1992 Developments in Indiana Taxation

Lawrence A. Jegen, III*
John R. Maley**

Introduction

Several significant developments occurred in Indiana tax law and practice during the survey period. The Indiana Tax Court rendered several important opinions on jurisdictional matters, including the scope of the Tax Court's small claims docket, and the Tax Court's jurisdiction to hear certain claims brought pursuant to 42 U.S.C. § 1983.[1] In addition, a number of key decisions concerning tax sales of real property were issued by the Indiana Supreme Court, the Indiana Court of Appeals, and the Indiana Tax Court. Finally, the Indiana Supreme Court showed substantial deference to the Indiana Tax Court, while debate ensued over whether the Tax Court's decisions should be subject to review by the Indiana Supreme Court as originally designed in the Tax Court's enabling statute, or, instead, whether the Indiana Court of Appeals should review such cases.

I. Procedural Matters

A. Jurisdictional Issues

In *Harlan Sprague Dawley, Inc. v. Indiana Department of State Revenue*,[2] Judge Fisher addressed the important issue of whether the Tax Court has subject-matter jurisdiction over a claim under 42 U.S.C. § 1983 relating to the original tax appeal. The issue arose because of the potential to recover attorneys' fees under 42 U.S.C. § 1988 for prevailing parties in § 1983 cases. Since the United States Supreme Court's decision in *Dennis v. Higgins*,[3] which held that Commerce-Clause

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* Thomas F. Sheehan Professor of Tax Law and Policy, Indiana University School of Law—Indianapolis. B.A., Beloit College; M.B.A., J.D., University of Michigan; LL.M., New York University.

** Associate, Barnes & Thornburg, Indianapolis; Adjunct Professor, Indiana University School of Law—Indianapolis. B.A., 1985, University of Notre Dame; J.D. (summa cum laude), 1988, Indiana University School of Law—Indianapolis. Law Clerk to the Honorable Larry J. McKinney, United States District Court, Southern District of Indiana, 1988-90.

1. 42 U.S.C. § 1983 (1988).
2. 583 N.E.2d 214 (Ind. T.C. 1991).
3. 111 S. Ct. 865 (1991).

cases are actionable under § 1983 and thus can provide the basis for fees under § 1988,[4] many tax practitioners have added § 1983 claims to their original tax appeals in the Indiana Tax Court. The taxpayer in *Harlan Sprague* did just this, and the Department of Revenue moved to dismiss for want of jurisdiction.

Judge Fisher denied the motion,[5] reasoning first that only the Tax Court has jurisdiction over original tax appeals and that in determining a § 1983 claim appended to an original tax appeal, the § 1983 issues would arise under Indiana's tax laws sufficient to confer jurisdiction. Judge Fisher added that he has construed the Tax Court's overall jurisdiction broadly, and that such a construction is consistent with the legislature's intent to avoid different county court interpretations of state tax issues.[6]

Judge Fisher then ruled that the Tax Injunction Act, 28 U.S.C. § 1341, does not prohibit the Tax Court from exercising jurisdiction.[7] He reasoned that this federal provision limiting the jurisdiction of United States district courts simply did not apply here. He then rejected the Department's argument of "equitable restraint" and dismissed the contention that Indiana's tax laws provided the exclusive remedy. Henceforth, the rule in the Indiana Tax Court is that § 1983 claims that arise out of the same common nucleus of operative facts as the original tax appeal may be prosecuted in the Indiana Tax Court. Practitioners should thus consider this additional theory of relief, and the possible attorneys' fees that might come with it, in each original tax appeal. Careful research on such § 1983 issues is advised, however, as this is an area replete with subtle difficulties.

In *Sherry Designs, Inc. v. State Board of Tax Commissioners*,[8] the Indiana Tax Court dismissed an original tax appeal for failure to meet all jurisdictional requirements.[9] The taxpayer sought to appeal an adverse final determination of the State Board of Tax Commissioners, and timely filed its petition with the Tax Court. However, the Tax Court's jurisdictional statute for such appeals also requires notice of the appeal to be served on the State Board and requires that the Indiana Attorney General and the local assessor be served with a copy of the complaint within forty-five days of the Board's final determination.[10] The taxpayer wrote the local assessor and the Indiana Attorney General advising of

4. *Id.* at 868-73.
5. 583 N.E.2d at 217-18.
6. *Id.* at 216-19.
7. *Id.* at 220.
8. 589 N.E.2d 285 (Ind. T.C. 1992).
9. *Id.* at 286.
10. Ind. Code § 6-1.1-15-5 (1988 & Supp. 1992).

the appeal, but neither communication included a copy of the complaint and thus technically violated the jurisdictional statute.

Judge Fisher held that this was fatal to the appeal,[11] relying on Indiana Code section 33-3-5-11(a) (1988), which states: "If a taxpayer fails to comply with any statutory requirement for the initiation of an original tax appeal . . . the tax court does not have jurisdiction to hear the appeal."[12] Judge Fisher rejected the taxpayer's "substantial compliance" argument, noting that the letters to the assessor and the Attorney General did not even reference the taxpayer, let alone the nature of the claim.[13]

Thus, Judge Fisher did not need to decide whether the doctrine of substantial compliance applied in this setting, for even if it did, the doctrine had not been met. The lesson for practitioners, of course, is to ensure that the jurisdictional requirements for pressing a claim in the Tax Court are strictly followed. If they are not, the doctrine of substantial compliance can still be argued if the facts support it, but it is unclear for now whether the Tax Court will accept this legal doctrine.

In *Leehaug v. State Board of Tax Commissioners*,[14] the Tax Court addressed the scope of its small claims docket. Under Indiana Code section 33-3-5-12, a small claims docket was contemplated as follows:

> The tax court shall establish a small claims docket for processing:
> (1) claims for refunds from the department of state revenue that do not exceed . . . $5,000 for any year; and
> (2) appeals of final determinations of assessed value made by the state board of tax commissioners that do not exceed . . . $15,000 for any year.[15]

Indiana Tax Court Rule 16 then defines the term "small tax case" to include "an appeal of a final determination of assessed value made by the State Board of Tax Commissioners that does not exceed $15,000 for any year."[16] The issue in *Leehaug* was whether, under this statute and rule, an appeal of a final determination of assessed value exceeding $15,000 could be a small tax case where the taxpayers did not seek to reduce the assessed value by more than $15,000.

Judge Fisher found the statute and rule ambiguous, and thus relied on principles of statutory construction to conclude that it is the amount

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11. 589 N.E.2d at 286.
12. *Id.* (quoting Ind. Code § 33-3-5-11(a) (1988)).
13. *Id.*
14. 583 N.E.2d 211 (Ind. T.C. 1991).
15. Ind. Code § 33-3-5-12(a) (1988).
16. Ind. R. T.C. 16.

at issue, not the total assessed value, that should govern.[17] He observed that Indiana statutes that are generally applicable to civil small claims cases similarly focus on the amount in dispute, and further reasoned that the consequences of applying a different rule would be unsatisfactory. He explained:

> Applying the State Board's interpretation of IC 33-3-5-12(a)(2) and Indiana Tax Court Rule 16(A) would deny the small claims process to taxpayers challenging State Board assessments on any property with an assessed value greater than $15,000. 'Assessed value' is defined as: "an amount equal to . . . 33 1/3% of the true tax value of property." Ind. Code § 6-1.1-1-3. Thus, a property with an assessed value of $15,000 would have a true tax value of approximately $45,000. The small claims process provides inexpensive access to the courts because the services of an attorney are generally not required. The imposition of a $15,000 assessed value ceiling would deny the benefits of the small claims process to taxpayers with modestly valued property, even in cases where the amount of assessed value in dispute is small.[18]

Thus, after *Leehaug* it is the amount in dispute, not the assessed value of the property, that determines whether the expedited small tax case rules will apply. This is a good result, because under Tax Court Rule 16 the notice of claim to be used is quite simple: service need only be made upon the Attorney General, and the Indiana Rules for Small Claims, which generally apply to civil cases in small claims courts, are incorporated by reference. Thus, for practitioners with appeals involving $5,000 or less in a claim for refund from the Department of Revenue, or $15,000 or less in disputed assessed value, the small tax case procedures offer simplicity, expediency, and the chance to take on such cases with minimal legal fees.

B. The Supreme Court's Role in Indiana Tax Issues

Last year's Survey Article discussed the Indiana Tax Court's emerging role as the leading judicial force in Indiana tax law.[19] This is due in part to the fact that the Indiana Supreme Court no longer automatically fully reviews decisions of the Tax Court. Instead, under Rule 18 of the Indiana Rules of Appellate Procedure, the Indiana Supreme Court now

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17. *Leehaug*, 583 N.E.2d at 212.
18. *Id.* at 214 (footnotes omitted).
19. Lawrence A. Jegen, III & John R. Maley, *1991 Developments in Indiana Taxation*, 25 IND. L. REV. 1405, 1405-11 (1992).

treats petitions to review tax cases much like transfer petitions, with which the decision to accept review is discretionary with the supreme court.[20]

Beyond Indiana Appellate Rule 18, the Indiana Supreme Court has shown varying interest in the Tax Court's decisions, and has deferred to the Tax Court's expertise in this area. For instance, in *Indiana Department of Revenue v. Caylor-Nickel Clinic*,[21] the court expressly noted that Tax Court decisions are reviewed deferentially. After observing the general rule that summary judgment rulings are reviewed de novo on appeal, the supreme court described a different rule in appeals from the Tax Court:

> As to summary judgments entered by the Tax Court, however, we will utilize a limited departure from this [de novo] standard of appellate review. When the summary judgment involves a question of law within the particular purview of the Tax Court, cautious deference is appropriate. The Indiana Tax Court was established to develop and apply specialized expertise in the prompt, fair, and uniform resolution of state tax cases. Thus upon issues of tax law, we will apply Indiana Tax Court Rule 10 which provides that "[t]he Court on appeal shall not set aside the findings or judgment of the Tax Court unless clearly erroneous."[22]

The supreme court then generally described the Department's challenge on appeal and summarily concluded that the "Tax Court formulated its decision utilizing principles of statutory construction in interpreting tax statutes and regulations, [and] the Department's briefs to this Court do not persuade us that the decision of the Tax Court was erroneous."[23]

A similarly brief review, though specifically discussing the issues involved, is found in *Indiana Department of State Revenue v. General Motors Corp.*[24] In this case, which concerned whether certain parts were exempt from sales and use tax as part of General Motors' integrated production process, as well as a separate issue concerning the payment of interest on interest itself wrongfully collected, the Indiana Supreme Court disposed of the case with deference to the Indiana Tax Court. At one point the supreme court noted that Judge Fisher had done an "excellent job of explaining" one of the issues, and concluded that his judgment should be affirmed.[25]

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20. *Id.*
21. 587 N.E.2d 1311 (Ind. 1992).
22. *Id.* at 1313 (citations omitted).
23. *Id.*
24. 599 N.E.2d 588 (1992).
25. *Id.* at 589.

The most dramatic example of this substantial deference to the Tax Court, however, comes in *Indiana Department of State Revenue v. Johnson County Farm Bureau Cooperative Ass'n*.[26] The complete opinion is as follows:

> The Indiana Department of State Revenue appeals from a decision of the Indiana Tax Court granting Johnson County Farm Bureau Cooperative Association, Inc., a deduction for freight-out costs when computing its gross earnings under the Grain Dealer Statutes, *Ind. Code* § 6-2-1-1(1) and *Ind. Code* § 6-2.1-1-5. *Johnson County Farm Bureau Cooperative Ass'n., Inc. v. The Indiana Department of State Revenue* (1991) [Ind. Tax], 568 N.E.2d 578. A careful review of the record leads us to agree with the Tax Court's conclusions. Because the Tax Court's opinion constitutes a clear, well-reasoned analysis of the law, we affirm, adopt, and incorporate by reference the opinion of the Tax Court. *Indiana Department of State Revenue v. Wechter*, (1990), 553 N.E.2d 844.[27]

On the other hand, in *USAir, Inc. v. Indiana Department of State Revenue*,[28] the Indiana Supreme Court issued a detailed opinion analyzing the sales tax issues raised. The court noted that the Tax Court's decision was entitled to a presumption of validity under Indiana Tax Court Rule 10, and after thoroughly discussing the issues, affirmed Judge Fisher's decision.[29]

Finally, in December 1992 in *Bethlehem Steel v. Indiana Department of State Revenue*,[30] the Indiana Supreme Court granted its first petition for review under Indiana Appellate Rule 18. The order granting review allowed the parties to file main briefs not exceeding fifty pages, and allowed the appellant to file a twenty-five-page reply brief.[31] Thus, *USAir* and *Bethlehem Steel* show that the Indiana Supreme Court still thoroughly reviews some decisions of the Indiana Tax Court.

Given more than seven years of experience and the deference often shown by the Indiana Supreme Court, there is no longer any doubt that the Indiana Tax Court is the leading arbiter of Indiana tax law. Thus, for practitioners, it is important to prepare cases before the Tax Court as thoroughly as possible. Judge Fisher and his two law clerks have sufficient time and resources to fully analyze the often complex tax

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26. 585 N.E.2d 1336 (Ind. 1992).
27. *Id.* at 1335-37.
28. 582 N.E.2d 777 (Ind. 1991).
29. *Id.*
30. No. 49S05-9212-TA-01046 (order granting review Dec. 18, 1992).
31. *Id.*

issues raised, and the Tax Court's detailed opinions reflect that this is indeed occurring. Although review and reversal of a Tax Court decision remains possible, in light of the Tax Court's expertise in this area and the deference shown by the Indiana Supreme Court, it is apparent that most cases will not be disturbed on review.

Perhaps as a result of this deference, a bill was introduced in the Indiana General Assembly this year seeking to amend Indiana Code section 33-3-5-15 so that appeals from the Tax Court would go to the Indiana Court of Appeals rather than the Indiana Supreme Court.[32] The bill did not become law, but could be introduced again in future sessions. If such a measure were enacted, presumably the deference provision of Indiana Tax Court Rule 10 would still apply, and the Indiana Court of Appeals would simply be the judicial body to exercise that deference in reviewing Tax Court decisions. In addition, although the House Bill was silent on this measure, presumably transfer to the Indiana Supreme Court could then be sought from an adverse decision of the Indiana Court of Appeals.

Particularly in cases involving the State Board of Tax Commissioners, the Tax Court acts much like an appellate court, because administrative decisions of the Board are not reviewed de novo by the Tax Court, and the parties are bound to the record presented at the administrative level.[33] In such cases, if the Indiana Court of Appeals reviewed Tax Court decisions, there would be three possible "appeals," as follows: (1) from State Board to Tax Court, (2) from Tax Court to Indiana Court of Appeals, and (3) from Indiana Court of Appeals to Indiana Supreme Court. Even in cases involving the Department of Revenue, in which the parties are not bound by the record developed at the administrative level, the proposed amendment would add an additional layer of appeal to the resolution of Indiana tax disputes.

The authors respectfully submit that the Indiana Supreme Court should retain its role as the final arbiter of Indiana tax law and that this important function should not be turned over to the Indiana Court of Appeals. The extra layer of review would add additional delay and expense to Indiana tax cases, and there is no obvious benefit that would be gained. Moreover, there is an apparent preference among tax practitioners for the Indiana Supreme Court to be the final check on Indiana tax issues.[34] The Indiana Supreme Court is certainly capable of performing

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32. *See* H.R. 1323, 108th Gen. Assembly, 1st Reg. Sess. (1993).

33. *See, e.g.*, Scheid v. State Bd. of Tax Comm'rs, 560 N.E.2d 1283 (Ind. T.C. 1990).

34. *See* Lawrence A. Jegen & John R. Maley, *1991 Developments in Indiana Taxation*, 25 Ind. L. Rev. 1405, 1409 (1992) (citing Report of the Tax Court Liaison Committee Concerning Proposed Rule Modifying Appellate Procedure in Tax Court Cases (Dec. 4, 1990)).

this role, and, although it has shown varying interest in such cases, has certainly not abandoned the area.

The authors further respectfully submit that in the cases the Indiana Supreme Court accepts for review, it should provide the bench and bar with the benefit of a thorough discussion of the issues. One benefit of such opinions is that they tend to produce better reasoned decisions.

A recent decision from the United States Supreme Court is noteworthy on this subject. The Court addressed whether a district judge's rulings on state-law issues should be reviewed deferentially.[35] That is to say, for example, should the Seventh Circuit review a decision on Indiana tort law from, say, Judge Barker, with deference, or should it review the legal standard de novo? In holding that de novo review is required, the United States Supreme Court expounded on the virtues of appellate review. The Court observed that trial courts have the burden of hearing witnesses and reviewing evidence, while at the same time trying to determine the applicable law. "Similarly, the logistical burdens of trial advocacy limit the extent to which trial counsel is able to supplement the district judge's legal research with memoranda and briefs."[36] "Thus," the Court explained, "trial judges often must resolve complicated legal questions without benefit of 'extended reflection [or] extensive information.'"[37]

Appellate courts, on the other hand, are

> structurally suited to the collaborative juridical process that promotes decisional accuracy. With the record having been constructed below and settled for purposes of the appeal, appellate judges are able to devote their primary attention to legal issues. As questions of law become the focus of appellate review, it can be expected that the parties' briefs will be refined to bring to bear on the legal issues more information and more comprehensive analysis than was provided for the district judge. Perhaps most important, courts of appeals employ multi-judge panels . . . that permit reflective dialogue and collective judgment.[38]

The Supreme Court then quoted Justice Frankfurter, who observed many years ago that "[w]ithout adequate study there cannot be adequate reflection; without adequate reflection there cannot be adequate discus-

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35. Salve Regina College v. Russell, 111 S. Ct. 1217 (1991).

36. *Id.* at 1221.

37. *Id.* (quoting Dan T. Coenen, *To Deter or Not to Deter: A Study of Federal Circuit Court Deterrence to District Court Rulings on State Law*, 73 MINN. L. REV. 899, 923 (1989)).

38. *Id.* (citations omitted).

sion; without adequate discussion there cannot be that fruitful interchange of minds which is indispensable to thoughtful, unhurried decision and its formulation in learned and impressive opinions."[39]

The Indiana Tax Court is not as "hurried" a place as most trial courts, and there are fewer trials in this forum than in most other trial courts. Moreover, the Tax Court has the benefit of two law clerks, unlike most state trial courts. Nonetheless, there is some merit to the above precepts in this context. In creating the Indiana Tax Court, it does not appear that the legislature intended for the Tax Court to be the final arbiter of tax matters. Indeed, the Tax Court's enabling statute provides that Tax Court decisions "may be appealed directly to the supreme court."[40] Moreover, it does not appear that Indiana's founders intended for trial court decisions to go unreviewed,[41] because the Indiana Constitution provides the "absolute right to one appeal."[42]

Thus, as a matter of both law and policy, the authors of this Article submit that the Indiana Supreme Court should carefully consider all petitions for review under Appellate Rule 18. When review is granted, the Indiana Supreme Court should render a full opinion in its role as the final arbiter of Indiana tax law. It is further submitted that the Indiana Court of Appeals should not take over this role, because this would only add an additional layer of delay and expense.

II. Substantive Issues

A. *Income Taxes*

In *F.A. Wilhelm Construction v. Indiana Department of State Revenue*,[43] the Indiana Tax Court held that built-in gains recognizable for federal income tax purposes when a C corporation elects S corporation status are not taxable under Indiana's adjusted gross income tax and supplemental income tax imposed on corporations.[44] Under federal tax laws, such built-in gains are taxable, and the taxpayer here had reported and paid those gains on its federal return. It did not report or pay such built-in gains, however, in its Indiana tax return.

The dispute centered on two Indiana tax statutes. First, Indiana Code section 6-3-2-2.8 states:

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39. *Id.* (quoting Dick v. New York Life Ins. Co., 359 U.S. 437, 458-59 (1959) (dissenting opinion)).

40. Ind. Code § 33-3-5-15 (1988).

41. Ind. Const. art. VII, §§ 4, 6.

42. *Id.* art. VII, § 6.

43. 586 N.E.2d 953 (Ind. T.C. 1992).

44. *Id.* at 956.

> Notwithstanding any provision of IC 6-3-1 through IC 6-3-7, there shall be no tax on the adjusted gross income of the following:
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> . . .
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> (2) Any corporation which is exempt from income tax under Section 1363 of the Internal Revenue Code [subchapter S corporations].[45]

Second, Indiana Code section 6-3-1-17 states:

> Whenever the Internal Revenue Code is mentioned in this article, the particular provisions which are referred to, together with all other provisions of the Internal Revenue Code . . . having any pertinency to the provisions specifically mentioned, shall be regarded as incorporated in this article by the reference and shall have the same force and effect as though fully set forth in this article.[46]

The tension in the *Wilhelm* case stemmed from apparent conflict between the former provision's exemption of Indiana income taxation on S corporations and the latter provision's incorporation by reference of all Internal Revenue Code provisions, which would thus include I.R.C. § 1374, which taxes such built-in gains. Judge Fisher resolved this conflict in favor of the taxpayer, reasoning that the former provision was clear that S corporations are not to pay any Indiana income tax.[47] Indeed, the former provision specifically states that this rule applies, "[n]otwithstanding any provision of IC 6-3-1 through IC 6-3-7."[48] Because the incorporation provision of Indiana Code section 6-3-1-17 is, of course, included within Indiana Code 6-3-1, the statutory scheme is clear that S corporations are not to pay income tax.

B. Property Tax Sales

In *Smith v. Breeding*,[49] the Indiana Court of Appeals addressed the consequences of a county auditor's failure to record a warranty deed for personal property. Smith had purchased fifty-eight acres of land in Crawford County in 1975 by land contract, and received his tax statements at his home in Indianapolis. Smith moved in 1981 to another residence in Indianapolis, and then in 1982 moved again to a third Indianapolis residence. In 1983 Smith recorded the warranty deed with the Crawford

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45. IND. CODE § 6-3-2-2.8 (1988).
46. *Id.* § 6-3-1-17 (repealed 1992).
47. 586 N.E.2d at 957.
48. IND. CODE § 6-3-2-2.8 (1988).
49. 586 N.E.2d 932 (Ind. Ct. App. 1992).

County auditor, but the auditor did not record Smith's new address or any other address. After 1984, no tax statements were delivered to Smith, Smith did not pay the 1984 and 1985 taxes, and the property was sold at a tax sale in 1987. Notice of the tax sale, and subsequently of the impending expiration of the redemption period, were sent to Smith at his prior Indianapolis address, but was returned undelivered. Smith thus did not redeem the property.

Smith later learned of the tax sale and sued to void the tax deed. The trial court denied Smith's motion for summary judgment,[50] and on interlocutory appeal the Indiana Court of Appeals affirmed.[51] Writing for the court, Judge Baker first observed that the auditor had plainly violated the statutory duty to record the mailing address of the grantee of real property.[52] This failure, however, was held not to violate due process such that the tax sale should be voided.[53] Smith had paid the taxes since the 1970s, and when two tax statements were mailed to his old address in 1982 and 1983 but forwarded to his correct address and those tax payments were made, Smith had the opportunity to advise the auditor of his new address. Judge Baker reasoned:

> Having failed to correct the auditor's records when he knew they reflected the wrong address, we will not now hear Smith complain about the auditor's failure to record Smith's address in the transfer book. As we stated in *Clark*, "the onus is upon the property owners to insure that the auditor's records reflect the correct address . . . ." Just as the owners in *Clark* had the opportunity to correct the auditor's incorrect information, Smith had the same opportunity. Even if the auditor's omission started "the chain of events that led to the tax sale[,]" Smith could have stopped the chain of events. He did not. Accordingly, the auditor's failure to record Smith's address in the transfer book did not render the subsequent tax deed void as a matter of law.[54]

The court then held that the auditor did not have any duty to search for Smith's correct address because Smith did not live in town.[55] Ad-

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50. *Id.* at 934.
51. *Id.* at 935.
52. *Id.* at 935 (citing IND. CODE § 6-1.1-5-4(a)).
53. *Id.* at 936.
54. *Id.* at 937 (citations omitted) (quoting Clark v. Jones, 519 N.E.2d 158, 160 (Ind. Ct. App. 1988), and Long v. Anderson, 536 F.2d 739, 742 (7th Cir. 1976)).
55. *Id.* at 937. Where the taxpayer's address can be located from the local phone directory, the Indiana Court of Appeals had imposed such a duty. *See* Elizondo v. Read, 553 N.E.2d 849 (Ind. Ct. App. 1990). As discussed *infra*, note 58 and accompanying text, however, the Indiana Supreme Court disagreed with and vacated the Court of Appeals' holding in *Elizondo*.

ditionally, the court held that Smith could show no prejudice from the auditor's failure to give the redemption notice at least 30 days prior to redemption as required by statute, particularly where the notice was sent 28 days before redemption, and the tax title deed was not actually issued until 36 days after the redemption notice to Smith.[56] Finally, the court then ordered that summary judgment be entered *against* Smith because there were no issues of fact.[57]

The *Smith* decision teaches the importance for property owners to ensure that their current address is on file for tax statements. Practitioners representing clients with property in addition to a principal residence should be particularly alert to this potential problem. For practitioners representing clients owning such land, when those clients change their principal residence, extra care must be taken to ensure that each county auditor where land is owned has the owner's proper mailing address.

In *Elizondo v. Read*,[58] the Indiana Supreme Court, in reversing a decision of the Indiana Court of Appeals, held that a county auditor is not required to search records unconnected with the subject property to give notice of tax sales.[59] In this case the prior owners of a recreational parcel had changed their principal residence several times, but did not give the auditor notice of their mailing address. Because the owner retains a duty to provide such information, the court held that the tax sale for failure to pay property taxes was not void.[60]

The *Elizondo* decision impacted Judge Fisher's analysis in *Centrium Group v. State Board of Tax Commissioners*,[61] in which penalties had been assessed by the State Board for failure to timely pay property taxes

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56. 586 N.E.2d at 938.

57. *Id.* Although, from a reading of the opinion, there do not appear to be any such factual issues, it is noteworthy that the court of appeals concluded that Smith *knew* the auditor did not have his address, and that he should have corrected this as a result. It may well be that Smith's knowledge was undisputed, but the facts stated in the opinion do not make this clear. Instead, the opinion outlines that two tax statements bore Smith's old address, and that those were then forwarded to Smith at his subsequent address. It thus appears that Smith's knowledge of the incorrect address might have been *inferred* by the court of appeals.

Certainly Smith *should have known* that the auditor did not have his address, but from the facts recited in the opinion it is not clear that he actually knew this. It may well be that Smith had admitted such knowledge in court filings, but if not, then there was at least one fact that was not undisputed. It may well be that the result would be the same if it could only be said that Smith should have known of the incorrect address, but the court applied no such objective standard, and instead used Smith's presumed subjective knowledge against him.

58. 588 N.E.2d 501 (Ind. 1992).

59. *Id.* at 504.

60. *Id.* at 505.

61. 599 N.E.2d 242 (Ind. T.C. 1992).

on commercial property. The taxpayer recorded the sale agreement with the county recorder, but the county auditor was not notified of the transaction, and no entry of the new owner's mailing address was made on the transfer books. Tax statements thus did not reach the new owner, the taxes went unpaid, penalties were assessed, and the property was put up for tax sale.

The owner read the published notice, and four days later prevented the sale by paying the tax of some $150,000 and the penalties of $40,000. The owner then sought a refund from the State Board, which was denied. On appeal to the Tax Court, Judge Fisher held that the auditor had no duty to independently determine the owner's new address.[62] The onus is on the taxpayer to ensure that the auditor has the correct address, and the fact that the auditor could have determined the proper address with ''minimal effort'' did not make the penalties illegal.[63] Thus, the penalties were affirmed,[64] and the owner's simple failure to give the auditor its mailing address ended up costing $40,000 in penalties, plus attorneys' fees to litigate the matter.

In *Metro Holding Co. v. Mitchell*,[65] the Indiana Supreme Court addressed whether the change in the tax-sale redemption period from two years to one year was constitutional, and, if so, whether it could be applied retroactively. The issues arose in two consolidated cases in which real property was sold at tax sales in 1987. At the time of sale, Indiana Code section 6-1.1-25-4 provided that a property owner whose property had been sold at tax sale had two years to redeem the property. Thus, both owners would have had until 1989 to redeem.

Effective January 1, 1988, however, this statute was amended to shorten the redemption period to one year.[66] The prior owners did not redeem within one year, so if the amendment applied, their redemption rights were extinguished.

The *Metro Holding* court first held that the one-year redemption period was not unconstitutional, rejecting the prior owners' argument that the redemption period created contract rights.[67] The court then held, however, that the amendment should not apply retroactively. The general rule is that statutes will normally be applied prospectively absent compelling reasons. Because no special reasons existed for applying the change retroactively, and because the Indiana Supreme Court had held in other circumstances that the law in force at the time of sale should govern

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62. *Id.* at 244.
63. *Id.*
64. *Id.*
65. 589 N.E.2d 217 (Ind. 1992).
66. IND. CODE § 6-1.1-25-4 (1988 & Supp. 1992).
67. *Metro Holding*, 589 N.E.2d at 218.

the redemption, the *Metro Holding* court applied the amendment prospectively.[68] The opinion is well-reasoned and supported by common sense and fairness. Practitioners should be aware, however, of the new one-year redemption period.

Finally, in *Leininger v. Gren*,[69] the Indiana Court of Appeals confirmed that there are only seven reasons that support an attack on title gained through a tax sale. Specifically, Indiana Code section 6-1.1-25-16 sets forth that a tax title may be defeated "only by proving" one of the following seven conditions:

(1) The tract was not subject to the taxes,
(2) The delinquent taxes were paid prior to sale,
(3) The tract was not assessed for the taxes for which it was sold,
(4) The tract was timely redeemed,
(5) The proper county officers issued a timely certificate stating no taxes were due,
(6) The description of the tract was so imperfect as to fail to describe it with reasonable certainty, and
(7) Proper notice was not given to a person with a substantial interest in the tract.[70]

In this case the prior owners tried to raise a condition not contained in the above statute, but the Court of Appeals held that only these seven defects can be raised.[71]

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68. *Id.* at 219. *Accord*, Rossman v. Dunson, 594 N.E.2d 789 (Ind. 1992) (following *Metro Holding*).
69. 596 N.E.2d 955 (Ind. Ct. App. 1992).
70. IND. CODE § 6-1.1-25-16 (1988).
71. *Leininger*, 596 N.E.2d at 958.