

RECENT DEVELOPMENTS IN INDIANA TAXATION SURVEY 2015

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INTRODUCTION: SOME REFERENCES USED IN THIS ARTICLE

This Article highlights the major tax developments that occurred during the calendar year of 2015. Whenever the term “GA” is used in this Article, the term refers only to the 119th Indiana General Assembly. Whenever the term “Tax Court” is referred to, such term refers only to the Indiana Tax Court. Whenever the term “Court of Appeals” is referred to, the term refers only to the Indiana Court of Appeals. Whenever the term “DLGF” is used, the term refers only to the Indiana Department of Local Government Finance. Whenever the term “IBTR” is used, the term refers only to the Indiana Board of Tax Review. Whenever the term “Department” or “DOR” is used, the term refers only to the Indiana Department of State Revenue. Whenever the term “IC” or “Indiana Code” is used, the term refers only to the Indiana Code, which is in effect at the time of the publication of this Article, unless otherwise explicitly stated. Whenever the term “ERA” is used, the term refers only to an Indiana Economic Revitalization Area. Whenever the term “CAGIT” is used, the term refers only to the Indiana County Adjusted Gross Income Tax. Whenever the term “COIT” is used, the term refers only to the Indiana County Option Income Tax. Whenever the term “LOIT” is used, the term refers only to the Local Option Income Tax. Whenever the term “IEDC” is used, the term refers only to the Indiana Economic Development Corporation. Whenever the term “CEDIT” is used, the term refers only to the Indiana County Economic Development Income Taxes. Whenever the term “IRC” or “Code” is used, the term refers only to the Internal Revenue Code, which is in effect at the time of the publication of this Article. Whenever the term “section” is used in this Article, the term refers only to a section of the Indiana Code, unless the reference is clearly to the Internal Revenue Code. Whenever the term “Public Law” is used, the term only refers to legislation passed by the Indiana General Assembly and assigned a Public Law number. Whenever the term “PTABOA” is used, the term refers only to a Property Tax Assessment Board of Appeals.

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I. INDIANA GENERAL ASSEMBLY LEGISLATION

More than forty of the 259 Public Laws passed by the 119th General Assembly in 2015 dealt with various aspects of state and local taxation. Given that high level of activity, it should come as no surprise that many of changes were fairly routine. That said, the GA made major revisions to Indiana's local taxation regime, its income taxes, and its approach to taxing Internet access. This Part discusses those revisions and highlights the majority of the GA's changes from 2015 in the areas of property taxes, state gross retail and use taxes, state income taxes, excise taxes, tax administration matters, and Internet taxation.

A. Property Taxes

As has been the case in recent years, when measured by volume, property tax legislation represented the lion's share of the GA's tax-related activity in 2015. A surprising amount of that work dealt with housekeeping,¹ filing deadlines,² routine updates,³ geographically-targeted measures,⁴ taxpayer-specific relief,⁵ property-transfer procedures,⁶ and voiding various DLGF rules.⁷ Other changes,

1. *See, e.g.*, Pub. L. No. 5-2015, § 13, 2015 Ind. Acts 10, 28-34 (amending IND. CODE § 6-1.1-22-8.1 to remove the hyphens from "black-and-white" and to delete subdivision (b)(9), which expired on January 1, 2015); Pub. L. No. 251-2015, § 32, 2015 Ind. Acts 4125, 4171-72 (repealing IND. CODE § 6-1.1-37-10.1, which permitted a county fiscal board to adopt an ordinance that only applied from July 1, 2012 to June 30, 2013).

2. *See, e.g.*, Pub. L. No. 245-2015, §§ 16-18, 2015 Ind. Acts 3874, 3903-07 (amending IND. CODE §§ 6-1.1-40-11, -42-27, and -44-6 to change the start of the window for filing applications for the manufacturing equipment deduction, the brownfield revitalization deduction, and the deduction for purchases of investment property by manufacturers of recycled components from March 1 to March 10).

3. *See, e.g.*, Pub. L. No. 117-2015, § 3, 2015 Ind. Acts 879, 892-94 (amending IND. CODE § 6-1.1-18.5-10 to replace "mental retardation" with "intellectual disability" when referring to "community mental retardation centers").

4. *See, e.g.*, Pub. L. No. 242-2015, § 3, 2015 Ind. Acts 3704, 3705-06 (codified at IND. CODE § 6-1.1-18.5-22.3 to deal with unique circumstances affecting only Brown County).

5. *See, e.g.*, Pub. L. No. 156-2015, § 1, 2015 Ind. Acts 1571, 1571-72 (amending IND. CODE § 6-1.1-18.5-10 to protect individuals who qualify under Indiana's newly-created Servicemembers Civil Relief Act, codified at IND. CODE §§ 10-16-20-1 to -5, from the failure-to-file penalty and other penalties connected with personal property tax returns).

6. *See, e.g.*, Pub. L. No. 71-2015, § 1, 2015 Ind. Acts 440, 440-41 (amending IND. CODE § 6-1.1-7-10 to clarify the Bureau of Motor Vehicles may not change the names on the title to a mobile home unless its owner has a permit to transfer title approved by the county treasurer, and that the permit only remains valid for 90 days); Pub. L. No. 194-2015, § 1, 2015 Ind. Acts 2385, 2385-86 (amending IND. CODE § 6-1.1-7-10 to give the county treasurer two business days to issue the permit to transfer title of a mobile home after all taxes are paid on the home and the treasurer has received a permit application).

7. *See, e.g.*, Pub. L. No. 148-2015, §§ 8-9, 2015 Ind. Acts 1366, 1384-86 (amending IND. CODE §§ 6-1.1-12.4-2 and -12.4-13 to eliminate language ordering the DLGF to promulgate rules

like termination of the real property deduction for World War I veterans at the end of 2015, simply reflected the passage of time.⁸

Still, the GA did make a number of more significant changes. In the area of real property taxation, most of those dealt with property assessment valuation issues, exemptions, and the homestead deduction. Regarding the assessment of property values, the GA broadened the “agricultural use” definition used when determining whether real property is “agricultural land” to include land enrolled in various conservation or reserve programs.⁹ It also set the statewide agricultural land base rate value per acre at \$2050 for 2015 and indexed that rate for future years using the assessed value growth quotient.¹⁰ Turning to big box retailing buildings, the GA mandated that the cost approach, less an adjustment for depreciation and obsolescence, must be used for such buildings if they are at least 50,000 square feet, have an effective age of ten years or less, and are owner occupied or leased to a tenant for whom the building was built.¹¹ With respect to commercial non-income producing property containing improvements with an effective age of less than ten years (including qualifying sale-leaseback properties), transactions involving a comparable real property (1) subject to significant use restrictions, (2) sold in a non-arm’s length transaction, (3) sold for a new purpose, or (4) vacant for too long cannot be used as a comparable sale when determining the assessed value of the commercial non-income producing property.¹² For residential property, the GA authorized county assessors to apply an influence factor to residential excess land that accounts for that lands’ reduced acreage value.¹³ Looking to future legislative sessions, the GA appears to be considering changes to the assessment method for agricultural land and for commercial non-income producing property,¹⁴ and to the “utility of the user”

connected with the investment property tax deduction and to void the DLGF’s existing rules for that deduction); *id.* § 14, 2015 Ind. Acts at 1388 (amending IND. CODE § 6-1.1-12.7-8 to void the DLGF’s existing rules governing applications for the residence in inventory property tax deduction).

8. Pub. L. No. 250-2015, § 3, 2015 Ind. Acts 4053, 4053-55 (amending IND. CODE § 6-1.1-12-17.4).

9. Pub. L. No. 249-2015, § 6, 2015 Ind. Acts 4020, 4026-27 (amending IND. CODE § 6-1.1-4-13). The GA also asked the legislative council to explore “alternative means of agricultural land assessment.” *Id.* § 35, 2015 Ind. Acts at 4052.

10. *Id.* § 7, 2015 Ind. Acts at 4027-28 (codified at IND. CODE § 6-1.1-4-13.2). The GA also asked the legislative council to study “the methods used to determine the true tax value for nonincome producing commercial property.” *Id.* § 37, 2015 Ind. Acts at 4052-53.

11. *Id.* § 8, 2015 Ind. Acts at 4028-29 (codified at IND. CODE § 6-1.1-4-13.2). Of course, the land beneath the big box retailing building is not affected by this change and must be assessed separately using the market values of comparable land. *Id.* When appropriate, the taxpayer may still use actual construction costs instead of those determined using the cost tables when calculating depreciation. *Id.*

12. *Id.* § 9, 2015 Ind. Acts at 4029-30 (codified at IND. CODE § 6-1.1-4-44).

13. *Id.* § 10, 2015 Ind. Acts at 4030 (codified at IND. CODE § 6-1.1-4-44.5).

14. *See supra* notes 9-10 (discussing the GA’s instructions to the legislative council regarding

concept used in the current assessment system.¹⁵

Three targeted real property exemptions were created by the GA during 2015. First, it exempted the basement floor level of any real property located in a FEMA-mandatory flood insurance special flood hazard zone if that basement is no longer usable as a living space because its floor has been raised to mitigate the risk of flooding.¹⁶ Second, the GA removed common areas in residential developments from real property taxation if the easements and restricted covenants that reserve the property as a common area are recorded.¹⁷ Finally, it created a new exemption for any tangible property owned by a IRC section 501(c)(5) agricultural organization that is land on which a county fair has been held in the past fifty years or an improvement to such land.¹⁸ The exemption even extends to personal property located on the exempt land and used for exempt purposes.¹⁹ This final exemption was retroactively extended to cover assessment dates falling in the years from 2011 to 2015.²⁰

With one exception, the changes to real property deductions dealt with the homestead deduction. The exception was the GA's decision to permit counties, cities, and towns to adopt an extended period for certain rehabilitated residential real property deductions.²¹ Specifically, when the rehabilitated property is more than fifty years old, and was abandoned or vacant, the relevant taxing unit may extend the rehabilitated residential real property deduction period to a duration between five and seven years.²² Similarly, when the rehabilitated property's assessed value falls below certain specified minimum thresholds (e.g., \$37,440 for the pre-rehabilitation improvements on a single family dwelling residential real property), and was abandoned or vacant, the relevant taxing unit may extend the rehabilitated residential real property deduction period to a duration between five and fifteen years.²³ For the homestead deduction, the amendments (1) clarify

these two areas).

15. Pub. L. No. 249-2015, § 36, 2015 Ind. Acts at 4052.

16. *Id.* § 11, 2015 Ind. Acts at 4030 (codified at IND. CODE § 6-1.1-10-16.8).

17. Pub. L. No. 148-2015, § 5, 2015 Ind. Acts 1366, 1371-73 (codified at IND. CODE § 6-1.1-10-37.5). A common area is an area reserved for the exclusive use of residential lot owners and occupants, and their guests, and whose ownership transfer is controlled by the lot owners. *Id.* Once the common area designation is obtained, it remains in place without the need for further filings until the area fails to qualify. *Id.*

18. *Id.* § 4, 2015 Ind. Acts at 1370-71 (codified at IND. CODE § 6-1.1-10-26.5).

19. *Id.*

20. *Id.* § 18, 2015 Ind. Acts at 1395-96. Qualifying taxpayers who filed a successful exemption claim before September 1, 2015 are entitled to a refund of any amounts paid in connection with the now-exempt property and are no longer liable for any outstanding property taxes, penalties, or interest on the property. *Id.*

21. The default duration for the deductions discussed here is five years. IND. CODE § 6-1.1-12-18(a), -22(a).

22. Pub. L. No. 247-2015, § 4, 2015 Ind. Acts 3937, 3940-41 (amending IND. CODE § 6-1.1-12-22).

23. *Id.* § 3, 2015 Ind. Acts at 3939-40 (amending IND. CODE § 6-1.1-12-18).

that only one standard deduction is available per property, regardless of whether the property qualifies as a homestead from more than one taxpayer;²⁴ (2) limit the buyer's deduction in situations where the home is still under a purchase contract to situations where the seller is contractually required to transfer title to the buyer upon completion of the buyer's contractual obligations;²⁵ and (3) remove the eligibility requirement that forces an individual to file a statement canceling the homestead deduction for all other potentially qualifying properties.²⁶

The GA made a handful of changes to personal property taxation that are worth noting here. Significantly, the GA broadened the reach of the \$20,000 business personal property tax exemption that it enacted in 2014 by mandating it for all Indiana counties.²⁷ It is not all good news for small business owners, though, because each county fiscal body received permission from the GA to collect a "local service fee" of up to \$50 from each person who claims the aforementioned exemption.²⁸ Regarding personal property assessment values, assessed values from a taxpayer's amended personal property tax return must be used to determine the taxes payable in the succeeding year when that amended return is filed before July 16 of the year covered by the return.²⁹ In all other situations, the assessed values from the original personal property tax return are used.³⁰ The rules affecting depreciation of tangible personal property were also adjusted to standardize the procedure for determining the year of acquisition used in calculating that depreciation. For property acquired after January 1, 2016, the default rule is the applicable fiscal year beginning January 2 and ending the following January 1.³¹ However, taxpayers may elect to use the same year that they use for federal income tax purposes if they have a financial year ending on

24. Pub. L. No. 207-2015, § 1, 2015 Ind. Acts 2531, 2531-41 (amending IND. CODE § 6-1.1-12-37).

25. Pub. L. No. 25-2015, § 1, 2015 Ind. Acts 234, 234-43 (amending IND. CODE § 6-1.1-12-37).

26. Pub. L. No. 148-2015, § 7, 2015 Ind. Acts 1366, 1382-83 (amending IND. CODE § 6-1.1-12-37).

27. Pub. L. No. 249-2015, § 3, 2015 Ind. Acts 4020, 4022-24 (amending IND. CODE § 6-1.1-3-7.2); see also Lawrence A. Jegen III et al., *Recent Developments in Indiana Taxation Survey 2014*, 48 IND. L. REV. 1455, 1456-57 (2015) (reporting the creation of the county-level optional business personal property exemption). This change also requires each taxpayer requesting the exemption to file an annual notarized certification signed under penalties of perjury with the relevant county assessor. Pub. L. No. 249-2015, § 3, 2015 Ind. Acts at 4022-24 (amending IND. CODE § 6-1.1-3-7.2).

28. Pub. L. No. 242-2015, § 2, 2015 Ind. Acts 3704, 3705 (codified at IND. CODE § 6-1.1-3-7.3).

29. Pub. L. No. 148-2015, § 1, 2015 Ind. Acts at 1366-69 (amending IND. CODE § 6-1.1-3-7.5).

30. *Id.*

31. Pub. L. No. 244-2015, § 2, 2015 Ind. Acts 3872, 3875 (codified at IND. CODE § 6-1.1-3-22.5).

December 31 or January 31.³²

Procedurally, taxpayers with personal property in multiple taxing jurisdictions received some reporting relief. For example, taxpayers with personal property in two or more taxing districts within a single township no longer need to file separate tax returns with each district.³³ Instead, the taxpayer must file a consolidated tax return with the relevant county assessor.³⁴ That consolidated tax return requirement also applies to all taxpayers with assessable personal property in more than one township within a county.³⁵ Taxpayers with aggregate business personal property assessed values in excess of \$150,000 were also relieved of the obligation to file their tax returns in duplicate.³⁶ However, the elimination of the need to file a duplicate return means that all taxpayers with personal property regularly used, or permanently located, in a county other than the taxpayer's county of residence must file a copy of the personal property tax return for that other county with the assessor of the county of residence.³⁷

The property tax appeals process received some legislative attention in 2015. Although it applies to all of Article 1.1, the GA's decision to automatically extend deadlines that fall on a non-business day to the next business day for political subdivisions, the DLGF, and the IBTR will impact the appeals process.³⁸ Once the appeals process starts, the county or township official conducting the informal preliminary hearing must attest to the fact that the official informed the taxpayer of the taxpayer's right to review by the county board, the IBTR, and the Tax Court.³⁹ Also, the county or township assessor now bears the burden of proof through the appeals process when the assessor attempts to reclassify a taxpayer's real property.⁴⁰ Within 120 days of filing the taxpayer's notice of review, the taxpayer and the official may agree to (1) skip the county board's normal review by going directly to the IBTR or (2) agree to use the assessed value resulting from a qualifying independent appraisal.⁴¹ In the latter case, which results in a

32. *Id.* For reporting purposes, any taxpayer taking advantage of this election must segregate and label the tangible personal property acquired after the end of its federal taxable year, but on or before its next assessment date. *Id.*

33. Pub. L. No. 249-2015, § 4, 2015 Ind. Acts 4020, 4024-25 (amending IND. CODE § 6-1.1-3-10).

34. *Id.* § 2, 2015 Ind. Acts at 4021-22 (amending IND. CODE § 6-1.1-3-7).

35. *Id.* Previously, this reporting requirement only applied when the "total assessed value of the personal property in the county [was] less than one million five hundred thousand dollars." *Id.*

36. *Id.*

37. *Id.* § 1, 2015 Ind. Acts at 4020-21 (amending IND. CODE § 6-1.1-3-1). In lieu of a copy of the tax return, the taxpayer may provide "other written evidence of the filing of the return." *Id.* § 2, 2015 Ind. Acts at 4021-22 (amending IND. CODE § 6-1.1-3-7).

38. Pub. L. No. 244-2015, § 1, 2015 Ind. Acts 3872, 3872 (codified at IND. CODE § 6-1.1-1-25).

39. Pub. L. No. 249-2015, § 12, 2015 Ind. Acts at 4030-35 (amending IND. CODE § 6-1.1-15-1).

40. *Id.* § 14, 2015 Ind. Acts at 4037 (codified at IND. CODE § 6-1.1-15-17.1).

41. Pub. L. No. 248-2015, § 2, 2015 Ind. Acts 4006, 4011-12 (codified at IND. CODE § 6-1.1-

stipulated determination, the county board may now use that determination as its written decision.⁴² Although the taxpayer and the official retain the right to request a review of that determination by the IBTR,⁴³ presumably this new written stipulation option should reduce the number of disputes reaching the IBTR. That goal of encouraging resolutions without extensive IBTR involvement is consistent with the GA's decision to require the IBTR to recommend settlement or mediation for pending unheard cases (as of May 1, 2015) where the taxpayer appeared before the county PTABOA and is claiming an assessed value that is more than 25% lower than the assessing official's costs approach result.⁴⁴ When a taxpayer succeeds with an appeal pertaining to an assessment date in or before 2014, and the amount of the taxpayer's refund exceeds \$100,000, the county auditor may opt to credit the refund amount in equal installments for up to five years against the taxpayer's future property tax liabilities in lieu of an immediate payment of the refund.⁴⁵

Finally, the GA continued working to improve the procedures surrounding real property tax sales.⁴⁶ In 2015, the GA tweaked some general provisions that apply broadly to tax sales while directing most of its efforts to the procedures for handling serial tax delinquencies, vacant or abandoned properties, properties that are unsuitable for tax sale, and properties that are transferred to nonprofit entities. Although many of the general tweaks were largely administrative, often dealing with the content and distribution of required tax sale notices,⁴⁷ others prevented properties from becoming eligible for a tax sale unless more than \$25 of the delinquent amounts dated back to at least the prior year's spring installment⁴⁸ and prohibited business associations that lack a certificate of authority or are not in good standing from purchasing real property at a tax sale (unless the property was

15-2.5).

42. *Id.* § 1, 2015 Ind. Acts at 4006-11 (amending IND. CODE § 6-1.1-15-1). Note the county official must provide notice of the stipulated determination within thirty days of its entry. *Id.*

43. *Id.* § 2, 2015 Ind. Acts at 4011-12 (codified at IND. CODE § 6-1.1-15-2.5).

44. Pub. L. No. 249-2015, § 21, 2015 Ind. Acts at 4042-43 (codified at IND. CODE § 6-1.5-3-4.5).

45. *Id.* § 19, 2015 Ind. Acts at 4041-42 (codified at IND. CODE § 6-1.1-37-14).

46. *See* Jegen et al., *supra* note 27, at 1459-62 (outlining the extensive changes made to this area during the 2014 legislative session).

47. *See, e.g.*, Pub. L. No. 118-2015, § 1, 2015 Ind. Acts 948, 948-49 (amending IND. CODE § 6-1.1-24-3 to permit the exclusion of a property description for the tax sale notice when the property has already been put up for sale at least once before and the description is available through other means (e.g., the county's website)); Pub. L. No. 251-2015, § 3, 2015 Ind. Acts 4125, 4130-31 (amending IND. CODE § 6-1.1-24-3 to require notice be sent to each requesting purchaser under an installment land contract recorded with the county recorder); *id.* § 4, 2015 Ind. Acts at 4131-33 (amending IND. CODE § 6-1.1-24-4 to require that notices be sent by certified mail, return receipt requested, and by first class mail, and that the country auditor must take reasonable steps to notify the property owner of the tax sale if both are returned).

48. Pub. L. No. 194-2015, § 3, 2015 Ind. Acts 2385, 2386-88 (amending IND. CODE § 6-1.1-24-1).

the association's property prior to that sale).⁴⁹ Potential tax sale bidders who owe amounts attributable to a prior tax sale of real property are also ineligible to bid in a current tax sale.⁵⁰ If such a person makes a successful bid, then the bid is forfeited and all amounts in excess of the minimum bid will be applied to the outstanding amount due.⁵¹

The GA addressed the ongoing problem of serial tax delinquencies connected with tax sales.⁵² The new rules target groups of one or more affiliated persons who purchased ten or more tracts of real property in earlier tax sales that are now, yet again, on the tax sale list.⁵³ When that situation exists, the county executive (or city/town executive, if appropriate) may petition a court for a "finding that serial tax delinquencies exist,"⁵⁴ and must serve that petition on every person with a "substantial property interest of public record" in the properties.⁵⁵ The court must give each owner an opportunity to appear and show cause as to why the property is not serially delinquent.⁵⁶ But, if the court finds that a tract or item of real property is serially delinquent, then (1) the property is removed from the tax sale list,⁵⁷ (2) the owners lose the right of redemption so that the taxing authority may dispose of it in any lawful manner,⁵⁸ and (3) the taxing authority acquires a lien in that property for the amount of delinquent property taxes or special assessments and may request the deed for the property.⁵⁹ In the event the taxing authority acquires the deed to a serially delinquent property and disposes of it within three years, the proceeds from that disposal are disbursed as if the property was sold in a tax sale.⁶⁰

Under new adopted rules, tax sales of vacant or abandoned real property will be handled differently going forward. Such properties may not be added to the list of properties to be sold in a tax sale unless there are also delinquent property

49. Pub. L. No. 247-2015, § 17, 2015 Ind. Acts 3937, 3961-62 (amending IND. CODE § 6-1.1-24-5.1). Note that business associations are supposed to provide proof of good standing when they register to bid at a tax sale. IND. CODE § 6-1.1-24-5.1(f). When an ineligible business association manages to purchase a property, a notice of possible forfeiture is sent to the ineligible association and that property is subject to forfeiture unless the certificate is acquired, or good standing is achieved, within thirty days. Pub. L. No. 247-2015, § 17, 2015 Ind. Acts at 3961-62 (amending IND. CODE § 6-1.1-24-5.1).

50. Pub. L. No. 251-2015, § 8, 2015 Ind. Acts at 4139-42 (amending IND. CODE § 6-1.1-24-5.3).

51. *Id.*

52. Pub. L. No. 236-2015, § 3, 2015 Ind. Acts 3590, 3593-97 (codified at IND. CODE § 6-1.1-24.5).

53. *Id.* § 3, 2015 Ind. Acts at 3593 (codified at IND. CODE § 6-1.1-24.5-2(a)).

54. *Id.* § 3, 2015 Ind. Acts at 3593-94 (codified at IND. CODE § 6-1.1-24.5-2(a), (b)).

55. *Id.* § 3, 2015 Ind. Acts at 3595 (codified at IND. CODE § 6-1.1-24.5-4).

56. *Id.* § 3, 2015 Ind. Acts at 3595-96 (codified at IND. CODE § 6-1.1-24.5-5).

57. *Id.* § 3, 2015 Ind. Acts at 3596 (codified at IND. CODE § 6-1.1-24.5-6(b)).

58. *Id.* § 3, 2015 Ind. Acts at 3596 (codified at IND. CODE § 6-1.1-24.5-6(a)).

59. *Id.* § 3, 2015 Ind. Acts at 3596 (codified at IND. CODE § 6-1.1-24.5-7(a)).

60. *Id.* § 3, 2015 Ind. Acts at 3596-97 (codified at IND. CODE § 6-1.1-24.5-8).

taxes or special assessments associated with them.⁶¹ However, once they are on that list, the relevant taxing authority must send a notice to the owner of record and any person with a substantial property interest informing them of (1) the vacant or abandoned classification, (2) the ability to prevent the tax sale by paying all delinquent taxes prior to the sale, and (3) the fact that the tax sale purchaser will receive a fee simple interest.⁶² Prior to the tax sale, the owner must also be informed that there will be no right of redemption.⁶³ That denial of a right of redemption after the tax sale occurs is enacted elsewhere.⁶⁴ The sole exception to this denial occurs when the vacant or abandoned property is transferred to the relevant taxing authority after it fails to receive a bid equal to, or exceeding, its minimum sale price.⁶⁵

The GA also addressed the problem of properties that are unsuitable for tax sale. For a property to be determined unsuitable, the cost of abating or remediating an environmental hazard or unsafe building condition must exceed the property's fair market value.⁶⁶ A property becomes unsuitable after the relevant county executive certifies it is unsuitable, provides notice of that certification within ten days to each person with a substantial property interest,⁶⁷ and a court agrees with that certification.⁶⁸ The unsuitable property is then removed from the tax sale list and treated as a property that failed to receive its minimum bid.⁶⁹ Each person with a substantial property interest in the unsuitable

61. Pub. L. No. 247-2015, § 7, 2015 Ind. Acts 3937, 3943-46 (amending IND. CODE § 6-1.1-24-1.5).

62. *Id.* § 11, 2015 Ind. Acts at 3951-52 (amending IND. CODE § 6-1.1-24-2.3). The notice rules in this section take the place of the more general notice rules that apply to properties that are neither vacant nor abandoned. *Id.* § 9, 2015 Ind. Acts at 3947-50 (amending IND. CODE § 6-1.1-24-2).

63. *Id.* § 7, 2015 Ind. Acts at 3943-46 (amending IND. CODE § 6-1.1-24-1.5).

64. *See id.* §§ 16, 22-23, 2015 Ind. Acts at 3959-61, 3970-73 (amending IND. CODE §§ 6-1.1-24-5, -25-0.5, and adding IND. CODE § 6-1.1-25-4, each of which denies the right to redeem a vacant or abandoned property sold in a tax sale).

65. *Id.* § 22, 2015 Ind. Acts at 3970 (codified at IND. CODE § 6-1.1-25-4). The official representing the taxing authority has the right to request the deed to any vacant or abandoned property that does not receive such a bid. *Id.* § 21, 2015 Ind. Acts at 3969-70 (amending IND. CODE § 6-1.1-24-13).

66. *Id.* § 15, 2015 Ind. Acts at 3956-59 (amending IND. CODE § 6-1.1-24-4.7). Presumably, the GA means the property's fair market value determined without taking into account the effect of the environmental hazard or unsafe building condition. Any other result would lead to nonsensical results. For example, suppose that a piece of polluted property had a \$50,000 fair market value and that the purchaser of the property would be required to pay \$150,000 to remediate it, after which the clean property would be worth \$200,000. Clearly, although the \$150,000 cost of remediation exceeds the current (polluted) fair market value of \$50,000, the property should be suitable for tax sale because someone would want to acquire it and clean it up for future use.

67. *Id.* § 8, 2015 Ind. Acts at 3946-47 (amending IND. CODE § 6-1.1-24-1.7).

68. *Id.* § 15, 2015 Ind. Acts at, 3956-59 (amending IND. CODE § 6-1.1-24-4.7).

69. *Id.*

property is entitled to notice of the court's determination that must be sent within ninety days of the date the property would have been sold at tax sale.⁷⁰ The former property owners have a 120-day right of redemption period that begins on that same date.⁷¹

The GA also revised the mechanism for a county to transfer a tax sale property to a nonprofit entity.⁷² The previously-existing procedure, determined in Indiana Code section 6-1.1-24-6.7, was augmented by a new alternative procedure.⁷³ Although most of the alternative procedures parallel the older ones, the key difference is that the county executive may directly identify the nonprofit entities intended to receive the properties without going through an open application process.⁷⁴

The GA closed its work on tax sales by updating the rules applicable when a tax sale is later determined to be invalid. Under the updated rules, the county auditor must refund "the purchase money and all taxes and special assessments on the property paid by the purchaser . . . after the tax sale plus five percent (5%) interest per annum" and, when appropriate, the purchaser's attorney's fees and title search costs connected to the property.⁷⁵ In addition, the county auditor must attempt to recover any amounts claimed from the tax sale surplus fund prior to the time when the tax sale was determined to be invalid (plus attorney's fees and other amounts reasonably attributable to the recovery of those funds).⁷⁶ These procedures replace the old approach of granting a lien on the real property in favor of the grantee of the ineffectual tax deed.⁷⁷ Presumably, this change is good news for purchasers of invalid deeds because the county will be easier to collect from than the original property owner.

B. State Gross Retail and Use Taxes

The state gross retail and use tax area remained a quiet one during 2014. Most of the changes that did occur fine-tuned a handful of fairly specific exemptions. For example, the GA expanded the double direct exemption test to cover "material handling equipment purchased for the purpose of transporting materials" from an onsite location into activities involving "the production, extraction, harvesting, or processing of agricultural commodities;"⁷⁸ activities

70. *Id.* § 25, 2015 Ind. Acts at 3974 (amending IND. CODE § 6-1.1-25-4.8).

71. *Id.* § 23, 2015 Ind. Acts at 3970-73 (amending IND. CODE § 6-1.1-25-4).

72. A "nonprofit entity" for this purpose is "an organization exempt from federal income taxation under 26 U.S.C. 501(c)(3)." Pub. L. No. 251-2015, § 19, 2015 Ind. Acts 4125, 4155-56 (codified at IND. CODE § 6-1.1-24-17).

73. *Id.* § 14, 2015 Ind. Acts at 4146-48 (amending IND. CODE § 6-1.1-24-6.7).

74. *Id.* § 19, 2015 Ind. Acts at 4155-56 (codified at IND. CODE § 6-1.1-24-17).

75. *Id.* § 27, 2015 Ind. Acts at 4166-68 (amending IND. CODE § 6-1.1-25-11).

76. *Id.*

77. *Id.* § 28, 2015 Ind. Acts at 4168 (repealing IND. CODE § 6-1.1-25-12).

78. Pub. L. No. 250-2015, § 9, 2015 Ind. Acts 4053, 4063-64 (amending IND. CODE § 6-2.5-5-2).

involving the “production, manufacturing, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property;”⁷⁹ and activities involving “the production of the machinery, tools, or equipment” described in the Code sections dealing with agricultural commodities and tangible personal property.⁸⁰ Another example was the GA’s tweaking of the exemptions dealing with the sale of drugs, medical equipment, and prescribed food. In addition to restating some exemptions (e.g., the exemptions for legend and non-legend drugs, hearing aids, insulin, and blood),⁸¹ the GA replaced the exemption for “sales of food and food ingredients prescribed as medically necessary by a physician”⁸² with one for sales of “food, food ingredients, and dietary supplements that are sold by a licensed practitioner or pharmacist.”⁸³

In other areas, the GA effectively exempted tangible personal property temporarily stored in Indiana for less than 180 days and is intended solely for use outside of the state from the state use tax by excluding such temporary storage from the use tax’s “storage” definition.⁸⁴ The GA explicitly exempted transactions involving labels for the state gross retail tax when the purchasing retail merchant is required by law to affix those labels to tangible personal property,⁸⁵ and modified the recycling exemption to exclude all collection activities while including transactions involving a “recycling cart” (i.e., a manually propelled cart with a capacity that does not exceed 100 gallons).⁸⁶ The exemption for research and development activities was also revised to clarify some of the activities covered under that umbrella and to explicitly exclude other activities like marketing and sales research.⁸⁷ The GA went on to restrict that exemption to activities “essential” or “integral” to the “experimental or laboratory research and development,” not merely “incidental” to it.⁸⁸ Going forward, the GA signaled its intention to consider exempting sales of “precious metals bullion or currency”

79. *Id.* § 10, 2015 Ind. Acts at 4064 (amending IND. CODE § 6-2.5-5-3). The GA also clarified the cutting of steel bars into billets and the felling of trees for further use in production, or for sale, is “processing of tangible personal property” for the purpose of applying the double direct test. *Id.*

80. *Id.* § 11, 2015 Ind. Acts at 4064-65 (amending IND. CODE § 6-2.5-5-4).

81. Pub. L. No. 242-2015, §§ 8-9, 2015 Ind. Acts 3704, 3709-12 (amending IND. CODE §§ 6-2.5-5-18, -19).

82. *Id.* § 10, 2015 Ind. Acts at 3712 (repealing IND. CODE § 6-2.5-5-21).

83. *Id.* § 8, 2015 Ind. Acts at 3709-11 (amending IND. CODE § 6-2.5-5-18). A “licensed practitioner” is “individual who is a doctor, dentist, veterinarian, or other practitioner licensed to prescribe, dispense, and administer drugs to human beings or animals in the course of the practitioner’s professional practice of treating patients.” *Id.* § 5, 2015 Ind. Acts at 3707 (codified at IND. CODE § 6-2.5-1-21.5).

84. *Id.* § 6, 2015 Ind. Acts at 3707-09 (amending IND. CODE § 6-2.5-3-1).

85. Pub. L. No. 138-2015, § 1, 2015 Ind. Acts 1233, 1233 (codified at IND. CODE § 6-2.5-5-50).

86. Pub. L. No. 242-2015, § 12, 2015 Ind. Acts at 3715-16 (amending IND. CODE § 6-2.5-5-45.8).

87. *Id.* § 11, 2015 Ind. Acts at 3712-15 (amending IND. CODE § 6-2.5-5-40).

88. *Id.*

and “the lease or rental of storage for precious metals bullion or currency” in future years when it urged the legislative council to study those areas.⁸⁹

The GA amended a few administrative provisions, too. First, it repealed unnecessary statutory language dealing with refund claims filed to recover prepaid state gross retail tax paid for gasoline that eventually turned out to be exempt.⁹⁰ Second, it removed the thirty-six-month limitations period for filing a refund claim relying on the tangible personal property tax exemption available for “electrical energy, natural or artificial gas, water, steam, and steam heat.”⁹¹ Third, the GA updated the statutory list of specific examples where the DOR may revoke a registered retail merchant’s certificate, a manufacturer’s or wholesaler’s certificate, or an exempt organization’s certificate for good cause, and authorized the DOR to act without waiting for criminal charges to be filed or adjudicated.⁹²

C. State Income Taxes

In 2015, the GA made a number of important changes to the state income tax base for individual and business taxpayers. It also created several new nonrefundable income tax credits and modified the reporting procedures for tax withholding and amended returns. Effective on January 1, 2013, the GA updated the state income tax base to use key definitions (e.g., “adjusted gross income” for individuals and “taxable income” for corporations) from the IRC in effect on January 1, 2015, rather than the one in effect on January 1, 2013, and to incorporate the Treasury regulations in effect on January 1, 2015, rather than those in effect on January 1, 2011.⁹³ The GA also tweaked the Indiana Code definitions to more closely align with those in the IRC by removing a handful of Indiana-specific adjustments passed in earlier years to reject certain provisions in the IRC.⁹⁴ Due to their length, those adjustments are listed in the footnote that accompanies this sentence.⁹⁵

89. Pub. L. No. 16-2015, § 1, 2015 Ind. Acts 218, 218.

90. Pub. L. No. 109-2015, §§ 24-25, 2015 Ind. Acts 749, 767-69 (amending IND. CODE § 6-2.5-7-6.5 and repealing IND. CODE § 6-2.5-7-12).

91. Pub. L. No. 242-2015, § 7, 2015 Ind. Acts at 3709 (amending IND. CODE § 6-2.5-5-5.1).

92. *Id.* § 13, 2015 Ind. Acts at 3716-20 (amending IND. CODE § 6-2.5-8-7). The list includes failing to file a required return or to “remit any tax collected for the state in trust.” *Id.*

93. *Id.* § 15, 2015 Ind. Acts at 3722-23 (amending IND. CODE § 6-3-1-11). As noted in prior versions of this Article, Indiana’s state income tax “piggybacks” off the IRC for many key statutory definitions. Lawrence A. Jegen III et al., *Recent Developments in Indiana Taxation Survey 2013*, 47 IND. L. REV. 1173, 1181 n.73 (2014). This statutory change also affects the definitions used in Article 3.1 (State Tax Liability Credits). IND. CODE § 6-3-1-1.

94. Pub. L. No. 250-2015, § 12, 2015 Ind. Acts 4053, 4065-81 (amending IND. CODE § 6-3-1-3.5).

95. The GA adjusted the Indiana-specific version of the IRC’s “adjusted gross income” definition used for individuals in the following manner, effective beginning January 1, 2016:

1. Removal of the reduction for amounts taxable by a political subdivision of another state (up to \$2000);

The GA made several specific tax base broadening changes that are primarily of interest to individual taxpayers. First, it eliminated the adjusted gross income exemptions for up to \$1200 of lottery winnings⁹⁶ and for up to \$1000 of rewards received for providing information to law enforcement officers that led to an

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2. Removal of the add back for the total capital gain portion of a lump sum distribution if that portion is taxed in the manner provided under IRC § 402;
 3. Removal of the reduction that neutralized the federal inclusion in adjusted gross income of any credit received under IRC § 6428;
 4. Removal of the add back that neutralized the IRC § 85(c) gross income exclusion for unemployment compensation;
 5. Removal of the add back that neutralized the IRC § 108(a)(1)(e) gross income exclusion for the discharge of debt on a qualified principal residence;
 6. Removal of the effects resulting from the IRC § 168(n) special allowance for qualified disaster assistance property;
 7. Removal of the effects resulting from the IRC § 179C 50% bonus allowance for qualified refinery property;
 8. Removal of the effects resulting from the IRC § 181 expense election for qualified file and television productions;
 9. Removal of the effects resulting from the ordinary loss classification of losses recognized on the sale or exchange of preferred stock in the Federal National Mortgage Association (i.e., “Fannie Mae”) or the Federal Home Loan Mortgage Corporation (i.e., “Freddie Mac”), which was provided in § 301 of the Emergency Economic Stabilization Act of 2008; and
 10. Removal of the reduction for wages, compensation, etc. paid to an employee if the individual in question was prohibited from being hired as an employee due to the fact that he or she was an unauthorized alien.

The GA also adjusted the Indiana-specific version of the IRC’s “taxable income” definition for corporations, insurance companies, and trusts and estates, and the IRC’s “life insurance taxable income” definition for life insurance companies organized under Indiana law, in the following manner, all effective beginning January 1, 2016:

1. Removal of the effects resulting from the IRC § 168(n) special allowance for qualified disaster assistance property;
2. Removal of the effects resulting from the IRC § 179C 50% bonus allowance for qualified refinery property;
3. Removal of the effects resulting from the IRC § 181 expense election for qualified file and television productions;
4. Removal of the effects resulting from the ordinary loss classification of losses recognized on the sale or exchange of preferred stock in the Federal National Mortgage Association (i.e., “Fannie Mae”) or the Federal Home Loan Mortgage Corporation (i.e., “Freddie Mac”), which was provided in § 301 of the Emergency Economic Stabilization Act of 2008, and;
5. Removal of the reduction for wages, compensation, etc. paid to an employee if the individual in question was prohibited from being hired as an employee due to the fact that he or she was an unauthorized alien.

Pub. L. No. 250-2015, § 12, 2015 Ind. Acts at 4065-81 (amending IND. CODE § 6-3-1-3.5).

96. *Id.* § 21, 2015 Ind. Acts at 4092-93 (repealing IND. CODE § 6-3-2-14.5).

arrest, indictment, or the filing of charges.⁹⁷ The tax exemption for employer-paid contributions to an employee's medical care savings account was also eliminated for amounts deposited after January 1, 2016.⁹⁸ Second, the GA repealed the deduction for individual taxpayers who improve their homes by installing new "insulation, weather stripping, double pane windows, storm doors, or storm windows"⁹⁹ or a solar powered roof vent or fan.¹⁰⁰ The GA did make one tax base narrowing change for individual taxpayers in 2015 when it increased the maximum deductible amount for federally-taxable federal civil service annuity payments from \$2000 to \$16,000 and extended eligibility for claiming that deduction to the surviving spouse of the person who was originally entitled to the annuity.¹⁰¹

On the business taxation side, the GA's major changes were (1) extending Indiana's business income definition to encompass "all income that is apportionable to the state under the Constitution of the United States"¹⁰² and (2) eliminating the throwback rule from the sourcing of sales when calculating the numerator in the apportionment sales factor.¹⁰³ The expansion of the anti-tax-avoidance add back for intercompany interest expenses to cover interest paid on loaned funds originally received by the intercompany lender as an intercompany payment of any expense, not just intangible expenses, was also a significant change for multistate corporate taxpayers.¹⁰⁴ At the same time, the GA created a new exception to the add back rule for situations where the intercompany interest payment recipient is subject to the financial institutions tax and files a return under that tax that complies with the applicable income apportionment rules determined there, presumably because the additional financial transactions tax due offsets the tax reduction from deducting the intercompany interest payment.¹⁰⁵ Finally, the GA made two narrower adjustments that are most relevant to business taxpayers when it decided to automatically treat the sale of computer software as the sale of tangible personal property for the purpose of calculating the apportionment sales factor¹⁰⁶ and it ended the deduction for export sales of tangible personal property manufactured in a maritime opportunity

97. *Id.* § 22, 2015 Ind. Acts at 4093 (repealing IND. CODE § 6-3-2-17).

98. *Id.* § 23, 2015 Ind. Acts at 4093-94 (amending IND. CODE § 6-3-2-18); *see also infra* notes 184-85 and accompanying text (describing other related changes made to the taxation of employee medical care savings accounts).

99. Pub. L. No. 36-2015, § 3, 2015 Ind. Acts 278, 283-84 (repealing IND. CODE § 6-3-2-5); Pub. L. No. 250-2015, § 17, 2015 Ind. Acts at 4090 (same).

100. Pub. L. No. 36-2015, § 4, 2015 Ind. Acts 278, 284 (repealing IND. CODE § 6-3-2-5.3); Pub. L. No. 250-2015, § 18, 2015 Ind. Acts 4053, 4090-91 (same).

101. Pub. L. No. 250-2015, § 15, 2015 Ind. Acts at 4089 (amending IND. CODE § 6-3-2-3.7).

102. *Id.* § 13, 2015 Ind. Acts at 4081 (amending IND. CODE § 6-3-1-20).

103. *Id.* § 14, 2015 Ind. Acts at 4084-85 (amending IND. CODE § 6-3-2-2).

104. *Id.* § 24, 2015 Ind. Acts at 4094-99 (amending IND. CODE § 6-3-2-20).

105. *Id.* § 24, 2015 Ind. Acts at 4096-97 (amending IND. CODE § 6-3-2-20).

106. *Id.* § 14, 2015 Ind. Acts at 4084-85 (amending IND. CODE § 6-3-2-2).

district.¹⁰⁷

Two new nonrefundable income tax credits came into being during the 2015 legislative session. Teachers acquiring classroom supplies may claim a credit that cannot exceed \$100 per year for their expenses.¹⁰⁸ Also, some acute care hospitals may claim an income tax credit for 10% of the property taxes paid on hospital property.¹⁰⁹ Neither of these new credits may be carried over to succeeding taxable years if they are not used up in the current year.¹¹⁰

As noted above, the GA modified the reporting procedures for income tax withholding, with an emphasis on obligations resulting from payments to nonresident persons. Employers who withhold income taxes from their employees' paychecks during a year must now file an annual withholding tax report with the DOR within thirty-one days after the end of that year.¹¹¹ A corporation required to file a withholding tax return and remit withheld taxes because of payments or credits made to its "nonresident shareholders" now automatically receive an extension of time to comply with those obligations when it receives an extension for its income tax return.¹¹² However, if the corporation is fails to pay the amount of withholding tax due in full by the due date (including extensions), it must pay a late payment penalty.¹¹³ Partnerships with income tax withholding duties resulting from "nonresident partners" received a similar automatic extension and face a similar late payment penalty.¹¹⁴ A publicly-traded partnership taxed as a partnership for federal purposes may avoid its withholding tax obligations and its obligation to file a composite adjusted gross income tax return for each nonresident partner, if the partnership agrees to file an annual information return that includes the tax information that the DOR requests regarding each of its partners.¹¹⁵ A trust or estate with one or more nonresident

107. *Id.* § 19, 2015 Ind. Acts at 4091-92 (amending IND. CODE § 6-3-2-13).

108. Pub. L. No. 213-2015, § 82, 2015 Ind. Acts 2636, 2953-54 (codified at IND. CODE § 6-3-3-14.5).

109. *Id.* § 83, 2015 Ind. Acts at 2954-55 (codified at IND. CODE § 6-3-3-14.6).

110. *Id.* §§ 82-83, 2015 Ind. Acts at 2953-55 (codified at IND. CODE § 6-3-3-14.5, -14.6).

111. Pub. L. No. 242-2015, § 17, 2015 Ind. Acts 3704, 3725-28 (amending IND. CODE § 6-3-4-8).

112. *Id.* § 19, 2015 Ind. Acts at 3733-34 (amending IND. CODE § 6-3-4-13). The GA also clarified a "nonresident shareholder" is "(1) an individual who does not reside in Indiana; (2) a trust that does not reside in Indiana; or (3) an estate that does not reside in Indiana." *Id.* § 19, 2015 Ind. Acts at 3735 (amending IND. CODE § 6-3-4-13).

113. *Id.* § 19, 2015 Ind. Acts at 3734-35 (amending IND. CODE § 6-3-4-13).

114. *Id.* § 18, 2015 Ind. Acts at 3729-32 (amending IND. CODE § 6-3-4-12). As it did for nonresident shareholders of corporations, the GA clarified a "nonresident partner" is

(1) an individual who does not reside in Indiana; (2) a trust that does not reside in Indiana; (3) an estate that does not reside in Indiana; (4) a partnership not domiciled in Indiana; (5) a C corporation not domiciled in Indiana; or (6) an S corporation not domiciled in Indiana.

Id. § 18, 2015 Ind. Acts at 3732 (amending IND. CODE § 6-3-4-12).

115. *Id.* § 18, 2015 Ind. Acts at 3731 (amending IND. CODE § 6-3-4-12). The GA authorized

beneficiaries is now required to submit a composite adjusted gross income tax return for those beneficiaries and will receive an automatic filing extension for that return upon receiving one for its income tax return.¹¹⁶

Because much of Indiana's income tax system piggybacks on the federal income tax, Indiana taxpayers have long had an obligation to notify the DOR of any post-filing modifications to their federal income tax returns or federal income tax liabilities.¹¹⁷ Evidently, the GA was concerned that some taxpayers were exploiting statutory vagueness regarding what constituted a modification to avoid complying with that obligation, because in 2015 the GA enumerated the specific situations when a modification or alteration has occurred, including (1) the filing an amended return, (2) the final determination of a deficiency or refund, (3) the taxpayer's waiver of restrictions on the assessment and collection of tax, and (4) the taxpayer's entrance into a closing agreement with the IRS.¹¹⁸ Generally, these events become "final" when they are conclusive and "cannot be reopened or appealed by a taxpayer or the Internal Revenue Service as a matter of law."¹¹⁹

D. State Tax Liability Credits

For the third consecutive year, the GA reduced the number of state tax liability credits.¹²⁰ Taxpayers cannot claim a new Tax Credit for Computer Equipment Donations for donations made during taxable years beginning after December 31, 2015.¹²¹ Similarly, a taxpayer's ability to claim the Historic Rehabilitation Credit for new qualifying expenditures ended at that time.¹²²

the DOR to issue written guidance discussing how this reporting requirement will apply to tiered partnerships. *Id.*

116. *Id.* § 20, 2015 Ind. Acts at 3735-36 (amending IND. CODE § 6-3-4-15). The new definition of "nonresident beneficiary" is identical to the "nonresident partner" definition. *Id.* § 20, 2015 Ind. Acts at 3736 (amending IND. CODE § 6-3-4-15); *see supra* note 114 (quoting the new statutory definition of "nonresident partner").

117. IND. CODE § 6-3-4-6(b).

118. Pub. L. No. 242-2015, § 16, 2015 Ind. Acts at 3723-25 (amending IND. CODE § 6-3-4-6); *see infra* note 170 and accompanying text (noting similar changes for the financial institutions tax).

119. Pub. L. No. 242-2015, § 16, 2015 Ind. Acts at 3725 (amending IND. CODE § 6-3-4-6). In conjunction with this change, the GA updated the statutory provision giving the DOR six months to assess additional taxes after a taxpayer's federal income tax return was modified to incorporate the new modification rules in this section. *Id.* § 36, 2015 Ind. Acts at 3763-64 (amending IND. CODE § 6-8.1-5-2). A similar change was made to the provision giving a taxpayer 180 days to file a refund claim after such a modification. *Id.* § 39, 2015 Ind. Acts at 3775 (amending IND. CODE § 6-8.1-9-1).

120. Jegen et al., *supra* note 27, at 1466; Jegen et al., *supra* note 93, at 1184.

121. Pub. L. No. 250-2015, § 26, 2015 Ind. Acts 4053, 4100 (amending IND. CODE § 6-3.1-15-7).

122. *Id.* § 27, 2015 Ind. Acts at 4100-01 (amending IND. CODE § 6-3.1-16-7). Concurrently, the GA set the maximum Historic Rehabilitation Credit amount allowed for fiscal years beginning after June 30, 2016 at \$0. Pub. L. No. 213-2015, § 85, 2015 Ind. Acts 2636, 2955-56 (amending

Finally, the GA eliminated the Community Revitalization Enhancement District Tax Credit for residential properties after December 31, 2015, except to the extent the expenditures involved were approved by the IEDC prior to that date.¹²³

A few state tax liability credits were modified, either in duration, scope, or in permissible amount. Specifically, the Tax Credit for Natural Gas Powered Vehicles was retroactively extended by one year to cover taxable years beginning after December 31, 2012.¹²⁴ However, any credit claimed for placing a qualified vehicle in service during 2013 may only be used against the taxpayer's state gross retail and use tax liability from transactions occurring after June 30, 2015 that involve a natural gas product.¹²⁵ The duration of the Venture Capital Investment Tax Credit and the Hoosier Business Investment Tax Credit were extended to include 2017-2020.¹²⁶

The scope of the Hoosier Business Investment Tax Credit was also expanded to include logistic expenditures incurred to upgrade or build passing lines or automated switches on a rail line.¹²⁷ More broadly, beginning on January 1, 2016, the Research Expense Credit shifts from using the "qualified research expense" and "base amount" definitions under the Internal Revenue Code in effect on January 1, 2001 to the one in effect on January 1, 2015.¹²⁸ The GA also capped the magnitude of the Economic Development for a Growing Economy Tax Credit by setting the maximum permissible amount the IEDC may approve each fiscal year for creating new jobs in Indiana at \$225,000,000.¹²⁹ Finally, for a limited time the GA empowered the IEDC to enter into written agreements with qualifying taxpayers that permit those taxpayers to accelerate up to \$17 million of their carried over Hoosier Business Investment Tax Credits at a discounted amount.¹³⁰ That ability to carryover and accelerate Hoosier Business Investment

IND. CODE § 6-3.1-16-14). Of course, previously-allowed credits may still carry over in to those fiscal years. *Id.*

123. Pub. L. No. 250-2015, § 28, 2015 Ind. Acts at 4101 (amending IND. CODE § 6-3.1-19-2).

124. Pub. L. No. 213-2015, § 87, 2015 Ind. Acts at 2956-57 (amending IND. CODE § 6-3.1-34.6-1). In conjunction with that extension, the GA removed the per-person, per-taxable-year maximum credit of \$150,000 for taxable years beginning during 2013. *Id.* § 89, 2015 Ind. Acts at 2957 (amending IND. CODE § 6-3.1-34.6-9).

125. *Id.* § 88, 2015 Ind. Acts at 2957 (amending IND. CODE § 6-3.1-34.6-8).

126. Pub. L. No. 250-2015, §§ 30, 35, 2015 Ind. Acts at 4102, 4109-10 (amending IND. CODE § 6-3.1-24-9, -26-26).

127. *Id.* § 31, 2015 Ind. Acts at 4102-04 (amending IND. CODE § 6-3.1-26-8.5).

128. Pub. L. No. 242-2015, § 21, 2015 Ind. Acts 3704, 3737 (amending IND. CODE § 6-3.1-4-1). For purposes of interpretation and administration, the DOR must use the provisions in § 41 of the 2015 Internal Revenue Code and the accompanying Treasury regulations. *Id.* § 22, 2015 Ind. Acts at 3737 (amending IND. CODE § 6-3.1-4-4).

129. Pub. L. No. 213-2015, § 84, 2015 Ind. Acts at 2955 (amending IND. CODE § 6-3.1-13-18).

130. Pub. L. No. 250-2015, § 32, 2015 Ind. Acts at 4104-06 (amending IND. CODE § 6-3.1-26-15). The IEDC's acceleration power only exists until January 1, 2017. *Id.* Despite the discounted acceleration of any credits, the IEDC must use undiscounted amounts when determining whether it has exceeded the maximum amount of Hoosier Business Investment Tax Credits that it may

Tax Credits was also extended to the owners of pass-through entities that qualified for the credits.¹³¹

E. Local Taxes

The 2015 legislative session was a momentous one for local taxes because the GA consolidated the parallel CAGIT,¹³² COIT,¹³³ and CEDIT¹³⁴ regimes, and the associated levy freeze amounts,¹³⁵ into a single local income tax that will take their place on January 1, 2017.¹³⁶ Before turning to an overview of that restructuring, it is worth noting that the GA made a few modest adjustments to the existing regimes. Many of those adjustments were targeted for specific counties.¹³⁷ Others were designed to increase flexibility by removing prerequisites for the imposition of new local taxes,¹³⁸ or to eliminate a credit against local taxes for the elderly or individuals with a total disability.¹³⁹ The GA also adjusted the

approve for a fiscal year. *Id.* § 34, 2015 Ind. Acts at 4108-09 (amending IND. CODE § 6-3.1-26-20).

131. *Id.* § 33, 2015 Ind. Acts at 4106-08 (amending IND. CODE § 6-3.1-26-16).

132. Pub. L. No. 243-2015, § 1, 2015 Ind. Acts 3789, 3789 (repealing IND. CODE § 6-3.5-1.1 (County Adjusted Gross Income Tax), effective on January 1, 2017).

133. *Id.* § 7, 2015 Ind. Acts at 3796 (repealing IND. CODE § 6-3.5-6 (County Option Income Tax), effective on January 1, 2017).

134. *Id.* § 8, 2015 Ind. Acts at 3796 (repealing IND. CODE § 6-3.5-7 (County Economic Development Income Tax), effective on January 1, 2017).

135. *Id.* § 6, 2015 Ind. Acts at 3796 (repealing IND. CODE § 6-3.5-1.5 (Calculation of Levy Freeze Amounts), effective on January 1, 2017). The new local income tax's treatment of counties that imposed a tax to provide a levy freeze is covered in Indiana Code section 6-3.6-11-1. *Id.* § 10, 2015 Ind. Acts at 3853 (codified at IND. CODE § 6-3.6-11-1(a) (2015)).

136. *Id.* § 10, 2015 Ind. Acts at 3802-71 (codified at IND. CODE § 6-3.6 (Local Income Taxes)). Although this new article has an effective date of July 1, 2015, it does not apply to taxes and tax liability until after December 31, 2016. *Id.* § 10, 2015 Ind. Acts at 3803 (codified at IND. CODE § 6-3.6-1-2(1)). Expect a whopper of a technical corrections bill during the 2016 legislative session that will attempt to correct all of the internal cross reference issues created by this transition. *See id.* § 11, 2015 Ind. Acts at 3871 (ordering the legislative council to scrub down the Indiana Code for internal cross reference problems in anticipation of future legislation).

137. *See, e.g.*, Pub. L. No. 242-2015, §§ 26-30, 2015 Ind. Acts 3704, 3739-50 (amending IND. CODE §§ 6-3.5-1.1-2.8, -10, -11 and adding IND. CODE §§ 6-3.5-1.1-3.4, -3.7 to adjust the CAGIT for Marshall, Tipton, and Rush Counties). Several of these statutory changes were enacted a second time. Pub. L. No. 243-2015, §§ 3-5, 2015 Ind. Acts at 3790-95 (amending IND. CODE §§ 6-3.5-1.1-10, -11, and adding IND. CODE § 6-3.5-1.1-3.7).

138. *See, e.g.*, Pub. L. No. 157-2015, §§ 2-3, 2015 Ind. Acts 1577, 1577-86 (amending IND. CODE §§ 6-3.5-1.1-25, -6-31 to permit a county to impose an additional CAGIT or COIT tax rate to fund public safety without imposing one for certain other purposes first); Pub. L. No. 255-2015, § 60, 2015 Ind. Acts 4222, 4272-76 (amending IND. CODE § 6-3.5-1.1-25 to permit a county with a historic hotel district to impose a CAGIT tax rate for public safety without imposing one for certain other purposes first).

139. Pub. L. No. 250-2015, §§ 36, 39-40, 2015 Ind. Acts 4053, 4110-12 (repealing IND. CODE

annual license excise surtax on motor vehicles to permit counties to apply that tax at “different rates based on the class of the vehicle,”¹⁴⁰ and reshuffled collection and reporting responsibilities for the county motor vehicle excise tax and the county wheel tax within the Bureau of Motor Vehicles.¹⁴¹

The GA’s purpose in consolidating CAGIT, COIT, and CEDIT into a single local income tax regime was to simplify Indiana’s messy local income tax system by installing a uniform set of rules that apply to all counties,¹⁴² all without disturbing the distribution and use of that local income tax revenue.¹⁴³ To that end, the total tax rate in effect on May 1, 2016 will seamlessly transition over to the new tax regime.¹⁴⁴ Future changes to those tax rates generally must be enacted by an ordinance passed by the relevant adopting body,¹⁴⁵ and take effect at the time prescribed in the statute (e.g., an ordinance to increase a tax rate adopted from January 1 through August 31 would take effect on October 1).¹⁴⁶

The new local income tax for each county is “imposed on the adjusted gross income of local taxpayers at a tax rate that is a sum of the tax rates imposed by the county’s adopting body.”¹⁴⁷ Generally, a “local taxpayer” is an individual who (1) resides in the county on January 1 or (2) has a principal place of business or employment within the county on that date and does not reside in another Indiana county that imposes a local income tax.¹⁴⁸ Residence is primarily determined by

§§ 6-3.5-1.1-7, -6-24, -7-9, which provided CAGIT, COIT, and CEDIT credits for taxpayers who qualified for the federal income tax credit available to the elderly and individuals with a total disability under IRC § 22). Note that a version of this credit is reinstated under the consolidated local income tax regime in place after January 1, 2017. Pub. L. No. 243-2015, § 10, 2015 Ind. Acts at 3853 (codified at IND. CODE § 6-3.6-8-8).

140. Pub. L. No. 249-2015, § 22, 2015 Ind. Acts 4020, 4043-44 (amending IND. CODE § 6-3.5-4-2).

141. Pub. L. No. 149-2015, §§ 1-14, 2015 Ind. Acts 1397, 1397-1400 (amending IND. CODE §§ 6-3.5-4-7, -4-9, -4-16, -5-9, -5-11, -5-18; adding IND. CODE § 6-3.5-4-15.5; and repealing IND. CODE §§ 6-3.5-4-8, -4-10, -4-11, -4-15, -5-10, -5-12, -5-17).

142. Pub. L. No. 243-2015, § 10, 2015 Ind. Acts at 3802 (codified at IND. CODE § 6-3.6-1-1(a)).

143. *Id.* § 10, 2015 Ind. Acts at 3802 (codified at IND. CODE § 6-3.6-1-1(c)).

144. *Id.* § 10, 2015 Ind. Acts at 3803-04 (codified at IND. CODE § 6-3.6-1-3).

145. *Id.* § 10, 2015 Ind. Acts at 3809 (codified at IND. CODE § 6-3.6-3-2(a)). A county’s “adopting body” is its local income tax council (if one exists) or its county fiscal body. *Id.* § 10, 2015 Ind. Acts at 3809 (codified at IND. CODE § 6-3.6-3-1).

146. *Id.* § 10, 2015 Ind. Acts at 3810 (codified at IND. CODE § 6-3.6-3-3(b)(1)).

147. *Id.* § 10, 2015 Ind. Acts at 3813 (codified at IND. CODE § 6-3.6-4-1(a)).

148. *Id.* § 10, 2015 Ind. Acts at 3807 (codified at IND. CODE § 6-3.6-2-13). Technically, the relevant date is “January 1st of the calendar year in which the individual’s taxable year commences.” *Id.* § 10, 2015 Ind. Acts at 3851 (codified at IND. CODE § 6-3.6-8-3(b)). But, for most people the taxable year and the calendar year will be identical because the federal income tax definition of taxable year is used. *See id.* § 10, 2015 Ind. Acts at 3851-52 (codified at IND. CODE § 6-3.6-8-5(a)(1), which imports the definitions from the state income tax law); IND. CODE § 6-3-1-16 (defining “taxable year” under the state income tax law as equivalent to the taxable year under

the location of the individual's home¹⁴⁹ and subsequent residence changes will not affect that classification for the taxable year.¹⁵⁰ "Adjusted gross income" has the same meaning that it has under the state income tax, except it only includes amounts earned from the taxpayer's business or employment when the taxpayer is not a county resident.¹⁵¹ The total tax rate is the sum of the county's (1) property tax relief rate,¹⁵² (2) expenditure rate,¹⁵³ and (3) special purpose rates.¹⁵⁴ The property tax relief rate may not exceed 1.25% and may only be used to fund a property tax credit that offsets the property tax liability of taxpayers with tangible property located in the county.¹⁵⁵ The expenditure rate is capped at 2.5% (2.75% for Marion County).¹⁵⁶ The revenue raised by the first 0.25% of the expenditure rate must go to school corporations and civil taxing units that imposed a CAGIT under the old taxing regime,¹⁵⁷ but the remaining revenue will be allocated by ordinance to public safety, economic development projects, and certified shares distributed to the civil taxing units.¹⁵⁸ Finally, a county's special purpose rates are intended to pay for county infrastructure projects (e.g., correctional facilities) so that higher property taxes, which might impair economic development, are not needed.¹⁵⁹ Although there is no single maximum permissible special purpose tax rate that applies to all counties, each county's rate is limited to maximum amount provided for it by the GA.¹⁶⁰

the IRC or the calendar year when the taxpayer does not file an income tax return under the IRC); I.R.C. § 441(g) (2012) (requiring a taxpayer who does not keep books or have an annual accounting period to use the calendar year as a taxable year).

149. Pub. L. No. 243-2015, § 10, 2015 Ind. Acts at 3850 (codified at IND. CODE § 6-3.6-8-3(a)).

150. *Id.* § 10, 2015 Ind. Acts at 3851 (codified at IND. CODE § 6-3.6-8-3(b)).

151. *Id.* § 10, 2015 Ind. Acts at 3805 (codified at IND. CODE § 6-3.6-2-2).

152. *Id.* § 10, 2015 Ind. Acts at 3814 (codified at IND. CODE § 6-3.6-5-1).

153. *Id.* § 10, 2015 Ind. Acts at 3817 (codified at IND. CODE § 6-3.6-6-1).

154. *Id.* § 10, 2015 Ind. Acts at 3828 (codified at IND. CODE § 6-3.6-7-1).

155. *Id.* § 10, 2015 Ind. Acts at 3815 (codified at IND. CODE § 6-3.6-5-6(b), (c)). Specific rules explain the options that the adopting body may use to allocate the property tax credit among qualifying taxpayers. *Id.* § 10, 2015 Ind. Acts at 3815-17 (codified at IND. CODE § 6-3.6-5-6(d) to (g)).

156. *Id.* § 10, 2015 Ind. Acts at 3817 (codified at IND. CODE § 6-3.6-6-2(b)).

157. *Id.* § 10, 2015 Ind. Acts at 3817 (codified at IND. CODE § 6-3.6-6-3(1)).

158. *Id.* § 10, 2015 Ind. Acts at 3818 (codified at IND. CODE § 6-3.6-6-4). The new statute contains extensive definitions for "public safety" and "economic development project." *Id.* § 10, 2015 Ind. Acts at 3806-08 (codified at IND. CODE §§ 6-3.6-2-8, -14).

159. *Id.* § 10, 2015 Ind. Acts at 3828 (codified at IND. CODE § 6-3.6-7-1). The list of permissible infrastructure investments includes criminal justice facilities, county hospitals, and public transportation systems. *Id.* § 10, 2015 Ind. Acts at 3828-29 (codified at IND. CODE § 6-3.6-7-3(a)).

160. *Id.* § 10, 2015 Ind. Acts at 3828 (codified at IND. CODE § 6-3.6-7-2). For example, the special purpose rates in Indiana Code section 6-3.6-7-9 only apply to Hancock County, *id.* § 10, 2015 Ind. Acts at 3832 (codified at IND. CODE § 6-3.6-7-9(a)), and those in Indiana Code section

The new local income tax aims for uniformity in the area of tax administration, too, by incorporating the administration rules already in use under the state income tax.¹⁶¹ Some tax-specific complexity still survives, though, because the statute allows the adopting body to change the applicable taxes and tax rates throughout the year.¹⁶² For that reason, special rules for calculating annual tax liabilities using different mixes of taxes and tax rates are provided.¹⁶³ The statute also supplements the imported rules with a local income tax-specific employer withholding reporting requirement,¹⁶⁴ tax credits for individuals who must pay local income taxes to a municipality located outside of Indiana on income that is subject to Indiana's income tax,¹⁶⁵ and tax credits for certain elderly and disabled individuals.¹⁶⁶

F. Taxation of Financial Institutions

After several years of reducing the tax rates that apply to corporations doing business as a financial institutions in Indiana,¹⁶⁷ the GA largely left this area untouched in 2015. The only two changes made parallel revisions to the state income tax. First, the GA updated the "adjusted gross income" definition in the financial institutions tax calculation to align with the revised taxable income definition applied to corporations for state income tax purposes.¹⁶⁸ Second, the GA extended the time period for notifying the DOR of an alteration or modification of that taxpayer's federal income tax return from 120 days to 180 days and ordered taxpayers to file an amended financial institutions tax return within that 180-day period any time a "modification or alteration results in a change in the taxpayer's federal adjusted gross income or income within Indiana."¹⁶⁹ The updated statute also included a list of "modification or alteration"

6-3.6-7-24 only apply to counties that are "member[s] of a regional development authority under IC 36-7.6." *Id.* § 10, 2015 Ind. Acts at 3846 (codified at IND. CODE § 6-3.6-7-24(a)).

161. *See id.* § 10, 2015 Ind. Acts at 3851-52 (codified at IND. CODE § 6-3.6-8-5(a) and incorporating the relevant rules for filing returns, remittances, and penalties and interest).

162. *See supra* note 146 and the accompanying text (identifying the relevant statutory provisions and providing one example of a mid-year rate change).

163. Pub. L. No. 243-2015, § 10, 2015 Ind. Acts at 3850 (codified at IND. CODE § 6-3.6-8-1, -2).

164. *Id.* § 10, 2015 Ind. Acts at 3852 (codified at IND. CODE § 6-3.6-8-5(c)).

165. *Id.* § 10, 2015 Ind. Acts at 3852-53 (codified at IND. CODE § 6-3.6-8-6).

166. *Id.* § 10, 2015 Ind. Acts at 3853 (codified at IND. CODE § 6-3.6-8-8). As with the now-repealed CAGIT, COIT, and CEDIT tax credits for the elderly and disabled, see *supra* note 139, this new tax credit incorporates its qualification requirements from IRC § 22. Pub. L. No. 243-2015, § 10, 2015 Ind. Acts at 3853 (codified at IND. CODE § 6-3.6-8-8(a)).

167. Jegen et al., *supra* note 27, at 1469-70.

168. Pub. L. No. 250-2015, § 42, 2015 Ind. Acts 4053, 4113-17 (amending IND. CODE § 6-5.5-1-2); see *supra* notes 93-95 and the accompanying text (conforming the income tax's taxable income definition for corporations to the one used in the IRC).

169. Pub. L. No. 242-2015, § 32, 2015 Ind. Acts 3704, 3757-58 (amending IND. CODE § 6-5.5-

events that mirrored the comparable list added for state income tax returns.¹⁷⁰

G. Excise Taxes and Other Miscellaneous Taxes

For excise taxes, 2015 was a year to recover from a multi-year spate of activity directed primarily at motor vehicles and fuel.¹⁷¹ As a result, most of the legislative activity was modest in nature. For example, under the Aircraft License Excise Tax the GA shifted the regular annual registration date from the end of February to the end of December¹⁷² and transformed the dealer's inventory exception from a lifetime test that could not extend beyond eighteen months to an annual test that turns on whether the airplane is in service for less than fifty hours during the relevant year.¹⁷³ With respect to excise taxes on vehicles, the GA (1) created a \$30 annual excise tax on mini-trucks, due at registration;¹⁷⁴ (2) adjusted the duration of the "first year of manufacture" for motorcycles to the end of the calendar year following the year the motorcycle was first offered for sale,¹⁷⁵ and for recreational vehicles and truck campers to the end of the calendar year first offered for sale;¹⁷⁶ and (3) limited the situations where the first-time registration of a motor vehicle, recreational vehicle, or truck camper automatically requires its owner to pay the renewal fee and excise tax for the first full annual registration year to those where that year does not extend beyond the end of the next calendar year.¹⁷⁷

Excise taxes on food and beverages also received some attention during 2015, and they are likely to receive more in the future as the GA considers whether to

6-6). In conjunction with this change, the GA gave the DOR and taxpayers six months to assess additional taxes or request a refund after a taxpayer's federal income tax return was modified. *See supra* note 119 (describing these changes in more detail).

170. Pub. L. No. 242-2015, § 32, 2015 Ind. Acts at 3757 (amending IND. CODE § 6-5.5-6-6); *see supra* notes 118-19 and the accompanying text (identifying the events that are "modifications or alterations" for state income tax purposes).

171. *See, e.g.*, Jegen et al., *supra* note 93, at 1187-89 (summarizing the numerous changes on the motor vehicle and fuel front in that year).

172. Pub. L. No. 245-2015, § 22, 2015 Ind. Acts 3874, 3920-21 (amending IND. CODE § 6-6-6.5-1).

173. Pub. L. No. 102-2015, § 1, 2015 Ind. Acts 689, 689 (amending IND. CODE § 6-6-6.5-10.6). Dealers owning aircraft on July 1, 2015 that had previously ceased to be inventory aircraft under the eighteen-month test, but would have qualified under the new fifty-hour annual test, may elect to retroactively reclassify those aircraft as inventory and receive a credit or a refund equal to the amount of registration fees and applicable taxes paid because of the aircraft was not treated as inventory. *Id.* § 2, 2015 Ind. Acts at 689-70 (codified at IND. CODE § 6-6-6.5-26).

174. Pub. L. No. 180-2015, § 1, 2015 Ind. Acts 1979, 1979 (codified at IND. CODE § 6-6-5-5.7).

175. Pub. L. No. 149-2015, § 15, 2015 Ind. Acts 1397, 1402 (amending IND. CODE § 6-6-5-5).

176. *Id.* § 18, 2015 Ind. Acts at 1409 (amending IND. CODE § 6-6-5.1-13).

177. *Id.* §§ 16, 19-20, 2015 Ind. Acts at 1402, 1410, 1413 (amending IND. CODE §§ 6-6-5-7.2, -5.1-15, -5.1-16).

replace the current hodgepodge of city- and county-level food and beverage taxes with a statewide uniform food and beverages tax that individual localities could choose to adopt.¹⁷⁸ In the meantime, the GA created targeted food and beverage excises taxes to raise for funds for the town of Rockville,¹⁷⁹ Orange County,¹⁸⁰ and the West Baden Springs historic hotel preservation and maintenance fund.¹⁸¹ It also approved a supplemental innkeeper's tax for the historic hotels in Orange County to support the aforementioned preservation and maintenance fund.¹⁸² On a statewide level, the GA clarified that holders of a direct wine seller's permit must pay the wine excise tax and the hard cider excise tax on that applicable alcoholic beverages the holder manufactures or imports into Indiana.¹⁸³

Outside of the excise tax realm, the GA significantly modified the tax rules applied to employee medical case savings account plans by terminating the employee's income tax exemption for employer contributions of principal made on or after January 1, 2016.¹⁸⁴ Consistent with that upfront taxation approach, employees may withdraw employer contributions that were subject to state income tax at any time, and for any reason, without penalty.¹⁸⁵

H. Tax Administration Matters

In 2015, the GA attended to a variety of tax administration matters, including creating a new tax amnesty program, revising the interest accrual period for refund claims, adjusting several tax controversy provisions, and improving the efficiency of the Tax Court's operations. Regarding tax amnesty, the GA modified the existing statutory provision permitting amnesty for unpaid tax liabilities from tax periods ending before July 1, 2004 to cover the tax periods ending before January 1, 2013, provided the taxpayer requesting amnesty did not participate in the earlier program or the amnesty program for unpaid use tax on claimed race horses.¹⁸⁶ The DOR is authorized to use emergency rules to carry out

178. Pub. L. No. 254-2015, § 3, 2015 Ind. Acts 4215, 4221 (urging the legislative committee to study whether such a uniform system should be adopted).

179. *Id.* § 1, 2015 Ind. Acts at 4215-18 (codified at IND. CODE § 6-9-45).

180. *Id.* § 2, 2015 Ind. Acts at 4218-21 (codified at IND. CODE § 6-9-47.5).

181. Pub. L. No. 255-2015, § 61, 2015 Ind. Acts 4222, 4276-78 (codified at IND. CODE § 6-9-45.5).

182. *Id.* § 62, 2015 Ind. Acts at 4278-79 (codified at IND. CODE § 6-9-45.6).

183. Pub. L. No. 107-2015, §§ 12-13, 2015 Ind. Acts 740, 747-48 (amending IND. CODE §§ 7.1-4-4-3, -4.5-3). The wine excise tax is \$0.47 per gallon and the hard cider excise tax is \$0.115 per gallon. IND. CODE §§ 7.1-4-4-1, -4.5-1.

184. Pub. L. No. 250-2015, § 45, 2015 Ind. Acts 4053, 4123 (amending IND. CODE § 6-8-11-9).

185. *Id.* § 46, 2015 Ind. Acts at 4123-24 (codified at IND. CODE § 6-8-11-11.5).

186. Pub. L. No. 213-2015, § 91, 2015 Ind. Acts 2636, 2959 (amending IND. CODE § 6-8.1-3-17). Any proceeds from the newly-created tax amnesty program will be distributed as follows: (1) the first \$84 million to the Indiana regional cities development fund, (2) the next \$6 million to the Indiana department of transportation for use funding the Hoosier State Rail Line, and (3) any

the program expeditiously¹⁸⁷ and must terminate the program prior to January 1, 2017.¹⁸⁸ The additional penalty provisions accompanying the 2004 tax amnesty program, which doubled the taxpayer's penalty when the taxpayer could have participated in the amnesty program but failed to do so, were also modified to cover any new program covering the tax periods through January 2013, and to cover the failure to file penalty.¹⁸⁹

The GA altered the date that interest begins to accrue for refund claims filed after June 30, 2015. Prior to that date, interest began on the date the refund claim was filed. Now, interest begins on the latest of (1) the date that the tax payment was due, (2) the date it was actually paid, and (3) the date the relevant tax return was filed.¹⁹⁰ For state gross retail or use taxes, the due date is automatically deemed to be December 31 of the calendar year containing the remittance period.¹⁹¹

On the tax controversy front, the GA gave the DOR another enforcement tool by granting the DOR authority to deny a taxpayer's vehicle registration application when the taxpayer has failed to file all tax returns or information returns, and to pay all taxes, penalties, and interest.¹⁹² The DOR's denial authority extends to businesses "operated, managed, or otherwise controlled by or affiliated with" the delinquent applicant (including those businesses controlled by a relative or family member of the applicant).¹⁹³ Procedurally, the GA extended the taxpayer's period for filing an appeal with the Tax Court from sixty days to ninety days after the DOR issues its letter of findings and made possible an extension of an additional ninety days by mutual agreement between the taxpayer and the DOR.¹⁹⁴ The procedure for challenging the DOR's denial of a refund claim, both within the DOR and to the Tax Court, were updated to better align those procedures with the procedures used to challenge the DOR's proposed assessment of additional taxes contained in a letter of findings.¹⁹⁵ Controversies that have reached the collections phase also received some attention. The DOR Commissioner may expunge a tax warrant when the taxpayer has paid or resolved all outstanding tax issues for the preceding five years, the warrant is more than ten years old, the warrant is not the subject of pending litigation, or the DOR has

residual amounts to the state general fund. *Id.* § 93, 2015 Ind. Acts at 2961-62 (codified at IND. CODE § 6-8.1-3-25).

187. *Id.* § 92, 2015 Ind. Acts at 2961 (codified at IND. CODE § 6-8.1-3-24).

188. *Id.* § 91, 2015 Ind. Acts at 2960 (amending IND. CODE § 6-8.1-3-17).

189. *Id.* § 94, 2015 Ind. Acts at 2962-63 (amending IND. CODE § 6-8.1-10-12).

190. Pub. L. No. 242-2015, § 40, 2015 Ind. Acts 3704, 3777 (amending IND. CODE § 6-8.1-9-2).

191. *Id.*

192. *Id.* § 34, 2015 Ind. Acts at 3759-60 (codified at IND. CODE § 6-8.1-4-5).

193. *Id.*

194. *Id.* § 35, 2015 Ind. Acts at 3760-62 (amending IND. CODE § 6-8.1-5-1).

195. *Id.* § 39, 2015 Ind. Acts at 3773-74 (amending IND. CODE § 6-8.1-9-1). The comparable procedures for challenging a proposed tax assessment are determined in IND. CODE § 6-8.1-5-1(d) through (h).

adopted rules indicating that expunging the warrant in question is consistent with best interest of the state.¹⁹⁶

Finally, the GA expressed concern that the Tax Court could improve the efficiency of its operations and ordered the Indiana Judicial Center to review that court's workload, operations, and backlog in an effort to improve the efficiency of case dispositions.¹⁹⁷ The judicial center's report is due to the legislative council by December 1, 2016.¹⁹⁸

I. Taxation of Internet Access

In response to the imminent expiration of the federal Internet Tax Freedom Act,¹⁹⁹ the GA added new Article 10 (Taxation of Internet Access) to Title 6 of the Indiana Code.²⁰⁰ The new article prohibits the state and its political subdivisions from "impos[ing], assess[ing], collect[ing], or attempt[ing] to collect a tax . . . on Internet access or the use of Internet access."²⁰¹ That prohibition protects both buyers and sellers of Internet access,²⁰² and covers state gross retail and use taxes,²⁰³ but does not extend to indirect taxes on Internet access providers (e.g., a tax on a provider's net income or property value).²⁰⁴ The term "Internet access" includes incidental services like home pages, email accounts, instant messaging, and personal data storage, regardless of whether those services are actually bundled together with Internet access.²⁰⁵ However, that term does not include "voice, audio, or video programming."²⁰⁶

II. INDIANA TAX COURT DECISIONS

The Tax Court issued a variety of opinions and decisions from January 20, 2015 to December 31, 2015. Specifically, the Tax Court issued fifty-four published opinions and decisions, which consist of: thirty-one concerning Indiana's real property tax; four concerning Indiana local taxes; eight concerning Indiana's sales and use tax; six concerning Indiana's corporate income tax; four concerning tax procedure; and, two concerning the inheritance tax. Below is a summary of each of these opinions.

196. *Id.* § 38, 2015 Ind. Acts at 3771-72 (amending IND. CODE § 6-8.1-8-2).

197. Pub. L. No. 248-2015, § 8, 2015 Ind. Acts 4006, 4019-20 (codified at IND. CODE § 33-38-9-11).

198. *Id.*

199. Internet Tax Freedom Act, 47 U.S.C. § 151 note (2012).

200. Pub. L. No. 44-2015, § 1, 2015 Ind. Acts 300, 300-02 (codified at IND. CODE §§ 6-10-1-1 to -5).

201. *Id.* § 1, 2015 Ind. Acts at 302 (codified at IND. CODE § 6-10-1-5).

202. *Id.* § 1, 2015 Ind. Acts at 302 (codified at IND. CODE § 6-10-1-4(a)).

203. *Id.* § 1, 2015 Ind. Acts at 302 (codified at IND. CODE § 6-10-1-5).

204. *Id.* § 1, 2015 Ind. Acts at 302 (codified at IND. CODE § 6-10-1-4(b)).

205. *Id.* § 1, 2015 Ind. Acts at 301 (codified at IND. CODE § 6-10-1-2(b)(2), (3)).

206. *Id.* § 1, 2015 Ind. Acts at 302 (codified at IND. CODE § 6-10-1-2(c)).

A. Real Property Tax

1. *Three Fountains West, Inc. v. O'Connor*.²⁰⁷—In 2011, the PTABOA revoked Three Fountains West, Inc.’s charitable property tax exemption for the 2010 tax year and on April 5, 2011, Three Fountains appealed the PTABOA’s action to the IBTR.²⁰⁸ When the IBTR explained the revocation was both timely and in compliance with all applicable notice requirements, Three Fountains initiated a tax appeal to the Tax Court.²⁰⁹

On appeal to the Tax Court, the Assessor claimed the Tax Court did not have subject matter jurisdiction because Three Fountains merely sought a review of an IBTR interlocutory order instead of a final determination.²¹⁰ However, Three Fountains contended the Tax Court must have jurisdiction, claiming the IBTR created a final determination by issuing an order on a procedural issue.²¹¹ Ultimately, the Tax Court held the act of reviewing and revoking the exemption was indeed an interlocutory order and not a final determination.²¹² Therefore, the taxpayer needed to exhaust its administrative remedies and actually acquire a final determination on the substantive issue before appealing.²¹³

In the alternative, Three Fountains argued no final determination was needed from the IBTR, claiming the PTABOA went “rogue.”²¹⁴ But the Tax Court did not consider this to be persuasive.²¹⁵ Instead, the Tax Court saw the matter of whether Three Fountains was entitled to the exemption for operating its property for a charitable purpose, as still being an issue for the IBTR to determine at the administrative level.²¹⁶ Accordingly, the Tax Court granted the Assessor’s Motion to Dismiss for Lack of Jurisdiction.²¹⁷

2. *Mayfield Green Cooperative, Inc. v. O'Connor*.²¹⁸—The Mayfield Green Cooperative, Inc. had been operating its multi-family apartment complex under an exemption from the property tax, because of a charitable purpose.²¹⁹ However, in 2009, precedent was created which held that the provision of affordable housing to low-income persons was not a per se charitable purpose.²²⁰ As a result,

207. No. 49T10-1406-TA-42, 2015 WL 256135 (Ind. T.C. Jan. 20, 2015) (unpublished disposition).

208. *Id.* at *1.

209. *Id.* at *2.

210. *Id.* at *3.

211. *Id.* at *4.

212. *Id.*

213. *Id.*

214. *Id.*

215. *Id.*

216. *Id.*

217. *Id.*

218. No. 49T10-1406-TA-41, 2015 WL 256161 (Ind. T.C. Jan. 20, 2015) (unpublished disposition).

219. *Id.* at *1.

220. *See* *Jamestown Homes of Mishawaka, Inc. v. St. Joseph Cty. Assessor*, 909 N.E.2d 1138,

the PTABOA questioned several prior exemption determinations and in March 2011 and revoked Mayfield Green's exemption for the 2010 tax year.²²¹

Therefore, Mayfield appealed to the IBTR, alleging the PTABOA lacked the statutory authority to revoke the 2010 exemption, and in the alternative, the revocation was untimely.²²² However, the IBTR issued an order denying Mayfield's motion for summary judgment.²²³ Further, the IBTR explained the Indiana Code²²⁴ did in fact authorize the PTABOA's exemption revocation and the revocation was here both timely and in compliance with all applicable notice requirements.²²⁵ Thus, Mayfield appealed to the Tax Court.²²⁶

On appeal to the Tax Court, the Tax Court determined because the IBTR order did not end the administrative process, the taxpayer did not have a final determination.²²⁷ Thus, the Tax Court was deprived of subject matter jurisdiction.²²⁸ Additionally, the Tax Court did not find the taxpayer had carried its burden to show the IBTR had exceeded its authority.²²⁹ For those reasons, the Tax Court dismissed Mayfield's appeal due to the Tax Court's lack of subject matter jurisdiction.²³⁰

3. *Lakeview Terrace Cooperative, Inc. v. O'Connor*.²³¹—In 2011, the PTABOA revoked Lakeview Terrace Cooperative, Inc.'s charitable property tax exemption for the 2010 tax year and Lakeview appealed such revocation to the IBTR.²³² Lakeview claimed the PTABOA lacked authority to revoke the 2010 exemption, and alternatively, that the revocation was untimely.²³³ However, the IBTR issued an order denying Lakeview's motion for summary judgment.²³⁴ Therefore, Lakeview initiated a tax appeal to the Tax Court.²³⁵

The parties disputed whether the IBTR had, in fact, issued a final determination.²³⁶ Lakeview contended the IBTR terminated litigation with an order on a procedural issue, while the Assessor claimed Lakeview was merely

1144 (Ind. T.C. 2009).

221. *Mayfield Green*, 2015 WL 256161, at *1.

222. *Id.*

223. *Id.*

224. *Id.* (citing IND. CODE §§ 6-1.1-11-1 to -11 (2015)).

225. *Id.*

226. *Id.* at *2.

227. *Id.* at *3.

228. *Id.* at *4.

229. *Id.*

230. *Id.*

231. No. 49T10-1406-TA-40, 2015 WL 249850 (Ind. T.C. Jan. 20, 2015) (unpublished disposition).

232. *Id.* at *1.

233. *Id.*

234. *Id.*

235. *Id.* at *2.

236. *Id.* at *3.

seeking a review of an interlocutory order.²³⁷ In deciding that issue, the Tax Court determined there was an outstanding substantive issue in this case for the IBTR to settle.²³⁸ Thus, the Tax Court determined that the Tax Court did not have jurisdiction to decide the issue.²³⁹

4. *Retreat Cooperative, Inc. v. O'Connor*.²⁴⁰—In 2005, Retreat Cooperative, Inc. claimed its cooperative apartment complex and personal charitable property tax exemption was proper because the property was owned, occupied, and exclusively used for the charitable purpose of providing affordable housing to low-income persons.²⁴¹ However, in 2009, the legal precedent changed, causing a review of all such exemptions.²⁴² Therefore, the PTABOA revoked Retreat's exemption for the 2010 tax year.²⁴³ Thereafter, Retreat appealed to the IBTR, asserting the PTABOA lacked the authority to make such revocation and the PTABOA's revocation was untimely.²⁴⁴ However, the IBTR issued an order denying Retreat's motion.²⁴⁵ Thus, Retreat initiated a tax appeal to the Tax Court.²⁴⁶

Thereafter, the Tax Court dismissed Retreat's appeal because no final decision had been made at the administrative level and because Retreat did not establish extraordinary circumstances.²⁴⁷ Thus, the Tax Court granted the Assessor's motion to dismiss.²⁴⁸

5. *Riley-Roberts Park, LP v. O'Connor*.²⁴⁹—Riley-Roberts Park claimed its property was exempt from property taxation under a charitable property tax exemption for the 2008 tax year.²⁵⁰ However, in 2011, the PTABOA revoked Riley-Roberts' charitable property tax exemption for the 2010 tax year because of new precedent regarding the charitable exemption.²⁵¹ Thereafter, Riley-Roberts appealed to the IBTR alleging the PTABOA lacked the statutory authority to revoke its 2010 exemption, and in addition, the PTABOA made the revocation in an untimely manner.²⁵² Nonetheless, the IBTR issued an order denying Riley-

237. *Id.*

238. *Id.*

239. *Id.* at *5.

240. No. 49T10-1406-TA-45, 2015 WL 256164 (Ind. T.C. Jan. 20, 2015) (unpublished disposition).

241. *Id.* at *1.

242. *Id.*

243. *Id.*

244. *Id.*

245. *Id.*

246. *Id.* at *2.

247. *Id.* at *3-4.

248. *Id.* at *4.

249. No. 49T10-1406-TA-37, 2015 WL 249841 (Ind. T.C. Jan. 20, 2015) (unpublished disposition).

250. *Id.* at *1.

251. *Id.*

252. *Id.*

Roberts' motion, and thereafter, Riley-Roberts initiated a tax appeal to the Tax Court.²⁵³

Indiana law requires a petition, which is filed with the Tax Court, to be an original tax appeal and this means the issues involved must arise under the tax laws of Indiana and the appeal must be an original appeal of a final determination.²⁵⁴ To have an original appeal, the petitioner must have a final determination from the IBTR, which Riley did not.²⁵⁵ Given the fact that Riley-Roberts did not exhaust its administrative remedies, the Tax Court was deprived of subject matter jurisdiction, and therefore, the Tax Court granted the Assessor's Motion to Dismiss For Lack of Jurisdiction.²⁵⁶

6. *Yorktown Homes South, Inc. v. O'Connor*.²⁵⁷—In 2011, the PTABOA revoked Yorktown Homes South, Inc.'s charitable property tax exemption for the 2010 tax year.²⁵⁸ Yorktown appealed to the IBTR claiming the PTABOA lacked authority to make such revocation or, in the alternative, the PTABOA revocation was untimely.²⁵⁹ Subsequently, the IBTR issued an order denying Yorktown's Motion for Summary Judgment, and thereafter, Yorktown initiated a tax appeal to the Tax Court.²⁶⁰

On appeal to the Tax Court, the Assessor claimed the Tax Court lacked subject matter jurisdiction over the issue because Yorktown was appealing an interlocutory order and not a final determination of the IBTR.²⁶¹ On the other hand, Yorktown contended that a final determination was in fact created when the IBTR made a ruling on a procedural issue.²⁶² However, the Tax Court determined that Yorktown had not exhausted its administrative remedies and, therefore, the Tax Court dismissed the case.²⁶³

7. *Harvard Square Cooperative, Inc. v. O'Connor*.²⁶⁴—Harvard Square Cooperative had been operating its cooperative apartment complex under a charitable property tax exemption.²⁶⁵ However, in 2011, the PTABOA revoked the charitable exemption for the 2010 tax year.²⁶⁶ Thus, Harvard Square filed an appeal with the IBTR, alleging the PTABOA lacked authority to make the

253. *Id.* at *1-2.

254. IND. CODE § 33-26-3-1 (2015).

255. *Riley-Roberts Park*, 2015 WL 249841, at *3.

256. *Id.* at *4.

257. No. 49T10-1406-TA-38, 2015 WL 249845 (Ind. T.C. Jan. 20, 2015) (unpublished disposition).

258. *Id.* at *1.

259. *Id.*

260. *Id.* at *1-2.

261. *Id.*

262. *Id.*

263. *Id.* at *3-5.

264. No. 49T10-1406-TA-36, 2015 WL 256158 (Ind. T.C. Jan. 20, 2015) (unpublished disposition).

265. *Id.* at *1.

266. *Id.*

revocation and, in addition, Harvard Square claimed the revocation was not timely made.²⁶⁷

Thereafter, the IBTR denied Harvard Square's Motion for Summary Judgment, and, therefore, Harvard Square initiated a tax appeal to the Tax Court.²⁶⁸ In addressing the tax appeal, the Tax Court determined Harvard Square had not been exhausted its administrative remedies, and therefore, the Tax Court granted the Assessor's Motion to Dismiss.²⁶⁹ Thus, the failure to obtain a final determination from the IBTR was fatal to Harvard Square's appeal.²⁷⁰

8. *Grandville Cooperative, Inc. v. O'Connor*.²⁷¹—Since 2005, Grandville Cooperative operated its cooperative apartment complex under a charitable property tax exemption.²⁷² However, during 2009, a decision was made by the Tax Court, which changed the landscape of how this exemption was to be applied.²⁷³ Therefore, the PTABOA questioned several of its prior charitable exemptions determinations, including Grandville's, and in March 2011, the PTABOA revoked Grandville's charitable exemption for the 2010 tax year.²⁷⁴ Thereafter, Grandville appealed to the IBTR, claiming the PTABOA lacked the authority to make such a revocation, and in addition, the PTABOA's revocation was untimely.²⁷⁵ Thereafter, the IBTR issued an order denying Grandville's Motion for Summary Judgment, and thereafter, Grandville initiated a tax appeal to the Tax Court.²⁷⁶

On appeal to the Tax Court, the Tax Court looked to whether this issue was in fact an original appeal and the Tax Court determined Grandville did not demonstrate there were extraordinary circumstances and because the IBTR's order did not end the administrative process, Grandville was left with an appeal from an interlocutory order.²⁷⁷ Therefore, the Tax Court granted the Assessor's Motion to Dismiss for Lack of Jurisdiction.²⁷⁸

9. *Southwood Cooperative, Inc. v. O'Connor*.²⁷⁹—Southwood Cooperative claimed its properties were exempt from property taxation by a charitable property tax exemption because the properties were owned and exclusively used

267. *Id.*

268. *Id.* at *1-2.

269. *Id.* at *3-5.

270. *Id.*

271. 25 N.E.3d 833 (Ind. T.C. 2015).

272. *Id.* at 834-35.

273. That precedent stated "the provision of affordable housing to low-income persons was not a per se charitable purpose." *Jamestown Homes of Mishawaka, Inc. v. St. Joseph Cty. Assessor*, 909 N.E.2d 1138, 1144 (Ind. T.C. 2009).

274. *Grandville Cooperative*, 25 N.E.3d at 835.

275. *Id.*

276. *Id.*

277. *Id.* at 837-38.

278. *Id.* at 838-39.

279. No. 49T10-1406-TA-43, 2015 WL 256162 (Ind. T.C. Jan. 20, 2015) (unpublished disposition).

for the charitable purpose of providing affordable housing to low-income persons.²⁸⁰ However, in 2009, the precedent changed for this type of exemption and this motivated the PTABOA to question several of its prior exemption determinations and, as a result of its examinations, the PTABOA determined Southwood no longer qualified for the exemptions.²⁸¹ Therefore, the PTABOA revoked Southwood's exemptions for the 2010 tax year.²⁸² Southwood appealed to the IBTR, claiming the PTABOA lacked the authority to revoke the 2010 exemption and, in addition, the revocation was not made timely.²⁸³ However, the IBTR issued an order denying Southwood's motion, explaining that Indiana Code section 6-1.1-11-1 authorized the PTABOA's revocation and the revocation was both timely and that the revocation complied with all requirements.²⁸⁴ Thereafter, Southwood initiated a tax appeal to the Tax Court.²⁸⁵

On appeal, the Tax Court determined that the IBTR's order did not end the administrative process.²⁸⁶ Therefore, Southwood had appealed an IBTR interlocutory order, not an IBTR final determination.²⁸⁷ Therefore, the Tax Court did not have jurisdiction to decide the matter and, for that reason, the Tax Court granted the Assessor's Motion to Dismiss.²⁸⁸

*10. Troy Manor Cooperative, Inc. v. O'Connor.*²⁸⁹—Troy Manor Cooperative owned an apartment complex, which had been granted a charitable property tax exemption.²⁹⁰ However, in March 2011, the PTABOA revoked Troy Manor's exemption for the 2010 tax year.²⁹¹ Troy Manor filed a petition with the IBTR, which claimed the PTABOA lacked authority to make such revocation and, in addition, the revocation was not timely made.²⁹² Subsequently, the IBTR issued an order denying Troy Manor's request.²⁹³ Thereafter, Troy Manor initiated a tax appeal.²⁹⁴

As the Tax Court has stated in numerous other opinions and as clearly stated in the applicable statutory laws, a person may obtain a hearing in the Tax Court by filing an initial appeal of a final determination of either the Department of

280. *Id.* at *1.

281. *Id.*

282. *Id.*

283. *Id.*

284. *Id.*

285. *Id.* at *2.

286. *Id.* at *3.

287. *Id.*

288. *Id.* at *4.

289. No. 49T10-1406-TA-39, 2015 WL 256159 (Ind. T.C. Jan. 20, 2015) (unpublished disposition).

290. *Id.* at *1.

291. *Id.*

292. *Id.*

293. *Id.*

294. *Id.* at *2.

Revenue or of the IBTR.²⁹⁵ Thus, for the Tax Court to possess subject matter jurisdiction over a case, the following two requirements must be met: the case must arise under Indiana's tax laws and the petitioner must be appealing a final determination either of the Department of Revenue or of the IBTR.²⁹⁶ Therefore, because Troy Manor did not have a final determination from the IBTR, the Tax Court did not have subject matter jurisdiction.²⁹⁷

*11. Three Fountains Cooperative, Inc. v. O'Connor.*²⁹⁸—Since 2005, Three Fountains had exclusively used its cooperative apartment complex for charitable purposes.²⁹⁹ However, in 2009, the qualification for the charitable property tax exemptions changed and this caused the PTABOA to question several of its prior charitable exemption determinations.³⁰⁰ Subsequently, the PTABOA revoked Three Fountains' charitable property tax exemptions for the 2010 tax year.³⁰¹ As a result, Three Fountains appealed to the IBTR, stating the PTABOA not only lacked the statutory authority to revoke the 2010 exemptions, but, in addition, the PTABOA did not make such revocations in a timely manner.³⁰² Nonetheless, the IBTR issued an order denying Three Fountains' motion.³⁰³ Thus, Three Fountains initiated a tax appeal to the Tax Court.³⁰⁴

In its appeal to the Tax Court, Three Fountains claimed the IBTR order did in fact create a final determination because the litigation was over.³⁰⁵ But the Tax Court was not persuaded by that argument and the Tax Court determined Three Fountains had appealed an IBTR interlocutory order and not final determination, as required by Indiana tax law.³⁰⁶

Additionally, Three Fountains made an argument for extraordinary circumstances.³⁰⁷ But, the Tax Court was not persuaded.³⁰⁸ Thus, the Tax Court concluded the IBTR had the statutory authority to review and revoke the taxpayer's exemption, in addition to finding the taxpayer had not exhausted its administrative remedies nor shown an abuse of discretion by the IBTR (e.g., when the IBTR either misinterprets the law or when the IBTR's final determination is clearly against the logic and effect of the facts and circumstances

295. *Id.* at *3-5.

296. *Id.*

297. *Id.*

298. No. 49T10-1406-TA-44, 2015 WL 256163 (Ind. T.C. Jan. 20, 2015) (unpublished disposition).

299. *Id.* at *1.

300. *Id.*

301. *Id.*

302. *Id.*

303. *Id.*

304. *Id.* at *2.

305. *Id.* at *3.

306. *Id.*

307. *Id.* at *4.

308. *Id.*

before it).³⁰⁹ Therefore, the case was dismissed for lack of jurisdiction.³¹⁰

12. *Marineland Gardens Community Ass'n v. Kosciusko County Assessor*.³¹¹—Marineland Gardens Community Association, Inc. owned and maintained ten non-contiguous parcels of land.³¹² During the 2009 and 2010 tax years, Marineland applied for a property tax exemption on each parcel.³¹³ However, the PTABOA denied the exemption.³¹⁴ Marineland appealed to the IBTR, where a final determination affirming all of the PTABOA's exemption denials was given.³¹⁵ Thus, Marineland initiated a tax appeal.³¹⁶

On appeal, Marineland claimed the IBTR gave no weight to its evidence and committed an abuse of discretion by the IBTR.³¹⁷ The IBTR explained the evidence showed Marineland's use of the land was inconsistent with being established for the purpose of retaining and preserving the natural characteristics of its land.³¹⁸ The Tax Court determined a reasonable person viewing the evidence in the record would find enough relevant evidence to support denying the charitable exemption.³¹⁹ Thus, the Tax Court stated the IBTR's final determination was supported by substantial evidence and was not an abuse of discretion by the IBTR.³²⁰ Accordingly, the Tax Court affirmed the IBTR's final determination.³²¹

13. *Johnson County Property Tax Assessment Board of Appeals v. KC Propco LLC*.³²²—KC Propco LLC owned and operated the KinderCare facility located in Greenwood, Indiana.³²³ When KC Propco filed an application for a property tax exemption (because the property was owned, occupied, and exclusively used for the charitable purpose of providing affordable housing to low-income persons), the PTABOA denied the exemption application.³²⁴ Thereafter, KC Propco appealed to the IBTR.³²⁵ Before the IBTR, KC Propco explained KinderCare operates as an educational facility, so the IBTR then granted KC Propco's exemption application.³²⁶ Thereafter, the Assessor and the

309. *Id.*

310. *Id.*

311. 26 N.E.3d 1087 (Ind. T.C. 2015).

312. *Id.* at 1087.

313. *Id.*

314. *Id.* at 1087-88.

315. *Id.* at 1088.

316. *Id.* at 1089-91.

317. *Id.*

318. *Id.*

319. *Id.*

320. *Id.*

321. *Id.*

322. 28 N.E.3d 370 (Ind. T.C. 2015).

323. *Id.* at 371.

324. *Id.* at 371-72.

325. *Id.* at 372-74.

326. *Id.*

PTABOA initiated a tax appeal.³²⁷

On appeal, the Assessor argued the IBTR's final determination was not supported by the evidence for two reasons.³²⁸ First, the Assessor claimed the record of evidence showed no evidence which established who owned, occupied, and used the property.³²⁹ Second, the Assessor claimed the evidence contradicted the IBTR's finding.³³⁰

However, these two arguments failed before the Tax Court.³³¹ First, the Tax Court stated it could not reweigh evidence nor judge the credibility of witnesses.³³² Second, the Tax Court stated the Tax Court had seen enough evidence in the record of evidence that would lead a reasonable mind to conclude KC Propco owned the subject property and that KinderCare Learning Centers occupied and used it.³³³ Thus, the IBTR's final determination was not reversed on this basis.³³⁴

Additionally, the Assessor argued the IBTR's finding was not supported by evidence.³³⁵ This argument also failed because it essentially requested the Tax Court to reweigh the evidence that was presented to the IBTR and it was clear to the Tax Court that the Assessor simply disagreed with the IBTR on the weight of the evidence.³³⁶

Finally, the Assessor argued the IBTR's final determination was arbitrary and capricious because all 2.607 acres of KC Propco's land was given the exemption.³³⁷ However, the Tax Court stated the entire parcel was exempt, not just the land attributable to the building's footprint.³³⁸ Therefore, the Tax Court did not reverse the IBTR on this basis either.³³⁹

14. *Property Development Company Four, LLC v. Grant County Assessor.*³⁴⁰—In 2003, Property Development Company Four, LLC purchased, in Grant County, Indiana purchased a parcel of land in the Hickory Hills Subdivision, Marion, Indiana (“the Eastway Drive Property”) and another parcel of land in the Meadows East Subdivision, Marion, Indiana (“the Aspen Court Property”).³⁴¹ These two properties are the subject of this appeal.³⁴² Thereafter,

327. *Id.*

328. *Id.* at 375-77.

329. *Id.* at 375.

330. *Id.* at 376-77.

331. *Id.* at 375-77.

332. *Id.* at 376.

333. *Id.*

334. *Id.*

335. *Id.* at 376-77.

336. *Id.*

337. *Id.* at 377-78.

338. *Id.*

339. *Id.*

340. 31 N.E.3d 1049 (Ind. T.C.), *aff'd on reh'g*, 42 N.E.3d 182 (Ind. T.C. 2015).

341. *Id.* at 1049-50.

342. *Id.* at 1050.

the Assessor assessed the Eastway Drive Property for the 2004 and 2005 tax years.³⁴³ However, the Grant County Treasurer did not attempt to recover from Property Development the additional tax liabilities, penalties, and fees arising from the 2004, 2005, and 2006 assessments of the subject properties.³⁴⁴ Property Development subsequently appealed the assessments, first to the PTABOA and then to the IBTR.³⁴⁵ However, the IBTR issued a final determination upholding the assessments.³⁴⁶ Therefore, Property Development initiated a tax appeal.³⁴⁷

On appeal to the Tax Court, Property Development sought to reverse the final determination of the IBTR for two main reasons.³⁴⁸ First, the Property Development claimed the IBTR misused the law when it upheld the assessments and second, Property Development asserted that the IBTR erred in concluding that Property Development received proper notice of the assessments.³⁴⁹

The facts revealed Property Development constructed a home on each of the subject properties in 2003, but the Assessor did not assess the Eastway Drive Property until 2006 and the Aspen Court Property was not assessed until 2007.³⁵⁰ Therefore, the Assessor applied each assessment retroactively.³⁵¹ Consequently, Property Development argued this action was precluded, but the Tax Court was not persuaded.³⁵² The Tax Court reasoned that doing so would defeat the purpose of Indiana Code section 6-1.1-9-4.³⁵³ Accordingly, Property Development did not show that the IBTR's acted contrary to law.³⁵⁴

Also, Property Development contended the IBTR erred in concluding that Property Development had received sufficient notice for the assessments.³⁵⁵ However, the Assessor offered two reasons why notice was proper.³⁵⁶ First, the Assessor stated Property Development was provided with notice of the subject properties' assessments consistent with Indiana Code section 6-1.1-9-1.³⁵⁷ Second, the Assessor stated that even if a mistake were made, Property Development should not benefit from that mistake.³⁵⁸

However, the Tax Court determined the notices did not comply with Indiana

343. *Id.*

344. *Id.*

345. *Id.*

346. *Id.* at 1050-51.

347. *Id.* at 1051.

348. *Id.* at 1051-53.

349. *Id.*

350. *Id.* at 1052.

351. *Id.* (citing IND. CODE § 6-1.1-9-4 (2014)).

352. *Id.*

353. *Id.*

354. *Id.* at 1053.

355. *Id.*

356. *Id.*

357. *Id.*

358. *Id.* at 1053-54.

Code section 6-1.1-15-1.³⁵⁹ Instead, they only contained a statement regarding the imposition of penalties.³⁶⁰ Because notice must be given within three years of the assessment date and the record of evidence showed that the tax bills were not issued until 2010, Property Development's tax bills did not satisfy the notice requirements.³⁶¹

In conclusion, the Tax Court held it was not error to assess properties retroactively under Indiana Code section 6-1.1-9-4, but in this case, the taxpayer did not receive adequate notice of the assessments under Indiana Code section 6-1.1-9-1 because the forms did not contain statements regarding the taxpayer's rights to a preliminary conference or review.³⁶²

15. *Peters v. Garoffolo*.³⁶³—Lee and Sally Peters own the real property involved in this case, which consisted of an office building situated on a 0.16 acre lot in Boone County, Indiana.³⁶⁴ For the 2009 tax year, the property was assessed at \$306,400.³⁶⁵ However, the assessment was increased to \$430,900 for the 2010 tax year.³⁶⁶ Thus, the Peters challenged the 2010 assessment with the PTABOA, which resulted in a reduction to a valuation of \$420,000.³⁶⁷ The Peters subsequently filed an appeal with the IBTR, which then issued a final determination stating the Peters failed to meet their burden of proving that the 2010 assessment was incorrect.³⁶⁸

Thereafter, the Peters filed a tax appeal, which presented two issues.³⁶⁹ First, the petitioners claimed the IBTR erred as to who bore the burden of proof at the IBTR proceeding.³⁷⁰ Second, the petitioners claimed the IBTR erred in determining that the evidence did not establish that the property was overvalued.³⁷¹

However, the Tax Court refused to hold the IBTR erred when it determined the evidence before it did not establish the subject property was overvalued for 2010.³⁷² The Assessor's explanation was sufficient to demonstrate the increase in the assessment was proper and, as a result, the burden of production shifted from the Assessor to the Peters.³⁷³

359. *Id.*

360. *Id.*

361. *Id.*

362. *Id.*

363. 32 N.E.3d 847 (Ind. T.C. 2015).

364. *Id.* at 848.

365. *Id.*

366. *Id.*

367. *Id.*

368. *Id.* at 849.

369. *Id.*

370. *Id.*

371. *Id.* at 849-50.

372. *Id.*

373. *Id.* (citing IND. CODE § 6-1.1-15-17.2 (2012) (amended 2014)).

16. *Marion County Auditor v. State*.³⁷⁴—Grandville Cooperative, Inc. owned a cooperative apartment complex in Indianapolis, Indiana.³⁷⁵ In 2012, Grandville filed several petitions for correction of an error.³⁷⁶ The Marion County Auditor referred Grandville’s forms to the PTABOA for resolution and the PTABOA determined Grandville’s property did qualify as a homestead, reversing the determination of the Auditor.³⁷⁷ The Auditor appealed the PTABOA’s decision to the IBTR and thereafter, the Auditor and Grandville reached a settlement.³⁷⁸

The Auditor filed a tax appeal, seeking a determination as to whether an Indiana tax statute was unconstitutional.³⁷⁹ Despite the lack of statutory standing, the Auditor urged the Tax Court not to dismiss the Auditor’s request for the reason that the Auditor had “traditional standing” in that the Auditor had been “aggrieved.”³⁸⁰

In response, the Tax Court stated it did have “subject matter jurisdiction” over the county Auditor’s appeal because the appeal arose under the tax laws of Indiana.³⁸¹ However, the Tax Court also stated the Auditor did not provide the Tax Court with any argument as to how the Auditor’s due process rights had been violated.³⁸² Therefore, the Tax Court determined the Auditor lacked statutory standing to appeal the issue to the Tax Court because Indiana Code section 6-1.1-15-12 permitted only taxpayers to appeal to the IBTR.³⁸³

17. *Muir Woods, Inc. v. O’Connor*.³⁸⁴—Muir Woods, Inc. filed an appeal with the PTABOA, asserting its property taxes, arising from the 2004 and 2005 assessments, were illegal as a matter of law.³⁸⁵ After the PTABOA denied Muir Woods appeal, Muir Woods filed two petitions with the IBTR.³⁸⁶ However, the IBTR dismissed Muir Woods’s appeals, stating Muir Woods’ alleged errors were not correctable by using the Form 133 process.³⁸⁷ Thus, Muir Woods initiated a tax appeal.³⁸⁸

On appeal, the Tax Court first stated even though the IBTR did not identify the authority on which the IBTR relied, nevertheless, the IBTR had authority to

374. 33 N.E.3d 398 (Ind. T.C. 2015).

375. *Id.* at 399.

376. *Id.* at 399-400 (contending “for the 2010, 2011, and 2012 tax years, the Marion County Auditor failed to provide it with the homestead deductions to which it was lawfully entitled”).

377. *Id.*

378. *Id.* at 400.

379. *Id.*

380. *Id.* at 400, 402.

381. *Id.* at 400-01 (citing IND. CODE §§ 33-26-3-1, -3 (2015)).

382. *Id.* at 403.

383. *Id.*

384. 36 N.E.3d 1208 (Ind. T.C.), *trans. denied*, 41 N.E.3d 69 (Ind. 2015).

385. *Id.* at 1209.

386. *Id.*

387. *Id.*

388. *Id.*

do so sua sponte.³⁸⁹ For those of you who are too old to remember the Latin terms which were taught to you in law school, the term “sua sponte” means, in this case, that the IBTR took this action on its own without being requested to do so by either party to the matter.

Therefore, the IBTR had the authority to determine whether it should dismiss Muir Woods’s case by issuing the show cause order sua sponte.³⁹⁰ Consequently, the IBTR acted within its authority when it issued the show cause order.³⁹¹

Second, the Tax Court determined the IBTR complied with the hearing requirement because the IBTR provided Muir Woods the opportunity to present evidence and argument both prior to and at the show cause hearing.³⁹² Therefore, Muir Woods did not succeed with its second argument.³⁹³

Furthermore, Muir Woods claimed it properly used the Form 133 appeal procedure.³⁹⁴ However, Muir Woods failed to raise this issue on its Forms 133 or on its memorandum or during the show cause hearing.³⁹⁵ Accordingly, Muir Woods had waived this claim and, therefore, the IBTR properly determined the use of the Form 133 appeal procedure was not the proper avenue to assert Muir Woods’s claim the assessment of its common area was illegal as a matter of law.³⁹⁶

18. *Kooshtard Property I, LLC v. Monroe County Assessor*.³⁹⁷—Kooshtard Property I, LLC owned and operated a gas station and convenience store in Monroe County, Indiana.³⁹⁸ For the 2010 tax year, the Assessor assigned Kooshtard’s land an assessed value of \$1,200,000.³⁹⁹ Believing the assessment was too high, Kooshtard appealed the assessment to the PTABOA and then to the IBTR.⁴⁰⁰ The IBTR issued a final determination, which reduced Kooshtard’s 2010 land assessment to \$1,050,000.⁴⁰¹ However, Kooshtard believed the assessment was still too high and thus initiated a tax appeal.⁴⁰²

In the appeal, Kooshtard asked the Tax Court to reverse the IBTR’s final determination, claiming the Assessor’s appraisal was flawed.⁴⁰³ However, in the absence of an absence of discretion by the IBTR, the Tax Court may not reweigh

389. *Id.* at 1211.

390. *Id.*

391. *Id.*

392. *Id.* at 1211-12.

393. *Id.* at 1212.

394. *Id.* at 1212-13.

395. *Id.*

396. *Id.*

397. 38 N.E.3d 750 (Ind. T.C. 2015).

398. *Id.* at 751.

399. *Id.*

400. *Id.* at 752.

401. *Id.*

402. *Id.*

403. *Id.* at 752-53.

evidence which is not within its prerogative.⁴⁰⁴ Accordingly, Kooshtard did not demonstrate that the IBTR abused its discretion and the Tax Court thus affirmed the IBTR's determination.⁴⁰⁵

19. *Monroe County Assessor v. Kooshtard Prop. I, LLC*.⁴⁰⁶—The reader might want to read the comments concerning *Kooshtard Prop. I, LLC* in synopsis number eighteen above prior to reading this synopsis. In this case, Kooshtard owned and operated a gas station and convenience store in Monroe County, Indiana.⁴⁰⁷ During the years at issue, the Assessor assigned Kooshtard's land an assessed value of \$1,200,000.⁴⁰⁸ Kooshtard appealed the assessments first with the PTABOA and then with the IBTR.⁴⁰⁹ The IBTR issued a final determination in which it determined despite certain flaws, the Appraisal provided the best indication of the value of Kooshtard's land.⁴¹⁰ Accordingly, the IBTR reduced Kooshtard's land assessment to \$300,000 for each of the years at issue.⁴¹¹ Thereafter, the Assessor initiated a tax appeal.⁴¹²

On appeal, the Assessor first asked the Tax Court to reverse the IBTR's final determination which reduced Kooshtard's land assessments to \$300,000.⁴¹³ The Assessor claimed the IBTR's final determination must be reversed because the IBTR failed to conduct an impartial review of the evidence in the record of evidence.⁴¹⁴ However, the IBTR's final determination revealed that it acted as an impartial adjudicator because it reviewed and weighed the quality of both parties' evidentiary presentations.⁴¹⁵ Thus, the Tax Court did not substitute its judgment for that of the IBTR.⁴¹⁶

Next, the Assessor contended the IBTR's final determination should be reversed because it was arbitrary, capricious, and unsupported by substantial or reliable evidence.⁴¹⁷ In this case, the administrative record of evidence showed the IBTR's finding was based on the fact that other record evidence corroborated that finding.⁴¹⁸ Accordingly, the Tax Court declined to find the IBTR's final determination was arbitrary.⁴¹⁹

20. *Property Development Company Four, LLC v. Grant County*

404. *Id.* at 753.

405. *Id.*

406. 38 N.E.3d 754 (Ind. T.C. 2015).

407. *Id.* at 755.

408. *Id.*

409. *Id.*

410. *Id.* at 756.

411. *Id.*

412. *Id.*

413. *Id.*

414. *Id.*

415. *Id.* at 757.

416. *Id.*

417. *Id.*

418. *Id.* at 758.

419. *Id.*

Assessor.⁴²⁰—The reader might want to read the comments concerning *Property Development Co.* in synopsis number fourteen above prior to reading this synopsis. In this instance, the Assessor claimed the Tax Court erred in determining *Property Development Co.* “received insufficient notice of its assessments because the Court did not consider a material fact.”⁴²¹ The certified administrative record of evidence indicated the Assessor filed a Form 11 for one of properties at issue.⁴²² However, that Form 11 was not presented to the IBTR during the administrative hearing.⁴²³ Consequently, the Tax Court determined it could not consider a certified copy of the blank Form 11 and, therefore, the Tax Court determined the Tax Court “did not err by omitting a material fact when it determined that *Property Development* received insufficient notice.”⁴²⁴

Next, the Assessor claimed the Tax Court erred in invalidating the assessments.⁴²⁵ However, the Tax Court determined even if the Assessor’s claim were properly before the Tax Court, it refused to change the remedy in this case.⁴²⁶ Additionally, the Tax Court held the failure to follow procedural rules is sufficient to invalidate an assessment.⁴²⁷ Thus, the Tax Court reaffirmed its holding in *Property Development*.⁴²⁸

21. *Pulte Homes of Indiana, LLC v. Hendricks County Assessor*.⁴²⁹—Pulte filed its Forms 133 with the PTABOA, claiming “the assessments of its parcels were illegal as a matter of law” or, alternatively, such assessments contained a mathematical error.⁴³⁰ However, the PTABOA denied all of Pulte’s appeals.⁴³¹ Pulte then petitioned the IBTR, which issued a final determination finding the resolution of Pulte’s claims were beyond the scope of relief which was available through the Form 133 appeal procedure.⁴³² Thus, Pulte initiated a tax appeal.⁴³³

On appeal, Pulte claimed the IBTR had no authority to dismiss Pulte’s case *sua sponte*.⁴³⁴ However, in *Muir Woods* (see synopsis seventeen above), the Tax Court resolved that type of claim, finding the IBTR in fact has the authority to

420. 42 N.E.3d 182 (Ind. T.C. 2015).

421. *Id.* at 183-84. (arguing the court did not consider the fact “that *Property Development* received Form 11s that contained a statement, missing from the Form 122s, explaining the right to review under Indiana Code § 6-1.1-15-1”).

422. *Id.* at 184.

423. *Id.*

424. *Id.*

425. *Id.*

426. *Id.*

427. *Id.*

428. *Id.* at 185.

429. 42 N.E.3d 590 (Ind. T.C. 2015), *trans. denied*, 43 N.E.3d 244 (Ind. 2016).

430. *Id.* at 592.

431. *Id.*

432. *Id.*

433. *Id.*

434. *Id.* at 593.

issue an order of dismissal on its own motion.⁴³⁵ Next, Pulte claimed the IBTR was required to hold an evidentiary hearing before dismissing this case on procedural grounds.⁴³⁶ However, the Tax Court stated the IBTR was not required to hold an evidentiary hearing before dismissing a case on procedural grounds because Indiana Code section 6-1.1-15-4(a) only required a hearing on the merits.⁴³⁷

Additionally, Pulte claimed the IBTR erred by determining the Form 133 appeal procedure was improper.⁴³⁸ Pulte reasoned that because common areas have an assessed value of zero per se, an objective determination of whether or not Pulte's parcels were common areas was the only inquiry needed.⁴³⁹ However, the Tax Court determined the Form 133 appeal procedure was improper to claim illegal common area assessments because prior decisions had no precedential value and there was no such per se rule requiring a subjective judgment.⁴⁴⁰

Finally, Pulte asserted the Assessor bore the burden of proving to the IBTR the assessments were correct.⁴⁴¹ However, the Tax Court determined the burden to show the Form 133 was the proper was with Pulte, but that such burden may shift to the Assessor "only when the validity of the assessment is at issue, not when, as here, there is a preliminary procedural issue being determined."⁴⁴²

22. *Cooper v. Allen County Assessor*.⁴⁴³—Carol Cooper owned a single-family home in an area referred to as the "Shadow Creek subdivision" in Hometown, Indiana and for the March 1, 2012 assessment of Cooper's real property, the Assessor assess the value of Cooper's property at \$517,100.⁴⁴⁴ Believing that such assessment was too high, Cooper appealed to the PTABOA, which denied Cooper's appeal.⁴⁴⁵ Thereafter, Cooper appealed the Assessor's decision to the IBTR and the IBTR issued a final determination, which stated the Assessor's evidence established a prima facie case that was not rebutted.⁴⁴⁶ Thereafter, Cooper filed a tax appeal.⁴⁴⁷

In Cooper's appeal, she argued the IBTR's final determination should be reversed because it was contrary to law and that it was not supported by

435. *Id.* at 593-94 (citing *Muir Woods, Inc. v. O'Connor*, 36 N.E.3d 1208 (Ind. T.C.), *trans. denied*, 41 N.E.3d 691 (Ind. 2015)).

436. *Id.* at 594.

437. *Id.*

438. *Id.*

439. *Id.*

440. *Id.* at 595.

441. *Id.*

442. *Id.* at 596.

443. 42 N.E.3d 596 (Ind. T.C. 2015).

444. *Id.* at 597 (noting that included \$173,400 for the land and \$343,700 for the improvements).

445. *Id.*

446. *Id.*

447. *Id.* at 598.

substantial evidence.⁴⁴⁸ However, the Tax Court rejected Cooper's arguments, noting the lots within Shadow Creek were already presumed to be comparable because the assessed value of residential land was to reflect the recent sales prices of land within the neighborhood.⁴⁴⁹ Therefore, the Tax Court determined it is not contrary to law to determine the Assessor's evidence was sufficient evidence of such values.⁴⁵⁰ Further, the Tax Court determined Cooper had done nothing more than ask the Tax Court to reweigh the evidence, which the Tax Court would not accept in the absence of a showing of abuse.⁴⁵¹ Further, the record of evidence contained ample evidence to support the conclusion of Cooper's land assessment.⁴⁵²

23. *Cooper v. Allen County Assessor*.⁴⁵³—The reader might want to read the comments concerning *Cooper* in synopsis number twenty-two above prior to reading this synopsis. Carol Coopers was the mother of Gregory Cooper and Gregory received the property as a gift/sale from Carol.⁴⁵⁴ For the 2012 assessment, the Assessor assigned the Coopers' property a value of \$517,100.⁴⁵⁵ Believing this assessment was too high, the Coopers filed an appeal with the PTABOA, which was ultimately denied.⁴⁵⁶ Thereafter, the Coopers filed an appeal with the IBTR and the IBTR issued a final determination in which the IBTR determined the Assessor's evidence established a prima facie case.⁴⁵⁷ Thus, the Coopers initiated a tax appeal.⁴⁵⁸

On appeal, the Coopers argued the IBTR's final determination should be reversed because its determination was contrary to law and not supported by substantial evidence.⁴⁵⁹ However, the administrative record of evidence revealed the Assessor's evidence was seen as being comparable to the other lots in the area.⁴⁶⁰ Further, the Coopers argued the IBTR should have rejected those comparisons because they were "too conclusory" or "not detailed enough."⁴⁶¹ However, the Tax Court rejected that argument too.⁴⁶²

Further, the Tax Court stated it was not contrary to law for the IBTR to find the Assessor's evidence sufficient for purposes of property tax assessment,

448. *Id.*

449. *Id.* at 599 (citing 50 IND. ADMIN. CODE 2.4-1-2 (2011), IND. CODE § 6-1.1-4-13.6 (2012)).

450. *Id.*

451. *Id.*

452. *Id.*

453. No. 02T10-1405-TA-00022, 2015 WL 5278720 (Ind. T.C. Sept. 9, 2015) (unpublished disposition).

454. *Id.* at *1.

455. *Id.*

456. *Id.*

457. *Id.*

458. *Id.*

459. *Id.* at *2.

460. *Id.*

461. *Id.*

462. *Id.*

because the lots within the subdivision were already presumed comparable.⁴⁶³ Moreover, the Coopers merely invited the Tax Court to reweigh the evidence.⁴⁶⁴ However, the Tax Court will only take such action when there an abuse of discretion by the IBTR is shown.⁴⁶⁵ Given the evidentiary presentations, the Tax Court therefore could not find the IBTR's final determination was against the facts and circumstances before it.⁴⁶⁶

24. *RJK Trust v. LaPorte County Assessor*.⁴⁶⁷—RJK Trust owns a single-family residential home in Long Beach, Indiana.⁴⁶⁸ The Assessor determined the value of the property to be \$630,500.⁴⁶⁹ Believing this value was too high, RJK Trust filed an appeal with the PTABOA, which was subsequently denied.⁴⁷⁰ RJK Trust appealed the assessment to the IBTR, which issued a final determination finding the Assessor's appraisal reflected the property's market value-in-use.⁴⁷¹ RJK Trust then filed a tax appeal.⁴⁷²

In RJK Trust's appeal, it contended the Assessor used an appraisal report that was never produced.⁴⁷³ The applicable small claims regulations require pre-hearing disclosures, so that neither party is subjected to trial unfairly—which is what happened in this case because RJK Trust did not receive a copy of the appraisal until the day of the hearing.⁴⁷⁴ As a result, RJK Trust was not afforded an opportunity to prepare any rebuttal in advance of the hearing.⁴⁷⁵ The Tax Court thus determined the IBTR abused its discretion and remanded the case for a rehearing consistent with its decision.⁴⁷⁶

25. *Marion County Assessor v. Gateway Arthur, Inc.*⁴⁷⁷—Gateway Arthur, Inc. owned a portion of The Shoppes at County Line Road in Marion County, Indiana.⁴⁷⁸ The Assessor “assigned the subject property a total assessed value of \$17,426,500 for 2007, \$18,112,000 for 2008, \$18,112,000 for 2009, and \$17,003,100 for 2010.”⁴⁷⁹ Thereafter, Gateway appealed the assessments, first to the PTABOA and then to the IBTR, the latter of which issued a final

463. *Id.*

464. *Id.* at *3.

465. *Id.*

466. *Id.*

467. 43 N.E.3d 276 (Ind. T.C. 2015).

468. *Id.* at 276.

469. *Id.* (noting the value included \$421,600 for the land and \$208,900 for the improvements).

470. *Id.* at 277.

471. *Id.* at 278.

472. *Id.*

473. *Id.*

474. *Id.*

475. *Id.* 278-79.

476. *Id.*

477. 43 N.E.3d 279 (Ind. T.C. 2015).

478. *Id.* at 281.

479. *Id.*

determination explaining the Assessor's evidence lacked probative value.⁴⁸⁰ As a result, the IBTR "valued the subject property at \$13,800,000 for 2007, \$14,800,000 for 2008, \$13,900,000 for 2009, and \$11,300,000 for 2010."⁴⁸¹ Therefore, the Assessor initiated a tax appeal.⁴⁸²

In the Assessor's appeal, he claimed the IBTR's final determination must be reversed because it not only erred in determining the Appraisal was probative, but also in determining the Assessor's evidence lacked probative value and increasing Gateway's requested valuations by \$1 million.⁴⁸³ However, the Tax Court did not agree, explaining, "Indiana's assessment guidelines do not prohibit the use of loaded capitalization rates when valuing real property."⁴⁸⁴ Therefore, the IBTR's determination was probative of the property's value.⁴⁸⁵

The Assessor further claimed the Appraisal lacked probative value.⁴⁸⁶ But the record did not indicate Gateway collected rent from other retailers based on their use of those parcels.⁴⁸⁷ Therefore, the Tax Court declined to find the Appraisal as not probative on this basis as well.⁴⁸⁸

Next, the Assessor claimed the IBTR erred in determining that the evidence lacked probative value.⁴⁸⁹ However, once again, the record of evidence revealed otherwise.⁴⁹⁰ Therefore, the Assessor did not show that the IBTR's determination lacked probative value.⁴⁹¹ Moreover, when the Tax Court is faced with conflicting record evidence, it will defer to the IBTR, "so long as a reasonable mind could find sufficient evidence in the record to support that finding."⁴⁹²

Finally, the Assessor claimed the IBTR exceeded its authority.⁴⁹³ But, the record of evidence revealed the parties agreed the Appraisal failed to include certain annual property taxes reimbursements.⁴⁹⁴ Thus, the IBTR determined that the undervaluation ranged from \$981,193 to \$1,047,120 by using the Appraisal's loaded capitalization rates.⁴⁹⁵ Therefore, the IBTR did not exceed its authority by increasing Gateway's requested valuations by \$1 million for each of the years at

480. *Id.* at 281-82.

481. *Id.* at 282.

482. *Id.*

483. *Id.*

484. *Id.*

485. *Id.*

486. *Id.* at 282-83.

487. *Id.* at 283.

488. *Id.*

489. *Id.*

490. *Id.*

491. *Id.* at 283-84.

492. *Id.* at 284.

493. *Id.* at 284-85.

494. *Id.* at 285.

495. *Id.*

issue.⁴⁹⁶ For these reasons, the final determination of the IBTR was affirmed.⁴⁹⁷

26. *Allen County Assessor v. Verizon Data Services, Inc.*⁴⁹⁸—In 2007, Verizon Data Services, Inc. reported an assessed value of its personal property at \$16,200,000.⁴⁹⁹ Thereafter, the Assessor issued a notice of assessment change to Verizon, increasing the assessment to \$50,261,538.⁵⁰⁰ Subsequently, Verizon started the administrative appeals process, which resulted in the secretary of Allen County’s PTABOA sending an e-mail to Verizon stating a meeting would not be scheduled.⁵⁰¹ In 2012, Verizon filed with the PTABOA, requesting the PTABOA issue a determination that the assessed value of Verizon’s personal property was \$16,200,000 for the 2007 tax year.⁵⁰² Verizon claimed it was entitled to that valuation because its 2007 personal property return was in substantial compliance.⁵⁰³

Next, Verizon filed a Form 131 with the IBTR, which held a hearing at which time Verizon claimed its personal property should be assessed at \$16,200,000.⁵⁰⁴ In response, the Assessor claimed Verizon’s motion should be denied because Verizon had acquiesced to the delay, and thus, Verizon waived its right to have a PTABOA hearing.⁵⁰⁵ Then, the IBTR granted Verizon’s motion for summary judgment.⁵⁰⁶ Thus, the Assessor initiated a tax appeal.⁵⁰⁷

On appeal, the Assessor claimed the IBTR’s final determination “must be reversed because [the IBTR] erred in determining that the Chapter 16 rather than the Section 15-1 deadlines governed the PTABOA’s appeals process.”⁵⁰⁸ Alternatively, the Assessor claimed “the Chapter 16 deadlines should not be enforced because Verizon waived its right to invoke the deadlines and failed to show that it suffered any prejudice.”⁵⁰⁹

The Tax Court looked to a companion case⁵¹⁰ in which it held, for purposes of personal property, “the Chapter 16 deadlines applied not only to the assessment process, but also to the appeals process.”⁵¹¹ Therefore, the IBTR “did not err in determining that Chapter 16 governed the PTABOA’s appeals

496. *Id.*

497. *Id.*

498. 43 N.E.3d 705 (Ind. T.C. 2015).

499. *Id.* at 706.

500. *Id.*

501. *Id.*

502. *Id.*

503. *Id.* at 706-07.

504. *Id.* at 707.

505. *Id.*

506. *Id.*

507. *Id.*

508. *Id.*

509. *Id.*

510. *See Wash. Twp. Assessor v. Verizon Data Servs., Inc. (Verizon I)*, 43 N.E.3d 697 (Ind. T.C. 2015), *trans. denied*, 48 N.E.3d 316 (2016).

511. *Allen County Assessor*, 43 N.E.3d at 707.

process.”⁵¹² Thus,

while the provisions of Chapter 16 indicate that the PTABOA and the Township Assessor had a duty to act or speak, they do not indicate that Verizon had any such duty when the PTABOA informed Verizon of the Township Assessor’s intent to delay their meeting. Therefore, the [IBTR] did not err in determining that there was no genuine issue of material fact regarding Verizon’s waiver of the Chapter 16 deadlines.⁵¹³

Next, the Assessor contended the IBTR erred in granting Verizon’s motion for summary judgment, maintaining that Verizon should not be allowed to keep a \$34,000,000 windfall because a contested date was missed.⁵¹⁴ However, the Tax Court determined the IBTR did not err in granting Verizon’s motion.⁵¹⁵

Finally, the Assessor claimed that the IBTR “erred in concluding Verizon’s Form 131 was timely filed because it misinterpreted Sections 15-1 and 15-3.”⁵¹⁶ But, the Tax Court disagreed.⁵¹⁷ First, stating that “the deadlines of Chapter 16 . . . dictated when the PTABOA was to conduct its hearing” and, in addition, when a statute is clear and unambiguous—as in this case—the Tax Court interpreted the statute’s words and phrases based on “their plain, ordinary, and usual meanings.”⁵¹⁸ Consequently, the IBTR “did not err in concluding that Verizon’s Form 131 was timely filed.”⁵¹⁹

In summary, the taxpayer did not waive appellant assessor’s deadlines because when the PTABOA did not make a decision by the date required, the taxpayer had no duty to speak. Accordingly, Verizon was entitled to summary judgment because Verizon did not have to show prejudice.

27. *Washington Township Assessor v. Verizon Data Services, Inc.*⁵²⁰—The reader might want to read the comments concerning *Verizon Data Services, Inc.* in synopsis number twenty-six above prior to reading this synopsis. In 2005, Verizon Data Services, Inc. filed with the Washington Township Assessor, reporting the value of its personal property at \$21 million.⁵²¹ Thereafter, the Township Assessor issued a Form 113/PP to Verizon, increasing the 2005 assessment to almost \$58 million.⁵²² Therefore, Verizon notified the Assessor it would seek a review of that form with the PTABOA.⁵²³ Thereafter, the PTABOA

512. *Id.*

513. *Id.* at 708-09.

514. *Id.* at 709.

515. *Id.*

516. *Id.* at 710.

517. *Id.* at 710-11.

518. *Id.* at 711.

519. *Id.*

520. 43 N.E.3d 697 (Ind. T.C. 2015), *trans. denied*, 48 N.E.3d 316 (Ind. 2016).

521. *Id.* at 699.

522. *Id.*

523. *Id.*

reduced Verizon's personal property assessment to \$50,777,790.⁵²⁴ As a result, Verizon appealed to the IBTR, which made a final determination granting summary judgment for Verizon.⁵²⁵ Allen County initiated a tax appeal soon after.⁵²⁶

On appeal to the Tax Court, the Assessor claimed the IBTR "erred in determining that as a matter of law the Chapter 16 deadlines rather than the Section 15-1 deadlines applied to the PTABOA's appeals process."⁵²⁷ In the alternative, the Assessor claimed the IBTR "erred in determining there was no genuine issue of material fact whether Verizon waived or was estopped from asserting that the Chapter 16 deadlines applied."⁵²⁸

"Chapter 16 applies and its deadlines are triggered when" the Assessor, the PTABOA, the DLGF change the assessed value claimed by a taxpayer on its personal property return.⁵²⁹ Further, "Chapter 16 does not indicate it applies solely to the assessment process as [the Assessor] urge[d]."⁵³⁰ Also, the Assessor maintained term "final determination," as used in Indiana Code section 6-1.1-16-1(a)(2), refers to the end of the assessment process.⁵³¹

In response to the Assessor's contentions, the Tax Court stated when statutes are in conflict, "the specific provisions take priority over the general provisions."⁵³² Thus, to the extent the two statutes at issue in this case were in conflict, "Chapter 16 governs because it applies specifically to appeals of an assessing official's change to a personal property assessment . . . Accordingly, the Chapter 16 deadlines applied to require the PTABOA to issue its final determination by October 30, 2005, which it did not."⁵³³

The Assessor alternatively claimed the record did not support the IBTR's determination that no genuine issues of material fact with regards to waiver and estoppel.⁵³⁴ However, the Tax Court found after reviewing the record the IBTR's final determination was supported by facts in the record.⁵³⁵ Therefore, the Tax Court determined the IBTR did not err in granting summary judgment to Verizon.⁵³⁶

28. *Marion County Assessor v. Gateway Arthur, Inc.*⁵³⁷—The reader might

524. *Id.*

525. *Id.*

526. *Id.*

527. *Id.* at 700.

528. *Id.*

529. *Id.* at 701 (citing IND. CODE § 6-1.1-16-1(a)(1)-(3) (2015)).

530. *Id.*

531. *Id.*

532. *Id.* at 702 (citing *Componx, Inc. v. Ind. State Bd. of Tax Comm'rs*, 741 N.E.2d 442, 446 (Ind. T.C. 2000)).

533. *Id.*

534. *Id.* at 703.

535. *Id.* at 704.

536. *Id.*

537. 45 N.E.3d 876 (Ind. T.C. 2015).

want to read the comments concerning *Gateway Arthur, Inc.* in synopsis number twenty-five above prior to reading this synopsis. During the 2006 tax year, Gateway Arthur, Inc. owned a portion of a retail shopping referred to as The Shoppes at County Line Road and the Marion County Assessor assigned the property an assessed value of \$17,451,900 for the 2006 tax year.⁵³⁸ Thereafter, Gateway challenged the 2006 assessment before the PTABOA, and after obtaining no satisfaction there, Gateway appealed to the IBTR.⁵³⁹ Unfortunately for Gateway, the IBTR determined the Assessor failed to make a prima facie case because its presentation lacked probative value.⁵⁴⁰ As a result, the Assessor initiated a tax appeal.⁵⁴¹

On appeal to the Tax Court, the Assessor that the IBTR's determination should be reversed for the following three reasons: (1) the IBTR erred in allocating the burden of proof; (2) the IBTR incorrectly concluded the Assessor's evidence lacked probative value; and (3) the IBTR improperly valued the property at issue at \$10,504,100 for the 2006 tax year.⁵⁴² However, the Tax Court disagreed with Gateway's on which party should bear the burden of proof, stating the "application has always been triggered by the filing of an appeal in which there was an annual increase in the assessed value of property in excess of 5%, not the act of assessing property."⁵⁴³ In this case, the record showed the property's assessment was increased by more than 5% from 2005 to 2006.⁵⁴⁴ Therefore, the Tax Court refused to hold the IBTR erred in determining the Assessor, rather than Gateway, bore the burden of proof.⁵⁴⁵

Next, addressing the conflicting evidence in the record, the Tax Court deferred to the IBTR to determine whether "a reasonable mind could find sufficient evidence in the record."⁵⁴⁶ Therefore, the Tax Court similarly refused to conclude the IBTR "erred in determining that the Assessor's Income Analysis lacked probative value."⁵⁴⁷ Then, the Tax Court also noted, rejecting the Assessor's contentions, it was clear the IBTR weighed the both parties' evidence before it ultimately determined Gateway's evidence was not more compelling.⁵⁴⁸ For the Tax Court, there was simply no basis for reversing the IBTR's rejection of 2007 purchase price.⁵⁴⁹

Finally, the Assessor claimed the IBTR "erred in valuing the subject property

538. *Id.* at 878.

539. *Id.*

540. *Id.*

541. *Id.*

542. *Id.* at 879.

543. *Id.*

544. *Id.*

545. *Id.*

546. *Id.* at 880.

547. *Id.*

548. *Id.*

549. *Id.* at 880-81.

consistent with its 2005 settlement value of \$10,504,100.”⁵⁵⁰ While this appeal was pending, the GA again amended the burden-shifting statute.⁵⁵¹ Under the plain language of the amendment, “Gateway was not required to submit independent valuation evidence.”⁵⁵² Furthermore, the statute now required the reinstatement of a settlement value when—which is the case here—“an assessing official failed to satisfy its burden of proof and the taxpayer did not offer its own valuation evidence.”⁵⁵³ Therefore, the IBTR did not commit a reversible error by reinstating the property’s settlement value.⁵⁵⁴

29. *Marion County Assessor v. Washington Square Mall, LLC*.⁵⁵⁵—The Washington Square Mall, LLC (“Mall”) is located in Indianapolis.⁵⁵⁶ The Mall’s listed owners are Washington Square Mall, LLC, DeBartolo Realty Partnership, LP, and Simon Capital, LP, which are all part of the Simon Property Group (“Simon”).⁵⁵⁷ The Assessor valued the Mall at “\$32,865,400 for 2006, \$28,034,200 for 2007, \$28,051,300 for 2008, \$28,054,000 for 2009, and \$26,832,600 for 2010.”⁵⁵⁸ Simon filed appeals with the PTABOA, contesting the high valuations.⁵⁵⁹ While the PTABOA decreased the Mall’s 2006 assessment to \$29,528,800, the PTABOA took no action on the 2007 through 2010 appeals.⁵⁶⁰ Simon subsequently challenged each of these assessments for with the IBTR.⁵⁶¹

During the tax valuation dispute before the IBTR, the Assessor used an appraiser (“Stump”) and Simon used an appraiser (“Korpacz”).⁵⁶² Given all of the oral and written comments by the two appraisers, the IBTR found it needed weigh the two appraisals and to determine which was more persuasive.⁵⁶³ Then, by doing such weighing, the IBTR determined Korpacz’s appraisal was more persuasive.⁵⁶⁴ After such weighing, the IBTR stated Korpacz’s analysis was

550. *Id.* at 881.

551. *Id.* The statute was amended to state

If a county assessor or township assessor fails to meet the burden of proof under this section, the taxpayer may introduce evidence to prove the correct assessment. If neither the assessing official nor the taxpayer meets the burden of proof under this section, the assessment reverts to the assessment for the prior year, which is the original assessment for that prior year or, if applicable, the assessment for that prior year

IND. CODE § 6-1.1-15-17.2(b) (2015).

552. *Id.*

553. *Id.*

554. *Id.*

555. 46 N.E.3d 1 (Ind. T.C. 2015).

556. *Id.* at 2-3.

557. *Id.* at 3.

558. *Id.*

559. *Id.*

560. *Id.*

561. *Id.*

562. *Id.* at 3, 5.

563. *Id.* at 8.

564. *Id.*

reasonable for two reasons, one of which was that Korpacz's appraisal "was based on timely sales of regional malls deemed comparable to the subject property that were qualitatively adjusted to determine the likely sale price in terms of a price per square foot for the [Mall]."⁵⁶⁵ Further, the IBTR was also persuaded by the fact that Korpacz refined his sales comparison values "by graphing each [comparable] property's sales price with its net operating income per square foot of gross leasable area."⁵⁶⁶ Also, the IBTR explained why the IBTR could not give much weight to Stump's analysis and the IBTR made other comparisons and contrasts between the Korpacz and Stump appraisals.

Based on the IBTR's determinations, it "reduced the Mall's assessments in accordance with the reconciled values provided in the Korpacz Appraisal . . . ordered that the Mall be valued at \$12,250,000 for 2006, \$14,200,000 for 2007, \$14,900,000 for 2008, \$12,000,000 for 2009, and \$9,500,000 for 2010."⁵⁶⁷ Thereafter, the Assessor petitioned the Tax Court to obtain a different result.⁵⁶⁸

The Tax Court carefully took note of the oral exchanges between the two appraisers as well as the comments made by the IBTR with respect to what the IBTR observed about the written appraisals of such two appraisers.⁵⁶⁹ For example, the Assessor argued the IBTR erred in adopting the Mall values in the Korpacz appraisal.⁵⁷⁰ First, the Assessor claimed the IBTR's determination was contrary to law because "it did not value the Mall in accordance with Indiana's market value-in-use."⁵⁷¹ In the alternative, the Assessor asserted that the IBTR's factual findings "were not supported by the evidence."⁵⁷² Further, the Assessor pointed out that the IBTR stated Korpacz manipulated the appraisal data.⁵⁷³ This flaw, the Assessor argued, should have rendered the Korpacz appraisal unreliable.⁵⁷⁴ However, the Tax Court observed when there is an error in one valuation approach, the entire appraisal is not rendered per se invalid.⁵⁷⁵ Nevertheless, the Tax Court determined the IBTR abused its discretion when it did not reject Korpacz's 2008 value estimate under the sales comparison approach.⁵⁷⁶

However, the Tax Court observed that in the IBTR's final determination, the IBTR determined "Korpacz used capitalization rates that were higher than those indicated in the investor surveys" and as a result, Korpacz's assigned rates were

565. *Id.*

566. *Id.*

567. *Id.*

568. *Id.*

569. *See id.* at 9-14.

570. *Id.* at 9.

571. *Id.*

572. *Id.*

573. *Id.*

574. *Id.*

575. *Id.* at 11.

576. *Id.*

not supported by the evidence.⁵⁷⁷ When the IBTR ignored this finding and adopted all of Korpacz's values, this was an abuse of discretion.⁵⁷⁸ The Tax Court further stated when the IBTR "ascertains, as it did here, that parts of an appraisal are not probative, [the IBTR] should not then accept those parts of the appraisal to value the property."⁵⁷⁹ Thus, with respect to this issue, the IBTR's final determination was reversed and remanded with instructions to value the Mall in accordance with the probative parts of the Korpacz appraisal.⁵⁸⁰

30. *Blesich v. Lake County Assessor*.⁵⁸¹—Blesich owned a single-family home located in St. John, Indiana.⁵⁸² During the years at issue, the PTABOA assigned Blesich's property the following assessed values: "\$320,000 for 2007, \$320,000 for 2008, \$300,900 for 2009, and \$320,000 for 2010."⁵⁸³ "Believing these values too high, Blesich filed four appeals with the [IBTR]"⁵⁸⁴ However, the IBTR determined because the PTABOA's 2007 assessment increase the property value by more than 5%, the Assessor had burden of proving that the assessment was correct.⁵⁸⁵ Thereafter, the IBTR issued a final determination holding the Assessor failed to satisfy this burden by failing to demonstrate how other properties were comparable to Blesich's property.⁵⁸⁶ Accordingly, the IBTR ordered Blesich's 2007 through 2010 assessments to revert to the property's 2006 assessed value of \$300,000. Thus, Blesich initiated an original tax appeal.⁵⁸⁷

On appeal, Blesich argued the IBTR erred when IBTR determined that Blesich's evidence did not support Blesich's claim.⁵⁸⁸ However, the Tax Court disagreed.⁵⁸⁹ Blesich merely used conclusory statements to prove Blesich's position.⁵⁹⁰ The requirement on appeal was to explain to the IBTR the characteristics of Blesich's own property.⁵⁹¹ Because the record of evidence indicated that "no such explanation was made," the IBTR did not err in determining that Blesich's data was not probative.⁵⁹² "Consequently, Blesich's appraisal . . . had no bearing on the 2007 through 2010 assessments."⁵⁹³ As a

577. *Id.* at 13.

578. *Id.*

579. *Id.* at 14.

580. *Id.*

581. 46 N.E.3d 14 (Ind. T.C. 2015).

582. *Id.* at 15.

583. *Id.*

584. *Id.*

585. *Id.*

586. *Id.* at 16.

587. *Id.*

588. *Id.*

589. *Id.* at 17.

590. *Id.*

591. *Id.*

592. *Id.*

593. *Id.*

result, “Blesich was *required* to trend his 2012 appraisal back to a 2006, 2007, 2008, 2009, and/or a 2010 value” and because Blesich did not do so, the IBTR “properly determined that the appraisal carried no weight.”⁵⁹⁴

31. *Blesich v. Lake County Assessor*.⁵⁹⁵—The reader might want to read the comments concerning *Blesich* in synopsis number thirty above prior to reading this synopsis. Mirko Blesich owned residential real property in Schererville, Indiana and the Assessor in 2010 assigned that property a value of \$229,300.⁵⁹⁶ Thereafter, Blesich filed an appeal with the PTABOA, which issued a notification that reduced Blesich’s 2010 assessment to \$205,000.⁵⁹⁷ Afterward, Blesich appealed to the IBTR and “asserted that the totality of [Blesich’s] evidence established that his 2010 assessment should be either \$181,000 or \$193,700.”⁵⁹⁸ The IBTR issued a final determination, finding that the appraisal was admissible hearsay evidence.⁵⁹⁹ Nonetheless, the IBTR explained the appraisal could not be the only basis for reducing Blesich’s assessment because the Assessor properly raised the hearsay objection without exception.⁶⁰⁰ Therefore, the IBTR concluded Blesich “had not made a *prima facie* case for any additional reduction to his 2010 assessment.” Thereafter, Blesich appealed to the Tax Court.

On appeal, Blesich claimed the IBTR’s final determination must be reversed “because it erred in rejecting not only the Appraisal, but also the Settlement Letter.”⁶⁰¹ However, the Tax Court disagreed.⁶⁰² The record of evidence revealed Blesich entered the appraisal into evidence to prove his property should only be valued at \$181,000 for the 2010 tax year.⁶⁰³ Because Mr. Serratore was not present at the IBTR hearing to testify in support of the appraisal, the appraisal was hearsay.⁶⁰⁴ The small claims rules provide that the IBTR’s “final determination cannot be based solely upon hearsay evidence when it is properly objected to and does not fall within a recognized exception to the hearsay rule.”⁶⁰⁵ Accordingly, the Tax Court determined the IBTR “did not err in disregarding the Appraisal.”⁶⁰⁶

Next, Blesich claimed the IBTR’s improperly rejected the settlement letter.⁶⁰⁷

594. *Id.* at 18.

595. 46 N.E.3d 1285 (Ind. T.C. Dec. 30, 2015).

596. *Id.* at 1285 (including \$41,700 for the land and \$187,600 for the improvements).

597. *Id.*

598. *Id.* at 1286.

599. *Id.*

600. *Id.*

601. *Id.* at 1287.

602. *Id.*

603. *Id.*

604. *See* IND. R. EVID. 801(a)-(c) (providing that hearsay is a person’s written assertion that: “(1) is not made by the person while testifying at trial or hearing; and (2) is offered in evidence to prove the truth of the matter asserted”).

605. *Blesich*, 46 N.E.3d at 1287.

606. *Id.*

607. *Id.*

Because the Indiana's Rules of Evidence prohibit the use of settlement terms and settlement negotiations to prove either the liability for or the invalidity of a claim or its amount, the Tax Court disagreed again.⁶⁰⁸ Consequently, the Tax Court determined the IBTR "did not err in rejecting the Settlement Letter."⁶⁰⁹

Finally, Blesich requested the Tax Court vacate the IBTR's final determination and reduce his 2010 assessment to \$181,000.⁶¹⁰ The Tax Court, however, did not grant Blesich's request.⁶¹¹ When Blesich appealed from the PTABOA, Indiana Code section 6-1.1-15-4 provided the IBTR needed to hold a hearing on his appeal within nine months after a petition is filed.⁶¹² The statute further required, absent an extension, the IBTR to issue its final determination on that appeal within ninety days of that hearing.⁶¹³ Although no one contested that the IBTR failed to hold its hearing on Blesich's appeal within the statutory required time period, the statute does not provide a remedy for these types of violations.⁶¹⁴ When the IBTR failed to issue a final determination within the required time period, "Blesich availed himself of the remedy provided by statute," by waiting for the IBTR "to make a final determination instead of filing a petition for review."⁶¹⁵ Blesich, therefore, was not prejudiced by the IBTR's delays.⁶¹⁶ Accordingly, the Tax Court made a determination against Blesich on that issue.⁶¹⁷

B. Local Tax

1. Board of Commissioners of Clark County v. Indiana Department of Local Government Finance.⁶¹⁸—Over 100 taxpayers filed an objection with Clark County when the IBTR petitioned the DLGF for a tax rate increase.⁶¹⁹ Thereafter, the DLGF issued a final determination, which denied the IBTR's request, explaining the IBTR sought to increase the tax rate for a purpose not expressly authorized under Indiana Code sections 6-1.1-41 or 36-9-14.5-2.⁶²⁰ Thus, the IBTR initiated a tax appeal.⁶²¹

On appeal to the Tax Court, the IBTR contended the DLGF exceeded its authority and because the DLGF findings were contrary to law.⁶²² However, the

608. *Id.* at 1287.

609. *Id.* at 1288.

610. *Id.*

611. *Id.*

612. *Id.* (citing IND. CODE § 6-1.1-15-4(e)-(f) (2013) (amended 2014)).

613. *Id.* (citing IND. CODE § 6-1.1-15-4(e)-(f)).

614. *Id.*

615. *Id.* at 1289.

616. *Id.*

617. *Id.*

618. 31 N.E.3d 552 (Ind. T.C. 2015).

619. *Id.* at 554.

620. *Id.* at 554-55.

621. *Id.* at 555.

622. *Id.*

Tax Court affirmed the final determination of the DLGF, finding that “[b]oth Chapter 41, and Indiana Code § 36-9-14.5-2 [] require[d] . . . the tax levy be established for one of the enumerated statutory purposes.”⁶²³ Thus, contrary to the IBTR’s contentions, the plain terms of Indiana Code section 36-9-14.5-8(c) not indicate that new property tax revenues may be generated by increasing an existing fund’s tax rate.⁶²⁴ Instead, that statute indicates money already in the fund may be used in emergencies.⁶²⁵ “Therefore, the DLGF’s consideration of the [IBTR’s] purpose for requesting an increase to the [tax] rate was proper and the [IBTR] [] failed to show that the DLGF considered matters outside its statutory authority under Chapter 41.”⁶²⁶

The IBTR further claimed the DLGF violated the Indiana Code because of a predetermination of a potential an abuse of discretion by the IBTR.⁶²⁷ This argument, however, was misplaced.⁶²⁸ The DLGF did not predetermine how the IBTR might expend the funds, but instead was provided evidence on the purpose.⁶²⁹ Accordingly, the IBTR did not show the DLGF erred.⁶³⁰

2. *Indianapolis Public Transportation Corp. v. Department of Local Government Finance*.⁶³¹—Indianapolis Public Transportation Corporation (“IndyGo”), provides bus service in Marion County, Indiana.⁶³² During 2011, IndyGo, adopted its proposed budget for 2012, including property tax levies and tax rates.⁶³³ Nevertheless, the Council made numerous changes to the proposed budget and ultimately sent that budget to the DLGF for review.⁶³⁴ Therefore, IndyGo submitted a response stating it made several errors calculating IndyGo’s tax rate.⁶³⁵ Still, the DLGF issued the 2012 Budget Order, without any consideration of IndyGo’s position.⁶³⁶ Thus, IndyGo initiated a tax appeal.⁶³⁷

On appeal to the Tax Court, the DLGF claimed IndyGo lacked standing, explaining that a political subdivision like IndyGo must first file an appeal with the DLGF.⁶³⁸ However, the Tax Court found DLGF’s argument to be unpersuasive.⁶³⁹ Further, the Tax Court determined the language of Indiana Code

623. *Id.* at 556.

624. *Id.*

625. *Id.*

626. *Id.*

627. *Id.* at 556-57.

628. *Id.*

629. *Id.* at 657.

630. *Id.*

631. 40 N.E.3d 536 (Ind. T.C. 2015).

632. *Id.* at 537.

633. *Id.*

634. *Id.* at 537-38.

635. *Id.* at 538.

636. *Id.*

637. *Id.*

638. *Id.* at 539.

639. *Id.*

section 6-1.1-17-16(g)(1) refers to “an appeal” “in the generic sense rather than in a specific sense.”⁶⁴⁰ Therefore, “under the facts of this case, the “appeal” referenced in Indiana Code § 6-1.1-17-16(g)(1) cannot refer exclusively to an excess levy appeal under Indiana Code § 6-1.1-17-15 as the DLGF contends.”⁶⁴¹ The Tax Court also held IndyGo did not lack standing to appeal the county budget order because when IndyGo responded to the DLGF’s notice it had initiated an appeal, that action conferred standing for it to seek judicial review.⁶⁴²

3. *Union Township v. Department of Local Government Finance*.⁶⁴³—Union Township “is a civil taxing located in St. Joseph County, Indiana.”⁶⁴⁴ In 2012, “Union Township, together with the Union-Lakeville Fire Protection Territory, requested the DLGF’s permission to impose an excess property tax levy.”⁶⁴⁵ The appeal claimed an error was made calculating the Union Township’s 2010 net assessed valuation, which resulted in a shortfall for 2011.⁶⁴⁶ The DLGF ultimately denied the excess levy request, so Union Township initiated a tax appeal.⁶⁴⁷

On appeal to the Tax Court, Union Township contended the DLGF “erred in denying its excess levy appeals.”⁶⁴⁸ First, the Tax Court did not find anything in the statute which required Union Township to present the appeal to the DLGF in a particular form.⁶⁴⁹ Therefore, the only question the Tax Court considered was whether Union Township’s first appeal provided the DLGF with the information required by Indiana Code section 6-1.1-18.5-12, which only allows Union Township to bring a claim that it would be unable to carry out the governmental functions without the excess levy.⁶⁵⁰ Union Township provide “reasonable statements of fact” to support its request.⁶⁵¹ Therefore, the Tax Court determined the requirements were satisfied because the information required by statute was given to the DLGE.⁶⁵² Thus, the DLGF erred in denying the excess levy appeal.⁶⁵³

Also, in its final determination, the DLGF provided another reason for denying Union Township’s first excess levy appeal, specifically, the DLGF’s alleged error caused a property tax revenue shortfall in 2011.⁶⁵⁴ Because both Union Township’s first and second appeals addressed whether the error gave rise

640. *Id.* at 541.

641. *Id.* at 542.

642. *Id.* at 542-43.

643. 45 N.E.3d 523 (Ind. T.C. 2015).

644. *Id.* at 524.

645. *Id.*

646. *Id.*

647. *Id.*

648. *Id.* at 526.

649. *Id.* at 527.

650. *Id.*

651. *Id.*

652. *Id.*

653. *Id.*

654. *Id.* at 528.

to the revenue shortfall, the DLGF was the appropriate finder of fact.⁶⁵⁵ Thus, the Tax Court reversed the DLGF's final determinations.⁶⁵⁶

4. *Union Township v. Department of Local Government Finance*.⁶⁵⁷—In another opinion issued the same day and addressing the same parties, Union Township challenged two DLGF final determinations.⁶⁵⁸ Subsequently, the DLGF moved to dismiss Union Township's tax appeal, "claiming that the relief offered to Union Township under the newly-enacted Indiana Code § 6-1.1-18-18 had rendered its appeal moot."⁶⁵⁹

As stated above, the Union-Lakeville Fire Protection Territory was eventually provided relief through special legislation of the Indiana General Assembly. However, Union Township was not granted the relief it sought.⁶⁶⁰ The Tax Court determined that the documentation Union Township provided to the DLGF as support for its request indicated that Union Township believed that the alleged error caused a total annual property tax revenue shortfall—totaling about \$52,000.⁶⁶¹ "Because Union Township's original tax appeal [sought] relief beyond what was provided by" the General Assembly, the Tax Court did not see the issues as moot.⁶⁶² Therefore, the Tax Court denied the DLGF's motion.⁶⁶³ However, the Tax Court would not determine whether Union Township's arguments were meritorious and, therefore, it did not find the DLGF's final determination was improper and thus the Township's request for relief was denied.⁶⁶⁴

C. Sales and Use Tax

1. *Brandenburg Industrial Service Co. v. Ind. Department of State Revenue*.⁶⁶⁵—*Brandenburg Industrial Service Co.* "remitted approximately \$150,000 in sales/use tax to the Department [of Revenue] ("DOR")."⁶⁶⁶ However, *Brandenburg* sought a partial refund in 2009, claiming some of the taxed 2006 purchases were actually exempt from this tax.⁶⁶⁷ Next, *Brandenburg* filed three more refund claims, asserting several 2007 purchases were also exempt.⁶⁶⁸ Then, DOR approved the first refund claim and issued a refund, but denied the second

655. *Id.*

656. *Id.*

657. 45 N.E.3d 530 (Ind. T.C. 2015).

658. *Id.* at 532.

659. *Id.*

660. *See generally id.*

661. *Id.* at 533.

662. *Id.* at 533-34.

663. *Id.* at 534.

664. *See generally id.*

665. 26 N.E.3d 147 (Ind. T.C. 2015).

666. *Id.* at 149.

667. *Id.* at 149-50.

668. *Id.* at 150.

refund claim.⁶⁶⁹ DOR also approved Brandenburg's third refund claim, but denied Brandenburg's fourth refund claim.⁶⁷⁰ Therefore, Brandenburg protested DOR's two denials of Brandenburg's claims.⁶⁷¹ When DOR denied the both protests, Brandenburg initiated a tax appeal.⁶⁷²

While the Tax Court processed this case, Brandenburg a motion which was titled "Motion to Compel Interrogatory Response and Motion to Compel Production of Non-Privileged Document."⁶⁷³ The Tax Court determined Brandenburg's motion sought "reinforcement of the purpose of the discovery rules."⁶⁷⁴ For example, "the Department identified an individual as its non-expert witness who may not be able to testify regarding the facts of this case because no audit was conducted and she apparently had no direct knowledge of the dealings between Brandenburg and the Department."⁶⁷⁵ Moreover, "Interrogatory Number 16 indicate[d] that the required identification of witnesses was for witnesses who were then known by the Department" to possibility be witnesses in this case.⁶⁷⁶ Because the facts did not show DOR knew of other witnesses when it answered this interrogatory, the Tax Court refused to require DOR of more.⁶⁷⁷ Accordingly, the Tax Court determined that the Department had "adequately answered Interrogatory Number 16."⁶⁷⁸

Next, Brandenburg asked the Tax Court "to compel the Department to produce the two-pages of handwritten notes that the Department identified as responsive to Brandenburg's Request for Production Number 3."⁶⁷⁹ Meanwhile, DOR claimed such disclosure was not required because the notes were "not relevant to the subject-matter of this case" and even if they were, the notes were shielded from discovery.⁶⁸⁰ However, "[b]ecause the notes involve[d] the proposed assessment process they could possibly lead to admissible trial evidence."⁶⁸¹ Accordingly, DOR had "not shown that there was no possibility that the two-pages of handwritten notes were not relevant to the subject matter of this case."⁶⁸² As such, "the information and documentation [did] not lack relevance merely because they might not be afforded deference."⁶⁸³ Therefore, the notes

669. *Id.*

670. *Id.*

671. *Id.*

672. *Id.*

673. *Id.* at 151.

674. *Id.* at 152.

675. *Id.*

676. *Id.* at 153.

677. *Id.*

678. *Id.*

679. *Id.*

680. *Id.*

681. *Id.*

682. *Id.* at 154.

683. *Id.*

were relevant to the issues in this case.⁶⁸⁴

Finally, DOR asserted the work-product privilege protected the notes.⁶⁸⁵ But, as discussed above, the notes contained information regarding the DOR's denials of Brandenburg's first and third refund claims and the subject matter of the notes were relevant to the issues in this case.⁶⁸⁶ However, relevancy did not settle the question of whether the notes "were prepared in anticipation of litigation."⁶⁸⁷ Thus, the Tax Court recognized whether the work-product privilege applies under Trial Rule 26(B)(3) focuses on depends on if they were prepared in anticipation of litigation.⁶⁸⁸ Given the facts disclosed in this case, the Tax Court found several notes were not prepared in anticipation of litigation; but rather, the notes were "commonplace documents which were prepared by one of the Department's employees during the ordinary course of the Department's general administrative duties . . . [of] denying refund claims and issuing proposed assessments."⁶⁸⁹ Therefore, the two-pages of handwritten notes that Brandenburg sought were discoverable.⁶⁹⁰

2. *Alloy Custom Products, Inc. v. Indiana Department of State Revenue.*⁶⁹¹—Alloy Custom Products, Inc. manufactured new cryogenic tanker trailers and rehabilitates used cryogenic tanker trailers.⁶⁹² Alloy's facility consists of three separate buildings, which all share a single natural gas meter.⁶⁹³ After DOR conducted a review of Alloy's business, DOR denied the exemption and refund for the meters on the two buildings used for rehabilitation.⁶⁹⁴ Subsequently, Alloy protested the DOR's determination, which DOR denied, so Alloy filed a tax appeal.⁶⁹⁵

On appeal, the DOR's position was the rehabilitation process "merely repairs existing tanker trailers for the purpose of extending their useful lives."⁶⁹⁶ Therefore, "no production of tangible personal property occur[red]."⁶⁹⁷ On the other hand, Alloy claimed even when characterized as a "repair," "its rehabilitation process constitutes production."⁶⁹⁸

The court noted:

684. *Id.*

685. *Id.*

686. *Id.* at 155.

687. *Id.*

688. *Id.*

689. *Id.* at 156.

690. *Id.*

691. 26 N.E.3d 1078 (Ind. T.C. 2015).

692. *Id.* at 1079.

693. *Id.*

694. *Id.* at 1081.

695. *Id.*

696. *Id.* at 1082.

697. *Id.*

698. *Id.*

Indiana imposes an excise tax, known as the state sales tax, on retail transactions made within the state. The person who acquires property in a retail transaction is liable for the tax on the transaction. In an effort to encourage industrial growth and to limit the effect of tax pyramiding, the Indiana legislature has enacted several statutes that exempt from sales tax certain purchases of tangible personal property that are used or consumed in the production of other tangible personal property. The exemption at issue in this case, found at Indiana Code § 6-2.5-4-5, provides that retail sales of electricity and natural gas by a public utility to a purchaser that uses that electricity and gas in its manufacturing process are not subject to sales tax. The exemption only applies, however, if the electricity and gas are consumed by the purchaser as an essential and integral part of an integrated process that produces tangible personal property and those sales are separately metered or, if those sales are not separately metered, then the electricity and natural gas is predominately used by the purchaser for manufacturing.⁶⁹⁹

Thereafter, the Tax Court made, what might be referred to as, exhaustive comments about the difference between an “exemption” and an “exclusion” for tax purposes.⁷⁰⁰ It made extremely fine comments about the nature of the work which Alloy did with respect to repairing or rehabilitating tanker truckers and whether those process were considered to be “production,” which they were not.⁷⁰¹ Finally, based on the abundance of evidence and arguments before the Tax Court, the Tax Court determined Alloy’s rehabilitation process does not produce other, or new, tangible personal property.⁷⁰² Therefore, the Tax Court granted summary judgment in favor of DOR and against Alloy, thus denying Alloy a refund of the Indiana sales tax which Alloy paid on utilities that Alloy consumed while rehabilitating tanker trailers because the Tax Court determined that the exemption⁷⁰³ did not apply.

3. *Aztec Partners, LLC v. Indiana Department of State Revenue*.⁷⁰⁴—Aztec Partners, LLC operates nineteen restaurants in Indiana. In 2011, Aztec filed twelve refund claims with the Department seeking, a refund of the sales tax Aztec paid on electricity used to power the electrical equipment.⁷⁰⁵ However, the Department determined that the electricity was taxable.⁷⁰⁶ Therefore, Aztec protested the Department’s denials, and the Department issued a memorandum denying Aztec’s protest. Thereafter, Aztec initiated a tax appeal with the Tax

699. *Id.* at 1081-82 (internal quotations and citations omitted).

700. *Id.* at 1082 n.4.

701. *See generally id.*

702. *Id.*

703. *Id.*

704. 35 N.E.3d 320 (Ind. T.C. 2015).

705. *Id.*

706. *Id.*

Court.⁷⁰⁷

On appeal to the Tax Court, the Department claimed the Tax Court lacked subject matter jurisdiction, because Aztec's refund claims requested an exclusion from sales tax, not an exemption from sales tax.⁷⁰⁸ As a result, the Department asserted that Aztec failed to exhaust its administrative remedies, because Aztec did not obtain a final determination regarding its eligibility for the consumption exemption.⁷⁰⁹ However, the stipulated facts showed Aztec obtained a final determination from the Department before initiating its appeal.⁷¹⁰ Thus, the Department's argument was unpersuasive.

Furthermore, Aztec claimed that Aztec was engaged in production, because Aztec created marketable products.⁷¹¹ However, the Department argued that Aztec was not engaged in production, because Aztec did not substantially transform the food items either physically or chemically into new products.⁷¹² However, the Tax Court determined that Aztec substantially changed the individual food items into new, marketable products.⁷¹³

Additionally, the Department claimed the electricity did not directly induce a substantial change in the ingredients to create new products.⁷¹⁴ However, Aztec asserted that the electricity powering its equipment qualified for the consumption exemption, because the electricity was essential and integral to Aztec's integrated production process.⁷¹⁵ However, the Tax Court determined that the use of electricity to preserve the food items at certain temperatures was essential and integral to Aztec's integrated production process, because without the electricity, Aztec could not produce the entrées.⁷¹⁶

Thus, the Tax Court determined that Aztec was entitled to an exemption from the sales tax where Aztec's preparation and combination of food items into entrees substantially changed the individual food items and where the electricity that powered the electrical equipment that held and preserved the food items was essential and integral to that process.⁷¹⁷

4. *Asplundh Tree Expert Co. v. Indiana Department of State Revenue*.⁷¹⁸—The Asplundh Tree Expert Co. provided particularized emergency storm and vegetation control services throughout the United States.⁷¹⁹ To provide these services, Asplundh garaged motor vehicles in Indiana between 2007 and 2009,

707. *Id.*

708. *Id.*

709. *Id.*

710. *Id.*

711. *Id.*

712. *Id.*

713. *Id.*

714. *Id.*

715. *Id.*

716. *Id.*

717. *Id.*

718. 38 N.E.3d 744 (Ind. T.C. 2015).

719. *Id.* at 745.

in addition to registering and licensing the vehicles in Indiana.⁷²⁰ Asplundh filed two claims with the Department seeking a refund of the use tax which Asplundh paid to the Department.⁷²¹ However, the Department denied Asplundh's refund claims, which lead to Asplundh to file two tax appeals with the Tax Court.⁷²²

On appeal to the Tax Court, Asplundh contended that its vehicle purchases were not subject to use tax for the following two major reasons: (1) Asplundh did not use the vehicles in Indiana in a way that would initiate imposition of the sales tax; and (2) the Department may not impose the use tax on the acquisition of a vehicle which never entered the state of Indiana.⁷²³

As support for its contentions, Asplundh argued that the imposition of use tax was improper, because, under Indiana Code section 6-2.5-3-2(a), Asplundh's licensing of its vehicles in Indiana is not a taxable use.⁷²⁴ Also, Asplundh averred that the applicable regulations⁷²⁵ distinguished between "licensing" and "use."⁷²⁶ However, the Tax Court did not agree that the applicable regulations distinguished between the words "licensing" and "use."⁷²⁷ Therefore, the Tax Court determined that Asplundh properly paid use tax on its out-of-state vehicle acquisitions, since Asplundh registered, licensed, and titled such vehicles in Indiana.⁷²⁸

In response to Asplundh's second contention, the Tax Court ruled that the location of tangible personal property is not dispositive of whether the use tax is applicable.⁷²⁹

Next, Asplundh argued that the imposition of the use tax in his case went against all four prongs of the Complete Auto⁷³⁰ tests.⁷³¹ However, the Tax Court ruled that the facts revealed that Asplundh kept its commercial motor vehicles in Indiana.⁷³² Accordingly, Asplundh did not demonstrate the imposition of use tax contravened the Complete Auto test's substantial nexus prong.⁷³³ Further, Asplundh did not show that "it ha[d] been subject to multiple taxation, that it [wa]s subject to the risk of multiple taxation, or that the Department's imposition of use tax provided a direct commercial advantage to local business over interstate business."⁷³⁴ Therefore, Asplundh did not meet its burden on the second

720. *Id.*

721. *Id.* at 746.

722. *Id.*

723. *Id.*

724. *Id.*

725. IND. ADMIN. CODE 2.2-3-5(a) (2007).

726. *Asplundh*, 38 N.E.3d 744 at 746.

727. *Id.* at 747.

728. *Id.*

729. *Id.* at 748.

730. *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977).

731. *Asplundh*, 38 N.E.3d at 748.

732. *Id.* at 749.

733. *Id.*

734. *Id.*

and third prongs of the Complete Auto tests.⁷³⁵ Finally, the Department explained that Indiana provided all of the services related to the registration program as well as access to Indiana's judicial system in exchange for Asplundh's payment of the use tax.⁷³⁶

Therefore, after the Tax Court did a complete review of the Complete Auto tests, the Tax Court determined that there was no violation of the tests set forth in Complete Auto.⁷³⁷ In conclusion, the Tax Court ruled that Asplundh failed to meet its burden of showing that Indiana's imposition of the use tax was not fairly related to the services which Asplundh received in and from the state of Indiana; and therefore, Asplundh was subject to the use tax.⁷³⁸

4. *Aztec Partners, LLC v. Ind. Department of State Revenue*.⁷³⁹—The reader might want to read the comments concerning Aztec Partners, LLC in synopsis number 38, above, prior to reading this synopsis. The Department filed a Petition for Rehearing in the Tax Court, asking for two determinations: “1) whether Aztec deprived the Court of subject matter jurisdiction by filing ambiguous refund claims; and, if not, 2) whether the Court erred in finding that Aztec's evidentiary presentation satisfied the essential and integral requirement of the consumption exemption.”⁷⁴⁰ With respect to the current matter, the Tax Court granted the Department's petition for the limited purpose of clarifying the Tax Court's decision regarding subject matter jurisdiction.⁷⁴¹

In its petition, the Department claimed that although the Department averred in both its written brief and at trial that Aztec failed to file a proper refund claim, the Tax Court failed to address the issue at all.⁷⁴² Further, the Department claimed that the Tax Court erred by not determining subject matter jurisdiction.⁷⁴³ The facts showed that the Department evaluated Aztec's refund claims and approved them in part and denied them in part.⁷⁴⁴ The Tax Court observed that the Department was able to determine “1) the basis of Aztec's refund claims, 2) the amount of refund to which it believed Aztec was entitled, and 3) the relationship to refund claims previously granted to Aztec, the Court declines to find that Aztec's refund claims were ambiguous.”⁷⁴⁵

Finally, the Tax Court explained, “whether Aztec sought a refund based on the consumption exemption at the administrative level does not implicate the Court's subject matter jurisdiction.”⁷⁴⁶ Thus, the Tax Court affirmed its decision

735. *Id.*

736. *Id.* at 750.

737. *Id.*

738. *Id.*

739. 35 N.E.3d 320 (Ind. T.C. 2015).

740. *Id.* at 327.

741. *Id.*

742. *Id.*

743. *Id.*

744. *Id.* at 328.

745. *Id.*

746. *Id.*

in Aztec Partners in its entirety.⁷⁴⁷

5. *R.R. Donnelley & Sons Co. v. Indiana Department of State Revenue*.⁷⁴⁸—RR Donnelley & Sons Company, a Delaware corporation headquartered in Chicago, Illinois, purchased pallets with sales and use tax exemption certificates from Perfect Pallets, Inc., an Indiana corporation.⁷⁴⁹ After an audit, the Department issued proposed use tax, penalties, and interest against Donnelley because Donnelley failed to pay sales tax on its procurement of the pallets.⁷⁵⁰ Thereafter, Donnelley protested, however, the Department issued a Letter of Finding that denied Donnelley's protest.⁷⁵¹ As a result of this denial, Donnelley filed an original tax appeal to the Tax Court.⁷⁵² In its appeal, Donnelley claimed that its acquisitions of shipping pallets were exempt from use tax because the pallets were not "returnable containers" under Indiana Code section 6-2.5-5-9(d).⁷⁵³

The Tax Court ruled that Donnelley's purchases did not qualify for the nonreturnable container exemption because the shipping pallets were indeed returnable containers, even though they were not returnable specifically by Donnelly.⁷⁵⁴ The Tax Court looked to the plain language of Indiana Code section 6-2.5-5-9(a), which indicated that "'returnable containers' are those containers that are returned by the *buyer of the contents*, not by the buyer of the containers themselves."⁷⁵⁵ Therefore, because Donnelly was not the purchaser of the contents of the pallets, the fact that Donnelly did not return the pallets was not germane to determining whether the pallets were returnable containers.⁷⁵⁶ Moreover, because the items in question were in fact returned, though not by Donnelly, the Tax Court granted summary judgment in favor of the Department.⁷⁵⁷

6. *J.S. Marten, Inc., Janice S. Marten, and Christopher M. Marten v. Indiana Department of State Revenue*.⁷⁵⁸—In 2008, the Martens remitted \$162,529.11 in sales tax to the Department.⁷⁵⁹ Thereafter, the Martens filed a refund claim for \$162,396.34.⁷⁶⁰ However, the Department denied the refund claim, because Martens failed to file the refund claim in a timely manner under Indiana Code

747. *Id.*

748. 41 N.E.3d 1053 (Ind. T.C. 2015).

749. *Id.* at 1054.

750. *Id.* The Department determined that the pallets were not entitled to the Nonreturnable Container Exemption and thus subject to use tax. *Id.*

751. *Id.* at 1054-55.

752. *Id.* at 1055.

753. *Id.* at 1056.

754. *Id.*

755. *Id.*

756. *Id.*

757. *Id.* at 1057.

758. 45 N.E.3d 534 (Ind. T.C. 2015).

759. *Id.* at 535.

760. *Id.*

section 6-8.1-9-1.⁷⁶¹ Thus, the Martens initiated an appeal with the Tax Court.⁷⁶²

On appeal to the Tax Court, the Department first argued that the Tax Court lacked subject matter jurisdiction because of the Martens' untimely filing.⁷⁶³ However, the Tax Court determined that the Department was erroneous, explaining that an original tax appeal arises under Indiana's tax laws and "is an initial appeal of a final determination made by the Department regarding the listed taxes"⁷⁶⁴ and in this case, both of these requirements were met.⁷⁶⁵ Thus, the Department's claim was denied.⁷⁶⁶

The Department next averred that the Martens' appeal should be dismissed because the Martens failed to state a claim upon which relief can be granted.⁷⁶⁷ However, the Martens asked the Tax Court to allow their appeal to proceed because the Department should be estopped from raising a statute of limitations defense based on statements made by its hearing officer.⁷⁶⁸ However, the Tax Court explained that to defeat the Department's motion to dismiss, the Martens must address the elements of an estoppel claim and propose a public policy motivation for application of the doctrine.⁷⁶⁹

The Martens' petition provided that "[t]he facts of the case were ignored and not substantiated."⁷⁷⁰ Although the Martens' petition denoted that their interactions with the Department aggrieved the Martens, the Tax Court determined that the Martens' petition failed to address the elements necessary for a claim of equitable estoppel and also failed to identify a public policy basis for the doctrine's application.⁷⁷¹ Further, the hearing officer's statements did not influence on when the Martens filed their refund claim.⁷⁷² Therefore, the Tax Court granted the Department's Motion to Dismiss.⁷⁷³

7. *Crystal Flash Petroleum, LLC v. Indiana Department of State Revenue*.⁷⁷⁴—Crystal Flash Petroleum, LLC operated twenty-five stores in Indiana.⁷⁷⁵ In an attempt to enable the sale of mid-grade gasoline, Crystal utilized an automated blending system that mixed a predetermined volume of hi-grade and low-grade gasoline.⁷⁷⁶ An audit of Crystal determined that Crystal's ice

761. *Id.*

762. *Id.*

763. *Id.*

764. *See* IND. CODE § 33-26-3-1(1) (2015).

765. *J.S. Marten*, 45 N.E.3d at 536.

766. *Id.*

767. *Id.*

768. *Id.*

769. *Id.* at 357.

770. *Id.*

771. *Id.*

772. *Id.*

773. *Id.*

774. 45 N.E.3d 882 (Ind. T.C. 2015).

775. *Id.* at 883.

776. *Id.*

production equipment was exempt from sales/use tax, but that a number of other items, including its food preparation equipment, mid-grade gasoline equipment, and several other items, were not excluded.⁷⁷⁷ Consequently, the Department issued proposed sales/use tax assessments against Crystal, and thereafter, Crystal paid the assessments, and thereafter, Crystal filed a refund claim for such payment.⁷⁷⁸ However, the Department denied Crystal's claim, and later, Crystal filed a tax appeal to the Tax Court and the Department filed a Motion For Partial Summary Judgment.⁷⁷⁹

On appeal, Crystal claimed that the Department's motion should be denied because the Department had acknowledged that Crystal's food preparation equipment was utilized in an integrated production process that produced innovative, marketable products for its customers.⁷⁸⁰ However, the Tax Court would not find a link between the exempted equipment and the equipment at issue, without specific designated evidence that Crystal's food preparation equipment was fundamental and essential to its ice production process or "some other integrated production process."⁷⁸¹ Moreover, it was impossible to determine which of Crystal's stores truly received an exemption.⁷⁸² Further, while Crystal asserted that it produced an assortment of marketable food products, Crystal did not specify any explanations of its food products.⁷⁸³ Thus, Crystal did not show that there is a genuine issue of material fact.⁷⁸⁴ Therefore, the Tax Court determined in favor of the Department on this issue.⁷⁸⁵

Finally, Crystal contended that "the Department is not entitled to summary judgment regarding this issue because there [was] a genuine issue of material fact as to whether it used its mid-grade gasoline equipment in an integrated production process."⁷⁸⁶ The Department, on the other hand, argued that Crystal did not show that Crystal was engaged in production.⁷⁸⁷

With respect to these issues, the Tax Court determined that the facts showed that Crystal mixed two separate grades of its gasoline by utilizing its mid-grade gasoline equipment to produce a third, distinctive gasoline grade.⁷⁸⁸ These realistic inferences established that the composition of Crystal's mid-grade gasoline contrasted from its other compositions.⁷⁸⁹ While this suggested that Crystal used its mid-grade gasoline equipment within an integrated production

777. *Id.*

778. *Id.* at 884.

779. *Id.*

780. *Id.* at 886.

781. *Id.*

782. *Id.*

783. *Id.* at 886-87.

784. *Id.* at 887.

785. *Id.*

786. *Id.*

787. *Id.*

788. *Id.*

789. *Id.*

process, the facts did not aid the Tax Court.⁷⁹⁰ Accordingly, the Tax Court ruled that there was a genuine issue of fact, and therefore, neither party was entitled to summary judgment on this issue.⁷⁹¹ For these reasons, the Tax Court granted summary judgment in favor of the Department with respect to the first two issues and denied the Department's Motion with respect to the third issue.⁷⁹²

D. Corporate Income Tax

1. *ESPN Productions, Inc. v. Indiana Department of State Revenue.*⁷⁹³—ESPN Productions, Inc. was a Delaware corporation with its principal office in Bristol, Connecticut.⁷⁹⁴ For the 2007 to 2010 tax years, ESPN filed Indiana corporate income tax returns, and thereafter, the Department issued Notices of Proposed Assessment, asserting that ESPN owed additional tax.⁷⁹⁵ Subsequently, ESPN protested the Department's proposal, and then the Department issued a Letter of Findings, which denied the protest.⁷⁹⁶ Thereafter, ESPN initiated a tax appeal to the Tax Court.⁷⁹⁷

ESPN was entitled to have its tax records contained in the judicial record sealed and protected from public access.⁷⁹⁸ However, such protection did not extend to ESPN's Supplement to the Protest.⁷⁹⁹ As such, the Supplement to Protest did not contain trade secrets, as the quotations therein did not contain any business model or pricing information, but merely stated the purpose of the cable TV license agreements themselves, which was already readily ascertainable from the public documents which were filed in the case.⁸⁰⁰ Accordingly, the clerk of the Tax Court was ordered to give back any green copies of the Supplement to Protest to ESPN.⁸⁰¹

2. *Pinnacle Entertainment, Inc. v. Indiana Department of State Revenue.*⁸⁰²—Pinnacle Entertainment, Inc. was a Delaware corporation with its headquarters in Las Vegas, Nevada.⁸⁰³ Pinnacle operated a pari-mutuel horse racing establishment and a card club in its building in Inglewood, California.⁸⁰⁴ During 1999, Pinnacle executed an Asset Purchase Agreement to sell Pinnacle's

790. *Id.*

791. *Id.* at 887-88.

792. *Id.* at 888.

793. 28 N.E.3d 378 (Ind. T.C. 2015).

794. *Id.* at 380.

795. *Id.*

796. *Id.*

797. *Id.*

798. *Id.*

799. *Id.* at 383.

800. *Id.*

801. *Id.*

802. 32 N.E.3d 1216 (Ind. T.C. 2015).

803. *Id.* at 1217.

804. *Id.*

Racetrack and building to Churchill Downs for \$140 million in cash.⁸⁰⁵ For purposes of federal income taxation, Pinnacle thereafter reported the gain under the installment method.⁸⁰⁶ Pinnacle then filed an Indiana adjusted gross income tax return that classified the gain as nonbusiness income.⁸⁰⁷ But, for the 2006 and 2007 tax years, the Department reclassified Pinnacle's gain as business income and assessed Pinnacle with additional adjusted gross income tax, interest, and penalties.⁸⁰⁸ Subsequently, Pinnacle protested the Department's assessments, which resulted in the Department issuing a Letter of Finding that upheld each of the assessments.⁸⁰⁹ Accordingly, Pinnacle initiated a tax appeal to the Tax Court.⁸¹⁰

The first issue that the Tax Court ruled on was whether an apportioned sum of the gain was attributable to Indiana.⁸¹¹ Specifically, Pinnacle argued that the sale proceeds were not attributable to Indiana because the property was located in California.⁸¹² The Department countered by claiming that Indiana Code section 6-3-2-2.2 did not impede Indiana's capability to tax part of the gain because the asset purchase agreement was not an installment sales contract.⁸¹³

The resolution of the issue turned on whether the asset purchase agreement was an installment sales contract.⁸¹⁴ The Tax Court looked to the plain meaning set forth in Black's Law Dictionary, which defines an "installment" as "a periodic partial payment of a debt."⁸¹⁵ Accordingly, the Tax Court determined "that an 'installment sales contract' is a contract for the sale of property in which the buyer agrees to make periodic payments of a fixed sum to the seller, usually at regular intervals."⁸¹⁶ Given this definition, the Tax Court looked at the terms of the asset purchase agreement, which denoted that Churchill Downs would cooperate and, if requested, accommodate Pinnacle's tax-deferred exchange.⁸¹⁷ By placing payment into a qualified escrow account, Churchill Downs received title to the Racetrack and building.⁸¹⁸ Such terms indicated that Churchill Downs would receive title after Churchill Downs made a single payment of \$140 million.⁸¹⁹ Accordingly, the Tax Court granted summary judgment on this issue

805. *Id.*

806. *Id.*

807. *Id.*

808. *Id.*

809. *Id.* at 1217-18.

810. *Id.* at 1218.

811. *Id.*

812. *Id.*

813. *Id.* at 1219.

814. *Id.*

815. *Id.* (quoting BLACK'S LAW DICTIONARY 868 (9th ed. 2009)).

816. *Id.*

817. *Id.* at 1220.

818. *Id.*

819. *Id.*

to the Department.⁸²⁰

Next, the Tax Court looked to whether the Department properly classified Pinnacle's gain as business income.⁸²¹ For this determination, the Tax Court applied both transactional and functional tests.⁸²² The transactional test originates from the first portion of Indiana's statutory definition of "business income."⁸²³ Therefore, the Tax Court may consider: "(1) the frequency and regularity of similar transactions; (2) the former practices of the business; and (3) the taxpayer's subsequent use of the income."⁸²⁴ The Department argued that Pinnacle's gain from the sale was business income because Pinnacle is in the business of buying and selling entertainment businesses.⁸²⁵ On the other hand, Pinnacle averred that the sale was an extraordinary event, one disparate from its regular business operations.⁸²⁶

The Tax Court could not resolve the issue on summary judgment because there was a genuine issue of material fact regarding the nature of Pinnacle's business (i.e., the Tax Court could not determine whether Pinnacle's acquisition, management, and disposition of the Racetrack and building were essential to its regular trade or business operations).⁸²⁷ Accordingly, the Tax Court determined that the Department did not show it was entitled to summary judgment on this basis.⁸²⁸

3. *Hamilton Southeastern Utilities, Inc. v. Indiana Department of State Revenue*.⁸²⁹—Hamilton Southeastern Utilities, Inc. provides sewage collection and disposal services to customers in Hamilton County, Indiana.⁸³⁰ In 2010, the Department audited Hamilton.⁸³¹ As a result of the audit, the Department issued a proposed assessment of Indiana's utility receipts tax on system development charges and connection fees which Hamilton collected during the 2006, 2007, and 2008 tax years (the years at issue).⁸³² The utility receipts tax assessments also

820. *Id.*

821. *Id.* "Business income" is "income arising from transactions and activity in the regular course of [a] taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations." IND. CODE § 6-3-1-20 (1999).

822. *Pinnacle*, 32 N.E.3d at 1220-21.

823. *Id.* at 1221 (quoting the first part of Indiana Code section 6-3-1-20 regarding the definition of business income: "'income arising from transactions and activity in the regular course of a taxpayer's trade or business'").

824. *Id.* (quoting *May Dep't Stores Co. v. Ind. Dep't of State Revenue*, 749 N.E.2d 651, 659 (Ind. T.C. 2001)); *see also* 45 IND. ADMIN. CODE 3.1-1-30 (1999).

825. *Pinnacle*, 32 N.E.3d at 1221.

826. *Id.*

827. *Id.* at 1222.

828. *Id.*

829. 40 N.E.3d 1284 (Ind. T.C. 2015).

830. *Id.* at 1285.

831. *Id.* at 1286.

832. *Id.*

included interest and penalties.⁸³³ Hamilton objected the proposed assessments to the Department where a Letter of Finding was issued which denied Hamilton's protest.⁸³⁴ Thus, Hamilton initiated a tax appeal to the Tax Court.⁸³⁵

On appeal to the Tax Court, the Department claimed Hamilton's system development charges and connection fees were gross receipts. Alternatively, the Department argued that the connection fees were subject to the utility receipts tax, because Hamilton failed to separate the utility receipts from other taxable receipts on its records or returns, as required by Indiana Code section 6-2.3-3-2.⁸³⁶

Further, the Department averred, that the utility receipts tax's definition of a sewage utility service is necessarily informed by Indiana's utility regulatory legislation, which contains a broader definition of "sewage disposal service."⁸³⁷ However, the Tax Court did not agree, because the General Assembly had given no indication that a broader definition applied.⁸³⁸ Accordingly, the Tax Court determined that sewage utility service refers only to providing the removal services themselves, and nothing more.⁸³⁹

The Tax Court then ruled on whether Hamilton's system connection fees and development charges were gross receipts, thus being subject to the tax under Indiana Code section 6-2.3-3-10.⁸⁴⁰ In so doing, the Tax Court did not find the grammatical structure of Indiana Code section 6-2.3-3-10 to support such a conclusion.⁸⁴¹ Consequently, neither the system development charges nor the connection fees were gross receipts pursuant to Indiana Code section 6-2.3-3-10.⁸⁴²

Finally, the Department failed to designate evidence showing whether Hamilton's returns separate the connection fee from taxable receipts.⁸⁴³ The court found that it was reasonable to infer that Hamilton possibly separated its nontaxable gross receipts from its taxable gross receipts on its returns.⁸⁴⁴ Therefore, the Tax Court determined that there was a genuine issue of fact on this last issue and ordered a case management conference.⁸⁴⁵

4. *Elmer v. Indiana Department of State Revenue*.⁸⁴⁶—Mr. Elmer was the sole shareholder and president of two S Corporations.⁸⁴⁷ Thus, the Elmers' Indiana

833. *Id.*

834. *Id.*

835. *Id.*

836. *Id.*

837. *Id.* at 1287.

838. *Id.* at 1288.

839. *Id.*

840. *Id.*

841. *Id.*

842. *Id.* at 1289.

843. *Id.*

844. *Id.* at 1290.

845. *Id.*

846. 42 N.E.3d 185 (Ind. T.C. 2015).

847. *Id.* at 188.

income tax returns reported their income and losses in addition to those of their two S Corporations, Pharmakon and Hamilton. The Department determined that the deductions the Elmers took for vehicle, contract labor, operating, and management/marketing expenses were not valid business expense deductions.⁸⁴⁸ Moreover, the Department decided there was an uncollectible debt in 2008 that the Elmers had improperly taken as a deduction.⁸⁴⁹ Therefore, the Department disallowed all of the Elmers' deductions, recalculated the Elmers' adjusted gross income tax liability, and assessed the Elmers with added Indiana adjusted gross income, interest, and penalties for the years at issue.⁸⁵⁰

The Elmers protested the Department's assessments.⁸⁵¹ Subsequently, the Department issued a Letter of Finding that upheld the assessments, and as a result, the Elmers initiated a tax appeal to the Tax Court.⁸⁵² On appeal, the Department argued that the Tax Court must disregard: certain deposition testimony; the Elmers' Protest Letter; and, portions of the Elmers' brief.⁸⁵³ The Tax Court considered the issue of whether the Tax Court may consider the Elmers' designated evidence.⁸⁵⁴

However, the Tax Court did not consider any of the Elmers' disposition because they failed to file any portion of it with the Tax Court.⁸⁵⁵ Furthermore, because the Elmers' Protest Letter was unverified, contained hearsay, and was unsupported, the Tax Court did not consider it either.⁸⁵⁶

Next, the Department argued the Tax Court should rule the Department was entitled to judgment as a matter of law for three alternative reasons.⁸⁵⁷ First, the Department claimed that it correctly disallowed the Elmers' business expense deductions because the business transactions lacked economic substance.⁸⁵⁸ Alternatively, the Department argued that the Elmers erroneously took the deductions, because the expenses were not ordinary and necessary business expenses.⁸⁵⁹ Third, the Department claimed that the Elmers failed to present sufficient written documentation substantiating their business expense deductions.⁸⁶⁰

The court discussed how determining whether a taxpayer's transactions lack economic substance requires the application of a two-prong test.⁸⁶¹ The

848. *Id.*

849. *Id.*

850. *Id.*

851. *Id.*

852. *Id.*

853. *Id.* at 190.

854. *Id.*

855. *Id.*

856. *Id.*

857. *Id.* at 191.

858. *Id.*

859. *Id.*

860. *Id.*

861. *Id.* The two-prong test the court described: "(1) was the taxpayer motivated by any

Department avers that the transactions were shams that lacked all economic substance.⁸⁶² The Tax Court determined that there was a genuine issue of material fact.⁸⁶³ Thus, neither the Department nor the Elmers were entitled to summary judgment on this basis.⁸⁶⁴

Next, the Department claimed the Elmers inappropriately utilized business expense deductions under IRC § 162.⁸⁶⁵ The Tax Court found that the Elmers' evidence indicated that Hamilton was formed for valid business purposes.⁸⁶⁶ When questions regarding the credibility of witnesses or the weight of testimony arise, as in this case, summary judgment should be denied.⁸⁶⁷ Accordingly, the Tax Court determined that neither party was entitled to summary judgment on this issue.⁸⁶⁸

Finally, the Department contended that the Department was entitled to judgment as a matter of law, because the Elmers had not provided adequate written documentation to authenticate their business expense deductions.⁸⁶⁹ The Tax Court, however, disagreed.⁸⁷⁰ The Tax Court ruled that the Elmers had designated evidence that ultimately established there was a genuine issue of material fact as to whether their business expense deductions from the years 2005 and 2007 were proper.⁸⁷¹ Therefore, the Elmers did not need to designate written documentation that substantiated their 2005 and 2007 business expense deductions to defeat the Department's Motion.⁸⁷² Thus, the Department did not show that the Department was entitled to summary judgment for the 2005 and 2007 tax years.⁸⁷³

For the above reasons, the Tax Court determined that the Department did not make the requisite *prima facie* showing in regard to the uncollectible debt deduction or the Elmers' other business expense deductions from the years 2006

business purpose other than obtaining a tax benefit (the business purpose test); and (2) did the transactions lack economic substance because no reasonable possibility of a profit existed (the economic substance test)." *Id.* (citing *Rice's Toyota World, Inc. v. C.I.R.*, 752 F.2d 89, 91 (4th Cir. 1985)).

862. *Id.* The Department claimed: "(1) the two S-corporations were closely related given that Mr. Elmer was the sole shareholder and president of both, (2) Mr. Elmer performed the same duties for each and failed to distinguish between either when working with a third party, Augusta Corporation, and (3) Hamilton had no employees." *Id.*

863. *Id.* at 193.

864. *Id.*

865. *Id.*

866. *Id.*

867. *Id.*

868. *Id.* at 193-94.

869. *Id.*

870. *Id.*

871. *Id.* at 195-96.

872. *Id.* at 196.

873. *Id.*

and 2008.⁸⁷⁴

5. *Rent-A-Center East, Inc. v. Indiana Department of State Revenue*.⁸⁷⁵—For the 2003 year, Rent-A-Center East, Inc. (hereinafter referred to as “RAC”) filed an Indiana corporate adjusted gross income tax return with respect to a separate company, reporting that RAC owed no income tax.⁸⁷⁶ Subsequently, the Department audited RAC and the Department proposed \$513,272.60 in additional Indiana adjusted gross income tax, penalties, and interest for the 2003 tax year, explaining that RAC should have filed a combined income tax return.⁸⁷⁷ RAC protested, and the Department issued a final determination, upholding the audit.⁸⁷⁸ Thus, RAC initiated a tax appeal with the Tax Court.⁸⁷⁹

In such appeal to the Tax Court, RAC contended that the Department could not force it to file a combined income tax return due to the fact that its 2003 separate return accurately reflected its Indiana sourced income.⁸⁸⁰ In response, the Department argued that RAC’s separate return did not fairly reflect RAC’s Indiana sourced income.⁸⁸¹

In this case, Indiana Code section 6-3-2-2 expressly states that a taxpayer may report, or the Department may demand, a combined income tax return to be filed in only limited instances.⁸⁸² Thus, requiring a taxpayer to file a combined income tax return simply because the taxpayer operates as a unitary business would “effectively render these two fundamental aspects of Indiana’s AGIT scheme superfluous or nullities.”⁸⁸³ Accordingly, the Tax Court determined that the Department’s claim was unpersuasive.⁸⁸⁴

Next, the Department argued that RAC East must file a combined income tax return due to the fact that its royalty fee payments to RAC West and management fee payments to RAC Texas distorted its Indiana source income.⁸⁸⁵ The Department asked the Tax Court to disregard the Transfer Pricing Study, because: “1) it concerns financial accounting, not tax, 2) it concerns federal, not Indiana law, 3) it has no binding effect on state tax authorities, 4) other jurisdictions have rejected similar studies, and 5) it is flawed.”⁸⁸⁶ However, because the Transfer Pricing Study was designated as evidence, its relevance depended on whether it tended to prove or disprove that the separate return accurately reflected its

874. *Id.* at 197.

875. 42 N.E.3d 1043 (Ind. T.C. 2015).

876. *Id.* at 1046.

877. *Id.*

878. *Id.*

879. *Id.*

880. *Id.* at 1047.

881. *Id.* at 1048.

882. *Id.* at 1048-49.

883. *Id.* at 1049.

884. *Id.*

885. *Id.*

886. *Id.*

Indiana source income.⁸⁸⁷ Consequently, the Department's position was not persuasive.⁸⁸⁸

Additionally, the parties have specified that the businesses were validly formed.⁸⁸⁹ Therefore, because the Department has not designated evidence that would indicate these relationships lacked economic substance, the Tax Court could not find that the Department appropriately collapsed RAC's business composition into one tax entity by forcing it to file a combined income tax return on this basis.⁸⁹⁰

Moreover, because the Department had specified the valid business purposes, the Tax Court could not rule that RAC utilized its management fee payments to avoid its Indiana adjusted gross income tax liability.⁸⁹¹ Hence, the fact that RAC reported zero tax liability in its 2003 Indiana adjusted gross income did not establish that RAC's Indiana sourced income was not accurately reflected on its separate return.⁸⁹²

6. *Columbia Sportswear USA Corp. v. Indiana Department of State Revenue*.⁸⁹³—In 2008, Columbia Sportswear USA Corporation filed two amended income tax returns that reflected a refund of adjusted gross income tax.⁸⁹⁴ The Department thereafter audited Columbia and made the determination that Columbia had to adjust Columbia's net income pursuant to Indiana Code section 6-3-2-2(1)(4) and 6-3-2-2(m).⁸⁹⁵ Thereafter, the Department issued to Columbia Proposed Assessments for the years at issue.⁸⁹⁶ Columbia protested the proposed assessment and the Department upheld only the assessments and interest.⁸⁹⁷ Thus, Columbia Sportswear initiated an original tax appeal with the Tax Court.⁸⁹⁸

On appeal to the Tax Court, Columbia argued that the adjustments were improper, because neither Indiana Code section 6-3-2-2(1)(4) nor 6-3-2-2(m) authorized the Department to increase Columbia's net income tax base in order to assess the income tax.⁸⁹⁹ However, the Department claimed both subsections of the statute authorized the adjustments.⁹⁰⁰

The court described how Indiana Code section 6-3-2-2(1)(4) indeed authorizes the Department's use of reasonable alternative methods, but only for dividing the

887. *Id.* at 1054.

888. *Id.*

889. *Id.* at 1053.

890. *Id.*

891. *Id.*

892. *Id.*

893. 45 N.E.3d 888 (Ind. T.C. 2015).

894. *Id.* at 891.

895. *Id.*

896. *Id.*

897. *Id.*

898. *Id.*

899. *Id.* at 893.

900. *Id.*

tax base.⁹⁰¹ However, Indiana Code section 6-3-2-2(1)(4) did not authorize the Department to make adjustments increasing Columbia's federal taxable income, and thus, also adjusting the taxpayer's Indiana net income tax base.⁹⁰² Therefore, the Department was not entitled to summary judgment on this basis.⁹⁰³

Next, Columbia, presented several Transfer Pricing Studies evidencing that its intercompany transactions were conducted using arm's-length rates, and therefore, Columbia's Indiana source income was accurately reflected under the Standard Sourcing Rules.⁹⁰⁴ However, the Department averred that these Transfer Pricing Studies failed to rebut its *prima facie* case that its assessments are correct.⁹⁰⁵ The Tax Court held that the Department had failed to provide evidence to show that Columbia's Transfer Pricing Studies were invalid or unreliable.⁹⁰⁶

Instead, the Tax Court ruled that the evidence established that Columbia's intercompany transactions were conducted utilizing arm's length-rates, and therefore, the Standard Sourcing Rules fairly reflected Columbia's Indiana sourced income, for purposes of Indiana Code section 6-3-2-2(m).⁹⁰⁷ Therefore, the court found that the Department was not authorized to make its adjustments under Indiana Code section 6-3-2-2(m), and the Department was not entitled to summary judgment.⁹⁰⁸ Further, the Tax Court determined that even if Columbia's Indiana sourced income was not fairly reflected, the Department's adjustments would still be incorrect, because those assumptions were not reasonable.⁹⁰⁹ Thus, the Tax Court granted summary judgment in favor of Columbia.⁹¹⁰

E. Tax Procedure

1. *Blue Chip Casino, LLC v. LaPorte County Treasurer*.⁹¹¹—Blue Chip Casino, LLC owned and operated a riverboat casino and hotel in LaPorte County, Indiana.⁹¹² Blue Chip remitted over \$300,000 in innkeeper's tax for complimentary hotel rooms distributed to members.⁹¹³ Subsequently, Blue Chip decided that remission was in error, so Blue Chip filed for a refund with the Department.⁹¹⁴ In response, the Department issued a Memorandum of Decision denying Blue Chip's claim and declaring that the tax was not paid to the

901. *Id.* at 896.

902. *Id.*

903. *Id.*

904. *Id.*

905. *Id.* at 897.

906. *Id.* at 898.

907. *Id.*

908. *Id.* at 899.

909. *Id.*

910. *Id.*

911. 27 N.E.3d 1198 (Ind. T.C. 2015).

912. *Id.* at 1199.

913. *Id.*

914. *Id.*

Department.⁹¹⁵ Thus, Blue Chip claimed the refund directly with the county.⁹¹⁶ However, when Blue Chip sent the Auditor a refund request, the County failed to ever act, and therefore, Blue Chip initiated a tax appeal to the Tax Court.⁹¹⁷

On appeal to the Tax Court, Blue Chip argued that the Tax Court had subject matter jurisdiction over this case based on Ordinance No. 92-1, “which placed the Treasurer in the shoes of the Department for purposes of collecting the LaPorte County’s innkeeper’s tax.”⁹¹⁸ Further, Blue Chip asserted that the Treasurer had the power to determine refund claims.⁹¹⁹ However, this argument was not successful.⁹²⁰

In response, the Tax Court stated that enforcement responsibilities would be a procedural act, or “events that are designed to compel the fulfillment of the listed taxes or cause them to take effect.”⁹²¹ Thus, the Tax Court would not read into Ordinance No. 92-1 a grant of authority to the Treasurer to decide claims for the refund of the innkeeper’s tax independently or as a substitute for the Department under Indiana Code section 6-8.1-9-1.⁹²²

Ultimately, the Tax Court determined that there was nothing which gave the Treasurer the authority to process refund claims.⁹²³ Instead, to invoke the Tax Court’s jurisdiction, Blue Chip needed to appeal from a final determination from the Department.⁹²⁴

2. *Foster v. Indiana Department of State Revenue*.⁹²⁵—Richard D. Foster was charged with possession and intent to deliver marijuana, and was also charged with violating the controlled substance excise tax provision, Indiana Code section 6-7-3-11.⁹²⁶ Thereafter, the Department issued an assessment of CSET, penalties, and interest to Foster.⁹²⁷ In accordance with a plea negotiation agreement, Foster pled guilty and was sentenced in 1994.⁹²⁸ Then, in 2015, Foster filed an appeal with the Tax Court.⁹²⁹

On appeal to the Tax Court, Foster:

1) requested that the Department refund all of his tax refunds that had been applied toward the CSET assessment; 2) sought payment for all of

915. *Id.*

916. *Id.*

917. *Id.* at 1199-1200.

918. *Id.* at 1200.

919. *Id.* at 1201.

920. *Id.*

921. *Id.* at 1202.

922. *Id.*

923. *Id.*

924. *Id.* at 1203.

925. No. 49T10-1504-TA-00017, 2015 WL 4394253 (Ind. T.C. July 7, 2015).

926. *Id.* at *1.

927. *Id.*

928. *Id.*

929. *Id.* at *2.

his vehicles that he lost due to the Department's seizure of their titles; and 3) sought compensatory and punitive damages in the amount of \$100,000.⁹³⁰

Thereafter, the Department filed a Motion to Dismiss, claiming that the Tax Court lacked subject matter jurisdiction to hear Foster's appeal.⁹³¹

Foster additionally averred that the Department improperly collected CSET.⁹³² The Tax Court determined that the case arose under the tax laws of Indiana.⁹³³ However, for the Tax Court to have subject matter jurisdiction, the case must have also been an initial appeal from a final determination of the Department according to Indiana Code section 33-26-3-1(1).⁹³⁴ The court held that the evidence presented established that Foster failed both to timely file a protest with the Department and failed to file a claim for refund with the Department.⁹³⁵ Accordingly, the court found no evidence that the Department issued a Letter of Findings or an order denying a refund.⁹³⁶ Thus, Foster did not appeal from a final determination, and therefore, the Tax Court did not have subject matter jurisdiction to hear Foster's appeal.⁹³⁷

3. *Wells County Assessor v. Alexin, LLC*.⁹³⁸—Alexin, LLC operated an aluminum production/manufacturing business in Wells County, Indiana.⁹³⁹ Prior to 2013, the Council granted a ten-year abatement of taxes for Alexin on its personal property.⁹⁴⁰ However, Alexin failed to timely file any of its tax abatement forms with the Wells County Assessor, resulting in a disallowance of the 2013 tax abatement.⁹⁴¹ Therefore, Alexin then filed an appeal with the PTABOA.⁹⁴² While on appeal, Alexin inquired of the Council to issue a resolution waiving the late filing, which was approved.⁹⁴³ Notwithstanding, the PTABOA upheld the Assessor's disallowance.⁹⁴⁴ Therefore, Alexin appealed to

930. *Id.*

931. *Id.*

932. *Id.* at *3.

933. *Id.*

934. *Id.*

935. *Id.* at *4; *see* 45 IND. ADMIN. CODE 15-5-8 (2015) (requiring a taxpayer to file a written protest 20 days from the date a CSET assessment or jeopardy assessment is made); *see also* IND. CODE § 6-8.1-9-1(a) (2015) (requiring a taxpayer to file a claim for refund with the Department within three years after the latter of the due date of the return or the date of payment).

936. *Foster*, 2015 WL 4394253, at *4.

937. *Id.* at *4-5.

938. 46 N.E.3d 1289 (Ind. T.C. 2015).

939. *Id.* at 1290.

940. *Id.*

941. *Id.*

942. *Id.*

943. *Id.*

944. *Id.*

the IBTR, which reinstated Alexin's 2013 tax abatement deduction.⁹⁴⁵ Thereafter, Alexin initiated a tax appeal to the Tax Court.⁹⁴⁶

The Tax Court determined that the plain language of Section 9.5 authorized the Council's resolution waiving Alexin's failure to comply with the filing deadlines for any documents that were required to be filed under Chapter 12.1.⁹⁴⁷ Therefore, the Council, had the authority to waive the untimeliness under Section 9.5, and therefore, the IBTR's final determination was not contrary to law on this basis.⁹⁴⁸

However, the Assessor further contended that the plain language of Resolution 2013-9 specified that the Council waived Alexin's failure to timely file its Forms CF-1, but that the resolution failed to waive Alexin's failure to file its personal property tax return.⁹⁴⁹ The Tax Court reviewed Resolution 2013-9 and agreed with the Assessor's analysis of the resolution.⁹⁵⁰ Thus, the applicable rules of construction required the Tax Court to find that the Council's resolution did not waive the non-compliance of Alexin's personal property tax return, and therefore, the Tax Court held that the IBTR's final determination was contrary to law.⁹⁵¹

F. Inheritance Tax

1. *Indiana Department of State Revenue v. McCombs*.⁹⁵²—Janice Hamblin's will was admitted to probate in 2009.⁹⁵³ For calculating the amount of tax owed, the Hamblin Estate valued the interests transferred to Larry Hamblin (Janice's husband) and Misty Snuffer (Janice's child) as annuities through a trust agreement with the Kentland Bank as trustee.⁹⁵⁴ Thereafter, the Department notified the Estate that it owed an additional \$105,000 in inheritance tax, which the Estate paid.⁹⁵⁵ Next, the Estate filed a claim for refund, and the Department denied the refund claim.⁹⁵⁶ Therefore, the Estate filed a petition with the Probate Court, which held that the interests transferred should have been valued as life estates and the Probate Court granted summary judgment for the Estate.⁹⁵⁷ One reason this issue arose is because the actuarial tables used for valuing life estates for death tax purposes were more favorable to the beneficiaries for death tax

945. *Id.*

946. *Id.* at 1291.

947. *Id.* at 1292.

948. *Id.* at 1293.

949. *Id.*

950. *Id.* at 1294.

951. *Id.*

952. 42 N.E.3d 178 (Ind. T.C. 2015).

953. *Id.* at 179.

954. *Id.*

955. *Id.* at 180.

956. *Id.*

957. *Id.*

purposes than were the actuarial tables which were utilized for valuing annuities.⁹⁵⁸ Thus, the Department initiated a tax appeal to the Tax Court.⁹⁵⁹

On appeal to the Tax Court, the Department maintained that the Probate Court erred in determining the transferred interests as life estates.⁹⁶⁰ However, the Tax Court ruled that the presence of certain words showed that the will intended to convey the interests as life estates, and not annuities.⁹⁶¹ Further, given the extremely broad grant, the Tax Court concluded that the will simply intended the “fixed” amounts of \$1,250 and \$1,000 per month to be minimum trust distributions.⁹⁶² Therefore, the Tax Court held that the words demonstrated intent to convey life estates.⁹⁶³ Therefore, the Probate Court did not err in deciding that those interests were to be valued as life estates and not as annuities.⁹⁶⁴

2. *Indiana Department of State Revenue v. Keenan*.⁹⁶⁵—Mary Leighton died in 2001. Thereafter arose a dispute concerning the management and disposition of certain assets within her estate.⁹⁶⁶ Regardless, Judd’s Estate remitted to the County Treasurer an estimated inheritance tax payment.⁹⁶⁷ Subsequently, Judd’s Estate and the IRS filed a stipulation of settlement in which the IRS agreed to keep the Judd Estate open until a refund problem was resolved with Judd’s Estate and the Department.⁹⁶⁸ Then, Judd’s Estate filed a claim for refund of \$644,998 from the Department and the Department denied the refund claim on the basis that the claim had not been timely filed.⁹⁶⁹ The Department subsequently argued that the Probate Court lacked subject matter jurisdiction with respect to this matter.⁹⁷⁰ Then, the Probate Court denied the Department’s motion to dismiss and the Probate Court granted summary judgment in favor of Judd’s Estate.⁹⁷¹ Next, the Department appealed to the Tax Court for a decision on the issue.⁹⁷²

The Tax Court had to decide when the inheritance tax liability of Judd’s Estate was finally determined.⁹⁷³ The Department’s argued that the inheritance tax liability was finally determined when the Probate Court issued its order.⁹⁷⁴ However, Judd’s Estate countered that an estate’s Indiana inheritance tax liability

958. *Id.* at 180-81.

959. *Id.* at 180.

960. *Id.* at 181.

961. *Id.*

962. *Id.* at 182.

963. *Id.*

964. *Id.*

965. 42 N.E.3d 1056 (Ind. T.C. 2015).

966. *Id.* at 1057.

967. *Id.* at 1058.

968. *Id.*

969. *Id.* at 1059.

970. *Id.*

971. *Id.*

972. *Id.*

973. *Id.* at 1060.

974. *Id.*

cannot be finally determined until the final determination of its federal estate tax liability.⁹⁷⁵

In this case, the Tax Court held that the General Assembly had always intended that the deadline for filing an Indiana inheritance tax refund claim be connected to either the tax payment or the probate court's order deciding the amount of inheritance tax due.⁹⁷⁶ Moreover, the Tax Court was not persuaded by an argument that the Indiana inheritance tax liability of Judd's Estate was not finally determined at the time when Judd's Estate filed its refund claim because its federal estate tax liability was still unresolved.⁹⁷⁷

Thus, the Tax Court held that the Probate Court's order stipulating the inheritance tax due is the determiner of the Indiana inheritance tax liability of the Judd's Estates.⁹⁷⁸ Therefore, because Judd's Estate did not timely file its claim for refund with the Department under Indiana Code section 6-4.1-10-1, the court held that the Probate Court lacked subject matter jurisdiction, and therefore, the Probate Court should have dismissed the case.⁹⁷⁹ Nevertheless, the Tax Court also determined that Judd's Estate was entitled to the initial refund that Judd's Estate claimed on its Indiana inheritance tax return because: 1) "there was no statute or administrative regulation that prevented Judd's Estate from claiming a refund on its inheritance tax return"; and, 2) "it [was] abundantly clear from the inheritance tax return why Judd's Estate claimed the refund."⁹⁸⁰

975. *Id.*

976. *Id.* at 1061.

977. *Id.* at 1061-62.

978. *Id.* at 1062.

979. *Id.*

980. *Id.* at 1063.