

Developments in Indiana Tax Law: Further Refinements of the Indiana Tax Court's Jurisdiction, and the Attack on Indiana's Property Tax System

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I. INTRODUCTION

During the survey period there were several significant developments in Indiana taxation. In the property tax area, the Indiana General Assembly directed the Indiana State Board of Tax Commissioners to study the property tax system. The legislature also created a special committee to study the reassessment process. Litigation challenging the very foundations of the property tax system was initiated as well.

Just as important, however, are the developments involving the jurisdiction of the Indiana Tax Court. Even though the Indiana Tax Court is entering its fifth year, questions about its jurisdiction are still being resolved. In 1990, both the Indiana Supreme Court and the Indiana General Assembly limited the Indiana Tax Court's jurisdiction to some degree.

Section II of this Article analyzes the Indiana Tax Court's jurisdiction, including a discussion of the recent jurisdictional changes. Recommendations are made to the Indiana General Assembly for improving the Indiana Tax Court's jurisdiction. Section III of this Article analyzes developments in the property tax area, focusing on the critical review of property taxation that is underway.

II. THE INDIANA TAX COURT'S JURISDICTION

After five years of existence, the basic jurisdictional confines of the Indiana Tax Court now appear to be in place, but a few important questions still linger.

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A. *The Statutory Scheme*

The enabling statute begins with the statement that the "tax court is a court of limited jurisdiction."¹ It then sets forth the basic jurisdictional framework:

The tax court has exclusive jurisdiction over any case that arises under the tax laws of this state and that is an initial appeal of a final determination made by:

(1) the department of state revenue with respect to a listed tax; or

(2) the state board of tax commissioners.

(b) The tax court also has any other jurisdiction conferred by statute.²

The enabling statute then further defines the Indiana Tax Court's jurisdiction as follows:

The cases over which the tax court has exclusive original jurisdiction are referred to as original tax appeals in this chapter.

The tax court does not have jurisdiction over a case unless:

(1) the case is an original tax appeal; or

(2) the tax court has otherwise been specifically assigned jurisdiction by statute.³

In order to bring an action before the Indiana Tax Court, there must be either a final determination from the Indiana State Board of Tax Commissioners or the Indiana Department of State Revenue,⁴ or there must be some other specific statutory grant of jurisdiction. This framework seems simple enough in the abstract, but has proved troubling in several situations.

B. *Appeals from Final Determinations of the Department of Revenue*

1. *Denials of Claims for Refunds of Listed Taxes.*—The Indiana Tax Court's jurisdiction over most final determinations rendered by the Department has been settled since the court's inception. Original appeals involving denials of claims for refunds of the listed taxes of Indiana Code section 6-8.1-1-1, which includes twenty-six different taxes such as the gross income tax and the gross retail and use taxes, clearly go to

1. IND. CODE ANN. § 33-3-5-2(a) (Burns Supp. 1990).

2. *Id.* § 33-3-5-2(a), (b).

3. *Id.* § 33-3-5-2(c).

4. Hereinafter referred to as the "Board" or the "Department."

the Indiana Tax Court. This is so because Indiana Code section 6-8.1-9-1(c), which formerly provided for appeals of denials of claims for refunds to be lodged with a county court, was amended with the creation of the Indiana Tax Court to provide that such appeals must be filed with the Indiana Tax Court.⁵

2. *“Letters of Findings” as Final Determinations.*—An issue that has not been squarely addressed is whether a letter of findings issued by the Department of Revenue is a final determination for purposes of appeal to the Indiana Tax Court. In order to address this issue, some background is necessary.

a. *Background*

Under Indiana Code section 6-8.1-5-1, the Department is required to make a proposed assessment of the amount of tax due when the Department believes the taxpayer has not reported the full amount of tax.⁶ The Department must then mail a notice of the proposed assessment to the taxpayer. The notice is to state that the taxpayer has sixty days to pay the assessment or to file a written protest.⁷

If a protest is filed, a hearing is held at the Department’s “earliest convenient time.”⁸ Then, no later than sixty days after the hearing, or after making a decision when no hearing was requested, the Department must issue a “letter of findings” to the taxpayer.⁹ This chapter dealing with assessment, however, does not provide any further mechanisms for appeal to the courts such as are contained within the chapter dealing with refund claims.¹⁰ The Indiana Tax Court’s enabling statute provides that an appeal can only lie from a “final determination.”¹¹ The question is whether a taxpayer can appeal from a letter of findings.

The first survey article to discuss the tax court implicitly answered this question in the negative and wrote, “In the case of appeals from the revenue department, the taxpayer is statutorily required first to pay the challenged tax, then to file a claim for refund; the statutory appeal lies from the department’s denial of the refund claim.”¹² Since its

5. Compare IND. CODE § 6-8.1-9-1(c) (1982) (appeals from denials of refund claims go to the circuit or superior court) with *id.* § 6-8.1-9-1(c) (Supp. 1985) (such appeals must go to the tax court).

6. IND. CODE ANN. § 6-8.1-5-1(a) (Burns Supp. 1990).

7. *Id.* § 6-8.1-5-1(c).

8. *Id.* § 6-8.1-5-1(c)(1).

9. *Id.* § 6-8.1-5-1(e).

10. IND. CODE § 6-8.1-9-1(c) (1988) (appeal of a decision by the Department on a claim for refund goes to the tax court).

11. IND. CODE ANN. § 33-3-5-2(a) (Burns Supp. 1990).

12. King, *Some Very Significant Developments in Indiana Taxation*, 20 IND. L.

inception, however the tax court has accepted appeals from letters of findings without any objection from the Department.¹³

Until this survey period, such appeals had been accepted without any explicit discussion of whether a letter of findings constituted a final determination under the Indiana Tax Court's enabling statute.¹⁴ In a recent case, however, the Indiana Tax Court noted the issue for the first time.

b. The GasAmerica decision

In *GasAmerica Services, Inc. v. State Department of Revenue*,¹⁵ the Department audited the taxpayer and thereafter issued a proposed assessment of sales taxes. The taxpayer protested the assessment and the Department held a hearing. The Department issued its letter of findings denying the protest, and the taxpayer later paid the assessment.¹⁶

The taxpayer then proceeded directly to the Indiana Tax Court without first filing an administrative claim for refund. The Department moved to dismiss the action by arguing that jurisdiction was lacking because the taxpayer had not filed a claim for refund under section 6-8.1-9-1. The Indiana Tax Court granted the motion and dismissed the appeal.

The opinion easily could be interpreted for the proposition that the only way to the Indiana Tax Court from the Department of Revenue is through the refund procedures of section 6-8.1-9-1. Fortunately, however, the opinion initially provides that its decision is limited to the claim-for-refund setting. The opinion states, "Since the facts of the case at bar only involve a refund, this decision restrictively applies to the situation *where the tax has been paid* and a refund is sought."¹⁷ Judge Fisher held that when a taxpayer has paid the tax, the only route to the Indiana Tax Court is to comply with the statutory refund procedures of section 6-8.1-9-1.

REV. 361, 375 (1987) [hereinafter *1987 Tax Survey*]. Note that the author discussed appeals in the context of the prerequisites for obtaining injunctive relief, an issue that is discussed later in this Article. The *1987 Tax Survey* did not specifically discuss whether a letter of findings would be an appealable final determination.

13. See, e.g., *Keller v. Indiana Dep't of State Revenue*, 530 N.E.2d 787 (Ind. T.C. 1988) (appeal from a letter of findings); *Video Tape Exch. CoOp of Am. v. Indiana Dep't of State Revenue*, 512 N.E.2d 476 (Ind. T.C. 1986) (same). Note that these cases involved petitions for injunctive relief.

14. The issue had been discussed only by one source prior to the survey period. See *Jegen & Maley, The Indiana Tax Court*, § 12, at 12-13 (I.C.L.E.F. 1988, 1990).

15. 552 N.E.2d 860 (Ind. T.C. 1990).

16. *Id.* at 860.

17. *Id.* at 861 (emphasis added).

Judge Fisher elaborated on the issue, but even some of his later discussion could be interpreted as requiring a taxpayer to always go through the administrative refund process before getting to court:

The procedure to be followed to invoke the jurisdiction of this Court when a refund is sought is expressly set forth in I.C. 6-8.1-9-1. Yet, I.C. 6-8.1-5-1 is silent as to the Tax Court. Therefore, the “statutory requirement for the initiation of an original tax appeal,” mentioned in I.C. 33-3-5-11(a), refers to I.C. 6-8.1-9-1. The claim for refund procedure must be followed once the tax is paid.

It may seem unnecessary to require a claim for refund in those cases where the tax has been paid pursuant to the protest procedure to invoke this Court’s jurisdiction. However, it is within the legislature’s prerogative to determine the jurisdiction of this Court. All administrative remedies must be met before the taxpayer can have his day in court. The procedure to be followed in refund cases is set forth in I.C. 6-8.1-9-1. The legislature has seen fit to provide for the administrative step of filing for a claim for refund before appealing to the Tax Court, even if the taxpayer protested the tax payment. Although this may cause duplication of effort and time in cases where the Department reaches the same result after the protest procedure and the claim for refund procedure have been followed, it is not for this Court to go beyond the jurisdiction expressly provided by statute.¹⁸

On balance, it seems that the Indiana Tax Court did not intend to write with such a broad pen so as to suggest that a claim for refund is a prerequisite to jurisdiction in all cases. Rather, the narrow holding of *GasAmerica*, given the facts presented, is that a refund claim must be filed before going to the Indiana Tax Court *when the taxpayer has opted to pay the proposed assessment*.¹⁹ As Judge Fisher stated in the first paragraph above, “The claim for refund procedure must be followed *once the tax is paid*.”²⁰

c. The lingering question

The question remains unanswered as to whether a taxpayer can actually appeal to the Indiana Tax Court from a letter of findings. This

18. *Id.* at 862.

19. *Id.*

20. *Id.* (emphasis added).

narrow issue was not presented in *GasAmerica*. Nonetheless, Judge Fisher did comment on the question in a footnote:

The question which must be answered is whether a Letter of Findings issued after a protest pursuant to I.C. 6-8.1-5-1 is a "final determination" as required under I.C. 33-3-5-2. The [Department] does not suggest that the "Letter of Findings" is not a final determination, so for purposes here the Court will assume and treat the "Letter of Findings" as a final determination.²¹

The footnote is dicta because the case was not resolved on the grounds of whether appeal lies from a letter of findings. To reiterate, the actual holding of *GasAmerica* was that when the tax has been paid, the refund procedures must be attempted before going to Indiana Tax Court.²²

What, then, can be said about the right to appeal from a letter of findings when the tax is *not* paid? First, as noted previously, the Indiana Tax Court routinely has accepted such appeals and the Department has not contested jurisdiction. This, of course, does not prove that jurisdiction exists, for the Indiana Tax Court is a court of limited jurisdiction,²³ and subject-matter jurisdiction cannot be presumed or conferred in such tribunals.²⁴ Thus, this practice of accepting appeals from letters of findings is of only marginal relevance from a legal standpoint, although its practical ramifications are profound.

Second, unlike other matters that go to the Indiana Tax Court, there is no statutory procedure that sets forth timetables and guidelines for appealing a letter of findings. For instance, the statute governing refund claims explicitly sets forth the steps that must be followed to get to the Indiana Tax Court. Section 6-8.1-9-1(c) provides that an appeal from a denial of a refund claim can be filed with the Indiana Tax Court

21. *Id.* at 861 n.1.

22. *Id.* at 862. This is similar to the federal system in which the taxpayer cannot get into United States Tax Court unless there is a notice of deficiency. Once the federal taxpayer pays the deficiency, the United States Tax Court is lost as a forum, and the only avenue of relief is to file a claim for refund and then seek relief in United States District Court or the United States Court of Claims. *See generally* 24A FEDERAL TAX COORDINATOR 2D §§ U-2000-109 (RIA 1990) (discussing litigation before the United States Tax Court and noting that it is the only federal court in which "such controversies can ordinarily be adjudicated before payment of the tax liability in dispute"); FED. TAX CT. R. 13 (notice of deficiency is a prerequisite to tax court jurisdiction).

23. IND. CODE ANN. § 33-3-5-2(a) (Burns Supp. 1990).

24. *See State ex rel. Hight v. Marion Superior Court*, 547 N.E.2d 267, 269 (Ind. 1989) (parties cannot confer subject matter jurisdiction by consent or agreement); *Wolfe v. Tuthill Corp.*, 532 N.E.2d 1, 2 (Ind. 1988) (subject matter jurisdiction can be contested at any time); *Artusi v. City of Mishawaka*, 519 N.E.2d 1246, 1248 (Ind. Ct. App. 1988) (same).

and that such an appeal must be filed within certain time limits.²⁵

One must ask what guidelines would govern appeals from letters of findings. There are no specific time limitations contained within the Indiana Tax Court's enabling statute, and it cannot be assumed that a letter of findings could be appealed at any time, including, say, seventeen years, after a letter was issued. Moreover, prior to the creation of the Indiana Tax Court, the general rule was that the refund statute of section 6-1.1-9-1 was the "taxpayer's exclusive remedy when contesting the legality of a tax."²⁶ These considerations strongly suggest that appeal to the Indiana Tax Court is not authorized from a letter of findings.

A third factor, however, weighs in favor of such jurisdiction. Section 33-3-5-11 of the enabling statute grants the Indiana Tax Court the power to enjoin collection of taxes pending an original tax appeal.²⁷ Such injunctive relief is unnecessary in refund cases because the tax already has been collected, and it is also unavailing in most property tax cases because under Indiana Code section 6-1.1-15-10, taxpayers are basically relieved from paying tax on contested assessment increases during the pendency of a court appeal challenging such increases.²⁸

The right to seek injunctive relief is coupled with and dependent on the filing of an original tax appeal.²⁹ If the only original tax appeals allowed were those involving refund claims of listed taxes and property taxes that are already "stayed" during an appeal, one must ask what purpose is served by the injunction procedure.

In this light, a legitimate argument can be made that the Indiana General Assembly must have contemplated appeals to the Indiana Tax Court from letters of findings. Otherwise, the injunctive relief provisions would indeed serve no purpose, which would be contrary to the rule that statutes are not to be construed in a fashion that renders absurd results.³⁰

In short, there are legitimate arguments for and against finding jurisdiction over appeals from letters of findings. On balance, however,

25. IND. CODE ANN. § 6-8.1-9-1 (Burns Supp. 1990).

26. *Felix v. Indiana Dep't of State Revenue*, 502 N.E.2d 119, 120 (Ind. Ct. App. 1986) (taxpayer challenging intangibles tax, then a listed tax, was required to exhaust remedies by seeking claim for refund); *State v. Meadowood I.U. Retirement Community, Inc.*, 425 N.E.2d 721, 724 (Ind. Ct. App. 1981) (taxpayer could not seek relief from adverse ruling by the Department by means of a declaratory judgment action in circuit court even though no tax assessment had been made, because the statutory remedy of paying the tax and then bringing an action to recover the amounts paid is exclusive).

27. IND. CODE § 33-3-5-11 (1988).

28. *Id.* § 6-1.1-15-10.

29. *See infra* notes 94-123 and accompanying text.

30. *Hatcher v. Lake Superior Court*, 500 N.E.2d 737, 739 (Ind. 1986); *In re Marriage of Lopp*, 268 Ind. 690, 706, 378 N.E.2d 414, 422 (1978), *cert. denied*, 439 U.S. 1116 (1979).

it is submitted that a court of limited jurisdiction needs a more explicit grant of power to hear such appeals. If the issue is ever raised, the proper answer, though unfortunate, might be that the Indiana Tax Court does not have jurisdiction in this setting.

d. Proposed Legislation

In order to resolve the confusion in this area and, just as in the federal tax system, provide for expedited appeals to the Indiana Tax Court without the necessity of first paying the tax, the legislature should take immediate action. The following proposals are submitted for consideration, with italicized text constituting new language:

Indiana Code § 6-8.1-5-1, dealing with proposed assessments and Letters of Findings issued by the Department of Revenue, should be amended as follows:

IND. CODE § 6-8.1-5-1(*d*)

(1) The taxpayer may appeal any adverse portion of a letter of findings issued by the Department of Revenue if the taxpayer has not paid the tax at issue. Any such appeal must be taken to the Indiana Tax Court. Letters of findings shall constitute "final determinations" under the Indiana Tax Court's enabling statute. Ind. Code § 33-3-5-1.

(2) The tax court does not have jurisdiction over an appeal from a letter of findings if:

(a) the appeal is filed more than ninety (90) days after the date the Department mails the letter of findings to the taxpayer, or

(b) the taxpayer has already filed an appeal under Indiana Code section 6-8.1-9-1 concerning the same matter after an adverse ruling on a claim for refund.

(3) If a taxpayer appeals a letter of findings to the Indiana Tax Court under this subsection, such taxpayer may not thereafter appeal a denial of a refund claim concerning the same matter to the Indiana Tax Court under Ind. Code § 6-8.1-9-1.

(4) The taxpayer appealing a letter of findings to the tax court may seek injunctive relief under Ind. Code § 33-3-5-11(b).

Such amendments, or something similar, would enhance Indiana's system of adjudicating tax issues. The Indiana Tax Court's practice of accepting such appeals without objection from the Department shows that this system is workable. The statute should be amended to make the workable unambiguously legal.

3. *Death Taxes.*—Prior to the survey period, there had been great debate concerning the Indiana Tax Court's jurisdiction over Indiana estate and inheritance tax matters. Unlike many other statutory provisions

that predated the Indiana Tax Court and that were amended in 1985 to leave no doubt that an appeal would go to the Indiana Tax Court, the statutory provisions governing the death taxes were not amended. For instance, Indiana Code section 6-4.1-10-4 provided that an appeal from the Department's order on a claim for refund of a death tax matter was to be filed in an appropriate county probate court.³¹ Such provisions were in apparent conflict with the Indiana Tax Court's purported exclusive jurisdiction.

a. The initial solution

The Indiana Tax Court confronted this issue several years ago in *Blood v. Poindexter*.³² In *Blood*, the taxpayer, well aware of the jurisdictional ambiguity, filed duplicative actions concerning Indiana death taxes in a county circuit court and the Indiana Tax Court. The Department requested Judge Fisher to exercise exclusive jurisdiction. Judge Fisher assumed such jurisdiction, reasoning that the jurisdictional statutes that had not been amended upon the creation of the Indiana Tax Court were effectively repealed. Judge Fisher noted that to hold otherwise would thwart the goal of state-wide uniformity in taxation that was behind the creation of the Indiana Tax Court.³³ The *Blood* decision remained the law of Indiana on this issue because the matter was not appealed to the Indiana Supreme Court.

b. The legislature's solution

In 1990, however, the Indiana General Assembly entered the foray. Responding to concerns that the administration of an estate in the county probate court could be impeded by a separate appeal of tax issues to the Indiana Tax Court, the legislature effectively repealed the *Blood v. Poindexter* decision. The legislature effected this change by amending one statute and adding two others. As to probate court redeterminations of inheritance tax, the new statute provides:

IND. CODE § 6-4.1-7-7. APPEAL TO TAX COURT. A probate court's redetermination of inheritance tax under this chapter may be appealed to the tax court in accordance with the rules of appellate procedure.³⁴

31. IND. CODE § 6-4.1-10-4 (1984). See also *id.* § 6-4.1-7-5 (appeals of inheritance tax determination of appraisals concerning nonresident's property go to probate courts); *id.* § 6-4.1-10-5 ("the probate court may determine the amount of any tax refund due").

32. 524 N.E.2d 824 (Ind. T.C. 1988).

33. *Id.*

34. IND. CODE ANN. § 6-4.1-7-7 (Burns Supp. 1990).

The amended provision for probate court rulings on inheritance tax and estate tax refund claims reads:

IND. CODE § 6-4.1-10-5. DETERMINATION OF AMOUNT OF TAX REFUND - APPEAL. When an appeal is initiated under section 4 of this chapter, the probate court shall determine the amount of any [inheritance or Indiana estate] tax refund due. Either party may appeal the probate court's decision to the tax court in accordance with the rules of appellate procedure.³⁵

Finally, the new statutory provision concerning appeals involving estate tax determinations reads:

IND. CODE § 6-4.1-11-7. APPEAL TO TAX COURT. A probate court's final determination concerning the amount of Indiana estate tax owing under this chapter may be appealed to the tax court in accordance with the rules of appellate procedure.³⁶

With these changes, the legislature made clear that the probate courts, rather than the tax court, are to initially review the Department's decisions on claims for refunds of death taxes, and that the probate courts are to make all redeterminations of inheritance tax and final determinations of estate tax.³⁷ Appeals from such decisions then go to the Indiana Tax Court, which will thus act like a true appellate court in its review of death tax matters.³⁸

c. Lingering questions

The statutory changes, however, raise several questions of their own. Each provision states that an appeal may be taken to the Indiana Tax Court "in accordance with the rules of appellate procedure."³⁹ If, as it appears, this reference is meant to incorporate the Indiana Rules of Appellate Procedure, the ramifications are significant, for some of the general appellate rules conflict with the appellate procedures specifically set forth for the Indiana Tax Court.

For instance, the Indiana Tax Court's enabling statute and its rules state that original tax appeals are initiated by filing "a petition in the

35. *Id.* § 6-4.1-10-5.

36. *Id.* § 6-4.1-11-7.

37. For a concise summary of how death taxes are administered in probate courts, see 3A THE PROBATE LAW AND PRACTICE OF THE STATE OF INDIANA 374-77 (J. Grimes 7th ed. 1980 & Supp. 1989).

38. It is assumed that the use of the word "may" in the statute is not meant to allow an appeal to go to the Indiana Tax Court or the Indiana Court of Appeals. See IND. CODE ANN. §§ 6-4.1-7-7, -10-5, -11-7.

39. *Id.* §§ 6-4.1-7-7, -10-5, -11-7.

tax court.”⁴⁰ General civil appeals, however, are “initiated by filing with the clerk of the trial court a praecipe designating what is to be included in the record of the proceedings.”⁴¹ “The praecipe shall be filed within thirty (30) days after the entry of a final judgment or an appealable final order”⁴²

Thus, as a preliminary matter, there is a difference in how the appeal must be initiated under the two sets of rules, with the Indiana Tax Court provisions for original tax appeals requiring only a petition in the Indiana Tax Court, and the general appellate rules requiring a praecipe to be filed in the trial court. In light of the 1990 amendment to the Indiana Tax Court’s statute providing that the “tax court also has any other jurisdiction conferred by statute,”⁴³ it appears that jurisdiction would be properly invoked by following only the general appellate rules in death tax cases. Nonetheless, in order to be safe in death tax appeals, practitioners would be wise to file both a praecipe with the probate court under Indiana’s Rules of Appellate Procedure, as well as a petition with the Indiana Tax Court under its statute and rules.

A more substantive difference, however, exists concerning *when* the probate court’s decisions can be appealed. Under Appellate Rule 4(A), appeals may only be taken from “final judgments” and from a limited class of interlocutory orders.⁴⁴ The question arises whether the final judgment requirement of the appellate rules is applicable. If so, the next inquiry is whether a probate court’s rulings on these death tax issues constitute appealable final judgments.

Initially, one could argue that the statutes granting the Indiana Tax Court jurisdiction over death tax appeals allow for immediate appeal without regard to final judgment considerations. Recall that the inheritance tax statute allows appeals to the Indiana Tax Court from “re-determinations of inheritance tax”⁴⁵ The estate-tax provisions allow such an appeal from the “probate court’s final determination concerning the amount of estate tax owing”⁴⁶ As to refund claims, the statute permits either party to appeal the “probate court’s decision”⁴⁷

40. IND. CODE § 33-3-5-11(a) (1988); IND. TAX CT. R. 3.

41. IND. APP. R. 2(A).

42. *Id.*

43. IND. CODE ANN. § 33-3-5-2(b) (Burns Supp. 1990).

44. IND. APP. R. 4(A) (“Appeals may be taken by either party from all final judgments of circuit, superior, probate, criminal, juvenile, county, and where provided by statute for municipal courts.”).

45. IND. CODE ANN. § 6-4.1-7-7 (Burns Supp. 1990).

46. *Id.* § 6-4.1-11-7.

47. *Id.* § 6-4.1-10-5.

Given the purpose of the statutory changes, it seems that the legislature intended to allow appeal from each particular determination without consideration of the final judgment rule.

Nonetheless, each provision also states that such appeals are to be "in accordance with the rules of appellate procedure."⁴⁸ Rule 4(a) of these rules requires a final judgment before taking an appeal.⁴⁹ In light of the strict construction normally accorded jurisdictional provisions,⁵⁰ the final judgment requirements are probably applicable to such death tax appeals.

Unfortunately, neither the trial rules nor appellate rules define the term "final judgment." The Indiana Supreme Court has written that an order is a final judgment if the "matter ruled upon was put to rest."⁵¹ "A judgment may be final and appealable even if it does not dispose of all the issues as to all the parties in the trial court, provided it disposes of a distinct and definite branch of the litigation."⁵²

Applying this standard to the "determinations" at issue, it is seen that the final judgment obstacle should be satisfied in each instance. For "decisions" concerning the tax refund due under Indiana Code section 6-1.4-10-5, all issues are resolved between the parties with the probate court's decision. The same is true of "final determinations" of estate tax under Indiana Code section 6-4-1.11-7. Similarly, for redeterminations of inheritance tax that are appealable under Indiana Code section 6-4.1-7-7, nothing remains to be adjudicated between the Department and any persons involved when such a "redetermination" of the tax is made by the probate court.⁵³

48. *Id.* §§ 6-4.1-7-7, -10-5, -11-7.

49. IND. APP. R. 4(A).

50. *See, e.g., State ex. rel. Consol. City of Indianapolis v. Indiana Tax Court*, No. 49S00-9010-OR-689 (Ind. Nov. 1, 1990) (holding that tax court lacks jurisdiction over injunctive relief petitions when no original tax appeal is on file).

51. *Richards v. Crown Point Community School Corp.*, 256 Ind. 347, 350, 269 N.E.2d 5, 7 (1971).

52. *Id.* *See also In re Green*, 525 N.E.2d 634, 635 (Ind. Ct. App. 1988) ("Generally, a final judgment is one which disposes of all the issues as to all the parties and puts an end to the matter in question.").

53. Note, however, that original "determinations" of inheritance tax made by the probate court pursuant to Indiana Code § 6-4.1-5-10 are apparently not appealable, at least not to the Indiana Tax Court, for only redeterminations and decisions reviewing denials of refund claims are appealable to the Indiana Tax Court. Thus, a probate court's initial "Order Determining Inheritance Tax Due," which is often completed on Form IH-9 of the Department, is not appealable to the Indiana Tax Court. By not allowing an appeal to the Department, the legislature has in essence required a motion to correct errors, in the form of a petition for rehearing under Indiana Code § 6-4.1-7-1, as a prerequisite to appealing to the Tax Court. *See* IND. CODE § 6-4.1-7-1 (1984). This effect contrasts with the recent amendments to Trial Rule 59(A) that make a motion to correct errors permissive in most cases. IND. R. TRIAL P. 59(A).

Although the administration of the estate may continue after such decisions, the adversarial posture taken over the death tax issues has subsided. Thus, if Appellate Rule 4(A)'s final judgment requirement applies to these death tax appeals, the prerequisite should be satisfied in each instance, and the appeals should proceed to the Indiana Tax Court.⁵⁴

Thus, it appears that Indiana's Rules of Appellate Procedure apply to appeals of death tax issues from probate courts to the Indiana Tax Court. Counsel involved in such appeals should review these rules as well as the Rules for the Indiana Tax Court and ensure compliance with both.

d. Proposed legislation

In order to clarify how appeals from the probate courts should proceed to the tax court, a few technical corrections are warranted. First, each of the provisions allowing appeal of death tax issues to the Indiana Tax Court should be amended to make clear that the Indiana Rules of Appellate Procedure apply, rather than using a nondescript reference to "the rules of appellate procedure."⁵⁵ Second, these provisions should also state that the probate courts' decisions are to be considered final judgments for purposes of appeal. Third, it should be made clear that appeals can only go to the Indiana Tax Court, and not to the Indiana Court of Appeals.

The proposed amendments, with new language italicized and deleted language stricken, would read:

IND. CODE § 6-4.1-7-7 — A probate court's redetermination of inheritance tax under this chapter may be appealed to the tax court in accordance with ~~the rules of appellate procedure~~ *the Indiana Rules of Appellate Procedure*. *Such redeterminations shall be considered final judgments for purposes of appeal to the tax court. Appeal from a probate court's redetermination of inheritance tax may not be taken to the Indiana Court of Appeals.*

IND. CODE § 6-4.1-10-5 — When an appeal is initiated under section 4 of this chapter, the probate court shall determine the amount of any tax refund due. Either party may appeal the

54. To ensure appealability, practitioners could alternatively seek to have the probate court's decision certified as a final judgment under Trial Rule 54(B), or certified as an appealable interlocutory order under Appellate Rule 4(B)(6). See IND. R. TRIAL P. 54(B); IND. APP. R. 4(B)(6). If nothing else, such an awkward request would demonstrate the true finality of these decisions.

55. IND. CODE ANN. §§ 6-4.1-7-7, -10-5, -11-7 (Burns Supp. 1990).

probate court's decision to the tax court in accordance with ~~the rules of appellate procedure~~ *the Indiana Rules of Appellate Procedure*. Such decisions by the probate court shall be considered final judgments for the purposes of appeal to the tax court. Appeal from a probate court's determination of any tax refund due may not be taken to the Indiana Court of Appeals.

IND. CODE § 6-4.1-11-7 — A probate court's final determination concerning the amount of Indiana estate tax owing under this chapter may be appealed to the tax court in accordance with ~~the rules of appellate procedure~~ *the Indiana Rules of Appellate Procedure*. Such final determinations shall be considered final judgments for purposes of appeal to the tax court. Appeal from a probate court's final determination of Indiana estate tax may not be taken to the Indiana Court of Appeals.

Also, in order to make it clear that the Indiana Tax Court has jurisdiction over certain cases besides original tax appeals (which are defined by statute to include only appeals from final determinations of the Department or of the Board), and to avoid any confusion over what constitutes an original tax appeal, the tax court's enabling statute should be amended as follows:

IND. CODE § 33-3-5-2(b) — The tax court also has any other jurisdiction conferred by statute, *including jurisdiction over certain inheritance tax and Indiana estate tax matters as set forth in Title 6, Article 4.1 of the Indiana Code*. Such appeals shall not be known as original tax appeals, but instead shall be referred to simply as "tax appeals."

Similarly, the Indiana Supreme Court should amend Tax Court Rule 2 as follows:

TAX COURT RULE 2
ONE TWO FORMS OF ACTION

(A) In the Indiana Tax Court, there shall be ~~one~~ *two* forms of action in the nature of a civil action, to be known as an "original tax appeal." *Appeals from final determinations of the State Board of Tax Commissioners or Department of Revenue shall be referred to as "original tax appeals."* All other appeals specifically conferred by statute to lie in the Indiana Tax Court shall simply be known as "tax appeals."

(B) An original tax appeal is an action that arises under the tax laws of the State of Indiana by which an initial judicial appeal of a final determination of the Department of State Revenue or the State Board of Tax Commissioners is sought.

These amendments, or something to their effect, would clarify the Indiana Tax Court's jurisdiction and simplify practice before this tribunal.⁵⁶

C. Appeals from Final Determinations of the State Board of Tax Commissioners

The Indiana Tax Court's enabling statute creates jurisdiction over appeals from final determinations of the Board.⁵⁷ Despite this seemingly clear grant of jurisdiction, there is still debate over what types of property tax appeals can be heard by the Indiana Tax Court.

1. *Final Determinations.*—First, it remains clear that the Indiana Tax Court has jurisdiction over appeals of final assessment determinations made by the Board under Indiana Code sections 6-1.1-15-4⁵⁸ and 6-1.1-15-5.⁵⁹ Indeed, the latter provision was specifically amended in 1985 to provide that such appeals “shall be taken to the tax court.”⁶⁰

2. *Property Tax Refund Claims.*—What remains an issue, however, is whether the Indiana Tax Court has jurisdiction over property tax refund claims. Additional background is necessary to evaluate this question.

56. The reference to “tax appeals” is admittedly awkward. The proposal here is simply meant to clarify that the tax court has jurisdiction over more actions than just “original tax appeals.” Indeed, besides appeals from probate courts in death-tax matters, the tax court also has jurisdiction to bind a delinquent taxpayer into receivership, IND. CODE § 6-8.1-8-6(b) (1988), to address the Board's final assessment of a public utility company's distributable property, *id.* § 6-1.1-8-30, and to hear any suit against the state involving the Indiana gasoline tax, *id.* § 6-6-1.1-1206. Whatever methodology is used to make clear that the tax court can hear more actions than just “original tax appeals” is satisfactory, including abandoning the “original tax appeal” language entirely.

Another issue that is a candidate for direction from the legislature is whether appeals can be taken from initial “determinations” of inheritance tax made under IND. CODE § 6-4.1-5-10 (1988). As discussed *supra* note 54, such determinations are not appealable to the tax court at the present time. It does not appear that such determinations would be final judgments that could be appealed to the Indiana Court of Appeals. If they are, the goal of uniformity in tax litigation via the Indiana Tax Court would not be realized.

57. IND. CODE ANN. § 33-3-5-2(a)(2) (Burns Supp. 1990).

58. IND. CODE § 6-1.1-15-4(e) (1988) (allowing judicial review when the Board fails to conduct a hearing within 12 months after receiving a petition in a nonreassessment year or 24 months in a reassessment year).

59. *Id.* § 6-1.1-15-5(b) (Supp. 1990) (allowing judicial review of the Board's final determination on assessment of tangible personal property).

60. *Id.* The provisions of Indiana Code § 6-1.1-15-4 did not need to be amended because this code section states that an appeal may be taken under Indiana Code § 6-1.1-15-5 in the same manner as if the Board had made a final determination. IND. CODE § 6-1.1-15-4 (1988).

a. *Background*

By statute, the taxpayer may file a claim for refund of all or a portion of a property tax installment that has been paid.⁶¹ The refund claim is filed with the county auditor, and the auditor forwards the claim to the Board for "review."⁶² However, the Board merely certifies its "approval or disapproval on the claim and [then] return[s] it to the county auditor."⁶³

After the Board approves or disapproves of the claim and returns it to the county auditor,⁶⁴ the auditor submits the claim to the "county board of commissioners for final review."⁶⁵ The county board of review then has discretion to disallow a claim that the Board has approved,⁶⁶ but has no discretion to allow a claim that was disapproved by the Board.⁶⁷

This review scheme further provides that when "the county board disallows a claim, the claimant may appeal that decision to the county circuit court."⁶⁸ Thus, unlike other tax provisions, the property tax refund sections were not amended to specifically provide for appeals to the Indiana Tax Court.

This statutory framework creates jurisdictional problems. As the author of this section of the 1987 survey edition wrote:

It therefore appears that a sound argument can be made that the new tax court has no jurisdiction over property tax refund claims since (1) the state tax board does not make the final determination of the refund claim, and (2) the judicial review provision specifying appeals to the circuit court was left intact.⁶⁹

61. *Id.* § 6-1.1-26-1.

62. *Id.* § 6-1.1-26-2(a). The Board reviews such claims if the claim is for the refund of taxes paid on an assessment made or determined by the Board, *id.* § 6-1.1-26-2(a)(1), or if the claim is based upon "illegal" taxes or mathematical errors in the computation of the assessment, *id.* § 6-1.1-26-2(a)(2). Under Indiana Code § 26-1.1-26-3, a more traditional "appeal" route (rather than simple forwarding "review") is used for refund claims not covered by Indiana Code § 6-1.1-26-2. *Id.* §§ 6-1.1-26-2, 26-1.1-26-3. Presumably, this would only include a claim for refund based on the ground listed in Indiana Code § 6-1.1-26-1(4)(a)(1) that taxes on the same property have been assessed and paid more than once for the same year, because section 2 of chapter 26 incorporates all other grounds upon which a claim for refund could be based. *Id.* § 6-1.1-26-1(4)(a)(1).

63. *Id.* § 6-1.1-26-2(b).

64. *Id.*

65. *Id.* § 6-1.1-26-4(a).

66. *Id.* § 6-1.1-26-4(c).

67. *Id.* § 6-1.1-26-4(b)(1).

68. *Id.* § 6-1.1-26-4(c).

69. 1987 *Tax Survey*, *supra* note 12, at 365.

b. The Herff Jones case

Judge Fisher addressed this issue that same year in *Herff Jones, Inc. v. State Board of Tax Commissioners*.⁷⁰ In *Herff Jones*, the taxpayer filed duplicative actions in a circuit court and the Indiana Tax Court because of the conflicting statutes governing property tax and the Indiana Tax Court. The State filed a petition asking Judge Fisher to assert exclusive jurisdiction; Judge Fisher held that the Indiana Tax Court had jurisdiction.⁷¹

The holding of the *Herff Jones* decision, however, is not that the Indiana Tax Court has jurisdiction over property tax refund claims. Rather, Judge Fisher merely held that it had jurisdiction because the action before it was in reality an appeal from the Board's ruling on a petition for correction of errors filed under Indiana Code section 6-1.1-15-12, as opposed to a refund claim.⁷² This issue arose because the taxpayer had filed a petition for correction of errors with the county auditor, but had also asked for a refund on the same form. Judge Fisher determined that the administrative action was actually one involving a petition for correction of errors rather than a claim for refund.⁷³ Judge Fisher could exercise jurisdiction because most final determinations of such petitions by the Board are appealable to the Indiana Tax Court.⁷⁴

In dicta, however, Judge Fisher went on to write that even if the matter were treated as a denial of a refund claim under section 6-1.1-26-4, the Indiana Tax Court would have exclusive jurisdiction.⁷⁵ Judge Fisher reasoned that the legislature's goal of uniformity in Indiana tax adjudications would be frustrated if such appeals were taken to the county circuit courts.⁷⁶

The *Herff Jones* decision has been called "clearly debatable"⁷⁷ by previous survey authors, for as has been pointed out, section 6-1.1-26-4(c) does expressly state that "[w]hen the county board disallows a claim,

70. 512 N.E.2d 485 (Ind. T.C. 1987).

71. *Id.* at 491.

72. *Id.*

73. *Id.* at 489-91.

74. *Id.* at 489. Note, however, that there are some situations in which a petition for correction of errors under Indiana Code § 6-1.1-15-12 is not appealable to the tax court because the Board does not act on such petitions. Specifically, petitions brought under subdivisions (1)-(5) of this code section do not involve the Board and thus cannot be the basis of a final determination by the Board. 1987 Tax Survey, *supra* note 12, at 365-66 (discussing issue); Dlouhy & King, *Significant Developments in Indiana Taxation*, 21 IND. L. REV. 383, 390 (1988) [hereinafter 1988 Tax Survey].

75. *Herff Jones*, 512 N.E.2d at 491.

76. *Id.*

77. 1988 Tax Survey, *supra* note 74, at 393.

the claimant may appeal that decision to the *county circuit court*.”⁷⁸ Some have stated that the Indiana Tax Court had to “turn its back completely on the clear and unambiguous language” of this code section to assert exclusive jurisdiction.⁷⁹

Judge Fisher did deal with this provision, however, by reasoning that “the Legislature understood statute 26-4(c) to address only those appeals in which the county board has discretion to allow or disallow the claim”⁸⁰ One must recall that section 26-4(b)(1) requires the county board to disallow a refund claim that was disapproved by the Board.⁸¹ Arguably, nothing in section 26-4 speaks to how such ministerial decisions by the county board should be appealed.

Indeed, a legitimate argument can be made that the Indiana Tax Court correctly decided that the section’s reference to the circuit courts applies only to situations in which the county board has discretion. The statute reads:

(c) Except as provided in subsection (b) of this section [which states that the county board shall disallow a claim if the Board disapproved of it], the county board of commissioners may either allow or disallow *a refund claim* which is submitted to it for final review. When the county board disallows *a claim*, the claimant may appeal that decision to the county circuit court⁸²

It is possible to conclude that the “claim” referred to in the language “When the county board disallows a claim”⁸³ means only a “claim”⁸⁴ over which it has discretion. Indeed, the first sentence specifically excludes the ministerial decisions described in subsection (b) from the rest of subsection (c).

This is, in essence, what Judge Fisher concluded. His interpretation of the statute could be further bolstered by the canon of statutory construction known as the “rule of the last antecedent.”⁸⁵ Under this doctrine, qualifying words correspond to and describe words or phrases immediately preceding them, and ordinarily do not refer to others more

78. IND. CODE § 6-1.1-26-4(c) (1988) (emphasis added).

79. *1988 Tax Survey*, *supra* note 74, at 394.

80. *Herff Jones*, 512 N.E.2d at 490.

81. IND. CODE § 6-1.1-26-4(b)(1).

82. *Id.* § 6-1.1-26-4(c) (emphasis added).

83. *Id.*

84. *Id.*

85. *Wilshire Westwood Assocs. v. Atlantic Richfield Corp.*, 881 F.2d 801, 804 (9th Cir. 1989); *Yasuda Fire & Marine Ins. Co. v. Lake Shore Elec. Corp.*, 744 F. Supp. 864, 872 (S.D. Ind. 1990).

remote.⁸⁶ Here, the “claim” referred to in the second sentence of subsection (c) could well be limited to the “claim” referred to in the preceding sentence.⁸⁷ Because the “claim”⁸⁸ in the first sentence is one in which the county board has discretion, the Indiana Tax Court’s conclusion that subsection (c) does not apply to ministerial decisions of the county board is reinforced.⁸⁹

On the other hand, the third sentence of subsection (c) dealing with appeals to circuit courts states that if the claimant “initiates an appeal, any board, officer, or commissioner who disapproved or disallowed the claim may be made a defendant to the action.”⁹⁰ Here the reference to “any board” that “disapproved” the claim can only mean the Board’s “disapproval” of a claim, for the statute uses the term “disapprove” with respect to the Board. Because such disapproved claims are then automatically and ministerially “disallowed” by the county board under section 26-4(b)(1), it would seem that appeals to circuit courts under subsection (c) would include such ministerial disallowances by county boards.⁹¹

In any event, it is not the purpose nor the province of this Article to say definitively whether the *Herff Jones* dicta is correct. Certainly there are legitimate arguments on both sides, but at present the dicta is controlling in Indiana tax litigation as the issue has not reached the Indiana Supreme Court. Indeed, it is possible that the issue will never be raised, for the Board took the position in *Herff Jones* that the Indiana Tax Court has exclusive jurisdiction, and it is unlikely to change its views on the matter in the future. Thus, the issue probably will be raised only if a taxpayer desires to remain in circuit court.

Nonetheless, the issue is one of jurisdiction. Because the Indiana Tax Court is a court of limited jurisdiction, its very power to adjudicate cannot be implied. Jurisdiction cannot be conferred by the parties,⁹² and when jurisdiction appears lacking, the issue must be addressed by the Indiana Tax Court and, when a case is appealed further, by the Indiana Supreme Court.

86. *Wilshire*, 881 F.2d at 804; *Yasuda*, 744 F. Supp. at 872.

87. IND. CODE § 6-1.1-26-4(c) (1988).

88. *Id.*

89. *Herff Jones, Inc. v. State Board of Tax Comm’rs*, 512 N.E.2d 485, 490 (Ind. T.C. 1987).

90. IND. CODE § 6-1.1-26-4(c).

91. *Id.* § 6-1.1-26-4(b)(1), (c).

92. See *State ex rel Hight v. Marion Superior Court*, 547 N.E.2d 267, 269 (Ind. 1989) (parties cannot confer subject matter jurisdiction by consent or agreement); *Wolfe v. Tuthill Corp.*, 532 N.E.2d 1, 2 (Ind. 1988) (subject matter jurisdiction can be contested at any time); *Artusi v. City of Mishawaka*, 519 N.E.2d 1246, 1248 (Ind. Ct. App. 1988) (same).

c. The need for legislation

As has been suggested before,⁹³ there are two important considerations remaining because of the jurisdictional uncertainty. First, practitioners appealing property tax refund claims would still be wise to file duplicative actions in the appropriate circuit court and the Indiana Tax Court. Otherwise, their clients could find themselves bumped out of court for want of jurisdiction.

Second, and just as important, it is time for legislative action to correct the remaining ambiguity. Indiana taxpayers deserve a straightforward system free of uncertainties for appealing property tax issues to the courts; they have not received this. In order to clear up the confusion, the following proposal is submitted, with italicized words representing new language and stricken words representing deleted language:

Indiana Code section 6-1.1-26-4(c) would be amended to read:

(c) Except as provided in subsection (b) of this section, the county board may either allow or disallow a refund claim which is submitted to it for final review. When the county board disallows *such a discretionary* claim, the claimant may appeal that decision to the county circuit court. If the claimant initiates *such* an appeal, any *county* board, officer, or commissioner who disapproved or disallowed the claim may be made a defendant to the action.

New code section 6-1.1-26-4(d) would read:

(d) *When the State Board of Tax Commissioners disapproves of a refund claim and, consistent with I.C. 6-1.1-26-4, the county board then disallows the refund claim, the claimant may appeal the disallowance to the Indiana Tax Court as a final determination of the State Board of Tax Commissioners. The tax court shall have exclusive jurisdiction over such appeals.*

This proposal would simply codify the Indiana Tax Court's dicta from *Herff Jones*, and thus reinforce the Indiana General Assembly's original goal of uniformity in state tax litigation.

D. Jurisdiction over Injunctive Relief Petitions When No Original Tax Appeal Is on File

The final jurisdictional issue came to the forefront during the survey period in the most dramatic fashion. By way of a writ of prohibition,

93. 1988 Tax Survey, *supra* note 74, at 395.

the Indiana Supreme Court held that the Indiana Tax Court lacks jurisdiction over a petition for injunctive relief unless an original tax appeal is on file with the Indiana Tax Court.⁹⁴

1. *The AUL Case.*—The issue arose in a case brought in the Indiana Tax Court: *American United Life Insurance Co. v. Indiana State Board of Tax Commissioners*.⁹⁵ AUL initiated the action by filing a petition for injunctive relief with the Indiana Tax Court. However, no original tax appeal was filed. Indeed, no such appeal could have been filed because there was not a final determination from the Board.

In its petition, AUL claimed that it had been wrongfully denied a portion of the property tax replacement credit under the property tax replacement fund provisions of Indiana Code sections 6-1.1-21-1 to -4.⁹⁶ The dispute arose out of tax increment financing for the Circle Center Mall in Indianapolis, with AUL basically claiming that its property was being taxed at a different effective rate of taxation than other property within the same taxing district.

AUL had filed claims for refunds for tax years 1987 through 1989, but no final determination had been issued by the Board as late as October of 1990. In order to enjoin collection of the November 1990 installment representing the disputed amount of the credit, AUL sought injunctive relief from the Indiana Tax Court. The defendants moved to dismiss the petition, arguing that under the Indiana Tax Court's enabling statute, an original tax appeal is a prerequisite to seeking injunctive relief. The defendants also asserted that an original tax appeal could never find its way to the Indiana Tax Court in this setting because any appeal would lie with a county circuit court.

Judge Fisher denied the motion to dismiss by memorandum order, reasoning that an original tax appeal could result under the posture of the case, and that such an appeal need not be on file.⁹⁷ Indeed, Judge Fisher previously had written in *American Trucking Associations, Inc. v. State*⁹⁸ that the Indiana Tax Court is empowered to enjoin the collection of taxes even before "an original tax appeal [is] filed or [is] ripe for filing at the time the injunction is requested."⁹⁹

94. *State ex. rel. Consol. City of Indianapolis v. Indiana Tax Court*, No. 49500-9010-OR-689 (Ind. Nov. 1, 1990).

95. *American United Life Ins. Co. v. Indiana State Board of Tax Comm'rs*, No. 49T05-9008-TA-40, slip op. (Ind. T.C. Oct. 29, 1990).

96. IND. CODE §§ 6-1.1-21-1 to -4 (Supp. 1990).

97. *AUL*, No. 49T05-9008-TA-40, slip op. at 2-3.

98. 512 N.E.2d 920 (Ind. T.C. 1987).

99. *Id.* at 922. Judge Fisher further wrote in *American Trucking* that "it is not necessary to determine here how much, if any, time may elapse after an injunction is granted before the original tax appeal must be filed, or be ripe for filing. Such determination is left for the future." *Id.*

Judge Fisher then set the *AUL* matter down for an expeditious trial, as is required by Indiana Tax Court Rule 12(F).¹⁰⁰ Before trial could be had, however, the defendants sought a writ of prohibition from the Indiana Supreme Court.¹⁰¹ Argument was heard the week after the petition for a writ was filed, and shortly after the argument was concluded, the Justices returned to announce their decision, as is contemplated by Original Action Rule 4(E).¹⁰² By a 3-2 vote, with Justices Givan and Pivarnik dissenting, the Indiana Supreme Court granted the writ and held that the Indiana Tax Court lacked jurisdiction.¹⁰³

The court supported its decision with two alternative rationales. In announcing the decision, Chief Justice Shepard stated that either the *American Trucking* decision was wrongly decided or there is no possibility of an original tax appeal ever reaching the Indiana Tax Court in the peculiar posture of *AUL*.¹⁰⁴

The first reason given by the Indiana Supreme Court is of greatest importance to this discussion.¹⁰⁵ In overruling the *American Trucking*

100. Tax Court Rule 12(F) provides that when a "petition to enjoin the collection of a tax pending the original tax appeal is filed pursuant to I.C. 33-3-5-11(b), a hearing will be held as promptly as possible upon request of either party." IND. TAX CT. R. 12(F).

101. *State ex. rel. Consol. City of Indianapolis v. Indiana Tax Court*, No. 49S00-9010-OR-689 (Ind. Nov. 1, 1990).

102. Original actions such as that brought by the defendants in *AUL* are governed by the Rules of Procedure for Original Actions. These rules contemplate an expedited, somewhat informal procedure, and Rule 4(E) provides that upon completion of the oral arguments, the court will deliberate and then return to announce its decision orally. IND. R. P. ORIGINAL ACTIONS 4(E).

103. *State ex. rel. Consol. City of Indianapolis*, No. 49S00-9010-OR-689.

104. *Id.*

105. This is not to say that the second reason given is not significant. The case was in a curious posture because the code provisions dealing with the property tax replacement fund contain their own procedures for filing claims for refunds in § 6-1.1-21-7. IND. CODE § 6-1.1-21-7 (1988). Under subsection (c) of this provision, the State Board of Accounts is required to establish "an appropriate procedure to simplify and expedite the method for claiming these refunds and for the payments thereof . . . , which procedure is the exclusive procedure for the processing of the refunds." *Id.* § 6-1.1-21-7(c). Unfortunately, the State Board of Accounts has never established such procedures, so the "exclusive" procedure is nonexistent.

Because of this problem, *AUL* filed its claim for refunds under both § 6-1.1-21-7 and the general refund provisions of § 6-1.1-26-4. *See id.* §§ 6-1.1-21-7, -26-4. Recall that the latter provisions speak of an appeal to the county circuit courts, although the tax court wrote in *Herff Jones* that, when the county board has no discretion to allow a claim that has been disapproved by the Board, the tax court has jurisdiction. *Herff Jones, Inc. v. State Board of Tax Comm'rs*, 512 N.E.2d 485, 491 (Ind. T.C. 1987); IND. CODE § 6-1.1-26-4.

In this light it is seen that the Indiana Supreme Court's decision could have profound

decision, the Indiana Supreme Court followed the letter of the Indiana Tax Court's enabling statute and in so doing curtailed the availability of injunctive relief in the Indiana Tax Court.¹⁰⁶ The Indiana Tax Court's statute provides that "[a] taxpayer who wishes to enjoin the collection of a tax pending the original tax appeal must file a petition with the tax court to enjoin the collection of the tax."¹⁰⁷ This section in conjunction with section 33-3-5-11(c) further reads:

The petition must set forth a summary of:

(1) the issues that the petitioner will raise in the original tax appeal; and

(2) the equitable considerations for which the tax court should order the collection of the tax to be enjoined.

(c) After a hearing on the petition filed under subsection (b), the tax court may enjoin the collection of the tax pending the original tax appeal, if the tax court finds that:

(1) the issues raised by the original tax appeal are substantial;

(2) the petitioner has a reasonable opportunity to prevail in the original tax appeal; and

(3) the equitable considerations favoring the enjoining of the collection of the tax outweigh the state's interests in collecting the tax pending the original tax appeal.¹⁰⁸

In *American Trucking*,¹⁰⁹ Judge Fisher relied on the language of section 33-3-5-11(b)(1) which states that the petition for injunctive relief must set forth the issues that "[the petitioner] *will raise* in the original tax appeal."¹¹⁰ Based on this forward-looking language, Judge Fisher reasoned that an original tax appeal need not be on file for injunctive relief to be granted.¹¹¹

Indeed, a contrary construction would render the injunctive relief provision "fundamentally flawed."¹¹² As one author explained:

First, [the injunctive relief provision] simply disregards the fact that the tax court does not have jurisdiction to hear an appeal

effects on the tax court's *dicta* in *Herff Jones*. 512 N.E.2d at 490-91. Thus, it is possible after *AUL* that the tax court's jurisdiction over Board determinations of property tax refund claims is in grave doubt. *American United Life Ins. Co. v. Indiana State Board of Tax Comm'rs*, No. 49T05-9008-TA-40, slip op. (Ind. T.C. Oct. 29, 1990). This is all the more reason for adoption of legislative corrections of the type proposed in this Article.

106. *State ex. rel. Consol. City of Indianapolis*, No. 49500-9010-OR-689.

107. IND. CODE § 33-3-5-11(b) (1988).

108. *Id.* § 33-3-5-11(b)(1), (b)(2), (c).

109. 512 N.E.2d 920 (Ind. T.C. 1987).

110. *Id.* at 922 (emphasis added); IND. CODE § 33-3-5-11(b)(1) (emphasis added).

111. *American Trucking*, 512 N.E.2d at 922.

112. *1987 Tax Survey*, *supra* note 12, at 375.

unless the taxpayer has complied with all of the statutory requirements for the initiation of the tax appeal. In the case of appeals from the revenue department, the taxpayer is statutorily required first to pay the challenged tax, then to file a claim for refund; the statutory appeal lies from the department's denial of the refund claim. If the taxpayer cannot initiate his appeal without first paying the contested tax, the stark question is: what purpose is served by the injunction procedure?

. . . .

Another fundamental inconsistency with the new tax collection injunction provision is that it is unnecessary in the case of a taxpayer appeal challenging property tax assessment increases by the state tax board. Under Indiana Code section 6-1.1-15-10, property tax taxpayers are basically relieved from paying tax on contested assessment increases during the pendency of a court appeal challenging such increases.¹¹³

In *AUL*, the taxpayer was in a similar situation to that discussed above regarding claims for refund with the Department, because *AUL*'s right to file an original tax appeal, if at all, depended upon a final determination by the Board.¹¹⁴

Nonetheless, the statute contains contrary language indicating that the legislature intended original tax appeals to be on file before injunctive relief can be obtained. For instance, section 33-3-5-11(c) states that the Indiana Tax Court may enjoin the collection of tax "*pending the original tax appeal*, if the tax court finds that: (1) the issues *raised by the original tax appeal* are substantial"¹¹⁵ The words "*pending the original tax appeal*"¹¹⁶ strongly suggest that injunctive relief is proper only while the merits of an original tax appeal are ripe.

Indeed, *Black's Law Dictionary* defines "*pending*" to mean "[b]egun, but not yet completed; during; before the conclusion of; prior to the completion of; unsettled; undetermined; in process of settlement or adjustment."¹¹⁷ This authority further provides that "an action or suit is '*pending*' from its inception until the rendition of final judgment."¹¹⁸ Moreover, the first subsection of Indiana Code section 33-3-5-11(c) instructs the Indiana Tax Court to look to the "*issues raised by the original*

113. *Id.* (footnotes omitted).

114. *American United Life Ins. Co. v. Indiana State Board of Tax Comm'rs*, No. 49T05-9008-TA-40, slip op. (Ind. T.C. Oct. 29, 1990).

115. IND. CODE § 33-3-5-11(c) (1988) (emphasis added).

116. *Id.*

117. BLACK'S LAW DICTIONARY 1021 (5th ed. 1979).

118. *Id.*

tax appeal” in order to rule on the injunctive relief petition.”¹¹⁹

Thus, there is ample support for the Indiana Supreme Court’s decision. Although, the Indiana Tax Court has consistently and understandably tried to effect the legislature’s goal of uniformity in Indiana tax matters, the enabling statute simply prevents it from exercising jurisdiction over injunctive relief petitions when there is no original tax appeal on file. The Indiana Supreme Court made it clear in *AUL* that injunctive relief may not be obtained unless an original tax appeal is on file.¹²⁰

2. *The Aftermath of AUL.*—After the Indiana Supreme Court’s decision in *AUL*, the value of the Indiana Tax Court’s injunctive relief provisions is uncertain. Conceivably, the only time these powers can be used is when the Department issues a final determination in the form of a letter of findings under section 6-8.1-5-1(e) and begins collection efforts.¹²¹ This assumes, of course, that a letter of findings constitutes a “final determination” for purposes of appeal to the Indiana Tax Court, an issue which, as discussed previously,¹²² is quite problematic.

Hopefully, the legislature will act quickly to enact amendments similar to those proposed earlier in this Article¹²³ to allow jurisdiction when a listed tax has not been paid. Until such amendments are passed into law, however, the Indiana Tax Court’s jurisdiction over appeals from letters of findings is tenuous. Nonetheless, taxpayers should continue to seek injunctive relief in these cases. The Indiana Tax Court has been willing to accept petitions challenging letters of findings, and the Department has not objected to date. Provided that such petitions are accompanied by an original tax appeal as required by *AUL*, injunctive relief is, from a practical standpoint, still available. Without legislative action, however, the jurisdictional foundations of such relief are tenuous at best.

D. *Summary of the Jurisdiction of the Indiana Tax Court*

The following tables summarize the Indiana Tax Court’s basic jurisdiction over Indiana tax issues:

119. IND. CODE § 33-3-5-11(c)(1) (1988).

120. No. 49T05-9008-TA-40, slip op. (Ind. T.C. Oct. 29, 1990).

121. IND. CODE § 6-8.1-5-1(e) (Supp. 1990).

122. See *supra* Section II.B.2.a.-c.

123. See *supra* Section II.B.2.d.

1. APPEALS FROM THE DEPARTMENT OF REVENUE

<u>Tax Involved</u>	<u>Nature of Determination</u>	<u>Authority</u>	<u>Jurisdiction</u>
Listed Taxes	Denials of Refund Claims	6-8.1-9-1(c) 33-3-5-2	Yes
Inheritance Tax	Redeterminations of Inheritance Tax	6-4.1-7-7	Yes
Inheritance and Determinations of Estate Tax	Inheritance or Estate Tax Refunds	6-4.1-10.5	Yes
Estate Tax	Final Determinations of Estate Tax	6-4.1-11-7	Yes
Listed Taxes	Letters of Findings under 6-8.1-5-1	33-3-5-2	Doubtful, but such petitions are routinely accepted ¹²⁴

2. APPEALS FROM THE STATE BOARD OF TAX COMMISSIONERS

<u>Tax Involved</u>	<u>Nature of Determination</u>	<u>Authority</u>	<u>Jurisdiction</u>
Property Taxes	Final Determinations - Assessments	6-1.1-15-5 33-3-5-2	Yes
Property Taxes	Denials of Refund Claims	<i>Herff Jones</i> , 512 N.E.2d 485 (<i>dicta</i>)	Uncertain, but tax court asserts jurisdiction ¹²⁵

3. INJUNCTIVE RELIEF JURISDICTION

<u>Tax Involved</u>	<u>Nature of Determination</u>	<u>Authority</u>	<u>Jurisdiction</u>
Listed tax or Property tax	Denial of Claim for Refund	33-3-5-11	Yes, but tax has already been paid
Property tax	Final Determination - Assessment	33-3-5-11	Yes, but tax increase is effectively stayed
Listed tax	Letter of Findings under 6-8.1-5-1	33-3-5-11	Doubtful, but tax court accepts such petitions
Listed tax or Property tax where no original tax appeal on file	Any type of decision	<i>AUL</i> case (<i>City of Indpls. v. Tax Ct.</i>)	No

124. The legislation proposed in this Article would provide jurisdiction. *See id.*125. *Id.*

III. INDIANA'S PROPERTY TAX SYSTEM UNDER THE MICROSCOPE

Indiana's property tax system is a common topic of debate among practitioners and taxpayers. The discussions were heightened during the survey period.

A. Legislative Mandates for Review of the System

The legislature initiated a review of Indiana property taxation¹²⁶ by establishing a "Reassessment Study Committee"¹²⁷ and a "Real and Personal Property Tax Study Committee."¹²⁸ The Board was also directed to study the property tax system.¹²⁹

The Reassessment Study Committee is a fifteen-person committee composed of four state senators, four state representatives, and seven law members.¹³⁰ The Committee was created in response to concerns stemming from the 1989 reassessment of real property, and the Committee was charged with evaluating a number of important issues.

The Committee held four meetings in 1990 and received testimony from a variety of citizens and public officials. The Committee issued a report summarizing some of the major areas of concern. In its report, the Committee formulated seventeen different recommendations, all of them being somewhat general in nature. For instance, the Committee recommended that the "amount of training provided for local assessing officials should be increased."¹³¹

Other recommendations are more substantive, however. For example, the Committee proposed that the issue of "whether real property should be valued by the replacement method or by the market value method should be resolved in 1991, and a recommendation should be made to the general assembly in 1991."¹³² The Committee also recommended

126. For a review of Indiana's property tax system and the major policy issues surrounding it, see Stroble & d'Avis, *Current Issues Affecting Indiana Tax Policy*, 22 IND. L. REV. 449, 449-67 (1989).

127. Act of Mar. 20, 1990, Pub. L. No. 47-1990, 1990 Ind. Acts 1355.

128. Act of Mar. 20, 1990, Pub. L. No. 179-1990, 1990 Ind. Acts 2224.

129. Act of May 9, 1989, Pub. L. No. 352-1989 (Spec. Sess.), 1989 Ind. Acts 2111.

130. PROPOSED FINAL REPORT OF THE REASSESSMENT STUDY COMMITTEE (on file at the *Indiana Law Review* office) [hereinafter PROPOSED FINAL REPORT].

131. *Id.*

132. *Id.* Unlike other states, Indiana still uses replacement value, as represented by "true tax value," to assess real property. See *Lawsuit Could Kick Props from Under State Tax System*, Indianapolis Star, Nov. 11, 1990, at A-16 ("Indiana is the only state in the nation that doesn't base property tax valuations on market value, or what the property could sell for."). "True tax value does not mean fair market value." IND. CODE § 6-1.1-31-6(c) (1988). *Accord* Cook v. City of Indianapolis, 559 N.E.2d 1201 (Ind. Ct. App. 1990) (court rejects landowner's argument that the assessed value of his land had relevance to the fair market value of his land in an eminent domain proceeding).

procedural changes, such as requiring up to sixty days for taxpayers to appeal their assessments.¹³³

The greatest impact of the Committee will probably be to heighten the Indiana General Assembly's awareness of the need for changes in the system. The Committee's work in identifying problems is a positive step toward improving real property taxation in Indiana.

The Board has also been active in this regard. It is to report its findings before January 1, 1992, and is in the process of conducting a wide ranging study of the entire property tax system. It has prepared a preliminary report that, more than anything, shows the breadth of issues involved and the diversity of opinions on the subject.¹³⁴

Finally, in a somewhat different light, the Real and Personal Property Tax Study Committee was formed to analyze the possibility of eliminating real and personal property taxation entirely, and replacing the lost revenue from other sources. This Committee consists of eight members of the legislature, the Chairman of the State Board of Tax Commissioners, the Commissioner of the Department of Revenue, and the Director of the Budget Agency.

The very creation of these committees is important, for it shows that the legislature is aware of the archaic procedures and results of the current system. The following three categories are the major issues to be addressed: (1) What standard of value should be used for assessing property, that is, should market value be used as in most other states? (2) Who should do the assessing? (3) What is the proper role of the existing exemptions, deductions, and credits, and would they withstand constitutional scrutiny?¹³⁵

Given the scope of these studies, it is doubtful that comprehensive legislation will be enacted soon. Nonetheless, the issues affect nearly every Indiana citizen at least indirectly, and the need for reform is clear. Indiana tax practitioners should follow these developments and assist in the improvement of Indiana property taxation.

B. Review of the System in the Indiana Tax Court

Many court challenges to the property tax system have been filed over the years. However, "such property tax challenges have been settled out of court without addressing constitutional questions."¹³⁶ During the

133. See PROPOSED FINAL REPORT, *supra* note 130.

134. THE INDIANA PROPERTY TAX SYSTEM, PRELIMINARY REPORT OF THE IND. STATE BD. OF TAX COMM'RS (July 23, 1990).

135. See L. STROBLE, 1990 INDIANA STATE TAX DEVELOPMENTS (Indiana Tax Institute, I.C.L.E.F. 1990).

136. *Lawsuit Could Kick Props from Under State Tax System*, Indianapolis Star, Nov. 11, 1990, at A-16.

survey period, however, an action was filed in the Indiana Tax Court in which the constitutional issues could have been addressed.

In *Northern Indiana Public Service Co. v. Indiana State Board of Tax Commissioners*,¹³⁷ NIPSCO asserted a broad-based challenge to Indiana's system of assessing and taxing tangible property. The petition raised four different issues in four counts. First, NIPSCO asserted that the Board erred in denying its request for equalization of its utility distributable property in various counties. Through equalization, NIPSCO sought to lower the assessed value of its distributable property to the general level at which it asserted other real property in the counties was assessed.

In count two, NIPSCO claimed that article X, section 1 of Indiana's Constitution requires assessment based on fair market value. NIPSCO pointed out that other states with similar just value language in their constitutions require fair market value to be used. In count three, NIPSCO asserted discrimination on the grounds that the assessment of agricultural land in Indiana is essentially capped at \$495 an acre. Finally, in count four, NIPSCO claimed that the property tax scheme's provision for "numerous exemptions and deductions" is discriminatory and unconstitutional.

NIPSCO raised serious questions about the constitutionality of Indiana's archaic property tax system. However, as in the past, the case will not break new law in this area because at the time this Article went to press, the parties settled the case.¹³⁸ One of the reasons for the settlement, according to one of the Commissioners of the State Board, was that the Board "really do[es]n't know whether our system would withstand a constitutional challenge."¹³⁹ The Commissioner added, "We would just like to contain (constitutional challenges) as long as possible and work from within to change the system."¹⁴⁰ Such an admission from a member of the Board shows that change is likely to occur in the future, one way or another.

IV. CONCLUSION

Both the Indiana Tax Court's jurisdiction and Indiana's property tax system were subjects of intense debate and litigation during the survey period. Unfortunately, unless the legislature takes action on both matters, the debate could intensify in the future.

137. No. 49T05-9007-TA-34, slip op. (Ind. T.C. July 13, 1990).

138. *3 Utilities Set Lower Assessments in Tax Case*, Indianapolis Star, Feb. 6, 1991, at A-14.

139. *Id.*

140. *Id.*

