transfer on a basis not enumerated in the Indiana Rules of Appellate Procedure. Baker v. Fischer, 296 N.E.2d 882, 883 (Ind. 1973). It seems likely that the *Baker* rationale would apply in the related "petition for review" setting as well.
15. IND. R. APP. P. 18(C).
16. IND. R. APP. P. 18(E)(1).
17. IND. R. APP. P. 18(E)(2) (emphasis added).

tax practice by abolishing the automatic right of appellate review.

Although Judge Fisher, the current tax court judge, has done a commendable job discharging the duties of the tax court, and in most instances no appeal is even desired,[18] the supreme court's abolition of full appellate review can be questioned on constitutional, statutory, and philosophical grounds. As a constitutional matter, one could ask whether the federal and state due process protections are infringed by Indiana Rule of Appellate Procedure 18.[19] Moreover, Indiana's constitutional provisions dealing with appellate jurisdiction and the "absolute right to one appeal" also suggest constitutional infirmities.[20]

Further, from a statutory standpoint, it appears that Rule 18 contravenes the legislature's directive in Indiana Code section 33-3-5-15 that decisions of the tax court "may be appealed directly to the supreme court."[21] A legitimate argument can be made that this vests taxpayers with a right of full appellate review, not just the chance at discretionary review based on six limited grounds as presented in a five page petition and a ten page brief. Supporters of Rule 18 might counter that this is a matter of procedure, over which the supreme court has primary authority.[22] Although it is one thing to define by rule how an appeal is to be taken, it is perhaps another to take away a right of appeal under the guise of procedure.

These constitutional and statutory issues cannot, of course, be resolved by this Article. The authors lack the authority, for one thing,

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18. From the time of its inception, the tax court has issued approximately 100 final orders. Less than 25% have been appealed, and the majority of those appealed have been affirmed.

19. *See* U.S. CONST., amend. V, XIV; IND. CONST., art. 1, § 12 ("All courts shall be open; and every person, for injury done to him in his person, property, or reputation, shall have remedy by due course of law. Justice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay.") The state constitutional issues are particularly noteworthy in this time of new focus on the Indiana Constitution. *See, e.g.*, IND. R. ADMISSION & DISCIPLINE 17 (making Indiana constitutional law a subject for the Indiana Bar examination); Brady v. State, 575 N.E.2d 981, 987 (Ind. 1991) (finding greater protections in Indiana's face-to-face clause than the federal confrontation clause); Randall T. Shepard, *Second Wind for the Indiana Bill of Rights*, 22 IND. L. REV. 575 (1989).

20. *See* IND. CONST. art. VII, §§ 4, 6.

21. IND. CODE § 33-3-5-15 (1988).

22. *See, e.g., id.* § 34-5-1-2 ("general assembly reaffirms the inherent power of the Supreme Court of Indiana to adopt, amend, and rescind rules of court . . ." affecting matters of procedure); *id.* § 34-5-2-1 (supreme court has power to adopt rules of practice and procedure, and "all laws in conflict therewith shall be of no further force or effect"); State v. Lewis, 429 N.E.2d 1110, 1113 (Ind. 1981) (court rule takes precedence over incompatible legislative rule of procedure), *cert. denied*, 457 U.S. 1118 (1982); Neeley v. State, 305 N.E.2d 434, 435 (Ind. 1974) ("[i]n the event of such incompatibility the Rules of Court will prevail").

and for another, analysis of such issues would benefit from advocacy in a litigation setting. Ironically, unless the matter were ever to reach the United States Supreme Court on a federal due process issue, it would be decided by the Indiana Supreme Court, which has apparently already rejected similar concerns of practitioners that were discussed by the Indiana State Bar Association's Tax Court Liaison Committee.[23]

Beyond the legalities of Rule 18, its wisdom can also be called into question. Indeed, the Tax Court Liaison Committee reported a preference among practitioners for having the supreme court preserve its role as the ultimate appellate arbiter of Indiana tax disputes.[24] The Report also considered what would occur if the tax court, which acts principally like a trial court, made a factual finding that a litigant desired to appeal.[25] Under a literal reading of Rule 18, no review of any such claimed error could occur.

Finally, in our system of jurisprudence, the very notion of not having at least one opportunity for appellate review is astounding. Again, Judge Fisher is doing an excellent job, but so are hundreds if not thousands of trial court judges across the land (including United States Tax Court judges) whose decisions are subject to full scrutiny by a *panel* of three or more appellate judges. There is something to be said for the American appellate system. If the Indiana Supreme Court had passed a rule stating that appeals from county circuit courts in contract, tort, or other cases were not as of right, one can imagine the outrage. There certainly does not seem to be any reason for tax to be treated any more lightly. Indeed, given that tax, by definition, involves the use of government power against the individual taxpayer, there probably should be more concern for full judicial review. It is respectfully submitted that this aspect of Rule 18 should be reconsidered and rewritten.

Until such time, if any, that the Rule is altered, tax practitioners are left in somewhat of a quandary. From a practical standpoint, two issues arise. First, should litigation strategy at the tax court be modified, and second, what should be done to obtain supreme court review? The answer to the first question is controlled by the simple fact that the Indiana Tax Court is now the court of last resort for Indiana tax law. No lawyer, not even the Attorney General, can guarantee the client will obtain appellate review. Thus, if nothing else, every reasonable effort to prevail on legal, and not just factual, issues must be made at the tax court.

When an adverse decision is reached (and obviously every case does have a loser, whether it be a private taxpayer or the taxpayers collectively

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23. TAX COURT COMMITTEE REPORT, *supra* note 8, at 11-12.
24. *Id.*
25. *Id.* at 13.

as represented by the State), the second issue of how to get full review by the supreme court must be addressed. Five pieces of advice are offered:

1. Prepare both a petition for review and an accompanying ten page brief demonstrating the importance of the case and the error committed.
2. Request oral argument. Rule 18 does not address this issue, so seek oral argument under Indiana Rule of Appellate Procedure 10(A). It might only be through the spoken word that the importance of the client's tax case can be effectively conveyed.
3. Look for possible amicus help. The time period for doing this is short, but an amicus brief proclaiming the importance of the issues might catch the court's attention.
4. Consider raising the constitutional and statutory issues outlined above and urge the court that full review is required notwithstanding Rule 18. Although this is a touchy subject that requires delicate handling, there is little to lose when it appears unlikely that the supreme court will accept review in a particular case.
5. Remind the court that it can consider errors that do not fall directly within the outlined bases for review, (or at least the court has so held in the related "transfer" context).[26]

Despite the legal and practical infirmities of Rule 18 perceived by the authors of this Article, Rule 18 is probably here to stay for the foreseeable future. Thus, tax practitioners must carefully consider the ramifications of restricted appellate review and work to make the best of it for their clients.

There are other aspects of Rule 18 that deserve mention. No extensions of time are permitted for the petition for review and related brief.[27] No petition for rehearing may be filed from denial of a petition for review.[28] If review is granted, the appellant's brief and any transcripts of evidence are due in thirty days.[29]

Although the draft of Rule 18 provided to the Tax Court Liaison Committee contained a provision for interlocutory appeals, the version adopted by the supreme court is silent on the matter. In fact, Rule 18 appears to be limited expressly to final orders. It does state, however, that "[a]ll other rules of appellate procedure shall apply to appeals from the Tax Court except as otherwise specifically provided in this Rule 18."[30]

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26. *See supra* note 14.
27. IND. R. APP. P. 18(H)(1), (4).
28. IND. R. APP. P. 18(H)(1).
29. IND. R. APP. P. 18(E)(2), (F)(2).
30. IND. R. APP. P. 18(H)(2).

Presumably, then, Indiana Rule of Appellate Procedure 4(B) governs appeals of interlocutory orders. Most significant in this context is Rule 4(B)(3), which allows appeal of an interlocutory order as of right from the grant or denial of preliminary injunctions.[31] As discussed in a previous survey article, the tax court's injunctive relief powers are significant and have been invoked on many occasions.[32] It would appear that appeal could be taken from the tax court's ruling on a petition for preliminary injunctive relief. This is how it should be, but it would be odd for the supreme court to entertain appeals from such preliminary orders and yet have full discretion to decline review of a final order on the merits.

Thus, Rule 18 is commendable for its attempt to collate and clarify the procedures for appealing from the Indiana Tax Court. Unfortunately, the Rule abolishes the right of appeal from final orders and leaves questions open concerning the appeal of nonfinal orders. The legislature's creation of the tax court and Judge Fisher's job in getting the court off on the right foot have gone a long way towards improving the administration of justice in Indiana tax disputes. Rule 18 could be viewed as one step forward and two steps backward down this road. Hopefully, the supreme court will seek input from the tax bar on these subjects and work to further improve the administration of justice in this important substantive area.

II. Substantive Decisions

As noted previously, few tax cases gained notoriety during 1991. Most dealt with fact specific issues and are thus only briefly summarized in this Article. The few decisions that are of general importance to tax practitioners are analyzed in more detail.

A. Jurisdiction

In *Indianapolis Historic Partners v. State Board of Tax Commissioners*,[33] the tax court was presented with an appeal that, according to the State Board, did not fall within any express statutory authorization or procedures for appeals to the tax court. The court ruled otherwise, though it acknowledged that no specific procedure exists for the taxpayer's appeal from the Board's denial of a petition for correction of error after the denial of an economic revitalization area deduction.[34] The court nonetheless found jurisdiction proper, reasoning that in Indiana Code

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31. Ind. R. App. P. 4(B)(3).

32. Lawrence A. Jegen, III & John R. Maley, *Survey of Recent Developments in Indiana Taxation Law*, 23 Ind. L. Rev. 531, 532-33 (1990).

33. 563 N.E.2d 1345 (Ind. Tax Ct. 1990).

34. *Id.* at 1348.

section 33-3-5-2,[35] which is the part of the tax court's enabling statute, the legislature "did provide a method by which a taxpayer may appeal a tax assessment which the taxpayer believes to be illegal or incorrect."[36] The decision further illustrates that the tax court will assume jurisdiction whenever reasonably possible.

B. Sales and Use Taxes

In *Evansville Concrete Supply Co. v. Indiana Department of State Revenue*,[37] the timeliness of the taxpayers' claim for refund of sales and use taxes was at issue. The limitation period for such claims is set forth in Indiana Code section 6-8.1-9-1(a), which provides that a claim for refund must be filed within three years of: "(1) the due date of the return; (2) the date of payment; or (3) in the case of a return filed for the state gross retail or use tax [and five other enumerated taxes] the end of the calendar year which contains the taxable period for which the return is filed."[38] The Department argued that subdivision (a)(3) provides the exclusive period for sales and use taxes. The tax court disagreed, reasoning that subdivision (a)(3), which addresses returns that have due dates relating to periods shorter than a calendar year, simply provides tax refund claimants with a third alternative.[39] The court noted that this subdivision relieves the Department and taxpayers from the burden of filing numerous refund claims for each time period.[40]

Apparently in reaction to the *Evansville Concrete* decision, the Department issued Tax Policy Directive # 1, addressing the related issue of when the Department can assess such taxes.[41] The Directive notes that the language of Indiana Code section 6-8.1-9-1(a)(3) with respect to claims for refund, is also contained within Indiana Code section 6-8.1-5-2, with respect to the three years allowed for assessment.[42] The Department takes the position in the Directive that a tax assessment for sales taxes, use taxes, and the other enumerated taxes with less than calendar year periods, can be made within three years of the date the return is filed or the date of the return, whichever is later. This interpretation is consistent with the Department's position in the related context of refunds and with the statutory authority under Indiana Code section 6-8.1-5-2.[43]

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35. IND. CODE § 33-3-5-2 (1988).
36. *Indianapolis Historic Partners*, 563 N.E.2d at 1348.
37. 571 N.E.2d 1350 (Ind. Tax Ct. 1991).
38. IND. CODE. § 6-8.1-9-1(a) (1988).
39. *Evansville Concrete*, 571 N.E.2d at 1353.
40. *Id.* at 1354.
41. TAX POLICY DIRECTIVE # 1 (August 1991) (copy on file with John R. Maley).
42. *Id.*
43. *See* IND. CODE § 6-8.1-5-2 (1988).

In a substantive matter, the tax court decided in *General Motors v. Indiana Department of State Revenue*,[44] that GM's purchases of packing materials were exempt from sales and use tax because they were used within an integrated production process, notwithstanding that these component parts could have been sold separately on replacement parts markets.[45] The case is significant not only for the amount at issue, which exceeded $450,000, but because it gives a well-reasoned interpretation of the equipment exemption standard of Indiana Code section 6-2.5-5-3(b).[46]

The tax court easily found the packaging materials to be directly used in the production process because they were an essential and integral part of an integrated production process.[47] The key dispute was whether GM's production of an automobile, which occured in various stages and in various facilities, was an integrated production process. The court found that it was, reasoning that even though finished component parts could be sold in the parts market, the most marketable product was the production of an automobile.[48] Further, taxing the packing materials would result in tax pyramiding, "the exact evil the legislature intended the exemption statutes to prevent."[49]

Thus, *General Motors* serves as a guide for other manufacturers with similar production processes. No doubt, there are a number of industries besides the auto industry that have various production processes occurring at different plants in different locations. The *General Motors* decision could aid in structuring those operations to avoid sales and use taxes at each level.

C. Income Taxes

In the income tax area, three decisions were issued by the Indiana Supreme Court, with the decision of the Indiana Tax Court affirmed each time. These are summarized as follows:

In *Hoosier Energy Rural Electric Cooperative, Inc. v. Indiana Department of State Revenue*,[50] the court affirmed Judge Fisher's ruling, holding that imposition of gross income tax on the interstate sale of federal income tax benefits does not violate the Commerce Clause when the seller and its property had their situs in Indiana.[51]

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44. 578 N.E.2d 399 (Ind. Tax Ct. 1991).
45. *Id.* at 405.
46. *See* IND. CODE § 6-2.5-5-3(b) (1988).
47. *General Motors*, 578 N.E.2d at 402.
48. *Id.* at 403.
49. *Id.* at 405.
50. 572 N.E.2d 481 (Ind.), *cert. denied*, 112 S. Ct. 337 (1991).
51. *Id.*

In *Hammond Lead Products v. Indiana Tax Commissioners*,[52] the court affirmed Judge Fisher's ruling that interest income earned under repurchase agreements was subject to adjusted gross income tax because the plaintiff corporation was not the owner of securities entitled to an exemption.[53]

In *Department of State Revenue v. Chrome Deposit Co.*,[54] the supreme court affirmed Judge Fisher's ruling for the taxpayer that the taxpayer was in the business of manufacturing a product consumed by its customers so as to take advantage of tax rates for wholesale sales and exemption for equipment used in manufacturing.[55] The supreme court simply adopted Judge Fisher's opinion on the merits and incorporated it by reference and then briefly explained its rejection of the Department's argument that the tax court had improperly decided questions of fact at summary judgment.[56]

At the tax court level, the only income tax decision of general interest is *Caylor-Nickel v. Indiana Department of State Revenue*,[57] wherein the court held that the timely filing of a small business corporation gross income tax return is not a condition precedent to claiming the small business exemption.[58]

D. Responsible Officer Liability

In *Ball v. Indiana Department of Revenue*,[59] the Indiana Supreme Court affirmed the tax court's ruling holding a corporate officer responsible for unpaid corporate sales and withholding taxes.[60] Ball was the majority shareholder and chief executive of a corporation that failed to pay sales and withholding taxes. There was never any dispute about his status as a responsible officer for purposes of Indiana tax law. Instead, Ball claimed he was not given proper notice of the deficiencies and was thus denied due process.

The supreme court found no due process violation, however, reasoning that "separate and additional notice to the responsible officer of the corporation is not required where there is timely notice to the

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52. 575 N.E.2d 998 (Ind. 1991).
53. *Id.* at 1001.
54. 578 N.E.2d 643 (Ind. 1991).
55. *Id.* at 644.
56. The *Chrome Deposit* decision could well be a barometer of how much (or how little) attention will be given by the supreme court to tax court cases now that Appellate Rule 18 is on the books.
57. 569 N.E.2d 765 (Ind. Tax Ct. 1991).
58. *Id.* at 768-71.
59. 563 N.E.2d 522 (Ind. 1990).
60. *Id.* at 525.

corporation as the [responsible officer] statute is, ipso facto, sufficient notice to the responsible officer that a duty exists to remit the tax fund held in trust."[61] The court added:

> Under I.C. 6-2.5-9-3, only those persons who have a duty to remit such assessments can be held personally liable for the failure to remit those taxes that are to be held in trust for the State. Thus, because these persons serving the corporation have direct and immediate control of the internal corporate processes dealing with these entrusted funds, it may be safely assumed that they are aware of the responsible officer statute which is the source of their potential personal liability and that they are aware of and privy to corporate correspondence relating to their corporate duties including notices of assessment sent to the corporation.[62]

Moreover, the court noted that the Department had tried on several occasions to serve Ball with personal notice by certified mail.[63] The decision thus stands as a warning to responsible officers to ensure that the corporation remits such taxes.

E. Interest

In the *General Motors* case discussed previously, the tax court also decided that GM was entitled to receive interest on the interest portion of its overpayment.[64] This sounds confusing at first, but on further review it is not. GM had paid additional tax and interest on the tax. Prior to trial, the Department determined that a portion of the tax was wrongfully assessed and thus, refunded that tax and the interest GM had paid. The Department did not, however, pay refund interest on the deficiency interest for the amount of time GM held that money (the deficiency interest payment).

The tax court ordered the Department to pay interest on this money, reasoning that there is a common-law right to receive interest as damages on money owed or withheld and that the taxing statutes do not abrogate this right.[65] The court further held that interest paid on the interest deficiency would not constitute impermissible compound interest.[66] Com-

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61. *Id.* at 524 (citing Van Orman v. State, 416 N.E.2d 1301 (Ind. Ct. App. 1981)).
62. *Id.*
63. *Id.*
64. General Motors v. Indiana Dep't of State Revenue, 578 N.E.2d 399 (Ind. Tax Ct. 1991).
65. *Id.* at 405-08.
66. *Id.* at 408.

pound interest, the court noted, is interest paid by a payor on interest the payor has previously paid.[67] By contrast, simple interest is interest paid by the payor (here the Department) on money previously paid by the payee (here GM), whether the money represents tax, interest, penalties, or some other classification.[68]

Thus, taxpayers who have previously paid money to the State in the form of interest are entitled to and should seek to recover interest on that money when it is recovered. The *General Motors* decision recognizes that this is proper, and it makes sense as the taxpayer has been without that money (and the State has been able to utilize the funds) during the time period in question.

F. Property Tax

In *Glass Wholesalers, Inc. v. State Board of Tax Commissioners*,[69] a wholesaler of automobile glass sought an adjustment in its tangible personal property tax for abnormal obsolescence of inventory pursuant to Indiana Code section 50-4.1-3-9. The State Board had denied the adjustment, reasoning that neither destruction of the inventory by catastrophe nor exceptional technological obsolescence had been shown. On appeal, the tax court first explained that "[t]o receive an adjustment for abnormal obsolescence of inventory, a taxpayer must show the value of its inventory has changed, the change in value was unforeseen, and the unforeseen change in value was the result of exceptional technological obsolescence or destruction by catastrophe."[70] The tax court affirmed the denial of the adjustment, because the taxpayer produced no evidence that the change in value was unforeseen.[71] The tax court further noted that obsolescence was not due to exceptional technology, in that there was still a market for the windshields, albeit at a lower price.[72]

Separately, the tax court held that the State Board was not estopped from challenging the claimed adjustment for 1988 because of its allowance in 1987 and 1989.[73] Noting that estoppels against the State are disfavored, the tax court determined that the taxpayer had not relied on the State Board's representations.[74]

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67. *Id.*
68. *Id.*
69. 568 N.E.2d 1116 (Ind. Tax Ct. 1991).
70. *Id.* at 1120 (citing IND. ADMIN. CODE tit. 50, r.4.1-3-9; Don Medow Motors, Inc. v. State Bd. of Tax Comm'rs, 545 N.E.2d 351, 352 (Ind. Tax Ct. 1989)).
71. *Id.* at 1121.
72. *Id.*
73. *Id.* at 1122-23.
74. *Id.*

In *Kentron, Inc. v. State Board of Tax Commissioners*,[75] the taxpayer appealed from the State Board's denial of the statutory interstate commerce exemption for tangible personal property taxes. The State Board had denied the exemption on the grounds of waiver, reasoning that the taxpayer had failed to comply with the procedural requirements for obtaining the exemption. On appeal, the tax court refused to consider the taxpayer's arguments on the merits of the exemption. The court reasoned that "the issues determined by the State Board are generally the only issues this court may review," and thus concluded that the "sole issue before the court concerns Kentron's waiver of the exemption."[76]

On the merits of the waiver issue, the tax court then held that the taxpayer had waived the exemption.[77] Although the exemption is rooted in a constitutional right that extends to taxpayers under *Dennis v. Higgins*,[78] such rights "may be regulated by reasonable procedural requirements."[79] The tax court thus held that the exemption had been waived by the taxpayer's failure to comply with the procedures set forth in Indiana Code sections 6-1.1-10-31 and 6-1.1-11-1.[80]

In the real property arena, the Indiana Supreme Court held in *St. Mary's Medical Center, Inc. v. State Board of Tax Commissioners*,[81] that a nonprofit hospital was not entitled to a property tax exemption for buildings occupied by staff for private medical practices.[82] The court thus affirmed the decision of the tax court that the use of the hospital's buildings for private medical practices was not "reasonably necessary" to the exempt purpose of providing hospital care and services to the public.[83] The supreme court also affirmed the tax court's rejection of the hospital's legislative acquiescence argument, noting that this doctrine is "hopelessly insoluble and useless as a tool of statutory construction" when "past administrative or judicial interpretations vary or are few in number or not widely known."[84] The court thus confirmed that this doctrine is not well received in Indiana.

Finally, in *Indiana Department of Revenue v. Felix*,[85] the Indiana Supreme Court reversed the trial court's ruling and held that Indiana's

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75. 572 N.E.2d 1366 (Ind. Tax Ct. 1991).
76. *Id.* at 1371.
77. *Id.* at 1374.
78. 111 S. Ct. 865 (1991).
79. *Kentron*, 572 N.E.2d at 1372.
80. *Id.* at 1374.
81. 571 N.E.2d 1247 (Ind. 1991).
82. *Id.* at 1250.
83. *Id.*
84. *Id.*
85. 571 N.E.2d 287 (Ind. 1991), *cert. denied*, 60 U.S.L.W. 3154 (U.S. Feb. 18, 1992).

former tax on intangible property is not violative of the Commerce Clause.[86] A petition for certiorari was filed with the United States Supreme Court, and at last word, the parties had agreed to settle this multi-million dollar case.[87] According to published reports, the State feared that the Court would hear the case and strike down the law, possibly leading to a much larger award in this class action lawsuit.[88]

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86. *Id.* at 293.
87. *Settlement on Intangibles Tax*, INDIANAPOLIS STAR, Feb. 11, 1992, at D8.
88. *Id.*