

DEVELOPMENTS IN INDIANA TAXATION

LAWRENCE A. JEGEN, III*
PETER A. SIDDIQUI**

The 112th Indiana General Assembly, the Indiana Supreme Court, and the Indiana Tax Court each contributed changes and clarifications to the Indiana tax laws in 2001.¹ This Article will highlight the more interesting developments for the period of October 1, 2000 through September 30, 2001.²

I. GENERAL ASSEMBLY LEGISLATION

Numerous legislative changes in 2001 affected Indiana taxation. While many of the changes were made in order to fine-tune existing laws, some policy changes occurred in each of the following Indiana tax areas: income tax, sales and use tax, tax credits, inheritance tax, financial institutions tax, gasoline tax, motor carrier fuel tax, commercial vehicle excise tax, cigarette tax, tax administration, and innkeeper's tax.

A. *Indiana Income Taxes*

The General Assembly enacted several laws affecting Indiana income taxes. For example, the General Assembly amended the general provision that all references to the Internal Revenue Code in Indiana tax statutes are to refer to the Internal Revenue Code "as amended and in effect on January 1, 2001."³ This updating must be done each year if the State of Indiana wishes to continue, for example, for the Indiana adjusted gross income tax law to be based on the definition of the federal adjusted gross income tax, because the Indiana adjusted gross income tax is based on the federal income tax law's adjusted gross income. The Indiana Constitution prevents the State of Indiana from allowing Indiana laws to automatically change in response to changes that the federal government makes to the federal income tax laws.

1. *Indiana Income Taxes: The Gross Income Tax.*—The General Assembly enacted laws with respect to the gross income tax. For example, the General

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

** B.A., DePauw University; J.D., 2002, Indiana University School of Law—Indianapolis.

1. Hereinafter, at times, the following abbreviations are used in this Article: the Indiana General Assembly is referred to as General Assembly; the Governor of Indiana is referred to as Governor; the Indiana State Board of Tax Commissioners is referred to as ISBTC; the Indiana Department of Revenue is referred to as IDR; the Indiana Supreme Court is referred to as the supreme court; the Indiana Tax Court is referred to as the tax court; and, the terms petitioner, petitioners, taxpayer, and taxpayers are used interchangeably.

2. For comprehensive information concerning the tax court, the IDR, the ISBTC, and a variety of other tax items related to Indiana tax laws, visit the official State of Indiana web site, available at <http://www.ai.org>.

3. IND. CODE § 6-3-1-11(a) (1998 & Supp. 2001).

Assembly enacted a law that exempts from gross income the proceeds of a specific business transaction.⁴ The new law provides that amounts received from the sale, lease, or other transfer of an electric generating facility and any auxiliary equipment are “exempt from gross income tax to the extent of any mortgage, security interest, or similar encumbrance that exists” with respect to the electric generating facility at the time of the sale, lease, or transfer.⁵

The General Assembly passed another exemption from gross income with respect to electric generating facilities. The new law provides that “[g]ross income received by a qualified lessee from a qualified investment is exempt from gross income tax.”⁶ The statute defines a qualified investment as an investment that is acquired by a qualified lessee for the purpose of paying rent under a qualified lease and exercising any purchase option in the qualified lease.⁷ A qualified lease is defined as “the lease of an interest in an electric generating facility . . . where the property is subject . . . to (1) or more leases previously entered into under Section 168(f)(8) of the Internal Revenue Code of 1954.”⁸ A qualified lessee is any person or an affiliate of a person who is the lessee under a qualified lease.⁹

2. *Indiana Income Taxes: The Adjusted Gross Income Tax.*—In 2001, the General Assembly also amended and added new laws with respect to the adjusted gross income tax. Now an employee of a “nonprofit entity, the state, a political subdivision of the state, or the United States government” counts as a qualified employee with respect to the enterprise zone adjusted gross income deduction.¹⁰ A qualified employee must reside in the enterprise zone in which the employee works; perform services for the employer, ninety percent of which are related to the employers’ trade or business, or to the nonprofit or governmental entity’s activities; and perform fifty percent of the employee’s service for the employer during the taxable year in the enterprise zone.¹¹ The enterprise zone deduction permits the qualified employee to deduct the lesser of one-half of the employee’s adjusted gross income for the taxable year or \$7500.¹²

4. *See id.* § 6-2.1-3-16(b).

5. *Id.*

6. *Id.* § 6-2.1-3-16.5(f).

7. *Id.* §§ 6-2.1-6-16.5(c)(1)(A)-(B). An investment is defined as a loan or deposit made by a qualified lessee or an investment contract or payment agreement purchased by a qualified lessee. *Id.* § 6-2.1-3-16.5(b).

8. *Id.* § 6-2.1-3-16.5(d). The federal income tax provision cited in the Indiana statute refers to a safe harbor provision that was given continuing effect for certain property by P.L. 99-514, Sec. 201(a).

9. *Id.* § 6-2.1-3-16.5(e). An affiliate is defined as a “corporation, partnership, limited liability company, or trust that controls, is controlled by, or is under common control with another corporation, partnership, limited liability company, or trust.” *Id.* § 6-2.1-3-16.5(a). Control is further defined as ownership of eighty percent of voting stock. *Id.*

10. *Id.* § 6-3-2-8(a).

11. *Id.*

12. *Id.* § 6-3-2-8(b).

In another amendment, the General Assembly, by deleting part of a subsection, now permits individuals over the age of sixty-five to be eligible for the disability income tax deduction.¹³ Another new law regarding the adjusted gross income tax treatment of distributions from individual accounts established under the Indiana family college savings account program provides that “[d]istributions from an individual account used to pay qualified higher education expenses are exempt from adjusted gross income . . . as income of an account beneficiary or an account owner.”¹⁴

The General Assembly also amended the law regarding independent contractors’ ability to elect exemption from worker’s compensation.¹⁵ The law now mandates that independent contractors must file a statement with the IDR declaring independent contractor status and obtain a certificate of exemption from Worker’s Compensation.¹⁶ This filing must be done yearly and be accompanied by a five-dollar filing fee.¹⁷ Within seven days, the IDR must provide a certificate of exemption after verifying the accuracy of the statement.¹⁸ Within thirty days after receiving the independent contractor’s statement, the IDR “shall provide the independent contractor with an explanation of the department’s tax treatment of independent contractors and the duty of the independent contractor to remit any taxes owed.”¹⁹

3. *Indiana Income Taxes: The County Adjusted Gross Income Tax.*—The General Assembly enacted laws regarding the county adjusted gross income tax in 2001. For example, county solid waste management districts may not receive distributions from the county adjusted gross income tax unless a majority of the county fiscal bodies approve the distribution by passing a resolution.²⁰ This resolution may expire on a date specified in the resolution or may remain in effect until the fiscal body revokes or rescinds the resolution.²¹

Also, regarding county adjusted gross income tax revenues, the General Assembly increased the length of time a county with a certain population has to impose an additional adjusted gross income tax to eight years instead of four.²² The purpose for this tax must be the operation and maintenance of a jail and

13. *Id.* § 6-3-2-9(a).

14. *Id.* § 6-3-2-19(e).

15. *See id.* § 6-3-7-5.

16. *See id.* § 6-3-7-5(c).

17. *Id.* § 6-3-7-5(e)-(f).

18. *Id.* § 6-3-7-5(j). This certificate of exemption then must be filed with the Worker’s Compensation Board of Indiana to be given effect. *Id.*

19. *Id.* § 6-3-7-5(k).

20. *Id.* § 6-3.5-1.1-1.3(b).

21. *Id.* § 6-3.5-1.1-1.3(c). The General Assembly passed a similar law regarding distributions to county solid waste management districts from the county option income tax. *See id.* § 6-3.5-6-1.3.

22. *Id.* § 6-3.5-1.1-2.5(c). The affected counties must have a population between 37,000 and 37,800, *id.* § 6-3.5-1.1-2.5(a) (2001), or between 12,600 and 13,000, *id.* § 6-3.5-1.1-3.5(a).

juvenile detention center.²³

A county described as having a population between 68,000 and 73,000²⁴ is now permitted to raise its county adjusted gross income tax rates in order to "finance, construct, acquire, improve, renovate, or equip" its county jail or repay bonds issued for the same purpose.²⁵ The taxes raised may not exceed the amount necessary to accomplish the above-stated purpose.²⁶ The law further provides that any excess revenue from the increased tax imposed will go to the highway fund for the county.²⁷

The General Assembly also passed a new law that prohibits it from amending or repealing the county adjusted gross income tax in a way that would hinder the collection of any taxes imposed for as long as obligations against which county adjusted gross income tax revenues are pledged remain unpaid.²⁸

4. *Indiana Income Taxes: The Municipal Option Income Tax.*—The General Assembly created a new tax called the municipal option income tax.²⁹ The municipal option income tax is a tax on the adjusted gross income of municipal taxpayers.³⁰ The rate of tax is one percent on municipal taxpayers who are county residents and one-half of one percent on municipal taxpayers who are not county residents.³¹ The revenue accumulated from this municipal option income tax will be used for the benefit of the county family and children's fund.³²

5. *Indiana Income Taxes: The Indiana Financial Institutions Tax.*—The General Assembly has enacted some minor amendments to the laws regarding the taxation of financial institutions. The definition of a unitary business has been amended in that the term "does not include an entity that does not transact business in Indiana."³³ Also, the General Assembly has changed the payment dates for the financial institutions tax to the twentieth day of the fourth, sixth, ninth, and twelfth months of the financial institution's fiscal year.³⁴

B. *Indiana Sales and Use Taxes*

The General Assembly amended and added tax laws regarding Indiana sales and use taxes. For example, the General Assembly eliminated quarterly filing of

23. *Id.* § 6-3.5-1.1-2.5(b).

24. *Id.* § 6-3.5-1.1-2.7(a).

25. *Id.* § 6-3.5-1.1-2.7(b).

26. *Id.* § 6-3.5-1.1-2.7(d).

27. *Id.* § 6-3.5-1.1-2.7(h).

28. *Id.* § 6-3.5-1.1-23.

29. *See id.* §§ 6-3.5-8-1 to -25.

30. *Id.* § 6-3.5-8-9(a). A municipal taxpayer is defined as resident of the affected county or a person who maintains his or her principal place of business in the affected county and does not live in a county where there is another municipal option income tax. *Id.* § 6-3.5-8-5.

31. *Id.* § 6-3.5-8-10.

32. *Id.* §§ 6-3.5-8-12(d)-(f).

33. *Id.* § 6-5.5-1-18(a).

34. *Id.* § 6-5.5-6-3(a).

sales tax returns.³⁵ The provision that allowed retail merchants to report and pay sales taxes on a quarterly basis if the merchant's tax liability in the previous calendar year was less than seventy-five dollars was removed.³⁶ Another deletion from the sales and use tax section eliminates the provision that allowed a taxpayer who remitted tax payments by electronic fund transfer to report quarterly instead of monthly.³⁷

The General Assembly added a new chapter to the law of sales and use taxes entitled the "Simplified Sales and Use Tax Administration Act."³⁸ This Act permits the IDR to enter into agreements with other states to simplify state rates, establish uniform standards of sourcing and administration of tax returns, provide a central electronic registration for the collection and remittance of state taxes and reduce the burden of complying with local sales and use taxes.³⁹ The IDR has the power to act jointly with other agreeing states "to establish standards for certification of certified service providers and certified automated systems and to establish performance standards for multistate sellers."⁴⁰ Certified service providers are defined as agents of sellers who are liable for sales and use tax due to each agreeing state on all sales transactions that they process for the seller.⁴¹

C. Indiana Tax Credits

The General Assembly amended and added tax laws regarding tax credits. For example, the General Assembly provides that when a pass through entity entitled to the prison investment credit "does not have state tax liability against which the credit may be applied . . . , it is entitled" to the distributive share of the prison investment credit that is available.⁴² A pass through entity is defined as any corporation that is exempt from adjusted gross income tax, a partnership, a trust, a limited liability company, or a limited liability partnership.⁴³

Another amendment to Indiana tax credits provides that a high technology business operation is entitled to a five percent enterprise zone investment cost credit.⁴⁴ The General Assembly also decreased the maximum amount of credit allowed in a fiscal year for the individual development account tax credit from \$500,000 to \$200,000.⁴⁵ Further, the General Assembly extended the expiration

35. *See id.* § 6-2.5-6-14.

36. *See id.*

37. *See id.*

38. *See id.* §§ 6-2.5-11-1 to -10.

39. *Id.* § 6-2.5-11-7.

40. *Id.* § 6-2.5-11-5.

41. *Id.* § 6-2.5-11-10(a).

42. *Id.* § 6-3.1-6-6.

43. *Id.* § 6-3.1-6-1.

44. *Id.* § 6-3.1-10-8(c)(4). *See* IND. CODE § 4-4-6.1-1.3 (Supp. 1998 & 2001) (defining a high technology business operation to include such operations as biotechnology and advanced computing).

45. *Id.* § 6-3.1-18-10(a).

date for the earned income tax credit to December 31, 2003.⁴⁶

The General Assembly created new tax credits as well. For example, the General Assembly created the capital investment tax credit.⁴⁷ This tax credit is available only to taxpayers in a county that has a population between 40,000 and 41,000 people.⁴⁸ To be eligible for the credit in any year, the taxpayer must make a qualified investment in that year.⁴⁹ A qualified investment is an amount of not less than seventy-five million dollars that is used to purchase new manufacturing equipment or machinery or improve facilities.⁵⁰ The amount of the credit is equal to fourteen percent of the qualified investment.⁵¹

Another newly-enacted tax credit is the income tax credit for property taxes paid on homesteads.⁵² A taxpayer is entitled to this credit if the taxpayer's earned income is less than \$18,600 and the taxpayer pays property taxes on a homestead⁵³ that the taxpayer owns or is buying.⁵⁴ Further, the taxpayer must file with the IDR information about the amount of property taxes paid on a homestead.⁵⁵ The property upon which the taxpayer pays property tax must be located in a county with a population between 400,000 and 700,000 people.⁵⁶ Any taxpayer who meets the above-described characteristics "is entitled to a refundable credit against the individual's state income tax liability. . . ."⁵⁷ The amount of the credit for a taxpayer who has earned income of less than \$18,000 is the lesser of \$300 or the amount of property taxes actually paid.⁵⁸ For a taxpayer with earned income between \$18,000 and \$18,600, the amount of the credit is the lesser of the amount of property taxes paid or an amount determined by subtracting the taxpayer's earned income from \$18,600 and multiplying the difference by 0.50.⁵⁹ The IDR must determine the amount of the credits allowed for a year by July 1 of the next year.⁶⁰ One-half of this amount will be deducted

46. *Id.* § 6-3.1-21-10.

47. See *id.* §§ 6-3.1-13.5-1 to -13.

48. *Id.* § 6-3.1-13.5-3.

49. *Id.* § 6-3.1-13.5-6.

50. *Id.* § 6-3.1-13.5-3.

51. *Id.* § 6-3.1-13.5-6. This law is retroactive to January 1, 2001. See 2001 Ind. Acts 291.

52. See IND. CODE §§ 6-3.1-20-1 to -7.

53. A homestead is defined as a taxpayer's principle place of residence, including a dwelling and surrounding real estate of less than one acre. *Id.* § 6-1.1-20.9-1(2).

54. *Id.* § 6-3.1-20-4(a). Earned income is defined as employee compensation and net earnings from self-employment for the taxpayer and the taxpayer's spouse if the taxpayer files a joint tax return. *Id.* § 6-3.1-20-1.

55. *Id.* § 6-3.1-20-6.

56. *Id.* § 6-3.1-20-4(a)(2)(B).

57. *Id.* § 6-3.1-20-5(a). This section also states that "[i]f the amount of the credit . . . exceeds the individual's state tax liability for the taxable year, the excess shall be refunded [by] the [IDR]." *Id.* § 6-3.1-20-5(d).

58. *Id.* § 6-3.1-20-5(b).

59. *Id.* § 6-3.1-20-5(c).

60. *Id.* § 6-3.1-20-7(a).

from the riverboat admissions tax revenue due to the affected county and paid into the state general fund.⁶¹

The General Assembly also enacted the residential historic rehabilitation credit.⁶² A taxpayer can receive a credit of twenty percent of qualified preservation and rehabilitation expenditures⁶³ on historic property⁶⁴ at least fifty years old⁶⁵ that the taxpayer intends to use as the taxpayer's residence.⁶⁶ To qualify for the credit, the expenditures on the property must exceed \$10,000.⁶⁷ The adjusted basis for the property affected by this credit will be reduced by the amount of credit claimed by the taxpayer.⁶⁸ The amount of credit can be carried forward by the taxpayer for fifteen years;⁶⁹ however, the credit cannot be carried back or refunded to the taxpayer.⁷⁰

The General Assembly has also enacted the rerefined lubrication oil facility credit.⁷¹ A taxpayer is entitled to a credit that is equal to the percentage of property taxes paid by the taxpayer for real property containing a facility that processes rerefined lubrication oil and for personal property used in the processing of rerefined lubrication oil.⁷² The percentage of property taxes on which the credit is determined decreases over five years from 100% in 2001 to twenty percent in 2005.⁷³ Rerefined lubrication oil is defined as used oil that is recycled in a manner that removes physical and chemical impurities so that it can be reused.⁷⁴ The taxpayer can carry forward any unused credit for two years.⁷⁵ To be eligible for the credit, the Department of Commerce must approve the taxpayer for the credit.⁷⁶

The General Assembly enacted a tax credit entitled "the voluntary remediation tax credit."⁷⁷ This credit provides that a taxpayer is entitled to the

61. *Id.* § 6-3.1-20-7(b)-(c). This credit will be applied retroactively to January 1, 2001. *See* 2001 Ind. Acts 151.

62. *See* IND. CODE §§ 6-3.1-22-1 to -16.

63. *Id.* § 6-3.1-22-8(b).

64. The property must be listed in the register of Indiana historic sites and structures. *Id.* § 6-3.1-22-9(2).

65. *Id.* § 6-3.1-22-9(1)(A).

66. *Id.* § 6-3.1-22-9(6).

67. *Id.* § 6-3.1-22-9(7).

68. *Id.* § 6-3.1-22-12.

69. *Id.* § 6-3.1-22-14(a).

70. *Id.* § 6-3.1-22-14(c).

71. *See id.* §§ 6-3.1-22.2-1 to -10.

72. *Id.* § 6-3.1-22.2-5. Personal property includes property used for transportation of rerefined lubrication oil. *Id.*

73. *Id.* § 6-3.1-22.2-6(b). This credit expires on January 1, 2006. *Id.* § 6-3.1-22.2-10.

74. *Id.* § 6-3.1-22.2-2.

75. *Id.* § 6-3.1-22.2-8.

76. *Id.* § 6-3.1-22.2-9.

77. *Id.* §§ 6-3.1-23-1 to -17.

lesser of \$100,000 or ten percent of a qualified investment⁷⁸ incurred to conduct a voluntary remediation of a brownfield.⁷⁹ The taxpayer can carry any unused credit over for five years.⁸⁰ The credit expires on December 31, 2003.⁸¹ A brownfield is defined as an industrial or commercial parcel of real estate that cannot be utilized because of the presence of a hazardous substance on or under the surface soil or in the groundwater that poses a risk to human health and the environment.⁸²

A final credit enacted by the General Assembly in 2001 is the credit for property taxes paid on business personal property.⁸³ A taxpayer is entitled to a credit for the net property taxes paid on business personal property up to the lesser of \$37,500 or the assessed value of the taxpayer's business personal property.⁸⁴ Business personal property is defined as tangible property held for sale in the ordinary course of business or held for the production of income.⁸⁵ The taxpayer can carry any unused credit over to the "following taxable years."⁸⁶ This credit is available to individuals and entities,⁸⁷ including pass through entities,⁸⁸ but the credit is not available to utility companies.⁸⁹

D. Indiana Inheritance Taxes

The General Assembly has modified the Indiana inheritance taxes by moving the provision that provides that the IDR must prescribe the affidavit form that may be used to state that no inheritance tax is due to a different chapter.⁹⁰ Further, personal representatives, trustees, and transferees of property must file an inheritance tax return with the probate court within nine months, instead of the previously required twelve months, after the decedents' death.⁹¹ Under the newly enacted laws, inheritance tax is to be paid within twelve months, instead of the

78. *Id.* § 6-3.1-23-6.

79. *Id.* § 6-3.1-23-3.

80. *Id.* § 6-3.1-23-11.

81. *Id.* § 6-3.1-23-16. This expiration date does not affect a taxpayer's ability to carry any unused credit forward. *Id.*

82. *Id.* § 13-11-2-19.3.

83. *See id.* §§ 6-3.1-23.8-1 to -9.

84. *Id.* § 6-3.1-23.8-6. Net property taxes means the "amount of property taxes paid by a taxpayer for a particular calendar year after the application of all property tax deductions and property tax credits." *Id.* § 6-3.1-23.8-2.

85. *Id.* § 6-3.1-23.8-1.5.

86. *Id.* § 6-3.1-23.8-7.

87. *See id.* § 6-3.1-23.8-5.

88. *Id.* § 6-3.1-23.8-8.

89. *Id.* § 6-3.1-23.8-6(c).

90. The provision is now in Indiana Code section 6-4.1-4-0.5(b). This provision was formerly in Indiana Code section 6-4.1-3-12.5 which was repealed by 2001 Ind. Acts 252.

91. IND. CODE § 6-4.1-4-1(a) (1998 & Supp. 2001).

previously required eighteen months.⁹² However, if the taxpayer pays the inheritance tax within nine months of the death of the decedent, then the taxpayer is entitled to a five-percent reduction in the inheritance tax due.⁹³

The General Assembly has also shortened the time within which Indiana estate taxes are to be paid from eighteen months to twelve months after the death of the decedent.⁹⁴ Also, the generation-skipping transfer tax is due twelve months, rather than eighteen months, from the date of death of the "person whose death resulted in the generation-skipping transfer."⁹⁵

E. Indiana Gasoline Tax

The Indiana General Assembly has amended one of the registration and licensure laws associated with the gasoline tax. The new law no longer requires a person who transports gasoline in a vehicle with a tank capacity of more than 850 gallons to display a transporter emblem.⁹⁶

F. Indiana Motor Carrier Fuel Tax

The Indiana General Assembly amended the law regarding the motor carrier fuel tax to provide that a carrier may obtain an International Fuel Tax Agreement (IFTA) repair and maintenance permit from the IDR to travel into Indiana to repair any vehicles owned by the carrier and then return to some other state when they are finished.⁹⁷ The operator of a motor vehicle with such a permit, which costs forty dollars, does not need to pay the motor carrier fuel tax.⁹⁸ A carrier may also obtain an International Registration Plan repair and maintenance permit, which is similar in all tax respects to the IFTA permits.⁹⁹ Further, the commissioner of the IDR may become a member of the IFTA or other reciprocal agreements with other states or jurisdictions.¹⁰⁰ Also, entering into the IFTA provides for the exchange and sharing of information with other states and jurisdictions.¹⁰¹

The General Assembly further specified its own powers and the powers of the IFTA.¹⁰² The IFTA is limited to determining the base state for users, specifying records requirements, specifying audit procedures, providing for the exchanging of information, defining persons eligible for tax licensing, defining qualified motor vehicles, determining whether bonding is required, and

92. *Id.* § 6-4.1-9-1(a).

93. *Id.* § 6-4.1-9-2.

94. *Id.* § 6-4.1-11-3.

95. *Id.* § 6-4.1-11.5-9.

96. *Id.* § 6-6-1.1-606.5(g) (2000), *repealed by* 2001 Ind. Acts § 10.

97. *Id.* § 6-6-4.1-13(c).

98. *Id.*

99. *See id.* § 6-6-4.1-1.3(d).

100. *Id.* § 6-6-6-4.1-14(a).

101. *Id.* § 6-6-4.1-16.

102. *See id.* § 6-6-4.1-14.5.

specifying reporting requirements and periods.¹⁰³ Despite these enumerated powers, the General Assembly also retains the authority to determine whether to impose a tax, to prescribe the tax rates, to define tax exemptions and deductions, and to determine what constitutes a taxable event.¹⁰⁴ The General Assembly further replaced all references to the Base State Fuel Tax Agreement with references to the IFTA.¹⁰⁵

G. Cigarette Tax

The General Assembly amended the law appropriating the money from the cigarette tax that is in the mental health centers fund, to the division of mental health and addiction.¹⁰⁶

H. Tax Administration

The General Assembly amended existing laws and added new laws with respect to tax administration. For example, the General Assembly added the municipal option income tax to the list of taxes defined as listed taxes.¹⁰⁷ The General Assembly also changed the name of the Alcoholic Beverage Commission to the Alcohol and Tobacco Commission.¹⁰⁸

The General Assembly amended the powers of the IDR by permitting the department to enter into the IFTA.¹⁰⁹ If the IDR does enter into the agreement, then any conflicts between the provisions of the agreement and any Indiana statute will be resolved in favor of the state statute.¹¹⁰ Any conflicts between the provisions of the agreement and provisions in the Indiana Administrative Code will be resolved in favor of the agreement.¹¹¹

The General Assembly amended the law of assessment of taxes by providing that if the IDR sends out a notice of a proposed tax assessment and the notice is returned because the taxpayer has moved, and the IDR cannot determine the taxpayer's new address, the IDR may immediately make an assessment for the taxes owing and demand immediate payment without issuing a ten-day demand notice.¹¹²

103. *Id.* § 6-6-4.1-14.5(a).

104. *Id.* § 6-6-4.1-14.5(b).

105. *See id.* §§ 6-6-4.1-22 to -26.

106. *Id.* § 6-7-1-32.1. The division has changed its name from the Division of Mental Health. *See* 2001 Ind. Acts 215, § 11.

107. 2001 Ind. Acts 151, § (codified at IND. CODE §§ 6-3.5-8-1 to -25 (Supp. 2001) (describing and enacting the municipal option income tax)).

108. IND. CODE § 6-8.1-7-1(m) (1998 & Supp. 2001).

109. *Id.* § 6-8.1-3-14(a).

110. *Id.* § 6-8.1-3-14(c)(1).

111. *Id.* § 6-8.1-3-14(c)(2).

112. *Id.* § 6-8.1-5-3(b). This statute expressly provides that the IDR may ignore the provision that provides that the taxpayer has ten days to show the IDR why it has not paid the amount of tax required. *Id.*; *see also id.* § 6-8.1-8-2(a)(1).

The General Assembly amended several statutes dealing with the tax collection so that the word "lien" has been replaced with "judgment."¹¹³

A new law regarding tax collection mandates that "a judgment arising from a tax warrant is enforceable in the same manner as any judgment issued by a court of general jurisdiction."¹¹⁴ Further, the IDR has the power to initiate proceedings supplementary to the execution of the warrant in any court of general jurisdiction in the county where the tax warrant is recorded.¹¹⁵

I. Innkeeper's Tax

The General Assembly amended and added several laws regarding the Vigo County Innkeeper's Tax. For example, the Vigo County Convention and Visitor Commission now has the power to issue bonds and enter into leases for the construction and equipping of a sports and recreational facility.¹¹⁶ This is so because the General Assembly found that Vigo County "possesses a unique opportunity to promote and encourage conventions" and special events from which it could benefit if it had a sports and recreation facility within its borders.¹¹⁷ The General Assembly covenanted that it would not amend or repeal this law while there are any outstanding bonds or payments due under any lease.¹¹⁸ The commission also has the ability to exercise the power of eminent domain for the purpose of encouraging conventions and tourism.¹¹⁹ The commission can now enter into agreements to pledge money deposited in the convention and visitor promotion fund¹²⁰ to pay for the construction and equipping of a sports and recreation facility.¹²¹ Any sports and recreational facility constructed pursuant to these new laws must "serve[] a public purpose and [be] of benefit to the general welfare of the county by encouraging investment, job creation and retention, and economic growth and diversity."¹²²

II. INDIANA TAX COURT OPINIONS AND DECISIONS

During the period of October 1, 2000 through September 30, 2001, the opinions and decisions of the Indiana Tax Court were dominated by cases dealing with Indiana real property cases. Specifically, the tax court published twenty-six opinions, sixteen of which concerned real property tax issues. The remaining cases are divided as follows: one case regarding the Indiana tangible personal

113. See 2001 Ind. Acts 129, § 22 (codified at IND. CODE §§ 6-8.1-8-2 to -8 (Supp. 2001)).

114. IND. CODE § 6-8.1-8-8.5(a).

115. *Id.* § 6-8.1-8-8.5(b).

116. *Id.* § 6-9-11-3(a)(8)-(a)(9). See *id.* § 6-9-11-3.7 (establishing parameters and rules for bond issuance and lease terms).

117. *Id.* § 6-9-11-9.

118. *Id.* § 6-9-11-3.9.

119. *Id.* § 6-9-11-3(a)(10).

120. See *id.* § 6-9-11-7 (enabling the Vigo County treasurer to establish such a fund).

121. *Id.* § 6-9-11-3.5.

122. *Id.* § 6-9-11-4.5.

property tax; two cases regarding the Indiana gross income tax; three cases regarding Indiana sales and use taxes; one case regarding the Indiana controlled substance excise tax; one case regarding the Indiana financial institutions tax; and two cases regarding Indiana motor vehicle excise taxes.

A. Property Tax—Real Property

1. *Bishop v. State Board of Tax Commissioners*.¹²³—The Bishops petitioned for review of the ISBTC's assessment of their Elkhart County condominium.¹²⁴ On review, the ISBTC did not adjust its determination of the condominium's assessed value of \$25,400.¹²⁵ The Bishops appealed to the tax court asserting two issues: whether the ISBTC unconstitutionally applied its assessment regulations in assessing the Bishops' condominium¹²⁶ and whether the ISBTC erred in assigning a B grade to the Bishops' condominium.¹²⁷

The tax court held that the Bishops did not sufficiently explain how the ISBTC method of assessment lacked equality and uniformity, and, therefore, the Bishops did not demonstrate that the method violated the property taxation clause of the Indiana Constitution.¹²⁸ The Bishops relied on a study performed by an appraiser, Landmark Appraisals, that analyzed the assessed value of newer homes as compared to older homes.¹²⁹ The study found that new homes are assessed at a higher rate than older homes.¹³⁰ The Bishops argued that these results demonstrated a lack of uniformity in the ISBTC's assessments.¹³¹

The court held that the Bishops did not explain how the study demonstrated "a lack of equality and uniformity of residential assessments under Indiana's true tax value system."¹³² The figures used in the study were based on market information.¹³³ However, the ISBTC regulations for assessing improvements do not allow for the application of market information.¹³⁴ As a result of this disparity in standards, the Bishops failed to show how the study, which used market information, showed that the ISBTC's assessments, which did not use market information, were unconstitutional.¹³⁵ The ISBTC's refusal to adjust the Bishops' property assessment was not an error.¹³⁶

123. 743 N.E.2d 810 (Ind. T.C. 2001).

124. *Id.* at 812.

125. *Id.*

126. *Id.*

127. *Id.* at 815.

128. *Id.* at 814-15. See IND. CONST. art. X, § 1.

129. *Bishop*, 743 N.E.2d at 813.

130. *Id.*

131. *Id.*

132. *Id.* at 814.

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.* at 815.

With respect to the grading of the Bishops' condominium, the tax court held that since the Bishops failed to establish "a prima facie case as to grade,"¹³⁷ the ISBTC's assessment of a B grade was not an error.¹³⁸ To get a grade reduction, a taxpayer "must offer probative evidence sufficient to establish a prima facie case concerning the alleged assessment error."¹³⁹ The Bishops offered only a photograph of their condominium, photos of C grade homes, a sample property report card, and the ISBTC's grade specification table.¹⁴⁰ The court held that this evidence was not probative as to grade.¹⁴¹ The court found this evidence to be merely conclusory statements by the Bishops that they deserved a grade reduction.¹⁴² The court was not persuaded and affirmed the denial of their reduction of grade.¹⁴³

2. *Garcia v. State Board of Tax Commissioners*.¹⁴⁴—The Garcias challenged the ISBTC's grade assessment of their home to the tax court, as well as the ISBTC's failure to assess some enclosed property on the land to the tax court.¹⁴⁵ After considerable procedural history,¹⁴⁶ the ISBTC increased the grade of the Garcias' home from A+4 to A+6.¹⁴⁷ Further, the ISBTC did not assess an enclosure on the Garcias' property.¹⁴⁸

The tax court held that the A+6 assessment was an error.¹⁴⁹ The court stated that the manner in which the ISBTC discerned the grade of the Garcias' home was wholly arbitrary and completely unsupported by the ISBTC's own regulations.¹⁵⁰ The court further stated that the ISBTC's regulations did not support, under any circumstances, a grade above A.¹⁵¹ Therefore, the court held

137. *Id.* at 816.

138. *Id.* at 817.

139. *Id.* at 815.

140. *Id.* at 816.

141. *Id.*

142. *Id.*

143. *Id.* at 817.

144. 743 N.E.2d 817 (Ind. T.C. 2001).

145. *Id.* at 818.

146. *See id.*; *see also Garcia v. State Bd. of Tax Comm'rs*, 694 N.E.2d 794 (Ind. T.C. 1998).

147. *Garcia*, 743 N.E.2d at 818.

148. *Id.*

149. *Id.* at 821.

150. *Id.* at 820. The ISBTC's method of assessment started with determining the actual construction value of the home only. Then it discounted this price to 1985 costs in order to comply with its regulations in place at the time of the construction of the house in 1991. Then the ISBTC used its regulations to determine what the cost of the house would be if it were graded as a C house. Then the court divided that cost by the actual cost of the house. This quotient constituted a percentage that the ISBTC used to guess the grade above an A at which the Garcia home should be assessed. *See id.* at 819-20. The ISBTC's methods were so arbitrary, the court noted, that even members of the ISBTC admitted at trial that the calculations were unsupported. *See id.* at 820.

151. *Id.* at 820-21.

that the A+6 assessment constituted an abuse of discretion by the ISBTC.¹⁵² Further, the court directed the ISBTC to assess Garcia's property as grade A.¹⁵³

The court held that the ISBTC's failure to assess the enclosure was also an error.¹⁵⁴ However, the court granted the ISBTC's request that the court remand the issue so that the ISBTC could "extrapolate the value of the enclosure from Schedule G.1 and then reassess it based on that extrapolation."¹⁵⁵

3. Canal Realty-Indy Castor v. State Board of Tax Commissioners.¹⁵⁶—Canal appealed to the tax court the assessment by the ISBTC of Canal's real property.¹⁵⁷ This appeal focused on certain paving surrounding buildings on Canal's property.¹⁵⁸ Canal posed three issues: whether the ISBTC erred in not allowing further obsolescence deductions; whether the ISBTC violated Canal's due process by assigning value to previously non-assessed property without giving Canal an opportunity to address the assessment; and whether the ISBTC incorrectly valued the paving on Canal's property.¹⁵⁹

The court reversed and remanded the ISBTC's denial of an additional obsolescence deduction.¹⁶⁰ The ISBTC performed the assessment at issue in 1995.¹⁶¹ In 1998, the tax court held that it would only hear obsolescence appeals from an ISBTC hearing in which the taxpayer identified the causes of the obsolescence and presented probative evidence to support an increase in obsolescence.¹⁶² For any assessment performed prior to this decision, the ISBTC had to support its obsolescence assessment with substantial evidence.¹⁶³ On this issue, the tax court stated that Canal's offer of proof to support an increased obsolescence deduction was "woefully inadequate."¹⁶⁴ However, the court had to remand the case so that the ISBTC could support its denial of increasing the obsolescence deduction with substantial evidence because the assessment was performed before the 1998 decision.¹⁶⁵

152. *Id.* at 821.

153. *Id.*

154. *Id.*

155. *Id.* This procedure was mandated by the court in its earlier *Garcia* opinion. *Garcia v. State Bd. of Tax Comm'rs*, 694 N.E.2d 794, 799 (Ind. T.C. 1998). Instead of complying with this request, however, the ISBTC did nothing. *Garcia*, 743 N.E.2d at 821.

156. 744 N.E.2d 597 (Ind. T.C. 2001).

157. *Id.* at 599.

158. *Id.*

159. *Id.*

160. *Id.* at 603-04.

161. *Id.* at 603.

162. *Id.* (referencing *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1241 (Ind. T.C. 1998)).

163. *Id.*

164. *Id.*

165. *Id.* The court, however, did hint to the ISBTC that if Canal offered the same quantum of evidence as it did in this appeal, the ISBTC could "merely state in its final determination that Canal takes nothing by its petition." *Id.* at 604. Then the ISBTC's "quantification of obsolescence stands

The court held that the ISBTC did not violate Canal's due process.¹⁶⁶ The court stated that all that due process requires is "an opportunity to review and rebut the [ISBTC]'s evidence of the paving value."¹⁶⁷ The hearing officer at Canal's administrative hearing conducted an *ex parte* assessment of the paving on Canal's property because it had never been assessed.¹⁶⁸ The hearing officer then mailed a letter to Canal's representative asking Canal to "present evidence responding to the proposed assessment."¹⁶⁹ The representative did not answer directly to this request.¹⁷⁰ The hearing officer subsequently sent another letter asking Canal to respond to the proposed assessment.¹⁷¹ Again, Canal's representative did not sufficiently respond to the request.¹⁷² The court held that Canal, through its representative, had an opportunity to review and rebut the assessment of the paving, but it chose not to do so.¹⁷³ The fact that Canal had an opportunity was enough to satisfy due process.¹⁷⁴

Regarding the issue of the value of the paving, the trial court affirmed the ISBTC's determination.¹⁷⁵ The court stated that since Canal had the opportunity to rebut the ISBTC's evidence at the administrative level, it bore the burden before the tax court of demonstrating that the ISBTC's assessment was invalid.¹⁷⁶ This burden required that Canal offer "probative evidence as to the paving's condition, for purposes of challenging the physical depreciation assigned to the paving."¹⁷⁷ The court stated that Canal offered no probative evidence.¹⁷⁸ Further, in support of the ISBTC's assessment, the court stated the its "photograph of the subject property, set to scale, shows the paving's size, and the ninety-cent per square foot base rate applied is taken directly from Schedule G of the regulations."¹⁷⁹ Therefore, the ISBTC's assessment of the value of the paving was affirmed.

4. *Quality Farm & Fleet v. Board of Tax Commissioners*.¹⁸⁰—Quality Farm and Fleet ("Quality Farm") appealed to the tax court the ISBTC assessment of its property.¹⁸¹ Quality Farm raised five issues: whether the ISBTC "exceeded its

automatically" without the need of substantial evidence to support it. *Id.*

166. *Id.* at 605.

167. *Id.*

168. *Id.* at 599.

169. *Id.* at 605.

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.* at 606.

176. *Id.*

177. *Id.*

178. *Id.*

179. *Id.*

180. 747 N.E.2d 88 (Ind. T.C. 2001).

181. *Id.* at 90.

legislative authority in conducting a hearing in this matter without having issued a letter of appointment or a prescription of duties to its hearing officer;"¹⁸² whether the ISBTC erred in denying Quality Farm a negative influence factor; whether the ISBTC erred in not applying the General Commercial Kit (GCK) pricing schedule; whether the ISBTC erred in applying a D grade to Quality Farm's main building; and whether the ISBTC erred in not awarding an obsolescence adjustment.¹⁸³

The court held that the administrative hearing was lawful even though the ISBTC did not issue a written order of appointment or a prescription of duties to the hearing officer.¹⁸⁴ The hearing was lawful because Quality Farm did not object to the hearing, and this failure constituted an acceptance of the hearing officer's authority, and a waiver of the issue.¹⁸⁵

With respect to the negative influence factor, the court held that the ISBTC properly denied a negative influence factor to Quality Farm's parcel.¹⁸⁶ For a negative influence factor to apply in this case, Quality Farm would have had to show, via probative evidence, that its main building did not have the same use as its surrounding buildings and that this inconsistent use negatively impacted the value of the property.¹⁸⁷ Quality Farm proved the former; however, it did not demonstrate how the differing use of the buildings decreased the value of the property.¹⁸⁸ Therefore, the denial of a negative influence factor was proper.¹⁸⁹

The court further held that the ISBTC did not err when it refused to use the GCK pricing schedule.¹⁹⁰ The GCK pricing schedule was used for determining the value of pre-engineered and pre-designed pole buildings used for commercial or industrial purposes.¹⁹¹ Quality Farm alleged that it had two qualifying buildings: an addition and a small shop area.¹⁹²

With respect to the addition, Quality Farm asserted that the ISBTC assessed it using the GCK price schedule in the past.¹⁹³ The court stated that this evidence alone was not sufficient to show an error here since "each assessment and each tax year stands alone."¹⁹⁴ Further, photographs shown by Quality Farm depicting the addition were not probative because they failed to explain how the addition qualifies for the GCK pricing schedule.¹⁹⁵

182. *Id.*

183. *Id.*

184. *Id.* at 91.

185. *Id.*

186. *Id.* at 92.

187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.* at 93.

191. *Id.* at 92 (referencing IND. ADMIN. CODE tit. 50, r. 2.2-10-6.1(a)(1)(D) (2000)).

192. *Id.*

193. *Id.* at 93.

194. *Id.*

195. *Id.*

With respect to the small shop area, Quality Farm demonstrated that its characteristics are similar to other buildings that use the GCK pricing schedule.¹⁹⁶ The court stated that this evidence, while probative, was not sufficient to “establish a prima facie case that the Small Shop Area should be assessed using the GCK pricing schedule.”¹⁹⁷

The court further held that Quality Farm did not present sufficient evidence to establish a prima facie case to invalidate the grade assessment on its main building.¹⁹⁸ Quality Farm wanted a decrease in grade from a D to a D-1 on the main building because it lacked interior finish, exterior windows, and exterior attractiveness.¹⁹⁹ The court held that Quality Farm failed to explain why these deficiencies warranted a downward adjustment in the base value of the building.²⁰⁰ Therefore, the ISBTC did not err in granting a grade assessment of D.²⁰¹

The court finally held that Quality Farm was not entitled to an obsolescence adjustment.²⁰² Obsolescence was defined as a diminishing of a property’s desirability and usefulness because of inadequacies inherent in the property, or economic factors external to the property.²⁰³ Quality Farm claimed that the flat roof of its building and add-on construction create a loss in value of the property.²⁰⁴ The court held, however, that Quality Farm did not sufficiently explain how these characteristics qualified as obsolescence.²⁰⁵ Quality Farm relied on conclusory statements that such characteristics reduce the value of the property.²⁰⁶ The court stated that these types of statements do not constitute probative evidence.²⁰⁷ Therefore, the ISBTC did not err in denying an obsolescence adjustment.²⁰⁸

5. *Fleet Supply, Inc. v. State Board of Tax Commissioners.*²⁰⁹—Fleet appealed the assessment of its real property by the ISBTC to the tax court.²¹⁰ Fleet raised four issues: whether the depreciation schedule for its main building should be based on a thirty-year rather than a forty-year life expectancy; whether the ISBTC erred in declaring the conditions of improvements to be average; whether the D grade was improper; and whether the ISBTC erred in refusing to

196. *Id.*

197. *Id.*

198. *Id.* at 94.

199. *Id.*

200. *Id.*

201. *Id.*

202. *Id.* at 95.

203. *Id.* (referencing IND. ADMIN. CODE tit. 50, r. 2.2-1-40 (1996)).

204. *Id.*

205. *Id.*

206. *Id.*

207. *Id.*

208. *Id.*

209. 747 N.E.2d 645 (Ind. T.C. 2001).

210. *Id.* at 647.

apply a negative influence factor.²¹¹

With respect to the life expectancy issue, the court held that the forty-year expectancy table was properly used.²¹² Life expectancy tables were used by the ISBTC to account for the physical depreciation of the property.²¹³ There are four different tables used for the depreciation of commercial and industrial buildings.²¹⁴ The thirty-year table is used for light pre-engineered buildings, while the forty-year table is used for buildings that are fire-resistant but not listed in other tables.²¹⁵ To show that the ISBTC should have used the thirty-year table, the court stated that Fleet “was required to submit to the ISBTC probative evidence sufficient to establish a prima facie case as to the invalidity of the application of the forty-year life expectancy table.”²¹⁶

This Fleet failed to do.²¹⁷ Fleet offered evidence through its appraiser, Landmark Appraisals, that the main building should have been depreciated by the thirty-year table, offered photographs of the main building, and offered testimony that the building was a light pre-engineered structure.²¹⁸ The court held that this evidence was conclusory and did not explain why the thirty-year table was more appropriate.²¹⁹ The photographs were without caption and were unexplained, so the court granted them no probative weight.²²⁰ The testimony offered no argument or analysis but, rather, just stated conclusions, and the court refused to make any arguments for Fleet.²²¹ Therefore, the court held that the ISBTC did not err in using the forty-year depreciation table.

As to the issue of the average condition rating, the court held that since Fleet failed to provide any explanation for its argument that the assignment of an average condition to the main building was in error, the court affirmed ISBTC’s assessment of the main building’s condition as average.²²² Fleet offered evidence that the proper condition was less than average because the main building received little maintenance and that the building had dents and stains.²²³ The court again disregarded this evidence as conclusory and uninformative as to how these problems affected the usefulness of the buildings.²²⁴

211. *Id.* at 647-48. Fleet also argued that the ISBTC’s assessment violated the Indiana Constitution. However, the court replied that it would not invalidate an assessment because the regulations that led to the assessment were unconstitutional. *Id.* at 647-48 n.1.

212. *Id.* at 650.

213. *Id.* at 648.

214. *Id.* at 648-49.

215. *Id.* See IND. ADMIN. CODE tit. 50, r. 2.2-11-7 (1996).

216. *Fleet Supply*, 747 N.E.2d at 649.

217. *Id.*

218. *Id.*

219. *Id.* at 649-50.

220. *Id.*

221. *Id.*

222. *Id.* at 651.

223. *Id.* at 650.

224. *Id.* at 650-51.

As to the issue of grade, the court affirmed the D grade assessed by the ISBTC.²²⁵ The court held that the evidence offered by Fleet did not create a prima facie showing to change the grade.²²⁶ Fleet's evidence consisted of conclusory statements similar to those that the court had rejected in its analysis of Fleet's other complaints.²²⁷

The court finally held that Fleet was not entitled to a negative influence factor.²²⁸ A negative influence factor is a percentage decrease in property's assessed value representing the effect of factors that influence the value.²²⁹ Fleet argued that it was entitled to a negative influence factor because the structures surrounding the main building were used for purposes different from those of the main building, which was suited for retail purposes.²³⁰ The court rejected this argument because Fleet failed to show that this disparate use of the property caused a decrease in the value of the property.²³¹ As a result, the court affirmed the denial of a negative influence factor.²³²

6. *McDonald's Corp. v. Indiana State Board of Tax Commissioners.*²³³— McDonald's appealed the assessment of its property by the ISBTC to the tax court.²³⁴ McDonald's asserted that "its land should have been assessed on a front foot basis pursuant to the Commercial/Industrial Platted section of the Land Order rather than on the acreage basis."²³⁵ The "land order" was the Kosciusko County Land Valuation Order.²³⁶ McDonald's wanted its property assessed by the platted section rather than the acreage section of the land order.²³⁷

The court held that since McDonald's land was platted and "the subdivision where McDonald's land [was] located [was] specifically provided for in the Commercial/Industrial Platted land section of the Land Order,"²³⁸ the land should have been assessed on a front foot basis pursuant to the commercial/industrial platted section.²³⁹

225. *Id.* at 652.

226. *Id.*

227. *See id.* at 651.

228. *Id.* at 653.

229. *Id.* at 652.

230. *Id.* at 652-53. To be entitled to a negative influence factor, Fleet needed to show two things: that the main building did not have the same use as the surrounding buildings and that the "inconsistent usage negatively impacted the subject parcel's value." *Id.* at 653 (referencing IND. ADMIN CODE tit. 50, r.2.2-4-10-(a)(9)(E) (1996)).

231. *Id.* at 653.

232. *Id.*

233. 747 N.E.2d 654 (Ind. T.C. 2001).

234. *Id.* at 655.

235. *Id.* at 656.

236. *Id.*

237. *Id.*

238. *Id.* at 657.

239. *Id.*

7. *Damon Corp. v. Indiana State Bd. of Tax Commissioners*.²⁴⁰—Damon purchased certain property in Elkhart County from Mallard Coach Co. in 1992.²⁴¹ In 1993, Damon received a bill for property taxes due for 1989 through 1992.²⁴² Damon filed a petition for review of the assessment with the ISBTC arguing that it was a bona fide purchaser and, therefore, not subject to a lien for additional taxes assessed before Damon purchased the property.²⁴³ The ISBTC did not hold a hearing or make any determination regarding Damon's petition.²⁴⁴ Damon subsequently filed another petition with the ISBTC requesting an obsolescence deduction and kit building adjustment.²⁴⁵ The ISBTC denied these requests, and Damon appealed to the tax court.²⁴⁶

The tax court initially ruled that it did not have jurisdiction over the bona fide purchaser issue.²⁴⁷ However, under the jurisdictional laws in 1994, the date when Damon filed its initial petition, if the ISBTC did not conduct a hearing within a certain time after the filing of the petition, Damon could file an appeal with the tax court.²⁴⁸ Since Damon filed its appeal after the requisite period, the tax court had jurisdiction over the case.²⁴⁹

With respect to the merits of the bona fide purchaser issue, the tax court held that the bona fide purchaser exception to liens for additional taxes assessed for assessment dates prior to Damon's purchase of property did not apply in this case.²⁵⁰ The bona fide purchaser notion relied upon by Damon states: "With respect to real property which is owned by a bona fide purchaser without knowledge, no lien attaches for any property taxes which result from an assessment, or an increase in assessed value, made under this chapter for any period before his purchase of the property."²⁵¹ The court stated that the plain language of this section provides that bona fide purchasers were exempt from previous assessments made under chapter nine, which dealt with the assessments of undervalued or omitted tangible property.²⁵² Since the taxes were owed before Damon even possessed the property, there was no evidence showing why the previous owner of the property owed these taxes.²⁵³ As a result, Damon failed to make a prima facie showing that it was not subject to the lien for additional

240. 738 N.E.2d 1102 (Ind. T.C. 2000).

241. *Id.* at 1105.

242. *Id.*

243. *Id.*

244. *Id.*

245. *Id.*

246. *Id.*

247. *See id.* at 1105 n.3.

248. *Id.* *See* IND. CODE § 6-1.1-15-4(e) (1989). The requisite time period was one year in a nonreassessment year and two years in a reassessment year. *Id.*

249. *Damon*, 738 N.E.2d at 1105 n.3.

250. *Id.* at 1107.

251. *Id.* at 1106 (quoting IND. CODE § 6-1.1-9-4(b) (2000)) (emphasis deleted).

252. *Id.* at 1107.

253. *Id.*

taxes.²⁵⁴

With respect to obsolescence, Damon asserted that it was entitled to an obsolescence deduction because it paid less than the true tax value for the property, because the building was vacant before Damon took it over, and because the building was under construction.²⁵⁵ The court held that the fact that Damon paid less than the true tax value of the property failed to make a prima facie case establishing an obsolescence deduction.²⁵⁶ The court stated that “the difference between the true tax value of Damon’s property and the price Damon paid for the property, two unrelated numbers, [did not] demonstrate that there has been a loss in value of the subject improvement.”²⁵⁷ The numbers were so unrelated, in fact, that a statute expressly states that “true tax value does not mean fair market value.”²⁵⁸

The court further held that the vacancy of the building did not constitute a prima facie case establishing that the property suffered a loss and was entitled to obsolescence.²⁵⁹ The court stated that Damon did not explain why the building was vacant or whether the building was even for sale during its vacant period.²⁶⁰

The court further found that no case for obsolescence had been shown by Damon’s argument that its main building was under construction and unusable.²⁶¹ The court stated that “for an obsolescence adjustment to be made, there must be some loss in value.”²⁶² Further, “obsolescence cannot be applied to a building that is under construction because its useful life has not yet begun.”²⁶³ Damon was not entitled to an obsolescence adjustment, because its building had not started becoming useful yet and therefore had not suffered a loss in value.²⁶⁴

With respect to the kit building adjustment, the court held that Damon had presented a prima facie case that its building was eligible for a kit building adjustment.²⁶⁵ The ISBTC permits a fifty percent reduction in the base rate of kit buildings,²⁶⁶ which are defined as buildings made of light weight and inexpensive materials put together in a particular way.²⁶⁷ Damon presented evidence to the tax court tending to show that it was entitled to a kit building adjustment because its main building was constructed in such a manner as to be a kit building.²⁶⁸ The

254. *Id.*

255. *Id.* at 1108.

256. *Id.* at 1109.

257. *Id.*

258. *Id.* (quoting IND. CODE § 6-1.1-31-6(c) (2000)) (emphasis deleted).

259. *Id.*

260. *Id.*

261. *Id.* at 1110.

262. *Id.* (emphasis deleted).

263. *Id.*

264. *Id.*

265. *Id.* at 1111.

266. *Id.* (referencing IND. ADMIN. CODE tit. 50, r. 2.1-4-5 (1992)).

267. *Id.*

268. *Id.*

court stated: "Because Damon has presented evidence that its building had tapered columns and Cee channels (both key factors in identifying kit buildings) as well as cross bracing, this Court concludes that Damon has established a prima facie case that its building is eligible for a kit building adjustment."²⁶⁹

Since Damon had presented a prima facie case, the ISBTC had to rebut Damon's evidence and justify its decision to deny a kit building adjustment with substantial evidence.²⁷⁰ The ISBTC argued that it denied the adjustment because Damon had put two additions to the main building.²⁷¹ The court rejected this reason as insufficient to rebut Damon's showing. The court stated that the ISBTC cited no authority supporting its position that additions to an otherwise qualifying structure disqualified that structure.²⁷² As a result, the court held that the ISBTC acted arbitrarily and capriciously in denying the kit building adjustment and remanded the case instructing the ISBTC to reassess Damon's property.²⁷³ The court further instructed that if the assessment altered the grade of Damon's building, the ISBTC must grade it a C or must support with substantial evidence any grade other than a C.²⁷⁴

8. *Componx, Inc. v. Indiana State Board of Tax Commissioners.*²⁷⁵—*Componx* appealed to the tax court the final determination of the ISBTC assessing *Componx's* property.²⁷⁶ *Componx's* property was subject to a kit building adjustment.²⁷⁷ However, the ISBTC ruled that the interior components of the building should be subtracted from the base price of the building before applying the fifty percent reduction²⁷⁸ for the kit building adjustment and then fully added back in after the adjustment has been made.²⁷⁹ The issue was whether this procedure constituted an abuse of discretion by the ISBTC.²⁸⁰

The tax court ruled that this procedure was not an abuse of discretion or arbitrary and capricious action by the ISBTC.²⁸¹ The court reasoned that the kit building adjustment statute did not provide for the interior components to be reduced by fifty percent.²⁸² Further, the court stated that the ISBTC developed the subtraction method through its instructional bulletins.²⁸³ The court stated that

269. *Id.*

270. *Id.* at 1112.

271. *Id.*

272. *Id.*

273. *Id.* at 1113.

274. *Id.*

275. 741 N.E.2d 442 (Ind. T.C. 2000).

276. *Id.* at 443.

277. *Id.*

278. *Id.* at 445.

279. *Id.*

280. *Id.* at 444.

281. *Id.* at 446.

282. *Id.* See IND. ADMIN. CODE tit. 50, r. 2.1-4-5 (1992).

283. *Componx, Inc.*, 741 N.E.2d at 444-45. See IND. ADMIN. CODE tit. 50, r. 4.2-1-5 (1992) (permitting the ISBTC to issue instructional bulletins to provide instructions to assessors).

“Instructional Bulletins hold a lofty position in property tax law.”²⁸⁴ The court held that Instructional Bulletin 92-1, the one describing the subtraction method, prevails over other previous, less specific, and contradictory instructional bulletins.²⁸⁵ Therefore, this method holds near-statutory status according to the tax court.

The court further supported its holding by stating that previous instructional bulletins, such as Instructional Bulletin 91-8,²⁸⁶ indicate that the kit building adjustment was meant to apply only to the shell of the building and not its interior components.²⁸⁷ To conclude, the court held:

Because the [ISBTC]’s interpretation of IND. ADMIN. CODE tit. 50, r. 2.1-4-5 via [Instructional Bulletin] 92-1 is not inconsistent with the regulation itself, reflects the purpose of the kit building adjustment, and is the most recent, specific, and objective explanation by the [ISBTC], this Court holds that the method of calculating the kit building adjustment therein is not arbitrary or capricious and is not an abuse of the ISBTC’s discretion.²⁸⁸

9. *Clark v. State Board of Tax Commissioners*.²⁸⁹—Clark appealed a final determination by the ISBTC adjusting the grade assigned to Clark’s apartment complex to a C-1 and refusing to issue an obsolescence adjustment.²⁹⁰

The tax court held that the ISBTC erred in adjusting the grade on Clark’s property from a C to a C-1.²⁹¹ In its final determination, the ISBTC offered no explanation as to why it adjusted Clark’s grade.²⁹² At the trial before the tax court, however, the hearing officer of Clark’s administrative hearing testified that she based the adjustment on deviations of Clark’s apartment building from the “specifications of the GCR Apartment model.”²⁹³ The court held that the ISBTC could not support its final determination by “referring to reasons that were not previously ruled upon, but that [were] offered as post hoc rationalizations.”²⁹⁴ Since the hearing officer’s trial testimony was the first explanation on the adjustment, the tax court reversed and remanded the ISBTC’s grade

284. *Componx, Inc.*, 741 N.E.2d at 446.

285. *Id.* at 447.

286. Instructional Bulletin 91-8 was previously used by the ISBTC in assessing the kit building adjustment. This instructional bulletin provided that the fifty percent reduction applied to the entire building, including the interior. *Id.* at 444.

287. *Id.*

288. *Id.* at 448. On practically the same facts, and on the very same day, the tax court made a ruling identical to *Componx* in *King Industrial Corp. v. State Board of Tax Commissioners*, 741 N.E.2d 815 (Ind. T.C. 2000).

289. 742 N.E.2d 46 (Ind. T.C. 2001).

290. *Id.* at 47.

291. *Id.* at 49.

292. *Id.* at 48.

293. *Id.* at 49. At no point in the opinion did the court define the GCR Apartment model.

294. *Id.* (quoting *Word of His Grace Fellowship, Inc. v. State Bd. of Tax Comm’rs*, 711 N.E.2d 875, 878 (Ind. T.C. 1999)).

determination.²⁹⁵

With respect to the issue of the obsolescence deduction, the court affirmed the ISBTC in denying the deduction.²⁹⁶ Clark argued that he was entitled to a deduction because his apartment lessees tend to be Purdue University students. This characteristic, Clark argued, translated into higher maintenance costs and a higher turnover rate. Further, Clark argued that he was entitled to obsolescence because of the low land-to-building parking ratios.²⁹⁷ The court held that while these reasons may in fact permit an entitlement, Clark failed to submit probative evidence tending to show that he actually suffered higher administrative costs or that the parking situation led to an actual problem.²⁹⁸ Instead, Clark rested on conclusory statements which, the court commented, "do not qualify as probative evidence."²⁹⁹ As a result, the court affirmed the ISBTC denial of an obsolescence deduction.³⁰⁰

10. *Louis D. Realty Corporation v. Indiana State Board of Tax Commissioners.*³⁰¹—Louis Realty appealed to the tax court a final determination by the ISBTC.³⁰² Louis Realty raised two issues: whether the ISBTC's regulations regarding grade, condition, or obsolescence were unconstitutional because they were arbitrary and capricious and whether the ISBTC's determinations regarding grade, condition, or obsolescence in Louis Realty's case were arbitrary and capricious or unsupported by substantial evidence.³⁰³

The tax court held that the final determination of the ISBTC would not be reversed solely because Louis Realty's property was assessed under an unconstitutional system.³⁰⁴ The court stated that property must still be assessed, even though the current system was unconstitutional, until new regulations are in place.³⁰⁵ Therefore, "a taxpayer cannot come into court, point out the inadequacies of the present system and obtain a reversal of an assessment Instead, the taxpayer must come forward with probative evidence relating to" the specific issues of the taxpayer's individual case.³⁰⁶ As a result, the court refused to reverse the final determination of the ISBTC solely on constitutional

295. *Id.* The court hinted to the ISBTC that the preferred way of accounting for Clark's deviation from the GCR Apartment model is to "use separate schedules that show the costs of certain components and features present in the model." *Id.* (referencing *Whitley Prods., Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1117 (Ind. T.C. 1998)). This method would be more objective than the grade adjustment method and therefore was preferred. *Id.*

296. *Id.* at 52.

297. *Id.* at 50-51.

298. *Id.* at 51-52. In fact, the evidence suggested that Clark was making money off his apartments. *Id.* at 51.

299. *Id.*

300. *Id.* at 52.

301. 743 N.E.2d 379 (Ind. T.C. 2001).

302. *Id.* at 381.

303. *Id.*

304. *Id.* at 383.

305. *Id.*

306. *Id.*

grounds.³⁰⁷

The court further held that the ISBTC did not err in its assessment of Louis Realty's property's grade.³⁰⁸ The court held that for Louis Realty to show that the ISBTC acted arbitrarily and capriciously, it must offer probative evidence demonstrating such action.³⁰⁹ Louis Realty failed to offer any evidence supporting its position that the ISBTC acted arbitrarily and capriciously, so the tax court affirmed the ISBTC's final determination with respect to grade.³¹⁰

The tax court reversed, however, the ISBTC's final determination with respect to condition.³¹¹ The condition of a structure on property was an important factor in the determination of that property's physical depreciation.³¹² Physical depreciation was important because it affects the property's true tax value, which is the value on which the taxpayer paid property taxes.³¹³ To determine condition, the assessor must perform "an observation of the amount of physical deterioration relative to the age of that improvement and the degree of maintenance relative to the age of that improvement."³¹⁴ This observation required the assessor to "determine the average condition of similar structures, [and] then relate the structure being assessed to that established average."³¹⁵

The assessor in this case failed to adhere to the assessment regulations.³¹⁶ The assessor compared Louis Realty's property to other similar property without ever determining the average condition of the similar buildings.³¹⁷ The court held that Louis Realty had presented a prima facie case of error in the ISBTC assessment of condition.³¹⁸ Further, the ISBTC failed to rebut this prima facie case.³¹⁹ Therefore, the ISBTC's final determination with respect to condition was reversed and remanded for a hearing in which Louis Realty must demonstrate, via substantial evidence, its entitled level of condition.³²⁰

With respect to obsolescence, the tax court held that Louis Realty failed to establish a prima facie case establishing that it was entitled to economic obsolescence, but it did establish a prima facie case establishing that it was entitled to functional obsolescence.³²¹ The rule regarding obsolescence in place

307. *Id.*

308. *Id.* at 384.

309. *Id.*

310. *Id.*

311. *Id.* at 385.

312. *Id.* at 384.

313. *Id.*

314. *Id.*

315. *Id.* (quoting IND. ADMIN. CODE tit. 50, r. 2.1-5-1 (1992)).

316. *Id.* at 385.

317. *Id.*

318. *Id.*

319. *Id.*

320. *Id.*

321. *Id.* at 386-87. Functional obsolescence was caused by factors internal to the property that reduced the value of the property, while economic obsolescence was caused by factors external to the property with the same effect. *Id.* at 386.

during the commencement of Louis Realty's case stated that in a case of alleged error in obsolescence assessments, Louis Realty must identify the causes of the obsolescence and demonstrate that the quantification of the obsolescence by the ISBTC was not supported by the evidence.³²²

The court held that the ISBTC erred in its assessment of Louis Realty's functional obsolescence.³²³ At trial, the assessor testified that he found twenty percent functional obsolescence because that was what he always did for property like Louis Realty's.³²⁴ The court stated that this finding was supported by no independent evidence.³²⁵ Therefore, Louis Realty had met its burden to show that the quantification of the obsolescence by the ISBTC was not supported by the evidence.³²⁶

The court held that Louis Realty failed to show any probative evidence establishing an entitlement to economic obsolescence.³²⁷ Louis Realty simply submitted to the assessor its financial statements and the vacancy rates for its property.³²⁸ Louis Realty failed to meet its burden because its submissions did not show a cause of economic obsolescence.³²⁹ Therefore, the ISBTC's denial of economic obsolescence was affirmed.³³⁰

11. *Davidson Industries v. State Board of Tax Commissioners*.³³¹—Davidson appealed a final determination by the ISBTC assessing two parcels of land in Allen County.³³² Davidson asserted two issues to the tax court: whether the ISBTC's determination should be reversed because its regulations were unconstitutional and whether Davidson's property suffered from obsolescence.³³³

The court held that it would not reverse the final determination of the ISBTC solely because its regulations were unconstitutional.³³⁴ Real property will still be assessed under the current system until a new set of regulations comes out.³³⁵ To have a cognizable claim, Davidson needed to show why the ISBTC erred on a specific issue in its individual case.³³⁶

The court held that the ISBTC did not err in refusing an obsolescence

322. *Id.* at 386. The current rule required the taxpayer to both identify the causes of the obsolescence and quantify the amount. *Id.* at 385-86 (citing *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1241 (Ind. T.C. 1998)).

323. *Id.* at 386.

324. *Id.*

325. *Id.*

326. *Id.*

327. *Id.* at 387.

328. *Id.* at 386-87.

329. *Id.* at 387.

330. *Id.*

331. 744 N.E.2d 1067 (Ind. T.C. 2001).

332. *Id.* at 1068.

333. *Id.*

334. *Id.* at 1069.

335. *Id.*

336. *Id.*

deduction.³³⁷ The rule in place at the time of the commencement of Davidson's case required that Davidson, to make a prima facie showing of an entitlement to obsolescence, demonstrate the cause of obsolescence.³³⁸ All Davidson offered as evidence were conclusory statements without explanations of the cause for obsolescence.³³⁹ The court stated: "Davidson did not even designate what kind of obsolescence was allegedly demonstrated by its evidence. It is not this Court's place to sift through Davidson's evidence and make its arguments for . . . it."³⁴⁰ As a result, the tax court affirmed the denial of obsolescence.³⁴¹

12. *Champlin Realty v. State Board of Tax Commissioners*.³⁴²—Champlin appealed to the tax court for the second time from a final determination of the ISBTC denying an obsolescence adjustment to Champlin's property.³⁴³ Champlin owned two parcels of land in Elkhart County.³⁴⁴ Champlin initially filed for review by the ISBTC the denial of an obsolescence adjustment by the local assessor.³⁴⁵ At that time, the ISBTC agreed with Champlin and assessed an obsolescence adjustment.³⁴⁶ However, Champlin appealed to the tax court.³⁴⁷ At that appeal, the tax court reversed the obsolescence adjustment and remanded the case back to the ISBTC.³⁴⁸ The court, on the first appeal, stated that the record was "bereft of any probative evidence which supports either the causes or quantification of functional obsolescence."³⁴⁹ On remand, the ISBTC denied an obsolescence adjustment, and Champlin again appealed to the tax court.³⁵⁰

At the trial before the tax court, Champlin presented several exhibits, photographs, and reviews of its property describing how it was entitled to a functional obsolescence adjustment.³⁵¹ The court, however, was not persuaded by it.³⁵² To create a prima facie case of entitlement to an obsolescence adjustment, the court stated: "the taxpayer must explain how the purported causes of obsolescence cause the subject improvements to suffer losses in value."³⁵³ It is not enough for the taxpayer to "merely identify possible causes

337. *Id.* at 1071.

338. *Id.* at 1070. The current rule requires the taxpayer to both identify the causes of the obsolescence and quantify the amount. *Id.* (citing *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1241 (Ind. T.C. 1998)).

339. *Id.* at 1071.

340. *Id.*

341. *Id.*

342. 745 N.E.2d 928 (Ind. T.C. 2001).

343. *Id.* at 929.

344. *Id.* at 930.

345. *Id.*

346. *Id.*

347. *Id.*

348. *Id.* at 930-31.

349. *Id.* at 930.

350. *Id.* at 931.

351. *Id.* at 932-34.

352. *Id.* at 934.

353. *Id.* at 936.

of obsolescence.”³⁵⁴

Champlin next contended that, since it and the ISBTC agreed in the first determination that the obsolescence adjustments were appropriate, the only issue before the court was the quantification of the obsolescence.³⁵⁵ The court rejected this argument.³⁵⁶ The court remarked that any agreement between the parties was negated by the issuance of a remand order.³⁵⁷ “The Court’s Remand Order wiped the slate clean with respect to functional obsolescence, due to the lack of any probative evidence tending to show that the subject improvements suffered from causes of functional obsolescence.”³⁵⁸ As a result, there was no agreement for the court to recognize.³⁵⁹ Therefore, the second final determination denying a functional obsolescence adjustment was affirmed.³⁶⁰

13. *North Group, Inc. v. State Board of Tax Commissioners*.³⁶¹—North Group appealed a final determination by the ISBTC that assessed North Group’s property as separate lots rather than on an acreage basis.³⁶² The property at issue was previously owned by Tipton.³⁶³ Prior to Tipton’s sale to North Group, the land was assessed on an acreage basis.³⁶⁴ After an agreement to sell, but before title changed hands, Tipton platted the property into lots.³⁶⁵ After North Group received title to the property, the county assessor reassessed the subject property on a lot basis, rather than on an acreage basis.³⁶⁶ North Group objected, but the ISBTC decided that the property was properly assessed on a lot basis.³⁶⁷

The tax court affirmed.³⁶⁸ The controlling statute over this dispute stated that “if land assessed on an acreage basis is subdivided into lots, the lots may not be reassessed until the next assessment date following a transaction which results in a change in legal or equitable title to that lot.”³⁶⁹ The court held that this statute was not ambiguous.³⁷⁰ “The facts of this case fit squarely within the statute,” and there was no error in reassessing the land on a lot basis.³⁷¹

354. *Id.*

355. *Id.* The court noted that on remand the “local assessing officials . . . opined that the obsolescence adjustments granted by the [ISBTC] in its original Final Determinations were adequate.” *Id.*

356. *Id.* at 937-38.

357. *Id.* at 937.

358. *Id.*

359. *Id.* at 938.

360. *Id.*

361. 745 N.E.2d 938 (Ind. T.C. 2001).

362. *Id.* at 939.

363. *Id.*

364. *Id.*

365. *Id.*

366. *Id.*

367. *Id.* at 940-41.

368. *Id.* at 941.

369. *Id.* at 940 (quoting IND. CODE § 6-1.1-4-12 (2000)) (emphasis deleted).

370. *Id.* at 941.

371. *Id.*

14. *Miller Structures, Inc. v. State Board of Tax Commissioners*.³⁷²—Miller Structures, Inc. (“Miller”) owned two parcels of land in Elkhart County, designated parcel one and parcel two.³⁷³ Miller filed a Form 133 Petition for Correction of Error for parcel one, asserting that the assessment of parcel one was in error because of the failure to consider the metal construction of a building on parcel one.³⁷⁴ Miller also filed a Form 131 Petition for Review of Assessment for both parcel one and parcel two asserting that the buildings on these parcels required kit building adjustment, a grade adjustment, and an obsolescence adjustment.³⁷⁵ Regarding the 133 petition, the ISBTC concluded that parcel one was not entitled to a kit building adjustment. Regarding the 131 petitions, the ISBTC concluded that neither parcel one nor parcel two was entitled to a kit building adjustment, the grade should be C-2, and there should be no obsolescence adjustment.³⁷⁶ Miller appealed to the tax court all of these issues and in addition whether the ISBTC exceeded statutory authority in conducting hearings on these petitions without having the hearing officers receive written prescriptions of their duties.³⁷⁷

With respect to the issue of the hearing officers, the court held that Miller had waived the issue.³⁷⁸ The ISBTC was required to set a hearing on these petitions³⁷⁹ and had to appoint a hearing officer who had received prescriptions about the duties of a hearing officer.³⁸⁰ Whether the hearing officers of Miller’s petitions actually received prescriptions of duties or not, the court stated that “there is no evidence presented by Miller and this Court has found no evidence that Miller objected to the authority of” the hearing officers.³⁸¹ This failure constituted a waiver.³⁸² Therefore, the ISBTC had not exceeded its statutory authority in this case.³⁸³

With respect to the 133 petition, the court held that the building on parcel one was not entitled to a kit building adjustment.³⁸⁴ The court stated that Miller needed “to present a prima facie case that its building was entitled to” the kit adjustment.³⁸⁵ All Miller did was simply state that its building was made of metal and, therefore, the kit adjustment should have been applied.³⁸⁶ The court

372. 748 N.E.2d 943 (Ind. T.C. 2001).

373. *Id.* at 946-47.

374. *Id.* at 947.

375. *Id.*

376. *Id.*

377. *Id.* at 947-48.

378. *Id.*

379. *See* IND. CODE § 6-1.1-15-4(a) (1998 & Supp. 2001).

380. *Miller Structures*, 748 N.E.2d at 948 (referencing IND. CODE § 6-1.1-30-11(a)-(b) (1998 & Supp. 2001)).

381. *Id.*

382. *Id.*

383. *Id.*

384. *Id.* at 949.

385. *Id.*

386. *Id.*

held that this statement was a bare allegation, which did not constitute a prima facie case.³⁸⁷ Since Miller failed to make a prima facie case, the ISBTC's burden to rebut this case had not been triggered.³⁸⁸

With respect to the 131 petitions, the court dealt with the kit adjustment issue, the grade issue, and the obsolescence issue separately. The court held that Miller had stated a prima facie case that the light manufacturing structure on parcel two and all structures on parcel one were entitled to a kit building adjustment.³⁸⁹ Miller met its burden by providing ample evidence that these buildings contained the elements of kit buildings, such as rigid framing with Cee channels and tapered columns, and that twenty-six gauge steel was used on the buildings.³⁹⁰ Because Miller had met its burden, the burden shifted to the ISBTC to rebut that the buildings were entitled to a kit building adjustment.³⁹¹ The ISBTC pointed to other characteristics of the buildings that were inconsistent with kit buildings, such as high tolerance loads for the concrete floors, beams, and roof.³⁹² The court found this rebuttal evidence to be sufficient to support the ISBTC's "final determination that the buildings in question were not entitled to a kit building adjustment."³⁹³ Since Miller did not present further evidence to rebut the ISBTC's rebuttal evidence, the court affirmed the ruling of the ISBTC.³⁹⁴

Miller asked the tax court for a grade adjustment if it denied the kit building adjustment.³⁹⁵ The trial court stated that the evidence Miller presented for a grade adjustment was the same as the evidence Miller presented for the kit building adjustment.³⁹⁶ The court held that this evidence did not constitute a prima facie case for a grade adjustment because Miller never explained why these characteristics better resembled D grade buildings instead of C-2 grade buildings.³⁹⁷ As a result, the tax court affirmed the ISBTC's C-2 grade assessment.³⁹⁸

Miller finally argued that its buildings were entitled to an obsolescence adjustment.³⁹⁹ The court stated that the rule regarding obsolescence in place during the commencement of Miller's case was that Miller simply needed to identify the causes of the obsolescence.⁴⁰⁰ Miller claimed that its buildings

387. *Id.*

388. *Id.*

389. *Id.* at 950.

390. *Id.*

391. *Id.*

392. *Id.* at 951.

393. *Id.*

394. *Id.* at 951-52.

395. *Id.* at 952.

396. *Id.* at 952-53.

397. *Id.* at 953.

398. *Id.*

399. *Id.*

400. *Id.* at 954. The current rule requires the taxpayer to both identify the causes of the obsolescence and quantify the amount. *Id.* at 953-54 (citing *Clark v. State Bd. of Tax Comm'rs*,

suffered from obsolescence because they had add-on construction.⁴⁰¹ Miller argued that the buildings would be more efficient if there were just one building with everything under one roof rather than having the add-on construction.⁴⁰² The court held that these statements were conclusory and did not establish how the property lost value because of these characteristics.⁴⁰³ As a result, the court affirmed the ISBTC's denial of an obsolescence adjustment because Miller failed to meet its burden.⁴⁰⁴

15. *Zakutansky v. State Board of Tax Commissioners*.⁴⁰⁵—The Zakutanskys owned real residential property in Porter County.⁴⁰⁶ The Zakutanskys appealed to the tax court from a final determination by the ISBTC, which concluded that the assessment of \$350 per front foot was proper and that the correct depth factor for the Zakutanskys' home was the 150 feet depth table.⁴⁰⁷

With respect to the front foot value issue, the tax court held that the ISBTC's use of the \$350 per front foot was proper.⁴⁰⁸ The Zakutanskys' property was in the third line of houses from Lake Michigan.⁴⁰⁹ The Zakutanskys argued that other homes located in the third row from Lake Michigan were assessed a lower rate than \$350 per front foot.⁴¹⁰ The tax court concluded that this showing constituted a *prima facie* case that the property was not assessed in an equal and uniform manner.⁴¹¹ However, the ISBTC rebutted the Zakutanskys' evidence by demonstrating that the houses with which Zakutansky compared its own were in fact different from the Zakutanskys' home.⁴¹² The other houses did not enjoy the hill-top positioning of the Zakutanskys' home and did not share the Zakutanskys' lake view.⁴¹³ Further, the ISBTC provided evidence that other properties that were very similar to the Zakutanskys' property were valued at the same or higher rates.⁴¹⁴ As a result, the tax court held that ISBTC rebutted the Zakutanskys' *prima facie* case and affirmed the \$350 per front foot valuation.⁴¹⁵

With respect to the depth-factor issue, the court remanded the issue back to the administrative level to determine the predominant lot depth in the area under consideration.⁴¹⁶ A depth factor was the factor used to adjust the front foot base

694 N.E.2d 1230, 1241 (Ind. T.C. 1999)).

401. *Id.*

402. *Id.*

403. *Id.*

404. *Id.*

405. 758 N.E.2d 103 (Ind. T.C. 2001).

406. *Id.* at 105.

407. *Id.* at 104.

408. *Id.* at 107.

409. *Id.* at 106.

410. *Id.*

411. *Id.*

412. *Id.* at 106-07.

413. *Id.*

414. *Id.* at 107.

415. *Id.*

416. *Id.* at 109.

rate to account for depth variations from the standard.⁴¹⁷ Indiana law stated that “depth charts should be selected by determining the predominant lot depth of the area under consideration.”⁴¹⁸ The ISBTC used the entire town of Ogden Dunes to determine the predominant lot depth.⁴¹⁹ The Zakutanskys asserted that this was error and argued that using only one block would be best.⁴²⁰ The court, however, held that the predominant lot depth should be the one that occurs more often than the others.⁴²¹ As a result of this definition, the court remanded the case back to the administrative level so that the parties could determine the predominant lot depth for the area under consideration.⁴²²

B. Property Tax—Tangible Personal Property

*I. Mariah Foods LP v. Indiana State Board of Tax Commissioners.*⁴²³—*Mariah Foods* (“*Mariah*”) purchased certain new equipment.⁴²⁴ *Mariah* petitioned the ISBTC for a deduction in both 1997 and 1998 from the assessed value of this equipment because *Mariah* operates in an Economic Revitalization Area.⁴²⁵ After both petitions, the ISBTC sent correspondence to *Mariah* stating that *Mariah* had not provided a detailed description of the equipment, the equipment’s cost, and its installation date.⁴²⁶ After these correspondences, *Mariah* did nothing.⁴²⁷ The ISBTC then sent notice to *Mariah* that the ISBTC was not going to allow a deduction and gave *Mariah* three weeks to object or present additional information.⁴²⁸ *Mariah* again did nothing, so the ISBTC denied the request for a deduction.⁴²⁹ *Mariah* appealed to the tax court.⁴³⁰

The tax court held that *Mariah* was not entitled to the deduction.⁴³¹ The tax court will only reverse a decision of the ISBTC if it was unsupported by substantial evidence, arbitrary or capricious, an abuse of discretion, or exceeded statutory authority.⁴³²

The Indiana legislature permitted a deduction from the assessed value of this new manufacturing equipment installed by *Mariah*.⁴³³ However, to qualify for

417. *Id.* at 108 (referencing IND. ADMIN. CODE tit. 50, r. 2.2-4-8 (1996)).

418. *Id.*

419. *Id.*

420. *Id.*

421. *Id.*

422. *Id.* at 109.

423. 749 N.E.2d 646 (Ind. T.C. 2001).

424. *Id.* at 647.

425. *Id.*

426. *Id.*

427. *Id.*

428. *Id.* at 648.

429. *Id.*

430. *Id.*

431. *Id.* at 650-51.

432. *Id.* at 648.

433. *Id.* See also IND. CODE § 6-1.1-12.1-4.5 (1998 & Supp. 2001).

this deduction, Mariah needed to file an application with the ISBTC that, among other things, adequately described the equipment installed.⁴³⁴ Mariah described the equipment only as “new pork processing equipment.”⁴³⁵ The court held that the ISBTC could have reasonably concluded that this description “lacked sufficient detail to properly identify the new equipment.”⁴³⁶ The court was moved by the numerous opportunities the ISBTC gave Mariah to correct the non-specific definition of which Mariah failed to take advantage.⁴³⁷ As a result, the ISBTC’s refusal to grant a deduction was affirmed.⁴³⁸

C. Gross Income

1. *Allison Engine Co., Inc. v. Indiana Department of State Revenue.*⁴³⁹—Allison Engine Co., Inc. (“Allison”) filed two claims for a refund of gross income tax paid with the IDR.⁴⁴⁰ The IDR denied the first claim.⁴⁴¹ Allison subsequently filed the second claim, which the IDR refused to address because the IDR thought the second claim was the same as the first claim.⁴⁴² Allison filed an appeal with the tax court, and the IDR argued that the tax court lacked jurisdiction to hear the appeal.⁴⁴³

The tax court held that it did have jurisdiction over the second claim.⁴⁴⁴ The court commented that the issue of whether more than one claim for a refund can be filed for the same tax was one of first impression in Indiana.⁴⁴⁵ However, relying on federal precedent, the court adopted an analysis to consider when determining whether two claims were identical.⁴⁴⁶ The court considered the “facts, grounds, and theories in each claim.”⁴⁴⁷ Allison’s first claim was for a refund of gross income because Allison should have been taxed at a lower rate as it qualified as a contractor in certain transactions.⁴⁴⁸ In the second claim, Allison claimed to be entitled to a lower tax rate because Allison was acting as a retail seller in certain transactions with the government.⁴⁴⁹

The court held that while there was some overlap between the claims, “claim

434. *Mariah Foods*, 749 N.E.2d at 648.

435. *Id.* at 649.

436. *Id.*

437. *See id.* at 649-50.

438. *Id.* at 651.

439. 744 N.E.2d 606 (Ind. T.C. 2001).

440. *Id.* at 607-08.

441. *Id.* at 607.

442. *Id.* at 608.

443. *Id.*

444. *Id.* at 611.

445. *Id.*

446. *Id.* at 610. *See also* *Huettl v. United States*, 675 F.2d 239 (9th Cir. 1982); *Charlson Realty Co. v. United States*, 384 F.2d 434 (Ct. Cl. 1967).

447. *Allison Engine*, 744 N.E.2d at 610.

448. *Id.* at 611.

449. *Id.*

one is based upon the theory and facts which support Allison's contention that it is a contractor while claim two is based upon the theory and facts which support its assertion that it is selling at retail because of the title passage clauses in its government contracts."⁴⁵⁰ Therefore, the court held that it had jurisdiction over the appeal of the denial of Allison's second claim "because it was filed less than three years but more than 180 days after Allison filed [c]laim [t]wo" with the ISDR, and the ISDR had not made a decision on claim two.⁴⁵¹

2. *May Department Stores Co. v. Indiana Department of State Revenue*.⁴⁵²—May Department Stores, Inc. ("May") had merged with Associated Dry Goods Corp. ("Associated").⁴⁵³ Both companies' principle business is department store retailing.⁴⁵⁴ Prior to and as a result of the planned merger, the City of Pittsburgh, Pennsylvania sued May and Associated for antitrust violations.⁴⁵⁵ The parties resolved this dispute by a stipulation that required May to divest all of the assets of one of the divisions of Associated.⁴⁵⁶ After the sale, May filed an Indiana adjusted gross income tax and supplemental income tax return.⁴⁵⁷ May characterized the gains realized from the sale of Associated's assets as non-business income.⁴⁵⁸ The IDR, after an audit, recharacterized these gains as business income.⁴⁵⁹ May paid the taxes owed and then filed for a refund.⁴⁶⁰ The IDR denied the refund claim, and May appealed to the tax court.⁴⁶¹

The issue was whether the gains realized by the sale of Associated's assets were business or non-business income.⁴⁶² The distinction was important because business income is apportioned between Indiana and other states, while non-business income is allocated either to Indiana or another state.⁴⁶³ Indiana law defines business income as "income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations."⁴⁶⁴ To determine whether income is business income, the tax court

450. *Id.*

451. *Id.*

452. 749 N.E.2d 651 (Ind. T.C. 2001).

453. *Id.* at 653.

454. *Id.* at 654.

455. *Id.*

456. *Id.*

457. *Id.* at 655.

458. *Id.*

459. *Id.*

460. *Id.*

461. *Id.*

462. *Id.* at 653.

463. *Id.* at 656. In other words, if the gains were non-business income then May would only have to pay taxes on those gains in one state, which would likely not be Indiana. If the gains were business income, then May would have to pay taxes on those gains to many states, pursuant to some formula irrelevant to the disposition of this case.

464. *Id.* at 655 (quoting IND. CODE § 6-3-1-20 (1998 & Supp. 2001)).

has adopted two tests: the transactional test and the functional test.⁴⁶⁵ To be business income under the transactional test, the gains must have been realized from a transaction that occurred in the regular course of May's business.⁴⁶⁶ To be business income under the functional test, the gains must have been realized from acquisition, management, or disposition of property by the taxpayer, and the process must be integral to the taxpayer's regular trade or business operations.⁴⁶⁷

The court concluded that the gains realized by May were non-business income under both tests.⁴⁶⁸ The gains were realized pursuant to the sale of an entire division of Associated.⁴⁶⁹ Associated was not in the business of selling entire divisions, but rather department store retail.⁴⁷⁰ Further, the disposition of these assets "was neither a necessary nor an essential part of Associated's department store retailing business operations."⁴⁷¹ Therefore, the income should have been characterized as non-business income, and it was error for the IDR to consider it otherwise.⁴⁷²

D. Sales and Use Tax

*1. Meyer Waste System, Inc. v. Indiana Department of State Revenue.*⁴⁷³—Meyer Waste System, Inc. ("Meyer Waste") was a garbage collector.⁴⁷⁴ Indiana law imposes a use tax "on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making the transaction."⁴⁷⁵ Certain transactions are exempt from this use tax. One such exemption applies to transactions involving tangible personal property acquired in providing public transportation to the property.⁴⁷⁶ Meyer Waste claimed that it was exempt from the use tax because the transportation of trash constituted public transportation.⁴⁷⁷ The IDR disagreed and assessed the use tax on Meyer Waste.⁴⁷⁸ Meyer Waste appealed to the tax court.⁴⁷⁹

The tax court held that Meyer Waste was liable for the use tax because it was not exempt under the public transportation exemption.⁴⁸⁰ The court stated that

465. *Id.* at 662-63.

466. *Id.* at 663.

467. *Id.* at 664.

468. *Id.* at 665.

469. *Id.* at 663.

470. *Id.*

471. *Id.* at 665.

472. *Id.* at 666.

473. 741 N.E.2d 1 (Ind. T.C. 2000).

474. *Id.* at 3.

475. *Id.* at 4 (quoting IND. CODE § 6-2.5-3-2(a) (1998 & Supp. 2001)).

476. *Id.* (citing IND. CODE § 6-2.5-3-4(a)(2) (1998 & Supp. 2001)).

477. *Id.* at 3.

478. *Id.*

479. *Id.*

480. *Id.* at 15-16.

to constitute public transportation, the carrier must be predominantly engaged in the transportation of the property of another.⁴⁸¹ In this case, Meyer Waste owned the trash it transported because the generator of the trash abandoned it when it put the trash at the curb.⁴⁸²

Meyer Waste further challenged the public transportation exemption on equal protection grounds.⁴⁸³ The court, using rational basis review, held that any disparities caused by the exemption are fairly and substantially related to a legitimate governmental interest.⁴⁸⁴ The interest involved was to reduce the cost to the carrier that provided transportation services to the public so that the carrier could pass those savings along to the public.⁴⁸⁵

2. *Panhandle Eastern Pipeline Co. v. Indiana Department of State Revenue.*⁴⁸⁶—*Panhandle Eastern Pipeline Co.* (“Panhandle”) was a company in the business of transporting natural gas.⁴⁸⁷ Most of the gas Panhandle transported belonged to other people; however, some of the transported gas belonged to Panhandle.⁴⁸⁸ Indiana law imposes a use tax on persons who acquire property through a transaction from a retail merchant.⁴⁸⁹ A taxpayer is exempt from this tax if it used or consumed the acquired property while providing public transportation for the property.⁴⁹⁰ Panhandle asserted that it was entitled to a 100% exemption because it transported tangible property in public transportation.⁴⁹¹

The court held that this exemption was “an all-or-nothing exemption.”⁴⁹² It further held that when “a taxpayer acquires tangible personal property for predominate use in providing public transportation for third parties, it is entitled to the exemption.”⁴⁹³ Panhandle predominantly transported gas for third parties.⁴⁹⁴ As a result, Panhandle was entitled to a 100% exemption from the use tax.⁴⁹⁵

3. *Williams v. Indiana Department of State Revenue.*⁴⁹⁶—*Williams* purchased and paid the gross retail tax on a car in Indiana.⁴⁹⁷ *Williams* then lost

481. *Id.* at 5-6.

482. *Id.* at 5-9.

483. *Id.* at 11.

484. *Id.* at 15.

485. *Id.* at 13.

486. 741 N.E.2d 816 (Ind. T.C. 2001).

487. *Id.* at 817.

488. *Id.*

489. *Id.* at 818 (referencing IND. CODE § 6-2.5-2-1(a) (1998 & Supp. 2001)).

490. *Id.* (referencing IND. CODE § 6-2.5-5-27 (1998 & Supp. 2001)).

491. *Id.*

492. *Id.* at 819.

493. *Id.*

494. *Id.*

495. *Id.* at 819-20.

496. 742 N.E.2d 562 (Ind. T.C. 2001).

497. *Id.* 562-63

the original title and requested a duplicate title from the dealer.⁴⁹⁸ Thereafter, Williams moved to Michigan.⁴⁹⁹ While in Michigan, Williams received the duplicate title and then registered the car.⁵⁰⁰ As a result of this registration, Williams paid the Michigan use tax on the car.⁵⁰¹ Williams never registered the car in Indiana.⁵⁰² Williams filed a petition with the IDR requesting a refund of the Indiana retail tax paid.⁵⁰³ The IDR denied the refund, and Williams appealed to the tax court.⁵⁰⁴

Williams contended that she was entitled to a credit since she paid a tax equal to or greater than the Indiana tax in another state.⁵⁰⁵ The tax court held that the credit listed taxes for which the credit applied, and the retail tax was not listed.⁵⁰⁶ Further, the credit was not applicable for vehicles that were required to be registered in Indiana.⁵⁰⁷ Since the car Williams purchased was supposed to be registered in Indiana, regardless of whether it ever was, Williams was not entitled to the credit.⁵⁰⁸

E. Controlled Substance Excise Tax

1. *Cliff v. Indiana Department of Revenue.*⁵⁰⁹—This case concerned a woman who was arrested for possession of marijuana.⁵¹⁰ The IDR issued an assessment of the Controlled Substance Excise Tax (CSET).⁵¹¹ The issue was whether Cliff possessed the marijuana and, as a result, is liable for the CSET.

The court held that Cliff indeed possessed marijuana and that the CSET assessment was proper.⁵¹² The court stated that Cliff pled guilty to possession of marijuana in her criminal case, and thereby admitted that she did indeed possess marijuana.⁵¹³ Also, the court found that Cliff had the intent and capability to exercise dominion and control of the marijuana that the police found

498. *Id.* at 563.

499. *Id.*

500. *Id.*

501. *Id.*

502. *Id.*

503. *Id.*

504. *Id.*

505. *Id.* at 564. See IND. CODE § 6-2.5-3-5 (1998 & Supp. 2001).

506. *Williams*, 742 N.E.2d at 564.

507. *Id.*

508. *Id.* at 564-65.

509. 748 N.E.2d 449 (Ind. T.C. 2001).

510. *Id.* at 451.

511. *Id.* at 450. See IND. CODE §§ 6-7-3-1 to -20 (2001).

512. *Cliff*, 748 N.E.2d at 454.

513. *Id.* at 453. Although the state submitted Cliff to a criminal trial, the CSET did not violate double jeopardy because the jeopardy in CSET cases attaches at the moment of the assessment, which occurred before the criminal case here. *Id.* at 451. See *Cliff v. Ind. Dep't of State Revenue*, 660 N.E.2d 310 (Ind. 1995). In other words, a double jeopardy issue would only apply against the subsequent criminal jeopardy and not the initial tax jeopardy.

in Clift's house.⁵¹⁴ This evidence was sufficient for the court to affirm the CSET assessment.⁵¹⁵

F. Financial Institutions Tax

1. *Salin Bancshares, Inc. v. Indiana Department of Revenue*.⁵¹⁶—Salin Bancshares, Inc. ("Salin") is an Indiana corporation that is subject to the Financial Institutions Tax (FIT).⁵¹⁷ The FIT is an "excise tax on the exercise of the corporate privilege of operation as a financial institution in Indiana."⁵¹⁸ The financial institution subject to this tax must, among other things, submit to the IDR the amount of federal adjusted gross income tax paid for a particular year, and then the IDR will calculate the FIT liability for that year.⁵¹⁹ In 1995, Salin entered into a closing agreement with the IRS settling a dispute regarding certain deductions Salin had been taking over the period of time dating back to 1984.⁵²⁰ This agreement had the affect of changing Salin's federal income tax liability for the year 1991.⁵²¹ Salin did not file an amended tax return for the year 1991,⁵²² nor did it notify the IDR of its agreement or its increased tax liability for 1991.⁵²³ The IDR audited Salin in 1996 and discovered a deficiency in Salin's FIT for 1991.⁵²⁴ Salin overpaid its FIT in 1993, so the IDR applied the subsequent overpayment.⁵²⁵ Salin requested a refund of its payment of the 1991 deficiency arguing that the statute of limitations for issuing an assessment for 1991 had expired.⁵²⁶ The IDR denied a refund.⁵²⁷ Salin appealed this denial to the tax court.

The issues before the tax court were "[w]hether Salin was obligated to notify the [IDR] of its 1995 closing agreement with the IRS"⁵²⁸ and "whether the [IDR]'s assessment of Salin for deficient FIT payments more than three years after the due date for the tax was untimely. . . ."⁵²⁹ Regarding the first issue, the court held that "Salin was obligated to and failed to notify the [IDR] of its 1995

514. *Clift*, 748 N.E.2d at 454.

515. *Id.*

516. 744 N.E.2d 588 (Ind. T.C. 2000).

517. *Id.* at 590. See IND. CODE § 6-5.5-1-1 to -9-5 (1998 & Supp. 2001).

518. *Salin*, 744 N.E.2d at 591 (quoting *Ind. Dep't of State Revenue v. Fort Wayne Nat'l Corp.*, 649 N.E.2d 109, 112 (Ind. 1995)).

519. *Id.*

520. *Id.* at 590.

521. *Id.*

522. *Id.* at 592.

523. *Id.* at 590.

524. *Id.*

525. *Id.*

526. *Id.*

527. *Id.*

528. *Id.*

529. *Id.*

closing agreement with the IRS.”⁵³⁰ The FIT statute provides that each taxpayer must, within 120 days, notify the IDR of “any alteration or modification of a federal income tax return . . . including any modification or alteration in the amount of tax, regardless of whether the modification or assessment results from an assessment.”⁵³¹ The court held that this broad language required Salin to notify the IDR of the changed liability “regardless of whether alterations or modifications are made on a tax return itself or in a manner that effectively alters or modifies the tax return.”⁵³²

Regarding the issue of the statute of limitations, the court held that while the IDR did not issue a timely proposed assessment, Salin was equitably estopped from asserting this as a defense.⁵³³ The FIT statute provides a three-year statute of limitations after the filing of a return for issuing an assessment;⁵³⁴ however, there is no statute of limitations if the taxpayer fails to file a return.⁵³⁵ The court, however, concluded that the FIT statute did not actually require the taxpayer to file an amended return if the federal liability was altered or modified.⁵³⁶ The express language and intent of the statute allowed, but did not require, an amended return to be filed to constitute notice for the purpose of the statute of limitations.⁵³⁷ Therefore, the IDR only had three years to conduct this assessment, which it failed to do.⁵³⁸

The court, however, held that Salin was equitably estopped from asserting the statute of limitations as a defense.⁵³⁹ The elements of equitable estoppel are:

- (1) a representation or concealment of a material fact;
- (2) made by a person with knowledge of the fact and with the intention that the other party act upon it;
- (3) to a party ignorant of the fact;
- (4) which induces the other party to rely or act upon it to his detriment.⁵⁴⁰

The court concluded that Salin failed in its statutory duty to notify the IDR of its closing agreement with the IRS.⁵⁴¹ The court stated: “the [IDR] had every right to presume that Salin would notify it of changes in Salin’s federal tax liability. The Court will not allow Salin to disclaim its obligation to notify the [IDR] of the closing agreement’s terms. Salin’s conduct amounted to constructive fraud on its part.”⁵⁴² As a result, the court granted summary judgment for the IDR, thereby

530. *Id.* at 593.

531. IND. CODE § 6-5.5-6-6(a) (1998 & Supp. 2001).

532. *Salin*, 744 N.E.2d at 593.

533. *Id.* at 595.

534. *Id.* See IND. CODE § 6-8.1-5-2(a)(1) (1998 & Supp. 2001).

535. *Salin*, 744 N.E.2d at 595. See IND. CODE § 6-8.1-5-2(e) (1998 & Supp. 2001).

536. *Salin*, 744 N.E.2d at 595.

537. *Id.*

538. *Id.*

539. *Id.*

540. *Id.* (citing *Wabash Grain, Inc. v. Smith*, 700 N.E.2d 234, 237 (Ind. Ct. App. 1998)).

541. *Id.* at 596.

542. *Id.*

affirming the IDR's denial of a refund to Salin.⁵⁴³

G. Motor Carrier Fuel Tax

1. *Jack Gray Transport, Inc. v. Department of State Revenue.*⁵⁴⁴—The taxpayer⁵⁴⁵ was a motor carrier in the business of commercial trucking.⁵⁴⁶ The General Assembly passed a law that exempted from the motor carrier tax those vehicles that used power take-off equipment.⁵⁴⁷ The taxpayer applied for this exemption, but the IDR denied its application.⁵⁴⁸ The taxpayer appealed to the tax court asking that the court certify its class and grant it the exemptions.⁵⁴⁹

The tax court did not certify the class.⁵⁵⁰ The court held that the taxpayer did not meet the numerosity requirement because the taxpayer expressly indicated that it could join all potential claimants in one lawsuit.⁵⁵¹ Furthermore, the IDR stated that it was willing to try all 1536 cases if necessary.⁵⁵²

The tax court did hold, however, that as to the taxpayers directly involved in this action,⁵⁵³ the IDR erred in refusing to give the taxpayers their exemption.⁵⁵⁴ The court held that the statute that provided the exemption was not completely invalidated by a previous tax court case that declared part of the statute unconstitutional.⁵⁵⁵ Since the court had previously only struck the unconstitutional language in the motor carrier fuel statute, the statute still existed and the taxpayer was entitled to the exemption.⁵⁵⁶

2. *Hi-Way Dispatch, Inc. v. Indiana Department of State Revenue.*⁵⁵⁷—Hi-Way Dispatch, Inc. ("Hi-Way") is a commercial motor vehicle operator with

543. *Id.*

544. 744 N.E.2d 1071 (Ind. T.C. 2001).

545. The taxpayer includes Jack Gray Transport as well as thirty-eight other parties. *Id.* at 1072. The taxpayer sought to certify a class action consisting of 1536 similarly-situated motor carriers. *Id.* at 1073.

546. *Id.*

547. *Id.* See IND. CODE § 6-6-4.1-4(d) (1998 & Supp. 2001).

548. *Jack Gray Transport*, 744 N.E.2d at 1072-73.

549. *Id.* at 1073.

550. *Id.* at 1075.

551. *Id.* See IND. TRIAL RULE 23(A).

552. *Jack Gray Transport*, 744 N.E.2d at 1075.

553. *Id.* at 1077 n.11.

554. *Id.* at 1077.

555. *Id.* See *Bulkmatic Transp. Co. v. Dep't of State Revenue*, 715 N.E.2d 26, 36 (Ind. T.C. 1999); *Bulkmatic Transp. Co. v. Dep't of State Revenue*, 691 N.E.2d 1371, 1379 (Ind. T.C. 1998). The previous version of the motor carrier fuel tax was unconstitutional because it contained language that "discriminated against interstate commerce and foreclosed tax neutral decisions, a result which is not allowed under the Commerce Clause." *Jack Gray Transport*, 744 N.E.2d at 1076.

556. *Jack Gray Transport*, 744 N.E.2d at 1077.

557. 756 N.E.2d 587 (Ind. T.C. 2001).

a principle place of business in Marion, Indiana.⁵⁵⁸ Between 1992 and 1994, Hi-Way did not pay its motor carrier fuel taxes for the gas lost during idle time.⁵⁵⁹ Idle time was when a motor vehicle's engine was on, but the vehicle was not moving.⁵⁶⁰ The IDR issued an assessment against Hi-Way for the amount of taxes not paid plus interest, and Hi-Way appealed to the tax court.⁵⁶¹

The issues before the tax court were whether the IDR properly included idle time gas consumption in the calculation of fuel tax owed, whether Hi-Way had any affirmative defenses with respect to the IDR's assessment, and whether Hi-Way was entitled to full credit for the fuel purchased in Indiana but consumed elsewhere.⁵⁶²

The tax court held that the IDR properly concluded that Hi-Way could not reduce its total fuel consumed figure by fuel lost in idle time.⁵⁶³ Indiana was a member of the International Fuel Tax Agreement (IFTA).⁵⁶⁴ The IFTA is an agreement between member jurisdictions that permits a motor carrier to pay fuel tax in one jurisdiction, and then that jurisdiction distributes the tax to other jurisdictions in which the carrier operates.⁵⁶⁵ The IFTA permitted a tax on the consumption of motor fuels used in the propulsion of certain vehicles.⁵⁶⁶ Hi-Way argued that idle time gas loss was not used in the propulsion of their vehicles, so it was exempt from the tax.⁵⁶⁷ Indiana statutes provide, however, a road tax on the consumption of fuel during operations on the state's highways.⁵⁶⁸ Another Indiana statute states that if an Indiana law and an IFTA regulation conflict, the IFTA regulation prevails.⁵⁶⁹

The court held that the Indiana road tax law and the IFTA tax only on the fuel that was used to propel the carrier were not inconsistent.⁵⁷⁰ The court stated that the IFTA regulation "explains the general use for which fuel must be consumed under IFTA, not the fuel's specific use at any given time."⁵⁷¹ Since there was no conflict, the IDR properly did not reduce Hi-Way's tax liability by the amount of gas used in idle time.⁵⁷²

The court held that Hi-Way had a valid affirmative defense of laches against

558. *Id.* at 591.

559. *Id.*

560. *Id.* at 596.

561. *Id.* at 591.

562. *Id.* at 590.

563. *Id.* at 597.

564. *Id.* at 595. See IND. CODE § 6-8.1-3-14 (1998 & Supp. 2001).

565. *Hi-Way Dispatch*, 756 N.E.2d at 594.

566. *Id.* at 595.

567. *Id.* at 596.

568. *Id.* See IND. CODE § 6-6-4.1-4 (1998 & Supp. 2001).

569. *Hi-Way Dispatch*, 756 N.E.2d at 595. See IND. CODE § 6-8.1-3-14(d) (1998 & Supp. 2001).

570. *Hi-Way Dispatch*, 756 N.E.2d at 597.

571. *Id.*

572. *Id.*

the IDR.⁵⁷³ The elements of the defense of laches were: “(1) inexcusable delay in asserting a right; (2) an implied waiver arising from knowing acquiescence in existing conditions; and (3) circumstances resulting in prejudice to the adverse party.”⁵⁷⁴ The court found a genuine issue of material fact as to laches because Hi-Way offered evidence that tended to show that its president received the blessing of the administrator of the IDR’s Special Tax Division to exclude idle time.⁵⁷⁵ Despite this apparent acquiescence, the IDR, after seven years, decided to enforce its right to collect idle time taxes anyway.⁵⁷⁶ As a result, the tax court permitted a trial to go forward on the issue of laches.⁵⁷⁷

With respect to the issue of Hi-Way’s entitlement to a tax credit, the court held that the IDR properly denied the credit to Hi-Way.⁵⁷⁸ The court held that the Indiana statute that provided a full tax credit for gasoline purchased in Indiana but consumed in a non-IFTA state only when a similar fuel tax was remitted to that state was not in conflict with the IFTA and did not violate the Commerce Clause.⁵⁷⁹ As a result, Hi-Way’s motion for summary judgment on the issue of the credit entitlement was denied.⁵⁸⁰

573. *Id.* at 600. The court concluded that Hi-Way did not have a valid equitable estoppel defense against the IDR. *Id.* at 599. The court stated: “Hi-Way must identify an important public policy reason for disregarding the general rule that government entities cannot be estopped.” *Id.* The reason for this rule is that “[i]f the government could be estopped, then dishonest, incompetent or negligent public officials could damage the interests of the public. At the same time, if the government were bound by its employees’ unauthorized representations, then government itself could be precluded from functioning.” *Id.* at 598 (quoting *Samplawski v. City of Portage*, 512 N.E.2d 456, 459 (Ind. Ct. App. 1987)).

574. *Id.* at 599-600.

575. *Id.* at 600.

576. *Id.*

577. *Id.* at 605.

578. *Id.*

579. *Id.* at 602-03.

580. *Id.* at 605.