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Survey of Recent Developments in Indiana Law

The Board of Editors of the *Indiana Law Review* is pleased to publish its seventh annual Survey of Recent Developments in Indiana Law. This survey covers the period from June 1, 1978, through May 31, 1979. It combines a scholarly and practical approach in emphasizing recent developments in Indiana case and statutory law. Selected federal case and statutory developments are also included. No attempt has been made to include all developments arising during the survey period or to analyze exhaustively those developments that are included.

I. Foreword: Indiana Taxation

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Taxation in the state of Indiana is necessarily a broad and complex subject, encompassing not only the various taxes levied by the state, but also numerous rules governing collection, appeal, and other procedural matters. The purpose of this article is to provide a comprehensive overview of the history and operation of the Indiana Department of Revenue and the State Board of Commissioners, to explain the various taxes administered by each agency, and to survey recent legislative and judicial developments in the area.

A. Department of Revenue

1. *Introduction.*—The Indiana Department of Revenue was created in 1947 by an act of the legislature which consolidated the operations of the gross income tax division, inheritance tax division, motor fuel tax division, intangibles tax division and store licenses.¹

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The author wishes to thank William L. Tracy, Administrator of the Inheritance Tax Division, Indiana Department of Revenue, for his assistance in preparing the portion of this discussion dealing with inheritance tax.

¹Act of Feb. 28, 1947, ch. 10, § 2, 1947 Ind. Acts 49 (codified at IND. CODE §§ 6-8-3-2, -4 (1976)). Prior to the passage of this Act, the income tax laws of Indiana were

In 1951, the department assumed responsibility for the administration of private employment agencies.² In 1963, the Indiana General Assembly enacted the Sales and Use Tax Act³ and Adjusted Gross Income Tax Act,⁴ and transferred the cigarette tax division to the department from the Indiana Alcoholic Beverage Commission.⁵ Finally, in 1973, the department began collection of the alcoholic beverage tax.⁶

The governing body of the department is the revenue board, consisting of the governor, the auditor of state, and the treasurer of state.⁷ The actual day-to-day operations, however, are under the direction of the commissioner and his staff,⁸ who coordinate the various divisions of the department.

2. *Taxpayer Contact Division.*—This section's primary duty is maintenance of communication with the public. The section handles phone calls, directs taxpayers to proper offices, deals with complaints, mails departmental publications, sells departmental rules and regulations, and regulates the licensing of private employment agencies.⁹

3. *Audit Division.*—The audit division was created by the 1961 Indiana General Assembly.¹⁰ It is presently composed of thirteen district offices in Indiana and several smaller offices in large cities throughout the United States. This division not only audits books and records of individuals and businesses, but also assists taxpayers with tax return preparation and provides departmental publications.

4. *Collection Division.*—This division is responsible for collect-

administered by the gross income tax division, created by Act of Feb. 27, 1933, ch. 50, § 1, 1933 Ind. Acts 388 (current version at IND. CODE § 6-2-1-1(b) (Supp. 1979)).

²Act of Mar. 6, 1951, ch. 292, § 2, 1951 Ind. Acts 938 (codified at IND. CODE § 25-16-2-1 (1976)). Prior to the transfer of powers, employment agency licensing was administered by the Industrial Board of Indiana pursuant to Act of Feb. 24, 1927, ch. 25, § 1, 1927 Ind. Acts 74 (current version at IND. CODE § 25-16-1-1 (1976)).

³Ch. 30, § 1, 1963 Ind. Acts 60 (Spec. Sess.) (codified at IND. CODE §§ 6-2-1-37 to -52 (1976 & Supp. 1979)).

⁴Ch. 32, § 101, 1963 Ind. Acts 82 (Spec. Sess.) (codified at IND. CODE §§ 6-3-1-1 to -8-6 (1976 & Supp. 1979)).

⁵Act of Apr. 22, 1963, ch. 37, § 2, 1963 Ind. Acts 207 (Spec. Sess.) (codified at IND. CODE §§ 6-7-1-1, -5, -12, -17 (1976)).

⁶Act of Feb. 13, 1973, Pub. L. No. 55, § 1, 1973 Ind. Acts 290 (codified at IND. CODE §§ 7.1-1-2-1 to -5-11-16 (1976 & Supp. 1979)); Act of Apr. 24, 1973, Pub. L. No. 56, § 19, 1973 Ind. Acts 438 (codified at IND. CODE § 7.1-4-6-3 (1976)).

⁷IND. CODE § 6-8-3-3 (1976).

⁸*Id.* § 6-8-3-6.

⁹*Id.* § 25-16-2-1. Each employment agency is required to register and pay annually a \$50 license fee. A \$1000 bond is required with each original and renewal application. See REV. DEPT. EMPLOYMENT AGENCIES, RULES 1-5 (adopted Jan. 7, 1975) (filed Mar. 3, 1975).

¹⁰Act of Mar. 11, 1961, ch. 341, § 1, 1961 Ind. Acts 1047 (codified at IND. CODE §§ 6-8-4-1 to -4 (1976)).

ing tax liabilities assessed by other divisions. The procedure for collection of unpaid taxes is outlined below:

The first step is the issuance of a notice of tax due,¹¹ Form CS-80, which sets out the deficiency, provides an explanation of the deficiency, and notifies the taxpayer that he must either pay the amount due or file a protest within thirty days. The second step is the issuance of a notice of assessment,¹² Form CS-40, giving the taxpayer an additional ten days to pay the deficiency plus any updated interest. The third step is the issuance of a pre-warrant final notice, Form LCS9, wherein the taxpayer is given an additional ten days for payment to avoid issuance of a tax warrant. Although the first two steps are statutorily defined, this third step has been instituted by the department. It gives the taxpayer one last opportunity to pay the tax plus any accrued interest. The fourth step is the issuance of a warrant for collection of tax, which must be filed with the clerk of the circuit court in the county of the taxpayer's residence.¹³ The warrant then becomes a judgment lien on the taxpayer's real and personal property in that county.¹⁴ If the warrant has not been satisfied within sixty days, the fifth step is the issuance of an "alias tax warrant"¹⁵ to collection attorneys who seek to collect the tax. If the attorney is unsuccessful, a civil suit may be instituted and proceedings supplemental filed.¹⁶

¹¹The statutory authority for issuance of the notice is as follows: (1) Gross income tax, IND. CODE § 6-2-1-17(a) (1976); (2) sales and use tax, *id.* § 6-2-1-51(c); (3) adjusted gross income tax, *id.* § 6-3-6-2(a) (1976 & Supp. 1979); (4) county adjusted gross income tax, *id.* § 6-3.5-1-10; (5) supplemental corporate net income tax, *id.* § 6-3-8-5 (1976); (6) intangibles tax, *id.* § 6-5.1-8-11 (Supp. 1979); (7) occupation income tax, *id.* § 6-3.5-3-11.5; (8) bank tax, *id.* § 6-5-6-26(a) (1976).

¹²See note 11 *supra*.

¹³The statutory authority for issuance of the notice is as follows: (1) Gross income tax, IND. CODE § 6-2-1-18(a) (1976 & Supp. 1979); (2) sales and use tax, *id.* § 6-2-1-51(c) (1976); (3) adjusted gross income tax, *id.* § 6-3-6-3(a)(1) (1976 & Supp. 1979); (4) county adjusted gross income tax, *id.* § 6-3.5-1-10 (Supp. 1979); (5) supplemental corporate net income tax, *id.* § 6-3-8-5 (1976); (6) intangibles tax, *id.* § 6-5.1-9-5.5 (Supp. 1979); (7) occupation income tax, *id.* § 6-3.5-3-11.5; (8) bank tax, *id.* § 6-5-6-24(a) (1976 & Supp. 1979).

¹⁴See note 13 *supra*.

¹⁵See note 13 *supra*.

¹⁶Two other collection remedies are also possible. First, the department can request the attorney general's office to institute a receivership proceeding if the business is still in operation and its outstanding tax liabilities are over 120 days old. Receivership proceedings are authorized by the following statutes: (1) Gross income tax, IND. CODE § 6-2-1-18(d) (1976 & Supp. 1979); (2) sales and use tax, *id.* § 6-2-1-51(c) (1976); (3) adjusted gross income tax, *id.* § 6-3-6-3(d) (1976 & Supp. 1979); (4) county adjusted gross income tax, *id.* § 6-3.5-1-10; (5) supplemental corporate net income tax, *id.* § 6-3-8-5 (1976); (6) occupation income tax, *id.* § 6-3.5-3-11.5 (Supp. 1979); (7) bank tax, *id.* § 6-5-6-24(c) (1976 & Supp. 1979).

Second, the department can institute criminal proceedings against taxpayers who have either collected and not remitted sales taxes, *id.* § 6-2-1-49(a), or deducted and not remitted withholding taxes, *id.* § 6-3-4-8(g).

5. *Advisory Section.*—The advisory section is the legal branch of the department. Its functions include advising the commissioner, reviewing legal documents executed by the department, assisting in the preparation of rules and regulations, and conducting administrative hearings. Because the department is not governed by the Administrative Adjudication Act,¹⁷ the procedure used at all administrative hearings is outlined below:

a. *Review of protest.*—Upon receipt of a notice of tax due, the taxpayer has thirty days to file a protest to the assessment¹⁸ with the division originating the assessment. If an audit is involved, the protest and audit file are reviewed by the audit division's protest review board. With the exception of protests on penalties and responsible officer billings, all files initially go to the division administrators. If the administrator determines that complex legal issues are involved, the file is assigned to the advisory section.

b. *Notice of hearing.*—The office administering the protested audit will notify the taxpayer by mail of the date, time, and place of the administrative hearing.

c. *Representation.*—Any person may represent a taxpayer at an administrative conference. Due to statutory restrictions on releasing confidential information,¹⁹ the taxpayer's representative must have a power-of-attorney on file with the department.

d. *Conduct of hearing.*—Hearings before the department are conducted on an informal basis, without sworn testimony or adherence to the rules of evidence. The taxpayer can present oral testimony at the hearing and is invited to submit a written brief no later than five days before the hearing. If a taxpayer does not appear for the hearing, a decision is made on the basis of any evidence the department has on the matter.

e. *Results of hearing.*—The department's decision is called either a letter of findings or a report of disposition. The letter is

¹⁷*Id.* § 4-22-1-2 (1976) specifically exempts the Indiana Department of Revenue from the provisions of the Administrative Adjudication Act, *id.* §§ 4-22-1-1 to -30 (1976 & Supp. 1979).

¹⁸See note 11 *supra* and accompanying text. Although no statutory authority exists, in practice, if the taxpayer is able to show good cause, the date scheduled for the hearing can be changed. Requests for continuances, however, should be submitted in writing at least one week before the scheduled hearing.

¹⁹Confidentiality provisions for the various tax laws are as follows: (1) Gross income tax, IND. CODE § 6-2-1-29 (1976 & Supp. 1979); (2) sales and use tax, *id.* § 6-2-1-51(c) (1976); (3) adjusted gross income tax, *id.* § 6-3-6-8 (1976 & Supp. 1979); (4) county adjusted gross income, *id.* § 6-3.5-1-10; (5) supplemental corporate net income, *id.* § 6-3-8-5 (1976); (6) occupation income tax, *id.* § 6-3.5-3-11.5 (Supp. 1979); (7) intangibles tax, *id.* § 6-5.1-9-1; (8) bank tax, *id.* § 6-5-6-28 (1976 & Supp. 1979). In addition, the department is in the process of promulgating confidentiality rules and regulations for inheritance tax and alcoholic beverage tax.

issued by a division administrator and the report by the advisory section. Each outlines the findings of fact and conclusions of law on the case decided. In unique situations, a second hearing will be granted before payment is required. Normally, after receiving the decision the taxpayer must first pay the tax and then file a claim for refund if a dispute still exists. A hearing can be held on the refund claim. If the claim is denied, the taxpayer can institute suit in the local courts within ninety days of the department's denial.²⁰

6. *Cigarette Tax Division.*—The cigarette tax is administered by the controller's office. The current tax is \$.105 per pack or \$1.05 per carton.²¹ Distributors must purchase a registration certificate for each location.²²

The provisions of the Cigarette Tax Act do not apply to sales either to the United States government or to interstate shipments.²³ A persistent problem encountered by the department in the area of exemptions is the sale of cigarettes through post exchanges. The attorney general recently issued an opinion,²⁴ however, reaffirming that the federal law²⁵ intended to bar the states from imposing cigarette taxes on cigarettes sold through post exchanges and other official military installations to authorized purchasers. Because the reasons justifying the original creation of these post exchanges no longer exist, the author believes that new federal legislation is needed to correct this favorable treatment afforded to military personnel and their families.

The Cigarette Fair Trade Act²⁶ establishes minimum prices at which cigarettes may be sold by wholesalers and retailers. Although the provisions of this Act are rarely employed, the recent proliferation of certain incentive-type purchase programs instituted by cigarette manufacturers has caused the department to review the scope and application of the Act.

²⁰Procedures for filing refund claims and instituting suit may be found in the following code sections: (1) Gross income tax, *id.* § 6-2-1-19(a) (1976); (2) sales and use tax, *id.* § 6-2-1-51(c); (3) adjusted gross income tax, *id.* § 6-3-6-4(a); (4) county adjusted gross income tax, *id.* § 6-3.5-1-10 (1976 & Supp. 1979); (5) supplemental corporate net income tax, *id.* § 6-3-8-5 (1976); (6) occupation income tax, *id.* § 6-3.5-3-11.5 (Supp. 1979); (7) intangibles tax, *id.* § 6-5.1-7-1; (8) bank tax, *id.* § 6-5-6-27 (1976). The provisions for filing inheritance tax refunds are found at *id.* § 6-4.1-10-1 to -6 (1976).

²¹*Id.* § 6-7-1-12 (Supp. 1979).

²²The annual fee is \$500. *Id.* § 6-7-1-16 (1976). In addition, a \$1,000 bond must accompany each application. *Id.* The amount of the bond, however, needs to be increased because it is currently inadequate to protect the department in the event of violations by the distributors. The Code also provides wholesalers a 4% discount from the price of cigarette stamps or meter units. *Id.* § 6-7-1-17.

²³IND. ADMIN. R. & REGS. §§ (6-7-1-18)-3, to -4 (Burns 1976).

²⁴[1978] IND. ATTY. GEN. ANN. REP. 37.

²⁵4 U.S.C. § 107 (1976).

²⁶IND. CODE § 24-3-2-1 (1976 & Supp. 1979).

The 1979 session of the Indiana General Assembly enacted a new provision concerning the recharging of metered, cigarette-tax stamping machines,²⁷ requiring approval of at least one financial institution in each county to recharge the machines, if at least one such institution applies and meets the bonding requirements. This legislation was prompted by distributors desiring more convenient locations for the recharging of tax stamping machines.

7. *Alcoholic Beverage Tax.*—The alcoholic beverage tax is also administered by the controller's office. The department's function is to insure that the necessary reports are filed and the tax paid by duly licensed breweries, wholesalers, and distributors.²⁸ Licensing and enforcement are duties of the Indiana Alcoholic Beverage Commission.²⁹

The legislature enacted a new refund provision for Indiana brewers this year, entitling them to a refund of one-half of the beer excise tax paid on the first 100,000 barrels produced and distributed in Indiana in a calendar year.³⁰

8. *Motor Fuel Tax Division.*—The motor fuel tax division is charged with the administration and collection of six separate tax laws: motor fuel tax on gasoline,³¹ fuel use tax on fuel other than

²⁷*Id.* § 6-7-1-15.1 (Supp. 1979).

²⁸*Id.* § 7.1-4-6-1 (1976). Taxpayers are required to make payments of the tax by the 20th day of each month and are given a 1½% discount for timely payment and accurate reporting. *Id.* §§ 7.1-4-6-3.5, -4. The Code also provides exemptions for sales delivered out-of-state and for religious use. *Id.* §§ 7.1-4-3-5, -4-6.

²⁹*Id.* §§ 7.1-2-3-1 to -31 (1976 & Supp. 1979).

³⁰*Id.* § 7.1-4-2-8.1 (Supp. 1979). The department is currently promulgating regulations to implement this new refund provision. Authority for promulgation of these rules and regulations is found in *id.* §§ 7.1-4-6-3.6, -2-8.1 (1976 & Supp. 1979). As previously mentioned, the department is also promulgating rules and regulations concerning the confidentiality of alcoholic beverage tax information. *See* note 19 *supra*. The department also promulgated regulations in August 1977, concerning the imposition of a 10% penalty for late remittance and a penalty equal to the unpaid tax if no remittance is made within 10 days of notification of the amount of tax and penalty due. IND. ADMIN. R. & REGS. §§ (7.1-4-6-2)-1 to -3 (Burns' Supp. 1978). IND. CODE § 7.1-4-6-2.1 (Supp. 1979) authorizes the promulgation of the regulations concerning imposition of the penalties.

³¹IND. CODE §§ 6-6-1.1-101 to -1313 (Supp. 1979). *See* note 36 *infra* and accompanying text. The motor fuel tax is imposed at the rate of eight cents per gallon on distributors who first receive the gasoline in the state by import, by blending with other products, or by withdrawal from a refinery or terminal. *Id.* § 6-6-1.1-201. Reports are required to be filed by the 20th day of each month. *Id.* § 6-6-1.1-501. Remittances by the distributors are computed on invoiced gallons. *Id.* A 2% allowance, however, is given the distributor to cover evaporation, shrinkage, losses, and expenses incurred in collection of the tax. *Id.* § 6-6-1.1-705. The tax paid by the distributor is in all cases passed on to the ultimate consumer. *Id.* § 6-6-1.1-201.

Certain gasoline sales are exempt, including sales to another state, territory, foreign country, or to the United States government; sales to post exchanges or

gasoline,³² motor carrier fuel use tax,³³ oil inspection fee,³⁴ petroleum severance tax,³⁵ and marine fuel tax.³⁶

This year the legislature adopted a new codification of the Motor Fuel Tax and Marine Fuel Tax Acts.³⁷ These Acts are the first of a series of codifications of all motor fuel tax laws aimed at improving the organization and clarity of the existing statutes.

A companion bill corrected deficiencies in the original codification. First, the statute of limitations was changed from four to three years in actions involving illegal collection or assessment of the affected taxes,³⁸ thus insuring uniformity of the statute of limitation provisions in the various tax laws. Second, motor fuel tax monies collected are treated as a trust fund for the benefit of the state, and personal liability is imposed for tax, penalty, and interest, upon persons under a duty to collect the tax.³⁹ Third, a person receiving fuel need not be licensed if he pays the tax directly to his supplier.⁴⁰

federal reservations in Indiana; destroyed or stolen gasoline; and sales to a licensed distributor who uses gasoline for any purpose not involving propulsion of motor vehicles on highways. *Id.* § 6-6-1-4.

A major tax break, primarily benefiting farmers, is the credit for tax paid on gasoline used in commercial vehicles that do not use the highway. Purchasers of gasoline for this purpose may claim a credit against either income or corporate tax liability for the tax paid or he may claim a refund by filing with the motor fuel tax division within six months after purchase. *Id.* §§ 6-6-1.1-903, -904(a).

³²IND. CODE §§ 6-6-2-1 to -16 (1976 & Supp. 1979). The fuel use tax is imposed at the rate of eight cents per gallon on diesel fuel, home heating oils, LP gas and other nongasoline fuels used to drive vehicles on public highways. *Id.* § 6-6-2-4. The fuel becomes taxable when it is placed in the tank of the motor vehicles. Reports are filed monthly with a 2% allowance afforded dealers only to cover costs of collecting and remitting the tax. *Id.* § 6-6-2-6 (1976).

³³*Id.* § 6-6-4-1 to -21 (1976 & Supp. 1979). The road tax section of the motor fuel tax division administers the eight cents per gallon tax on motor fuel consumed by motor carriers. *Id.* § 6-6-4-3 (1976). The tax is levied on the amount of fuel consumed by the motor carrier in his Indiana operations with a credit allowed for tax paid on fuel purchases in Indiana. *Id.* § 6-6-4-4. Reports are made on a quarterly basis by all carriers except those who annually certify that they purchase substantially all of their fuel in Indiana. *Id.* § 6-6-4-6.

³⁴*Id.* § 16-6-11-9 (1976 & Supp. 1979). This law is intended to insure the quality of petroleum products. A fee of \$.0008 per gallon is charged to defray the costs of inspecting gasoline and kerosene at the division's laboratory. *Id.*

³⁵*Id.* §§ 6-8-1-1 to -27. The tax is imposed at the rate of 1% of the value of crude petroleum products extracted in Indiana and paid by the owners and producers of such products. *Id.* § 6-8-1-8 (1976). Monthly reports must list the number of barrels of crude oil or thousand cubic feet of gas severed from the ground. IND. ADMIN. R. & REGS. §§ (6-8-1-12)-2 to -3 (Burns 1976).

³⁶IND. CODE §§ 6-6-1.1-101 to -1313 (Supp. 1979). See note 31 *supra* and accompanying text. The marine fuel tax is imposed at the rate of eight cents per gallon on marinas and boat liveries on Indiana's lakes. IND. CODE § 6-6-1.1-201.

³⁷IND. CODE §§ 6-6-1.1-101 to -1313 (Supp. 1979).

³⁸*Id.* § 6-6-1.1-1206.

³⁹*Id.* § 6-6-1.1-801.

⁴⁰*Id.* § 6-6-1.1-401.

Fourth, an additional ground for cancellation of a distributor's license is his failure to distribute 500,000 gallons during a twelve-month period.⁴¹

In addition to the above amendments, certain changes recommended by the department were also adopted. The interest rate on unpaid taxes was increased to eight percent per annum, effective January 1, 1980.⁴² The change, again, reflects the desire for uniform procedures among the various taxing statutes. An amendment was adopted offsetting the strict forfeiture rules which came into operation if an altered invoice was submitted with the claim⁴³ and allowing approval of the claim if it is determined that the change or alteration was not made to improperly obtain a refund.⁴⁴ This provision gives the administrator wide latitude in determining the existence of intentional alteration.

Numerous changes were also made this year to the fuel use tax, motor carrier fuel use tax, and oil inspection fee laws. Definitions have been expanded for the terms "fuel dealer"⁴⁵ and "fuel oil distributor."⁴⁶ Fuel use tax monies collected are to be treated as trust funds of the state, thereby creating the possibility of criminal prosecutions of special fuel use dealers who fail to remit the amounts collected.⁴⁷ Effective January 1, 1980, the interest rate on unpaid fuel use tax was increased to eight percent per annum to conform with other tax laws,⁴⁸ and provisions were made for a three-year statute of limitations and the use of tax warrants.⁴⁹ The new law also allows the department to forgive penalty and interest when tax returns are filed less than ten days after the due date.⁵⁰

9. *Inheritance Tax Division.*—The Indiana inheritance tax is not a tax on the property itself, but on the transferee's right to succeed thereto.⁵¹ The tax is imposed at progressive rates upon lineal and collateral relatives as well as strangers in blood.⁵² Indiana also imposes an estate tax to take full advantage of the credit provided by the federal estate tax law for death taxes paid to the states.⁵³

⁴¹*Id.* § 6-6-1.1-415.

⁴²*Id.* § 6-6-1.1-1301.

⁴³*Id.* § 6-6-1.1-1305.

⁴⁴*Id.*

⁴⁵*Id.* § 6-6-2-2(8). The term now includes one who sells fuel to a user. *Id.*

⁴⁶*Id.* § 6-6-2-2(11). One can be a fuel oil distributor if he sells and delivers heating fuel, LP gas, or propane. *Id.*

⁴⁷*Id.* § 6-6-2-4.

⁴⁸*Id.* §§ 6-6-2-9, -4-20.

⁴⁹*Id.* § 6-6-2-10(b)-(c).

⁵⁰*Id.* § 6-6-2-10(a).

⁵¹*Armstrong v. State*, 72 Ind. App. 303, 120 N.E. 717 (1918).

⁵² IND. CODE § 6-4.1-5-1 (1976 & Supp. 1979).

⁵³*Id.* § 6-4.1-11-1 (1976).

The inheritance tax applies to a property interest transfer by a resident of this state of real and tangible personal property located within the state, and of intangible personal property regardless of where it is located.⁵⁴ The tax also applies to a property interest transfer by a nonresident decedent of all real and tangible personal property within the jurisdiction of this state.⁵⁵ The transfer of intangible personal property interests of a nonresident decedent is exempt if reciprocity exists between Indiana and the state of which the decedent died a resident.⁵⁶ Certain deductions are also allowed in determining the value to each transferee of the taxable transfer.⁵⁷

The Indiana inheritance tax is not self-assessing. For resident decedents, the tax is determined by the court with probate jurisdiction of the county in which the decedent was domiciled at the time of his death.⁵⁸ For nonresident decedents, the tax is determined by the Indiana Department of Revenue.⁵⁹

If a federal estate tax return is required, a copy of the final determination of the federal estate tax must be filed with the Indiana Department of Revenue within thirty days after it is received.⁶⁰

The inheritance tax for estates of resident decedents is paid to the county treasurer of the county in which the decedent died a resident.⁶¹ The inheritance tax for nonresident decedents' estates and the estate tax for both resident and nonresident estates, is paid directly to the Indiana Department of Revenue.⁶²

If the inheritance tax is paid within one year of the decedent's death, a discount of five percent of the tax determined is allowed.⁶³

⁵⁴*Id.* § 6-4.1-2-2.

⁵⁵*Id.* § 6-4.1-2-3 (Supp. 1979).

⁵⁶*Id.* § 6-4.1-3-5 (1976). There is no tax on the intangible personal property of nonresident decedents dying after June 30, 1979. *Id.* § 6-4.1-2-3.

Other types of transfers are also exempt: a transfer for public, charitable, and religious uses; a transfer of life insurance proceeds payable to a named beneficiary other than the estate of the decedent; a transfer of death benefits that qualify under I.R.C. § 2039; a transfer of entireties-held real estate; and transfers up to the total amount of the personal exemption allowed each transferee. *Id.* §§ 6-4.1-3-1 to -15 (1976 & Supp. 1979).

⁵⁷*Id.* §§ 6-4.1-3-1 to -15 (1976 & Supp. 1979).

⁵⁸*Id.* § 6-4.1-12-1. For resident decedents, the inheritance tax return, Form IH-6, is required to be filed with the court within 12 months after the decedent's death. *Id.* § 6-4.1-4-1.

⁵⁹*Id.* § 6-4.1-5-14 (1976). For nonresident decedents, the return (Form 12) must be filed with the Indiana Department of Revenue within six months after the date of death. *Id.* § 6-4.1-4-7 (1976 & Supp. 1979).

⁶⁰*Id.* § 6-4.1-4-8 (1976).

⁶¹*Id.* § 6-4.1-9-5 (1976 & Supp. 1979).

⁶²*Id.* §§ 6-4.1-9-4, -11-6 (1976).

⁶³*Id.* § 6-4.1-9-2.

If the tax is paid after one year, but before eighteen months from the date of death, the full amount of tax determined is payable, without interest; after eighteen months, interest is charged at the rate of ten percent per annum from the date of death, unless the court reduces the interest to six percent per annum upon a showing by the estate of unavoidable delay.⁶⁴ If additional inheritance tax is determined to be due because of a final federal estate tax determination, however, interest is imposed at the rate of six percent per annum from thirty days after such final federal determination is received.⁶⁵

A claim for refund may only be made to the Indiana Department of Revenue, which is authorized to order the refund and repayment, without interest, of all taxes erroneously or illegally collected, even though such taxes have been paid voluntarily and without protest.⁶⁶ Claims for refunds must be filed within three years from the date of payment or within one year from the date the tax is finally determined by the highest court hearing the matter, whichever is later.⁶⁷ Should such a refund claim be denied, the applicant may appeal the denial by filing a complaint in the appropriate court within ninety days of the date of such denial, naming the department as the defendant.⁶⁸

Before the personal property (except for life insurance proceeds) of a resident decedent is transferred, the person who has control over the property must obtain the written consent (Form IH-14) of the assessor of the county in which the decedent died a resident.⁶⁹ Consent will be given only to the extent that the transfer will not jeopardize the collection of the inheritance tax.⁷⁰ In addition, any person who has possession of, or control over, a resident decedent's safe deposit box must give reasonable notice of the time and place of such opening to the county assessor of the county in which the

⁶⁴*Id.* § 6-4.1-9-1.

⁶⁵*Id.* § 6-4.1-9-1.5.

⁶⁶*Id.* § 6-4.1-10-1, -3.

⁶⁷*Id.* § 6-4.1-10-1.

⁶⁸*Id.* § 6-4.1-10-4. A person may obtain a redetermination of the inheritance tax under any one or more of the following statutes of limitations: For any matter, within 90 days of the date of the original determination (for both resident and nonresident decedents); for a reappraisal of the decedent's property, within one year of the date of the original order, or two years if the original appraisal was fraudulently or erroneously made (for resident decedents); for a change in the fair market value of the assets of the decedent's estate due to the final determination of federal estate tax, within 30 days after a copy of such final determination is filed with the Indiana Department of Revenue (for both resident and nonresident decedents). *Id.* §§ 6-4.1-7-1 to -6 (1976 & Supp. 1979).

⁶⁹*Id.* § 6-4.1-8-4 (Supp. 1979).

⁷⁰*Id.*

decedent died a resident, and the assessor must be given the opportunity to inventory the complete contents of the box.⁷¹

a. *Statutory developments.*—Major changes were made this year in the inheritance tax code. All transfers to a surviving spouse are now exempt from the Indiana inheritance tax,⁷² but not the Indiana estate (pick-up) tax. The Indiana estate tax is not a tax on property or on the right to transfer property, but merely a device by virtue of provisions found in the Internal Revenue Code⁷³ and the Indiana Code⁷⁴ whereby death taxes bound for the United States Treasury are detoured to the Indiana Treasury. For an estate in which property is located entirely within Indiana, the death taxes will not exceed the total determined under the Internal Revenue Code, but if the decedent dies with property in more than one state, the total state death taxes could exceed the maximum credit allowable under the Internal Revenue Code.⁷⁵

Consent-to-transfer provisions of the law were not amended concerning a transfer to a spouse. However, because a spouse could not be liable for the payment of inheritance tax in any event, it will be the policy of the department that only the *proportionate share* passing to a surviving spouse may be transferred at the same time an application for consent to transfer is made on accounts that are held jointly with rights of survivorship. In other words, if the account is held jointly between a husband and wife and a third party, only one-half of the account could be transferred at the time the application for consent to transfer is made. Also, because property in the decedent's safe deposit box could pass to someone other than the surviving spouse, the notice requirement and the opportunity to inventory a decedent's safe deposit box have not been changed.⁷⁶

A minor child's personal exemption was increased from \$5,000 to \$10,000, and the definition of a minor child was changed from one under the age of eighteen to one under the age of twenty-one at the time of the decedent's death.⁷⁷ The personal exemption for all other Class A beneficiaries remains at \$2,000.⁷⁸

An orphan's exemption, similar to that provided by section 2057 of the Internal Revenue Code, is provided to a child of the decedent who is less than twenty-years old on the date of death and who has

⁷¹*Id.* § 6-4.1-8-5 (1976 & Supp. 1979).

⁷²*Id.* § 6-4.1-3-7 (Supp. 1979).

⁷³I.R.C. § 2011.

⁷⁴IND. CODE § 6-4.1-11-1 (1976).

⁷⁵*State v. Purdue Nat'l Bank*, 355 N.E.2d 414 (Ind. Ct. App. 1976) (construing IND. CODE § 6-4.1-37 (1971) (repealed 1976) (current version at *id.* § 6-4.1-11-2 (1976 & Supp. 1979))).

⁷⁶See note 71 *supra* and accompanying text.

⁷⁷IND. CODE § 6-4.1-3-9 (Supp. 1979).

⁷⁸*Id.* § 6-4.1-3-10 (1976 & Supp. 1979).

no known parent, provided that the decedent does not leave a surviving spouse.⁷⁹ The major differences between the Indiana provision and section 2057 of the Internal Revenue Code are: (1) the limitation in the case of a life estate or other terminable interest for federal estate tax purposes, and (2) the maximum age (twenty for federal estate tax purposes⁸⁰ and nineteen for Indiana inheritance tax purposes⁸¹). The age difference ensures that a twenty-year-old child will receive a \$10,000 personal exemption, because he may not receive both the orphan's exemption and the minor child's exemption.⁸²

The State of Indiana or an interested person will be allowed to petition the court for a redetermination of tax due to a change in deductions or in the fair market value of the assets of a decedent's estate as a result of the final determination of federal estate tax.⁸³

A person who believes that more inheritance tax is due than that originally determined by the court may pay the additional tax, and any interest due thereon, to the county treasurer without obtaining an amended order.⁸⁴ This provision should speed the final disposition of the payment and clearance of any additional taxes agreed to be due by the estate and the Indiana Department of Revenue.

A new section states that any change in the Indiana Department of Revenue's interpretation of any statute that could increase a person's inheritance tax liability must be properly promulgated in a rule before it will take effect.⁸⁵ What effect this new provision will have on the inheritance tax determination in any given estate is not known. Its application is open to more than one interpretation, however, and it may be unconstitutional as presently written. Because no interpretation of the department has the force of law until it is promulgated in a rule or regulation,⁸⁶ the need for this provision is difficult to understand. Both parties have their judicial remedies if they cannot agree on the interpretation. This provision, if upheld, could have the effect of denying a hearing on the merits of the issue because of a procedural violation.

⁷⁹*Id.* § 6-4.1-3-8.5 (Supp. 1979). The amount of the exemption is determined by multiplying \$5,000 by the quantity of 21 minus the child's age at the time of the parent's death: \$5,000 x (21 - child's age).

⁸⁰I.R.C. § 2057(e)(1).

⁸¹IND. CODE § 6-4.1-3-8.5 (Supp. 1979).

⁸²*Id.* § 6-4.1-3-9.

⁸³*Id.* § 6-4.1-7-6(b) (1976 & Supp. 1979). The petition must still be filed within 30 days after a copy of the final determination of federal estate tax is filed with the Indiana Department of Revenue. *Id.*

⁸⁴*Id.* § 6-4.1-9-5(a) (Supp. 1979).

⁸⁵*Id.* § 6-4.1-12-6.5.

⁸⁶*Id.* § 6-8-3-8 (1976).

The personal representative of a decedent's estate will no longer be required to attach the countersigned inheritance tax receipt to his final report.⁸⁷ This provision does not relieve the personal representative of his personal liability for payment of the tax,⁸⁸ and he should not petition the court for a decree of final distribution of the estate if the estate is not in a condition to be closed.⁸⁹ If the federal and state death taxes have not been finally determined, the estate is not in a condition to be closed.⁹⁰ Also, a decree of discharge of the personal representative may be limited under the appropriate circumstances.⁹¹

The issue of whether a personal representative who is discharged by the court from further duties as a personal representative is also relieved of any further liability for payment of the Indiana inheritance taxes was settled long ago by the Indiana Supreme Court in *Nation v. Green*.⁹² A personal representative acts as an agent for the state in making the collection and is personally responsible for collection of the tax.⁹³

Intangible personal property of a nonresident decedent will be exempt from the Indiana inheritance tax and the Indiana estate (pick-up) tax.⁹⁴ This provision will apply to nonresidents of this state and this country, whether or not they were previously a resident of Indiana.

Under prior law, Indiana exempted from tax the intangible personal property of decedents who were residents of a state with which Indiana had a reciprocal agreement under the Indiana Reciprocal Agreement Statute.⁹⁵ In *State v. Davies*,⁹⁶ the court of appeals held that the reciprocal agreement statute applied to both the inheritance tax and the Indiana estate tax prior to the enactment of Indiana Code section 6-4.1-3-5,⁹⁷ which specifically allows an exemption only from inheritance tax.⁹⁸ In 1979, the legislature exempted the intangible personal property of a nonresident from Indiana estate tax,⁹⁹ thus eliminating double taxation on the estates of

⁸⁷*Id.* § 6-4.1-9-13 (1976) (repealed 1979).

⁸⁸*Id.* § 6-4.1-8-1 (1976).

⁸⁹*Id.* § 29-1-17-2(a).

⁹⁰*Id.* § 29-1-17-2(b).

⁹¹*Id.* §§ 29-1-17-13, -14, -16.

⁹²188 Ind. 697, 123 N.E. 163 (1919).

⁹³*Id.* at 703, 123 N.E.2d at 165.

⁹⁴IND. CODE §§ 6-4.1-2-3, -11-2(c) (Supp. 1979).

⁹⁵*Id.* § 6-4-1-26 (1971) (repealed 1976) (current version at *id.* § 6-4.1-3-5 (1976)).

⁹⁶379 N.E.2d 501 (Ind. Ct. App. 1978). For discussion of another aspect of this case, see notes 103-07 *supra* and accompanying text.

⁹⁷IND. CODE § 6-4.1-3-5 (1976).

⁹⁸379 N.E.2d at 506-07.

⁹⁹IND. CODE § 6-4.1-2-3 (Supp. 1979).

residents of states with which Indiana does not enjoy reciprocity. If the decision in *State v. Davies* stands, the following situation will exist: For decedent's dying prior to February 18, 1976, the exemption applies to both the inheritance and estate taxes; from February 18, 1976, through June 30, 1979, the exemption applies only to the inheritance taxes; after July 1, 1979, the exemption again applies to both taxes.

The deductions allowed against the value of property interests transferred by a resident decedent under his will or under the laws of intestate succession¹⁰⁰ are now also allowed against the value of property interests transferred under a trust.¹⁰¹ In estates consisting entirely of trust property, the issue arose as to whether a transfer by trust occurred by operation of law and, if not, what deductions were valid against the value of such property interests. This issue is now settled. The new provision was made retroactive to March 1, 1976,¹⁰² to cover those estates in which the issue first arose.

b. Judicial developments.—During the last year, three cases involving Indiana's inheritance and estate tax were decided. The decisions raised the questions of reciprocity, real estate held by the entirety, and contribution.

*State v. Davies*¹⁰³ involved a decedent who had died in Florida owning intangible personal property in Indiana. The court considered the jurisdiction of the probate court to allow a refund of Indiana estate tax paid by the nonresident decedent's estate. Resolution of this issue required an analysis of both the rehearing statute¹⁰⁴ and the refund statute.¹⁰⁵ The former allows taxpayers the opportunity to contest the tax determination of the appraisal and assessment; the latter requires the payment of tax before a suit for refund can be instituted.¹⁰⁶ The court held that these two statutes created alternative remedies; thus, the estate's failure to protest the assessment did not bar a subsequent refund suit after the tax had been paid.¹⁰⁷

In *State v. Union Bank & Trust Co.*,¹⁰⁸ the decedent and her husband had transferred certain land owned by them as tenants by the entirety, reserving a life estate. The husband died in 1968 and no

¹⁰⁰*Id.* § 6-4.1-3-13 (1976 & Supp. 1979).

¹⁰¹*Id.* § 6-4.1-3-13(b) (Supp. 1979).

¹⁰²Act of Apr. 9, 1979, Pub. L. No. 75, § 16, 1979 Ind. Acts 319 (not codified).

¹⁰³379 N.E.2d 501 (Ind. Ct. App. 1978). For discussion of another aspect of this case, see notes 96-99 *supra* and accompanying text.

¹⁰⁴IND. CODE § 6-4-1-21 (repealed 1976) (current version at *id.* § 6-4.1-7-5 (1976)).

¹⁰⁵*Id.* § 6-4-1-17 (repealed 1976) (current version at *id.* §§ 6-4.1-10-1 to -3 (1976)).

¹⁰⁶379 N.E.2d at 503-04.

¹⁰⁷*Id.* at 505.

¹⁰⁸380 N.E.2d 1279 (Ind. Ct. App. 1978).

estate was opened. When the decedent died in 1973, the administrator reported only one-half of the value of the property, contending that the remainder passed to the grantee at her husband's death.¹⁰⁹ The State, on appeal from the denial of its petition for reappraisal, contended that the estate was liable for tax on the entire value of the property. In agreeing with this contention, the court quoted Inheritance Tax Regulation Two: "Whenever real estate which is held by the entireties is transferred, subject to joint and successive life estates in the grantors, without valuable and sufficient consideration in money or money's worth, such transfer will be taxed in the estate of the last grantor to die."¹¹⁰ When the husband died, he had no interest to pass to beneficiaries. Therefore, no taxable transfer occurred on the husband's death because he had no power of conveyance without his wife's consent.¹¹¹

*State v. George*¹¹² concerned jointly held property and the question of contribution. George, the sole heir and sister of the decedent, filed a contribution affidavit to support her claim that one-half the value of the real estate held in joint tenancy with the decedent was hers and therefore entitled to exclusion. The state contended that there was no contribution and that none could be shown since the property was originally owned solely by the decedent. The court of appeals agreed that the type of contribution envisioned by the exemption statute¹¹³ did not include household and farm hand services.¹¹⁴ Because contribution must be in money or money's worth, services performed by family members did not qualify.¹¹⁵ The court, however, remanded the case to afford George the opportunity to show proof of ownership of jointly held personal property.¹¹⁶

10. *Sales Tax Division.*—The sales tax division is charged with the administration of the sales¹¹⁷ and use tax.¹¹⁸

¹⁰⁹*Id.* at 1280.

¹¹⁰*Id.* at 1281 (quoting IND. REV. BD., IND. INHERITANCE TAX STATUTES, REGS., CIRCULARS & PROC. § 8, No. 2 (1976)).

¹¹¹380 N.E.2d at 1280.

¹¹²388 N.E.2d 600 (Ind. Ct. App. 1979).

¹¹³IND. CODE § 6-4-1-1 (1971) (repealed 1976) (current version at *id.* § 6-4.1-2-5 (1976)).

¹¹⁴388 N.E.2d at 602.

¹¹⁵*Id.*

¹¹⁶*Id.*

¹¹⁷IND. CODE § 6-2-1-37 (1976). A sales tax return must be filed within 30 days after the close of the month. Quarterly and annual filings can be authorized if average monthly tax liabilities of the merchant fall below certain stated amounts. A return must be filed even if no sales are made during the reporting period, to prevent the business from receiving delinquency notices. When the merchant ceases his business, he is required to notify the department in writing and file all tax returns within 30 days of closing. For the requirements for filing a sales tax return, see *id.* § 6-2-1-51(a) (1976).

¹¹⁸*Id.* § 6-2-1-41.

a. *In general.*—The gross retail tax is imposed at the rate of four percent on transactions by retail merchants which constitute selling at retail.¹¹⁹ The seller is required to collect the tax on his gross receipts, less allowable exemptions, and remit the tax to the department.¹²⁰ In addition, governmental entities are required to collect and remit tax on receipts derived from the performance of proprietary activities.¹²¹ Special provisions are made for contractors, with tax treatment dependent on whether jobs are performed on a lump-sum or time-and-materials basis.¹²²

The use tax is imposed at the rate of four percent on the storage, use, or consumption in Indiana of tangible personal property on which the sales tax has not been paid.¹²³ The tax also applies to tangible personal property originally purchased for an exempt purpose and subsequently put to a taxable use.¹²⁴ The tax is normally paid directly to the Indiana Department of Revenue.¹²⁵

Numerous transactions are exempt from sales and use tax.¹²⁶ Of all the exemptions, the most difficult to administer are those per-

¹¹⁹*Id.* § 6-2-1-37.

¹²⁰The major transactions to which the tax applies are: renting or leasing hotel and motel accommodations, auditoriums, banquet halls, tents, and camper parks and other rooms or accommodations for periods less than 30 consecutive days, *id.* § 6-2-1-38(b) (1976 & Supp. 1979); the sale of electricity, water or gas, *id.* § 6-2-1-38(c); charges for intrastate telephone and telegraph services, *id.* § 6-2-1-38(d), (e); sales of tangible personal property to the consumer, *id.* § 6-2-1-38(a); the rental or leasing of tangible personal property, *id.* § 6-2-1-38(1); local and intrastate cable television service, *id.* § 6-2-1-38(n); auction sales, *id.* § 6-2-1-38(o); and isolated or occasional sales of motor vehicles and aircraft, *id.* § 6-2-1-38(m), (q).

¹²¹*Id.* § 6-2-1-38(g).

¹²²IND. ADMIN. R. & REGS. § (6-2-1-38)-19 (Burns 1976). If contractors perform jobs on a lump-sum basis, they are required to pay sales or use tax on the cost of materials they purchase. If jobs are performed on a time-and-materials basis, the contractor must collect sales tax on the contract price of materials unless he receives an exemption certificate or direct pay permit. *Id.*

¹²³IND. CODE § 6-2-1-41 (1976).

¹²⁴*Id.* § 6-2-1-48.

¹²⁵*Id.* § 6-2-1-51(a). Registered retail merchants remit any use tax due on the sales tax return, Form ST-103A. A person who is not registered with the department has the option of reporting the tax on his personal income tax return or filing a use tax return, Form ST-115.

An out-of-state merchant may be authorized by the department to collect the use tax on tangible personal property delivered into Indiana. *Id.* § 6-2-1-47(b) (1976 & Supp. 1979). If this method is employed, the Indiana customer pays the tax to the merchant rather than remitting it directly to the department. To prevent problems of proof in the event of a subsequent audit, the purchaser should require the out-of-state merchant to furnish him with a receipt showing that the use tax has been paid.

¹²⁶Sales of tangible personal property to be directly used in direct production, *id.* § 6-2-1-39(b)(1), (6), (10) (1976 & Supp. 1979) (applying to purchases of machinery, tools, and equipment to be used in manufacture, fabrication, assembly, extraction, mining, processing, refining, and agriculture); sales of tangible personal property for direct use

taining to sales for direct use in direct production.¹²⁷ The various exemptions containing this language have been the source of continuing litigation¹²⁸ and have prompted unsuccessful legislative attempts to delete the double directness requirement.

The Indiana Court of Appeals recently resolved the issue of whether equipment used to transmit television signals is exempt from sales tax.¹²⁹ The taxpayer was an Indiana corporation engaged in the cable television business, which entails processing electronic signals to produce viewable signals in home television sets. The taxpayer contended that television signals were tangible personal property. Under this theory, the materials and equipment used for transmitting and gathering the signals would be exempt from sales tax within the meaning of Indiana Code section 6-2-1-39(b)(6),¹³⁰ which exempts materials, tools, and equipment directly used in the direct production of tangible personal property. The State contended that cable television was a service, thereby precluding application of the exemption statute.

The court of appeals found that the statute specifically labeled cable television as a service.¹³¹ Because a service is not tangible personal property, the exemption statute was not applicable. In reaching this conclusion, the court restated the familiar principle

in public transportation, *id.* § 6-2-1-39(b)(4); sales of newspapers, *id.* § 6-2-1-39(b)(3); sales to the state and its political subdivisions for use in governmental activities, *id.* § 6-2-1-39(b)(5); certain sales to not-for-profit organizations, *id.* § 6-2-1-39(b)(8); purchases of tangible personal property for resale, *id.* § 6-2-1-39(b)(9); sales of motor vehicles, trailers, and aircraft in Indiana for immediate transportation and licensing in another state, *id.* § 6-2-1-39(b)(12), (29); certain prescription drugs, *id.* § 6-2-1-39(b)(13); sales to electric, water and gas utilities for direct use in direct production, *id.* § 6-2-1-39(b)(16) to (19); sales of food for human home consumption, *id.* § 6-2-1-39(b)(20); certain sales of medical devices and equipment, *id.* § 6-2-1-39(b)(21), (22), (23), (28); sales of eyeglasses and contact lenses, *id.* § 6-2-1-39(b)(24); sales to municipally-owned public utilities, *id.* § 6-2-1-39(b)(27).

Certain gross income tax exemptions are applicable to the sales and use tax. *Id.* § 6-2-1-7(a) (income derived from interstate commerce); *id.* § 6-2-1-7(b) (taxes collected by the taxpayer as an agent for Indiana or the United States); *id.* § 6-2-1-7(c) (sales to the United States government which the department is prohibited from taxing by the United States Constitution); *id.* § 6-2-1-7(m) (retailers' excise taxes); *id.* § 6-2-1-7(o) (encumbrances on tangible personal property received in a reciprocal exchange for like-kind property).

¹²⁷*E.g.*, *id.* § 6-2-1-39(b)(1), (6), (10).

¹²⁸*See* Indiana Dep't of State Revenue v. Mumma Bros. Drilling Co., 364 N.E.2d 167 (Ind. Ct. App. 1978); Indiana Dep't of State Revenue v. Indianapolis Transit Sys., Inc., 356 N.E.2d 1204 (Ind. Ct. App. 1976); Indiana Dep't of State Revenue v. American Dairy, Inc., 338 N.E.2d 698 (Ind. Ct. App. 1975); Indiana Dep't of State Revenue v. RCA Corp., 160 Ind. App. 55, 310 N.E.2d 96 (1974).

¹²⁹Indiana Dep't of State Revenue v. Cable Brazil, Inc., 380 N.E.2d 555 (Ind. Ct. App. 1978).

¹³⁰IND. CODE § 6-2-1-39(b)(6) (Supp. 1979). *See* note 126 *supra*.

¹³¹380 N.E.2d at 559.

that exemption statutes are strictly construed against the party claiming the exemption.¹³²

To be relieved from collection of the sales tax, the retail merchant must obtain an exemption certificate from the purchaser containing the name and address of the purchaser, his registered retail merchant certificate number, and the nature of the property purchased.¹³³ Blanket certificates can be used if the same type of property is sold to a particular purchaser on a regular basis.¹³⁴

The use of an exemption certificate by a purchaser should not be confused with a direct pay permit.¹³⁵ The exemption certificate indicates that the purchase is for an exempt use and therefore not subject to tax. The direct pay permit, by contrast, merely indicates that the merchant need not collect the tax because the holder of the permit will remit the tax directly to the department. The fine distinction between these two documents is often confused.

A registered retail merchant certificate is required of all individuals, firms, partnerships, corporations and associations selling at retail, renting or leasing tangible personal property in Indiana.¹³⁶ A retail merchant selling at retail is one who sells tangible personal property for use or consumption by an ultimate consumer in the ordinary course of a regularly conducted business activity.¹³⁷ Merchants selling only exempt food are not required to register unless they also sell food as a street vendor or through a vending machine.¹³⁸

b. Statutory developments.—This year's sales and use tax amendments reflected the Indiana General Assembly's inclination to

¹³²*Id.* See *Indiana Dep't of State Revenue v. Indianapolis Transit Sys., Inc.*, 356 N.E.2d 1024 (Ind. Ct. App. 1976); *Indiana Dep't of State Revenue v. American Dairy*, 338 N.E.2d 698 (Ind. Ct. App. 1975); *Madding v. Indiana Dep't of State Revenue*, 149 Ind. App. 74, 270 N.E.2d 771 (1971); *Gross Income Tax Div. v. National Bank & Trust Co.*, 226 Ind. 293, 79 N.E.2d 651 (1948).

¹³³IND. CODE §§ 6-2-1-40(c), -47(a) (1976 & Supp. 1979).

¹³⁴*Id.* These requirements do not apply to sales of exempt food, prescription drugs, blood or plasma, oxygen or insulin for medical use, newspapers, or to artificial limbs or orthopedic devices prescribed by a doctor. The relief from use of an exemption certificate for these transactions is not mandated by the Code but developed through department practice. Adequate records, however, should be maintained by the seller of the amount of these sales. Exemption certificates are also not required for sales made to other states, but bills of lading showing the delivery point should be kept by the seller.

¹³⁵The use of direct pay permits is authorized by *id.* § 6-2-1-52 (1976).

¹³⁶The certificate is obtained by filing an application with the Indiana Department of Revenue accompanied by a \$3.50 fee and must be renewed each year. The certificate number is to be used by the merchant in making exempt purchases and in his communications with the department. The requirements for registration are contained in *id.* § 6-2-1-40 (1976 & Supp. 1979).

¹³⁷*Id.* § 6-2-1-1(j).

¹³⁸See *id.* § 6-2-1-39(20)(xi)-(xii).

broaden the exemptions afforded under the Act. The legislature provided for a sales tax exemption on sales of gasohol,¹³⁹ which is described as a fuel with at least ten percent agriculturally derived ethyl alcohol and not more than ninety percent gasoline.¹⁴⁰ It is assumed that the purpose of this exemption is to promote the sale of this product, which is allegedly more efficient and cleaner burning than gasoline.

Retail merchants may no longer advertise gasoline at a price different from that required to be displayed on the pump.¹⁴¹ In the past, the advertised price often included the phrase, "plus sales tax," in such small lettering that a potential customer could be misled as to the actual price.

The sales tax does not apply to the rental of rooms, lodgings, or accommodations for more than thirty days.¹⁴² This exemption has been extended to all counties imposing capital improvement or innkeeper's taxes,¹⁴³ with the notable exception of Lake County.¹⁴⁴ If the original period of rental is more than thirty days, any additional periods extending the original period will be treated as a part of the period of more than thirty days.

Legislation this year afforded a partial exemption to sellers of mobile and modular homes, exempting from sales tax thirty-five percent of the gross income received from these sales.¹⁴⁵ The exemption applies to the expenditures of labor in the manufacture of these homes.¹⁴⁶ This statute creates many inequities in the law. First, the statute ignores the express wording of another statute¹⁴⁷ that items such as fabrication, manufacture and assembly are part of selling at retail for purposes of imposition of the tax. Second, the statute establishes a dangerous precedent, because all manufacturers may now request an exemption equal to the labor costs of items they produce. Finally, this sales tax benefit also gives sellers of these homes an indirect gross income tax break.¹⁴⁸ The statute, in essence, allows a labor and materials breakdown for purposes of computing the sales tax without a corresponding provision for the computation of the gross income tax. In summary, manufacturers in this industry will be receiving the best of both worlds.

¹³⁹*Id.* § 6-2-1-39(b)(29) (Supp. 1979).

¹⁴⁰*Id.*

¹⁴¹*Id.* § 6-2-1-37.5(b).

¹⁴²*Id.* § 6-2-1-38(b).

¹⁴³*Id.* §§ 6-9-1-5, -2.5-6, -3-4, -4-6, -5-6, -6-6, -7-6; *id.* §§ 18-4-17-11, -7-18-11.

¹⁴⁴*See id.* §§ 6-9-1-1 to -3-5; *id.* §§ 18-4-17-11, -7-18-11 (1976 & Supp. 1979) (Lake County does not fall within these parameters).

¹⁴⁵*Id.* § 6-2-1-39.2 (Supp. 1979).

¹⁴⁶*Id.*

¹⁴⁷*See id.* § 6-2-1-1(k).

¹⁴⁸*See id.* § 6-2-1-5 (1976).

The monetary problems of the elderly were considered in the passage of an energy assistance program.¹⁴⁹ Electric utilities and heating fuel providers are allowed a sales and use tax deduction for energy assistance extended to the elderly.¹⁵⁰

The use tax will no longer be imposed upon tangible personal property delivered into the state for the sole purpose of being processed, printed, fabricated or manufactured, and subsequently shipped out of state.¹⁵¹ This legislation will primarily affect businesses engaged in printing publications for out-of-state clients.

New statutory provisions concerning administrative matters were also enacted. First, the department was prohibited from issuing a sales or use tax permit to any taxpayer having outstanding tax warrants for gross income tax, sales tax, use tax, adjusted gross income tax, or county adjusted gross income tax.¹⁵² The registered retail merchant certificate, however, can be issued once the tax is paid or a satisfactory payment plan is established.¹⁵³ Second, the department was required to furnish the Indiana Bureau of Motor Vehicles with a list of outstanding tax warrants for the above mentioned taxes.¹⁵⁴ The bureau will then record the warrant as a lien on the taxpayer's title and list the State of Indiana as a lienholder. If the state is the only lienholder on the title, the commissioner of the Indiana Department of Revenue will be the custodian of the title and will be required to notify the owner of the department's receipt of the title.¹⁵⁵ Although this portion of the statute will serve a useful purpose, its administration will be difficult because of the determination of costs and because of the potential confidential nature of the information provided to the bureau.

11. Income Tax Division.—The income tax division is charged with the responsibility of collecting and administering the gross income tax,¹⁵⁶ adjusted gross income tax,¹⁵⁷ supplemental net income tax,¹⁵⁸ county adjusted gross income tax,¹⁵⁹ intangibles tax,¹⁶⁰ and occupation income tax.¹⁶¹

¹⁴⁹*Id.* §§ 4-3-10-1 to -18 (Supp. 1979).

¹⁵⁰*Id.* § 6-2-1-49(d).

¹⁵¹*Id.* § 6-2-1-42(e).

¹⁵²*Id.* § 6-8-3-17.

¹⁵³*Id.* § 6-8-3-17(c).

¹⁵⁴*Id.* § 6-8-3-17(a).

¹⁵⁵*Id.* § 6-8-3-17(e).

¹⁵⁶*Id.* §§ 6-2-1-1 to -2-3 (1976 & Supp. 1979).

¹⁵⁷*Id.* §§ 6-3-1-1 to -8-6.

¹⁵⁸*Id.* §§ 6-3-8-1 to -6 (1976).

¹⁵⁹*Id.* §§ 6-3-5-1-1 to -12 (1976 & Supp. 1979).

¹⁶⁰*Id.* §§ 6-5-1-1-1 to -9-6 (Supp. 1979).

¹⁶¹*Id.* §§ 6-3-5-3-1 to -13 (1976 & Supp. 1979). These administrative functions are performed by the individual income tax section, corporation income tax section, in-

a. *Gross income tax.*—The Gross Income Tax Act of 1933¹⁶² applied to both corporate and individual taxpayers. With the passage of the Adjusted Gross Income Tax Act in 1963,¹⁶³ individuals, partnerships, trusts, and estates were exempted from the tax. The gross income tax is now imposed only on non-Subchapter S corporate taxpayers¹⁶⁴ at two different rates.¹⁶⁵ The respective rates are decreasing at a slow percentage, with complete elimination of the tax scheduled for December 31, 2007.¹⁶⁶

The tax is imposed on a taxpayer's gross income with virtually no deductions. Certain receipts, however, are deemed nontaxable under restricted situations.¹⁶⁷ Each corporate taxpayer is also entitled to a deduction of \$1,000 per year from its taxable gross

tangibles tax section, fiduciary income tax section, not-for-profit section, and withholding tax section.

¹⁶²Ch. 50, § 1, 1933 Ind. Acts 338 (current version at IND. CODE §§ 6-2-1-1 to -36 (1976 & Supp. 1979)).

¹⁶³Ch. 32, § 101, 1963 Ind. Acts 82 (Spec. Sess.) (codified at IND. CODE §§ 6-3-1-1 to -8-6 (1976 & Supp. 1979)).

¹⁶⁴Returns, under the Code, must be filed by the 15th day of the 4th month following the close of the taxpayer's calendar or fiscal year. IND. CODE § 6-2-1-15(a) (Supp. 1979); IND. REV. BD., IND. GROSS INCOME TAX REG. 6-2-1-15(020) (effective Dec. 14, 1978) [hereinafter cited as GROSS INCOME REG.]. Not-for-profit organizations have one additional month to file their returns. IND. CODE § 6-2-1-7(i)(4) (Supp. 1979); GROSS INCOME REG., *supra*, at 6-2-1-7(1)(070). Affiliated corporations may file a consolidated return if they meet the statutory requirements. IND. CODE § 6-2-1-14(a) (1976); GROSS INCOME REG., *supra*, at 6-2-1-14(010). All taxpayers subject to the gross income tax provisions must also file quarterly returns if their gross income tax liability exceeds \$250 in any quarter. IND. CODE § 6-2-1-15(b) (Supp. 1976); GROSS INCOME REG., *supra*, at 6-2-1-15(010).

The Code provides for the payment of interest on refunds and the imposition of interest and various penalties on assessments. IND. CODE § 6-2-1-16(b), (c) (Supp. 1979) (providing for payment of 8% interest); *id.* § 6-2-1-16(d) (1976 & Supp. 1979) (providing for a 10% penalty in cases of negligence or intentional disregard of the law); *id.* § 6-2-1-16(e) (providing for a 50% penalty in cases of fraud); *id.* § 6-2-1-16(f) (providing for a 10% penalty for failure to file a return or pay the tax when due); *id.* § 6-2-1-16(g) (providing for a 20% penalty if the department prepares a return for a taxpayer who has failed to file a return or pay the tax within 20 days after being notified of his delinquency). Billings go through a normal collection cycle explained earlier. *See* notes 11-16 *supra* and accompanying text. The taxpayer also is afforded an opportunity to protest any refund or assessment and request an administrative hearing. *See* notes 18-20 *supra* and accompanying text.

¹⁶⁵The higher rate is imposed on commissions, fees, dividends, rents, leases, interest, sales of real estate, sales of securities, sales of capital assets, contractor service receipts, and other service receipts. IND. CODE § 6-2-1-3(g) (Supp. 1979). The lower rate is imposed on selling at retail, laundering and dry cleaning, industrial processing, wholesale sales, and contractor sales of materials. *Id.* § 6-2-1-3(a)-(d), (f).

¹⁶⁶*Id.* § 6-2-1-3.

¹⁶⁷*See id.* §§ 6-2-1-1(m), -6(b), (h), (n); *id.* §§ 6-2-1-9, -10; GROSS INCOME REG., *supra* note 151, at 6-2-1-1(m) (and listings thereunder), -6(020), -7(a)(100), (h)(010), (n)(010); *id.* at 6-2-1-9(010), -10(020).

receipts.¹⁶⁸ Further, a preferred tax treatment, referred to as gross earnings, is afforded to certain corporations.¹⁶⁹

In addition to the items excluded from gross income and the special treatment afforded certain taxpayers, there are a number of exemptions. The primary exemption is for receipts derived from interstate commerce.¹⁷⁰ Because the gross income tax affects many multistate corporations doing business in Indiana, this exemption provision is constantly at issue before the department in administrative hearings. Exemptions are also afforded for taxes collected by the taxpayer as an agent for Indiana or the United States government;¹⁷¹ sales to the United States government;¹⁷² life insurance proceeds;¹⁷³ all receipts of wholly exempt not-for-profit organizations (except for income from unrelated business activities);¹⁷⁴ certain federal retailers and manufacturers excise taxes;¹⁷⁵ dealer exchanges of new, untitled, and unregistered motor vehicles;¹⁷⁶ receipts from transportation of property by truck which is an initial, intermediate, or final step in interstate commerce.¹⁷⁷

The gross income tax amendments this session provided additional exemptions. Amounts received directly from a national broadcasting network for broadcasting national network programs are now exempt.¹⁷⁸ Also exempted is transportation income relating to shipments of property by rail which are an initial, intermediate, or

¹⁶⁸IND. CODE § 6-2-1-6(a) (Supp. 1979); GROSS INCOME REG., *supra* note 164, at 6-2-1-6(010).

¹⁶⁹Financial institutions, certain brokers, certain investment companies, certain leasing companies, life and fire and casualty insurance companies, grain dealers, sales of grain and soybeans under United States government regulations, wholesale grocers, softwater companies, and dealers in livestock. *Id.* § 6-2-1-1(n)-(u) (1976 & Supp. 1979). The term "gross earnings" is used here in an unorthodox sense; its common use is more closely associated with a net income concept.

¹⁷⁰*Id.* § 6-2-1-7(a); GROSS INCOME REG., *supra* note 164, at 6-2-1-7(a)(010)-(100).

¹⁷¹IND. CODE § 6-2-1-7(b) (1976 & Supp. 1979); GROSS INCOME REG., *supra* note 164, at 6-2-1-7(b)(010).

¹⁷²IND. CODE § 6-2-1-7(c) (1976 & Supp. 1979); GROSS INCOME REG., *supra* note 164, at 6-2-1-7(c)(010). These sales are exempt only if the United States Constitution or a federal statute prohibits their taxation.

¹⁷³IND. CODE § 6-2-1-7(d) (1976 & Supp. 1979); GROSS INCOME REG., *supra* note 164, at 6-2-1-7(d)(010).

¹⁷⁴IND. CODE § 6-2-1-7(i) (1976 & Supp. 1979); GROSS INCOME REG., *supra* note 164, at 6-2-1-7(i)(010)-(050). Taxation of unrelated business income is provided for by IND. CODE § 6-2-1-7.5 (Supp. 1979).

¹⁷⁵IND. CODE § 6-2-1-7(m) (1976 & Supp. 1979); GROSS INCOME REG., *supra* note 164, at 6-2-1-7(m)(010).

¹⁷⁶IND. CODE § 6-2-1-7(p) (1976 & Supp. 1979); GROSS INCOME REG., *supra* note 164, at 6-2-1-7(p)(010).

¹⁷⁷IND. CODE § 6-2-1-7(q) (Supp. 1979); GROSS INCOME REG., *supra* note 164, at 6-2-1-7(q)(010).

¹⁷⁸IND. CODE § 6-2-1-7(r) (Supp. 1979).

final link in interstate transportation.¹⁷⁹ This change corrects an oversight which occurred when this exemption was afforded to transportation of property by truck in 1978.¹⁸⁰ In response to the national concern for energy conservation, a new gross income tax deduction is available to taxpayers who have a resource recovery system which converts refuse, garbage, or rubbish into energy or useful products.¹⁸¹ The deduction is limited to the taxpayer's depreciation deduction allowed for the system under sections 167 and 179 of the Internal Revenue Code.¹⁸²

New gross income tax rules and regulations promulgated by the department went into effect December 14, 1978.¹⁸³ The division also issues information bulletins, private letter rulings, and summaries of administrative hearings.

During the last year, the courts decided several cases of importance, dealing with both procedural and substantive issues in the gross income tax area. The issue in *Indiana Department of State Revenue v. Hoosier Metal Fabricators*¹⁸⁴ was the imposition of the gross income tax on sales made f.o.b. to Pratt-Whitney, the taxpayer's Gas City, Indiana, plant. The taxpayer's customer employed quality control representatives who were present at Hoosier's plant three days a week. These representatives, however, had no authority to accept or reject parts for shipment. This function occurred at Pratt-Whitney facilities located out of state.

Although the State contended that the f.o.b. delivery term completed the sale within Indiana, thereby subjecting the income to tax, the issue was not preserved for appeal. Instead, the State and the taxpayer stipulated that the issue of taxability was determined by the place of acceptance or rejection by the nonresident buyer. The court of appeals held that this stipulation was binding and operated as a waiver of all other questions.¹⁸⁵ Because there was no evidence of acceptance or rejection of goods in the state, the trial court's finding of nontaxability was upheld. The concurring opinion indicated in dicta, however, that taxability would have resulted had the proper issue been before the court on appeal.¹⁸⁶

¹⁷⁹*Id.* § 6-2-1-7(q).

¹⁸⁰Act of Apr. 9, 1979, Pub. L. No. 51, § 2, 1979 Ind. Acts 225 (codified at IND. CODE § 6-2-1-7(q) (Supp. 1979).

¹⁸¹*Id.* § 6-2-1-6.5 (Supp. 1979).

¹⁸²*Id.*

¹⁸³These regulations were promulgated pursuant to *id.* § 6-2-1-34(a) (1976 & Supp. 1979). The adoption of these regulations was of primary importance because *id.* § 6-2-1-34(d) (Supp. 1979) now requires departmental interpretations that could increase a taxpayer's gross income tax liability to be promulgated in rules or regulations.

¹⁸⁴386 N.E.2d 963 (Ind. Ct. App. 1979).

¹⁸⁵*Id.* at 964.

¹⁸⁶*Id.* at 965 (Sullivan, J., concurring).

*Indiana Department of State Revenue v. Beemer Enterprises*¹⁸⁷ concerned the taxability of commissions received in Indiana on sales made to the states of Illinois and Michigan. Beemer, an Indiana corporation with one employee, engaged four independent salesmen in Indiana, Illinois, and Michigan. Beemer had verbal agreements to sell products of Wood Metal Industries, Inc., a Pennsylvania corporation, within these same states. Products were shipped directly to Beemer's customers from Pennsylvania. A twelve percent commission was paid on each order, of which five percent went to Beemer and seven percent to the salesmen who placed the order. The court held that Beemer was properly taxed on commissions received on sales to its Indiana customers, but that the State was prohibited by the commerce and due process clauses of the United States Constitution,¹⁸⁸ and the interstate commerce exemption of the Gross Income Tax Act,¹⁸⁹ from taxing commissions which were generated by sales to Illinois and Michigan customers.¹⁹⁰

This decision is erroneous on several grounds. First, the entire twelve percent commission on each sale should be subject to tax under the "source of income test" enunciated in *Indiana Department of State Revenue v. Frank Purcell Walnut Lumber Co.*¹⁹¹ Second, the payment of commissions to independent salesmen constitutes a cost of doing business, for which no deduction is permitted under Indiana Code section 6-2-1-1(m).¹⁹² Third, Beemer did not establish that imposition of tax on commissions relating to Illinois and Michigan sales either burdened commerce or created a threat of multiple taxation.

*Park 100 Development Co. v. Indiana Department of State Revenue*¹⁹³ concerned the gross income tax treatment of partnerships. Park 100 Development Company is a partnership composed of one individual and two partnerships. One of the partnerships is composed of two partners which are both corporations. Under Indiana Code section 6-3-7-1(b),¹⁹⁴ Park 100 was taxed as a regular corporation under the Gross Income Tax Act on the basis that one of its partners was a corporation. The court of appeals held that Park 100 was not taxable under section 6-3-7-1(b) in that all members were either individuals or partners.¹⁹⁵ The fact that one of these partners was composed of two corporations did not change the fact that it

¹⁸⁷386 N.E.2d 187 (Ind. Ct. App. 1979).

¹⁸⁸U.S. CONST. art. I, § 8, cl. 3; *id.* amend. XIV. § 1.

¹⁸⁹IND. CODE § 6-2-1-1(m) (1976 & 1979 Supp.)

¹⁹⁰386 N.E.2d at 190.

¹⁹¹152 Ind. App. 122, 282 N.E.2d 336 (1972).

¹⁹²IND. CODE § 6-2-1-1(m) (1976 & Supp. 1979).

¹⁹³388 N.E.2d 293 (Ind. Ct. App. 1979).

¹⁹⁴IND. CODE § 6-3-7-1(b) (1976 & Supp. 1979).

¹⁹⁵388 N.E.2d at 295.

was a partnership under a strict interpretation of the statute. If this decision is upheld, tiered partnerships of this nature will receive a real competitive advantage over traditional corporate-partnerships now subject to gross income tax.

*Middleton Motors, Inc. v. Indiana Department of State Revenue*¹⁹⁶ dealt with common procedural requirements which must be complied with by all taxpayers seeking relief under various taxing statutes. The taxpayer in the case failed to file suit within three months after its claim for refund was denied, and the trial court dismissed the action for lack of jurisdiction. The taxpayer argued that the State should be estopped to rely on the procedural statute, Indiana Code section 6-2-1-19,¹⁹⁷ because it relied on erroneous representations from a department official who allegedly informed the taxpayer that it had two years from payment of the final installment of tax to file suit. In upholding the trial court's dismissal, the supreme court held that section 6-2-1-19 provided the exclusive remedy for the taxpayer.¹⁹⁸ Failure to comply with this procedural statute, therefore, precluded the taxpayer from instituting its suit. Citing the maxim that all persons are presumed to know the law,¹⁹⁹ the court found the taxpayer's reliance upon the erroneous representations of the department's deputy commissioner to be unjustified.²⁰⁰

Under Indiana law, a special tax break is afforded "industrial processing or servicing."²⁰¹ Rather than paying the higher rate normally assessed on service receipts, qualifying taxpayers pay the lower rate imposed on sales receipts.²⁰² In *Indiana Department of State Revenue v. Apex Steel & Supply Co.*,²⁰³ the court held that the taxpayer was entitled to treatment as an industrial processor or servicer.²⁰⁴ The taxpayer's business consisted of compressing and baling loose scrap steel for a steel manufacturer. The baled steel then became an integral part of property which the steel company manufactured for sale. The court rejected the State's contention that "processing" or "servicing" required the addition of other tangible personal property to the material being processed or serviced.²⁰⁵ The court also stated that in construing a statute phrases are to be

¹⁹⁶380 N.E.2d 79 (Ind. 1978).

¹⁹⁷IND. CODE § 6-2-1-19 (1976).

¹⁹⁸380 N.E.2d at 81.

¹⁹⁹*Id.* (citing *City of Evansville v. Follies*, 161 Ind. App. 396, 315 N.E.2d 724 (1974)).

²⁰⁰380 N.E.2d at 81.

²⁰¹IND. CODE § 6-2-1-3(a) (1976 & Supp. 1979).

²⁰²*Id.*

²⁰³375 N.E.2d 598 (Ind. Ct. App. 1979).

²⁰⁴*Id.* at 601.

²⁰⁵*Id.*

viewed in their plain and ordinary sense.²⁰⁶ This decision may cause a marked decrease in revenues as more taxpayers try to qualify for this special treatment. Corrective legislation will probably be required to offset the effects of this decision or to delete industrial servicing from low rate treatment.

*Indiana Department of State Revenue v. Northern Indiana Steel Supply Co.*²⁰⁷ concerned the amount of receipts subject to gross income tax upon the sale of personal property subject to security agreements. The department assessed the entire amount received from the sale, arguing that the purchaser's assumption and payment of the taxpayer's outstanding obligations on the equipment constituted constructive receipt of gross income. In upholding the granting of the taxpayer's motion for summary judgment, the court held that the taxpayer only received taxable gross income to the extent of its equity in the property and that there was no constructive receipt of income, either at the time of assumption of the indebtedness by the purchaser or at the time of his payment thereof, because the taxpayer received neither a credit nor a payment for its direct benefit.²⁰⁸

The result reached by the court is not supported by analogous statutory authority. A similar exemption for mortgage debts in real property sales was written into the law by judicial decision in 1952²⁰⁹ and is now codified at Indiana Code section 6-2-1-9.²¹⁰ Depending on the outcome of final appeals in this case, corrective legislation may be sought to specifically forbid deductions for encumbrances in personal property sales.

b. Adjusted gross income tax.—The Adjusted Gross Income Tax Act,²¹¹ applies to both corporate²¹² and individual taxpayers. Cor-

²⁰⁶*Id.*

²⁰⁷388 N.E.2d 596 (Ind. Ct. App. 1979).

²⁰⁸*Id.* at 599-600.

²⁰⁹*Indiana Dep't of State Revenue v. Crown Dev. Co.*, 231 Ind. 449, 109 N.E.2d 426 (1952); *Indiana Dep't of State Revenue v. Colpaert Realty Corp.*, 231 Ind. 463, 109 N.E.2d 415 (1952).

²¹⁰IND. CODE § 6-2-1-9 (1976).

²¹¹Act of Apr. 30, 1963, ch. 32, § 101, 1963 Ind. Acts 82 (1963) (Spec. Sess.) (codified at IND. CODE §§ 6-3-1-1 to -8-6 (1976 & Supp. 1979)).

²¹²The adjusted gross income tax provisions concerning the filing of returns, the payment of refunds, assessments, penalties, interest, and hearings are almost identical to the gross income tax provisions. Compare IND. CODE §§ 6-3-4-1 to -14 (1976 & Supp. 1979) (adjusted gross income tax) with gross income tax provisions discussed in note 164 *supra*. For adjusted gross income tax purposes, however, quarterly returns are required to be filed to reflect 25% of a taxpayer's liability if it exceeds \$1,000 for his taxable year. IND. CODE § 6-3-4-4(c) (1976 & Supp. 1979). Failure to report quarterly subjects the corporation to an 8% penalty. Corporations complying with the provisions of I.R.C. § 1502 may also file on a consolidated basis. IND. CODE § 6-3-4-14(a) (1976). Corporations must be eligible to file on a consolidated basis for federal income tax pur-

porate taxpayers pay the greater of the adjusted gross income tax, or gross income tax plus the supplemental net income tax.²¹³

(i.) *Corporations.*—The corporate adjusted gross income tax is computed by starting with taxable income under section 63 of the Internal Revenue Code and then making certain adjustments.²¹⁴ If a corporation's income is solely derived from Indiana income, the computation is complete. If income is derived from sources both within and without Indiana, the adjusted gross income is apportioned by use of a three-factor formula.²¹⁵ The factors reflect a taxpayer's property, payroll, and sales both within the state (reflected in the numerator) and everywhere (reflected in the denominator). The average of these three factors is then applied to the taxpayer's adjusted gross income to determine Indiana adjusted gross income. If the use of this three-factor formula does not fairly reflect a taxpayer's Indiana activity, the statute provides for the use of alternative methods.²¹⁶

Certain entities are not themselves subject to the tax. Not-for-profit organizations need not file a return unless they have unrelated business income.²¹⁷ Partnerships and Subchapter S corporations file a return, but the tax is imposed on the partners and shareholders respectively.²¹⁸

In computing their adjusted gross income tax, corporate taxpayers are entitled to certain credits. First, a credit of ten percent of its adjusted gross income tax or \$1,000, whichever is less, is afforded to corporations for contributions to Indiana colleges and

poses and have income derived from sources within the state. *Id.* Consistency in reporting on a consolidated basis for both gross and adjusted gross income tax purposes is important in order to ensure the proper allocation of all credits.

²¹³IND. CODE § 6-3-8-5 (1976). The corporate adjusted gross income tax rate is 3%, and the individual adjusted gross income tax rate is currently 1.9%. *Id.* § 6-3-2-1 (Supp. 1979) (effective Jan. 1, 1980).

²¹⁴*Id.* § 6-3-1-3.5(b) (Supp. 1979). The adjustments are as follows: (1) Deduct income exempt from tax by the United States Constitution and statutes; (2) add charitable deductions; and (3) add any deductions taken for state income and local property taxes on the taxpayer's federal return. *Id.*

²¹⁵*Id.* § 6-3-2-2(b)-(e) (1976).

²¹⁶*Id.* § 6-3-2-2(l) allows the use of separate accounting, the exclusion or inclusion of one or more factors, or the employment of any other method if the three-factor formula provided by *id.* § 6-3-2-2(b) fails to fairly reflect a taxpayer's income derived from sources in Indiana.

²¹⁷*Id.* § 6-3-2-3.1 (Supp. 1979). The Indiana statute adopts the definition of unrelated income in I.R.C § 513.

²¹⁸IND. CODE § 6-3-4-11 (1976) (partnerships); *id.* § 6-3-4-13 (1976 & Supp. 1979) (Subchapter S corporations). The returns filed by each of these entities are merely information returns unless the partnership or Subchapter S corporation has a use or intangibles tax liability.

universities.²¹⁹ Second, a credit is allowed for salaries and wages paid in training the hard-core unemployed in either basic skills or specific job skills.²²⁰ Third, a corporate taxpayer can receive a credit of up to \$25,000 for amounts invested in economically disadvantaged areas.²²¹

Indiana Department of Revenue v. Kimberly-Clark Corp.,²²² the first significant decision under Indiana's adjusted gross income tax, concerned the applicability of the adjusted gross income tax to the taxpayer's Indiana operations. During the years 1969 to 1971, Kimberly-Clark employed several salesmen who lived in Indiana but reported to out-of-state district offices. The activities of these salesmen in Indiana consisted of checking shelf facing, checking customer inventories, pricing products, stocking shelves, erecting displays, conveying information to customers concerning out-of-stock conditions or delays in shipments, verifying destruction of damaged merchandise for special promotions, and coordinating delivery of merchandise for special promotions. The issue for determination was whether these activities constituted mere solicitation under Public Law 86-272,²²³ thereby relieving Kimberly-Clark from Indiana's adjusted gross income tax. Although the first four activities constituted mere solicitation, the court of appeals held that the remaining three activities exceeded the immunity from state taxation afforded by Public Law 86-272 and provided a sufficient nexus for imposition of the adjusted gross income tax on income derived by Kimberly-Clark from sales into Indiana.²²⁴ Solicitation, according to the opinion, is limited to activities that lead to the placing of orders and does not include activities that follow as a natural result of the prior placing of orders, such as the servicing of prior accounts.²²⁵

The *Kimberly-Clark* decision is far from a definitive statement, however. In *Smith Kline & French Laboratories v. State Tax Commission*,²²⁶ the Oregon Supreme Court found that the activities of the taxpayer's detail men to be solicitation under Public Law 86-272.²²⁷

²¹⁹*Id.* § 6-3-3-5(c) (Supp. 1979). The credit is denied a corporate taxpayer who is not subject to the adjusted gross income tax. *Id.* § 6-3-3-5(a).

²²⁰*Id.* § 22-1-4-71 (1976 & Supp. 1978).

²²¹These neighborhood assistance credits are provided by *id.* § 6-3-3.1-1 to -7 (1976 & Supp. 1979). Economically disadvantaged areas are determined by the state department of commerce. *Id.* § 6-3-3.1-1(b) (Supp. 1979). A maximum of one million dollars in tax credits is available in each state fiscal year. *Id.* § 6-3-3.1-6 (1976).

²²²375 N.E.2d 1146 (Ind. Ct. App. 1978).

²²³15 U.S.C. § 381 (1976) (providing that income from interstate commerce may not be subject to state taxation if activity within the state consists only of solicitation).

²²⁴375 N.E.2d at 1151.

²²⁵*Id.* at 1150.

²²⁶241 Or. 50, 403 P.2d 375 (1965).

²²⁷*Id.* at 53, 403 P.2d at 377.

The court held that the exemption was to be afforded not only to certain specified sales efforts but also to "all lesser, [sic] included phases."²²⁸ By contrast, the same court in *Herff Jones Co. v. State Tax Commission*²²⁹ adopted a narrow interpretation of solicitation and found such activities as the receipt of ring deposits and subsequent collections to be beyond the protection of Public Law 86-272.²³⁰ In *CIBA Pharmaceutical Products, Inc. v. State Tax Commission*,²³¹ the Missouri Supreme Court held that the activities of the taxpayer's detail men constituted solicitation.²³² To the contrary is *Clairol, Inc. v. Kingsley*.²³³ In *Clairol*, the New Jersey court considered the economic substance of the taxpayer's activities and found that they exceeded the protections of Public Law 86-272.²³⁴ A similar result was reached by the Arkansas Supreme Court in *Hervey v. AMF Beird, Inc.*²³⁵ Both of these cases premised taxability, in part, on the taxpayer's checking of inventories, a fact which was viewed by the Indiana Court of Appeals in *Kimberly-Clark* as an element of solicitation.²³⁶

These cases all illustrate attempts by state courts to wrestle with the applicability of Public Law 86-272 to their own tax laws. The constant litigation of this issue reveals failure of the federal law to establish guidelines as to what constitutes solicitation and indicates the need for uniform legislation or judicial guidance.

(ii.) *Individuals.*—The individual adjusted gross income tax is computed by starting with adjusted gross income under section 62 of the Internal Revenue Code and then making required adjustments.²³⁷ If the corporate or nonresident taxpayer has income

²²⁸*Id.*

²²⁹247 Or. 404, 430 P.2d 998 (1967).

²³⁰*Id.* at 422, 430 P.2d at 1002. See also *Olympia Brewing Co. v. Dep't of Revenue*, 266 Or. 309, 511 P.2d 837 (1973), cert. denied, 415 U.S. 976 (1974) (recognizing that salesman's activities did not exceed solicitation but holding that the presence of beer kegs in the state subjected the company to state corporate income tax); *Briggs & Stratton Corp. v. Commission*, 3 Or. T.R. 174 (1968) (holding that activities of the corporation's representatives were primarily to provide service but nonetheless subjected the corporation to tax).

²³¹382 S.W.2d 645 (Mo. 1964).

²³²*Id.* at 653.

²³³109 N.J. Super. 22, 262 A.2d 213 (Super. Ct. App. Div. 1970).

²³⁴*Id.* at 30, 262 A.2d at 217-18.

²³⁵250 Ark. 147, 464 S.W.2d 557 (1971).

²³⁶375 N.E.2d at 1150.

²³⁷IND. CODE § 6-3-1-3.5(a) (1976 & Supp. 1979). The adjustments are calculated in the following manner: (1) Deduct income exempt from tax by the United States Constitution and statutes; (2) add any deductions taken for state income and local property taxes on the taxpayer's federal return; (3) add the ordinary income portion of a lump sum distribution; (4) deduct recoveries of items previously deducted as an itemized deduction for federal tax purposes; and (5) deduct supplemental railroad retirement an-

derived from sources both within and without the state, the three-factor formula previously discussed²³⁸ is used to determine Indiana adjusted gross income.²³⁹

By virtue of the Indiana Code's incorporation of the Internal Revenue Code, a taxpayer is also entitled to certain income exemptions.²⁴⁰ There is also a deduction for the first \$2,000 received from a civil service annuity by a taxpayer over age sixty-two.²⁴¹ In addition, a taxpayer can receive a \$2,000 military pay deduction, which applies to retirement or survivor benefits if the taxpayer is at least sixty-years old.²⁴² Finally, the Code provides for deductions of up to \$1,000 for amounts expended on residential insulation.²⁴³

The Code also provides for a number of credits to individual taxpayers, including a credit for tax withheld²⁴⁴ or paid to another state,²⁴⁵ for the elderly,²⁴⁶ for contributions to Indiana colleges and universities,²⁴⁷ for property tax paid by certain individuals who are disabled or elderly,²⁴⁸ for motor fuel taxes paid,²⁴⁹ and a credit for offsetting the sales and use taxes paid on utilities.²⁵⁰ Several credits are available only to the elderly.²⁵¹

Legislative changes in the adjusted gross income tax dealt almost exclusively with new or revised credits and deductions. A new adjusted gross income deduction is available for income taxed by an out-of-state locality.²⁵² The deduction is limited to the lesser of

nunities. *Id.* The state income and local property taxes added back are those paid on business and nonbusiness investment property and deducted in arriving at adjusted gross income for federal purposes. Any income and property taxes taken as itemized deductions on the federal return need not be added back.

²³⁸See note 215 *supra* and accompanying text.

²³⁹IND. CODE § 6-3-2-2(b) (1976).

²⁴⁰The exemptions are: (1) for each dependent, \$500, *id.* 6-3-1-3.5(a)(4) (1976 & Supp. 1979); (2) a special income exemption of up to \$500, *id.* § 6-3-1-3.5(a)(3); (3) if the taxpayer is blind, \$500, *id.* § 6-3-1-3.5(a)(4); (4) if the taxpayer is over age 65, \$1,000, *id.*

²⁴¹*Id.* § 6-3-2-3.7 (Supp. 1979). This amount is reduced by social security and railroad retirement benefits received by the taxpayer. *Id.*

²⁴²*Id.* § 6-3-2-4.

²⁴³*Id.* § 6-3-2-5. The deduction applies to expenditures for new insulation, weather stripping, double pane windows, storm windows, and storm doors in a residence at least three years old. *Id.*

²⁴⁴*Id.* § 6-3-3-1 (1976).

²⁴⁵*Id.* § 6-3-3-3.

²⁴⁶*Id.* § 6-3-3-4.1 (Supp. 1979).

²⁴⁷*Id.* § 6-3-3-5(b).

²⁴⁸*Id.* § 6-3-3-6 (1976).

²⁴⁹*Id.* § 6-3-3-7 (Supp. 1979).

²⁵⁰*Id.* § 6-3-3-8. The filing requirements for this credit are identical to those for the property tax credit.

²⁵¹See *id.* § 6-3-3-4.1; *id.* § 6-3-3-6 (1976).

²⁵²*Id.* § 6-3-2-5.5 (Supp. 1979).

the amount of an individual's adjusted gross income subject to an income tax imposed by another state or \$2,000.²⁵³

A new renter's deduction²⁵⁴ replaces the older renter's deduction which expired in 1975.²⁵⁵ The new deduction, limited to the lesser of the amount of rent paid or \$1,500, cannot be claimed if the property is exempt from Indiana property tax.²⁵⁶

In the most sweeping change in the law, all individuals will receive a credit of fifteen percent for tax years beginning in 1979.²⁵⁷ The credit is to be applied to the taxpayer's adjusted gross income tax liability before the application of any other credits. In addition, the individual adjusted gross income tax rate is reduced to 1.9%, effective January 1, 1980.²⁵⁸

The legislature also updated the Adjusted Gross Income Tax Act to include the latest rules and regulations of the Internal Revenue Code in effect on January 1, 1979.²⁵⁹ Thus, all federal income tax amendments taking effect on or before January 1, 1980, are incorporated by reference into title six, chapter three of the Indiana Code.²⁶⁰

(iii.) *Trusts and estates.*—The adjusted gross income tax of trusts and estates is computed by starting with taxable income as defined by section 641(b) of the Internal Revenue Code and deducting income exempted by the United States Constitution and federal statutes.²⁶¹ An exemption of \$600 is given to estates, \$100 to complex trusts, and \$300 to simple trusts.²⁶²

The entire body of federal law applies to the preparation and filing of Indiana fiduciary returns.²⁶³ In addition, fiduciaries are required to withhold tax on distributions of income, other than interest and dividends, made to nonresident beneficiaries.²⁶⁴

To implement the provisions of the Code, the department is in the process of promulgating new adjusted gross income tax rules and regulations. Additional publications now available to the public include information bulletins, private rulings, and summaries of administrative hearings.

²⁵³ *Id.*

²⁵⁴ *Id.* § 6-3-2-6.

²⁵⁵ *Id.* § 6-3-1-3.1 (1976).

²⁵⁶ *Id.* § 6-3-2-6 (Supp. 1979).

²⁵⁷ Act of Apr. 10, 1979, Pub. L. No. 68, § 8, 1979 Ind. Acts 275 (1979). This one-time credit was not codified.

²⁵⁸ IND. CODE § 6-3-2-1, -17.

²⁵⁹ *Id.* §§ 6-3-1-11, -17.

²⁶⁰ *Id.*

²⁶¹ *Id.* § 6-3-1-3.5(c) (1976).

²⁶² These exemptions are afforded by I.R.C. § 642(b), and are incorporated into the adjusted gross income tax by IND. CODE § 6-3-1-11 (Supp. 1979).

²⁶³ See IND. CODE § 6-3-1-17 (1976 & Supp. 1979).

²⁶⁴ *Id.* § 6-3-4-15 (Supp. 1979).

12. *Supplemental Net Income Tax.*—The supplemental net income tax is imposed on corporations, banks, trust companies, national banking associations, mutual savings banks, private banks, savings and loan companies, and domestic insurance companies.²⁶⁵ The tax is computed by deducting the greater of the taxpayer's gross income tax or adjusted gross income tax from his adjusted gross income.²⁶⁶ The remainder is subject to a three-percent tax.²⁶⁷

13. *County Adjusted Gross Income Tax.*—The county tax is imposed on taxpayers who reside in an adopting county or whose principal place of business is an adopting county as of January 1 of any given year.²⁶⁸

14. *Occupation Income Tax.*—A 1½% occupation income tax is imposed on personal service income of employees who devote more than 50% of their time performing work for their employer in the adopting county, city, or town.²⁶⁹ This tax is currently under attack in the courts and was declared unconstitutional by the Scott County Circuit Court in *Harris v. Clark*.²⁷⁰ In response to this decision, the department instructed employers to cease withholding this tax on October 20, 1978, pending final appeal of the decision.

15. *Intangibles Tax.*—The intangibles tax is imposed on all persons who exercise any of the privileges enumerated in Indiana Code section 6-5.1-3-1(a).²⁷¹ Persons subject to the tax include those who reside or are domiciled in Indiana and own or control an intangible

²⁶⁵*Id.* § 6-3-8-2(a) (1976).

²⁶⁶*Id.* § 6-3-8-2(b).

²⁶⁷*Id.* § 6-3-8-4.

²⁶⁸County taxpayers are defined in *id.* § 6-3.5-1-1(2) (1976 & Supp. 1979). The January 1 date is established by *id.* § 6-3.5-1-9(b) (1976 & Supp. 1979). The rate of tax, as adopted by the county, can be either ½, ¾, or 1% and is imposed on a taxing county resident's total adjusted gross income. *Id.* § 6-3.5-1-5 (1976). All people who work in an adopting county but live in a non-adopting county are subjected to a tax of ¼% on income earned in that county. *Id.*

²⁶⁹*Id.* § 6-3.5-3-1 (1976) defines occupation income. The tax rate is established by *id.* § 6-3.5-3-2(a).

²⁷⁰No. 77-C-109 (Scott Cir. Ct. Oct. 20, 1978). The attack on the tax was made because Indiana residents are exempt from the tax, except in the unusual situation where the 1½% occupation income tax liability exceeds their 2% adjusted gross income tax liability. By contrast, nonresidents principally employed in Indiana always pay the tax because they are exempt from Indiana's adjusted gross income tax by virtue of reciprocity agreements. IND. CODE § 6-3-5-1 (1976).

²⁷¹An exercise of any of the following privileges is subject to the tax:

- (1) Executing, selling, assigning, transferring, renewing, removing, consigning, mailing, shipping, trading-in, controlling, or enforcing an intangible;
- (2) Receiving income, increase, issues, or profits of an intangible;
- (3) Passing an intangible or income from an intangible to another person by will, gift, or intestate succession; or
- (4) Having an intangible classified for tax purposes.

IND. CODE § 6-5.1-2-1(a) (Supp. 1979).

in Indiana, or persons who own or control intangibles exercised in the course of maintaining or operating a business in Indiana.²⁷² Intangibles include such items as promissory notes, stock of foreign corporations, non-Indiana bonds, corporate bonds, debentures, money on deposit, loans of money, debt instruments, mortgages, installment sales contracts, accounts receivable reserving title or a security interest, brokerage account equity, capital notes, certificates of participation, commercial paper, dealer floor plans, investment certificates, repurchase agreements, and variable demand notes.²⁷³

Certain intangibles are exempt from tax: intangibles held by qualified not-for-profit organizations,²⁷⁴ stocks or bonds executed be-

²⁷²*Id.* While the law as recodified appears to apply only to persons residing or domiciled in the state, the department continues to apply the tax to nonresidents exercising taxable privileges in the course of their Indiana business. Taxation of nonresidents in this situation existed in the law before recodification. *Id.* § 6-5-1-1(k) (1976) (repealed 1977). Its omission was an oversight because a recodification cannot make substantive changes in the law.

The intangibles tax is normally paid annually on a taxpayer's income tax return and is due on the 15th day of the 4th month following the close of the taxpayer's taxable year. *Id.* § 6-5.1-6-1(b) (Supp. 1979). Qualified credit companies file either monthly or quarterly. *Id.* § 6-5.1-4-4.

The statutory provisions for assessment and refunds of the intangibles tax basically parallel those for the gross income tax and adjusted gross income tax with the exception that interest is six percent and a penalty of four times the unpaid tax can be assessed in addition to other penalties and interest if the taxpayer failed to pay his intangibles tax with intent to evade its payment. *Id.* § 6-5.1-9-5. There is no provision for waiver of any penalties.

²⁷³*Id.* § 6-5.1-1-1 (Supp. 1979). The valuation of intangibles is determined by whether it is classified as a current or annual intangible. A current intangible is one "designed to be and is matured, paid, discharged, or retired within one (1) year of its execution or issuance date." *Id.* § 6-5.1-1-2. Annual intangibles are all other intangibles. *Id.* § 6-5.1-1-3.

The valuation of annual intangibles varies with their characteristics. *Id.* § 6-5.1-3-2. Those traded on a recognized market are valued by taking the closing bid or sale price on the last market day of December. Those not traded on a recognized market are valued in the initial year of execution on the face value and on the total time balance due on the anniversary date of the execution. Other methods include average daily or monthly balance in the case of out-of-state deposits. Annual intangibles can also be valued by the department at valuation hearing.

Current intangibles are valued on their face value on the execution date. *Id.* § 6-5.1-3-3. "[I]f the intangible has a maturity date of ninety (90) days or less from the date of acquisition," the value is determined by multiplying the face value by a fraction, the numerator of which is the number of days the intangible is held and the denominator of which is 360. *Id.*

A special valuation method exists for qualified credit companies who elect to file and are granted permission to use the permit stamp method of reporting. *Id.* §§ 6-5.1-4-1 to -5. The benefit of filing on this basis is that the monthly tax is determined by multiplying the closing monthly ledger balances by the $\frac{1}{4}\%$ rate and then dividing by eight. *Id.* § 6-5.1-4-5.

²⁷⁴*Id.* § 6-5.1-5-1 (Supp. 1979). The eligible organizations are basically those enumerated in I.R.C. § 501(c)(3).

tween parent and subsidiary corporations if the parent owns at least eighty percent of the voting stock of the subsidiary,²⁷⁵ intangibles held by persons with under \$10,000 of household income,²⁷⁶ and qualifying pension and profit sharing plans.²⁷⁷ Section 6-5.1-5-7 of the Indiana Code²⁷⁸ enumerates an twenty additional types of exempt intangibles, and section 6-5.1-5-8²⁷⁹ incorporates other sections which grant exemptions from the intangibles tax.

The Indiana General Assembly echoed taxpayer displeasure with the intangibles tax by providing for a fifteen-year phaseout of the intangibles tax.²⁸⁰ The current rate of ¼ % will begin declining .17% a year beginning in 1982, with scheduled termination after 1995.²⁸¹

Another change provides a further advantage to mortgage lending companies who report their tax under the permit stamp method. These qualifying taxpayers will compute their monthly tax by dividing the annualized tax by twelve rather than eight, as is required of others using the permit stamp.²⁸²

B. State Board of Tax Commissioners

1. *Introduction.*—The State Board of Tax Commissioners is responsible for the assessment of property values on both real and personal property. The board is authorized by statute to construe the property tax laws of the state and instruct the various taxing officials in their duties with respect to taxation and assessment.²⁸³ The board is headed by a chairman and two commissioners.²⁸⁴ The day-to-day operations of the board are administered by the division of tax review,²⁸⁵ the division of property valuation,²⁸⁶ the division of

²⁷⁵IND. CODE § 6-5.1-5-2 (Supp. 1979).

²⁷⁶*Id.* § 6-5.1-5-3. This exemption is computed in the same manner as the property tax credit for the elderly under *id.* § 6-3-3-6(a) (1976).

²⁷⁷*Id.* § 6-5.1-5-5 (Supp. 1979). The exemption applies to plans qualified under I.R.C § 401.

²⁷⁸IND. CODE § 6-5.1-5-7 (Supp. 1979).

²⁷⁹*Id.* § 6-5.1-5-8.

²⁸⁰*Id.* § 6-5.1-2-2.

²⁸¹*Id.* (effective Jan. 1, 1980).

²⁸²*Id.* § 6-5.1-4-5.1.

²⁸³*Id.* § 6-1.1-30-14 (Supp. 1979) lists the powers and duties of the board.

²⁸⁴*Id.* § 6-1.1-30-1 (1976).

²⁸⁵*Id.* §§ 6-1.1-33-1 to -6. This division is responsible for auditing business personal property tax returns, hearing appeals filed by taxpayers, and making recommendations to the board for a final determination on the assessment of business property.

²⁸⁶The work of this division consists of holding hearings on petitions for reassessment, and hearing appeals on assessments and exemptions. *Id.* §§ 6-1.1-14-1 to -11 (1976 & Supp. 1979); *id.* §§ 6-1.1-15-1 to -13. The division is also responsible for conducting ratio studies for the state's school corporations and implementing new ratios and factors if substantial change is discovered. *Id.* § 6-1.1-34-1 to -12 (1976).

public utilities and railroads,²⁸⁷ and the division of budget review.²⁸⁸

2. *Property Taxes.*—*a. Tax rates.*—Each school corporation and civil taxing unit imposes its own tax rate.²⁸⁹ Property within a given taxing district is often subject to a variety of rates, including those imposed by a county, city, or school corporation. The tax is the product of assessed valuation times the tax rate per \$100 of assessed valuation.²⁹⁰ The assessed value is set at one-third of its true cash value.²⁹¹

Effective September 1, 1979, land classified as a wildlife habitat is assessed at one dollar per acre for property tax purposes. If the property is ever withdrawn from the wildlife habitat classification, the owner of the land must make a special tax payment.²⁹²

b. Assessment procedures.—Assessments are made in accordance with regulations issued by the board. The initial assessment of real property is made by the township assessor or trustee-assessor.²⁹³ Such assessments are subject to change by a county board of review on its own initiative or on appeal by the property owner.²⁹⁴ Either the assessing official or the property owner may appeal the county board's action directly to the State Board of Tax Commissioners.²⁹⁵

The initial assessment of personal property is made by the property owner.²⁹⁶ Any subsequent changes made by local assessing offi-

²⁸⁷Public utilities and railroads file their property tax returns directly with this division, which then determines assessments on a unit method. *Id.* §§ 6-1.1-8-9, -11, -19, -26. The taxpayer is entitled to protest the assessment made and request a hearing which is conducted by representatives of this division on behalf of the board. *Id.* §§ 6-1.1-8-28, -29. When the assessments are finalized, the division distributes the valuation to the taxing districts in which the property is located. *Id.* § 6-1.1-8-25(b). In addition to its dealings with public utilities and railroads, the division also assesses car line equipment companies. *Id.* §§ 6-1.1-8-12, -13 (1976 & Supp. 1979).

²⁸⁸This division has three major functions: to conduct hearings of budgets, levies and tax rates of local governmental units, *id.* §§ 6-1.1-17-1 to -19 (1976 & Supp. 1979); to conduct hearings when local governmental units request additional appropriations above the amounts budgeted, *id.* §§ 6-1.1-18-1 to -11; and to hold public hearings when a remonstrance is filed by taxpayers objecting to general obligations, bond issues, and lease rental agreements, *id.* §§ 6-1.1-20-1 to -9. The staff of this division also furnishes information to the school property tax control board and the local government property tax control board for use in appeals.

²⁸⁹*Id.* § 6-1.1-17-5 (1976).

²⁹⁰*Id.* § 6-1.1-2-3.

²⁹¹*Id.* § 6-1.1-1-3. This assessed value is determined by township and county officials yearly for personal property and every six years for real property. *Id.* §§ 6-1.1-2-2, -4-4 (1976 & Supp. 1979).

²⁹²*Id.* §§ 6-1.1-6.5-1 to -25 (Supp. 1979).

²⁹³Assessments of real property are made under *id.* §§ 6-1.1-4-1 to -30 (1976 & Supp. 1979).

²⁹⁴*Id.* §§ 6-1.1-13-1 to -12 (1976).

²⁹⁵*Id.* § 6-1.1-15-3 (Supp. 1979).

²⁹⁶Assessments of personal property are made under *id.* §§ 6-1.1-3-1 to -21 (1976 & Supp. 1979).

cially may be appealed in the same manner as for real property adjustments.

Property owned by public utilities is assessed by the board itself.²⁹⁷ Disputes with the assessments are handled by the board's division of public utilities and railroads.

All administrative actions of the State Board of Tax Commissioners are final. The board's action, however, can be set aside or subject to redetermination if suit is instituted and a court so orders.²⁹⁸

New legislation requires persons who reside in one township and have assessable personal property in another to submit evidence to their township of residence that a personal property tax has been filed in the township where the property is located.²⁹⁹ If the evidence is not filed within forty-five days, a penalty of ten percent of the tax liability is imposed.³⁰⁰ Another provision of the bill requires township assessors of Marion County to keep all property transfer books and to effect the transfer of title to real property.³⁰¹

c. Property tax exemptions.—Certain types of property are exempt from tax.³⁰² The legislature last term created a new exemption. Property shared by hospitals which would be exempt from property taxation if it were not shared and property owned by a shared hospital services organization which is used by a tax-exempt hospital are exempt from property taxation.³⁰³

The only noteworthy case during the survey period involving property tax was *Indiana State Board of Tax Commissioners v. News Publishing Co.*,³⁰⁴ which concerned the application of the personal property tax to newsprint imported from Canada but not required for the current needs of the taxpayer. The board appealed from a judgment which had allowed the taxpayer an exemption from tax on this property. In reversing the decision of the trial court, the appellate court noted that both article 10, section 1(a)(2) of the Indiana Constitution and the United States Supreme Court decision in *Michelin Tire Corp. v. Wages*³⁰⁵ warranted a contrary result.³⁰⁶ Indiana's constitution requires uniformity in property taxation and prohibits tax exemptions for personal property which is either held,

²⁹⁷*Id.* § 6-1.1-8-22 (1976).

²⁹⁸*Id.* § 6-1.1-15-5.

²⁹⁹*Id.* § 6-1.1-3-1(d) (Supp. 1979).

³⁰⁰*Id.* § 6-1.1-37-7.5.

³⁰¹*Id.* § 6-1.1-5-9.

³⁰²*Id.* §§ 6-1.1-10-1 to -38 (1976 & Supp. 1979).

³⁰³*Id.* § 6-1.1-10-16 (Supp. 1979).

³⁰⁴387 N.E.2d 488 (Ind. Ct. App. 1979).

³⁰⁵423 U.S. 276 (1976).

³⁰⁶387 N.E.2d at 491.

used, or consumed in the production of income.³⁰⁷ In *Michelin*, the Supreme Court upheld the validity of an ad valorem tax which did not discriminate against imports as such.³⁰⁸ Thus, the regulation, which exempted goods imported for the importer's own use which were not required for his current operations, was invalid, and the imposition of tax on the goods in question was proper.³⁰⁹

d. Property tax deductions.—The Indiana Code provides a number of deductions which primarily benefit homeowners. For example, taxpayers rehabilitating residential real property, buildings, and structures more than ten years old or making improvements in designated urban development areas receive various deductions.³¹⁰ The current energy crisis paved the way for recognition of a solar energy deduction.³¹¹ The legislature has established a new valuation method for purposes of computing the solar energy property tax deduction.³¹² The primary factor is "the cost of the system components that are unique to the system and that are needed to collect, store, or distribute solar energy."³¹³ A new deduction will also be available in 1980 for wind power devices which use the energy of moving air to create mechanical energy or produce electricity.³¹⁴ The deduction is the difference between the assessed value of the property with the device and without the device.³¹⁵

Other deductions relating to personal residences are listed below. First, a resident taxpayer owning real estate secured by a mortgage can receive a yearly deduction of up to \$1,000.³¹⁶ Second, certain persons age sixty-five or over are entitled to a \$1,000 deduction if they have combined gross income of less than \$10,000, own the property for at least one year, reside on the property, receive no other property tax deduction, and the assessed value of the property does not exceed \$9,000.³¹⁷ New legislation also affords additional tax benefits for the elderly. The property tax deduction has been extended to owners of mobile homes which are not assessed as real property.³¹⁸ In addition, persons sixty-five or older may claim both the standard mortgage deduction and the old age property tax

³⁰⁷*Id.* at 490. See IND. CONST. art. 10, § 1.

³⁰⁸423 U.S. at 301.

³⁰⁹387 N.E.2d at 491.

³¹⁰IND. CODE §§ 6-1.1-12-18 to -25 (1976 & Supp. 1979).

³¹¹*Id.* §§ 6-1.1-12-26 to -27.

³¹²*Id.* § 6-1.1-12-26(b) (Supp. 1979).

³¹³*Id.* § 6-1.1-12-26(b)(1).

³¹⁴*Id.* §§ 6-1.1-12-29, -30.

³¹⁵*Id.* § 6-1.1-12-29(b).

³¹⁶*Id.* § 6-1.1-12-1 (1976).

³¹⁷*Id.* § 6-1.1-12-9 (Supp. 1979).

³¹⁸*Id.*

deduction.³¹⁹ Third, the \$2,000 deduction available to blind persons has been expanded to include those with taxable gross income of \$7,500 or less who use or occupy the real property as a residence.³²⁰ Fourth, a partially disabled veteran can receive a \$2,000 deduction.³²¹ Fifth, a totally disabled veteran is entitled to a \$1,000 deduction unless the assessed value of the property exceeds \$6,500.³²² Finally, a World War I veteran may receive a \$3,000 deduction if the property is used as a principal residence, has been owned for at least a year, and has an assessed value of not more than \$14,000.³²³

Of interest to industry is a new provision allowing a deduction for resource recovery systems of ninety-five percent of the system's assessed value.³²⁴

e. Property tax credits.—Each year, taxpayers are provided a credit equal to twenty percent of their property tax bill.³²⁵ Additional relief is given to taxpayers who reside in counties which have adopted the county adjusted gross income tax. This program is made possible by virtue of the property tax replacement credits received by each county which replace property taxes that would have otherwise been levied.³²⁶

The property tax replacement credits are funded by fifty percent of the sales and use tax collections.³²⁷ Collections of county adjusted gross income tax are used to fund the local option credit.³²⁸

New legislation of most benefit to taxpayers is the new homestead credit, which provides an additional property tax credit of ten percent for property taxes paid on a homestead.³²⁹ The credit decreases two percent a year until its scheduled termination in 1985.³³⁰

³¹⁹*Id.* § 6-1.1-12-9.1.

³²⁰*Id.* § 6-1.1-12-11.

³²¹*Id.* § 6-1.1-12-13 (1976).

³²²*Id.* § 6-1.1-12-14.

³²³*Id.* § 6-1.1-12-17.4 (Supp. 1979).

³²⁴*Id.* §§ 6-1.1-12-28.5, -28.6. *See also* note 181 *supra* and accompanying text.

³²⁵*Id.* § 6-1.1-21-5 (1976).

³²⁶*Id.* § 6-1.1-21-4 (1976 & Supp. 1979).

³²⁷*Id.* § 6-2-1-53 (1976).

³²⁸*Id.* § 6-3.5-1-7 (Supp. 1979).

³²⁹*Id.* §§ 6-1.1-20.9-1 to -6.

³³⁰*Id.* § 6-1.1-20.9-2(d).