

# RECENT DEVELOPMENTS IN INDIANA TAXATION

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## INTRODUCTION

The 113th General Assembly, the Governor of Indiana, the Indiana Supreme Court, and the Indiana Tax Court contributed changes to the Indiana tax laws in 2004. This Article highlights the major developments that occurred throughout the year.<sup>1</sup> Whenever the term “General Assembly” is used in this Article, such term shall refer only to the Indiana General Assembly. Whenever the term “State Board” is used in this Article, such term shall refer only to the Indiana State Board of Tax Commissioners. Whenever the term “Indiana Board” is used in this Article, such term shall refer only to the Indiana Board of Tax Review. Whenever the term “Department” is used in this Article, such term shall refer only to the Indiana Department of State Revenue. Whenever the term “Tax Court” is used in this Article, such term shall refer only to the Indiana Tax Court.

## I. INDIANA GENERAL ASSEMBLY LEGISLATION

The 113th General Assembly passed several pieces of legislation affecting various areas of state and local taxation. The most significant changes were in the area of property taxes. This section highlights the majority of the General Assembly’s changes from 2004 in the areas of corporate tax, sales tax, inheritance tax, and property tax. There are also several other changes noted in the miscellaneous section.

### *A. Corporate Tax*

The General Assembly reduced the minimum size required for a building to be eligible for the Industrial Recovery Tax Credit from 300,000 to 250,000 square feet.<sup>2</sup> A taxpayer is entitled to a credit against the adjusted gross income tax, insurance premiums tax, or financial institutions tax liability for a “qualified investment” on an industrial recovery site. The building or buildings comprising the industrial recovery site must: (1) contain at least 250,000 interior square feet; (2) be at least twenty years old; and (3) have been at least 75% vacant for at least

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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.accessindiana.org>.

2. IND. CODE § 6-3.1-11-15 (2004).

two years.<sup>3</sup> A qualified investment may consist of expenditures by the taxpayer for rehabilitation (including remodeling, repair, or betterment of real property in any manner or any enlargement or extension of real property, or the installation, repair, or retrofitting of personal property) located within an industrial recovery site under a plan approved by the Enterprise Zone Board.<sup>4</sup> Depending upon designation of industrial recovery sites by the Enterprise Zone Board, this change could potentially reduce revenue from the Adjusted Gross Income (“AGI”) Tax, Insurance Premiums Tax, and Financial Institutions Tax.<sup>5</sup>

The General Assembly enacted legislation that will allow the Randolph County Council to use revenue generated from the county economic development income tax, imposed at a rate of 0.25%, to finance the construction, acquisition, renovation, and equipping of the county courthouse.<sup>6</sup> This bill changed the legal uses of revenue from the tax, but did not increase the tax rate.<sup>7</sup>

The General Assembly also made changes to simplify the calculation of Indiana net operating loss.<sup>8</sup> The calculation starts with the taxpayer’s federal net operating loss and then the taxpayer must add back state income taxes, property taxes, and charitable contributions, and then, deduct interest on U.S. Government obligations, and finally, apply the apportionment percentage to determine the Indiana portion of the net operating loss.<sup>9</sup>

The General Assembly also made the income tax credit for research expenses permanent by deleting the 2013 expiration date.<sup>10</sup>

The General Assembly also authorized the award of refundable “Economic Development for a Growing Economy” (“EDGE”) credits to a trust, limited liability company, or limited liability partnership owned wholly or in part by an

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3. *Id.* §§ 6-3.1-11-1, -14.

4. LEGISLATIVE SERVS. AGENCY, FISCAL IMPACT STATEMENT HB 1024 (2004) [hereinafter FISCAL IMPACT STATEMENT 1024], available at <http://www.in.gov/legislative/bills/2004/PDF/FISCAL/HB1024.005.pdf>.

5. *See id.* at 1.

6. IND. CODE § 6-3.5-7-22.5.

7. LEGISLATIVE SERVS. AGENCY, FISCAL IMPACT STATEMENT HB 1055, at 5 (2005) [hereinafter FISCAL IMPACT STATEMENT 1055], available at <http://www.in.gov/legislative/bills/2004/PDF/FISCAL/HB1055.009.pdf> (“[Public Law] 291-2001 allowed the Randolph County Council to impose an additional 0.25% CEDIT rate in order to finance, construct, acquire, renovate, and equip the county courthouse, the former county hospital (for additional office space), and other additional projects specified under current law. Following the passage of [Public Law] 291-2001, the Randolph County Council raised their CEDIT rate from 0.25% to 0.5%. [Public Law] 224-2003 removed the provision that allowed Randolph County to use additional CEDIT revenue generated by the rate increase allowed under P.L. 291-2001 for courthouse repairs.”).

8. IND. CODE §§ 6-3-1-3.5; 6-3-2-2.5, -2.6.

9. *See* LEGISLATIVE SERVS. AGENCY, FISCAL IMPACT STATEMENT HB 1365 at 7 (2004) [hereinafter FISCAL IMPACT STATEMENT 1365], available at <http://www.in.gov/legislative/bills/2004/PDF/FISCAL/HB1365.010.pdf>.

10. IND. CODE § 6-3.1-4-6.

electric cooperative that is incorporated in Indiana as a nonprofit corporation.<sup>11</sup> The conditions for the refundable EDGE credit include a finding by the EDGE Board that the average wage to be paid by the pass through entity will be at least twice the average wage paid within the county in which the pass through entity's project will be located.<sup>12</sup>

The General Assembly also extended the Hoosier Business Investment Tax Credit for two years through tax year 2007.<sup>13</sup>

In addition, the General Assembly established three new tax incentives for businesses that locate new operations or expand existing operations within the boundaries of: (1) a military base that is scheduled for closing or closed; (2) a Military Base Reuse Area; (3) an Economic Development Area established in connection with a closed military base; or, (4) a Military Base Recovery Site.<sup>14</sup> As of March 10, 2004, there were three known areas in Indiana that were both Enterprise Zones and Military Base Reuse Areas—Grissom Air Force Base in Miami County, Fort Benjamin Harrison in Marion County, and the Indiana Army Ammunition Plant in Clark County.<sup>15</sup>

The tax incentives provided by the General Assembly to the qualifying businesses were as follows: (1) A sales tax exemption on the sales of utility services or commodities made to the qualifying business within five years of the start of the new operations;<sup>16</sup> (2) an adjusted gross income tax rate of 5% (versus 8.5%) for the year of relocation and the following four taxable years;<sup>17</sup> and, (3) a military base investment cost credit against state tax liability for a taxpayer who purchases an ownership interest in or otherwise invests in a qualifying business.<sup>18</sup> These incentives are not available to a business that does not have operations in a qualified area and that substantially reduces or ceases its operations somewhere

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11. *Id.* §§ 6-3.1-13-7, -21.

12. *Id.*

13. *Id.* § 6-3.1-26-26. “[T]he EDGE Board is authorized to award a taxpayer (an individual, corporation, partnership, or other entity with a tax liability) a nonrefundable tax credit for expenditures on qualified investment that the Board determines will foster job creation and higher wages in Indiana. The tax credit is equal to 30% of the qualified investment. A taxpayer may claim the credit against a taxpayer’s Adjusted Gross Income (AGI) Tax, Insurance Premiums Tax, or Financial Institutions Tax liability. If a pass through entity does not have a tax liability, the credit may be claimed by shareholders or partners in proportion to their distributive income from the pass through entity. The tax credit may only be awarded for qualified investment made during tax year 2004 or 2005. The credit is nonrefundable and may not be carried back. Unused tax credits may be carried over for up to nine years after the year in which the investment was made. The credit amount that the taxpayer may *claim* in the taxable year in which the investment is made is equal to the lesser of: (1) 30% of the qualified investment or (2) the taxpayer’s state tax liability growth.” FISCAL IMPACT STATEMENT 1365, *supra* note 9, at 5.

14. *See* FISCAL IMPACT STATEMENT 1365, *supra* note 9, at 8-9.

15. *See id.* at 9.

16. IND. CODE § 6-2.5-4-5(c)(4).

17. *Id.* §§ 6-3-2-1, -1.5.

18. *Id.* § 6-3.1-11.6-4.

else in Indiana in order to relocate that operation within the qualified area.<sup>19</sup>

The General Assembly also expanded the number of taxpayers that could claim the Community Revitalization Enhancement District ("CRED") Tax Credit.<sup>20</sup> If a taxpayer is otherwise entitled to the CRED Tax Credit for a taxable year then the taxpayer may claim the credit whether or not the incremental income or sales tax revenue has been deposited in an incremental tax financing fund or allocated to the District.<sup>21</sup> Also in relation to the CRED Credit, the General Assembly provided new conditions under which a taxpayer that reduces operations somewhere in Indiana to relocate to a District can remain eligible for the credit.<sup>22</sup> These new conditions are as follows.

The taxpayer relocates all or part of its non-CRED operations [for any of the following reasons] or . . . the taxpayer has not terminated or reduced the pension or health insurance obligations payable to employees or former employees of the non-CRED operation with their consent:

(A) The lease on property necessary for the non-CRED operation has been involuntarily lost through no fault of the taxpayer.

(B) The space available at the location of the non-CRED operation cannot accommodate planned expansion needed by the taxpayer.

(C) The building for the non-CRED operation has been certified as uninhabitable by a state or local building authority.

(D) The building for the non-CRED operation has been totally destroyed through no fault of the taxpayer.

(E) The renovation and construction costs at the location of the non-CRED operation are more than 1.5 times the costs of purchase, renovation, and construction of a facility in the CRED, as certified by three independent estimates.

(F) The taxpayer had existing operations in the district, and the nondistrict operations relocated to the district are an expansion of the taxpayer's operations in the district.<sup>23</sup>

Further, the General Assembly established the Interim Study Committee on Corporate Taxation to study the establishment and utilization of passive investment corporations by companies doing business in Indiana.<sup>24</sup>

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19. *Id.* §§ 6-3-2-1, -1.5; 6-3.1-11.6-13.

20. *Id.* § 6-3.1-19-3.

21. *Id.*

22. *Id.* Previously any taxpayer substantially reducing operations to relocate was per se ineligible for the credit unless "(1) the taxpayer had existing operations in the CRED; and (2) the operations relocated to the CRED are an expansion of the taxpayer's operations in the CRED." See FISCAL IMPACT STATEMENT 1365, *supra* note 9, at 10.

23. FISCAL IMPACT STATEMENT 1365, *supra* note 9, at 11.

24. *Id.* at 3. The Committee's final report is available at <http://www.in.gov/legislative/>

### B. Sales Tax

The General Assembly also provided that in a sale of bundled telecommunication services, which include both taxable and nontaxable services, the part of the services not ordinarily subject to the state sales tax is taxable unless the provider can reasonably identify the nontaxable part based on the provider's regularly kept business records.<sup>25</sup> Charges for phone calls made within the state are subject to Indiana's sales tax, while charges for long distance interstate calls are not.<sup>26</sup> Prior to this enrolled act, if the taxable and nontaxable service charges were not separately stated on the customer's bill, the entire bundled service charges were subject to the sales tax.<sup>27</sup> This legislation allows phone companies to state the bundled service charge on the bill and only remit the sales tax on the portion of the package that would be taxable if that portion of the service had been separately stated on the bill.<sup>28</sup>

Also, the General Assembly made two changes to the sales and use tax credits and exemptions associated with the sale of motor vehicles, trailers, watercraft, and aircraft. The first change allows credit against Indiana's sales and use tax for sales and use tax paid to another state.<sup>29</sup> The transactions most affected were purchases of a vehicle by Indiana residents from an out of state dealer. For example, if an Indiana resident were to buy an automobile in Virginia and pay a 4% sales tax in Virginia and immediately bring the vehicle back to Indiana for titling, then this person would receive a credit of 4% against Indiana's use tax of 6%, and therefore, would be liable for 2% in use tax to Indiana.<sup>30</sup> Previously, Indiana did not allow a credit for sales or use tax paid to another state in a transaction which involved the sale of a motor vehicle, trailer, watercraft, or aircraft.

In addition, the General Assembly repealed a provision that previously allowed for an exemption from Indiana's sales tax with respect to a purchase of a motor vehicle, trailer, watercraft, or aircraft which was immediately transported out of Indiana to be titled in another state.<sup>31</sup>

The General Assembly also repealed the sales tax with respect to complimentary hotel rooms, effective April 1, 2004.<sup>32</sup> The Legislative Services Agency estimated that repealing this provision would reduce state sales tax

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interim/committee/icct.html (last visited Apr. 20, 2005).

25. IND. CODE § 6-2.5-4-6(d).

26. LEGISLATIVE SERVS. AGENCY, FISCAL IMPACT STATEMENT HB 1114, at 1 [hereinafter FISCAL IMPACT STATEMENT 1114] (2004), available at <http://www.in.gov/legislative/bills/2004/PDF/FISCAL/HB1114.006.pdf>.

27. *See id.*

28. *See id.*

29. IND. CODE § 6-2.5-3-5 (part (b) was deleted).

30. *See* FISCAL IMPACT STATEMENT 1365, *supra* note 9, at 5 for another example.

31. IND. CODE § 6-2.5-5-15 (2003) (repealed 2004).

32. *Id.* §§ 6-2.5-4-4.5, -6-15 (2003) (repealed 2004).

revenues by about \$2.1 million each year.<sup>33</sup>

Further, the General Assembly passed legislation specifying that satellite broadcasts of radio or television signals that terminate in Indiana are subject to Indiana's sales tax.<sup>34</sup>

With respect to sales tax deductions, the General Assembly provided that deductions for bad debt are only assignable if the retail merchant that paid the sales tax liability assigns the right to the deduction in writing.<sup>35</sup>

The General Assembly also expanded the standards for determining whether or not an out-of-state business entity must register as a retail merchant in Indiana and collect Indiana's sales and use tax.<sup>36</sup> In conjunction with this provision the General Assembly expanded the definition of the term "retail merchant engaged in business in Indiana" in the use tax statute to include entities engaging in activities such as installing, repairing, assembling, setting up, accepting returns of, billing, or invoicing the "sales of tangible personal property or services to be used, stored, or consumed in Indiana."<sup>37</sup>

The General Assembly passed legislation providing that installation charges which are separately stated on a retail merchant's invoice are not subject to the sales tax.<sup>38</sup> The General Assembly also specified that "delivery charges" included, but were not limited to, charges for transportation, shipping, postage, handling, crating, and packing.<sup>39</sup> In relation to delivery charges, the General Assembly specified that for purposes of a retail merchant making a retail transaction, "a transfer is considered to have occurred after delivery of the property to the purchaser."<sup>40</sup>

### C. Inheritance Tax

The General Assembly enacted legislation stating that, for purposes of the Inheritance Tax, a stepchild of the transferor is a Class A transferee.<sup>41</sup> Prior to this legislation, Class A transferees under the Inheritance Tax included both (1) legally adopted children and (2) children who have been part of a *loco parentis* relationship for at least ten years where the relationship began before the child's

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33. See FISCAL IMPACT STATEMENT 1365, *supra* note 9, at 6.

34. IND. CODE § 6-2.5-4-11 (2004). Note that this language is a response to the Tax Court's decision in *Grand Victoria Casino & Resort, LP v. Indiana Department of State Revenue*, 789 N.E.2d 1041, 1044-1045 (Ind. Tax Ct. 2003), where the Tax Court held that Grand Victoria was entitled to a refund of sales tax paid on the purchase of satellite services that originated in Kentucky and terminated in Indiana.

35. IND. CODE § 6-2.5-6-9.

36. *Id.* § 6-2.5-8-10.

37. *Id.* § 6-2.5-3-1 (the activities listed were added to the activities otherwise listed).

38. *Id.* § 6-2.5-1-5(b)(6).

39. *Id.* § 6-2.5-1-5(a).

40. *Id.* § 6-2.5-4-1(e).

41. *Id.* § 6-4.1-1-3.

fifteenth birthday.<sup>42</sup> Therefore, the General Assembly expanded the definition of Class A transferee to include all stepchildren.<sup>43</sup> Previously, the individuals affected were classified as Class C transferees rather than Class A transferees for purposes of the standard Inheritance Tax exemption.<sup>44</sup> The amount of the exemption for Class A transferees is \$100,000 while the amount of the exemption for Class C transferees is \$100.<sup>45</sup>

Also, the General Assembly passed legislation providing that for inheritance tax purposes an adopted child is not considered a Class A transferee, unless the child was adopted before the child was totally emancipated.<sup>46</sup>

#### *D. Property Tax*

The General Assembly made changes to the property tax system to better accommodate the needs of the taxpayers. These changes included the option for the Department of Local Government Finance to allow taxpayers to pay in installments and also options for the Department to waive penalties.<sup>47</sup> The General Assembly also made changes to the taxpayer's notice and process for appealing assessments<sup>48</sup> including allowing the taxpayer to receive their refund automatically by eliminating the requirement for a taxpayer to file a claim for refund after a successful assessment appeal.<sup>49</sup>

Other changes made by the General Assembly to accommodate taxpayers include allowing counties to issue provisional tax statements if the actual bills are not going to be delivered in a timely manner. The General Assembly also passed legislation permitting an individual who was eligible for, but who did not apply for the homestead credit (and/or certain deductions) prior to October 1, 2003, to obtain such a credit if the individual applied for the credit before December 15, 2003.<sup>50</sup> The General Assembly also increased the cap on the income tax deduction for property taxes paid on a principal place of residence for homeowners who pay property taxes imposed for the March 1, 2002, or January 15, 2003 assessment dates in 2004.<sup>51</sup> The General Assembly also required the Commission on State Tax and Financing to study elimination of property taxes

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42. LEGISLATIVE SERVS. AGENCY, FISCAL IMPACT STATEMENT HB 1154, at 1 (2004) [hereinafter FISCAL IMPACT STATEMENT 1154], available at <http://www.in.gov/legislative/bills/2004/PDF/FISCAL/HB1154.007.pdf>.

43. *See id.*

44. *See id.* at 2.

45. *See id.*

46. IND. CODE § 6-4.1-1-3.

47. *Id.* §§ 6-1.1-21-5, -22-9, -37-9, -37-10, -37-10.5.

48. *Id.* §§ 6.1.1-4-38, -15-1, -15-2.1, -15-3, -15-4, -15-10; Act of Dec. 12, 2003, § 79, 2004 Ind. Acts 1.

49. *Id.* § 6-1.1-15-11.

50. Act of Dec. 12, 2003, § 68, 2004 Ind. Acts 1.

51. IND. CODE § 6-3-1-3.5(f).

and alternative sources of revenue.<sup>52</sup>

The General Assembly authorized the Department of Local Government Finance to take over the 2003 general reassessment process in a county if the county's equalization study was not submitted to the Department before October 20, 2003 or if the Department determines that the county's reassessment is likely to be inaccurate.<sup>53</sup>

The General Assembly passed legislation requiring the property tax liability payable in 2006 and thereafter on residential rental properties that have more than four rental units to be computed using the lowest assessed valuation determined by applying each of the following appraisal techniques: (1) cost approach; (2) sales comparison approach; and, (3) income capitalization approach.<sup>54</sup> This legislation also provided that the gross rent multiplier method is the preferred method for valuing rental properties that have fewer than five rental units and mobile homes.<sup>55</sup>

The General Assembly removed the prohibition against beer, wine, and liquor wholesalers receiving property tax abatements for the redevelopment or rehabilitation of real property in areas designated as economic revitalization areas.<sup>56</sup>

The General Assembly added sanitary sewers as an improvement that may be financed by a municipality by use of the Barrett Law.<sup>57</sup> For purposes of the Barrett Law applicable to municipalities, the General Assembly, through this legislation, allowed a municipal fiscal officer and municipal works board to establish procedures allowing the municipality to defer collection of a special assessment that is in default by preserving the assessment as a lien upon the property subject to the assessment.<sup>58</sup> This same legislation also required the collection of the preserved lien: (1) when ownership of the property is transferred; and, (2) before the final bond maturity date.<sup>59</sup> The General Assembly also provided that deferred assessments are treated similarly to delinquent property taxes.<sup>60</sup> Prior to this change, an assessment in default must have been collected through: (1) payment in full; (2) foreclosure on the property; or, (3) a conveyance in satisfaction of the assessment.

The General Assembly passed legislation that approved the form of the question to appear on the ballot for the voters to ratify a constitutional amendment concerning property taxes. The form of the question was as follows:

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52. Act of Dec. 12, 2003, § 82, 2004 Ind. Acts 1. The Commission on State Tax and Financing Policy's final report is available at <http://www.in.gov/legislative/interim/committee/stfp.html>.

53. IND. CODE § 6-1.1-4-35, -36.

54. *Id.* § 6-1.1-4-39.

55. *Id.*

56. *Id.* § 6-1.1-12.1-3(e)(12)(c).

57. *Id.* § 36-9-37-11.

58. *Id.* § 36-9-37-19 to -22.5.

59. *Id.* § 36-9-37-22.5.

60. *Id.* § 36-7-19-25.

**PUBLIC QUESTION #1**

Shall Article 10, Section 1 of the Constitution of the State of Indiana be amended to allow the General Assembly to make certain property exempt from property taxes, including (1) a homeowner's primary residence; (2) personal property used to produce income; and (3) inventory?<sup>61</sup>

This constitutional amendment was ratified by the voters on November 2, 2004, which completed the constitutional amendment process.<sup>62</sup> The impact of this amendment will ultimately depend upon future action of the General Assembly.

The General Assembly also passed legislation requiring a closing agent, in a residential real property financing or refinancing, to provide to each customer information on property tax deductions and the homestead credit on a form prescribed by the Department of Local Government Finance.<sup>63</sup> The legislation imposes a \$25 penalty on a closing agent who does not comply with this provision.<sup>64</sup> The legislation also provides that a closing agent is not liable for any other damages which may be claimed by a customer because of the closing agent's failure to provide the appropriate document to the customer.<sup>65</sup>

In addition, the General Assembly passed a bill requiring the Department of Local Government Financing to set up a pilot program for 2005, 2006, and 2007, which program designates five counties<sup>66</sup> which are to include, with the county's property tax statement, the following information:

- (1) A breakdown showing the total property tax and special assessment liability and the amount of the taxpayer's liability that will be distributed to each taxing unit in the county.
- (2) A comparison showing any change in the assessed valuation for the property as compared to the previous year.
- (3) A comparison showing any change in the property tax and special assessment liability for the property as compared to the previous year. The information required under this subdivision must identify:
  - (A) the amount of the taxpayer's liability distributable to each taxing unit in which the property is located in the current year and in the previous year; and
  - (B) the percentage change, if any, in the amount of the taxpayer's liability distributable to each taxing unit in which the property is located from the previous year to the current year.
- (4) An explanation of the following:

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61. Act of Mar. 19, 2004, 2004 Ind. Acts 11.

62. IND. CONST. art. 10, § 1 (see the history line for the ratification date).

63. IND. CODE § 6-1.1-12-43 (2004) (along with conforming language in IND. CODE §§ 28-1-5-6, 28-5-1-26, 28-6.1-6-25, 28-7-1-38, 34-30-2-16.6).

64. *Id.*

65. *Id.*

66. *Id.* § 6-1.1-20-8(d).

- (A) The homestead credit and all property tax deductions.
  - (B) The procedure and deadline for filing for the homestead credit and each deduction.
  - (C) The procedure that a taxpayer must follow to:
    - (i) appeal a current assessment; or
    - (ii) petition for the correction of an error related to the taxpayer's property tax and special assessment liability.
  - (D) The forms that must be filed for an appeal or petition described in clause (C). The department of local government finance shall provide the explanation required by this subdivision to each county treasurer.
- (5) A checklist that shows:
- (A) the homestead credit and all property tax deductions; and
  - (B) whether the homestead credit and each property tax deduction applies in the current statement for the property transmitted under subsection (a)(1) or (a)(2).<sup>67</sup>

Every county is to provide this information beginning in 2008. The legislation also permits each county to voluntarily provide the additional information about property taxes with property tax statements in 2004.<sup>68</sup> Also, the legislation provides for state reimbursement of expenditures made by a county to provide the additional information, not to exceed a statewide total of \$50,000.<sup>69</sup>

In addition, this legislation establishes the Property Tax Replacement Study Commission, consisting of twenty-four members.<sup>70</sup> This Commission is charged with studying the affect of eliminating all or part of the current property tax.<sup>71</sup> The Commission is required to submit its work to the Legislative Council by November 30, 2004.<sup>72</sup> The legislation provides that the Commission will expire on January 1, 2005.<sup>73</sup>

The General Assembly also authorized the counties of Allen, Grant, Huntington, Madison, and Wells<sup>74</sup> to provide property tax abatements for logistical distribution equipment and information technology equipment, installed after June 30, 2004 and before January 1, 2006, in economic revitalization

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67. *Id.* § 6-1.1-20-8(e) (Also note that "(a)(1) or (a)(2)" refers to IND. CODE § 6-1.1-20-8(a), which requires the county treasurer to transmit the property tax statement either to the liable homeowner or to the mortgage company keeping an escrow account for the homeowner.).

68. *Id.* § 6-1.1-20-8(d).

69. *Id.* § 6-1.1-20-8(g).

70. Act of Mar. 19, 2004, § 39, 2004 Ind. Acts 64.

71. *Id.*

72. *Id.* The Commission published a report available at <http://www.in.gov/legislative/interim/committee/ptrc.html> (last visited Apr. 20, 2005).

73. *Id.*

74. LEGISLATIVE SERVS. AGENCY, FISCAL IMPACT STATEMENT HB 1005, at 5-6 (2004) [hereinafter FISCAL IMPACT STATEMENT 1005], available at <http://www.in.gov/legislative/bills/2004/PDF/FISCAL/HB1005.008.pdf>.

areas.<sup>75</sup> These abatements are available for up to ten years.<sup>76</sup> The equipment eligible for the abatements as logistical distribution equipment includes racks, scanners, separators, conveyors, forklifts, moving equipment, packaging equipment, sorting and picking equipment, and software.<sup>77</sup> The equipment eligible for the abatements as information technology equipment includes equipment and software used in the fields of information processing, office automation, telecommunication facilities and networks, informatics, network administration, software development, and fiber optics.<sup>78</sup> Prior to the passage of this legislation, property tax abatement was allowed for new manufacturing equipment and new research and development equipment.

Further, the General Assembly also authorized local governments to impose a property tax abatement fee.<sup>79</sup> The General Assembly specified that the fee is to be calculated by: (1) determining the additional property taxes the taxpayer would have paid if not for the abatement; and then, (2) multiplying that additional amount by a percentage as determined by the designating body.<sup>80</sup> The statutory language specifies that the fee could not exceed 15% of the unabated property tax liability or \$100,000.<sup>81</sup> The statute also gives the designating body the right to revoke the abatement if the taxpayer does not pay the fee.<sup>82</sup>

In addition, the General Assembly passed legislation disallowing the value of federal income tax credits awarded under Section 42 of the Internal Revenue Code to be considered in determining the assessed value of low-income housing tax credit property.<sup>83</sup>

Also, the General Assembly passed legislation authorizing a religious institution to “retroactively file for a property tax exemption on real property for property taxes payable in 2001 and 2002 if the organization[:] (1) acquired the property in 1999; (2) the property was exempt from property tax in 2000; and, (3) the organization failed to file the required exemption application for 2001 and 2002 taxes.”<sup>84</sup> A religious institution could also file retroactively if the institution: “(1) acquired the property in 2000 under contract with another religious institution; (2) the property was exempt from property tax in 2000; and (3) the organization failed to file the required exemption application for 2001, 2002, 2003, and 2004 taxes.”<sup>85</sup> If, after review by the county property tax

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75. IND. CODE § 6-1.1-12.1-1(13) (2004).

76. See FISCAL IMPACT STATEMENT 1005, *supra* note 74, at 5.

77. See *id.*

78. See *id.* at 6.

79. IND. CODE § 6-1.1-12.1-14.

80. *Id.* (Designating body is defined in section 6-1.1-12.1-1(7) as “(A) For a county that does not contain a consolidated city, the fiscal body of the county, city, or town. (B) For a county containing a consolidated city, the metropolitan development commission.”).

81. *Id.*

82. *Id.*

83. *Id.* 6-1.1-12.1-14.

84. See FISCAL IMPACT STATEMENT 1055, *supra* note 7, at 3-4.

85. See *id.*

assessment board of appeals and the Department of Local Government Finance the application is approved, the religious institution may file a claim with the county auditor for a refund of the applicable taxes.<sup>86</sup>

The General Assembly also authorized amended business property tax filings for a taxpayer located in Marion County and meeting the conditions of the statute.<sup>87</sup> A taxpayer is authorized to amend the taxpayer's return for 2002 to claim an industrial waste control facility exemption, an industrial air purification exemption, and an interstate commerce exemption for finished goods inventory to be shipped out of state.<sup>88</sup>

The General Assembly also authorized a youth baseball and softball organization for an additional period in which to file an application for a property tax exemption.<sup>89</sup>

Further, the General Assembly passed legislation increasing certain property tax deductions as follows: (1) elderly,<sup>90</sup> disabled,<sup>91</sup> and disabled veteran (not service related)<sup>92</sup> deductions were raised from \$9000 to \$12,480; (2) service related disabled veteran<sup>93</sup> from \$12,000 to \$24,960; and, (3) widow of veteran<sup>94</sup> and World War I veteran<sup>95</sup> from \$9000 to \$18,720. This same legislation also raised by 108% the deductions for rehabilitated property.<sup>96</sup>

#### *E. Miscellaneous*

The General Assembly passed legislation allowing a custodial parent to bring an action to recover delinquent child support by intercepting the child support obligor's state income tax refund.<sup>97</sup> The legislation required that the noncustodial parent must: (1) be in arrears of \$1500 or more in child support; and, (2) have intentionally violated the terms of the most recent child support order for the petition to intercept the tax refund to be granted.<sup>98</sup> The General Assembly also provided that even if the custodial parent filed a joint return with the noncustodial parent, the custodial parent could petition the court to intercept

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86. Act of Mar. 18, 2004, §§ 13-14, 2004 Ind. Acts 90.

87. *Id.* § 16. The conditions listed involve the previous filing of certain tax forms on certain dates as listed in part (b) of the statute.

88. *Id.*

89. *Id.* § 15. The provision applied to the Southport Little League that failed to renew its exemption.

90. IND. CODE § 6-1.1-12-9 (2004).

91. *Id.* § 6-1.1-12-11.

92. *Id.* § 6-1.1-12-14.

93. *Id.* § 6-1.1-12-13.

94. *Id.* § 6-1.1-12-16.

95. *Id.* § 6-1.1-12-17.4.

96. *Id.* §§ 6-1.1-12-18, -12-22, -12.1-4.1.

97. *Id.* § 31-16-12.5-2.

98. *Id.*

the noncustodial parent's half of the return.<sup>99</sup> The legislation specifically provided that this option is not available for support orders which were entered in Title IV-D cases.<sup>100</sup> The bill also contained a requirement that the court notify both the noncustodial parent and a person who filed a joint state income tax return with the noncustodial parent of the hearing by certified mail, return receipt requested.<sup>101</sup>

The General Assembly enacted legislation requiring the Department of State Revenue to collect and maintain information for all retail merchants concerning the merchants' industry codes under the North American Industry Classification System Manual.<sup>102</sup> A portion of retail merchants currently registered in Indiana are categorized in DOR records based on the Standard Industrial Classification ("SIC") codes.<sup>103</sup> The SIC system was used by government and industry until it was replaced in 1997 by the North American Industry Classification system ("NAICS"). In some cases, it is possible to directly link all of the business types listed under one SIC code to a single corresponding NAICS code. However, many businesses currently classified under the one SIC code also correspond to a number of different NAICS codes. As a result of this legislation, the Department of Revenue was required to develop a method of collecting NAICS codes directly from merchants currently categorized under the SIC system.<sup>104</sup>

The General Assembly also eliminated certain tax credits provided to members of the Indiana Comprehensive Health Insurance Association ("ICHIA").<sup>105</sup> Prior to this legislation ICHIA members of the organization were assessed losses based proportionately on the number of premiums collected from Indiana residents who were involved in the ICHIA program. The members were then allowed to take a credit against Indiana Premium Taxes, Adjusted Gross Income Taxes, or any combination of these or similar taxes, or charge higher premiums sufficient to recoup the assessments. Although the General Assembly eliminated the tax credits, members with unused credits are permitted to carryover the remaining credit for tax years beginning after December 31, 2006.<sup>106</sup> However, the carryover credit is limited to 10% per year of the credit that remained on January 1, 2005.<sup>107</sup>

The General Assembly extended the deadline from July 1, 2003 to January

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99. *Id.* § 31-16-12.5-4(a).

100. *Id.* § 31-14-12-2.5.

101. *Id.* § 31-16-12.5-5(c).

102. *Id.* § 6-2.5-10-5.

103. LEGISLATIVE SERVS. AGENCY, FISCAL IMPACT STATEMENT SB 278, at 1 (2004) [hereinafter FISCAL IMPACT STATEMENT 278], available at <http://www.in.gov/legislative/bills/2004/PDF/FISCAL/SB0278.008.pdf>.

104. *See id.*

105. IND. CODE § 27-8-10-2.1. (Note: All carriers, health maintenance organizations, limited service health maintenance organizations, and self-insurers providing health insurance or health care services in Indiana are members of the Indiana Comprehensive Health Insurance Association.).

106. *Id.* § 27-8-10-2.4.

107. *Id.*

1, 2005 for second class cities and the city of Marion, Indiana to be allowed to establish a Professional Sports and Convention Development Areas (“PSCDA”).<sup>108</sup> The bill also repealed a statute that prohibited a PSCDA in Gary, Indiana from containing more than one facility or containing a facility used by a professional sports franchise for practice or competitive sporting events.<sup>109</sup> Prior to this change a Gary PSCDA was authorized to contain a facility used principally for convention or tourism-related events.<sup>110</sup>

A Professional Sports and Convention Development Tax Area is a special zone in which certain state and local tax revenues earned in the area are diverted and deposited into a special fund.<sup>111</sup> This fund is dedicated to capital improvement in the development area. As of March 10, 2004, PSCDAs were being operated by Marion County, Allen County, Evansville, Huntingburg, and South Bend.<sup>112</sup> The state and local taxes that are allowed to be captured by PSCDAs include sales tax and the state and local individual income taxes. This capturing of tax revenue is capped at \$5 per resident of the establishing entity.<sup>113</sup>

The General Assembly also passed legislation requiring the maximum appropriation and property tax levy for community mental health centers be recalculated annually based on the increase in the assessed value growth quotient.<sup>114</sup> The growth quotient is equal to the six-year average annual increase in Indiana nonfarm personal income.<sup>115</sup> The growth quotient was 4.8% in 2003 and 4.7% in 2004.<sup>116</sup> After this legislation, all counties will have the same growth rate.

The General Assembly passed legislation requiring the Department of Revenue to compile a list of taxpayers subject to tax warrants in excess of \$1000 that have been outstanding for at least two years.<sup>117</sup> This legislation also requires the Department to publish the list on the AccessIndiana website,<sup>118</sup> as well as make the list available for public inspection.<sup>119</sup> The delinquent taxpayer must be notified two weeks prior to the publishing of their name on the list.<sup>120</sup>

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108. *Id.* § 36-7-31.1-9.

109. *See* FISCAL IMPACT STATEMENT 1005, *supra* note 74, at 4.

110. *See id.*

111. *See id.*

112. *See id.* at 5.

113. IND. CODE § 36-7-31.1-10.

114. *Id.* § 6-1.1-18.5-10(a)(1)(A).

115. LEGISLATIVE SERVS. AGENCY, FISCAL IMPACT STATEMENT HB 1320, at 4 (2004) [hereinafter FISCAL IMPACT STATEMENT 1320], available at <http://www.in.gov/legislative/bills/2004/PDF/FISCAL/HB1320.009.pdf>.

116. *See id.*

117. IND. CODE § 6-8.1-3-16.

118. *See* <http://www.ai.org>.

119. IND. CODE § 6-8.1-3-16.

120. *Id.*

## II. INDIANA SUPREME COURT DECISIONS

The Indiana Supreme Court (“supreme court”) rendered a variety of opinions from January 1, 2004, to December 31, 2004. The supreme court issued three opinions in the area of taxation. Two of these decisions involved sales and use taxes and one of them involved an individual’s right to a tax sale surplus.

### A. Sales and Use Tax

1. *Indiana Department of Revenue v. 1 Stop Auto Sales*.<sup>121</sup>—1 Stop Auto Sales (“Dealership”) was an automobile dealership that sold vehicles on what it called a “buy-here, pay-here” basis.<sup>122</sup> Dealership loaned its customers the money for both the purchase price and the sales tax due on the vehicle.<sup>123</sup> The Department of State Revenue (“Department”) audited Dealership in 1997 and assessed it for an additional sales tax of approximately \$132,000 plus interest.<sup>124</sup> The Department found that Dealership was deducting all bad and uncollectible debts in computing its sales tax liability, but for purposes of this calculation was not subtracting the value of the property which Dealership was repossessing.<sup>125</sup> In 2002, the Tax Court held that Dealership’s bad debt deduction from its Indiana sales tax liability was required to be equal to the amount Dealership deducted for federal income tax purposes.<sup>126</sup> Then, in a 2003 rehearing, the Tax Court reversed itself and held that Dealership “may deduct an amount equal, in part, to the amount of its uncollectible Indiana receivables it removed from its books as a loss for federal tax purposes, not merely the amount it deducted as federal bad debt.”<sup>127</sup> The supreme court granted the Department’s request for review and reversed the Tax Court’s decision.<sup>128</sup> Dealership argued that the “equal to” language in Indiana Code section 6-2.5-6-9<sup>129</sup> applies only to “receivables” and not to “for federal tax purposes,” and also, that the General Assembly did not

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121. 810 N.E.2d 686 (Ind. 2004).

122. *Id.*

123. *Id.* at 686-87.

124. *Id.* at 687-88.

125. *Id.* at 688.

126. *Id.* (citing *1 Stop Auto Sales, Inc. v. Ind. Dep’t of State Revenue*, 779 N.E.2d 614 (Ind. Tax Ct. 2002)).

127. *Id.* (quoting *1 Stop Auto Sales, Inc. v. Ind. Dep’t of State Revenue*, 785 N.E.2d 672, 674 (Ind. Tax Ct. 2003) (Op. on reh’g)).

128. *Id.*

129. *Id.* at 687-88 (quoting IND. CODE § 6-2.5-6-9(a) which provides: “In determining the amount of state gross retail and use taxes which he must remit . . . a retail merchant shall deduct from his gross retail income from retail transactions made during a particular reporting period, an amount equal to his receivables which: (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 in 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”).

intend “to incorporate Internal Revenue Code Section 166 mathematics into the calculation.”<sup>130</sup> Dealership also claimed that their interpretation of the statute was in line with the General Assembly’s intent to allow retail merchants to recover from the Department the amount of sales tax that the customer did not pay as a result of their default on the loan.<sup>131</sup> The supreme court disagreed with Dealership and held that if the General Assembly had intended not to incorporate Internal Revenue Code section 166 mathematics, then the General Assembly would not have referenced federal tax law at all.<sup>132</sup> The supreme court pointed out that the Tax Court took a similar approach in *Cooper Industries v. Indiana Department of State Revenue*.<sup>133</sup> The supreme court also noted that any ambiguity in an exemption statute is to be strictly construed against the taxpayer.<sup>134</sup> The supreme court was also swayed by the Department’s prior consistent interpretation that bad debt in these cases was net debt, and also the Department’s argument that conventional legal, accounting, and tax jargon considers bad debt or uncollectible debt to mean net debt.<sup>135</sup>

2. *Indiana Department of State Revenue, v. Trump Indiana, Inc.*<sup>136</sup>—Trump Indiana, Inc. (“Trump”) operated a casino riverboat on Indiana’s shore on Lake Michigan.<sup>137</sup> When Trump bought the boat in 1996, it was built in Florida and delivered in Indiana.<sup>138</sup> Trump did not pay any sales or use tax to any state, but did pay Indiana real property taxes since 1997.<sup>139</sup> The Tax Court, in 2003, held that Trump’s boat was not personal property and not subject to use tax in Indiana.<sup>140</sup> The Tax Court held that the boat became real property upon delivery, and therefore, was not subject to the use tax.<sup>141</sup> The supreme court reversed, and held that until the boat is actually put to use as a casino riverboat

130. *Id.* at 689 (quoting Appellee’s Br. in Resp. to Pet. for Review at 2).

131. *Id.*

132. *Id.*

133. *Id.* at 689 n.3 (citing *Cooper Indus. v. Ind. Dep’t of State Revenue*, 673 N.E.2d 1209, 1213 (Ind. Tax Ct. 1996) where the Tax Court found that although “the Revenue Department argued that . . . a corporate taxpayer must begin calculating its Indiana adjusted gross income with the total amount the taxpayer reported as taxable income on its federal return. . . . The statute provided that the term ‘adjusted gross income’ shall mean . . . in the case of corporations, the same as ‘taxable income’ as defined in Section 63 of the Internal Revenue Code”). *See also* IND. CODE § 6-3-1-3.5 (2004). The Tax Court in *Cooper* held that the Department was required to calculate taxable income in accordance with Section 63—to use Internal Revenue Code Section 63 mathematics. *Cooper Indus.*, 673 N.E.2d at 1212.

134. *I Stop Auto Sales*, 810 N.E.2d at 689 (citing *Gen. Motors Corp. v. Ind. Dep’t of State Revenue*, 578 N.E.2d 399, 404 (Ind. Tax Ct. 1991)).

135. *Id.* at 690.

136. 814 N.E.2d 1017 (Ind. 2004).

137. *Id.* at 1018.

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.* at 1019.

it was not real property,<sup>142</sup> but rather personal property, and therefore, Trump is liable for use tax on the purchase of the boat.<sup>143</sup> The supreme court noted that if the definitions of “property” in the property tax statutes were applied in all contexts of the sales and use tax, then many items that are clearly taxable under the sales and use tax would suddenly become non-taxable.<sup>144</sup>

*B. Tax Sale Surplus: Lake County Auditor v. Burks*<sup>145</sup>

In 1998, the Auditor sold the home where Lonnie Burks (“Burks”) lived in order to satisfy delinquent taxes on the property, which sale brought in more money than was owed in property taxes.<sup>146</sup> Burks, although not the record owner, was the intestate heir and beneficiary under the unprobated will of the deceased record owner.<sup>147</sup> Burks sued for the tax sale surplus on April 12, 2000 and the trial court ruled that as “‘the only surviving heir of the record owner’ of the property, Burks was entitled to the surplus.”<sup>148</sup> The Auditor appealed claiming that under the Indiana Code section 6-1.1-24-7(b), Burks did not fall within the list of people permitted to an administrative refund of the surplus.<sup>149</sup> The statute provides that in certain counties the: (1) owner; (2) purchaser; or, (3) a person with a substantial property interest of record, may file a claim that, if approved by the auditor, would entitle the person to the surplus.<sup>150</sup> Lake County was not included in the statute, and therefore, Burks was not entitled to the administrative claim for the surplus.<sup>151</sup> Relying on this statute the court of appeals agreed with

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142. IND. CODE § 6-1.1-1-15(5) (2004) (defining a casino riverboat as real property).

143. *Trump*, 814 N.E.2d at 1020.

144. *Id.* (quoting IND. CODE § 6-1.1-1-11(a)(6)). The supreme court’s example here was that: “property tax definitions are designed to impose property taxes on furniture held in inventory by a retailer, but to exempt furniture in a home. This is accomplished by the requirement in item (6) that ‘other property’ be ‘held for sale’ before it is considered ‘tangible personal property.’” *Id.*

145. 802 N.E.2d 896 (Ind. 2004).

146. *Id.* at 897.

147. *Id.*

148. *Id.* at 898.

149. *Id.*

150. *Id.* at 898-99 (citing IND. CODE § 6-1.1-24-7(b) which provides that “[t]he: (1) owner of record of the real property at the time the tax deed is issued who is divested of ownership by the issuance of a tax deed; or (2) tax sale purchaser or purchaser’s assignee, upon redemption of the tract or item of real property; (3) person with a substantial property interest of public record, as defined in section 1.9 of this chapter and as evidenced by the issuance of a tax deed to a tax sale purchaser, in a county: (1) having a population of more than two hundred thousand (200,000) but less than four hundred thousand (400,000); (2) having a consolidated city; or (3) in which the county auditor and the county treasurer have an agreement under [IND. CODE §] 6-1.1-25-4.7; may file a verified claim for money which is deposited in the tax sale surplus fund. If the claim is approved by the county auditor and the county treasurer, the county auditor shall issue a warrant to the claimant for the amount due”).

151. *Id.* at 899.

the Auditor that Burks was not entitled to the surplus.<sup>152</sup> The supreme court reversed the court of appeals and affirmed the trial court, holding that Burks was entitled to the surplus.<sup>153</sup>

The supreme court relied on the court of appeals decision in *Brewer v. EMC Mortgage Corp.*, 743 N.E.2d 322 (Ind. Ct. App. 2001).<sup>154</sup> In *Brewer*, the court of appeals held that subsection (b)(3) of the statute<sup>155</sup> allowed an administrative remedy in the included counties, but the court of appeals also held that the statute was permissive and not mandatory, and therefore, the remedy of a lawsuit remained available in all counties.<sup>156</sup> The supreme court held that although that subsection was removed, the permissive interpretation should apply to the whole statute, and therefore the statute does not preclude Burks from bringing a lawsuit to claim the surplus.<sup>157</sup> The supreme court stated that because the listed parties in the statute are generally easily identified and in most cases there is no dispute that they are the proper claimant, allowing them the quicker, less expensive administrative remedy was a sensible interpretation.<sup>158</sup> The supreme court also noted that interpreting the statute as the court of appeals suggested could present a “taking” of property in violation of the Fifth Amendment to the U.S. Constitution.<sup>159</sup>

### III. INDIANA TAX COURT DECISIONS

The Indiana Tax Court (“Tax Court”) rendered a variety of opinions from January 1, 2004 to December 31, 2004. Specifically, the Tax Court issued eighteen published opinions, ten of which concerned Indiana real property tax matters. The remaining cases are divided as follows: four cases regarding Indiana sales and use tax; three cases involving corporate income tax matters; and one case involving individual income tax. Each decision is summarized separately below.

#### A. Real Property Taxes

1. *Heart City Chrysler/Lockmandy Motors v. Department of Local Government Finance*.<sup>160</sup>—Heart operated a car dealership in Elkhart County, Indiana.<sup>161</sup> Heart filed an original tax appeal on June 24, 1999 to dispute the State Board’s determination awarding Heart’s improvements only a 10%

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152. *Id.*

153. *Id.* at 899-900.

154. *Id.* at 899 (citing *Brewer v. EMC Mortgage Corp.*, 743 N.E.2d 322 (Ind. Ct. App. 2001)).

155. IND. CODE § 6-1.1-24-7(b)(3) (removed in a 2001 amendment).

156. 802 N.E.2d 896 at 899.

157. *Id.* at 899-900.

158. *Id.* at 900.

159. *Id.* at 899 (citing *United States v. Lawton*, 110 U.S. 146, 150 (1884)).

160. 801 N.E.2d 215 (Ind. Tax Ct. 2004).

161. *Id.* at 216.

obsolescence depreciation adjustment,<sup>162</sup> as well as the State Board's reduction of the improvements' physical depreciation factor from 45% to 35%. The Tax Court reversed and remanded the case to the State Board, and the Tax Court instructed Heart to quantify the obsolescence of the improvements with generally accepted appraisal techniques.<sup>163</sup> On rehearing in October of 1999, the State Board kept the obsolescence adjustment at 10% and returned the physical depreciation factor to 45%.<sup>164</sup> On December 2, 1999, Heart filed this second action, appealing the State Board's determination on rehearing.<sup>165</sup> Heart claimed the State Board erred by disregarding Heart's evidence quantifying the obsolescence depreciation present in its improvements.<sup>166</sup> The Tax Court stated that in seeking an obsolescence adjustment Heart was required to: (1) identify causes of alleged obsolescence; and, (2) quantify the amount of obsolescence to be applied to the improvements.<sup>167</sup> The Tax Court in affirming the State Board, found that Heart did quantify the improvements' obsolescence, but failed to link those quantifications to the causes of the obsolescence.<sup>168</sup> The Tax Court found that Heart failed by presenting only a mathematical calculation bearing no relationships to the causes of the obsolescence depreciation that allegedly existed.<sup>169</sup>

2. *Indianapolis Racquet Club, Inc. v. Washington Township (Marion County) Assessor*.<sup>170</sup>—Indianapolis Racquet Club ("IRC") initiated this action on June 3, 2002, appealing the Assessor's determination to value IRC's "primary" land at \$4.80 per square foot and its "secondary" land at \$3.36 per square foot.<sup>171</sup> IRC claims that the Land Order was invalidly applied because IRC's tennis facility was lumped in with noncomparable "high value retail properties."<sup>172</sup> IRC claimed that a "misimprovement" influence factor should

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162. *Id.* at 217 (stating that "[o]bsolescence is the functional or economic loss of property value. Functional obsolescence is caused by factors internal to the property; economic obsolescence is caused by external factors. Obsolescence is expressed as a percentage reduction in the remaining value of an improvement") (citations omitted).

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.* ("Heart requested a 25% adjustment to its 1990 and 1991 assessment, and a 37% adjustment to its 1995 assessment").

167. *Id.* at 218 (citing *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1238 (Ind. Tax Ct.1998)).

168. *Id.*

169. *Id.*

170. 802 N.E.2d 1018 (Ind. Tax Ct. 2004).

171. *Id.* at 1019 n.1 (reasoning "[f]or the 1995 assessment, commercial and industrial land was classified according to its use. Consequently, 'primary commercial or industrial land' refers to the primary building or plant site, whereas 'secondary commercial or industrial land' refers to land utilized for purposes secondary to the primary use of the land") (citations omitted).

172. *Id.* at 1021 (quoting Pet'r Br. at 4).

have been applied to its land.<sup>173</sup> The Tax Court stated that IRC was required to: (1) submit probative evidence to show its parcel had a different use than surrounding parcels; and, (2) submit probative evidence to show that this inconsistent use had a negative impact on the land's value.<sup>174</sup> The Tax Court held that IRC failed to establish that its land's use was different than the surrounding land, and therefore IRC was not entitled to a negative influence factor.<sup>175</sup> The only evidence IRC presented was a transcript from its 1989 appeal on this same issue, and the Tax Court found that the transcript alone was not enough to establish IRC's prima facie case.<sup>176</sup> The Tax Court stated that IRC could not merely say the facts had not changed, but that IRC still was obligated to make a careful, methodical, and detailed factual presentation on the issues presented.<sup>177</sup>

3. American United Life Insurance Company (AUL) v. Maley.<sup>178</sup>—AUL initiated this action on October 15, 2002, appealing the 1995 assessment of AUL's building.<sup>179</sup> AUL owned an entire city block in downtown Indianapolis on which AUL's thirty-eight-floor building stood.<sup>180</sup> AUL claimed that the Center Township Assessor ("Assessor") should have assigned the building an "A-2" grade factor, instead of an "A" grade factor.<sup>181</sup> AUL established its prima facie case for an "A-2" grade by providing a floor by floor analysis by property tax experts.<sup>182</sup> AUL also compared the interior of its building with that of other prominent downtown buildings that all had been assigned "A-2" grades.<sup>183</sup> AUL conceded that the outside of their building was "A" grade, but claimed the interior was "B+1" grade; therefore, they were entitled to an overall "A-2" grade.<sup>184</sup> After AUL established its prima facie case, the burden then shifted to

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173. *Id.* at 1021 n.3 (stating "IRC does not ask for an influence factor per se. Rather, it merely asserts that the appropriate rate to be applied to its land is \$2.40 for 'primary' land and \$1.68 for 'secondary' land. Given the fact that 1) the application of an influence factor is the only way by which the value of IRC's land can be reduced under this Land Order; and 2) a 'misimprovement' influence factor most accurately reflects IRC's argument, this Court construes IRC's request as one for the application of a 'misimprovement' influence factor") (citations omitted).

174. *Id.* (citing *Quality Farm & Fleet, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 88, 91 (Ind. Tax Ct. 2001)).

175. *Id.* at 1022.

176. *Id.*

177. *Id.*

178. 803 N.E.2d 276 (Ind. Tax Ct. 2004), *trans. denied*, 2004 Ind. LEXIS 450 (Ind. May 14, 2004).

179. *Id.* at 278.

180. *Id.*

181. *Id.* at 279 (the grading of improvements is set forth at IND. ADMIN. CODE tit. 50, r. 2.2-10-3).

182. *Id.* at 280.

183. *Id.* at 281 (buildings compared were Market Tower, First Indiana Plaza, and One Indiana Square).

184. *Id.* at 280.

the Assessor to rebut AUL's evidence.<sup>185</sup> The Tax Court in holding for AUL on this point, found that the Assessor simply failed to impeach or rebut AUL's evidence.<sup>186</sup> AUL next claimed that some of its land should have been valued at \$20 per square foot, instead of all of the land being valued at \$75 per square foot.<sup>187</sup> AUL presented the "Square 34" land order which stated that AUL's land bounded by New York Street from Illinois Street to Capital Avenue was to be valued at \$10-\$20 per square foot.<sup>188</sup> The Tax Court agreed that under the plain meaning of the land order AUL's land was to be valued at \$70-\$100 per square foot, except for the triangle mentioned above.<sup>189</sup> The Tax Court again held for AUL, finding that the Assessor's interpretation that the land order authorized use of one base rate of \$70-\$100 was in error because that interpretation would ignore the \$10-\$20 rate, and the Tax Court presumed that all the language used in the order has meaning.<sup>190</sup> Finally, AUL asserted that it was entitled to a negative influence factor of 25% be applied to its land.<sup>191</sup> AUL was seeking a misimprovement influence factor, and thus, AUL was required to submit evidence demonstrating: (1) its land did not have the same use as surrounding land; and, (2) the different use had a negative impact on the land value.<sup>192</sup> The Tax Court found that AUL was not entitled to the negative influence factor.<sup>193</sup> The Tax Court stated that AUL's evidence that its building only occupied 49% of its parcel versus surrounding buildings occupying 80% to 99% of their parcels was not itself evidence of different "use."<sup>194</sup> The Tax Court also stated that even assuming arguendo that AUL had shown that this was a different "use," they still failed to quantify how the land suffered a loss in value due to that different "use."<sup>195</sup>

#### 4. Waterfurnace International, Inc. v. Department of Local Government

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185. *Id.* at 281.

186. *Id.* at 282.

187. *Id.* at 283.

188. *Id.* (noting the land order provided "1. \$70-\$100 per square foot for the southern portion of the property bounded by Ohio Street from Illinois Street to Capitol Avenue; 2. \$10-\$20 per square foot for the northern portion of the property bounded by New York Street from Illinois Street to Capital Avenue; and, 3. \$70-\$100 per square foot for a northwest to southeast diagonal portion of the property, which at one time was bisected by Indiana Avenue from Ohio Street to New York Street (Indiana Avenue was vacated in 1979)").

189. *Id.* at 283.

190. *Id.* (citing *The Precedent v. State Bd. of Tax Comm'rs*, 659 N.E.2d 701, 704 (Ind. Tax Ct. 1995)).

191. *Id.* at 284 (citing *Quality Farm & Fleet, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 88, 91 (Ind. Tax Ct. 2001) (quoting IND. ADMIN. CODE tit. 50, r. 2.2-4-17(c)(8) (1996) "[a]n influence factor 'refers to a condition peculiar to the acreage tract that dictates an adjustment to the extended value to account for variations from the norm'")).

192. *Id.* at 284-85 (citing *Quality Farm & Fleet, Inc.*, 747 N.E.2d at 92).

193. *Id.* at 285.

194. *Id.*

195. *Id.*

Finance.<sup>196</sup>—Waterfurnace owned land and improvements in Fort Wayne, Indiana, and initiated this appeal on May 15, 2000 challenging the State Board of Tax Commissioner's final assessment.<sup>197</sup> Waterfurnace claimed that the improvement should have been assessed under the General Commercial Kit ("GCK") schedule and not the General Commercial Industrial ("GCI") schedule.<sup>198</sup> Waterfurnace presented evidence of features establishing that the improvement should have been assessed under the GCK schedule.<sup>199</sup> "Specifically, Waterfurnace's evidence indicated that its improvement has: (1) 26-gauge exterior metal walls; (2) interior metal walls with 4-inch vinyl insulation; and (3) unfinished interior flooring, ceilings, and sidewalls."<sup>200</sup> The Tax Court then held that the burden shifted to the State Board to bring forward probative evidence to rebut Waterfurnace's showing.<sup>201</sup> The State Board in using the GCI schedule relied on the fact that the improvement had a 3-foot high wall and a rubber roof system that were not on the GCK schedule.<sup>202</sup> The Tax Court held that this evidence was not enough to rebut Waterfurnace's showing because the State Board provided no evidence of specifically why these features disqualified the improvement from the GCK schedule.<sup>203</sup> Therefore, the Tax Court reversed the State Board's determination and remanded the case with instructions that Waterfurnace's improvement be assessed under the GCK schedule.<sup>204</sup>

5. *Clarkson v. Department of Local Government Finance*.<sup>205</sup>—The Clarksons owned and operated a manufacturing facility in Franklin, Indiana, and initiated this appeal on July 6, 1999 to challenge the State Board's 1995 assessment of the facility.<sup>206</sup> Specifically, the Clarksons claimed the State Board erred in assessing their property as "commercial" rather than "industrial" under the Johnson County Land Order.<sup>207</sup> Because the Land Order did not define "commercial" or "industrial", the Clarksons asked the Tax Court to follow the definitions from the Indiana assessment manual and the Indiana Administrative Code.<sup>208</sup> The assessment manual defined the term "land classification" as "the classification

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196. 806 N.E.2d 891 (Ind. Tax Ct. 2001) (order published July 14, 2004).

197. *Id.* at 892.

198. *Id.*

199. *Id.* at 893.

200. *Id.*

201. *Id.*

202. *Id.*

203. *Id.* at 893-94.

204. *Id.* at 894.

205. 812 N.E.2d 255 (Ind. Tax Ct. 2004).

206. *Id.* at 256.

207. *Id.* at 257 (The base rate for "commercial" land could be between \$6500 and \$84,900 per acre, while the rate for "industrial" land is capped at \$19,500 per acre.).

208. *Id.* (citing the Indiana assessment manual and IND. ADMIN. CODE tit. 50, r. 2.2-4-1(13) (1996)).

of land based upon its capabilities for use.”<sup>209</sup> The Clarksons presented evidence of their actual primary use of the land for manufacturing.<sup>210</sup> The Tax Court stated that the State Board had not substantially supported its final determination, and seemed to value the land as “commercial” merely because it was near other commercial properties.<sup>211</sup> Therefore, the Tax Court reversed the State Board, and held that the land should be assessed as “industrial.”<sup>212</sup>

6. *Keag Family Ltd. Partnership v. Indiana Board of Tax Review*.<sup>213</sup>—Keag challenged the Indiana Board’s assessment of Keag’s land for the 2000 and 2001 tax years.<sup>214</sup> In order for the Tax Court to have jurisdiction, Keag first had to get an extension to file the Certified Administrative Record (“Record”).<sup>215</sup> The State Board mailed the Record to Keag on March 19, 2004 and there exists a rebuttable presumption that once the Record is mailed by the State Board, it is received by Keag.<sup>216</sup> Keag attempted to rebut the presumption with evidence showing that Keag’s office was closed from March 19, 2004 to April 13, 2004 for “vacation shutdown.”<sup>217</sup> Keag provided as evidence a return itinerary proving a return date of April 11, 2004.<sup>218</sup> The Tax Court dismissed the motion for extension holding that Keag had failed to rebut the presumption.<sup>219</sup> The Tax Court cited as its rationale the lack of departure evidence, and the fact that Keag was still able to file the Record by the Tax Court’s April 21, 2004 deadline.<sup>220</sup>

7. *K.P. Oil, Inc. v. Madison Township Assessor*.<sup>221</sup>—K.P., during the 1997 and 1998 assessment years, owned a platted parcel of land in Jefferson County, Indiana.<sup>222</sup> A Jefferson County Land Order provided that parcels that were not platted should have been priced no higher than \$24,750 per acre, while commercial platted lots should have been priced no higher than \$900 per front foot.<sup>223</sup> The Assessor, in 1995, assessed the land at the \$900 per front foot rate resulting in a total assessment of \$32,230.<sup>224</sup> K.P. appealed claiming that the

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209. *Id.* (citing the Indiana assessment manual).

210. *Id.* at 258.

211. *Id.*

212. *Id.* at 258-59.

213. 815 N.E.2d 567 (Ind. Tax Ct. 2004).

214. *Id.* at 568.

215. *Id.* at 568, 570.

216. *Id.* at 569 (citing *Carter v. Review Bd. of Ind. Dep’t of Employment & Training Servs.*, 526 N.E.2d 717, 718-19 (Ind. Ct. App. 1988) (stating that “when an administrative agency sends notice through the regular course of mail, a rebuttable presumption arises that such notice is received”)).

217. *Id.*

218. *Id.* at 570.

219. *Id.*

220. *Id.*

221. 818 N.E.2d 1006 (Ind. Tax Ct. 2004).

222. *Id.* at 1007.

223. *Id.*

224. *Id.*

parcel should have been assessed at the \$24,750 per acre rate, rather than the \$900 per front foot.<sup>225</sup> The State Board found the land was not platted and reversed the Assessor, holding that the land should be assessed at the \$24,750 per acre rate.<sup>226</sup> The Assessor asked for a rehearing, which was denied.<sup>227</sup> On September 8, 1999 the Assessor performed an interim assessment and found that the land was indeed platted, resulting in a reassessment of the land at the \$900 per front foot rate.<sup>228</sup> The State Board, seeing its mistake from the previous hearing, affirmed the interim assessment. K.P. appealed on November 15, 2002, claiming that the interim assessment was not validly conducted because there were no changes to the subject property between the 1995 general assessment and the 1999 interim assessment.<sup>229</sup> The Tax Court in finding for K.P. held that the State Board error in the first hearing in finding the land was not platted did not justify an interim reassessment when there was no change to the subject property.<sup>230</sup> The Tax Court noted that the Assessor could not have appealed the State Board's first determination because the refund at issue did not meet the minimum jurisdictional requirement for an appeal to the Tax Court.<sup>231</sup> The Tax Court, acknowledging that this decision seemed harsh, also noted that the General Assembly, in the 2001 Session, enacted legislation allowing an assessor to petition for judicial review regardless of the amount of refund in controversy.<sup>232</sup>

8. *Majestic Star Casino, LLC v. Blumenburg*.<sup>233</sup>—Majestic Star was an Indiana limited liability company that operated a casino riverboat on Lake Michigan.<sup>234</sup> Majestic was granted their riverboat gaming license at the same time as Trump Casino.<sup>235</sup> Trump had their boat ready for business before Majestic, so in order not to lose the competitive advantage, Majestic leased and renovated a dinner cruise boat (Star I) while waiting for their bigger riverboat (Star II) to be completed.<sup>236</sup> Majestic operated the Star I from June 1996 through October 1997.<sup>237</sup> The State Board's final property tax assessment of the Star I was approximately \$3.2 million.<sup>238</sup> Majestic believed this assessment was too high, and initiated this tax appeal on May 23, 2003.<sup>239</sup> Majestic argued that the

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225. *Id.*

226. *Id.*

227. *Id.*

228. *Id.*

229. *Id.*

230. *Id.* at 1008-09.

231. *Id.* at 1009 n.5 (citing IND. CODE § 6-1.1-15-5(e)).

232. *Id.* (citing IND. CODE § 6-1.1-15-5(e)).

233. 817 N.E.2d 322 (Ind. Tax Ct. 2004).

234. *Id.* at 324.

235. *Id.* at 324 n.1.

236. *Id.*

237. *Id.* at 324.

238. *Id.*

239. *Id.*

State Board's assessment violated article X, section 1 of the Indiana Constitution (the "Property Taxation Clause").<sup>240</sup> Specifically Majestic argued that this assessment resulted in the Star I, which they claimed was physically still a dinner cruise boat, being assessed at a much higher value as a casino riverboat, and therefore, the assessment violated the Property Taxation Clause requirements of: (1) uniformity and equality in assessment; (2) uniformity and equality as to rate of taxation; and, (3) a just valuation for taxation.<sup>241</sup> The Tax Court acknowledged the boat had substantially the same physical characteristics,<sup>242</sup> but held that Majestic had to prove that the contested classification as a casino riverboat was "not based upon differences naturally inhering in the property or in the subject matter of the legislation that creates the classification."<sup>243</sup> The Tax Court upheld the casino riverboat assessment classification.<sup>244</sup> The Tax Court found that the General Assembly's choice to classify casino riverboats separately for property tax assessment purposes was constitutional as based on differences naturally inhering in the subject matter of the legislation that created the classification.<sup>245</sup> The Tax Court also held that all taxpayers within the classification were treated equally.<sup>246</sup> Majestic also claimed that there was an improper withdrawal of admissions by the State Board at the State Board's hearing in December of 2002.<sup>247</sup> The Tax Court agreed with Majestic and reinstated the admissions regarding their entitlement to a 55% physical depreciation adjustment and an 80% obsolescence depreciation adjustment.<sup>248</sup> Because the admissions were reinstated, the Tax Court held that Majestic was entitled to the 55% adjustment.<sup>249</sup> However, the Tax Court held that Majestic was entitled to only 40.7% of the obsolescence adjustment because although the admission was reinstated, Majestic had argued before the Tax Court that the adjustment was only 40.7%.<sup>250</sup>

9. Indianapolis Osteopathic Hospital, Inc. v. Department of Local Government Finance.<sup>251</sup>—Westview Hospital ("Westview") and Health Institute of Indiana, Inc. (HII) (collectively "Hospital") filed an original tax appeal in both

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240. IND. CONST. art. X, § 1 ("The General Assembly shall provide, by law, for a uniform and equal rate of property assessment and taxation and shall prescribe regulations to secure a just valuation for taxation of all property, both real and personal.").

241. *Majestic*, 817 N.E.2d at 325-26.

242. *Id.* at 326.

243. *Id.* at 327-28 (citing *State Bd. of Tax Comm'rs v. Town of St. John*, 702 N.E.2d 1034, 1037 (Ind. 1998)).

244. *Id.* at 328.

245. *Id.*

246. *Id.*

247. *Id.*

248. *Id.* at 329.

249. *Id.* at 331.

250. *Id.*

251. 818 N.E.2d 1009 (Ind. Tax Ct. 2004), *trans. denied*, 2005 Ind. LEXIS 375 (Ind. Apr. 14, 2005).

1999 and 2000 appealing the property tax assessment by the State Board of Tax Commissioners of the Hospital's real and personal property that was part of their Healthplex.<sup>252</sup> Seventy-four percent of the Healthplex was devoted for use as a sportsclub ("Club") and the other 26% was devoted for use as the medical pavilion ("MP").<sup>253</sup> The Hospital claimed that 100% of the Club and 91% of the MP should be exempt from property tax under Indiana Code section 6-1.1-10-16.<sup>254</sup> Both Westview and HII were recognized as I.R.C. section 501(c)(3) organizations.<sup>255</sup> In 1999, the State Board originally allowed a 9% exemption on the improvement of the Club and MP property, but after a rehearing, the State Board removed the exemption entirely.<sup>256</sup> In 2000, the State Board allowed a 9% exemption only for the improvements to the Club and MP property and denied an exemption for the land on which the facilities sit. The State Board did not allow any exemption for the personal property within the facilities in either 1999 or 2000. The Hospital argued that the land, facility and personal property should all be exempt under the charitable exemption because they were used for the Hospital's charitable purpose. The Hospital specifically argued that "there should be no legal difference between the delivery of health care in the traditional sense . . . and the activities . . . aimed at preventing disease in the first instance."<sup>257</sup> The State Board argued that the facility was essentially a commercial health club that was neither affordable nor accessible.<sup>258</sup> The Tax Court, relying on an opinion from the 1994 Tennessee Court of Appeals,<sup>259</sup> held that the Club did not qualify for the charitable purposes exemption.<sup>260</sup> The Tax Court's holding cited, as a relevant factor, the evidence that the Club offers many of the same programs and also advertises to compete with for-profit businesses.<sup>261</sup> The Tax Court reversed the State Board, in part, in holding that 38% of the MP was entitled to the exemption.<sup>262</sup> The Tax Court found that the evidence supported the exemption because 38% of the MP was used to support the inpatient facility (which has a charitable purpose).<sup>263</sup> The Hospital also claimed that the State Board, in denying the exemption, violated article I, section 23 of

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252. *Id.* at 1011.

253. *Id.*

254. *Id.* at 1013 (specifically the Hospital relied on IND. CODE § 6-1.1-10-16(a), which provides that "[a]ll or part of a building is exempt from property taxation if it is owned, occupied, and used [ ] for . . . charitable purposes").

255. *Id.* at 1011 (citing Internal Revenue Code § 501(c)(3) which exempts certain corporations from federal income tax).

256. *Id.* at 1013.

257. *Id.* at 1016.

258. *Id.*

259. *Id.* at 1017 (citing *Middle Tenn. Med. Ctr. v. Assessment Appeals Comm'n of the State of Tenn.*, 1994 WL 32584, at \*4 (Tenn. Ct. App. Feb. 4, 1994)).

260. *Id.* at 1018.

261. *Id.*

262. *Id.* at 1019.

263. *Id.* at 1018-19.

the Indiana Constitution (“Equal Privileges and Immunities Clause”).<sup>264</sup> The Hospital’s claim was based on the State Board’s granting of a charitable purposes exemption to the Jewish Community Center (JCC).<sup>265</sup> The Tax Court stated that a claim asserted under the Equal Privileges and Immunities Clause must pass the two part test from *Collins v. Day*.<sup>266</sup> The Tax Court found that although there was evidence that the JCC offered and operated similar programs, there was no evidence of the percentage of use between the charitable and non-charitable purposes.<sup>267</sup> Therefore, the Tax Court held that the evidence in the record was insufficient in showing that the JCC and the Hospital were “similarly situated” as is required by the second prong of the test.<sup>268</sup>

10. *Cooperative, Inc. v. Department of Local Government Finance*.<sup>269</sup>—Hoosier Energy is owned by sixteen local rural electric membership corporations (“REMCs”).<sup>270</sup> Hoosier Energy furnishes energy to the REMCs, and the REMCs then deliver the electricity to the ultimate consumer.<sup>271</sup> In both 1999 and 2000 the REMCs attempted to file a consolidated property tax return.<sup>272</sup> In both years the State Board denied the REMCs filing of consolidated returns, and in both 1999 and 2000 the REMCs filed an original tax appeal.<sup>273</sup> The Tax Court consolidated the appeals into this single action and affirmed the State Board in denying the REMCs’ requests to file consolidated returns.<sup>274</sup> The REMCs wanted to file consolidated returns to lower their assessed valuation, because they then would have been eligible to take a larger accumulated depreciation deduction.<sup>275</sup> The REMCs argued that because three investor owned electric utilities (“IOUs”) had been permitted to file consolidated returns, the State Board, in denying this consolidated filing, violated article X, section 1 of the

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264. *Id.* at 1019 (citing IND. CONST. art. I, § 23 which provides: “The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens”).

265. *Id.*

266. *Id.* at 1019-20 (citing *Collins v. Day*, 644 N.E.2d 72, 78-79 (Ind. 1994) (“First, the disparate treatment accorded by the legislation must be reasonably related to inherent characteristics which distinguish the unequally treated classes. In other words, ‘there must be some inherent and substantial difference germane to the subject and purpose of the legislation [creating the distinction] between those included within the class and those excluded.’ Second, the preferential treatment accorded by the legislation must be uniformly applicable and equally available to all persons similarly situated.”) (alteration in original).

267. *Id.* at 1020.

268. *Id.* at 1021.

269. 820 N.E.2d 787 (Ind. Tax Ct. 2004).

270. *Id.* at 788.

271. *Id.*

272. *Id.*

273. *Id.* at 788-89.

274. *Id.* at 789.

275. *Id.* at 789-90.

Indiana Constitution.<sup>276</sup> The State Board on the other hand argued that the REMCs had not proven that they are similarly situated to these IOUs and therefore were not entitled to file consolidated returns.<sup>277</sup> The Tax Court said the question was not whether the REMCs should be treated as the IOUs were, but rather whether any public utility company may file a consolidated return in the first place.<sup>278</sup> The Tax Court based its denial of the REMCs' request on the fact that Indiana Code section 6-1.1-8 is completely silent with respect to public utilities filing consolidated returns.<sup>279</sup> The Tax Court also relied on the fact that the law pertaining to assessment of personal property generally does not allow for filing of consolidated returns.<sup>280</sup>

### *B. Sales and Use Tax*

1. *Simon Aviation, Inc. v. Indiana Department of State Revenue*.<sup>281</sup>—Simon initiated this action on March 6, 2000 appealing the Department's imposition of use tax on aircraft lease payments Simon made from 1993 to 1995.<sup>282</sup> Simon, an Indiana corporation, leased two aircraft which were primarily hangered in Indiana during the years at issue, but used for interstate travel.<sup>283</sup> The Department issued a ruling in 1987 that the lease payments were not subject to the use tax because the aircraft were used primarily in interstate commerce (ruling DRS87-10).<sup>284</sup> The Department then audited Simon in the early 1990s and determined the lease payments were subject to the use tax.<sup>285</sup> Simon contested the ruling under Indiana Code section 6-8.1-3-3, arguing that the imposition was prohibited because it would retroactively increase its tax liability.<sup>286</sup> The Department reversed its ruling in a June 2, 1992 Letter of Finding ("LOF"), and stated that the audit did not establish a change in Simon's situation that would warrant invalidating DRS87-10.<sup>287</sup> The Department, in that same LOF also stated that if any change did occur, Simon was required to notify the Department and request a new ruling.<sup>288</sup> In 1993, Simon consolidated and refinanced its aircraft leases and did not notify the Department.<sup>289</sup> Then in 1994, the Department rescinded DRS87-10, effective on leases entered into after July

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276. *Id.* at 790.

277. *Id.*

278. *Id.*

279. *Id.* at 791.

280. *Id.* at 791 n.6.

281. 805 N.E.2d 920 (Ind. Tax Ct. 2004).

282. *Id.* at 922, 924.

283. *Id.* at 922.

284. *Id.*

285. *Id.*

286. *Id.*

287. *Id.*

288. *Id.* at 922-23.

289. *Id.* at 923.

1, 1992, and in 1996 the Department determined that Simon owed use tax of approximately \$150,000 on its lease payments from 1993 to 1995.<sup>290</sup> Simon claims that DRS87-10 and the 1992 LOF did not subject the lease payments to use tax, but merely stated that the matter must be reconsidered.<sup>291</sup> The Tax Court held that by not notifying the Department of the refinancing of the lease, Simon placed itself outside the parameters of both DRS87-10 and the 1992 LOF, and therefore Simon's lease payments did not fall within the non-taxable parameters of either ruling.<sup>292</sup> Simon also argued that the 1992 LOF was a retroactive change prohibited by Indiana Code section 6-8.1-3-3, and therefore it should not be liable for the use taxes.<sup>293</sup> The Tax Court dismissed this argument as without merit because it found that the 1992 LOF did not change the Department's interpretation under DRS87-10, but merely stated that a change in specific factual circumstances may warrant a different ruling.<sup>294</sup> Finally, Simon argued that the imposition of the use tax against the lease payments violated the Commerce Clause of the United States Constitution.<sup>295</sup> The Tax Court held that the imposition of use tax in this situation did indeed violate the Commerce Clause.<sup>296</sup> The Tax Court, in applying the test from *Complete Auto Transit, Inc. v. Brady*,<sup>297</sup> found that the imposition discriminated against interstate commerce in favor of local commerce.<sup>298</sup> The Tax Court found discrimination in the fact that Indiana's use tax resulted in a greater tax burden on aircraft purchased out-of-state than aircraft purchased in-state.<sup>299</sup> The Tax Court declined to find the imposition unfairly apportioned, because Simon did not present evidence that they had paid any sales or use tax to another state.<sup>300</sup>

2. *Guardian Automotive Trim, Inc. v. Indiana Department of State Revenue*.<sup>301</sup>—Guardian operates a manufacturing facility in Evansville, Indiana, at which it manufactures exterior automotive components.<sup>302</sup> Guardian initiated

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290. *Id.* at 923-24.

291. *Id.* 925.

292. *Id.* 926.

293. *Id.*

294. *Id.* at 926-27.

295. *Id.* at 927 (citing U.S. CONST. art. I, § 8, cl. 3, which provides "that Congress shall have the power '[to] regulate Commerce . . . among the several States'") (alteration in original).

296. *Id.* at 927.

297. 430 U.S. 274, 279 (1977).

298. *Simon Aviation*, 805 N.E.2d at 927 (citing *Ind.-Ky. Elec. Corp. v. Ind. Dep't of State Revenue*, 598 N.E.2d 647, 656 (Ind. Tax Ct. 1992) (stating that a state tax "will survive a Commerce Clause challenge if the tax (1) is imposed on an activity with a substantial nexus with the taxing state, (2) is fairly apportioned, (3) does not discriminate against interstate commerce in favor of local commerce, and (4) is fairly related to services the state provides").

299. *Id.* at 929.

300. *Id.* at 928.

301. 811 N.E.2d 979 (Ind. Tax Ct. 2004), *trans. denied*, 2005 Ind. LEXIS 162 (Ind. Feb. 24, 2005).

302. *Id.* at 980 (the automotive components manufactured include: grilles, headlamp, bezels,

this tax appeal on December 31, 1998 claiming that the Department erred in assessing use tax on Guardian's mask processing equipment.<sup>303</sup> The masks themselves were used by Guardian to insure that certain coatings sprayed on plastic parts that Guardian manufactured were applied only on the appropriate sections of the parts.<sup>304</sup> Guardian claimed that the equipment it used to clean these masks was exempt from the use tax under the "equipment exemption."<sup>305</sup> The Tax Court stated that, in order to be entitled to the exemption, Guardian had to show it was engaged in production and that the mask processing equipment was integral and essential to that production.<sup>306</sup> Guardian claimed that it was clearly engaged in production, and that the mask processing equipment was integral because without it, the production process could not be sustained.<sup>307</sup> Guardian also claimed that the chemicals used in the mask processing were exempt under the "consumption exemption."<sup>308</sup> The Department agreed that the masks were integral, but that the mask processing equipment was for maintenance and not integral to the production process.<sup>309</sup> The Department secondarily argued that the mask processing was not integral because it halted production for a substantial period of time.<sup>310</sup> The Tax Court held that Guardian was entitled to the "equipment" and "consumption" exemptions.<sup>311</sup> The Tax Court relied on the fact that the mask processing was performed in synchronization with the production process, and that without the masks being cleaned Guardian would only be able to produce a small number of parts.<sup>312</sup> The Tax Court disposed of the Department's arguments by stating that the production process must be examined as a whole, and not broken down into parts. The Tax Court also found that the evidence showed that the time spent cleaning the masks was not substantial.<sup>313</sup>

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and other exterior components).

303. *Id.* at 982.

304. *Id.* at 981.

305. *Id.* at 982 (citing IND. CODE § 6-2.5-5-3(b) which provides: "[t]ransactions involving manufacturing machinery, tools, and equipment are exempt from [sales and use] tax if the person acquiring that property acquires it for direct use in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property") (alteration in original).

306. *Id.* at 982-83.

307. *Id.* at 983.

308. *Id.* at 985 (citing IND. CODE § 6-2.5-5-5.1(b) which provides: "[t]ransactions involving tangible personal property are exempt from [sales and use] 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 of manufacturing, processing, refining, [or] repairing") (alteration in original).

309. *Id.* at 984.

310. *Id.*

311. *Id.* at 984-85.

312. *Id.*

313. *Id.*

3. *Graham Creek Farms v. Indiana Department of State Revenue*.<sup>314</sup>—Graham is a farm operation in Jennings County, and brought this original tax appeal on July 20, 2000 after the Department denied Graham's claim for refund of sales and use taxes paid on certain purchases.<sup>315</sup> Graham farms almost 7000 acres of land, raising various crops as well as cows and turkeys.<sup>316</sup> Graham contended that several items purchased for use on the farm should have been exempt from sales and use tax under the exemptions for property used in agricultural production.<sup>317</sup> The Tax Court noted that Graham had to show that it was engaged in production, and also that the item at issue was directly used in the production process.<sup>318</sup> Graham first argued that the rain slickers it purchased for its employees to use in loading turkeys were exempt because "people will not stand outside in the rain."<sup>319</sup> The Tax Court denied the exemption and agreed with the Department's argument that the rain slickers were not necessary to prevent injury or prevent contamination of the turkeys, as is required for a purchase of safety clothing to be exempt.<sup>320</sup> Graham next sought an exemption for replacement parts for a backhoe that it claimed was "exempt machinery"<sup>321</sup> because the backhoe was used to bury dead turkeys and move contaminated bedding from the starter house.<sup>322</sup> The Tax Court again agreed with the Department in denying the exemption.<sup>323</sup> The Tax Court relied on evidence that although the backhoe was a convenient way to move the bedding and bury turkeys, the backhoe was only used to move the bedding after it was outside of the starter house.<sup>324</sup> The Tax Court held that this evidence was insufficient to show that the backhoe was directly used during the production process, and therefore, because the backhoe was taxable, the repair parts were taxable.<sup>325</sup> Graham next asserted that the waste it purchased for the turkey house bedding was exempt as an essential and integral part of the turkey raising process.<sup>326</sup> The Tax Court found the waste purchases were exempt.<sup>327</sup> The Department's contention was that the waste was also used in Graham's barnyard, but the Tax Court found the evidence that the waste was used solely as turkey bedding

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314. 819 N.E.2d 151 (Ind. Tax Ct. 2004).

315. *Id.* at 154.

316. *Id.*

317. *Id.* at 155 (Specifically, Graham claimed the purchases were exempt under IND. CODE § 6-2.5-5-1 or § 6-2.5-5-2.).

318. *Id.* at 156.

319. *Id.*

320. *Id.* (citing IND. ADMIN. CODE tit. 45, r. 2.2-5-6(d)(11)).

321. *Id.* at 157 (citing IND. ADMIN. CODE tit. 45 r. 2.2-5-4(d)(9)).

322. *Id.*

323. *Id.*

324. *Id.*

325. *Id.*

326. *Id.*

327. *Id.* at 158.

material sufficient to allow the exemption.<sup>328</sup> The Tax Court held that the tobacco barn in which Graham sought exemption was an integral and essential part of the production process of producing marketable tobacco, and thus allowed an exemption for the materials purchased to remodel the barn.<sup>329</sup> The Tax Court, in finding the barn was used for more than storage, relied on evidence of special construction of the barn which allowed for proper drying of the tobacco.<sup>330</sup> The Tax Court next held that purchases of rat bait, used to prevent rats from getting in the seed packages Graham stores, were not exempt because the bait was not used in the production process.<sup>331</sup> The Tax Court then held that materials purchased to maintain the grain leg<sup>332</sup> and the gravel purchased for a driveway leading to the grain leg were not exempt because no evidence was presented showing that these items were used in the grain drying process.<sup>333</sup> The Tax Court, in holding that the purchases of gate and fencing supplies were exempt, found that these items were used to manage and confine Graham's cows, and not merely, as the Department argued, for partitioning land.<sup>334</sup> Graham next sought an exemption for the purchase of the bush-hog power take-off shaft because the bush-hog itself was exempt equipment.<sup>335</sup> The Department argued the bush-hog was not exempt machinery because it was used on the land when no crops were being planted and no production was taking place.<sup>336</sup> The Tax Court held the purchase of the take-off shaft was exempt in part.<sup>337</sup> The Tax Court said that Graham was entitled to an exemption only for the percentage of time the bush-hog was used for preparing fields for planting and pastures for feeding cattle, but held that Graham was not entitled to the exemption for the percentage of time it used the bush-hog to clear fields as required to participate in the Conservation Reserve Program ("CRP").<sup>338</sup> The Tax Court then held that Graham was not entitled to an exemption on the purchases of certain maintenance tools that Graham did not prove were directly used in the direct production process.<sup>339</sup> The Tax Court granted Graham an exemption for purchases of parts and supplies that it sufficiently demonstrated were used to replace parts on exempt machinery.<sup>340</sup>

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328. *Id.*

329. *Id.* at 159.

330. *Id.* at 158.

331. *Id.* at 159.

332. *Id.* (explaining that "the grain leg is the portion of the grain-drying operation that lifts the grain to the top of the tower where it is cleaned both at the time it goes into the grain bin and then again out of the bin for transport").

333. *Id.* at 160.

334. *Id.* (citing IND. ADMIN. CODE tit. 45, r. 2.2-5-3(e)(3)).

335. *Id.* at 161.

336. *Id.*

337. *Id.*

338. *Id.* (stating "under the CRP, if Graham sets aside acreage, it receives governmental price support for the crops produced on the remaining acres").

339. *Id.* at 162.

340. *Id.* at 163.

The Tax Court denied an exemption for the rope used to tie down tarpaulins (“tarps”) to protect the hay Graham stores, because no evidence was provided that Graham used the hay in any of its production processes.<sup>341</sup> Graham next claimed that it was entitled to an exemption for the purchase of tarps used to cover its seeding machines. The Tax Court granted the exemption by finding that for production to occur the grain must be protected as it moves from storage to the fields.<sup>342</sup> Graham next asserted its purchase of a heavy duty extension cord used to run the portable grain auger should be exempt because the auger was occasionally used to remove grain from the storage pit if there was a problem.<sup>343</sup> The Tax Court denied the exemption finding that Graham failed to show the auger was directly used in the grain production process.<sup>344</sup> The Tax Court denied Graham’s claim for an exemption of purchases of cleaning chemicals used to clean parts of exempt equipment during the maintenance and repair of that equipment, but the Tax Court granted an exemption for the glass cleaner used to clean the windows of the combine.<sup>345</sup> The Tax Court found the testimony sufficient to conclude that the glass cleaner was part of the soy bean production process because no further production could occur if the beans could not be safely harvested because of dirty combine windows.<sup>346</sup>

4. *Morton Buildings, Inc. v. Indiana Department of State Revenue.*<sup>347</sup>—Morton is an Illinois corporation licensed to do business in Indiana, and is engaged in the production, sale, and on-site erection of prefabricated timber-frame, metal sheathed warehouses and other buildings for agricultural and industrial use.<sup>348</sup> Morton paid use taxes to the Department for all of the raw materials used in the manufacturing of its buildings.<sup>349</sup> Morton requested a refund of these use taxes, and after the Department’s failure to refund such taxes, Morton initiated this tax appeal on December 10, 1998.<sup>350</sup> Morton did not claim that the raw materials were exempt, but rather claimed that the use tax imposition statute did not apply to Morton’s activity.<sup>351</sup> Morton contended that the raw materials were not subject to tax because Indiana Code section 6-2.5-3-2 required that the property at issue be both acquired in a retail transaction and used in Indiana.<sup>352</sup> Morton then presented evidence that the raw materials were acquired

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341. *Id.*

342. *Id.*

343. *Id.* at 164.

344. *Id.*

345. *Id.*

346. *Id.* at 164-65.

347. 819 N.E.2d 913 (Ind. Tax Ct. 2004), *trans. denied*, 2005 Ind. LEXIS 392 (Ind. Apr. 19, 2005).

348. *Id.* at 914.

349. *Id.*

350. *Id.* at 914-15.

351. *Id.* at 915.

352. *Id.* (citing IND. CODE § 6-2.5-3-2 which “establishes two conditions for the imposition of use tax on tangible personal property: 1. The ‘tangible personal property’ at issue must be

in a retail transaction in Illinois, but claimed that the materials were used in Morton's factories in Illinois to fabricate the building components.<sup>353</sup> Morton argued that the building components had an identity separate and distinct from the raw materials, and therefore the raw materials were not used in Indiana, but rather only the building components were used in the State.<sup>354</sup> The Department argued that the raw materials retained their original identity up until the point the finished product was completed.<sup>355</sup> The Tax Court reversed the Department and held that the raw materials were used outside Indiana, and the materials used in Indiana (the building components) were not acquired in a retail transaction but instead were fabricated by Morton.<sup>356</sup> The Tax Court used fabrication in the same context as the word is used in a manufacturing exemption regulation, and therefore found that in this case the transformation was sufficient to render the building materials different from the raw materials.<sup>357</sup> The Tax Court declined to define the point during a process at which raw materials lose their original identity, and stated the question must be answered on a case-by-case basis.<sup>358</sup> The Tax Court also acknowledged that Morton was simply taking advantage of a loophole in the use tax statute, but said that it was up to the General Assembly to correct the loophole.<sup>359</sup>

### C. Corporate Income Tax

1. Southern Indiana Gas & Electric Co. ("SIGECO") v. Indiana Department of State Revenue.<sup>360</sup>—SIGECO initiated this action on January 7, 2002 appealing the Department's determination that SIGECO should include its sales of natural gas to out-of-state purchasers in computing the fraction of its business income to be apportioned to Indiana.<sup>361</sup> SIGECO is an Indiana Corporation with its

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'stor[ed], use[d], or consum[ed] in Indiana;' and, 2. The 'tangible personal property' at issue must have been "acquired in a retail transaction").

353. *Id.* at 915-16.

354. *Id.* at 916.

355. *Id.*

356. *Id.* at 917.

357. *Id.* at 916 (citing IND. ADMIN. CODE tit. 45, r. 2.2-5-8(k) which provides: "Direct production, manufacture, fabrication, assembly, or finishing of tangible personal property is performance as a business of an integrated series of operations which places tangible personal property in a form, composition, or character different from that in which it was acquired. The change in form, composition, or character must be a substantial change, and it must result in a transformation of property into a different product having a distinctive name, character, and use. Operations such as compounding, fabricating, or assembling are illustrative of the types of operations which may qualify under this definition").

358. *Id.* at 917.

359. *Id.* at 917-18.

360. 804 N.E.2d 877 (Ind. Tax Ct. 2004), *trans. denied*, 2004 Ind. LEXIS 659 (Ind. July 23, 2004).

361. *Id.* at 878.

principal place of business in Evansville.<sup>362</sup> SIGECO was in the business of purchasing natural gas from producers in Louisiana, Texas, and Illinois, and then, transporting the gas to SIGECO customers located outside of Indiana.<sup>363</sup> The gas was transported in interstate pipelines, which operated as common carriers under the Federal Energy Regulatory Commission.<sup>364</sup> SIGECO would take delivery and ownership of the gas at some point in the pipeline and then it would make arrangements to ship the natural gas to its customers.<sup>365</sup> The Department claimed that SIGECO should include these sales in the numerator of its sales factor for the apportionment formula based on the Department's rule at Indiana Administrative Code title 45, rule 3.1-1-1-53(6).<sup>366</sup> This rule states that "where the following conditions have been met: a) a taxpayer whose salesman operated from an office located in Indiana; b) makes a sale to a purchaser in another state in which the taxpayer is not taxable; c) the property is shipped directly by a third party to the purchaser" and also, the sales are not taxable in the state of delivery, then the sale will be attributed to Indiana.<sup>367</sup> The Department and SIGECO only disagreed as to the application of condition (c) from above.<sup>368</sup> SIGECO argued that when they took ownership of the gas, they failed to fall under condition (c), because a third party did not deliver the gas directly to the customer.<sup>369</sup> The Department argued that because "third party" was not defined, the pipeline (as a common carrier) could be considered a "third party," therefore subjecting SIGECO's sales to inclusion in the numerator of their sales factor.<sup>370</sup> The Tax Court reversed the Department, and held that the plain meaning of "third party" as "a person other than the principals" did not allow for the Department's interpretation.<sup>371</sup> The Tax Court secondarily held that the pipelines were "carriers" and not "shippers" which also leads to a conclusion that these sales do not meet the condition above.<sup>372</sup>

2. *Aztar Indiana Gaming Corp. v. Indiana Department of State Revenue.*<sup>373</sup>—Aztar initiated a tax appeal on July 28, 2000, contending that the

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362. *Id.*

363. *Id.*

364. *Id.*

365. *Id.*

366. *Id.* at 881 n.5 ("The Department contends that under Indiana Code [section] 6-3-2-2(I) it has the administrative authority [when] . . . 'the allocation and apportionment provisions of this article do not fairly represent the taxpayer's income derived from sources within the state of Indiana . . . [to] require, in respect to all or any part of the taxpayer's business activity if reasonable . . . the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.'").

367. *Id.* at 881 (quoting IND. ADMIN. CODE tit. 45, r. 3.1-1-1-53(6)).

368. *Id.*

369. *Id.*

370. *Id.* at 882.

371. *Id.* (citing WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2378 (1981)).

372. *Id.* (citing BLACK'S LAW DICTIONARY 513 (7th ed. 1999) for the definition of "shipper").

373. 806 N.E.2d 381 (Ind. Tax Ct. 2004), *trans. denied*, 2004 Ind. LEXIS 907 (Ind. Sept. 28,

Department erred in holding that Aztar must “add-back” its deduction for Indiana’s Riverboat Wagering Tax (“RWT”) in calculating Aztar’s Indiana Adjusted Gross Income (“AGI”).<sup>374</sup> Aztar claimed that the RWT was an excise tax and not a tax “based on or measured by income,” and therefore Aztar should not have to add back the RWT.<sup>375</sup> Aztar supported its claim by citing instances in the Department’s regulations and the Indiana Code where the RWT was unambiguously labeled a “Wagering Tax.”<sup>376</sup> The Tax Court discussed the precedent on excise taxes, where the Indiana Supreme Court recognized that a tax on a privilege is an excise tax, but that an excise tax could be a tax measured by income.<sup>377</sup> The Tax Court held that the RWT was an excise tax, but that because it was clearly “measured by the taxpayer’s income” the RWT liability is subject to the add-back provisions of Indiana’s AGI.<sup>378</sup>

3. *Norrell Services, Inc. v. Indiana Department of State Revenue*.<sup>379</sup>—Norrell was a Georgia corporation with its principal office in Atlanta, Georgia.<sup>380</sup> Norrell, under franchise agreements, provided temporary employee services to franchisees in Indiana during the late 1970s.<sup>381</sup> The franchisees, under the agreements, paid fees to Norrell for “franchise and license granted [by Norrell] in the Agreement, for payroll and billing services[,] and for financing of receivables.”<sup>382</sup> In 1982, the Department audited Norrell and informed the company that it was liable for gross income tax on the franchise fees.<sup>383</sup> Then, in 1984, the Department issued a Letter of Findings (“LOF”)<sup>384</sup> determining that Norrell was not liable for gross income tax on the fees.<sup>385</sup> In 1998, the Department issued another LOF<sup>386</sup> in which it determined that Norrell was liable for the portion of the fees paid for employees’ wages and royalty fees.<sup>387</sup> Norrell initiated this appeal on April 1, 1999 and filed a motion for summary judgment claiming that the Department’s position represented a “change of interpretation”

2004).

374. *Id.* at 382.

375. *Id.* (citing IND. CODE § 6-3-1-3.5(b)(3)).

376. *Id.* at 384 (specifically citing IND. CODE § 4-33-13-1 to -6).

377. *Id.* at 384-85 (citing *Ind. Dep’t of State Revenue v. Fort Wayne Nat’l Corp.*, 649 N.E.2d 109, 111 (Ind. 1995) (holding that “an excise . . . tax may be measured by a taxpayer’s income without being construed as an income tax”)).

378. *Id.*

379. 816 N.E.2d 517 (Ind. Tax Ct. 2004), *trans. denied*, 2005 Ind. LEXIS 383 (Ind. Apr. 14, 2005).

380. *Id.* at 518.

381. *Id.*

382. *Id.* (alterations in original).

383. *Id.*

384. *Id.*

385. *Id.*

386. *Id.*

387. *Id.* at 519.

in the imposition of the gross income tax,<sup>388</sup> which is prohibited by Indiana Code section 6-8.1-3-3<sup>389</sup> as cited from the years at issue.<sup>390</sup> The Tax Court granted Norrell's summary judgment motion holding that absent a modification in the agreements, or a change in the governing regulations, the Department's alteration of its interpretation was improper.<sup>391</sup>

*D. Individual Income Tax: Bucker v. Indiana Department of State Revenue*<sup>392</sup>

Bucker, an Indiana resident, received a W-2 from his employer Banc One Management, indicating wages of approximately \$32,000.<sup>393</sup> On his 2001 individual income tax return, Bucker claimed zero income and requested a refund of approximately \$1400.<sup>394</sup> The Department denied the refund, and Bucker initiated this action on November 1, 2002, appealing the Department's ruling.<sup>395</sup> Bucker made a "section 861" argument claiming that the source of his income was: (1) outside the United States; (2) was not listed in section 1.861; 3) was not "gross income"; and therefore, was not taxable.<sup>396</sup> The Tax Court granted the Department's motion for summary judgment, and held that "section 861 arguments" had been uniformly rejected, and stated although the Tax Court was not bound by those decisions, the Tax Court found them persuasive in this instance.<sup>397</sup> The Tax Court also relied on a U.S. Tax Court decision that found that the source rules in 1.861 do not exclude from U.S. taxation income earned by U.S. citizens from sources within the United States.<sup>398</sup>

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388. *Id.*

389. *Id.* (citing IND. CODE § 6-8.1-3-3(b) (1994) which provided that "[n]o change in the department's interpretation of a listed tax may take effect before the date the change is [a]dopted in a rule under this section . . . if the change would increase a taxpayer's liability for a listed tax") (alteration in original).

390. *Id.* at 519.

391. *Id.* at 520.

392. 804 N.E.2d 314 (Ind. Tax Ct. 2004).

393. *Id.*

394. *Id.*

395. *Id.* at 315.

396. *Id.* (citing 26 C.F.R. § 1.861-8(f)(1)).

397. *Id.* (citing *United States v. Bell*, 238 F. Supp. 2d 696, 701 (M.D. Pa. 2003)).

398. *Id.* (citing *Takaba v. Comm'r*, 119 T.C. 285, 295 (2002)).

