

RECENT DEVELOPMENTS IN INDIANA TAXATION

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INTRODUCTION

The 112th General Assembly, the Governor of Indiana, the Indiana Supreme Court, and the Indiana Tax Court contributed changes to the Indiana tax laws in 2001. This Article highlights the major developments that occurred throughout the year.¹

I. INDIANA GENERAL ASSEMBLY LEGISLATION

The Special Session 112th Indiana General Assembly (“General Assembly”) passed one key bill that broadly affected several provisions throughout the Indiana Code relating to taxation. This section will highlight the major changes with particular attention to gaming taxes, property taxes, sales and use taxes, motor fuel and vehicle excise tax, tobacco products taxes, and various other state income tax provisions.

1. *Gaming Tax.*—The General Assembly provided that a riverboat may implement a flexible schedule² after submitting a plan and obtaining the approval of the Gaming Commission.³ With this schedule, it then permitted a riverboat to conduct gambling games and to allow passengers steady ingress and egress for gambling while the riverboat is docked. Moreover, the General Assembly maintained the \$3 admissions tax for each person admitted to a riverboat that does not use a flexible schedule.⁴ With a flexible schedule, however, it required an admission tax only on the turnstile count of people boarding the riverboat.⁵ In the event that all riverboats implement flexible boarding, the Legislative Services Agency projects that admissions tax revenue may fall below the levels required for state and local distributions by \$38 million in fiscal year 2003, \$36.2 million in fiscal year 2004, and \$34.4 million in fiscal year 2005.⁶

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1. For comprehensive information concerning the Indiana Tax Court, the Indiana Department of State Revenue, the Indiana State Board of Tax Commissioners, and a variety of other tax-related information, visit the Access Indiana website at <http://www.ai.org>.

2. See IND. CODE § 4-33-6-10 (2003). Flexible schedule refers to the practice of conducting gambling games and allowing the continuous ingress and egress of passengers for the purpose of gambling while a riverboat is docked. IND. CODE § 4-33-2-7.5 (2003).

3. See *id.* § 4-33-6-21.

4. *Id.* § 4-33-12-1.

5. *Id.*

6. See Legislative Services Agency, Fiscal Impact Statement 12, June 21, 2002, available at <http://www.state.in.us/serv/> (last visited Apr. 24, 2003) [hereinafter Fiscal Impact Statement].

The General Assembly also implemented a graduated wagering tax in the case of a riverboat with a flexible schedule. It set the bottom rate at 25% for adjusted gross receipts below \$25 million and the top rate set at 35% for adjusted gross receipts in excess of \$150,000,000.⁷ In contrast, the General Assembly increased the wagering tax rate from 20% to 22.5% of the adjusted gross receipts for a riverboat without a flexible schedule.⁸ Assuming that all riverboats implement a flexible schedule, the Legislative Services Agency predicts that this change will impact the property tax replacement fund by \$381.1 million in fiscal year 2003, \$407.1 million in fiscal year 2004, and \$434.1 million in fiscal year 2005.⁹

2. *Property Tax.*—The General Assembly increased the standard property tax deduction for homesteads from \$6000 to \$35,000.¹⁰ It also increased the homestead credit rate from 10% to 20% commencing in 2003.¹¹ The General Assembly likewise stipulated that this credit be determined after the property tax replacement credit is applied. Hence, the homestead credit is indirectly linked to changes made in the property tax replacement credit.

Focusing on the property tax replacement credit,¹² the General Assembly maintained the credit rate at 20%, but narrowed the classes of qualifying property.¹³ Specifically, it only qualified real property, mobile homes, and non-business personal property and excluded business personal property.

On the subject of inventory,¹⁴ the General Assembly established an exemption for certain inventory that is either (1) altered into a new form and intended to be shipped to a destination outside Indiana; or (2) incorporated into personal property that will be shipped to a destination outside Indiana.¹⁵ It also established a 100% property tax deduction for the assessed value of inventory

7. See IND. CODE § 4-33-13-1.5 (2003).

8. *Id.* § 4-33-13-1.

9. See Fiscal Impact Statement, *supra* note 6, at 11.

10. See IND. CODE § 6-1.1-12-37 (2003). Homestead is defined as “an individual’s principal place of residence which A) is located in Indiana; B) the individual owns or is buying under a contract, recorded in the county recorder’s office, that provides that he is to pay property taxes on the residence, and C) consists of a dwelling and the real estate, not exceeding one (1) acre, that immediately surrounds the dwelling.” *Id.* § 6-1.1-20.9-1.

11. See *id.* § 6-1.1-20.9-2.

12. The State of Indiana provides each taxing unit with a percentage of its tax levies attributable to certain property in order to offset the amount of property taxes required from each taxpayer. Each taxing unit may, in turn, provide a credit to the taxpayer equal to this percentage offset. See INDIANA LEGISLATIVE SERVICES AGENCY OFFICE OF FISCAL AND MANAGEMENT ANALYSIS, INDIANA HANDBOOK OF TAXES, REVENUES, AND APPROPRIATIONS 87 (fiscal year 2002).

13. See IND. CODE § 6-1.1-21-2d (2003).

14. “Inventory” means “(1) materials held for processing or for use in production; (2) finished or partially finished goods of a manufacturer or processor; and (3) property held for sale in the ordinary course of trade or business.” *Id.* § 6-1.1-3-11.

15. *Id.* § 6-1.1-10-29b.

beginning with assessments made in fiscal year 2006.¹⁶ The General Assembly then authorized a county to allow this same 100% deduction for assessments made before January 1, 2006.¹⁷ According to the Legislative Services Agency, this exemption alone is likely to total \$6.25 billion in taxes for calendar years 2004, 2005, and 2006 collectively.¹⁸ When combined with the deduction in 2007, the agency predicts an estimated \$17.1 billion loss in of property tax revenue.

Finally, the General Assembly repealed the \$37,500 business personal property tax credit.¹⁹ The Legislative Services Agency predicted that the cost of this credit would reach \$96.0 million in fiscal year 2004 and \$97.9 million in fiscal year 2005.²⁰

3. *Sales and Use Tax.*—The General Assembly increased the sales and use tax from 5% to 6% effective December 1, 2002.²¹ The Legislative Services Agency estimated that this increase will generate approximately \$393 million in fiscal year 2003, \$806.4 million in fiscal year 2004, and \$827.4 million in fiscal year 2005.²² The General Assembly also amended the distribution of revenue generated as a result of this tax increase.²³ The statute requires that 50% of the revenue generated be deposited into the property tax replacement fund; 49.192% paid into the state general fund; 0.633% directed to the public mass transportation fund; and the remaining 0.142% placed into the commuter rail service fund.²⁴

4. *Motor Fuel and Vehicle Tax.*—The General Assembly increased the gasoline tax by three cents per gallon from fifteen cents to eighteen cents.²⁵ Per the Legislative Services Agency, the revenue raised from each penny increase will result in approximately \$32.1 million in 2003, \$32.7 million in 2004, and

16. *Id.* § 6-1.1-12-42. “Assessed value of inventory” means the value of inventory determined after application of any deductions or adjustments that apply by either statute or rule for assessing inventory. *Id.*

17. *Id.* § 6-1.1-12-41.

18. See Fiscal Impact Statement, *supra* note 6, at 15.

19. See IND. CODE § 6-3-3-2b (2003). “Business personal property” means tangible personal property (other than real property) being held (1) for sale in the ordinary course of a trade or business; or (2) held, used, or consumed in connection with the production of income, excluding inventory. *Id.* § 6-1.1-21-2.

20. See Fiscal Impact Statement, *supra* note 6, at 10.

21. See IND. CODE § 6-2.5-6-7 (2003). Sales and use tax is applied to the purchase of all tangible personal property, public utility services, rent of rooms or other accommodations for less than thirty days, and other types of property rental. See INDIANA LEGISLATIVE SERVICES AGENCY OFFICE OF FISCAL AND MANAGEMENT ANALYSIS, INDIANA HANDBOOK OF TAXES, REVENUES, AND APPROPRIATIONS 53 (fiscal year 2002).

22. See Fiscal Impact Statement, *supra* note 6, at 11 (estimating that the sales tax revenue will grow 2.6% annually in 2003, 2004, and 2005).

23. See IND. CODE § 6-2.5-10-1 (2003).

24. *Id.*

25. *Id.* § 6-6-1.1-201b.

\$33.3 million in 2005.²⁶ A three cents per gallon increase will thus result in even higher revenue—\$48.15 million in fiscal year 2003, \$97.2 million in fiscal year 2004, and \$99 million in fiscal year 2005.²⁷

5. *Tobacco Products Taxes.*—The General Assembly increased the tax on cigarettes from \$0.155 per pack to \$0.555 per pack, translating into an increase of \$0.0275 per individual cigarette.²⁸ This increase will likely result in \$268.2 million in fiscal year 2003, \$293.5 million in fiscal year 2004, and \$295 million in fiscal year 2005 based upon Legislative Services Agency forecasts.²⁹ It will be deposited into the state general fund. Additionally, the General Assembly increased the tax on the distribution of tobacco products from 15% to 18%.³⁰

6. *Other State Income Taxes.*—The General Assembly enacted changes to various other Indiana Code taxation provisions. It eliminated the gross income tax for all Indiana entities, except public utilities, beginning December 31, 2002.³¹ It removed, in turn, the corresponding credit afforded against the adjusted gross income tax for the gross income tax paid by a taxpayer. The General Assembly also repealed the supplemental net income tax.³²

These two modifications significantly altered the structure for corporate tax liability in Indiana. Under the Indiana Code, Indiana corporations were required to pay the greater of the gross income tax liability or the adjusted gross tax liability. In addition, Indiana corporations were responsible for supplemental net income tax.³³ Combined, the effective tax rate for a corporation paying both adjusted gross income tax and supplemental net income tax was therefore 7.747%.³⁴ To account for the loss in revenue due to the elimination of the gross income and supplemental net income taxes, the General Assembly increased the corporate adjusted gross income tax from 3.4% to 8.5% as of January 1, 2003.³⁵ The Legislative Services Agency expects that the impact of this rate change will yield \$28.6 million in fiscal year 2003 if corporations immediately adjust tax payments.³⁶ Nevertheless, the Legislative Services Agency anticipates that taxpayers will not adjust on time and that most taxpayers will not remit the full amount for the higher rate until after the end of their fiscal year. Thus, the bulk of the \$28.6 million will, in reality, be collected in fiscal year 2004.

26. See Fiscal Impact Statement, *supra* note 6, at 14.

27. *Id.*

28. See IND. CODE § 6-7-1-12 (2003).

29. See Fiscal Impact Statement, *supra* note 6, at 9.

30. See IND. CODE § 6-7-2-7 (2003).

31. *Id.* § 6-2.1.

32. *Id.* § 6-3-8b.

33. This tax was computed by reducing the adjusted gross income by the greater of the amounts paid in adjusted gross income tax, gross income tax, or premium tax. See INDIANA LEGISLATIVE SERVICES AGENCY OFFICE OF FISCAL AND MANAGEMENT ANALYSIS, INDIANA HANDBOOK OF TAXES, REVENUES, AND APPROPRIATIONS 18 (fiscal year 2002).

34. See Fiscal Impact Statement, *supra* note 6, at 9.

35. IND. CODE § 6-3-2-1.

36. See Fiscal Impact Statement, *supra* note 6, at 9.

The General Assembly also established a tax on the gross income earned by public utilities from retail activity.³⁷ Such gross receipts will be taxed at a rate of 1.4%.³⁸ In addition to this new utilities receipts tax, public utilities will continue to pay the corporate adjusted gross income tax. They will not, however, be required to pay the supplemental net income tax as mentioned above. Therefore, the Legislative Services Agency predicts that the overall effect of these tax changes on utilities will result in \$58.2 million additional revenue from public utilities in calendar year 2003.³⁹

Concerning the Hoosier Lottery, the General Assembly eliminated the adjusted gross income tax exemption for winnings received from a single ticket that exceed \$1200 as of July 1, 2002.⁴⁰ This means that any money in excess of \$1200 is taxable to the taxpayer lottery winner. Based on the winnings of \$1200 and higher distributed from 1999 to 2001, the Legislative Services Agency expects that this tax will generate annual income of approximately \$3.9 million starting in fiscal year 2003.⁴¹

Similarly, the General Assembly established procedures for withholding adjusted gross income taxes from both riverboat gambling winnings of (1) \$1200 or more from slot machine play; and (2) \$1500 or more from a keno game.⁴² That is, riverboat casino owners are required to withhold and remit adjusted gross income tax on such winnings. The General Assembly also required payment of this tax on the next business day following the win.⁴³ This tax is projected to increase Indiana revenue by nearly \$15 million beginning in fiscal year 2003.⁴⁴

At the same time that the General Assembly enacted means to increase revenue, it also enhanced the credits available to taxpayers. Specifically, the General Assembly increased the renter's deduction from \$2500 beginning in tax year 2003.⁴⁵ This provision previously allowed a taxpayer to deduct an amount equal to the total rent paid during a tax year up to \$2000 so long as such rent deduction was made of the taxpayer's principal place of residence. Such increase probably will result in a loss of revenue totaling \$10.9 million in fiscal year 2004 and \$11.1 million in fiscal year 2005 per the Legislative Services Agency.⁴⁶

Next, it extended the research expense credit through 2004.⁴⁷ In allowing for this extension, it eliminated the apportionment formula previously set forth in the

37. See IND. CODE § 6-2.3-2-1 (2003).

38. *Id.* § 6-2.3-2-2.

39. See Fiscal Impact Statement, *supra* note 6, at 9.

40. See IND. CODE § 6-3-2-14.5 (2003).

41. See Fiscal Impact Statement, *supra* note 6, at 9.

42. See IND. CODE § 6-3-4-8.2 (2003) (keno winnings are calculated by reducing net winnings by the amount wagered).

43. *Id.*

44. See Fiscal Impact Statement, *supra* note 6, at 11.

45. See IND. CODE § 6-3-2-6 (2003).

46. See Fiscal Impact Statement, *supra* note 6, at 10.

47. See IND. CODE § 6-3.1-4 (2003).

Indiana Code.⁴⁸ Under this formula, a taxpayer's credit was based on the lesser of its Indiana qualified research expenses and its apportioned research expenses. The General Assembly's instead modified the apportionment provision to base the credit solely on the taxpayer's Indiana qualified research expenses.⁴⁹ As well, the General Assembly increased the credit from 5% to 10%.⁵⁰ This change would thus lower the tax liability for multi-state, Indiana-domiciled companies that perform significant research within Indiana. Indiana revenue through 2004 is likely to drop as result. Nevertheless, as a counterpoint, the research that is promoted by this credit will likely generate gross income via hiring additional employees and sales tax via purchasing research equipment.⁵¹

The General Assembly extended the earned income tax credit through tax years 2005 and set the credit rate at 6% of the federal earned income tax credit.⁵² The Legislative Services Agency estimated that 105,000 taxpayers were entitled to claim the credit as of 1999 and that the base cost for this number was \$17.5 million. Using these figures, the Legislative Services Agency predicts the new rate will increase the base cost of the credit by \$8.7 million in fiscal year 2003, \$21.4 million in fiscal year 2004, and \$22.7 million in fiscal year 2005.⁵³

Lastly, the General Assembly established a venture capital investment tax credit for qualified venture capital investment beginning in tax year 2004 and ending in tax year December 31, 2008.⁵⁴ A taxpayer is entitled to a non-refundable tax credit equal to the lesser of: (1) 20% of qualified investment capital provided to a qualified Indiana business⁵⁵ during a calendar year or (2) \$500,000. The General Assembly limited the total tax credits claimed collectively by all Indiana taxpayers to \$10 million per year.⁵⁶ Therefore, claims for the credit may not be approved once the annual maximum of \$10 million is reached. The General Assembly also permitted the credit to be applied against any individual taxpayer's state gross retail and use tax, adjusted gross income tax, financial institutions tax, or insurance premiums tax liability.⁵⁷ Moreover, in the event that the amount of credit exceeds the taxpayer's liability, the General Assembly provided that the excess credit may be carried forward and applied in subsequent tax years until exhausted. It did, however, not permit the excess

48. *Id.*

49. *Id.*

50. *Id.* This credit is available to an individual taxpayer who (1) claims a qualifying dependant; (2) has a total income of less than \$12,000 per year; and (3) earns at least 80% of the income. See INDIANA LEGISLATIVE SERVICES AGENCY OFFICE OF FISCAL AND MANAGEMENT ANALYSIS, INDIANA HANDBOOK OF TAXES, REVENUES, AND APPROPRIATIONS 34 (fiscal year 2002).

51. See Fiscal Impact Statement, *supra* note 6, at 10.

52. See IND. CODE § 6-3.1-21 (2003).

53. See Fiscal Impact Statement, *supra* note 6, at 9.

54. See IND. CODE § 6-3.1-24 (2003).

55. A business must apply to the Indiana Department of Commerce for certification as a "qualified business" for purposes of the tax credit. Fiscal Impact Statement, *supra* note 6, at 8.

56. See IND. CODE § 6-3.1-24 (2003).

57. *Id.*

credit to be either carried back and applied to prior tax years or refunded. Lastly, the General Assembly enabled the shareholders, partners, or members of a pass-through entity to utilize the credit in proportion to their distributive income.⁵⁸ The Legislative Services Agency estimates that this credit may reduce revenue by \$5 million in fiscal year 2004 and \$10 million annually each year thereafter.⁵⁹

II. INDIANA SUPREME COURT DECISIONS

During the time period of October 1, 2001, to September 30, 2002, the Indiana Supreme Court decided four taxation related cases. The first case involved the role of a tax representative before the State Board of Tax Commissioners ("State Board"). The second case pertained to the methodology used by the State Board in assigning a grade factor to a mansion-like, private dwelling for property tax valuation purposes. The third case addressed whether a non-profit organization was entitled to a charitable use property tax exemption, and the fourth case dealt with the application of the exclusionary rule to a controlled substance excise tax proceeding. Each decision is further detailed below.

1. *State ex rel. Indiana State Bar Ass'n v. M. Drew Miller*.⁶⁰—Pursuant to Indiana Admission and Discipline Rule 24, the Indiana State Bar Association ("Bar Association") brought suit against M. Drew Miller ("Miller") for the unauthorized practice of law based upon Miller's conduct as a "tax representative" before the State Board.⁶¹ In 1992, Hoogenboom contracted with Landmark Appraisal, Inc., which is solely owned by Miller, to challenge the tax valuation of several properties. The contract provided that Landmark would research, examine, and evaluate the properties to determine whether the assessment was excessive. In such case, Landmark would then seek a reduction on behalf of Hoogenboom and earn 50% of any tax savings.

In 1996, Miller challenged the tax valuation of one of Hoogenboom's office building before the State Board. He centered his argument on four specific challenges as follows: (1) the valuation violated Article X, Section 1 of the Indiana State Constitution; (2) the obsolescence depreciation factor of 0% was too low; (3) the property grade of C-1 was improper; and (4) the physical depreciation factor of 25% was too low.⁶² The State Board rejected Miller's arguments and determined that the assessments were correct. Hoogenboom attempted to appeal the State Board's decisions to the Indiana Tax Court ("Tax Court"). The attempted appeal was, however, unsuccessful in part because Miller failed to place certain responses to interrogatories into the record at the State Board hearing.

Before the Indiana Supreme Court, the Bar Association contended that the

58. See IND. CODE § 6-3.1-24 (2003).

59. See Fiscal Impact Statement, *supra* note 6, at 13.

60. 770 N.E.2d 328 (Ind. 2001).

61. *Id.* at 329.

62. *Id.* at 330.

Article X challenge involved a question of law. It also stipulated that the remaining three challenges required an analysis of case law because State Board regulations did not fully explain the evidence necessary to prove the factor assignments. The supreme court agreed with the Bar Association's position regarding the constitutional claim.⁶³ Nevertheless, it disagreed with Bar Association as to the other challenges.⁶⁴ The supreme court concluded that the use of court opinions to answer questions about obsolescence and depreciation factors did not constitute the practice of law.

In addition, the court refused to enjoin Miller from practicing before the State Board.⁶⁵ It reasoned that the rules governing the State Board,⁶⁶ which became effective in 2001 following the Hoogenboom appeal, would prevent Miller from engaging in the unauthorized practice of law as a tax representative in the future. The supreme court particularly noted that a tax representative may not practice before the State Board in actions with claims that (1) assessments or taxes are "illegal as a matter of law;" or (2) pertain to the constitutionality of an assessment or any other representation that involves the practice of law.⁶⁷ Lastly, the court acknowledged that a tax representative must inform a prospective client in writing that he/she is not an attorney, is not licensed to present legal arguments, and may not address legal issues relating to a tax assessment.⁶⁸

2. *State Board of Tax Commissioners v. Juan C. and Maria N. Garcia*.⁶⁹—Assessors assign a grade factor for tax valuation ranging from "A" to "E" based on a home's construction qualities and amenities in accord with the State Board regulations.⁷⁰ Grade "A" is the highest classification and defines a dwelling that is of "outstanding architectural style and design" and is "constructed with the finest quality materials and workmanship throughout."⁷¹ Such dwellings have a grade factor of 160% of the base price. In contrast, "C" grade dwellings are moderately attractive, constructed with average quality materials, and have a

63. *Id.*

64. *Id.*

65. *Id.* at 331.

66. The Indiana Administrative Code defines a "tax representative" as "a person who represents another person at a proceeding before the property tax assessment board of appeals, the division of appeals, or the Board." IND. ADMIN. CODE tit. 50, r. 15-5-5 (2001).

67. *See* 50 IND. ADMIN. CODE tit. 50, r. 50-15-5-2 (2001).

68. *See* 50 IND. ADMIN. CODE tit. 50, r. 15-5-5 (2001).

69. 766 N.E.2d 341 (Ind. 2002). As the Indiana Supreme Court decided this case, the State Board of Tax Commissioners were in the process of developing a new manual and guidelines for property tax assessments. The Board sought to establish a more objectively verifiable result that will satisfy the constitutional requirement of uniform and equal assessments. *See* State Board of Tax Commissioners, 2002 Real Property Assessment Manual 2 (2001). In addition, the State Board of Tax Commissioners was abolished as of January 1, 2002. Its duties were distributed to two new agencies: the Department of Local Government Finance for tax collection and the Indiana Board of Tax Review for review of property tax appeals. *See* IND. CODE §§ 6-1.5-1-3, 4-1 (2001).

70. *Garcia*, 766 N.E.2d at 345-46 (citing IND. ADMIN. CODE tit. 50, r. 2.1-3-4 (1992)).

71. *Id.*

grade factor of 100%.⁷² If a dwelling falls in between the classifications, then an assessor may assign pluses and minuses to further narrow grades.⁷³ Grades that fall above "A" may be indicated by "+1 through +10," and each increment above "A" represents an increase in value over the base grade of 20%.⁷⁴ The regulations also allow grades "A+4" and "A+10" to be designated as "AA" and "AAA," respectively.

With this general background regarding tax valuation, Juan and Maria Garcia ("the Garcias") reside in an 11,000 square foot dwelling in South Bend, Indiana.⁷⁵ When their home was constructed in 1991, the actual building cost was \$1,634,543. The township tax assessor originally assigned a grade "A+10" to their home. Upset with this grade, the Garcias petitioned the County Board of Review ("County Board") for re-evaluation. The County Board determined that the assessment was entirely proper.

The Garcias then filed a Petition for Review of Assessment with the State Board in March 1994. Following a hearing, the State Board found that the Garcias' home deserved an elevated "A" grade, but reduced the actual assessment to "A+4."⁷⁶ The Garcias remained, nevertheless, displeased with the grade assignment and petitioned to the Tax Court. This court found that the State Board employed an arbitrary and capricious methodology in grading dwellings above an "A" and remanded the case to the State Board for further considerations.⁷⁷

Upon remand, the Board revised the grade using a four-step process.⁷⁸ First, the Board considered the actual construction cost of the home and subtracted either (1) items not assessed in Indiana; or (2) items assessed as separate line items. Second, the Board equated the 1991 construction cost with 1985 data since the regulations concerning grades were based upon 1985 reproduction costs. Third, the State Board noted that the 1985 cost schedule was further reduced by 15% and therefore reduced the revised reproduction cost this amount. Following this computation, the Garcias' construction cost totaled \$629,854. Fourth, the State Board calculated that a grade "C" would have a reproduction cost of \$217,900. Using this calculation for comparison, it then determined that the Garcias' home of \$629,854 should be afforded a final grade of "A+6."

Still unsatisfied, the Garcias again petitioned to the Tax Court. The Tax Court reasoned that neither the regulations nor appraisal standards specifically provided a methodology for assessing a grade higher than "A."⁷⁹ Additionally, it stated that the regulations should be updated to include the instant calculation method if the Board wishes to use it in the future. Consequently, the Tax Court

72. *Id.* at 345.

73. *Id.* at 346.

74. *Id.* at 348 (citing IND. ADMIN. CODE tit. 50, r. 2.1-3-4(f) (1992)).

75. *Id.* at 346.

76. *Id.* at 342.

77. *Id.*

78. *Id.* at 346-47.

79. *Id.* at 342.

entered a grade "A" for the Garcias' home.

Following this second Tax Court decision, the Board petitioned to the Indiana Supreme Court for review. The supreme court recognized that the Tax Court owes deference to the executive body assigned principle responsibility a specific mission.⁸⁰ Under the instant facts, it determined that the State Board has such principle responsibility for tax valuation based on the Indiana Code. In particular, the supreme court noted that duties of the State Board include: (1) interpreting the property tax laws of this state; (2) instructing property tax officials about their taxation and assessment duties and ensuring that the county assessors, township assessors, and assessing officials are in compliance the Code; (3) verifying that all property assessments are made in the manner provided by law; and (4) developing and maintaining a manual for assessing officials and county assessors.⁸¹

Next, the supreme court recognized that assessment regulations explicitly contemplate ten plus factors above grade "A" and that specific percentage multipliers are associated with these higher grades. That is, an "A" grade house has a multiplier of 160%, and an "A+6" house has a multiplier of 280%. It then noted that the regulations provide pictorial comparisons for homes in grades "E-1" up to "A," but only describe "A+4" grade houses or above as "mansion-type dwellings."⁸² In this regard, the supreme court appreciated that it would be nearly impossible to provide assessors with a picture of the absolute highest quality home. It thus focused not on the availability of a picture, but on the fact that the regulations contained a description and specific grade factors from which to work. Accordingly, the supreme court rejected the Garcias' argument that the Board did not contemplate a home of such high caliber and that it must assign only a grade "A." It found instead that the Board employed an "objective, logical method to assess a literally incomparable property within the existing guidance and that [t]his was not arbitrary or capricious."⁸³ The supreme court, as a result, overturned the Tax Court decision in favor of the Board.

3. *State Board of Tax Commissioners v. New Castle Lodge #147, Loyal Order of Moose*.⁸⁴—The New Castle Lodge #147 ("Lodge") applied for a property tax exemption in 1988 based upon the claim that its property is predominantly used for charitable purposes. The Lodge owns a 10,400 square foot building with a meeting/ballroom, game room, dining room, lounge, kitchen, and common areas. The Henry County Board of Review denied exemption status in 1992. The Lodge appealed this ruling to the State Board.

A Board Hearing Officer updated the "Room by Room Analysis of Exempt (Charitable) Activities" from the Lodge's application by assessing how many of the 1110 hours that the meeting/ballroom were open for charitable uses. He found that 67% of the total 1992 meeting/ballroom hours were for charitable

80. *Id.* at 348.

81. *Id.* (citing IND. CODE § 6-1.1-35-1 (1998)).

82. *Id.*

83. *Id.* at 349.

84. 765 N.E.2d 1257 (Ind. 2002).

purposes. The Officer also considered other written evidence of charitable activity such as the Lodge's Constitution, by-laws, articles of incorporation, 1991 federal Return of Organization Exempt From Tax form, and 1992 monthly member newsletters. He ultimately recommended an exemption of 63%.

Nonetheless, the State Board rejected this recommendation and denied an exemption. The State Board found as fact that the newsletter described only social activities and that all of the meeting/ballroom hours were for social functions. Moreover, it determined that the Lodge's 4% charitable contribution rate did not qualify for exemption status. In response to this ruling, Lodge appealed to the Tax Court. The Tax Court reversed that State Board's decision and held that the Lodge's uses of its facilities were predominantly for charitable functions.

The Indiana Supreme Court granted the State Board's petition for review to clarify the appropriate standard for the "predominant use" test. The supreme court employed a three-part analysis. It first reviewed the statutory language that gave rise to this test.⁸⁵ "All or part of a building is exempt from property taxation if it is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes."⁸⁶ In determining whether property qualifies for an exemption under this language, it referred to Indiana Code section 6-1.1-10-36.3, which states that "property is predominantly used or occupied for [the] one or more [preceding] stated purposes if it is used or occupied for one or more those purposes during more than 50% of the time that it is used or occupied in the year that ends on the assessment date of the property."

As the second step in its analysis, the supreme court turned to the State Board's findings of fact concerning charitable activities.⁸⁷ It ruled these findings were simply wrong because the Lodge's newsletter expressly mentioned multiple charitable events including an Easter Seals campaign, donations to the local Disabled American Veterans, a campaign to raise for the city emergency warning system, and delivery of food and supplies to Hurricane Andrew victims.⁸⁸ More importantly, the supreme court determined that the State Board's finding regarding the use of the Lodge for social purposes contradicted the Hearing Officer's observations.⁸⁹ It additionally stated that the State Board did not cite any additional evidence or grounds to explain away the Officer's findings.

Finally, the supreme court addressed the State Board's conclusions of law in third step of its analysis. It reasoned that the Board both misstated and misapplied the law in considering charitable giving.⁹⁰ The Court acknowledged that charitable giving may serve as evidence of charitable use, but that the predominant use test is concerned only with use of the facility.⁹¹ Thus, the

85. *Id.* at 1259.

86. *Id.* (quoting IND. CODE § 6-1.1-10-16(a) (1989)).

87. *Id.* at 1262.

88. *Id.*

89. *Id.* at 1262-63.

90. *Id.* at 1263.

91. *Id.*

supreme court scolded the State Board for misleading the Lodge to document charitable giving by consistently citing such levels during its hearing. It then suggested that the State Board would have been justified to require to the Lodge to produce facility usage reports in greater detail with better supporting documentation than those offered by the Lodge.

In reaching a remedy, the supreme court recognized that it would not be possible for the Lodge to prove charitable facility usage today in a remand hearing, especially since the State Board lead the Lodge to document charitable giving.⁹² Consequently, it concluded that the available evidence satisfied the predominant use test, thereby entitling the Lodge to a partial exemption. The supreme court therefore remanded the case to the State Board for a final determination of the Lodge's exemption application, with evidence limited to the Hearing Officer's recommendation.

4. *State of Indiana, Department of Revenue v. Dante Adams*.⁹³—The Indianapolis police obtained a search warrant for Dante Adams's ("Adams") safe deposit box based upon a tip from an Indianapolis bank that the odor of marijuana emanated from the box.⁹⁴ The police found cocaine in the box and charged Adams with dealing in cocaine and possession of cocaine. The Indiana Department of Revenue, in turn, issued a tax assessment against Adams pursuant to the Controlled Substance Excise Tax ("CSET").⁹⁵ Adams asserted, however, that the State could not assess the CSET because the cocaine was discovered during an illegal search and is barred from evidence under the exclusionary rule.

The supreme court began its opinion by referring to the conclusions of the United States Supreme Court in *Pennsylvania Board of Probation & Parole v. Scott*. In this case, the United States Supreme Court has held that exclusionary rule is "a judicially created means of deterring illegal searches and seizures."⁹⁶ As well, it determined that the rule is most effective when "its deterrence benefits outweigh its 'substantial social costs.'"⁹⁷ With this guidance, the Indiana Supreme Court compared the deterrence benefits with the costs in reaching its holding that the exclusionary rule does not apply to the evidence seized from Adams's safe deposit box for the CSET proceeding.

Focusing first on deterrence, the supreme court noted that revenue officers collect CSET assessments on illegal narcotics that are uncovered by police investigations. Thus, the supreme court deemed that the police would not be significantly deterred if evidence were excluded in a CSET proceeding because they are primarily concerned with criminal prosecutions.⁹⁸ Furthermore, it acknowledged that the police are more concerned with enforcement of criminal laws, not tax laws. On the other hand, the supreme court appreciated that

92. *Id.* at 1265.

93. 762 N.E.2d 728 (Ind. 2001).

94. *Id.* at 729.

95. *Id.*

96. *Id.* at 730 (quoting *Pa. Bd. Of Prob. & Parole v. Scott*, 524 U.S. 357, 363 (1998)).

97. *Id.*

98. *Id.* at 731.

revenue officers may be deterred somewhat if the exclusionary rule were applied to CSET proceedings.⁹⁹ Nevertheless, it reasoned that such circumstances would only rarely occur.

Concerning the costs, the supreme court concluded that application of the exclusionary rule in the CSET context would undermine many state interests.¹⁰⁰ It would impede that state's ability to exercise its power to tax and thereby prevent the state from performing necessary governmental functions. It would also enable taxpayers to avoid paying taxes. In addition, the state would lose evidence necessary to assess tax. In contrast, if drug evidence were suppressed in a criminal prosecution, then the state would likely have other evidence on which it could seal a conviction. Lastly, application of the exclusionary rule would require complicated legal determinations in frustration of the administration purpose of the proceeding.

III. INDIANA TAX COURT DECISIONS

The Indiana Tax Court ("Tax Court") rendered a variety of opinions from October 1, 2001, to September 30, 2002. In particular, the Tax Court issued twenty-seven published opinions, fourteen of which concerned Indiana real property tax matters. The remaining fourteen cases are divided as follows: five cases regarding Indiana tangible personal property tax; four cases regarding Indiana sales and use tax; one case regarding Indiana inheritance tax; two cases regarding Indiana motor carrier fuel tax; and one case regarding the hospital care for the indigent tax. Each decision is summarized separately below.

A. Real Property Tax

1. *Irwin Mortgage Corp. v. Indiana Board of Tax Review*.¹⁰¹—Irwin is a mortgage company that maintains an escrow account on behalf of its customers for property tax payments.¹⁰² On May 12, 1997, Irwin was scheduled to pay a property tax installment to the County Treasurer's Office. Due to the absence of an employee on that day, Irwin failed to make the payment. On May 13, 1997, Irwin hand delivered the payment to the County Treasurer's Office. The County Treasurer considered the payment delinquent and imposed a 10% penalty pursuant to Indiana Code section 6-1.1-37-10.

Although Irwin paid the penalty, it later filed a claim for refund with the Marion County Auditor on January 5, 1998.¹⁰³ The Auditor denied a refund. Irwin then appealed to the State Board via a 131 Petition for Review on January 27, 1998. It argued that it was entitled to a refund of the penalty amount and that the statute under which the penalty was charged, namely Indiana Code section

99. *Id.*

100. *Id.*

101. 775 N.E.2d 720 (Ind. Tax Ct. 2001).

102. *Id.* at 721.

103. *Id.* at 722.

6-1.1-37-10, is unconstitutional.¹⁰⁴ The State Board rendered a decision stating that it did not have the authority to decide whether the Treasurer property imposed the penalty on Irwin.¹⁰⁵ Following the State Board's ruling, Irwin appeal to the Tax Court on March 12, 2002. The State Board,¹⁰⁶ in response, filed a motion to dismiss the appeal for failure to state a claim upon which relief may be granted in response.

The Tax Court was faced with the primary issue of determining whether the State Board has the authority to hear cases involving penalties on delinquent property tax installments. In addressing this issue, the Tax Court first recognized that the State Board is statutorily empowered to review appeals concerning one of four matters that stem from a determination by an assessing official or county property tax assessment board appeals.¹⁰⁷ These matters include (1) the assessed valuation of tangible property; (2) property tax deductions; (3) property tax exemptions; and (4) property tax credits. Thus, the Tax Court ruled that the statute does not grant any power to the State Board to review penalties imposed by the County Treasurer for late payment of property taxes. It suggested that Irwin might find a remedy, if any, with a court of general jurisdiction.¹⁰⁸

As a secondary issue, the Tax Court then turned to consider Irwin's assertion that Indiana Code section 6-1.1-37-10 is unconstitutional. Although Irwin relied on *State v. Sproles*¹⁰⁹ for the holding that challenges to tax law lie in the exclusive jurisdiction of the Tax Court, it found Irwin's reliance misplaced.¹¹⁰ It reasoned that an administrative agency may not review the constitutionality of a statute until the agency has jurisdiction over the appeal brought under the statute alleged to be unconstitutional. Consequently, it ruled that neither the State Board nor the Tax Court itself had any authority to rule on the appropriateness of the penalty and that the constitutional challenge was improper.¹¹¹

2. *Walker Manufacturing Co. v. Department of Local Government Finance*.¹¹²—Walker runs a manufacturing business in Ligonier, Indiana. It owns two parcels of land, parcel 155 and parcel 210 with an improvement on each. For the tax years 1989-1991, Walker filed three Form 133 Petitions for Correction of Error for parcel 155 with the County Board to address the excessive assessment of its improvement and the assessment of improvements that were

104. *Id.* at 720.

105. *Id.* at 722.

106. The Indiana legislature abolished the State Board as of December 31, 2001, and established the Department of Local Government Finance and the Indiana Board of Tax Review in its place. *See id.* at 722 n.2.

107. *Id.* at 723.

108. *Id.* at 724.

109. *See generally* 672 N.E.2d 1353, 1356 (Ind. 1996).

110. *Irwin*, 775 N.E.2d at 723.

111. *Id.* at 724.

112. 772 N.E.2d 1 (Ind. Tax Ct. 2001).

never made.¹¹³ Walker also challenged parcel 155's land classification. The County Board denied all petitions and forwarded them to the State Board for review.¹¹⁴ The State Board did not grant Walker relief with regard to his three Form 133 Petitions. In addition, it assessed certain yard improvements, which were not previously assessed. Due to the failure to timely initiate a tax appeal, the Tax Court dismissed Walker's original case for lack of subject matter jurisdiction.¹¹⁵

For the tax years 1990-91, Walker re-filed the same Form 133 Petitions. Both the County Board and State Board again denied the petitions.¹¹⁶ Consequently, Walker filed a Form 130 Petition for Review of Assessment for both parcels and improvements with the County Board for the 1992 tax year.¹¹⁷ The County Board denied the Form 130 Petitions on November 17, 1993. In response, Walker filed two Form 131 Petitions for Review of Assessment with the State Board, arguing that the assessment of the land and improvements for parcels 155 and 210 should have been reduced for tax year 1992. Walker supported his position by alleging that the land was improperly classified and that the improvements were entitled to grade and obsolescence adjustments. The State Board, nevertheless, refused to change the land classification, grade, or obsolescence. Walker then appealed the State Board's final determinations on its Form 131 and Form 133 Petitions.¹¹⁸

Considering the Form 133 Petitions, the Tax Court first noted that Walker failed to timely appeal its first series of Form 133 Petitions.¹¹⁹ It then ruled that Walker had not raised any new issues in his second series of Form 133 Petitions and that essentially Walker was "trying for a second bite at the apple."¹²⁰ The Tax Court reasoned that if it were to decide the present appeal, then it would nullify the forty-five day time limit for appealing a State Board final determination of a Form 133 Petition.¹²¹ Thus, it dismissed Walker's appeal of its Form 133 Petitions for lack of subject matter jurisdiction.

Turning to the Walker's second grounds for appeal, the Tax Court acknowledged that Walker had the burden of submitting probative evidence to establish a prima facie case regarding the assessments before triggering the State Board's duty to support its findings with substantial evidence.¹²² To this end, Walker offered an "Assessment Review and Analysis" generated by M. Drew Miller of Landmark Appraisals, Inc. for each parcel. Miller simply stated that parcel 155 should be classified as primary and assessed at \$24,450 and that specific sections of parcel 210 should be classified as primary, secondary, and

113. *Id.* at 3.

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.* at 4.

119. *Id.* at 6.

120. *Id.*

121. *Id.*

122. *Id.* at 7.

undeveloped, respectively, for a total value of \$32,730. He then stated that parcel 155 should be assigned a grade of D or 80% factor while parcel 210 should have a grade D-1 or 70% factor. Miller also recommended applying a 30% obsolescence factor to parcel 155. Lastly, he advocated that an obsolescence adjustment should be applied where an improvement's reproduction cost exceeds its market cost by 85% for parcel 210. The Tax Court decided that such evidence alone did not establish a prima facie case because Miller's statements were conclusory and not probative.¹²³ Thus, the Tax Court affirmed the State Board's final determinations of Walker's Form 131 Petitions.¹²⁴

3. *Damico v. Department of Local Government Finance*.¹²⁵—Damico, d/b/a Moulded Acoustical Products, ("Moulded") owns a light, pre-engineered manufacturing building with a 1080 square foot attached wood-frame in Elkhart County.¹²⁶ The light manufacturing area has a number of gas heating units suspended from the ceiling. The attached office area has a separate use from the manufacturing building. For the tax years 1990-94, the light manufacturing area and office area were assessed using the General Commercial Industrial (GCI) Light models. This model was customarily used to assess pre-engineered structures.¹²⁷ It was also assessed for central heating rather than for suspended gas heaters.¹²⁸ Furthermore, the improvement was assessed using two perimeter-to-area ratios (PAR). Specifically, the Cleveland Township Assessor assessed the light manufacturing area with a PAR of 2 using the GCI Light Manufacturing model and the office area with a PAR of 9 using the GCI Office model. Finally, it depreciated the improvement with a forty-year depreciation table for tax year 1990.

Moulded filed four Form 133 Petitions for Correction of Errors for the 1990-93 tax years. For the 1990 tax year, it argued that one PAR should have been calculated for the entire improvement and that a thirty-year depreciation table should have been used instead of the forty-year table. Moulded also stipulated that its facility should have been valued at \$195,560, not at \$293,770 as assessed. For the 1991-93 tax years, Moulded again argued the following three positions: (1) that only one PAR should have been calculated; (2) that it was assessed for partitioning that was not physically present; and (3) that it was assessed for central heating instead of for suspended gas heaters. Thus, it stated that the true value was \$125,700, an amount much lower than the Assessor's estimation of \$181,830. In response to these petitions, the County Board rejected Moulded's arguments, raised Moulded's assessment for the 1990 tax year, and made no changes to the 1991-93 assessment.¹²⁹

123. *Id.* at 7-8.

124. *Id.* at 8.

125. 769 N.E.2d 715 (Ind. Tax Ct. 2001).

126. *Id.* at 718.

127. *Id.* at 719.

128. *Id.* at 718.

129. *Id.*

Moulded appealed this denial to the State Board. The State Board assessed the property as \$277,570 for the 1990 tax year and \$157,230 for the 1991-93 tax years. In addition, it refused to decrease the assessment of the heaters or to assess the property using a single PAR.

Moulded next filed a Form 130 Petition for Review of Assessment for the 1994 tax year to challenge its PAR and assessment for partitioning. The Assessor assessed the property at \$181,830. Once again, the County Board rejected Moulded's contentions and raised the assessment to \$238,170. Moulded appealed and filed a Form 131 Petition for Review of Assessment with the State Board.¹³⁰ It argued on appeal that the light manufacturing area should have been given a kit building adjustment and discount for partitioning, finish, and walls. Accounting for these changes, it contended that the assessment should have been lowered to \$175,870. The State Board agreed to lower the overall assessment to \$185,770, but refused to assign a kit building adjustment or allow the requested discount.

Moulded combined its two appeals and brought four issues before the Tax Court: (1) whether the State Board should have applied the thirty-year physical depreciation table for the 1990-93 tax years; (2) whether the assessment for 1990-93 should be reduced because it included central heating when the property actually has suspended heating units; (3) whether the property should have been assessed with one PAR for the tax years 1990-93; and (4) whether the 1994 assessment should have included a kit building adjustment or should have been reduced because the partitioning, walls and finish were excessively assessed.¹³¹

Considering the first issue, the State Board insisted that its rules did not provide for the classification of "light pre-engineered." Instead, it claimed that it appropriately classified the property as "fire-resistant building not listed elsewhere," which required application of the forty-year depreciation table. The Tax Court noted that physical depreciation tables adjust the reproduction cost of a structure to account for its age and condition.¹³² For the tax year 1990, the Tax Court acknowledged that the State Board rules plainly provided for the application of the thirty-year depreciation table, not the forty-year table, to "light pre-engineered buildings" such as Moulded's. Accordingly, the Tax Court found that the State Board acted arbitrarily and capriciously when it refused to depreciate Moulded's light pre-engineered manufacturing building using thirty-year depreciation tables.¹³³

Second, the State Board argued that subjective judgment would be required to assess Moulded's heaters because its costs schedules do not list a cost for the type of heaters found in Moulded's light, pre-engineered building. Therefore, it asserted that Moulded improperly filed a Form 133 Petition. The Tax Court observed that improvements are assessed using models and that an assessor

130. *Id.* at 719.

131. *Id.* at 717-18.

132. *Id.* at 720 (citing IND. ADMIN. CODE tit. 50, r. 2-1-5-1 (1992)).

133. *Id.*

locates closest model and then matches it with a cost schedule.¹³⁴ Citing case precedent, it then stated that a taxpayer must show that the alleged error is objective and that it could be quantified using the State Board's cost schedules.¹³⁵ Consistent with Moulded's argument, the court found that as assessor could readily determine from a cursory inspection that the heaters were not part of a central heating system. However, it found that Moulded failed to quantify the cost differential between its heaters and the central heating system and thus failed to establish a *prima facie* case.¹³⁶

Third, the State Board did not refute Moulded's position that its improvement should have been assessed with a single PAR because of its mixed uses (i.e., manufacturing and office space). It maintained, nonetheless, that an assessor's subjective judgment would be required to correct the PAR. The Tax Court recognized that a PAR is "the total linear feet in the perimeter of a building divided by the corresponding square foot area and multiplied by 100 to convert to a whole number."¹³⁷ It also recognized that State Board rules permit an assessor to "compute a PAR for the [mixed use improvement], select the correct square foot price for each [model], and then apply a percentage multiplier based on the actual square footage of each individual section or [model], as compared to the total square footage of the [improvement]."¹³⁸ It then reasoned that the State Board must follow its own rules for assessing real property. The Tax Court commented that State Board determined that Moulded's property constituted a single improvement and thus, it should have assessed a single PAR. The Tax Court further articulated that applying one does not require subjective judgment as suggested by the State Board because the rules offer no other option. It consequently ruled that the State Board acted arbitrarily and capriciously in not following its rules.¹³⁹

Lastly, the Tax Court stated that a taxpayer has the burden of submitting probative evidence in support of its claim for an adjustment of the base price of an improvement.¹⁴⁰ Here, it noted that Moulded offered a four page "Assessment Review and Analysis" supplied by Landmark Appraisals, Inc, but that this document only contained conclusory statements unsupported by explanation. Therefore, the Tax Court ruled that Moulded failed its *prima facie* burden on this issue with regard to its claims for the 1994 tax year.¹⁴¹

134. *Id.* at 721 (citing IND. ADMIN. CODE tit. 50, rr. 2.1-4-7; 2.1-4-3(a); 2.1-4-4; 2.1-4-5 (1992)).

135. *Id.* (citing *Barth, Inc. v. State Bd. of Tax Comm'rs*, 756 N.E.2d 1124, 1128-29 (Ind. Tax. Ct. 2001); *Rinker Boat Co. v. State Bd. of Tax Commr's*, 722 N.E.2d 919, 922 (Ind. Tax. Ct. 1999)).

136. *Id.*

137. *Id.*

138. *Id.* at 722 (quoting IND. ADMIN. CODE tit. 50, r. 2.1-4-1 (1992)).

139. *Id.* at 723.

140. *Id.*

141. *Id.* at 724.

4. *Deer Creek Developers, Ltd. v. Department of Local Government Finance*.¹⁴²—Deer Creek Developers (“Deer Creek”) purchased the Center in 1996.¹⁴³ This facility included a 30,000 square foot, finished supermarket with air-conditioning and 36,286 square foot retail shopping area. After purchasing the Center, Deer Creek added an additional 10,440 square foot, unfinished area without air-conditioning to the supermarket. The Center contained 6,000 square feet of partitioning and the exterior walls were not of uniform height. In March 1994, approximately 43% of the Center was empty.

The Assessor assessed the Center at \$1,645,800 using the General Commercial Mercantile (GCM) Supermarket model for the supermarket portion and the GCM Shopping Center model for the remainder.¹⁴⁴ He also assigned a grade C to the structure. In response, Deer Creek filed a Form 130 Petition for Review of Assessment with the County Board. The County Board increased the assessment to \$1,810,900. Deer Creek filed a Form 131 Petition for Review of Assessment with the State Board and argued that the assessment should have been lowered to \$1,132,900. At this point, the State Board agreed to correct the wall type and exterior wall height, paving, floor area measurement, building components, sprinkler system, and mixed use improvements. Accordingly, it lowered the assessment to \$1,685,400. Deer Creek, nevertheless, appealed seven issues to the Tax Court.¹⁴⁵

First, Deer Creek argued that the Center’s assessment should be reduced by 50% for economic obsolescence because 43% of the Center was continuously empty for the one year period prior to assessment.¹⁴⁶ The State Board responded that such argument was unsupported by any evidence. The Tax Court stated that “[e]conomic obsolescence is a loss of property value because of external factors.”¹⁴⁷ Moreover, it acknowledged that vacancy alone does not prove obsolescence.¹⁴⁸ Rather, the Tax Court accepted vacancy is merely as sign of possible obsolescence and the taxpayer must show why a building is vacant.¹⁴⁹ Consequently, it found that Deer Creek had the burden of presenting probative evidence showing the cause of the Center’s obsolescence. Because it offered no such evidence, the Tax Court ruled that Deer Creek failed its burden and thus did not establish a *prima facie* case.¹⁵⁰

Second, Deer Creek claimed that it has been excessively assessed for partitioning because the GCM Shopping model presumes more partitioning that

142. 769 N.E.2d 259 (Ind. Tax Ct. 2001).

143. *Id.* at 262.

144. *Id.*

145. *Id.*

146. *Id.* at 263.

147. *Id.* (citing IND. ADMIN CODE, tit. 50, rr. 2.1-5-1; 2.1-6-1 (1992)).

148. *Id.* (citing *Louis D. Realty v. State Bd. of Tax Comm’rs*, 743 N.E.2d 379, 387 (Ind. Tax Ct. 2001)).

149. *Id.*

150. *Id.*

is actually present in the Center.¹⁵¹ The State Board countered that the model includes the cost of normal partitioning and thus the Center was appropriately assessed. The Tax Court appreciated that improvements are assessed according to models and that the GCM Shopping model included scant partitioning characteristic of a discount retail finished open area.¹⁵² As a result, it noted that Deer Creek could have established a *prima facie* case by showing that the Center's partitioning is atypical of discount retail finished open area.¹⁵³ Deer Creek submitted evidence that its Center has approximately one square foot of partitioning for each twelve-and-a-half square feet of floor area and claimed that the GCM Shopping model presumes one square foot of partitioning for one square foot of floor area. The Tax Court commented that Deer Creek failed to cite any authority for its 1:1 ratio of partitioning claim. Therefore, the court ruled that Deer Creek did not satisfy its burden.¹⁵⁴

Third, Deer Creek contended that its assessment should have been reduced because the Center's lighting was similar to that used in discount stores as opposed to the expensive lighting used in retail shopping centers. The Tax Court again turned to the GCM Shopping model and pointed out that the model presumes the use of average fluorescent lighting fixtures.¹⁵⁵ Deer Creek offered witness testimony that the lights were "the least expensive fluorescent lights that [he had] ever seen in any commercial store."¹⁵⁶ The Tax Court readily found that these statements were conclusory and not probative, and as such, ruled that Deer Creek failed to establish a *prima facie* case.

Fourth, Deer Creek asserted that the Center should have been assigned a grade D, instead of a grade C, because the materials, design, and workmanship used to construct the structure were inferior to that of Wal-Mart.¹⁵⁷ The Tax Court observed that the grades of A to E are assigned to an improvement's materials, design and workmanship and represent a numeric multiplier that raises or lowers an improvement's base price.¹⁵⁸ Further, the Tax Court commented that a grade of C is given to "moderately attractive buildings constructed with average quality materials and workmanship throughout," while the grade of D is given to "buildings constructed with economy quality materials and fair workmanship throughout."¹⁵⁹ Here, it found that Deer Creek did not submit any probative evidence to explain why a grade C was improper; it again merely offered conclusory witness testimony.¹⁶⁰

151. *Id.*

152. *Id.* at 264 (citing IND. ADMIN. CODE tit. 50, rr. 2.1-4-7; 2.1-4-2(i) (1992)).

153. *Id.*

154. *Id.*

155. *Id.* at 265 (citing IND. ADMIN. CODE tit. 50, rr. 2.1-4-5 (Schedule C); 2.1-4-7 (1992)).

156. *Id.* (quoting Trial Transcript at 25-26).

157. *Id.*

158. *Id.* (citing *Miller Structures, Inc. v. State Bd. of Tax Comm'rs*, 748 N.E.2d 943, 952 (Ind. Tax Ct. 2001)).

159. *Id.* (quoting IND. ADMIN. CODE tit. 50, r. 2.1-4-3(f)(1992)).

160. *Id.* at 266.

Fifth, Deer Creek maintained that the Center's walls were excessively assessed because the State Board measured them from base to top at eighteen average feet.¹⁶¹ It argued that the interior walls should have been measured from the floor to the drop ceiling. In addressing the issue of whether the interior or exterior walls should have been used, the Tax Court found that State Board rules indicated that an assessor should determine the adjusted wall height for a building and use this figure to calculate the improvement price when an improvement has two or more sections with varying exterior wall heights.¹⁶² The Tax Court then reflected that the State Board followed this procedure and that Deer Creek cited no authority to show that another method would have been more appropriate. Thus, it ruled that Deer Creek failed again to meet its burden.¹⁶³

Sixth, Deer Creek challenged that the supermarket's 10,440 square foot storage area without air-conditioning should have been assessed using the "unfinished" finish type, instead of with the finished open finish type, and also that the cost for air-conditioning should be subtracted from the base price. The Tax Court noted that "finish type" "denotes the extent to which interior finish is included in the base price" of a model.¹⁶⁴ It then consulted the State Board rules, which required an assessor to locate the finish type that best matches that of the improvement and to use such type in determining the improvement's base price.¹⁶⁵ The Tax Court observed that the State Board rules further required component costs such as air-conditioning to apply to the entire area unless otherwise stated.¹⁶⁶ From this wording, it found that the rule plainly refers to a single area, not adjoining areas, and that an area is not coextensive with its surrounding improvements.¹⁶⁷ Accordingly, the Tax Court determined that the rule implicitly provides for the use of more than one finish type when an improvement has an adjoining area and the finish type of such space differs from that of the improvement.¹⁶⁸ The court found that Deer Creek's evidence sufficiently showed the supermarket was divided into a retail area and a storage area and that the storage area was not air-conditioned. Thus, it rejected the State Board's assessment that the area included adjoining space and found that it acted arbitrarily and capriciously in assessing the storage space.¹⁶⁹

As the final issue, Deer Creek argued that the State Board should have subtracted the cost of wallpaper from the Center's assessment because the GCM Shopping model presumes standard grade wallpaper at a cost of \$0.25 per square

161. *Id.*

162. *Id.* at 267 (citing IND. ADMIN. CODE tit. 50, r. 2.1-4-1(1992)).

163. *Id.*

164. *Id.* (quoting IND. ADMIN. CODE tit. 50, r. 2.1-4-3(a) (1992)).

165. *Id.*

166. *Id.* (citing IND. ADMIN. CODE tit. 50, r.2.1-4-3(c) (1992)).

167. *Id.* at 268.

168. *Id.*

169. *Id.*

foot of wall surface, and the Center did not have any wallpaper in its interior.¹⁷⁰ The State Board countered that the absence of wallpaper is not a significant variation from the model necessitating a deduction. The Tax Court held that when an objective feature in a model is absent, the variation is significant.¹⁷¹ Moreover, it reasoned that that State Board has a duty to show that a variation, when present, is not significant. Here, the Tax Court found that the State Board offered no evidence to show that the Center was typical of the model, even without wallpaper.¹⁷²

5. *Griffin v. Department of Local Government Finance*.¹⁷³—Griffin owns property in Lake County where the Hospital Care for the Indigent property tax (“HCIT”) ranged from \$0.4834 to \$0.5024 per one hundred dollars of assessed value.¹⁷⁴ He filed two Form 17T for a refund of this tax for the 1996-1998 tax years with the Lake County auditor. Griffin claimed that (1) the HCIT was an illegal state tax; (2) that it exceed the maximum tax rate allowed under Indiana Code section 6-1.1-18-2; and (3) that it violated the Indiana Constitution because it resulted in nonuniform and unequal taxation of like property. The auditor forwarded Griffin’s refund claims to the State Board. The State Board denied the refund and concluded that it lacked the authority to rule on the constitutionality of the HCIT statute. It also determined that the HCIT was not a state tax and that even if it was, it did not violate that statutory state tax limits because the HCIT statute was enacted after that state tax rate statute and therefore superseded it. Griffin appealed in response to this ruling to the Tax Court.

The Tax Court first considered the history of the tax. The HCIT program was enacted to provide cost-free emergency medical care to indigent patients who did not qualify for Medicaid.¹⁷⁵ The program is funded by a tax levy on property located in each county and by distributions from financial institutions taxes, motor vehicle taxes, and commercial vehicle excise tax. With regard to the property tax component, the legislature provided a formula to mandate the rate.¹⁷⁶ When money is collected for a particular county’s HCIT, it is deposited into that county’s HCIT fund. The county HCI fund is then transferred one time per month into a state fund. Monies from the state fund are used to reimburse emergency medical care providers.¹⁷⁷

170. *Id.*

171. *Id.* at 269.

172. *Id.*

173. 765 N.E.2d 716 (Ind. Tax Ct. 2002) (Griffin I).

174. *Id.* at 717.

175. *Id.* at 719-20.

176. *Id.* at 720 (citing IND. CODE § 12-16-14-3 (2001)). According to the formula, each county is “to impose an HCI tax levy equal to the product of: (1) the HCI property tax levy imposed for taxes first due and payable in the preceding year; multiplied by (2) the statewide average assessed value growth quotient, using all the county assessed value growth quotients determine under Ind. Code § 6-1.1-18.5-2 for the year in which the tax levy will be first due and payable.” IND. CODE § 12-16-14-3 (2001).

177. *Griffin I*, 765 N.E.2d 720.

With this background in place, the Tax Court considered Griffin's argument that the HCIT is an illegal state tax because it is not uniform and equal across counties for like property. Griffin relied on *Lake County Council v. State Board of Tax Commissioners*¹⁷⁸ for support. In that case, the Indiana Tax Court found that the HCIT was a state tax for four key reasons: (1) the State mandates that counties impose the tax at a formulary rate set by statute; (2) the amount of the tax collected in a particular county is not a function of the indigent health care expenses in that county; (3) monies generated by the HCIT are forwarded to the state; and (4) state HCIT monies are used to defray state expenses.¹⁷⁹ To rebut Griffin's position, the State Board contended that the tax was local because the legislature mentioned it under a local tax limit statute. The Tax Court agreed with Griffin that the tax was a state tax in nature and based its rationale on the reasons offered in *Lake County Council*.¹⁸⁰

The Tax Court then disagreed with Griffin's argument that the HCIT exceeded the maximum tax rate allowed under that Indiana Code section 6-1.1-18-2.¹⁸¹ It acknowledged that statutory inconsistencies should be resolved in favor of the more recent statute, as advocated by the State Board. It likewise noted that specific provisions take priority over more general provisions. Hence, the Tax Court ruled that the HCIT statute repeals any inconsistent limitations found within the state tax rate limit statute since it was enacted later in time.¹⁸²

Lastly, although the State Board claimed that the HCIT did not need to be uniform across the state because it is a welfare tax, the Tax Court agreed with Griffin that the HCIT statute violated Article 10, Section 1 of the Indiana Constitution because rates were not uniformly and equally applied.¹⁸³ It noted that the Indiana Constitution requires "(1) uniformity and equality in assessment; (2) uniformity and equality as to rate of taxation; and (3) a just valuation for taxation of all property."¹⁸⁴ The Tax Court found that Griffin established that the HCIT does not achieve a uniform and equal rate, despite its statewide application and use. Specifically, it cited evidence that Griffin paid \$166 HCIT on his assessed property value of \$25,000 in Lake County but that he would have only paid \$0.08 in HCIT in Johnson County for the same property assessment. Accordingly, the Tax Court ruled that the HCIT statute created an arbitrary classification based upon a taxpayer's county of residence, not on differences in property.¹⁸⁵

178. See 706 N.E.2d 270 (Ind. Tax Ct. 2000).

179. *Griffin I*, 765 N.E.2d 721 (citing *Lake County Council v. State Bd. of Tax Comm'rs*, 706 N.E.2d 270, 277 (Ind. Tax Ct. 2000)).

180. *Id.* at 722.

181. *Id.*

182. *Id.*

183. *Id.* at 724.

184. *Id.* at 723 (quoting IND. CONST. Art. X, § 1).

185. *Id.* at 724.

6. *Blackbird Farms Apartment, LP v. Department of Local Government Finance*.¹⁸⁶—Blackbird Farms Apartment, LP (“Blackbird”) owns thirteen acres of land and 154 rental apartments in Tippecanoe County.¹⁸⁷ The State Board promulgated a land order for the 1995 general assessment that permitted the base rate values to vary between \$5,000 and \$240,000 per acre. Assessors valued Blackbird’s land at \$60,000 per acre. Blackbird filed three Form 130 Petitions for Review of Assessment with the County Board. It argued that its land should have been valued between \$30,000 and \$36,000. However, the BOR did not change the valuation. Blackbird then appealed to the State Board, but the State Board also declined to change the assessment.¹⁸⁸ Blackbird appealed in response.

The court ruled that Blackbird must present probative evidence that comparable properties are assessed and taxed differently to challenge the base rate applied under the land order.¹⁸⁹ Blackbird first attempted to meet this burden via evidence of comparable land assessments. Nevertheless, the court did not find evidence that seven “comparable” apartment complexes in Tippecanoe County were assessed at either \$30,000 per acre or \$36,000 per acre to be persuasive. It turned to Indiana Supreme Court precedent and articulated that “whether or not properties are similar enough to be considered ‘comparable’ . . . depends on a number of factors including but not limited to size, shape, topography, accessibility, use.”¹⁹⁰ Further, the court stated that properties within each geographic area, subdivision, or neighborhood in a land order are presumed to be comparable.¹⁹¹ The court then reasoned that none of the properties that Blackbird offered into evidence were in the same township and thus not subject to the same land order. Additionally, it commented that Blackbird failed to explain how the properties were comparable and instead merely made a conclusory statement that the land “is comparable.”¹⁹² Thus, the court did not find such conclusory statements to be probative evidence.

Besides comparable properties, Blackbird also attempted to convince the court through evidence of comparable sales in Tippecanoe County.¹⁹³ It offered a list of six land sales made in tax years 1990-94 with purchase prices ranging from \$11,000 to \$46,000. Nevertheless, the court did not find that these sales were “comparable” because they were made in other townships as before. Likewise, it determined that Blackbird again did not substantiate the costs and thereby failed to establish its *prima facie* case.¹⁹⁴

186. 765 N.E.2d 711 (Ind. Tax Ct. 2002).

187. *Id.* at 712.

188. *Id.* at 713.

189. *Id.* at 714.

190. *Id.* (quoting *Beyer v. State*, 280 N.E.2d 604, 607 (1972)).

191. *Id.* at 712 (citing *State Bd. of Tax Comm’rs v. Indianapolis Racquet Club*, 743 N.E.2d 247, 251-52 (Ind. 2001)).

192. *Id.* at 715.

193. *Id.*

194. *Id.* at 716.

7. *Whetzel v. Department of Local Government Finance*.¹⁹⁵—Whetzel purchased property in Harrison County in September 1995 and received a notice of assessment in September 1997.¹⁹⁶ In March 1998, he received a property tax bill for the 1996 tax year. This bill included a 10% late penalty in the amount of \$110.06. Although Whetzel paid the bill and penalty, he filed a 133 Petition for Correction of Error to dispute the penalty. He argued that he was not given the opportunity to pay the tax bill in a timely manner and that his initial bill included the penalty. The County Board affirmed the penalty. Whetzel appealed this decision to the State Board, who in turn, claimed that it did not have authority to hear or decide the appeal. Whetzel therefore appealed to the Tax Court.

The Tax Court first confirmed that it has subject matter jurisdiction over any case arising under Indiana tax laws and that is an initial appeal of a State Board final determination.¹⁹⁷ Consequently, it explored whether the State Board made a final determination to allow for subject matter jurisdiction over the appeal. It noted that the State Board titled their decision “Final Determination,” yet at the same time deemed that it did not have statutory authority to decide the late penalty issue. The Tax Court reasoned that this qualified as a final determination for their jurisdiction purpose, even though the State Board did not decide a substantive issue. However, given the State Board’s treatment of the case, the Tax Court concluded that it could only decide the limited issue of whether the State Board has the procedural authority to address Whetzel’s penalty.¹⁹⁸

To this end, the Tax Court rationalized that the State Board could decide the penalty issue only if it was permitted to do so by statute. It then reviewed Indiana Code section 6-1.1-30-11(c) which provided that the appeals division of the State Board could review: (1) the assessed valuation of tangible property; (2) property tax deductions; (3) property tax exemptions; or (4) property tax credits.¹⁹⁹ Because the statute did not grant power to review penalties for the late payment of property taxes, the Tax Court thus ruled in favor of the State Board.²⁰⁰

8. *LDI Manufacturing Co., Inc. v. State Board of Tax Commissioners*.²⁰¹—LDI Manufacturing Co., Inc. (“LDI”) owns land in Logansport, Indiana, where it placed two preengineered buildings. The township assessed these buildings as improvements under the General Commercial Industrial (“GCI”) Light Manufacturing model. LDI challenged the application of the GCI pricing schedule to the improvements by filing petitions to both the Cass County Property Tax Assessment Board of Appeals and the State Board. LDI argued that the GCI schedule was inappropriate and that the improvements should have been assessed under the General Commercial Kit (“GCK”) schedule. However, both

195. 761 N.E.2d 9094 (Ind. Tax Ct. 2002).

196. *Id.* at 905.

197. *Id.* at 906.

198. *Id.* at 907.

199. *Id.* at 908.

200. *Id.*

201. 759 N.E.2d 685 (Ind. Tax Ct. 2001).

entities affirmed the original decision to apply the GCI schedule, and LDI appealed to the Tax Court.²⁰²

LDI argued that the State Board abused its discretion and acted arbitrarily and capriciously by failing to apply the GCK schedule. The Tax Court recognized that LDI presented evidence that its improvements were preengineered buildings and that components of the improvements were properly listed and priced under the GCK schedule. In addition, it commented that LDI explained how to calculate its base rate under the GCK schedule.²⁰³ Finally, the Tax Court highlighted that the State Board had, in fact, admitted that LDI's evidence supported the use of the GCK schedule.

In light of this evidence, the Tax Court determined that LDI had presented a proper *prima facie* case that its improvement should have been assessed under the GCK pricing schedule. It therefore determined that the burden shifted to the State Board to rebut LDI's evidence and support its decision with substantial evidence.²⁰⁴

To meet its burden, the State Board argued that LDI's improvements resulted in a "special purpose design building." As proof of this, it particularly relied on LDI's statement that the building could be increased in size. In addition, the State Board accentuated the fact that certain of the building columns were of a thickness twice that of other columns and deemed these "heavy duty columns."²⁰⁵

In its analysis, the Tax Court utilized rules of statutory construction to interpret the term "special purpose design." Under these rules, the Tax Court read the term strictly, giving the words and phrases "their plain and ordinary meaning unless they [were] technical words and phrases having a peculiar and appropriate meaning in the law requiring definition according to their technical import."²⁰⁶ The Tax Court thus defined "special purpose design" as "[a] limited-market property with a unique physical design, special construction materials, or a layout that restricts its utility to the use for which it was built[.]"²⁰⁷

Using this definition, the Tax Court decided that LDI's improvements did not constitute a "special purpose design building." It found that the ability to increase the building's size and the column thickness did not mean the building had a unique design, special materials, or restrictive layout that would limit the marketability of the building. Hence, the Tax Court reversed the final determination of the State Board and remanded the case for application of the GCK schedule.²⁰⁸

9. *Thousand Trails, Inc. v. State Board of Tax Commissioners*.²⁰⁹—Thousand Trails, Inc. is a commercial resort in Vermillion County, Indiana, featuring

202. *Id.* at 686-87.

203. *Id.* at 688.

204. *Id.*

205. *Id.* at 689-90.

206. *Id.* at 689.

207. *Id.* (quoting APPRAISAL INSTITUTE, *THE APPRAISAL OF REAL ESTATE* 25 (12th ed. 2001)).

208. *Id.* at 690.

209. 757 N.E.2d 1072 (Ind. Tax Ct. 2002).

campgrounds, a lake, and related facilities. In May 1993, the company filed a Form 130 Petition with the County Board to contest its 1992 tax assessment. The County Board then issued a final determination reassessing Thousand Trails' land at \$154,500 and improvements at \$190,100. This determination was, however, for the 1994 tax year, not the 1992 tax year as petitioned. Believing that the decision was for the 1992 tax year, Thousand Trails subsequently filed a Form 131 Petition with the State Board in October 1994 that alleged both subjective and objective errors in the assessments. In December 1995, Thousand Trails also filed Form 133 Petitions for the 1992 and 1993 tax years, alleging objective errors in the assessments and requesting correction.

The State Board issued final determinations on these petitions in January 1997. The State Board assessed the land at \$136,030 and the improvements at \$185,530. It also included a new assessment for a pool and pool apron on Thousand Trails' property that had been omitted from the original assessment. In making this determination, the State Board did not allow the company to present evidence concerning these values at a hearing. Based on these decisions, Thousand Trails appealed to the Tax Court in February 1997.²¹⁰

First, the Tax Court reviewed its subject matter jurisdiction on review of the 130/131 Petitions. Because Thousand Trails failed to submit its petition timely – a fact not disputed by the parties – the Tax Court ruled that the company did not meet the statutory requirements for proper initiation of a tax appeal on this issue.²¹¹ Thus, it barred Thousand Trails from raising objective *and* subjective errors in the tax assessment and summarily dismissed the company's appeal of the 130/131 Petition for lack of subject matter jurisdiction.²¹²

Second, regarding the 133 Petitions, Thousand Trails argued that the information included in its Form 131 Petition was sufficient to allow the State Board to "conclusively know" that the company was entitled to reassessment and adjustments. The company sought changes on the issues of land classification, kit building adjustment on a maintenance building, and the application of a different depreciation schedule for an office building. The Tax Court, however, stated that each property tax appeals process stands alone and that the information in Thousand Trails' appeal of its 130/131 Petition could not be used to support its 133 Petitions.²¹³ As a result, it deemed that Thousand Trails did not present any evidence to substantiate the objective errors alleged in the assessments, and the Tax Court refused relief on these petitions.

Finally, Thousand Trails argued that it was denied the opportunity to rebut the State Board's assessment of its pool and pool apron value. Thousand Trails requested another hearing before the State Board to challenge those assessments. Here, too, the Tax Court disagreed, stating that the company had sixteen months following the State Board's final determination to gather evidence and present it at trial to the Tax Court. Since Thousand Trails did not do so, the Tax Court

210. *Id.* at 1074-75.

211. *Id.* at 1076.

212. *Id.*

213. *Id.*

denied the company's request for a new hearing before the State Board.

10. *Barth, Inc. v. State Board of Tax Commissioners*.²¹⁴—In December 1991, Barth, Inc., filed six Form 133 Petitions with the Kosciusko County Auditor to correct alleged errors in assessments on its commercial buildings in Milford, Indiana.²¹⁵ These assessments were for the 1989-91 tax years and involved a light manufacturing building, small shop, and light utility storage building. Local officials denied Barth's petitions in January 1992 and forwarded them to the State Board for final determination. In November 1996, the State Board denied Barth's petitions without reviewing the merits because it believed that a remedy would necessarily involve subjective judgment and that 133 Petitions were consequently improper. Barth appealed to the Tax Court, which decided that 133 Petitions could be used to correct objective errors and remanded the case to the State Board to determine whether the assessments were erroneous. In April 1999, the State Board issued a final determination stating that Barth had failed to present a prima facie case of error and again denied relief. Barth appealed a second time to the Tax Court in May 1999.

The Tax Court held that a taxpayer must present a prima facie case supported by probative evidence taxpayer must present a prima facie case supported by probative evidence when challenging a final determination from the State Board. It explained that probative evidence is evidence that is sufficient to establish a given fact and which if not contradicted will remain sufficient.²¹⁶ The Tax Court then noted that the burden shifts to the State Board to rebut the evidence and justify its decision with substantial evidence once the taxpayer presents a proper prima facie case.²¹⁷

In the instant case, Barth presented six alleged occurrences of miscalculation involving its three buildings: 1) improper classification of a building heater; 2) lack of windows in one building; 3) materials used in exterior walls; 4) partitioning; 5) difference in floor finish; and 6) difference in wall height. In each of these alleged errors, however, the Tax Court found that Barth failed to present sufficient evidence to establish a prima facie case. It either deemed the evidence inadequate or the error as a subjective judgment not properly evaluated under a Form 133 Petition. As a result, the Tax Court found that the State Board had not acted arbitrarily or capriciously in denying Barth's petitions.²¹⁸

11. *Boehning v. State Board of Tax Commissioners*.²¹⁹—Richard Boehning, Phyllis Boehning, and Louise Heinold (collectively, "the Taxpayers"), along with Harvey Gutwein, own a stone quarry in Pulaski County, Indiana.²²⁰ The

214. 756 N.E.2d 1124 (Ind. Tax Ct. 2001).

215. *Id.* at 1127.

216. *Id.* (quoting *Damon Corp. v. State Bd. of Tax Comm'rs*, 738 N.E.2d 1102, 1106 (Ind. Tax Ct. 2000)).

217. *Id.* (quoting *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1233 (Ind. Tax Ct. 1998)).

218. *Id.* at 1129-32.

219. 763 N.E.2d 502 (Ind. Tax Ct. 2001).

220. *Id.* at 503.

Taxpayers are assessed for eighty acres, and Gutwein is separately assessed for another seventy-eight acres. For the March 1995 assessment, Pulaski County officials classified the property as seventy-six acres primary commercial/industrial land, 3.32 acres undeveloped usable commercial/industrial land, and 0.68 acres roadway. The Taxpayers challenged this assessment, arguing that only one acre was primary commercial/industrial and that the remainder were undeveloped usable commercial/industrial land. Concurrently, Gutwein also challenged classification of his land. The County Board, however, declined reclassification. Both parties petitioned to the State Board.²²¹

The State Board held a joint hearing for both the Taxpayers and Gutwein, but subsequently issued a final determination only in the Taxpayers' case. This decision upheld the lower County Board's assessment. Both parties then appealed to the Tax Court in May 1999. Prior to trial, however, Gutwein and the Pulaski County officials reached a settlement and removed his case from the Tax Court's docket.²²²

On appeal, the Taxpayers asserted that Gutwein's settlement served as legal precedent and should control the outcome of their case. The Tax Court disagreed, stating that to enter settlement negotiations as precedent at trial would deter parties from settling and this would contradict Indiana Evidence Rule 408, which promotes settlements by allowing parties to avoid judgment or admission of liability or wrong-doing.²²³ Moreover, the Tax Court expressed concern that such action might have a chilling effect on the incentive of government officials to settle cases. It thus refused to consider the Gutwein settlement in its decision.

Focusing on the substance of the Taxpayers' appeal, the Tax Court noted that the Taxpayers produced detailed testimony regarding the specific use of their land at trial. It commented that this testimony was particularly directed to the definitions of "primary commercial or industrial land" versus "unusable undeveloped commercial and industrial land." The Tax Court likewise appreciated that the Taxpayers testified in detail about how parcels of land were used, what equipment was used on it, and where machinery or materials were stored. Based on this testimony, the Tax Court concluded that the Taxpayers had indeed produced sufficient evidence to support a prima facie case showing its land was improperly classified. Furthermore, it recognized that the State Board did not properly rebut this evidence, but instead merely rejected the case based on a lack of written documentation. The Tax Court consequently reversed and remanded the case to the State Board to reclassify the land.²²⁴

12. *Talesnick v. State Board of Tax Commissioners*.²²⁵—Talesnick was a resident of Eagle Ridge subdivision, which bordered the Eagle Creek Reservoir. Talesnick's property, consisting of 2.717 acres, included a water flowage easement encumbering a portion of the land. Following a Land Order issued by

221. *Id.*

222. *Id.* at 503-04.

223. *Id.* at 504.

224. *Id.* at 507.

225. 756 N.E.2d 1104 (Ind. Tax Ct. 2001).

the Marion County Land Valuation Commission and the State Board, the Township Assessor valued Talesnick's property at the highest values under the land order: the land at \$116,910 and the improvements at \$194,100.²²⁶ The County Board upheld this assessment, and Talesnick filed a 131 Petition with the State Board. There, Talesnick asserted that the base rate for his property should be reduced and that a negative influence factor should have applied to his land because of the water flowage easement. The State Board denied Talesnick's petition. In response, he appealed to the Tax Court.²²⁷

In March 1998, the Tax Court remanded the case to the State Board because it found that Talesnick successfully established a prima facie case that his land had been valued incorrectly. The Tax Court also remanded the case to the State Board for a determination on whether the easement encroached Talesnick's land enough to merit a negative influence factor.²²⁸

In July 1998, the State Board held its remand hearing on this case. It reduced the valuation of Talesnick's first acre from \$110,000 to \$90,000. It did not reduce the value of further acreage from the maximum rate of \$4,000 per acre because it narrowly construed the Tax Court's remand order to the sole issue of the value of the first acre. The State Board also denied Talesnick's request for the application of a negative influence factor for the water flowage easement because it decided that the easement was not unlike easements on other nearby properties. Talesnick filed another appeal to the Tax Court to challenge these decisions.²²⁹

Concerning the valuation of the acreage in excess of the first acre, Talesnick asserted that lack of both a sewer and city water and limited accessibility to the property reduced the value of the property. The State Board countered by stressing that the Tax Court's order applied only with respect to the first acre. In addition, the State Board argued that the factors that Talesnick cited should not impact the other acres because no home was constructed on them. The Tax Court cited its prior decision and explained that its reasoning applied to the entirety of Talesnick's property, despite mention of the first acre alone. It therefore remanded the issue to the State Board for revaluation.²³⁰

Regarding the application of a negative influence factor, the Tax Court decided that Talesnick presented a prima facie showing based on evidence presented at the remand hearing. It commented that Talesnick offered testimony and maps supporting the higher relative encumbrance of the water flowage easement compared to nearby residential properties. The Tax Court, as a result, remanded this issue to the State Board in light of the intervening case *Phelps Dodge v. State Board of Tax Commissioners*,²³¹ which explains how to quantify influence factors to reflect the actual deviation of property from average market

226. *Id.* at 1105-06.

227. *Id.* at 1106.

228. *Id.*

229. *Id.* at 1106-07.

230. *Id.* at 1107.

231. 705 N.E.2d 1099 (Ind. Tax Court 1999).

value.

13. *Aboite Corp. v. State Board of Tax Commissioner*.²³²—Aboite Corporation (“Aboite”) owns land and a shopping center in Allen County, Indiana.²³³ In March 1992, Aboite’s property was assessed at \$2,317,300. Aboite, believing this value was in error, filed an appeal with the County Board. In November 1992, the County Board affirmed the initial assessment, and Aboite filed a 131 Petition with the State Board. The State Board conducted a hearing and subsequently issued a final determination in January 1997. It reduced the assessed value of Aboite’s property to \$1,895,440, but denied Aboite relief on the issues of additional obsolescence depreciation, land reclassification, and atrium pricing. Aboite appealed those three issues to the Tax Court in January 1997.²³⁴ The issue of obsolescence depreciation, however, was remanded to the State Board prior to trial and not addressed in the opinion.

Regarding the issue of land reclassification, Aboite and the State Board disagreed on whether the State Board had the authority to reassess property. The controlling statute, Indiana Code section 6-1.1-4-12, requires reassessment of land 1) if acreage is subdivided into lots, or 2) if the land is put to a different use.²³⁵

Aboite argued that it qualified for an exception to these conditions in the statute. This exception prevents reassessment upon subdivision until the next assessment date following a transaction that results in a change in title to the lot.²³⁶ The Tax Court noted, however, that the intent of this statutory exception was to protect the owner who subdivides a lot and sells some of the subdivided sections from being assessed a higher tax value. It recognized here, however, that Aboite did not sell its property, but instead changed the use. Thus, the Tax Court determined that Aboite did not qualify for the exception to reassessment merely because it retained some of its subdivided lots. The Tax Court affirmed the State Board’s final determination denying Aboite relief on this issue.

Aboite next contested the State Board’s assignment of value to its shopping center atrium as being arbitrary and capricious. The State Board assessed the value of Aboite’s atrium under an “A quality” pricing scheme. Aboite argued that the State Board failed to provide sufficient instructions on how to properly assess an atrium, and that its atrium should have been priced under a “C quality” scheme. The Tax Court disagreed, characterizing Aboite’s arguments as mere conclusory statements with little probative evidence. It suggested that Aboite could have, for example, offered evidence that other similar atriums were priced differently. Hence, the Tax Court commented that Aboite failed its burden of proof and affirmed the State Board’s final determination denying relief to Aboite on the atrium pricing issue.²³⁷

232. 762 N.E.2d 254 (Ind. Tax Ct. 2001).

233. *Id.* at 256.

234. *Id.*

235. *Id.* at 257.

236. *Id.* at 257-58 (citing IND. CODE § 6-1.1-4-12 (2001)).

237. *Id.* at 258-59.

14. *Huntington County Community School Corp. v. State Board of Tax Commissioners*.²³⁸—In 1999, the Huntington County Community School Corporation (“School Corporation”) instituted a plan for the reconstruction of several school buildings. In March 2000, the School Corporation held a public hearing to consider this construction process. Soon after, taxpayers filed 504 petitions with the Huntington County Auditor to oppose the construction. However, the petitions were not verified as required by law.²³⁹ Two months later, the School Corporation reviewed the petitions and discovered this flaw. Because the petitions were improperly executed, the School Corporation decided that they were insufficient to begin the petition and remonstrance process cited in Indiana Code section 6-1.1-20-3.2.²⁴⁰

The School Corporation proceeded with its plans and in January 2001, it approved a lease rental agreement. When notice of this decision was published in February 2001, taxpayers again filed another remonstrance petition. The School Corporation immediately petitioned the State Board to approve the lease. The State Board, in turn, referred the petition to the Indiana School Property Tax Control Board (“Control Board”).²⁴¹ The School Board held a public hearing in March 2001, where concerned taxpayers had the opportunity to object to the lease on the basis that it was neither fair nor reasonable; following the discussion, the School Board decided to go forward with the lease. Subsequently, the Control Board held a hearing in April 2001, where arguments for and against the lease were again voiced. After the hearing, the Control Board recommended approving the lease.²⁴²

The State Board considered the recommendation of the Control Board, and issued its final determination on June 1, 2001. It approved the execution of the lease, but “subject to the condition that [the School Board] . . . first be required to obtain approval of the project through the petition and remonstrance procedures found in [Indiana Code section] 6-1.1-20-3.2.”²⁴³ The State Board was primarily concerned that the Auditor had provided taxpayers the incorrect or incomplete forms for the remonstrance petition, then later used these deficiencies as cause for invalidating the submitted petition. As a result of this conditional approval, the School Board appealed to the Tax Court.

The State Board argued that the authenticity of the signatures on the petition were not in dispute, and the number of signatures was more than double that required by law. Nevertheless, the Tax Court construed the requirements in the Indiana Code strictly to require the verification provisions. Despite the flaws in the forms provided by the Auditor, the Tax Court firmly imposed the unambiguous statutory requirement that the petition be verified. “While the taxpayers had a right to challenge the School Corporation’s proposed lease

238. 757 N.E.2d 235 (Ind. Tax Ct. 2002).

239. *Id.* at 236 (citing IND. CODE § 6-1.1-20-3.1(5)(2001)).

240. *Id.* at 237.

241. *Id.*

242. *Id.*

243. *Id.* at 237-38.

agreement . . . they also bore the responsibilities that were attached to that right."²⁴⁴ It attached the fault directly to the taxpayers despite any flawed forms. It likewise noted that taxpayers had several opportunities to remonstrate, and thus reversed the final determination of the State Board.²⁴⁵

B. Tangible Personal Property Tax

*1. Standard Plastic Corp. v. Department of Local Government Finance.*²⁴⁶— Standard Plastic ("Standard") manufactures plastic molded parts in Wells County, Indiana.²⁴⁷ It possessed, but did not own, 20 to 50 year old special tools. Standard's customers actually owned these tools, and permitted the company to use them to make difference types of plastic injected-molded products. When Standard filed its 1995 Business Tangible Personal Property Assessment Return (Form 103), it did not report the value of any of the special tools. Likewise, it did not file a Confidential Return of Special Tools (Form 103-T) to disclose that it even possessed any customer-owned special tool molds.²⁴⁸

During an audit of Standard's Form 103, the State Board field auditor found that Standard failed to report the special tool molds. Standard responded by providing a list of replacement costs for the molds amounting to \$2,725,703. The auditor requested, however, a list of estimated original costs instead. Standard thus provided a second list showing estimated original costs totaling \$355,950. Despite this request, the auditor and her supervisor ultimately rejected the estimated original cost list and opted to assess the special tools on the basis of the replacement cost list. Consequently, the auditor increased Standard's total assessed value from \$99,590 to \$139,180 and also recommended a 20% penalty with respect to the \$39,590 increase in value.²⁴⁹

Standard objected to the auditor's assessment and sought an administrative hearing before the State Board. It argued that (1) the special tool molds should have been assessed according to the estimated cost; (2) its barrel and screw assemblies and platens should have been assessed as special tools and therefore entitled to a deduction; and (3) it should have received a deduction for application software because the value of such software was sufficiently reflected on its books and records.²⁵⁰ The Board disagreed with Standard on all three issues. In turn, Standard filed an appeal with the Tax Court.

Standard first stipulated that the Board's refusal to use Standard's list of estimated original costs was arbitrary and capricious, even though the Board found that the second list was not credible evidence. The Tax Court acknowledged that the Indiana personal property tax system is based upon self-

244. *Id.* at 241.

245. *Id.*

246. 773 N.E.2d 379 (Ind. Tax Ct. 2001).

247. *Id.* at 381.

248. *Id.*

249. *Id.* at 382.

250. *Id.*

assessment, full disclosure, and accurate reporting.²⁵¹ It then turned to consider the State Board's own regulation pertaining to special tools. The regulation stated, "The total value of special tools not owned by the taxpayer must be based on the original cost to the owner of such special tools, if available. If the original cost to the owner is not available, the value shall be based upon the best information available."²⁵² The Tax Court determined that this regulation was clear—if original cost is not available, then the best information with regard to the original cost must be used.²⁵³ It therefore reasoned that Standard provided the State Board with the best information available when it assembled the list of estimated original costs given that it could not know the actual original cost to the owners. Moreover, the Tax Court recognized that the regulation did not make any reference to using replacement costs and that the Board acted contrary to this regulation in using the replacement costs for assessment purposes.²⁵⁴ Thus, the Tax Court ruled that the State Board's final determination was not supported by substantial evidence and was arbitrary and capricious.²⁵⁵

Next, Standard claimed that its barrel and screw assemblies and platens are special tools in accordance with Indiana Administrative Code section 4.2-6-2(b). Under this regulation, "'special tools' includes, but [are] not limited to, tools, dies, jigs, fixtures, gauges, molds, and patterns acquired or made for the production of products or product models which are of such specialized nature that their utility generally ceases with the modification or discontinuance of such products or product models."²⁵⁶ As evidence to support their position, Standard offered a list of barrel and screw assemblies from Newcastle Industries with a description of possible applications for each assembly. Additionally, Standard presented a copy of a fax sent to Cincinnati Milacron as proof that Cincinnati Milacron considered Standard's assemblies and platens to be special tools. The Tax Court found this evidence, however, to be merely conclusory and upheld the State Board's determination. Indeed, it pointed out that the fax did not even contain a definitive statement or opinion that the assemblies and platens were of such a specialized nature that their utility generally ceases with the modification or discontinuance of various molds as required by the regulation.²⁵⁷

Finally, Standard argued that it should not have been assessed for the application software used in its injection molding machines, but instead entitled to a deduction because this software was included on its books and records.²⁵⁸ To address this issue, the Tax Court again turned to the Board's regulations. "If the value recorded on the books and records reflects charges for customer support services such as . . . application software that relate to future periods and not to

251. *Id.* at 195.

252. *Id.* (quoting IND. ADMIN. CODE tit. 50, r. 4.2-6-2(d)(2) (1996)).

253. *Id.* at 384.

254. *Id.*

255. *Id.* at 385.

256. *Id.* (citing IND. ADMIN. CODE tit. 50, r. 4.2-6-2(b)(1996)).

257. *Id.* at 386.

258. *Id.*

the value of the tangible personal property, such charges may be deducted as nonassessable intangible personal property.²⁵⁹ Standard maintained that the value of the application software was recorded on its books and records “in the form of” its property tax return and on invoices submitted to the State Board. The Tax Court pointed out, nevertheless, that the face of neither the tax return nor the invoices showed such value.²⁶⁰ Furthermore, it reasoned that the fax offered by Standard also failed as evidence because it did not record any value but merely discussed the software components on the Cincinnati Milacron injection molding machines.²⁶¹ Hence, the Tax Court once more affirmed the State Board’s final determination.

With respect to the penalty assessed because Standard failed to include the special tools on its Form 103, the Tax Court found that Standard undervalued its personal property.²⁶² It noted that the regulations provide for a penalty of 20% of the additional taxes due as a result of undervaluation.²⁶³ The Tax Court, accordingly, remanded the penalty issue to the Board pending proper valuation of the special tools in line with estimate original costs.²⁶⁴

2. *Edgcomb Metals Co. v. Department of Local Government Finance*.²⁶⁵—Edgcomb Metals Company (“Edgcomb”), a Delaware corporation, owns and operates a steel service center in Indianapolis, Indiana.²⁶⁶ The company purchased large sheets of steel from mills both inside and outside of the state and resold them to customers inside and outside of the state. The mills wrapped the sheet metal on coils before shipping to Edgcomb to facilitate transport. Edgcomb then stored the steel in its Indianapolis warehouse until a customer purchased the steel. Its inventory consisted of three forms of steel: (1) “as is” steel; (2) “custom cut” steel; and (3) “standard cut.”

Edgcomb claimed an exemption on its 1995, 1996, and 1997 personal property tax for the “standard cut” steel under Indiana Code section 6-1.1-10-29.3 because it deemed that the steel had been repackaged in preparation for out-of-state shipment. This code section provides that personal property shipped into Indiana qualifies for a property tax exemption if the property is stored in an in-state warehouse for transshipment to an out-of-state destination and is ready for transshipment without additional manufacturing or processing, except repackaging. A hearing officer for the State Board found that the “standard cut” steel had not been repackaged, but instead was further processed to form a saleable good. Therefore, the officer concluded the “standard cut” steel did not qualify for the exemption for any year. The State Board affirmed the officer’s determination, and Edgcomb appealed the decision to the Tax Court.

259. *Id.* at 386-87 (quoting IND. ADMIN. CODE tit. 50, r. 4.2-4-3(g)(1996)).

260. *Id.* at 387.

261. *Id.*

262. *Id.* at 388.

263. *Id.* at 387 (citing IND. CODE § 6-1.1-37-7(e) (2000)).

264. *Id.* at 388.

265. 762 N.E.2d 259 (Ind. Tax Ct. 2002).

266. *Id.* at 261.

To resolve whether the “standard cut” steel was repackaged for purposes of the exemption, the Tax Court read Indiana Code section 6-1.1-10-29.3 together with other interstate commerce exceptions, namely Indiana Code sections 6-1.1-10-29(b)(1) and 6-1.1-10-30(a), (b), and (c). The Tax Court reasoned that Indiana Code section 6-1.1-10-29.3 operates to provide an alternative exemption for taxpayers who are unable to qualify for the “original package” exceptions of Indiana Code sections 6-1.1-10-29(b)(1) and 6-1.1-10-30(a), (b), and (c). Under the latter sections, personal property is exempt from taxation if it remains in its original package without further processing.²⁶⁷ In light of the emphasis on “original packaging,” the Tax Court stressed that the “repackaging” language of Indiana Code section 6-1.1-10-29.3 means transferring to a different container for the purposes of shipment, not to packing in the sense of combining different parts. In addition, it pointed to *Monarch Steel Co. v. State Board of Tax Commissioners*²⁶⁸ wherein the Tax Court said that “securing an interstate commerce exemption most often hinges on the distinction between ‘manufacturing or processing’ on the one hand and ‘packaging’ or ‘repackaging’ on the other.”²⁶⁹

To support its “repackaging” exemption position, Edgcomb described its procedures for handling the sheet steel upon arrival from the mills to prepare the “standard cut” inventory.²⁷⁰ It stated that it first uncoiled the steel from its original packaging. It then leveled the steel and cut it into manageable, standard sheets for ease of storage and shipment. The State Board asserted, however, that leveling altered the steel’s form and that “standard cut” steel is in itself a final product.²⁷¹ The Tax Court disagreed with the State Board and reasoned that leveling and cutting the steel actually just repackages large quantities into smaller quantities. Likewise, it determined that the sheet steel itself was the final product, not the “standard cut.” It found that customers were better able to use pieces of “standard cut.” Therefore, the Tax Court ruled that Edgcomb’s “standard cut” pieces are exempt from taxation under Indiana Code section 6-1.1-10-29.3.²⁷²

3. *Ispat Inland, Inc. v. State Board of Tax Commissioners*.²⁷³—Ispat Inland, Inc. (“Ispat”) owns a steel mill in Lake County, Indiana, purchased in 1998 from Inland Steel Company. In November 2000, the County Board employed Tax Management Associates, Inc. (“TMA”), a North Carolina accounting firm, to conduct an audit of Ispat’s personal property tax returns for that year.²⁷⁴

Counsel for Ispat contacted the Lake County Assessor (“Assessor”), expressing reservation about TMA’s authority to conduct the audit. Although the

267. *Id.* at 263.

268. 611 N.E.2d 708 (Ind. Tax. Ct. 1993).

269. *Edgcomb*, 762 N.E.2d at 264.

270. *Id.*

271. *Id.* at 265.

272. *Id.*

273. 757 N.E.2d 1078 (Ind. Tax Ct. 2001).

274. *Id.* at 1081.

Assessor admitted that third parties were not referred to in the confidentiality statutes, he assured Ispat that all confidential information would be handled appropriately. The Assessor then validated his position with a senior administrative law judge with the State Board, who confirmed that the Assessor was properly within his authority to contract with and disclose confidential information to TMA.²⁷⁵ The Assessor thus insisted that Ispat schedule an audit with TMA, and Ispat petitioned the State Board to interpret the property tax laws. Additionally, Ispat requested the State Board instruct the Assessor that: (1) the Assessor could not audit Ispat because the statute of limitations to change the assessment had expired; (2) the confidentiality statute precluded disclosure of Ispat's confidential information to TMA; and (3) the Assessor was not permitted to delegate his official duties regarding business personal property taxes to a third party.²⁷⁶ The State Board determined that the Assessor could employ a third party because local officials "lack sufficient expertise . . . to perform some auditing and similar tasks pertaining to personal property assessment."²⁷⁷ Ispat subsequently appealed to the Tax Court.

The State Board moved for dismissal of the appeal for lack of subject matter jurisdiction because there was not a final determination at the State Board level. The State Board presented three arguments supporting this assertion. First, the phrase "final determination" was not present in the decision. Next, the State Board had exercised its authority to interpret tax laws, which was independent from statutes governing issuance of final determinations. Third, the State Board had issued only an advisory opinion to Ispat.²⁷⁸

Considering the jurisdictional requirements, the Tax Court stated that it held "exclusive jurisdiction over any case that arises under the tax laws of [Indiana] and that is an initial appeal of a final determination made by the State Board."²⁷⁹ It first noted that both parties agreed that the case arose under Indiana tax laws. Additionally, the Tax Court decided that the State Board's decision was a final determination. It held that the State Board's reliance on *Lake County Council v. State Board of Tax Commissioners*²⁸⁰ was flawed. The Tax Court distinguished the facts in *Lake County Council* from the instant facts. It acknowledged that here, unlike in *Lake County Council*, Ispat received a decision, which "determined rights and imposed obligations on the parties," signed by all three State Board commissioners.²⁸¹ On these two grounds, the Tax Court ruled that it possessed subject matter jurisdiction over the case.

The Tax Court then analyzed the merits of Ispat's request for injunctive relief against the Assessor, since both parties agreed that the issues had been fully litigated before the court. It first decided the threshold issue of whether the

275. *Id.*

276. *Id.* at 1081-82.

277. *Id.* at 1082.

278. *Id.* at 1082-83.

279. *Id.* at 1083 (quoting IND. CODE § 33-3-5-2 (2001)).

280. 706 N.E.2d 270 (Ind. Tax Ct. 1999).

281. *Ispat*, 757 N.E.2d at 1084.

Assessor's delegation of his duties was lawful. The Tax Court disagreed with the State Board and the Assessor, stating that there was no statutory basis for delegation of auditing duties to third parties. While it acknowledged that the legislature granted counties authority to employ third parties in matters involving real property, it held that the statute intended to impliedly exclude those not specifically enumerated like auditing.²⁸² Thus, it ruled that the Assessor's delegation of auditing duties for personal property to TMA was an unlawful act. The Tax Court dismissed the State Board's motion to dismiss and enjoined the Assessor from delegating personal property assessment duties to TMA.

4. *Cooke Chevrolet Co. v. State Board of Tax Commissioners*.²⁸³—Cooke Chevrolet Company ("Cooke") is a car dealership located in Vanderburgh County, Indiana. In August 1991, the Township Assessor valued Cooke's commercial land at \$29,970 and improvements at \$84,730. In October 1991, the Vanderburgh County Assessor filed a 130 Petition with the County Board alleging that the township's assessment was too high. As a direct result, the County Board reduced the assessment of the land to \$17,970 and the improvements to \$72,070. The Township Assessor filed a 131 Petition with the State Board in November 1991, asserting that the Vanderburgh County Assessor was not authorized to file the petition on behalf of Cooke.²⁸⁴

In its final determination, the State Board decided that only Cooke – and not the county assessor – was permitted to file a 130 Petition. Therefore, it reasoned that the County Assessor's 130 petition was not properly before the County Board and any subsequent action by the County Board (i.e., reducing the assessed values) was void. The State Board found no reason to consider the merits of the 131 Petition filed by the Township Assessor and reinstated the initial assessment rendered by the Township Assessor. Cooke filed an appeal to the Tax Court in January 1997.²⁸⁵

On appeal, the State Board argued that only taxpayers are permitted to file 130 Petitions, and that one filed by the County Board was void as a result. It thus stipulated that it was improper to consider the merits of the Township Assessor's 131 Petition. The Tax Court decided otherwise, agreeing instead with Cooke's argument. The Tax Court, citing favorably to Indiana Code section 6-1.1-13-5 and *Wetzel Enterprises, Inc. v. State Board of Tax Commissioners*,²⁸⁶ held that "the County Assessor could bring Cooke's assessment to the attention of the [State Board] by filing a 130 Petition . . ."²⁸⁷ It therefore decided that the County Board's reassessment was not void, and the State Board should have considered the Township Assessor's 131 Petition. The Tax Court then determined that the State Board acted arbitrarily and capriciously, reversed the

282. *Id.* at 1085 (citing IND. CODE § 6-1.1-4-16, 17, 18 (2002)).

283. 756 N.E.2d 1121 (Ind. Tax Ct. 2001).

284. *Id.*

285. *Id.* at 1123.

286. 694 N.E.2d 1259 (Ind. Tax Ct. 1998).

287. *Cooke Chevrolet*, 756 N.E.2d at 1124.

State Board's final determination, and remanded the case to the State Board.²⁸⁸

5. *Inland Container Corp. v. State Board of Tax Commissioners*.²⁸⁹—Inland Container Corporation ("Inland") operates a mill in Vermillion County, Indiana, that disposes of waste materials and converts them into recycled paper.²⁹⁰ In March 1994, Inland requested that the Indiana Department of Environmental Management certify its mill as a resource recovery system ("RRS"), which it did in April 1994. In June 1994, Inland filed a claim for deduction due to status as an RRS (RRS-1 form) as permitted under Indiana Code section 6-1.1-12.28.5. The county assessor approved the form, and the auditor sent a tax statement to Inland that included the RRS deduction. Inland paid the corresponding taxes on May 10, 1995.²⁹¹

Shortly thereafter, the Indiana legislature amended the statutes containing the RRS provision with an emergency effective date of May 1, 1995. The amendment permitted the RRS deduction only for those systems certified for the 1993 assessment year or earlier. It also provided for a phase out period ending in 1997. This amendment further stated that any RRS assessed and first deducted in the 1994 assessment year could not receive the deduction.²⁹²

In October 1995, the Vermillion County Treasurer notified Inland that it no longer qualified for the RRS deduction. Inland filed a Form 133 Petition and Form 130 Petition with the County Board. Inland challenged the valuation of its land, but the County Board denied Inland's petitions. Inland then filed a Form 131 Petition for Review to the State Board in January 1996 challenging the County Board's denial of the RRS deduction. Inland was again denied relief. Inland filed an appeal to the Tax Court in September 1996.²⁹³

The State Board characterized the amended RRS provision as a legislative policy decision and as such, stipulated that it was not properly reviewable by the Tax Court. The Tax Court disagreed with the State Board, stating "Article 10, [Section] 1 does not provide immunity to legislative policy judgments from judicial oversight, 'but rather establishes mandatory minimum requirements for our system of property assessment and taxation.'"²⁹⁴ Additionally, the Tax Court disagreed with the State Board's position that the deduction was not part of the assessment. Instead, it viewed the deduction as a "stage in arriving at the assessed value that is the basis for taxation."²⁹⁵ Consequently, the Tax Court determined that it could properly review the statute's constitutionality.

To support his appeal, Inland argued that the amended Indiana statute phasing out the RRS deduction was unconstitutional as a violation of Article 10, Section 1 of the Indiana Constitution since only those taxpayers who had a RRS

288. *Id.*

289. 756 N.E.2d 1109 (Ind. Tax Ct. 2001).

290. *Id.* at 1112.

291. *Id.*

292. *Id.* at 1112-13 (citing IND. CODE § 6-1.1-12-28.5(2000)).

293. *Id.* at 1113.

294. *Id.* at 1117 (quoting *Boehm v. Town of St. John*, 675 N.E.2d 318, 324 (Ind. 1996)).

295. *Id.*

deduction certified in 1993 or earlier were eligible to participate in the phase-out schedule. In particular, he contended that the amended RRS statute created non-uniform and unequal taxation.²⁹⁶ Inland presented exhibits to show other similar properties that had been granted the RRS deduction. As well, he argued that the legislature created a classification based on the date that the RRS deduction was certified, a difference that “was arbitrary because it was not based on differences ‘naturally inhering’ within the RRS property itself.”²⁹⁷ The Tax Court completely agreed with Inland. It thus ruled that the statute was unconstitutional because it created artificial distinctions between similarly situated properties.

Regarding remedy, Inland sought to have the RRS statute apply without the phase-out date provisions. The State Board, on the other hand, argued that the only remedy available was to void the entire statute; thus, Inland and all other taxpayers claiming the RRS deduction would receive no such deduction. The Tax Court again found in Inland’s favor. It granted him relief from “any unlawful tax that would result from an unconstitutional restriction of the RRS deduction” and authorized him to participate in the phase-out schedule.²⁹⁸

C. Sales and Use Tax

1. *Rhoades v. Indiana Department of State Revenue*.²⁹⁹—Rhoades, an Indiana resident, purchased a motor vehicle for \$17,265.50 in Florida on January 31, 1998.³⁰⁰ He also paid a 6% Florida sales tax on this purchase. After returning home, Rhoades titled his vehicle in Indiana on April 20, 1998 and was assessed a 5% Indiana use tax in the amount of \$878.27 on the purchase price. On October 22, 1998, Rhoades filed a claim for a refund of the use tax along with statutory interest with the Indiana Department of State Revenue (“Department”).³⁰¹ The Department denied his claim on December 29, 1998. Rhoades appealed to the Tax Court on February 1, 1999 and later filed a motion for summary judgment. The Department, in turn, filed a motion for judgment on the pleadings.³⁰²

Rhoades argued that he was free from paying Indiana’s use tax on his vehicle because he already paid Florida’s sales tax at the time of purchase.³⁰³ In support of his position, he relied on Indiana Code section 6-2.5-3-6(d), which states that “a person liable for this use tax imposed in respect to a vehicle . . . shall pay the tax . . . unless the person presents proof . . . that the use tax or state gross retail

296. *Id.* at 1116.

297. *Id.* at 1119 (citing *State Bd. of Tax Comm’rs v. Town of St. John*, 702 N.E.2d 1034, 1042 (Ind. 1998); *State Bd. of Tax Comm’rs v. Lyon & Greenleaf Co., Inc.*, 359 N.E.2d 931 (1997)).

298. *Id.* at 1121.

299. 774 N.E.2d 1044 (Ind. Tax Ct. 2001).

300. *Id.* at 1046.

301. *Id.*

302. *Id.*

303. *Id.* at 1047.

tax has already been paid with respect to the purchase of the vehicle.”³⁰⁴ In contrast, the Department contended that the legislature intended to impose a use tax on vehicles that are purchased in other states and required to be titled in Indiana. Specifically, the Department cited Indiana Code section 6-2.5-3-5(b). This section states, “The credit . . . does not apply to the use tax imposed on the use, storage, or consumption of vehicles . . . that are required to be titled, registered, or licensed by Indiana.”³⁰⁵

To address the first issue of whether Rhoades was exempt from paying use tax, the Tax Court acknowledged that a state imposes a use tax out of concern (1) that local merchants will lose business if taxpayers purchase goods out-of-state to avoid sales tax liability and (2) that it will lose tax revenue if taxpayers purchase goods out-of-state.³⁰⁶ It noted that “[t]o deal with this potential loss of business and revenue, states enacted ‘complementary’ or ‘compensating’ use taxes on the use of goods purchased outside of the state and brought into the state for use.” Lastly, the Tax Court recognized that a use tax is functionally equivalent to a sales tax and is levied when the use of tangible personal property is not subject to sales tax.³⁰⁷

With this foundation in place, the Tax Court focused on the two statutes raised by the parties in furtherance of their respective positions and opted to read them *in pari material*. It pointed out that Indiana Code section 6-2.5-3-6(d) did not expressly indicate whether the taxes are attributable to any state or just Indiana. On the other hand, it found that Indiana Code section 6-2.5-3-5(b) expressly denied any use tax credit for another state’s sales or use tax when a taxpayer purchases a vehicle out-of-state and is required to title it in Indiana. Thus, the Tax Court ruled that plain language of Indiana Code section 6-2.5-3-5(b) showed that the legislature intended the use tax in Indiana Code section 6-2.5-3-6(d) to refer to Indiana taxes only.³⁰⁸ The Tax Court denied Rhoades’s motion for summary judgment.

Regarding the second issue of whether imposition of Indiana use tax on a vehicle for which the taxpayer already paid sales tax in another state violates the Commerce Clause, the Tax Court turned to the four part test announced in *Complete Auto Transit, Inc. v. Brady*.³⁰⁹ In *Brady*, the U.S. Supreme Court wrote that a state tax will not withstand a Commerce Clause challenge if it (1) is applied to an activity with a substantial nexus with the taxing state; (2) is fairly apportioned; (3) does not discriminate against interstate commerce; and (4) is fairly related to the service provided by the state.³¹⁰ Rhoades claimed that

304. *Id.* (quoting IND. CODE § 6-2.5-3-6(d) (1998)).

305. *Id.* (quoting IND. CODE § 6-2.5-3-5(b) (1998)).

306. *Id.* (referencing JEROME R. HELLERSTEIN & WALTER HELLERSTEIN, 2 STATE TAXATION § 16.01[2] (3d ed. 2000)).

307. *Id.* (referencing HELLERSTEIN & HELLERSTEIN, *supra* note 306, § 16.01[2]).

308. *Id.* at 1048-49.

309. 430 U.S. 274 (1977).

310. *Id.* (citing *Anderson v. Ind. Dep’t of State Revenue*, 758 N.E.2d 597, 601 (Ind. Tax. Ct. 2001)).

Indiana's use tax violated the third prong of this test. In view of this assertion, the Tax Court referred to an earlier decision *Bulkmatic Transport Co. v. Department of State Revenue* where it addressed the proof necessary to show discrimination against interstate commerce. The *Bulkmatic* court emphasized "a state tax impermissibly discriminates against interstate commerce when that state's taxing power increases the tax burden for out-of-state transactions, thereby coercing taxpayers to conduct intrastate rather than interstate business."³¹¹

Applying this standard to the present facts, the Tax Court noted that Rhoades was effectively taxed at a rate of 11% when he purchased his vehicle in Florida and registered it in Indiana.³¹² If he had purchased his vehicle in Indiana, he would, however, only been assessed a 5% tax rate. Accordingly, the Tax Court acknowledged strong financial disincentives to purchase a vehicle out-of-state. It thus ruled that Indiana's use tax directly discriminates against interstate commerce in violation of the Commerce Clause and denied the Department's motion for judgment on the pleadings.³¹³

2. *The Frame Station, Inc. v. Indiana Department of State Revenue*.³¹⁴—The Frame Station provides custom framing services for customers' artworks.³¹⁵ It records two subtotals—one for the frame itself and the other for the service of framing the artwork—on a customer's invoice. It collected sales tax, however, only on the cost of the frame. The Department determined that the framing services were also subject to taxation and submitted a Demand Notice for Payment to Frame Station in the amount of \$9,155.54 for sales and use tax, penalties, and interest for tax years 1993-95. Although Frame Station objected to the assessment, the Department denied the protest. Consequently, Frame Station paid the amount due, but filed a claim for a refund. The Department denied the refund, which led Frame Station to appeal to the Tax Court.³¹⁶

The Tax Court addressed a single issue in this case—whether the custom framing service constitutes a retail unitary transaction subject to sales tax. Pursuant Indiana Code section 6-2.5-4-1(e), a retail unitary transaction is taxable to the extent that income from the transaction represents (1) the price of the property transferred; and (2) any bona fide charges which are made for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other service performed in respect to the property transferred *before* its transfer and which are separately stated on the transferor's records.³¹⁷ Given the express language, the Tax Court directed the heart of its analysis on whether the services were performed *before or after* Frame Station transferred the property

311. *Id.* (quoting *Bulkmatic Transp. Co. v. Ind. Dep't of State Revenue*, 691 N.E.2d 1371, 1377 (Ind. Tax. Ct. 1998)).

312. *Id.* at 1050.

313. *Id.* at 1051.

314. 771 N.E.2d 129 (Ind. Tax Ct. 2001).

315. *Id.* at 130.

316. *Id.*

317. *Id.* at 130-31 (citing IND. CODE § 6-2.5-4-1(e) (1998)).

to its customers.³¹⁸ Frame Station argued that it frames artwork *after* it transfers the frame to the customer. In contrast, the Department stipulated that Frame States frames artwork *before* it transfers the frame to the customer.

To resolve the parties' contradictory viewpoints, the Tax Court recognized that transfer occurs when the buyer agrees to buy the property from a seller, pays the purchase price, and takes ownership and possession of the property.³¹⁹ It then stated that customers pay for their artwork *after* framing is complete upon pick-up. Therefore, the Tax Court ruled that Frame Station's framing services are performed *before* transfer and indeed constitute a taxable retail unitary transaction under Indiana Code section 6-2.5-4-1(e).³²⁰

3. *Chrysler Financial Co., LLC v. Indiana Department of State Revenue.*³²¹—Chrysler finances the sale of motor vehicles from Indiana dealers to consumers.³²² Specifically, a consumer may enter into an installment contract with a dealer to purchase a motor vehicle. The contract covers the price of the vehicle plus sales tax. In exchange for the financing, the dealer acquires a security interest in the vehicle. The dealer then assigns all rights, title, and interest in the contract to Chrysler. As consideration for the assignment, Chrysler pays the dealer the amounts due under the contract. The dealer then remits the sales tax to the Department.³²³

For select assignments issued from 1995 through the second quarter of 1997, some consumers defaulted on the contracts.³²⁴ After failed attempts to collect amounts due, Chrysler wrote the unpaid balances off as uncollectible debts for federal income tax purposes. It also filed a claim for a refund of sales tax in proportion to the sum of the unpaid balances pursuant to the Bad Debt Statute.³²⁵ By multiplying the unpaid principle by the 5% Indiana sales tax then in effect, Chrysler calculated their refund amount to be \$388,429. The Department denied the request, and Chrysler appealed to the Tax Court.

The Tax Court determined that Chrysler's refund claim actually involved three sub-issues: (1) whether dealers may assign their rights to sales tax deductions under the Bad Debt Statute to Chrysler; (2) whether Chrysler qualifies for the sales tax deduction under the Bad Debt Statute as the assignee; and (3) whether a sales tax refund is calculated by multiplying the unpaid principle of the bad debt by the sales tax rate.³²⁶

With regard the first sub-issue, Chrysler argued that common law, which favors assignment, should control because the Bad Debt Statute did not expressly forbid assignment. In contrast, the Department countered that assignment is

318. *Id.* at 131.

319. *Id.* (citing *Webb v. Clark County*, 159 N.E.2d 19, 20-1 (1927)).

320. *Id.*

321. 761 N.E.2d 909 (Ind. Tax Ct. 2002).

322. *Id.* at 910.

323. *Id.* at 911.

324. *Id.*

325. See IND. CODE § 6-2.5-6-9 (2002).

326. *Chrysler*, 761 N.E.2d at 911.

generally prohibited because the Bad Debt Statute does not expressly favor assignees. The Tax Court first noted that the Indiana Bad Debt Statute allowed merchants "to deduct from their gross retail income an amount equal to any receivables on which a merchant has remitted sales tax to the Department but has not collected the sales tax from the purchaser."³²⁷ It then acknowledged that the legislature expressly forbid assignment in many instances such as workers compensation claims and medical malpractice compensation. The Tax Court thus concluded that the absence of an express prohibition against assignment indicated that the legislature did not intend to minimize the common law of assignment. Accordingly, it ultimately agreed with Chrysler's position and ruled that dealers may assign their right to a sales tax deduction to Chrysler under the Bad Debt Statute.³²⁸

Second, the Department argued that even if a dealer may assign its rights to a sales tax deduction, Chrysler does not qualify for such a deduction because it is not a "retail merchant" under the Bad Debt Statute. Chrysler stipulated, however, that an assignee "stands in the shoes" of an assignor at common law. Hence, it contended that it does not matter whether it is an actual retail merchant. The Tax Court again agreed with Chrysler and found that Chrysler was entitled to a deduction as long as either the dealers themselves or Chrysler, as assignee, met the requirements of the Bad Debt Statute. The statute provides that "a retail merchant may deduct from his gross retail income an amount equal to his receivable that: (1) resulted from retail transactions in which the retail merchant did not collect the state gross retail or use tax from the purchaser; (2) resulted from retail transactions on which the retail merchant has previously paid the state gross retail or use tax liability to the department; and (3) were written off as an uncollectible debt for federal tax purposes during the particular reporting period."³²⁹ Here, the Tax Court recognized that the dealers and Chrysler satisfied all criteria. The dealers did not collect the sales tax from the consumers, although they previously paid such tax to the Department. Likewise, Chrysler wrote off the uncollectible debt. As a result, the Tax Court ruled that Chrysler is entitled to a sales tax deduction.³³⁰

Turning to the final issue, the Department asserted that Chrysler improperly calculated the amount of the refund by multiplying the unpaid principle by the sales tax rate. It suggested that the Department was entitled to retain all sales tax, regardless of default, based on Indiana's vehicle, watercraft title, and aircraft registration provision. Thus, the Department implied that the Bad Debt Statute was meaningless with regard to sales tax refunds.³³¹ Chrysler, on the other hand, argued that the calculation was in conformity with the Department's practice established in 1975. Particularly, it cited three Department documents support

327. *Id.* at 912.

328. *Id.* at 913.

329. *Id.* at 914.

330. *Id.* at 915.

331. *Id.* at 916.

Chrysler's calculation method.³³² The Tax Court recognized that the Bad Debt Statute was silent regarding the method by which a refund should be determined. Yet, it presumed that the legislature did not intend to enact meaningless legislation as suggested by the Department. The Tax Court consequently found that Chrysler used a reasonable means to calculate a sales tax refund.³³³

4. *Interstate Warehousing, Inc. v. Indiana Department of State Revenue*.³³⁴— Interstate Warehousing, Inc. ("Interstate") is an Indiana corporation and operates two refrigerated warehouses where food manufacturers and retailers store agricultural goods.³³⁵ Interstate produces the conditioned air used in the warehouses by chilling ammonia to a temperature that converts it from a gas to a liquid. The corporation charges customers based on the temperature required for refrigeration and the quantity of frozen food stored. It purchased electricity to chill the ammonia from Indianapolis Power and Light and PSI Energy. From 1993, to 1996, it paid \$91,566.85 in sales and use taxes for electricity. Interstate filed for a refund under the consumption exemption of Indiana Code section 6-2.5-5-5.1. The Indiana Department of State Revenue ("Department") denied the refund, and Interstate appealed to the Tax Court.

The court reviewed the consumption exemption, which provides that "transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for direct consumption as a material to be consumed in the direct production of other tangible personal property in the person's business."³³⁶ The Tax Court determined that Interstate was involved in the direct production of other tangible personal property in its operation of producing conditioned air.³³⁷ By chilling the ammonia, Interstate created a significant change in the ammonia which, as a result, was capable of cooling air in the storage units. Interstate had created a new and marketable good by this operation and, in the terms of the statute, produced "other tangible personal property." Thus, the Tax Court decided that Interstate was entitled to the consumption exception. In reaching this conclusion, the Tax Court analogized to *Mid-America Energy Resources v. Indiana Department of State Revenue*.³³⁸ There, the taxpayer chilled and treated water for the purpose of conditioning air its customers' buildings. The Mid America court similarly decided that the taxpayer was involved in the direct production of a new and marketable good and therefore was entitled to the consumption exception.

332. *Id.*

333. *Id.*

334. 764 N.E.2d 313 (Ind. Tax Ct. 2002).

335. *Id.* at 314.

336. *Id.* (quoting IND. CODE § 6-2.5-5-5.1(a) (2002)).

337. *Id.* at 316.

338. 681 N.E.2d 259 (Ind. Tax Ct. 1997).

D. Inheritance Tax

In *Estate of Hagerman v. Indiana Department of State Revenue*,³³⁹ Theodore Hagerman ("Hagerman") funded a revocable trust in 1997.³⁴⁰ When he died in 1999, his spouse survived him. On January 31, 2000, his Estate filed an Indiana inheritance tax return and attached a written Schedule of Beneficiaries. The Estate listed "Theodore F. Hagerman 1997 Rev. Trust [Sched. E, Item 6] QTIP Election" adjacent to his wife's name with a value of \$602,398 on the Schedule.³⁴¹

The probate court determined the inheritance tax due on March 6, 2000. In doing so, it allowed the QTIP exemption for the Trust remainder. It also allowed certain deductions for expenses incurred in administering the property subject to inheritance tax. After auditing the inheritance tax return, the Department filed a Petition for Rehearing, Reappraisal and Redetermination of Inheritance and Transfer Tax, asserting that additional tax was due because the Estate did not make a valid QTIP election and improperly deducted certain expenses.³⁴² The probate court agreed with the Department and ordered the inheritance tax to be re-determined consistent with disallowance of the QTIP election.³⁴³ On April 20, 2001, the Estate filed its notice of appeal to the Tax Court on the grounds that the probate court erred in finding that the Estate did not make a valid QTIP election.

In rendering a decision on this issue, the Tax Court first explored the application of the Indiana inheritance tax. When a property interest is passed from a decedent to a surviving spouse, such interest is exempt from inheritance tax under Indiana Code section 6-4.1-3-7.³⁴⁴ Accordingly, no tax is due on the transfer of a life estate from a decedent spouse to a surviving spouse.³⁴⁵ Tax is, however, due on the transfer of a remainder interest, but it may be postponed via a QTIP election until the surviving spouse dies. At the date of death of the surviving spouse, the remaindermen will then pay the Indiana inheritance tax on the value of the entire property.³⁴⁶ A surviving spouse qualifies for this election only if he/she is entitled to all of the income for life and only if he/she has the power to appoint part of the property to a third person.³⁴⁷

The Tax Court then considered the requirements to achieve QTIP treatment. Per the Indiana regulations, a QTIP election must specifically identify the property being elected, be in writing, signed by the authorized person, and

339. 771 N.E.2d 120 (Ind. Tax Ct. 2001).

340. *Id.* at 123.

341. *Id.*

342. *Id.*

343. *Id.*

344. *Id.* at 124.

345. *Id.* (citing IND. CODE § 6-4.1-3-7(b)(2000) and *Inheritance Tax Div. v. Estate of Phelps*, 697 NE. 2d 506, 509 (Ind. Tax Ct. 1998)).

346. *Id.* (citing *Estate of Hibbs v. Ind. Dep't of State Revenue*, 636 N.E.2d 204, 207 (Ind. Tax Ct. 1994)).

347. *Id.* (citing *Estate of Hibbs*, 636 N.E.2d at 207).

attached to the original inheritance tax return.³⁴⁸ Additionally, the Tax Court noted that precedent also required that the election must “manifest an affirmative, unequivocal intent to elect Indiana QTIP treatment.”³⁴⁹

In the instant case, the Tax Court ruled that the estate did not attach a written election to the inheritance tax return that met the regulation requirements. It found an entry on the “Schedule of Beneficiaries” which read “Theodore F. Hagerman 1997 Rev. Trust [Sched. E, Item 6] QTIP Election” followed by the figure \$602,398 to be the only indication that the Estate sought QTIP treatment. Consequently, the Tax Court stated that the Estate failed to show an affirmative intent to make the election, offered no statement of understanding that the election was irrevocable, and included no signature on the “Schedule of Beneficiaries.”³⁵⁰ Thus, it affirmed the probate court’s decision to deny the QTIP election.

The Tax Court also affirmed the probate court’s decision to allow the Estate to take certain deductions on the Indiana inheritance tax return as opposed to the Indiana fiduciary tax return.³⁵¹ Although the Department argued that deductions on both tax returns would violate the regulations,³⁵² the Tax Court found no evidence to suggest that the Estate attempted such a double deduction.³⁵³ The Tax Court observed that the Estate had, in fact, not even filed a fiduciary tax return. Therefore, it ruled that any issue concerning the Estate’s deductions was not ripe for adjudication and beyond the subject matter jurisdiction of the court.³⁵⁴

E. Motor Carrier Fuel Tax:

1. *Waste Management of Indiana v. Indiana Department of State Revenue.*³⁵⁵—Waste Management handles and disposes of hazardous waste in Indiana.³⁵⁶ It operates commercial motor carrier using vehicles with specialized refuse collection equipment, winching and dumping mechanisms, and a common fuel reservoir. Waste Manage paid the Motor Carrier Fuel Tax (MCFT) at a rate of \$0.27 per gallon. During the period of July 27, 1999 to October 18, 1999, it filed five refund claims totaling \$369,599 for MCFT paid in five select quarters pursuant to Indiana Code sections 6-6-4.1-4(d) and 6-6-4.1-5(d). The Department denied the refund and claimed that it did not have the authority to issue refunds for the period between February 13, 1998, when the Tax Court issued its

348. *Id.* (citing IND. ADMIN. CODE tit. 45, r. 4.1-3-5(b)(4) (2001)).

349. *Id.* (quoting *Estate of Hibbs*, 636 N.E.2d at 209).

350. *Id.* at 126.

351. *Id.* at 129.

352. *Id.* at 128. *See also* IND. ADMIN. CODE tit. 45, r. 4.1-3-11 (1992).

353. *Estate of Hagerman*, 771 N.E.2d at 128.

354. *Id.*

355. 764 N.E.2d 318 (Ind. Tax Ct. 2002).

356. *Id.* at 319.

decisions in *Bulkmatic Transport Co. v. Indiana Department of State Revenue*³⁵⁷ and July 1, 1999, when the legislature amended the statute.³⁵⁸ Waste Management appealed this ruling to the Tax Court.

The Tax Court first explained the history and confusion around the MCFT within the state. It noted that the MCFT is a tax on fuel that is consumed by motor vehicles on Indiana highways.³⁵⁹ It then acknowledged that Indiana Code section 6-6-4.1-4(d) provided that the MCFT did not apply to the amount of motor fuel used to propel equipment mounted on a motor vehicle in Indiana prior to 1999. In 1998, this court rendered its *Bulkmatic II* and *III* decisions wherein it held that the "in Indiana" language of the code violated the Commerce Clause. In response, the legislature amended the code to remove this language in 1999. During the interim period between *Bulkmatic II* and *III* and the legislature's amendment, the Department was uncertain whether the *Bulkmatic II* and *III* decisions applied to the entire code section or only to the "in Indiana" language.³⁶⁰ The Tax Court recognized that this period of confusion coincided with the five quarters in dispute in the instant case.

The Tax Court clarified the effect of *Bulkmatic II* and *III* in *Jack Gray Transport, Inc. v. Department of State Revenue*.³⁶¹ In that case, the Tax Court found that the legislature did not intend to abolish the exemption in its entirety, but instead only sought to remove the "in Indiana" limitations. As a result, it instructed the Department to grant the exemption.³⁶²

Waste Management relied on the *Jack Gray* decision for support and argued that it should receive the refund because it met the statutory requirements for the exemption.³⁶³ The Department rebutted this argument by asserting that the *Bulkmatic II* and *III* voided the exemption in its entirety for the five quarters at issue. Citing *Wright v. Steers*,³⁶⁴ it contended that the Tax Court could not declare only certain clauses, such as "in Indiana," void. Instead, it maintained that that the Tax Court could only declare the entire exemption void. In considering the Department's argument, the Tax Court recognized that every code provision is severable, absent an exception.³⁶⁵ It then explained that the Department misread *Wright v. Steers* regarding sentence splitting. It clarified that a court should consider legislative intent, not a cannon against sentence splitting, when determining whether to sever part of a statute. That is, the Tax Court reasoned that a severance is permissible if the legislature would have passed the statute presented without the language in question.

357. 691 N.E.2d 1371 (Ind. Tax Ct. 1998) (*Bulkmatic II*); 715 N.E.2d 26 (Ind. Tax Ct. 1999) (*Bulkmatic III*).

358. *Waste Mgmt. of Ind.*, 764 N.E.2d at 319.

359. *Id.* at 320.

360. *Id.*

361. 744 N.E.2d 1071 (Ind. Tax Ct. 2001).

362. *Waste Mgmt. of Ind.*, 764 N.E.2d at 321.

363. *Id.*

364. 179 N.E.2d 721 (Ind. 1962).

365. *Waste Mgmt. of Ind.*, 764 N.E.2d at 321.

Next, the Tax Court struck the Department's affirmative defense that it merely sought to administer the exemption in a non-discriminatory manner by denying all refunds for the five quarters at issue. It stated "the question for the Department after *Jack Gray* is not whether to grant the [e]xemption; the [l]egislature intended for the [e]xemption to be granted. The question for the Department after *Jack Gray* simply is who qualifies for the [e]xemption."³⁶⁶ It further found that the Department had no option but to obey the Legislature and grant the exemption to those who qualified for it after *Jack Gray* and until the 1999 amendment. Thus, the Tax Court ruled that the Department should grant Waste Management's MCFT refund claim for the five quarters with interest.³⁶⁷

2. *Anderson v. Indiana Department of State Revenue*.³⁶⁸—Max Anderson, d.b.a. M.X. Express ("M.X. Express"), is an interstate carrier based in Indiana. M.X. Express paid the Motor Carrier Fuel Tax (MCFT) from January 1997 through June 1999 to the Department. In November 1999, however, M.X. Express submitted a claim to the Department for an MCFT refund of \$1,538.39 paid by the company on the Indiana Toll Road. M.X. Express also asserted that the MCFT violated the Commerce Clause. Later that month, the Department denied M.X. Express' claim. The company subsequently appealed to the Tax Court and requested that a class of carriers be certified for which M.X. Express would be the named representative. M.X. Express later moved for summary judgment on the issue of whether the MCFT violates the Commerce Clause.³⁶⁹

Regarding the class certification, the Tax Court applied Indiana Trial Rule 23(A), which states four necessary criteria: "(1) the potential class members must be so numerous that joinder of all members is impracticable; (2) questions of law or fact must be common to the class; (3) the claims or defenses of the representative party must be typical of the claims or defenses of the class; and (4) the representative party must be able to fairly and adequately protect the interests of the class."³⁷⁰ The Tax Court determined that counsel for M.X. Express had not provided "a sufficient foundation of fact showing M.X. Express's willingness and ability to serve as the named representative."³⁷¹ Consequently, it denied the class certification request.

On the issue of state taxation and the Commerce Clause, the Tax Court affirmed that the U.S. Supreme Court has not declared interstate commerce exempt from state taxation. Indeed, it acknowledged that "a state tax will withstand a Commerce Clause challenge if it (1) is applied to an activity with a substantial nexus with the taxing state, (2) is fairly apportioned, (3) does not discriminate against interstate commerce, and (4) is "fairly related" to the services provided by the State."³⁷² M.X. Express argued that the MCFT was not

366. *Id.* at 322.

367. *Id.* at 323.

368. 758 N.E.2d 597 (Ind. Tax Ct. 2002).

369. *Id.* at 598-600.

370. *Id.* at 600.

371. *Id.*

372. *Id.* at 601 (citing *Roehl Transp., Inc. v. Ind. Dep't of State Revenue*, 653 N.E.2d 539, 545

fairly related to services provided by the state. However, the Tax Court cited the U.S. Supreme Court's opinion in *Oklahoma Tax Commission v. Jefferson Lines, Inc.*,³⁷³ which elaborated on the fair relation prong of the test. The Jefferson Lines explained that the relation is satisfied if the taxpayer has a substantial nexus with the state and the tax is reasonably related to the contact. The parties did not dispute that M.X. Express had a substantial nexus, so the Tax Court was left to decide only the reasonableness of the tax. Here, the Tax Court agreed that the tax was measured properly. It deemed that the tax was proportionate to the amount of fuel M.X. Express consumed on Indiana highways, as measured by the number of miles traveled. Accordingly, the Tax Court resolved that the MCFT was not a violation of the Commerce Clause and granted summary judgment for the Department.³⁷⁴

*F. Hospital Care for the Indigent Tax:
Griffin v. Department of Local Government Finance*³⁷⁵

In *Griffin I*,³⁷⁶ on April 3, 2002, the Tax Court held that the Hospital Care for the Indigent Tax ("HCIT") violated Article 10, Section 1 of the Indiana Constitution.³⁷⁷ It also ordered the nature and extent of Griffin's \$180.29 refund for tax years 1996-1998 to be considered in a separate proceeding. Consequently, Griffin filed a motion to grant his refund and enjoin collection of the HCIT for the present tax year on May 6, 2002.³⁷⁸ The Department of Local Government Finance ("Local Department") opposed this motion on June 17, 2002 and also requested the Tax Court to stay its *Griffin I* order concerning the constitutionality of the HCIT.³⁷⁹ Even beyond this single order, the Local Department also requested the Tax Court to stay the entire *Griffin I* decision, permit it time to appeal the decision to the Indiana Supreme Court, and give the legislature the opportunity to correct the HCIT.

The Tax Court framed the issue in the instant case as whether *Griffin I* should be given prospective effect only or whether retroactive relief should be granted. In rendering a decision, the Tax Court noted that retroactive relief might be denied in a case of first impression such as *Griffin I* where substantial inequities would result.³⁸⁰ To this end, the Tax Court considered testimony offered by both parties regarding the immediate harm of an unconstitutional HCIT versus the potential harm to Indiana's 750,000 Medicaid recipients if HCIT collection were enjoined.

(Ind. Tax Ct. 1995)).

373. 514 U.S. 175 (1995).

374. *Anderson*, 758 N.E.2d at 600-03.

375. 770 N.E.2d 957 (Ind. Tax Ct. 2002) (*Griffin II*).

376. 765 N.E.2d 716 (Ind. Tax Ct. 2002).

377. *See supra* notes 173-83 and accompanying text.

378. *Griffin II*, 770 N.E.2d at 958.

379. *Id.*

380. *Id.* at 959.

Griffin offered that HCIT revenue constituted only 1.25% of the State's four billion Medicaid budget.³⁸¹ Given this small percentage, Griffin argued that any effect of an HCIT refund on Medicaid would not outweigh the harm to taxpayers who were assessed an unconstitutional tax. In addition, he asserted that HCIT tax refunds would not jeopardize emergency medical care for indigents because the \$2 million of HCIT revenue spent for such care is a relatively small amount.³⁸² Moreover, while Griffin admitted that Family and Social Service Administration ("FSSA") could lose millions of federal matching funds as a result of a HCIT refund, he nonetheless offered that FSSA could employ other measures such as trimming its budget and cutting optional programs to combat the loss.³⁸³ Finally, he submitted evidence to show that over 160,000 persons have requested HCIT refunds to Lake County and that the County would not have ample funds to meet this demand.³⁸⁴

In contrast to Griffin's evidence, the Department stipulated that the State already factored HCIT revenue into its four billion Medicaid budget for fiscal year 2003 and that the State would lose \$126 million in Medicaid funds if the HCIT were not collected.³⁸⁵ Furthermore, the Department offered that FSSA in particular operated under a \$250 million budget shortfall in fiscal year 2001. It then stipulated that the agency would lose \$57 million in matching revenue if the HCIT were not collected.³⁸⁶

Taking into account the gloomy public financial state and the 160,000 present refund claims, the Tax Court denied Griffin's refund request and stayed *Griffin I* until January 1, 2003.³⁸⁷ It reasoned that the State should be afforded a reasonable period of time to fix the HCIT rate. In practical terms, this decision permitted the State to collect HCIT through the November 2002 installment of property taxes, but forbid assessment or collection after January 1, 2003.

381. *Id.* at 958.

382. *Id.* at 958-59.

383. *Id.* at 959.

384. *Id.*

385. *Id.*

386. *Id.*

387. *Id.* at 960.

