

RECENT DEVELOPMENTS IN INDIANA TAXATION SURVEY 2013

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INTRODUCTION: SOME REFERENCES USED IN THIS ARTICLE

This Article highlights the major tax developments that occurred during the calendar year of 2013. Whenever the term “GA” is used in this Article, the term refers only to the 118th Indiana General Assembly. Whenever the term “Tax Court” is referred to, such term refers only to the Indiana Tax Court. Whenever the term “Court of Appeals” is referred to, the term refers only to the Indiana Court of Appeals. Whenever the term “DLGF” is used, the term refers only to the Indiana Department of Local Government Finance. Whenever the term “IBTR” is used, the term refers only to the Indiana Board of Tax Review. Whenever the term “Department” or “DOR” is used, the term refers only to the Indiana Department of State Revenue. Whenever the term “IC” or “Indiana Code” is used, the term refers only to the Indiana Code, which is in effect at the time of the publication of this Article, unless otherwise explicitly stated. Whenever the term “ERA” is used, the term refers only to an Indiana Economic Revitalization Area. Whenever the term “CAGIT” is used, the term refers only to the Indiana County Adjusted Gross Income Tax. Whenever the term “COIT” is used, the term refers only to the Indiana County Option Income Tax. Whenever the term “LOIT” is used, the term refers only to the Local Option Income Tax. Whenever the term “IEDC” is used, the term refers only to the Indiana Economic Development Corporation. Whenever the term “CEDIT” is used, the term refers only to the Indiana County Economic Development Income Taxes. Whenever the term “IRC” or “Code” is used, the term refers only to the Internal Revenue Code, which is in effect at the time of the publication of this Article. Whenever the term “section” is used in this Article, the term refers only to a section of the Indiana Code, unless the reference is clearly to the Internal Revenue Code. Whenever the term “Public Law” is used, the term only refers to legislation passed by the Indiana General Assembly and assigned a Public Law number. Whenever the term “PTABOA” is used, the term refers only to a Property Tax Assessment Board of Appeals.

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I. INDIANA GENERAL ASSEMBLY LEGISLATION

The 118th General Assembly passed several pieces of legislation affecting various areas of state and local taxation. As in 2012, the most significant statutory changes were in the area of inheritance taxes. This Part also highlights the majority of the GA's changes from 2013 in the areas of property taxes, state gross retail and use taxes, incomes taxes, and excise taxes.

A. Inheritance Taxes

In 2013, the GA finished what it started a year earlier by accelerating repeal of the inheritance tax to December 31, 2012.¹ Prior to this change, the inheritance tax was scheduled for gradual elimination over a ten-year period ending on December 31, 2021.² For good measure, the GA went on to repeal the Indiana estate tax³ and the Indiana generation-skipping tax,⁴ both taking effect on January 1, 2013.

Despite the dramatic nature of these changes, the transition rules accompanying these significant repeals are relatively modest. The state treasurer was required to make one, final inheritance tax replacement distribution to eligible counties no later than August 15, 2013, based on inheritance tax collections for the state's 2012 fiscal year.⁵ Inheritance tax mistakenly paid "with respect to an individual whose death occurs in 2013" must be refunded to the taxpayer by the DOR in its entirety, even if a county holds some of those taxes.⁶ And, the DOR must recoup any inheritance tax retained by a county resulting from a death in 2013 using payment offsets against the inheritance tax replacement amount due in 2013 to that county (or any other revenue owed to the county if no inheritance tax replacement is due).⁷

B. Property Taxes

Although the GA's legislative activity on property taxes in 2013 lacked the dramatic effect of its inheritance tax legislation, the GA made a variety of important changes in numerous property tax areas. Beginning in 2014, the property tax calculation for agricultural land will use new soil productivity factors to determine the land's true tax value.⁸ The DLGF must develop those new

1. Pub. L. No. 205-2013, §§ 99-110, 2013 Ind. Acts 2141, 2512-16 (cutting off application of chapters 1 to 9 of IND. CODE § 6-4.1 for decedents dying after 12/31/2012).

2. Lawrence A. Jegen III et al., *Recent Developments in Indiana Taxation Survey 2012*, 46 IND. L. REV. 1235, 1236-37 (2013).

3. Pub. L. No. 205-2013, §§ 114-19, 121, 2013 Ind. Acts at 2517-21 (repealing IND. CODE §§ 6-4.1-11-0.1 to -5, -7).

4. *Id.* § 122, 2013 Ind. Acts at 2521-22 (repealing chapter 11.5 of IND. CODE § 6-4.1).

5. *Id.* § 120, 2013 Ind. Acts at 2519-20 (amending IND. CODE § 6-4.1-11-6).

6. *Id.* § 112, 2013 Ind. Acts at 2516 (codified as IND. CODE § 6-4.1-10-1.5).

7. *Id.*

8. Pub. L. No. 1-2013, § 1, 2013 Ind. Acts 1, 1-2 (amending IND. CODE § 6-1.1-4-13).

factors and announce them in a report due by November 1, 2013.⁹ Although it remains to be seen how much impact this change will have, Governor Mike Pence announced that it should “prevent an estimated \$57 million property tax increase on Hoosier farmers.”¹⁰

For new homeowners of recently constructed homes, the GA created a home-construction exception that allows qualifying homeowners to claim the standard deduction even though they lacked the required homestead interest on the assessment date. Generally speaking, a homeowner can now qualify for the deduction if: (1) the required homestead interest is conveyed to the homeowner after the assessment date, but during the same calendar year, or the homeowner contracts to purchase the homestead after the assessment date but during the same calendar year; (2) the homestead was under construction, or was still vacant land, on the assessment date; (3) the required certified statement, or qualifying sales disclosure form, is filed before the end of the calendar year containing the relevant assessment date; and (4) the homeowner files a statement before the end of the calendar year that cancels the deduction for any other property that the homeowner could have claimed for the year in question.¹¹ The county auditor receiving the homeowner’s cancellation statement must cancel the deduction for any property within the auditor’s county and, if necessary, forward the statement to the auditors for any counties containing affected properties.¹²

An owner of real property in a residentially distressed area who rehabilitates or redevelops that property can now qualify for a deduction over a time period set by the area’s designated body that can be up to ten years instead of five years under prior law.¹³ Furthermore, after June 30, 2013, the deduction’s amount is determined by multiplying the increase in the property’s assessed value by a percentage set by the designated body.¹⁴ The GA made similar changes for rehabilitation and redevelopment in economic revitalization areas that are not residentially distressed areas,¹⁵ and for occupation of eligible vacant buildings in such areas.¹⁶

The GA took steps to improve the counties’ collective ability to effectively assess property taxes on a mobile home after it relocates by requiring the county

9. *Id.* § 2, 2013 Ind. Acts at 2.

10. *Pence Signs First Bill into Law to Prevent \$57 Million Tax Increase on Hoosier Farmers*, IN.GOV, http://www.in.gov/activecalendar/EventList.aspx?fromdate=1/1/2013&todate=12/31/2013&display=Year,Month&type=public&eventidn=88516&view=EventDetails&information_id=175800 (last visited Aug. 13, 2014).

11. Pub. L. No. 288-2013, § 3, 2013 Ind. Acts at 4400-01 (amending IND. CODE § 6-1.1-12-37).

12. *Id.*

13. *Id.* § 5, 2013 Ind. Acts at 4406 (amending IND. CODE § 6-1.1-12.1-2).

14. *Id.* § 9, 2013 Ind. Acts at 4418-19 (amending IND. CODE § 6-1.1-12.1-4.1).

15. *See id.* §§ 7-8, 20, 2013 Ind. Acts at 4413, 4415-17, 4444 (amending IND. CODE §§ 6-1.1-12.1-3, -4, -17).

16. *See id.* §§ 12, 20, 2013 Ind. Acts at 4413, 4428-31, 4444 (amending IND. CODE §§ 6-1.1-12.1-4.8, -17).

treasurer of the county that the mobile home is leaving to report the move to the township or county assessor with jurisdiction over the mobile home's new location.¹⁷ As a further backstop, the DLGF is ordered to develop a statewide mobile home tracking system before January 1, 2015.¹⁸

The GA continued to deal with the problems that result when a county fails to assess and collect property taxes for three or more years.¹⁹ Specifically, new legislation addressed the problem created when a homeowner is currently assessed property taxes from prior years when the homeowner did not qualify for deductions from the homestead's assessed value.²⁰ The legislative solution treats the homeowner as automatically qualifying for those deductions to the extent the homeowner qualifies for them in the current year.²¹ The current owner also qualifies for the circuit breaker credit and other applicable credits if the homestead qualifies for the standard deduction in the year containing the delayed assessment date.²² Note that, beginning on May 11, 2013, only a homestead that has actually been granted a standard deduction will be eligible for the homestead version of the circuit breaker credit found in Indiana Code section 6-1.1-20.6-7.5(a)(1).²³

On the procedural front, the GA made several significant property tax changes. First, the GA shifted the burden of proof from the taxpayer to the county/township assessor for establishing the gross assessed value of real property when (1) the value of that property was reduced by the PTABOA for an earlier assessment period and (2) the current assessed value exceeds the value from the latest assessment period covered by the PTABOA's decision.²⁴ Second, the GA standardized and clarified that the applicable annual interest rate payable to a taxpayer on property tax refunds due to (1) duplicate tax payments, (2) math errors, (3) illegality,²⁵ and (4) assessment reductions shall be the rate established under Indiana Code section 6-8.1-10-1 "for each particular year covered by the refund or credit."²⁶ A similar clarification was made for interest on amounts owed by a taxpayer due to a post-due date assessment adjustment by administrative or judicial action.²⁷

17. Pub. L. No. 203-2013, § 1, 2013 Ind. Acts 2101, 2102 (amending IND. CODE § 6-1.1-7-10).

18. *Id.* § 3, 2013 Ind. Acts at 2102 (codified at IND. CODE § 6-1.1-7-16).

19. *See* IND. CODE §§ 6-1.1-22.6-1 to -27.

20. Pub. L. No. 11-2013, § 1, 2013 Ind. Acts 24, 25 (codified at IND. CODE § 6-1.1-22.6-26.5).

21. *Id.*

22. *Id.*

23. Pub. L. No. 257-2013, § 28, 2013 Ind. Acts 3486, 3521-22 (amending IND. CODE § 6-1.1-20.6-2).

24. Pub. L. No. 235-2013, § 1, 2013 Ind. Acts 3344, 3344 (codified at IND. CODE § 6-1.1-4-4.3).

25. *Id.* § 2, 2013 Ind. Acts at 3344-45 (amending IND. CODE § 6-1.1-26-5).

26. *Id.* § 4, 2013 Ind. Acts at 3347-48 (amending IND. CODE § 6-1.1-37-11).

27. *Id.* § 3, 2013 Ind. Acts at 3345-46 (amending IND. CODE § 6-1.1-37-9).

On the tax resale front, the GA expanded the definition of “vacant parcel” that may be sold by a county to include vacant or abandoned properties that contain a residential-use structure²⁸ and eliminated the five-year property tax exemption for vacant parcels that are consolidated into the acquirer’s contiguous property after June 30, 2013.²⁹

In what must be a sign of the times, the GA added another way that a township may become a distressed political subdivision requiring oversight by an emergency manager. Specifically, the distressed unit appeal board now has the power to designate any township as a distressed political subdivision when its property tax rate for township assistance is more than twelve times the statewide average determined by the DLGF.³⁰ The distressed unit appeal board is similarly authorized to terminate that status when either (1) the distressed township’s property tax rate for township assistance drops below twelve times the statewide average or (2) the distressed township gets a new executive who adopts a plan to lower its township assistance property tax rate.³¹

The GA also spent time on the property tax benefits of intergovernmental cooperation and, in the most extreme form of cooperation, local government consolidation (e.g., township mergers). The DLGF is instructed to select up to three counties for participation in a pilot program in which the counties will go through a “more thorough nonbinding review” of their taxing units’ “budgets, property tax rates, and property tax levies” to help increase cooperation among taxing units.³² Each year, the DLGF must prepare an analysis of the taxing units’ data for each pilot county and the county must review and issue a nonbinding recommendation before the taxing units finalize their “budgets, property tax rates, and property tax levies” for the year.³³ Each year, the DLGF must also submit a report to the commission on state tax and financing policy discussing whether the pilot program’s nonbinding review “is fostering cooperation among taxing units in the adoption of their budgets, property tax rates, and property tax levies.”³⁴ For new consolidations, the resulting political subdivision is now guaranteed power to “[i]mpose any tax levy or adapt any tax that one (1) or more of the reorganizing political subdivisions were authorized to impose or adopt before the reorganization.”³⁵ The consolidating subdivisions’ plan of reorganization must state the amount, if any, that the DLGF shall decrease the new consolidated

28. Pub. L. No. 118-2013, § 6, 2013 Ind. Acts 836, 840-41 (amending IND. CODE § 6-1.1-24-6.8(b)).

29. *Id.* § 6, 2013 Ind. Acts at 844 (amending IND. CODE § 6-1.1-24-6.8(m)).

30. Pub. L. No. 234-2013, § 3, 2013 Ind. Acts 3329, 3331-32 (codified at IND. CODE § 6-1.1-20.3-6.7).

31. *Id.* § 7, 2013 Ind. Acts at 3335-36 (amending IND. CODE § 6-1.1-20.3-13).

32. Pub. L. No. 257-2013, § 8, 2013 Ind. Acts 3486, 3500-01 (codified at IND. CODE § 6-1.1-17-3.7).

33. *Id.* § 8, 2013 Ind. Acts at 3503 (codified at IND. CODE § 6-1.1-17-3.7(f)).

34. *Id.* § 8, 2013 Ind. Acts at 3504 (codified at IND. CODE § 6-1.1-17-3.7(h)).

35. Pub. L. No. 255-2013, § 9, 2013 Ind. Acts 3447, 3454-55 (amending IND. CODE § 36-1.5-4-38).

subdivision's maximum permissible tax levies, maximum permissible property tax rates, and budgets on account of (1) eliminated double taxation for services or goods provided by the subdivision and (2) excess taxation unnecessary to provide those services or goods.³⁶ The DLGF can no longer set these maximum amounts and must follow the political subdivision's plan in this respect.³⁷ In the event that the reorganization terminates, the DLGF retains the power to restore the taxing power of the then-separated political subdivisions by adjusting their maximum permissible tax levies, maximum permissible property tax rates, and budgets accordingly.³⁸

Finally, the GA made a number of township- and county-specific changes during 2013. For example, the GA increased the city of Gary's maximum permissible *ad valorem* property tax levy after December 31, 2013 by over \$4 million, while concurrently reducing the Gary Sanitary District's levy to \$0,³⁹ and permitted the town of Williams Creek in Marion County to borrow money so that the town can recoup the 2013 property tax shortfall resulting from the town's failure to properly publish its 2013 budget and property tax levy.⁴⁰ Although a complete review of these localized changes is beyond the scope of this Article, these changes may be important for the affected areas and governing units.

C. State Gross Retail and Use Taxes

The most substantial statutory change in the state gross retail and use tax area was the GA's creation of a new use tax on gasoline,⁴¹ which will replace the existing gross retail tax on gasoline on July 1, 2014.⁴² Although a comprehensive explanation of the new gasoline use tax would be excessive in a survey article like this one, the tax's main contours are outlined here. Depending on the path that the gasoline takes from the refinery to the consumer, a different member of the supply chain is charged with collecting and remitting the gasoline use tax. If a refiner or terminal operator sells or ships gasoline to a non-qualified distributor, the refiner or terminal operator is required to collect the tax from that distributor and to remit it.⁴³ However, if a qualified distributor is involved and sells or ships the gasoline to a retail merchant, then the qualified distributor must collect the tax

36. *Id.* § 7, 2013 Ind. Acts at 3452-53 (amending IND. CODE § 36-1.5-3-5).

37. *Id.* § 3, 2013 Ind. Acts at 3450 (amending IND. CODE § 36-1-8-17).

38. *Id.* § 6, 2013 Ind. Acts at 3451-52 (amending IND. CODE § 36-1.5-3-4).

39. Pub. L. No. 230-2013, § 3, 2013 Ind. Acts 3227, 3228-29 (codified at IND. CODE § 6-1.1-18.5-22.5).

40. Pub. L. No. 257-2013, § 16, 2013 Ind. Acts 3486, 3512-13 (codified at IND. CODE § 6-1.1-18-19).

41. Pub. L. No. 227-2013, § 1, 2013 Ind. Acts 3164, 3164-72 (codified at IND. CODE § 6-2.5-3.5).

42. *Id.* §§ 4-17, 2013 Ind. Acts 3164, 3174-83 (amending or repealing IND. CODE §§ 6-2.5-7-1 to -15).

43. *Id.* § 1, 2013 Ind. Acts 3164, 3166-67, 3169-70 (codified at IND. CODE §§ 6-2.5-3.5-16, -19).

from that merchant and remit it.⁴⁴ Finally, if a retail merchant manages to obtain gasoline for resale without anyone in the supply chain paying the use tax, then the party that delivered the gasoline to the merchant is required to pay the tax.⁴⁵ A distributor that imports gasoline from outside Indiana for use within the state is also subject to the tax.⁴⁶ Exemptions exist for retail purchasers who buy gasoline from a metered pump,⁴⁷ and for distributors that purchase gasoline for sale outside of the state.⁴⁸ In addition, the Indiana Code section 6-2.5-5 gross retail tax exemptions apply to the new gasoline use tax.⁴⁹

The amount of gasoline use tax due is calculated by multiplying the gasoline use tax rate per gallon by the number of gallons purchased or shipped during the relevant month.⁵⁰ The gasoline use tax rate per gallon is seven percent of the statewide average retail price per gallon of gasoline.⁵¹ The DOR is required to calculate and publish the gasoline use tax rate per gallon for each month no later than the 22nd day of the preceding month and must also provide the data that it uses in its calculation.⁵² Taxpayers having a duty to collect and remit the new use tax must remit the collected taxes on a semi-monthly basis and file an accompanying electronic report.⁵³ Failure to do so will result in application of the standard penalties and interest found in Indiana Code section 6-8.1-10.⁵⁴ To cover collection costs, taxpayers having a duty to collect and remit the new use tax may retain a collection allowance equal to the allowance permitted for retail merchants under the gross retail and use tax.⁵⁵

The GA also made two substantive changes to the gross retail tax's application to mail delivery services. The first change is that separately stated postage charges (i.e., "the purchase price of stamps or similar charges for mail or parcel delivery through the United States mail"⁵⁶) are excluded from the delivery charges that are subject to the tax.⁵⁷ Non-separately stated postage charges, and other delivery charges using delivery services providers other than the United

44. *Id.* The procedure for becoming a qualified distributor is outlined in Indiana Code §§ 6-2.5-3.5-17 and -18. *Id.* § 1, 2013 Ind. Acts at 3167-69 (codified at IND. CODE §§ 6-2.5-3.5-16, -18).

45. Pub. L. No. 227-2013, § 1, 2013 Ind. Acts 3164, 3169-70 (codified at IND. CODE § 6-2.5-3.5-19).

46. *Id.* § 1, 2013 Ind. Acts at 3171 (codified at IND. CODE § 6-2.5-3.5-22).

47. *Id.* § 1, 2013 Ind. Acts at 3169-70 (codified at IND. CODE § 6-2.5-3.5-19).

48. *Id.* § 1, 2013 Ind. Acts at 3171 (codified at IND. CODE § 6-2.5-3.5-22).

49. *Id.* § 1, 2013 Ind. Acts at 3172 (codified at IND. CODE § 6-2.5-3.5-26).

50. *Id.* § 1, 2013 Ind. Acts at 3169-70 (codified at IND. CODE § 6-2.5-3.5-19).

51. *Id.* § 1, 2013 Ind. Acts at 3166 (codified at IND. CODE § 6-2.5-3.5-15).

52. *Id.* § 1, 2013 Ind. Acts at 3169-70 (codified at IND. CODE § 6-2.5-3.5-19).

53. *Id.* § 1, 2013 Ind. Acts at 3170 (codified at IND. CODE § 6-2.5-3.5-20).

54. *Id.* § 1, 2013 Ind. Acts at 3171 (codified at IND. CODE § 6-2.5-3.5-23).

55. *Id.* § 3, 2013 Ind. Acts at 3173-74 (amending IND. CODE § 6-2.5-6-10).

56. Pub. L. No. 265-2013, § 2, 2013 Ind. Acts 3800, 3802 (codified at IND. CODE § 6-2.5-1-7.5).

57. *Id.* § 1, 2013 Ind. Acts at 3800-02 (amending IND. CODE § 6-2.5-1-5).

States mail, remain subject to the tax.⁵⁸ The second change brings Indiana's treatment of direct mail in line with the Streamlined Sales and Use Tax Agreement by dividing direct mail into two groups—"advertising and promotional direct mail" and "other direct mail"—and sourcing the resulting sales accordingly for gross retail tax and use tax purposes. For "advertising and promotional direct mail," if the direct mail's purchaser provides the seller with a direct mail form or a certificate of exemption, then the purchaser must source the sale using the recipients' jurisdictions.⁵⁹ Alternatively, if the purchaser can provide the seller with information regarding the direct mail recipients' jurisdictions, then the seller must collect and remit the tax using the recipients' jurisdictions.⁶⁰ Finally, if the purchaser provides the seller with no form, certificate, or information, then the seller must collect and remit taxes using the sourcing rules in Indiana Code section 6-2.5-13-1(d)(5).⁶¹ For "other direct mail," if the direct mail's purchaser provides the seller with a direct mail form or a certificate of exemption, then the purchaser must source the sale using the recipients' jurisdictions.⁶² In all other cases, the sale of other direct mail is sourced under the normal sourcing rules in Indiana Code section 6-2.5-13-1(d)(3).⁶³

The GA expanded several existing gross retail tax exemptions and created a few new ones, too. After July 1, 2013, the existing exemption for sales of "research and development equipment," which covered five specific types of property, expands to cover "research and development property," which can mean any tangible personal property if used in a qualifying manner.⁶⁴ Also effective on that date, the existing exemption for sales of tangible personal property in connection with "the repair, maintenance, refurbishment, remodeling, or remanufacturing of an aircraft or an avionics system of an aircraft" is not limited to aircraft registered outside of the United States and of a certain size and propulsion type.⁶⁵ Aviation fuel is the subject of a new gross retail tax

58. *Id.*

59. *Id.* § 8, 2013 Ind. Acts at 3807-09 (amending IND. CODE § 6-2.5-13-3).

60. *Id.*

61. *Id.* Thus, "the location will be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided (disregarding for these purposes any location that merely provided the digital transfer of the product sold)." IND. CODE § 6-2.5-13-1(d)(5).

62. Pub. L. No. 265-2013, § 8, 2013 Ind. Acts at 3807-09 (amending IND. CODE § 6-2.5-13-3).

63. *Id.* Thus, "the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith." IND. CODE § 6-2.5-13-1(d)(3).

64. Pub. L. No. 288-2013, § 29, 2013 Ind. Acts 4391, 4452-53 (amending IND. CODE § 6-2.5-5-40).

65. *Id.* § 30, 2013 Ind. Acts at 4453-54 (amending IND. CODE § 6-2.5-5-46).

exemption,⁶⁶ but is subject to a new excise tax.⁶⁷ Transactions involving alternative fuels used in motor vehicles providing public transportation are also exempt.⁶⁸ In a housekeeping measure, the gross retail tax exemption for blood glucose monitoring supplies, whether sold or provided without charge, was consolidated into one statutory section.⁶⁹

Finally, the GA addressed a specific area of use tax noncompliance by ordering the DOR “to establish an amnesty program for taxpayers having an unpaid use tax liability for a claiming transaction occurring before June 1, 2012.”⁷⁰ (In claim horse racing, the horses in the race are all offered for sale at close to the same price shortly before the race begins and the purchaser of the winning horse pockets the purse.) The amnesty program must require the participants to voluntarily pay the unpaid use tax liability before January 1, 2014 and must offer relief from interest, penalties, collection fees, existing liens, and threat of civil or criminal prosecution.⁷¹

D. Income Taxes

In 2013, the GA significantly changed the state income tax rate and tax base. First, it installed a gradual tax rate reduction for individuals, trusts, and estates that will lower the rate from 3.4% for taxable years beginning before January 1, 2015, to 3.3% for taxable years beginning after December 31, 2014 and before January 1, 2017, and finally to 3.23% for taxable years beginning after December 31, 2016.⁷² Second, effective on January 1, 2013, the GA updated the state income tax base to use key definitions (e.g., “adjusted gross income” for individuals and “taxable income” for corporations) from the IRC in effect on January 1, 2013 instead of the one in effect on January 1, 2011.⁷³ The GA also more closely aligned the Indiana Code definitions with those in the IRC by removing a number of Indiana-specific adjustments that the GA had passed in prior years to specifically reject certain provisions in the IRC.⁷⁴ Some of those

66. *Id.* § 31, 2013 Ind. Acts at 4454 (amending IND. CODE § 6-2.5-5-49).

67. *Id.* § 67, 2013 Ind. Acts at 4473-75 (codified at IND. CODE § 6-6-13); *see also infra* notes 115-25 and accompanying text (discussing the new Aviation Fuel Excise Tax).

68. Pub. L. No. 277-2013, § 31, 2013 Ind. Acts 4137, 4141 (amending IND. CODE § 6-2.5-5-27).

69. Pub. L. No. 265-2013, §§ 5-6, 2013 Ind. Acts 3800, 3803-04 (amending IND. CODE §§ 6-2.5-5-18, -19.5).

70. Pub. L. No. 205-2013, § 79, 2013 Ind. Acts 2141, 2479-80 (codified at IND. CODE § 6-2.5-14).

71. *Id.*

72. *Id.* § 82, 2013 Ind. Acts at 2505-06 (amending IND. CODE § 6-3-2-1); IND. CODE § 6-3-1-14 (defining “person”).

73. Pub. L. No. 205-2013, § 81, 2013 Ind. Acts at 2503-05 (amending IND. CODE § 6-3-1-11). As noted in prior versions of this Article, the Indiana income tax “piggybacks” off the IRC for many key statutory definitions. Jegen et al., *supra* note 2, at 1242.

74. Pub. L. No. 205-2013, § 80, 2013 Ind. Acts at 2480-2503 (amending IND. CODE § 6-3-1-

removals took effect for taxable years beginning after December 31, 2012, while others retroactively apply to taxable years beginning after December 31, 2011.⁷⁵ Because of their length, these adjustments are listed in the footnote that accompanies this sentence.⁷⁶

3.5).

75. *Id.* § 361, 2013 Ind. Acts at 2742.

76. The GA adjusted the Indiana-specific version of the IRC's "taxable income" definition for corporations, insurance companies, and trusts and estates in the following manner, effective for the following taxable years:

1. Removal of the add back that neutralized the classification of "qualified restaurant property" as 15-year property under I.R.C. § 168(e)(3)(E)(v) for taxable years beginning after 12/31/2012,
2. Removal of the add back that neutralized the classification of "qualified retail improvement property" as 15-year property under I.R.C. § 168(e)(3)(E)(ix) for taxable years beginning after 12/31/2012,
3. Removal of the add back that neutralized the I.R.C. § 198 deduction for expensing of environmental remediation costs for taxable years beginning after 12/31/2012,
4. Removal of the add back that neutralized the I.R.C. § 179E deduction for expensing of any qualified advanced mine safety equipment property for taxable years beginning after 12/31/2011,
5. Removal of the add back that neutralized the classification of "qualified leasehold improvement property" as 15-year property under I.R.C. § 168(e)(3)(E)(iv) for taxable years beginning after 12/31/2012,
6. Removal of the add back that neutralized the classification of a "motorsports entertainment complex" as 7-year property under I.R.C. § 168(e)(3)(C)(ii) for taxable years beginning after 12/31/2012, and
7. Removal of the add back that tied the I.R.C. § 195 deduction for start-up expenditures to the pre-P.L. 111-240 version of that section for taxable years beginning after 12/31/2012.

For trusts and estates, the add back that tied the I.R.C. § 1374(d)(7) net recognized built-in gain recognition for S corporations to the pre-P.L. 111-240 version of that section was also removed for taxable years beginning after 12/31/2012.

The GA also adjusted the Indiana-specific version of the IRC's "adjusted gross income" definition used for individuals in the following manner, effective for the following taxable years:

1. Removal of the add back that neutralized the classification of "qualified restaurant property" as 15-year property under I.R.C. § 168(e)(3)(E)(v) for taxable years beginning after 12/31/2011,
2. Removal of the add back that neutralized the classification of "qualified retail improvement property" as 15-year property under I.R.C. § 168(e)(3)(E)(ix) for taxable years beginning after 12/31/2011,
3. Removal of the add back that neutralized the I.R.C. § 198 deduction for expensing of environmental remediation costs for taxable years beginning after 12/31/2012,
4. Removal of the add back that neutralized the I.R.C. § 408(d)(8) gross income exclusion for charitable deductions from individual retirement plans for taxable years beginning after 12/31/2011,

The GA also acted to clarify existing law on the sourcing rules for “receipts derived from motorsports racing” by providing that (1) prize money, purses, etc. are sourced to Indiana if the race is conducted in Indiana, (2) sponsorship receipts are apportioned using the ratio of sponsored racing events in Indiana to all sponsored racing events for the taxable year, and (3) placement or participation incentives are attributed to Indiana “in the proportion of the races that occurred in Indiana.”⁷⁷ Furthermore, for services provided by a race team member, the team member must apportion total income (i.e., total compensation received including salaries, wages, bonuses, etc.) to Indiana using the ratio of duty days in Indiana to total duty days.⁷⁸

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5. Removal of the add back that neutralized the I.R.C. § 222 deduction for qualified tuition and related expenses for taxable years beginning after 12/31/2011,
 6. Removal of the add back that neutralized the I.R.C. § 62(a)(2)(D) deduction for certain expenses of elementary and secondary school teachers for taxable years beginning after 12/31/2012,
 7. Removal of the add back that neutralized the I.R.C. § 127 gross income exclusion for employer-provided education expenses for taxable years beginning after 12/31/2012,
 8. Removal of the add back that neutralized the I.R.C. § 179E deduction for expensing of any qualified advanced mine safety equipment property for taxable years beginning after 12/31/2011,
 9. Removal of the add back that neutralized the I.R.C. § 132(f)(1) gross income exclusion for qualified transportation fringe benefits in excess of \$100 per month for taxable years beginning after 12/31/2011,
 10. Removes the add back that tied the I.R.C. § 221 deduction for interest on education loans to the pre-P.L. 111-312 version of that section for taxable years beginning after 12/31/2012,
 11. Removal of the add back that neutralized the classification of “qualified leasehold improvement property” as 15-year property under I.R.C. § 168(e)(3)(E)(iv) for taxable years beginning after 12/31/2011,
 12. Removal of the add back that neutralized the classification of a “motorsports entertainment complex” as 7-year property under I.R.C. § 168(e)(3)(C)(ii) for taxable years beginning after 12/31/2011,
 13. Removal of the add back that tied the I.R.C. § 195 deduction for start-up expenditures to the pre-P.L. 111-240 version of that section for taxable years beginning after 12/31/2012, and
 14. Removal of the add back that tied the I.R.C. § 1374(d)(7) net recognized built-in gain recognition for S corporations to the pre-P.L. 111-240 version of that section was also removed for taxable years beginning after 12/31/2011.

Pub. L. No. 205-2013, §§ 80, 361, 2013 Ind. Acts at 2480-2503, 2742 (amending IND. CODE § 6-3-1-3.5).

77. Pub. L. No. 233-2013, § 7, 2013 Ind. Acts 3290, 3317-24 (amending IND. CODE § 6-3-2-2).

78. *Id.* § 8, 2013 Ind. Acts at 3324-27 (codified at IND. CODE § 6-3-2-3.2).

E. State Tax Liability Credits

State tax liability credits also received some attention from the GA in 2013. Four tax credits—the Military Base Recovery Tax Credit, the Military Base Investment Cost Credit, the Capital Investment Tax Credit, and the Coal Combustion Product Tax Credit—were repealed.⁷⁹ The GA also created the Tax Credit for Natural Gas Powered Vehicles, which provides a credit for placing a qualified vehicle in service after December 31, 2013 and before January 1, 2017.⁸⁰ A qualified vehicle is a natural gas powered vehicle with a gross vehicle weight rating of more than 33,000 pounds.⁸¹ The credit is available against the individual's (or legal entity's) adjusted gross income tax, financial institutions tax, and insurance premiums tax.⁸² A pass-through entity's credits flow-through to its owners in proportion to their shares of flow-through income.⁸³ The amount of the credit is 50% of the price increase needed to go from a similarly equipped gasoline or diesel vehicle of the same make and model to the qualified vehicle, subject to a \$15,000 maximum.⁸⁴ The annual credit per person is capped at \$150,000.⁸⁵ The total credit for all persons in a given year is equal to the gross retail and use tax on transactions involving alternative fuels for the year, but may not exceed \$3 million.⁸⁶ The cumulative total credit over its three-year lifetime may not exceed three times the per year maximum amount for the year in question.⁸⁷ Credits must be claimed on state tax returns and will be approved on a taxpayer-by-taxpayer basis in chronological order (i.e., if the per year or cumulative maximum is exceeded for a given year, all later credit claims for that year will be rejected).⁸⁸ Credits in excess of the taxpayer's state tax liability carry forward for an additional six years, but the credits cannot be sold or otherwise transferred.⁸⁹

A number of other tax credits were amended in 2013. First, the Industrial Recovery Tax Credit was modified to remove the restriction on qualified investments that limited them to those that are made under an approved plan.⁹⁰ That credit was also changed to remove the requirement that a “vacant industrial

79. Pub. L. No. 288-2013, § 44-46, 48, 2013 Ind. Acts 4391, 4460-61 (repealing IND. CODE §§ 6-3.1-11.5, -11.6, -13.5, -25.2).

80. Pub. L. No. 277-2013, § 6, 2013 Ind. Acts 4137, 4142-45 (codified at IND. CODE § 6-3.1-34.6).

81. *Id.* § 6, 2013 Ind. Acts at 4142 (codified at IND. CODE § 6-3.1-34.6-6).

82. *Id.* § 6, 2013 Ind. Acts at 4143 (codified at IND. CODE §§ 6-3.1-34.6-7, -8(a)).

83. *Id.* § 6, 2013 Ind. Acts at 4144 (codified at IND. CODE § 6-3.1-34.6-11).

84. *Id.* § 6, 2013 Ind. Acts at 4143 (codified at IND. CODE § 6-3.1-34.6-8(b)).

85. *Id.* § 6, 2013 Ind. Acts at 4143 (codified at IND. CODE § 6-3.1-34.6-9).

86. *Id.* § 6, 2013 Ind. Acts at 4143-44 (codified at IND. CODE § 6-3.1-34.6-10).

87. *Id.*

88. *Id.* § 6, 2013 Ind. Acts at 4144 (codified at IND. CODE § 6-3.1-34.6-12).

89. *Id.* § 6, 2013 Ind. Acts at 4144-45 (codified at IND. CODE §§ 6-3.1-34.6-13, -14).

90. Pub. L. No. 288-2013, § 37, 2013 Ind. Acts 4391, 4457-58 (amending IND. CODE § 6-3.1-11-10).

facility” be vacant for at least one year, or apparently that it be vacant at all.⁹¹ In addition, the GA removed two factors—the desirability of intended use, including whether it will improve the economic or employment conditions in the surrounding community, and evidence that the municipality or county made efforts to implement a plan without financial assistance—from the six factors that the corporation must consider when evaluating applications.⁹² Second, the Headquarters Relocation Tax Credit was expanded (1) to include research and development centers and the principal offices of divisions or subdivisions under the definition of “corporate headquarters”⁹³ and (2) to extend eligibility to otherwise-qualified businesses with annual worldwide revenues of at least \$50 million instead of the \$100 million that was formerly required.⁹⁴ Third, the GA expanded the Hoosier Business Investment Tax Credit to include a 25% credit for qualified logistics investments,⁹⁵ which generally include real property improvements related to improving a transportation or logistical distribution facility; certain ways of improving transportation of goods on Indiana highways, railways, waterways, and airways; and improving warehousing and logistical capabilities.⁹⁶ To claim the credit for a logistics investment, the taxpayer’s proposed project must “substantially enhance the logistics industry by creating new jobs, preserving new jobs that otherwise would be lost, increasing wages in Indiana, or improving the overall Indiana economy.”⁹⁷ The maximum aggregate logistics investment credit available for all taxpayers during a state fiscal year is capped at \$10 million.⁹⁸ The maximum aggregate Hoosier Business Investment Tax Credit for all other qualified investments in a state fiscal year is \$50 million.⁹⁹ Finally, the School Scholarship Tax Credit’s maximum amount was increased from \$5 million to \$7.5 million per state fiscal year¹⁰⁰ and, starting with taxable years beginning after December 31, 2012, taxpayers may carryover excess credits for up to nine additional years.¹⁰¹ Also on the education front, the GA removed buddy system projects from the Tax Credit for Computer Equipment Donations.¹⁰²

91. *Id.* § 38, 2013 Ind. Acts at 4458 (amending IND. CODE § 6-3.1-11-15).

92. *Id.* § 40, 2013 Ind. Acts at 4459-60 (amending IND. CODE § 6-3.1-11-19).

93. *Id.* § 60, 2013 Ind. Acts at 4471 (amending IND. CODE § 6-3.1-30-1).

94. *Id.* § 62, 2013 Ind. Acts at 4471 (amending IND. CODE § 6-3.1-30-2).

95. *Id.* § 51, 53, 2013 Ind. Acts at 4461-62, 4464-65 (amending IND. CODE §§ 6-3.1-26-1, -14).

96. *Id.* § 52, 2013 Ind. Acts at 4462-64 (codified at IND. CODE § 6-3.1-26-8.5).

97. *Id.* § 56, 2013 Ind. Acts at 4466-67 (amending IND. CODE § 6-3.1-26-18).

98. *Id.* § 57, 2013 Ind. Acts at 4467-68 (amending IND. CODE § 6-3.1-26-20).

99. *Id.*

100. Pub. L. No. 205-2013, § 84, 2013 Ind. Acts 2141, 2506 (amending IND. CODE § 6-3.1-30.5-13).

101. Pub. L. No. 211-2013, § 2, 2013 Ind. Acts 2802, 2803 (codified at IND. CODE § 6-3.1-30.5-9.5).

102. Pub. L. No. 286-2013, §§ 4-6, 2013 Ind. Acts 4301, 4304-05 (repealing IND. CODE § 6-3.1-15-1 and amending IND. CODE §§ 6-3.1-15-12, -17).

F. Local Taxes

Although the GA made a number of statutory changes affecting local taxation, those changes were largely procedural in nature and were not particularly significant.¹⁰³ For that reason, they will not be discussed further here.

G. Taxation of Financial Instruments

In 2013, the GA significantly changed the tax base and tax rate for the franchise tax on corporations transacting the business of a financial institution in Indiana. First, it installed a gradual tax rate reduction that will lower the rate from 8.5% for taxable years beginning before January 1, 2014, to 8.0% for taxable years beginning after December 31, 2013 and before January 1, 2015, to 7.5% for taxable years beginning after December 31, 2014 and before January 1, 2016, to 7.0% for taxable years beginning after December 31, 2015 and before January 1, 2017, and finally to 6.5% for taxable years beginning after December 31, 2016.¹⁰⁴ Second, effective on January 1, 2013, the GA updated the financial institutions tax base to use key definitions (e.g., “adjusted gross income”) from the IRC in effect on January 1, 2013 instead of the one in effect on January 1, 2011.¹⁰⁵ The GA also removed a number of Indiana-specific adjustments to the IRC “adjusted gross income” definition, which the GA had passed in prior years to specifically reject certain provisions in the IRC.¹⁰⁶ Some of those removals took effect for taxable years beginning after December 31, 2012, while others retroactively apply to taxable years beginning after December 31, 2011.¹⁰⁷ Because of their length, these adjustments are listed in the footnote that accompanies this sentence.¹⁰⁸

103. For example, the GA amended the County Motor Vehicle Excise Surtax and the County Wheel Tax so that a county council or a county income tax council, as appropriate, can pass an ordinance imposing those taxes. Pub. L. No. 205-2013, §§ 85-87, 92-94, 2013 Ind. Acts 2141, 2506-07, 2509-10 (amending IND. CODE §§ 6-3.5-4-1 to -2 and IND. CODE §§ 6-3.5-5-1 to -2).

104. Pub. L. No. 93-2013, § 5, 2013 Ind. Acts 713, 721-23 (amending IND. CODE § 6-5.5-2-1).

105. The tax on financial institutions uses definitions from Indiana Code § 6-3-1-11. IND. CODE § 6-5.5-1-11. As noted above, the GA revised that section to update the applicable IRC version. *See supra* note 73 and accompanying text.

106. Pub. L. No. 205-2013, § 124, 2013 Ind. Acts 2141, 2522-28 (amending IND. CODE § 6-5.5-1-2).

107. *Id.* § 362, 2013 Ind. Acts at 2743-44.

108. The GA adjusted the Indiana-specific version of the IRC’s “adjusted gross income” definition used in the tax on financial institutions in the following manner, effective for the following taxable years:

1. Removal of the add back that neutralized the classification of “qualified restaurant property” as 15-year property under I.R.C. § 168(e)(3)(E)(v) for taxable years beginning after 12/31/2011,
2. Removal of the add back that neutralized the classification of “qualified retail improvement property” as 15-year property under I.R.C. § 168(e)(3)(E)(ix) for

H. Excise Taxes and Other Miscellaneous Taxes

Finally, the GA worked on a number of excises taxes and other miscellaneous taxes during 2013. While most of the affected taxes were connected to motor vehicles and fuel, the GA also created a new admissions fee for certain motorsports events,¹⁰⁹ made it clear that the tax imposed on distributing tobacco products in Indiana applies to persons “sell[ing] tobacco products through an Internet website,”¹¹⁰ and modified the taxes applicable to certain types of gambling activities in Indiana.¹¹¹ Finally, the GA tweaked a few city-specific food and beverage taxes¹¹² and extended the Liquor Excise Tax to permittees holding an “artisan distiller’s permit.”¹¹³

On the motor vehicle and fuel front, the GA repealed The Special Fuel Tax in Chapter 2.1 of Indiana Code section 6-6 effective January 1, 2014.¹¹⁴ The GA also created the Aviation Fuel Excise Tax for purchases after June 30, 2013.¹¹⁵

taxable years beginning after 12/31/2011,

3. Removal of the add back that neutralized the I.R.C. § 198 deduction for expensing of environmental remediation costs for taxable years beginning after 12/31/2012,
4. Removal of the add back that neutralized the I.R.C. § 179E deduction for expensing of any qualified advanced mine safety equipment property for taxable years beginning after 12/31/2011,
5. Removal of the add back that neutralized the classification of “qualified leasehold improvement property” as 15-year property under I.R.C. § 168(e)(3)(E)(iv) for taxable years beginning after 12/31/2011,
6. Removal of the add back that neutralized the classification of a “motorsports entertainment complex” as 7-year property under I.R.C. § 168(e)(3)(C)(ii) for taxable years beginning after 12/31/2011,
7. Removal of the add back that tied the I.R.C. § 195 deduction for start-up expenditures to the pre-P.L. 111-240 version of that section for taxable years beginning after 12/31/2012, and
8. Removal of the add back that tied the I.R.C. § 1374(d)(7) net recognized built-in gain recognition for S corporations to the pre-P.L. 111-240 version of that section was also removed for taxable years beginning after 12/31/2011.

Id. §§ 124, 362, 2013 Ind. Acts at 2522-28, 2743-44 (amending IND. CODE § 6-5.5-1-2).

109. *See infra* notes 137-41 and accompanying text.

110. Pub. L. No. 205-2013, § 129, 2013 Ind. Acts 2141, 2538 (amending IND. CODE § 6-7-2-7). The Internet distributor must also obtain a license before it begins distribution into the state.

Id. § 130, 2013 Ind. Acts at 2538-39 (amending IND. CODE § 6-7-2-8).

111. *See infra* notes 142-51 and accompanying text.

112. *See, e.g.*, Pub. L. No. 157-2013, § 2, 2013 Ind. Acts 1150, 1152-55 (creating the Town of Fishers Food and Beverage Tax and codified at IND. CODE § 6-9-44).

113. Pub. L. No. 109-2013, § 7, 2013 Ind. Acts 798, 805 (amending IND. CODE § 7.1-4-3-2).

114. Pub. L. No. 277-2013, § 7, 2013 Ind. Acts 4137, 4145 (repealing IND. CODE § 6-6-2.1).

115. Pub. L. No. 288-2013, § 67, 2013 Ind. Acts 4391, 4473-75 (codified at IND. CODE § 6-6-13).

This new excise tax equals \$0.10 per gallon “on the gross retail income received by a retailer on each gallon of aviation fuel purchased in Indiana.”¹¹⁶ Gross retail income excludes any federal excise taxes,¹¹⁷ and a retailer is one whose business is to sell or distribute aviation fuel to an end user within Indiana.¹¹⁸ The excise tax does not apply if the fuel “is placed into the fuel supply tank of an aircraft owned by: (1) the United States or an agency or instrumentality of the United States; (2) the state of Indiana; (3) the Indiana Air National Guard; or (4) a common carrier of passengers or freight.”¹¹⁹ In such cases, the exempt purchaser may provide an exemption certificate to the retailer, which relieves the retailer of its duty to collect and remit the tax.¹²⁰ Remission of collected taxes through electronic funds transfer before the 16th day of the next month is required (less 1.6% of the taxes to cover the retailer’s collection costs).¹²¹ For entities, “each officer, employee, or member of the employer who is in that capacity” is personally liable for tax, penalty, and interest if the collections are not deposited to the DOR.¹²² Also, knowing failure to collect and timely remit the tax due leads to “a penalty equal to [100%] of the uncollected tax.”¹²³ Knowing, reckless, or intentional failure to remit, or the fraudulent withholding of, the state’s money is a Class D felony.¹²⁴ Mere negligence in this respect yields a \$500 civil penalty for each occurrence.¹²⁵

Also in the motor vehicle and fuel area, the GA modified several existing taxes. First, it added liquid natural gas products to the list of alternative fuels that are now included among the “special fuels” subject to the license tax contained in Indiana Code section 6-6-2.5 (“Special Fuel Tax”).¹²⁶ A new “diesel gallon equivalent” and “gasoline gallon equivalent” were created for use in calculating that tax for liquid natural gas and compressed natural gas, respectively.¹²⁷ Second, the tax rate for the Motor Carrier Fuel Tax found in Indiana Code section 6-6-4.1 was modified to distinguish between alternative fuels and other fuels, and to use the rate per diesel gallon equivalent from Indiana Code section 6-6-2.5 as the tax rate for liquid natural gas and the rate per gasoline gallon equivalent from Indiana Code section 6-6-2.5 as the tax rate for compressed natural gas and certain other alternative fuels.¹²⁸ In addition, use of diesel gallon equivalents for

116. *Id.* § 67, 2013 Ind. Acts at 4473-74 (codified at IND. CODE § 6-6-13-6(a)).

117. *Id.* § 67, 2013 Ind. Acts at 4474 (codified at IND. CODE § 6-6-13-6(b)).

118. *Id.* § 67, 2013 Ind. Acts at 4473 (codified at IND. CODE § 6-6-13-5).

119. *Id.* § 67, 2013 Ind. Acts at 4474 (codified at IND. CODE § 6-6-13-7).

120. *Id.* § 67, 2013 Ind. Acts at 4474 (codified at IND. CODE § 6-6-13-8).

121. *Id.* § 67, 2013 Ind. Acts at 4474 (codified at IND. CODE §§ 6-6-13-9, -10, -11).

122. *Id.* § 67, 2013 Ind. Acts at 4474-75 (codified at IND. CODE § 6-6-13-12).

123. *Id.* § 67, 2013 Ind. Acts at 4475 (codified at IND. CODE § 6-6-13-13(a)).

124. *Id.* § 67, 2013 Ind. Acts at 4475 (codified at IND. CODE § 6-6-13-13(b)).

125. *Id.* § 67, 2013 Ind. Acts at 4475 (codified at IND. CODE § 6-6-13-13(c)).

126. Pub. L. No. 277-2013, §§ 8-10, 2013 Ind. Acts 4137, 4145-47 (amending IND. CODE §§ 6-6-2.5-1, -22, -28).

127. *Id.* § 10, 2013 Ind. Acts at 4145-47 (amending IND. CODE § 6-6-2.5-28).

128. *Id.* § 12, 2013 Ind. Acts at 4148-49 (amending IND. CODE § 6-6-4.1-4).

liquid natural gas and gasoline gallon equivalents for compressed natural gas and certain other alternative fuels are now used in the motor carrier fuel surcharge tax.¹²⁹ Third, the Motor Vehicle Excise Tax now extends to dealers or manufacturers for that portion of the total year that the dealer's or manufacturer's designee operates the motor vehicle under a dealer designee license.¹³⁰

Finally, the GA created a new Road Tax Credit effective on January 1, 2014.¹³¹ The new tax credit is refundable¹³² and is available to carriers that are "taxed on the consumption of motor fuel under [Indiana Code section] 6-6-4.1."¹³³ Such carriers may claim a credit in the current year equal to 12% of the road taxes imposed upon the carrier's consumption of compressed natural gas in the previous state fiscal year.¹³⁴ For this purpose, road taxes include: (1) the Gasoline Tax found in Indiana Code section 6-6-1.1, (2) the Special Fuel Tax found in Indiana Code section 6-6-2.5, and (3) the Motor Carrier Fuel Tax found in Indiana Code section 6-6-4.1.¹³⁵ The carrier must claim the credit on the proper form and it is a Class C infraction to knowingly make a false statement, or present a fraudulent road tax receipt, in an attempt to obtain a road tax credit, whether successful or not.¹³⁶

In other areas, the GA created a new Motorsport Admissions Fee that imposes an admissions fee on each person who pays to enter a qualified motorsports facility on race day.¹³⁷ The fee equals the admission price, excluding parking, multiplied by an applicable percentage that ranges from 6% for admission prices of at least \$150 down to 2% for those below \$100.¹³⁸ The admissions fee is collected with the admission price and must be remitted to the DOR before the 15th day of the next month.¹³⁹ The organizers or sponsors of professional motorsports racing events at qualified facilities also must provide the DOR with a list of persons or entities that received prize money, purses, or other similar amounts when requested to do so by the DOR.¹⁴⁰ Recipients of that prize money, purse, or another similar amount must also provide the DOR with a list of persons or entities that received the awards when the DOR requests one.¹⁴¹

129. *Id.* § 13, 2013 Ind. Acts at 4149-50 (amending IND. CODE § 6-6-4.1-4.5).

130. Pub. L. No. 262-2013, § 92, 2013 Ind. Acts 3709, 3752 (amending IND. CODE § 9-18-27-0.5).

131. Pub. L. No. 277-2013, § 14, 2013 Ind. Acts 4137, 4150-51 (codified at IND. CODE § 6-6-12).

132. *Id.* § 14, 2013 Ind. Acts at 4151 (codified at IND. CODE § 6-6-12-8).

133. *Id.* § 14, 2013 Ind. Acts at 4150 (codified at IND. CODE § 6-6-12-1).

134. *Id.* § 14, 2013 Ind. Acts at 4150 (codified at IND. CODE §§ 6-6-12-5, -6).

135. *Id.* § 14, 2013 Ind. Acts at 4150 (codified at IND. CODE § 6-6-12-4).

136. *Id.* § 14, 2013 Ind. Acts at 4151 (codified at IND. CODE §§ 6-6-12-7, -9).

137. Pub. L. No. 233-2013, § 9, 2013 Ind. Acts 3290, 3327-28 (codified at IND. CODE § 6-8-14).

138. *Id.* § 9, 2013 Ind. Acts at 3327 (codified at IND. CODE § 6-8-14-4).

139. *Id.* § 9, 2013 Ind. Acts at 3327-28 (codified at IND. CODE §§ 6-8-14-6, -7).

140. *Id.* § 10, 2013 Ind. Acts at 3328-29 (codified at IND. CODE § 6-8.1-5-5(a)).

141. *Id.* § 10, 2013 Ind. Acts at 3328-29 (codified at IND. CODE § 6-8.1-5-5(b)).

Finally, the GA updated the tax laws applicable to certain riverboat and racetrack gambling activities. For riverboat gambling, beginning after June 30, 2013,¹⁴² the GA created a new graduated tax table for riverboats that have implemented flexible scheduling and that received less than \$75 million of adjusted gross receipts in the preceding state fiscal year. In the new tax table, the tax rate imposed on the first \$25 million of adjusted gross receipts is reduced from 15% to 5%, but all other rates remain the same.¹⁴³ However, a riverboat benefitting from the lower tax rate in a given year, that then receives more than \$75 million of adjusted gross receipts in that year, must pay an additional \$2.5 million tax.¹⁴⁴ The additional tax effectively neutralizes the tax savings provided by the reduced rate. At racetracks, the tax base for the graduated slot machine wagering tax was reduced from 99% of adjusted gross receipts to 91.5% of those receipts beginning on July 1, 2013.¹⁴⁵ In addition, racetrack licensees subject to the tax are allowed to deduct receipts from “qualified wagering” received after May 10, 2013 and before July 1, 2016 from the adjusted gross receipts subject to the tax.¹⁴⁶ Qualified wagering in this context is promotional wagering using “noncashable vouchers, coupons, electronic credits, or electronic promotions” provided by racetrack licensees.¹⁴⁷ In no event may a licensee deduct more than \$2.5 million under this provision in a state fiscal year ending before July 1, 2013 or more than \$5 million for a state fiscal year ending after June 30, 2013 and before July 1, 2016.¹⁴⁸ This deduction also applies to the licensee’s obligation to distribute funds in support of the Indiana horse racing industry, to pay a county slot machine wagering fee, and to remit the supplemental fees due under Indiana Code section 4-35-8.9.¹⁴⁹ A riverboat’s licensed owner or operating agent who is subject to the wagering taxes mentioned above may take a deduction for receipts from “qualified wagering” received after May 10, 2013 and before July 1, 2016, which is similar to the deduction described above for racetrack licensees.¹⁵⁰ During the time period that these two promotional wagering deductions are in effect at racetracks and on riverboats, the Indiana gaming commission is charged with studying “the use of complimentary promotional credit programs” at those gambling facilities and the programs’ impact on state

142. Pub. L. No. 229-2013, § 38, 2013 Ind. Acts 3194, 3226.

143. *Id.* § 20, 2013 Ind. Acts at 3211-14 (amending IND. CODE § 4-33-13-1.5).

144. *Id.* § 20, 2013 Ind. Acts at 3213 (amending IND. CODE § 4-33-13-1.5(d)).

145. Pub. L. No. 210-2013, § 18, 2013 Ind. Acts 2786, 2801-02 (amending IND. CODE § 4-35-8-1). The slot machine wagering tax is only imposed on “a permit holder holding a gambling game license issued under IC 4-35-5,” which only covers licenses for racetracks. IND. CODE §§ 4-35-1-1, -5-1.

146. Pub. L. No. 229-2013, § 36, 2013 Ind. Acts 3194, 3224-25 (codified at IND. CODE § 4-35-8-5).

147. *Id.* § 36, 2013 Ind. Acts at 3225 (codified at IND. CODE § 4-35-8-5(b)).

148. *Id.* § 36, 2013 Ind. Acts at 3225 (codified at IND. CODE § 4-35-8-5(d)).

149. *Id.* § 36, 2013 Ind. Acts at 3225 (codified at IND. CODE § 4-35-8-5(e)).

150. *Id.* § 22, 2013 Ind. Acts at 3219-20 (codified at IND. CODE § 4-33-13-7).

gaming revenues.¹⁵¹

II. INDIANA TAX COURT DECISIONS

The Tax Court rendered a variety of opinions from January 1, 2013 to December 31, 2013. Specifically, the Tax Court issued twenty published opinions and decisions: eleven concerned the Indiana real property tax, two concerned Indiana local tax, one concerned the Indiana inheritance tax, four concerned the Indiana sales and use tax, and two concerned the Indiana corporate income tax. The Tax Court also issued one unpublished opinion concerning Indiana real property tax. A summary of each opinion and decision appears below.

A. Real Property Tax

1. *Indianapolis Public Transportation Corp. v. Indiana Department of Local Government Finance*.¹⁵²—Indianapolis Public Transportation Corporation (“IndyGo”) appealed the DLGF’s final determination denying its excess property tax levy request for the 2007 budget year.¹⁵³ IndyGo, as a public transportation corporation, pays its operating costs and expenditures from the collection of local property taxes.¹⁵⁴ In November 2008, pursuant to Indiana Code section 6-1.1-18.5-16, IndyGo requested the DLGF’s permission to impose an excess property tax levy because it had suffered property tax revenue shortfalls in budget years 2006 and 2007.¹⁵⁵ The DLGF referred the request to the Local Government Tax Control Board for a recommendation.

The Tax Control Board held a hearing where both IndyGo and a DLGF representative presented documentation showing the property tax revenue shortfall (or lack thereof) for 2006 and 2007. Each used a different method for its computation.¹⁵⁶ The DLGF representative found no shortfall existed in

151. *Id.* § 39, 2013 Ind. Acts at 3226 (requiring that a report from the commission must be submitted to the budget committee before November 1, 2015).

152. 988 N.E.2d 1274 (Ind. T.C. 2013).

153. *Id.* at 1275.

154. *Id.* at 1277.

155. *Id.* at 1275.

156. *Id.* at 1275-76. IndyGo calculated its shortfall: “first it computed the total amount of property taxes (both real and personal) *charged* in Marion County for the 2006 (pay 2007) assessment as **\$1,234,203,346**; from that figure, it subtracted \$65,534,933, which it determined represented the total amount of property taxes (both real and personal) *charged* for the 2006 (pay 2007) assessment within Lawrence, Southport, and Speedway for a result of **\$1,168,667,813**; it next computed the total amount of property taxes (both real and personal) *paid* in Marion County for the 2006 (pay 2007) assessment as **\$1,147,620,620**; from that figure, it subtracted \$58,429,384, which it determined represented the total amount of property taxes (both real and personal) *paid* for the 2006 (pay 2007) assessment within Lawrence, Southport, and Speedway, for a result of **\$1,089,189,357**; by subtracting the “paid” from the “charged,” IndyGo concluded that in budget year 2007, Marion County suffered a property tax revenue shortfall in the amount of **\$79,478,456**

2007.¹⁵⁷ Nevertheless, the Tax Control Board recommended to the DLGF that IndyGo's excess property tax levy request for both 2006 and 2007 be approved. The DLGF issued a final determination approving IndyGo's 2006 request but denying its 2007 request.¹⁵⁸ IndyGo appealed this final determination to the Indiana Tax Court, arguing the DLGF's determination was unlawful, not supported by the evidence, and an abuse of discretion.¹⁵⁹

On appeal, IndyGo claimed the DLGF's final determination was contrary to the law, because the DLGF did not follow the correct statutory procedure in determining the lack of property tax revenue shortfall in 2007.¹⁶⁰ IndyGo acknowledged that neither the Code nor any DLGF regulation prescribes a method for calculating a property tax revenue shortfall, but nevertheless argued the DLGF's calculation did not comply with clearly stated legislative policy.¹⁶¹ The Tax Court declined to overturn the DLGF's final determination on this ground, as it would have required a reweighing of the evidence, which is not proper in reviewing administrative agency final determinations.¹⁶² IndyGo also challenged the DLGF's final determination, because it was "not supported by the evidence" since the DLGF granted IndyGo's 2006 request, which was computed using the same methodology as in the 2007 request.¹⁶³ The Tax Court also declined to overturn the final determination on this ground because the administrative records showed the DLGF's calculation found a shortfall in 2006 in the amount of \$469,535.¹⁶⁴ IndyGo only requested \$344,478. Accordingly, the DLGF "simply used IndyGo's requested amount as its starting point and then reduced that amount by \$125,479 to account for IndyGo's receipt of too much levy for budget year 2008."¹⁶⁵ As such, the Tax Court affirmed the DLGF's final determination denying IndyGo's 2007 excess property tax levy request.

2. *Kooshtard Property VIII, LLC v. Shelby County Assessor*.¹⁶⁶—During the

(*i.e.*, \$1,168,667,813 minus \$1,089,189,377); of that shortfall, IndyGo determined that **\$770,941**, or .00971%, was its own. IndyGo arrived at this amount by dividing Center Township's tax rate of 3.7166% by IndyGo's tax rate of .0361% and then applying that result (*i.e.*, .00971%) against the \$79,478,456.2."

The DLGF presented "documentation that showed the amount of the certified levy, the actual collections, and the delinquent tax collections regarding IndyGo's general fund for both 2006 and 2007. Based on that documentation, the DLGF representative explained that IndyGo did not have a property tax revenue shortfall in 2007: its certified levy was \$15,229,898 and it actually collected \$15,315,930."

157. *Id.* at 1276.

158. *Id.* at 1276-77.

159. *Id.* at 1275.

160. *Id.* at 1278.

161. *Id.* at 1278-79.

162. *Id.* at 1279.

163. *Id.* at 1279-80.

164. *Id.* at 1280.

165. *Id.*

166. 987 N.E.2d 1178 (Ind. T.C.), *review denied*, 995 N.E.2d 620 (Ind. 2013).

2006 and 2007 tax years, Kooshtard owned two acres of land in Shelbyville, Indiana on which a convenience store and gas station were located.¹⁶⁷ In valuing the property, assessing officials applied a positive influence factor of 100%, which increased the value by \$200,000 per acre. Kooshtard filed two petitions for review of the assessment, one with the Shelby County PTABOA and one with the Indiana Board.¹⁶⁸ The petitions were consolidated, a hearing was held, and the Indiana Board issued a final determination upholding the assessments.¹⁶⁹ The Indiana Board determined Kooshtard failed to establish a *prima facie* case that its land had been over assessed.¹⁷⁰ Kooshtard then filed an appeal with the Indiana Tax Court.¹⁷¹

On appeal, Kooshtard claimed, as it had at the Indiana Board hearing, that the application of the 100% positive influence factor to its land was erroneous because adjacent properties did not have the factor applied.¹⁷² Accordingly, Kooshtard argued uniformity required the positive influence factor be applied to all similar land and maintained that sales data from similar properties indicated Kooshtard's land had been over assessed. Kooshtard also presented two new arguments for the first time on appeal, but the Tax Court refused to review the arguments because "there would [have been] no written findings in the record for the Court to review."¹⁷³

With respect to the uniformity claim, the Indiana Tax Court agreed with the Indiana Board that Kooshtard had not presented sufficient evidence to establish a *prima facie* case, because it did not present any market-based evidence to support its claim.¹⁷⁴ Instead, Kooshtard had "merely *concluded* that because the Assessor did not apply the same positive influence factor of 100% to a nearby office building, automotive sales/service center, and fast-food restaurant, the factor should be removed from its assessment."¹⁷⁵ The Tax Court went on to state, "conclusory statements are insufficient to make a *prima facie* case because they are not probative evidence."¹⁷⁶ Accordingly, the Tax Court affirmed the Indiana Board's final determination upholding the assessments.¹⁷⁷

3. Hamilton County Assessor v. Allisonville Road Development, LLC.¹⁷⁸— Beginning in the 1990's, several land developers purchased and owned two vacant land parcels located in Fishers, Indiana.¹⁷⁹ Prior to the purchase, the land

167. *Id.* at 1179.

168. *Id.*

169. *Id.* at 1179-80.

170. *Id.* at 1179.

171. *Id.* at 1180.

172. *Id.* at 1181.

173. *Id.* at 1182.

174. *Id.* at 1181.

175. *Id.*

176. *Id.*

177. *Id.* at 1182.

178. 988 N.E.2d 820 (Ind. T.C.), *review denied*, 995 N.E.2d 619 (Ind. 2013).

179. *Id.* at 821.

was actively farmed. In its 2002 general reassessment, the Assessor changed the property's classification from agricultural land to "undeveloped, useable commercial land."¹⁸⁰ Allisonville Road Development, LLC ("Allisonville Development") purchased the parcels in April 2006. Allisonville Development appealed the property's 2008 assessment to the Hamilton County PTABOA, who reduced the assessment from \$2,237,300 to \$1,427,400.¹⁸¹

Allisonville Development was unsatisfied with the reduction and filed a petition for review with the Indiana Board, asserting the 2008 assessment was incorrect because "the Assessor's 2002 reclassification of the property from agricultural to commercial contravened Indiana Code [section] 6-1.1-4-12."¹⁸² Specifically, the statute "precluded reassessments based on new classification until land was subdivided, rezoned, purchased by a non-developer, construction of a building commenced, or a building permit was issued."¹⁸³ On March 15, 2012, the Indiana Board issued a final determination announcing while land could be reassessed based on a change in the land's use, "cessation of farming activities did not constitute a change in use sufficient to warrant reassessment under Indiana Code [section] 6-1.1-4-12."¹⁸⁴ Therefore, the Indiana Board determined the property's assessment as commercial land was in error and reduced Allisonville Development's 2008 assessment accordingly. The Assessor filed an appeal with the Indiana Tax Court.¹⁸⁵

On appeal, the Assessor first argued the Indiana Board had applied the wrong version of the Indiana statute.¹⁸⁶ The Tax Court determined the argument moot, as the Indiana Board had done, because "none of the events that would trigger a reassessment under either version of the statute [had] occurred [.]"¹⁸⁷ Next, the Assessor argued the cessation of farming activities was sufficient to trigger a "change in use" under the statute.¹⁸⁸ The Assessor specifically argued the Indiana Board had misinterpreted the holding from *Aboite Corp. v. State Board of Tax Commissioners*.¹⁸⁹ The Tax Court disagreed, pointing to the underlying rationale from *Aboite* and Indiana Code section 6-1.1-4-12.¹⁹⁰ The Court explained the statute was designed to promote "commercial development by allowing a developer's land to be assessed on the basis of its original (i.e., its pre-purchase) classification until an objective event signaling the commencement of development occurs."¹⁹¹ As such, because no action had been taken yet to

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.*

184. *Id.* at 822.

185. *Id.*

186. *Id.*

187. *Id.* at 823.

188. *Id.*

189. 762 N.E.2d 254 (Ind. T.C. 2001).

190. *Allisonville Rd. Dev., LLC*, 988 N.E.2d at 823.

191. *Id.*

commence development, the property should still be classified on the basis of its original classification as agricultural land.¹⁹² Accordingly, the Tax Court affirmed the Indiana Board's final determination.¹⁹³

4. *Washington Township. Assessor v. Verizon Data Services, Inc.*¹⁹⁴—This matter pertains to Verizon's motion to dismiss the Assessors' appeal pursuant to Indiana Tax Court Rule 4 and Indiana Trial Rules 12(B)(1), (2), (4), and (5).¹⁹⁵ In December 2010, the Indiana Board issued a final determination granting summary judgment to Verizon with respect to its 2005 personal property tax assessment appeal. The Indiana Board's courier was delayed in mailing the final determination and Confidentiality Order to Verizon by more than three weeks. Both parties conferred over e-mail and telephone regarding the delayed receipt and the Assessor's intention to file an appeal, which resulted in the Indiana Board issuing a *nunc pro tunc* order, deeming the date the courier mailed the documents to be the date they were issued. As such, the Assessor timely filed an appeal of the Indiana Board's final determination with the Indiana Tax Court. The same day of the filing, the Assessor mailed a copy of the Petition to Verizon's attorneys, Bradley Hasler and Jeffrey Bennett, who accepted service of the Petition and summons a week later. On March 11, 2011, Verizon's attorneys entered their appearance and moved to dismiss the Assessors' appeal pursuant to Indiana Tax Court Rule 4 and Indiana Trial Rules 12(B)(1), (2), (4), and (5), alleging failure by the Assessor to serve the summons and petition directly on Verizon. As such, the sole question before the Tax Court was whether this failure to serve directly on Verizon barred the Assessor's appeal.¹⁹⁶

Verizon argued the appeal must be dismissed because "the Assessor initially served a copy of the Petition and summons on a non-party law firm whose attorneys were not the attorneys of record in the Tax Court rather than serving Verizon directly."¹⁹⁷ The Tax Court acknowledged there could be no attorney of record for the respondent when a petitioner appeals a final determination of the Indiana Board to the Tax Court until after the respondent's attorney enters an appearance.¹⁹⁸ However, the Court also pointed to Indiana Trial Rule 4.15(F), which establishes that "non summons or service of process shall not be set aside if either is reasonably calculated to inform the person to be served of the impending action before him."¹⁹⁹ As such, because Hasler and Bennett had a "long history" of representing Verizon with the Assessor, it was reasonable for the Assessor to believe the service on Verizon's attorneys would inform Verizon of the impending action against it.²⁰⁰ The Court also noted that Verizon conceded

192. *Id.* at 824.

193. *Id.*

194. 985 N.E.2d 376 (Ind. T.C. 2013).

195. *Id.* at *1.

196. *Id.*

197. *Id.* at *2.

198. *Id.* at *3.

199. *Id.*

200. *Id.*

it had “timely knowledge of this original tax appeal, which suggests that the Assessors’ manner of service, while not made on Verizon directly, was likely to inform.”²⁰¹ Therefore, the Tax Court denied Verizon’s motion to dismiss.

5. *Indiana MHC, LLC v. Scott County Assessor*.²⁰²—Indiana MHC owns Amberly Pointe in Scottsburg, Indiana, which is a manufactured home community on approximately 33 acres of land and contains 205 rentable pads.²⁰³ For the 2007 assessment, the Assessor assigned Amberly Pointe an assessed value of \$5,400,300.²⁰⁴ Indiana MHC believed the assessment was too high and filed an appeal with the Scott County PTABOA, who reduced the assessment to \$3,377,000. Indiana MHC still believed the assessment was too high and appealed to the Indiana Board. At the hearing before the Indiana Board, Kurtis Keeney, Indiana MHC’s managing partner, testified that “due to the manufactured home industry’s ‘credit crisis’ of 2005, only 85 of Amberly Pointe’s 205 pads (i.e., 40%) were rented and generating income between 2005 and 2008.”²⁰⁵ Keeney contended only the 85 pads that were rented should be considered in determining value for the 2007 assessment. Keeney also argued that approximately 2.6 acres of Amberly Pointe had no value because that acreage was zoned as “green space” and could not generate income. As such, Keeney contended the property assessment should be reduced using the income capitalization approach and submitted a worksheet applying the approach to Amberly Pointe. While the income capitalization approach may be used to determine value, Indiana MHC’s income capitalization approach failed to take into account any market data. As such, the Indiana Board determined it lacked probative value and issued a final determination announcing Indiana MHC failed to demonstrate its 2007 assessment was erroneous. Indiana MHC filed an appeal with the Indiana Tax Court.²⁰⁶

On appeal, Indiana MHC argued the Indiana Board’s determination was “arbitrary and capricious because it disregarded the ‘substantial evidence’ it presented demonstrating that Amberly Pointe’s 2007 assessment should have been much lower: it had an occupancy rate of only 40% and its green space was ‘worthless.’”²⁰⁷ The Tax Court disagreed, determining that Indiana MHC’s income capitalization approach failed to comply with generally accepted appraisal principles since it did not consider occupancy rate of comparable properties in the market.²⁰⁸ The Court also highlighted that the administrative record contained “evidence that indicate[d] Amberly Pointe’s low occupancy rate of 40% was

201. *Id.* at *4.

202. 987 N.E.2d 1182 (Ind. T.C. 2013).

203. *Id.* at 1183. An individual owning a manufactured home may rent a pad to place the home, which includes a driveway off the street, footers on which the home is placed, and utility hook-up. *Id.* at 1183 n.1.

204. *Id.* at 1184.

205. *Id.*

206. *Id.*

207. *Id.* at 1185.

208. *Id.* at 1185-86.

actually the anomaly in the market place.”²⁰⁹ As such, the Tax Court affirmed the Indiana Board’s final determination, concluding Indiana MHC’s income capitalization approach lack probative value and the 2007 assessment of Amberly Pointe was proper.²¹⁰

6. *Shelby County Assessor v. CVS Pharmacy, Inc. #6637-02.*²¹¹—This case concerns a CVS general retail store and pharmacy located in Shelbyville, Indiana.²¹² Hook-SupeRx, Inc. (“Hooks”) leased the CVS from SCP 2001A-CSF-19 LLC (SCP), pursuant to a twenty-two year lease term in which Hooks paid monthly lease payments of \$27.20 per square foot. Hooks was responsible for the property’s annual property tax liabilities. For the 2007 and 2008 tax years, the Assessor assessed the subject property at \$2,375,600 and \$2,459,700. CVS filed appeals with the Shelby County PTABOA, alleging the values were too high. The PTABOA affirmed the assessments and CVS subsequently filed appeals with the Indiana Board. The Indiana Board conducted a hearing where both parties agreed the income capitalization method was the most reliable method by which to value the property. However, in presenting their income capitalization method calculations, the parties “differed in one major aspect: CVS used market rents and the Assessor used contractual rent.”²¹³ The Indiana Board was not persuaded by either party’s calculation and issued a final determination upholding the Assessor’s *original* assessments.²¹⁴ The Indiana Board explained “it was ‘not convinced’ that either party presented ‘a more credible or reliable indication of market value-in-use for the subject property than the assessments . . . [originally] established for 2007 and 2008.’”²¹⁵ The Assessor, not CVS, appealed the Indiana Board’s final determination to the Indiana Tax Court.²¹⁶

On appeal, the Assessor argued the contractual rent of \$27.20 per square foot should have been used in the income approach, and by failing to do so the Indiana Board “completely ignored the subject property’s utility as a fully-functioning CVS store.”²¹⁷ The Tax Court acknowledged the Indiana Board had determined CVS provided probative evidence demonstrating there was a significant difference between the subject property’s market rent and contractual rent.²¹⁸ Due to this evidence, the Indiana Board explained that “the Assessor’s use of the subject property’s contractual rent in her income approach likely was capturing more than the value of the real property (*i.e.*, the ‘sticks and bricks’) in her computation.”²¹⁹ As such, the Indiana Board did not give the Assessor’s approach

209. *Id.* at 1186.

210. *Id.*

211. 994 N.E.2d 350 (Ind. T.C. 2013).

212. *Id.* at 351.

213. *Id.*

214. *Id.* at 351-53.

215. *Id.* at 352.

216. *Id.* at 353.

217. *Id.*

218. *Id.* at 354.

219. *Id.*

any weight. The Tax Court agreed with the Indiana Board and explained that case law supported such a decision. Accordingly, the Tax Court affirmed the Indiana Board final determination.²²⁰

7. *Orange County Assessor v. Stout*.²²¹—James E. Stout owns 9.12 acres of land in West Baden Springs, Indiana, which was assessed at \$8,000 for the 2008 tax year.²²² For the 2009 tax year, his land's assessed value increased to \$45,600 because the Assessor reclassified 8.12 acres of “agricultural” land to “residential excess” land. In May 2010, Stout filed an appeal with the Orange County PTABOA, but when the PTABOA failed to issue a decision after 120 days, Stout sought relief from the Indiana Board. During the Indiana Board’s hearing, Stout argued Indiana Code section 6-1.1-15-17 required the Assessor to prove the assessment was correct because it had increased by more than 5% from 2008 to 2009. Conversely, the Assessor claim that because Indiana Code section 6-1.1-15-17 only applied to assessment appeals involving March 1, 2012 assessments because the statute was first effective July 1, 2011. As such, because Stout was appealing his 2009 assessment, the Assessor argued Indiana Code section 6-1.1-15-17 did not apply, which meant Stout bore the burden of proving that his assessment was incorrect. The Indiana Board determined both that the Assessor bore the burden of proving the land assessment was proper and the Assessor had failed to meet this burden. The Assessor appealed to the Indiana Tax Court.²²³

On appeal, the Assessor contended the Indiana Board incorrectly applied the new burden of proof statute.²²⁴ The Tax Court disagreed, explaining Indiana Code section 6-1.1-15-17 was not a “new” statute because its content had already been codified at Indiana Code section 6-1.1-15-1(p). Specifically, the General Assembly repealed Indiana Code section 6-1.1-15-1(p) and enacted section 6-1.1-15-17 to clarify its original intent in enacting Indiana Code section 6-1.1-15-1(p), which was “the 5% burden-shifting rule was to be applied not solely at the preliminary level of the administrative process (i.e., the PTABOA level), but throughout the entire appeals process.”²²⁵ Therefore, the Tax Court determined that “as early as 2009, the General Assembly deemed an annual increase in the assessed value of property in excess of 5% to automatically shift the burden of proof from the taxpayer (to demonstrate that the assessment was incorrect) to the assessing official (to demonstrate that the assessment was correct).”²²⁶ Furthermore, the Court disagreed with the Assessor that the statutory “trigger” for the burden shifting is the assessment date.²²⁷ Instead, the Court found the statute applied to the date the taxpayer challenges the assessment. When Stout appealed the assessment to the PTABOA on in May 2010, Indiana Code section 6-1.1-15-

220. *Id.*

221. 996 N.E.2d 871 (Ind. T.C. 2013).

222. *Id.* at 872.

223. *Id.*

224. *Id.* at 874.

225. *Id.*

226. *Id.*

227. *Id.* at 875.

1(p) was in effect, placing the burden of proof on the Assessor to establish the propriety of the assessment increase.

In the alternative, the Assessor argued she had met the burden because she provided a reasonable basis for reclassifying Stout's land.²²⁸ The Court determined the Assessor had "changed the classification on Stout's land from 'agricultural' to 'residential excess' solely on the basis that she did not have a forest management plan or a timber harvesting plan for the property."²²⁹ As such, the Tax Court found the Assessor failed to provide any evidence Stout was not using his property for an agricultural purpose and affirmed the final determination of the Indiana Board.²³⁰

8. *Kildsig v. Warrick County Assessor*.²³¹—During the 2009 tax year, Douglas G. Kildsig owned 12.648 acres of land housing his residence, two pole barns, a lake, and just over eleven acres of woods.²³² The Warrick County Assessor assessed the property at \$192,600, which Kildsig appealed first to the Warrick County PTABOA and then to the Indiana Board. At the Indiana Board hearing, Kildsig claimed that because his 2009 assessment was more than 5% greater than his 2008 assessment, the Assessor bore the burden of establishing the validity of his 2009 assessment pursuant to Indiana Code section 6-1.1-15-1(p). Kildsig also contended his assessment was incorrect because 11.648 acres were improperly classified as residential excess acreage rather than agricultural land. Conversely, the Assessor maintained the classification was proper because Kildsig did not use his land for any qualifying agricultural purpose. The Indiana Board issued a final determination finding Kildsig bore the burden of establishing the invalidity of his 2009 assessment because Indiana Code section 6-1.1-15-1(p) applied exclusively to PTABOA proceedings. The Indiana Board also determined Kildsig's land classification was proper and upheld his assessment. Kildsig appealed to the Tax Court.²³³

On appeal, Kildsig contended the Indiana Board's determination finding Indiana Code section 6-1.1-15-1(p) applied exclusively to PTABOA proceedings was incorrect as a matter of law.²³⁴ The Tax Court explained it had recently decided a case finding "the burden-shifting rule contained in Indiana Code [section] 6-1.1-15-1(p), as clarified by Indiana Code [section] 6-1.1-15-17, applied throughout the entire appeals process, not just in the initial proceedings."²³⁵ As such, the Court determined the Indiana Board's determination that Indiana Code section 6-1.1-15-1(p) did not apply to its proceedings was contrary to the law. Next, Kildsig claimed the Indiana Board's determination that 11.648 acres of his land was "excess residential acreage" was not supported by

228. *Id.*

229. *Id.* at 876.

230. *Id.* at 876-77.

231. 998 N.E.2d 764 (Ind. T.C. 2013).

232. *Id.* at 765.

233. *Id.*

234. *Id.* at 766.

235. *Id.* (citing *Orange Cnty. Assessor v. Stout*, 996 N.E.2d 871, 872-75 (Ind. T.C. 2013)).

substantial evidence. The Tax Court noted the Assessor and Kildsig had presented conflicting evidence at the Indiana Board hearing, and the Indiana Board found the Assessor's evidentiary presentation more persuasive.²³⁶ As such, the Tax Court determined Kildsig was simply asking the Court to reweigh the evidence, which it would not do.²³⁷ Accordingly, the Tax Court reversed the Indiana Board's determination with respect to the application of Indiana Code section 6-1.1-15-1(p) but affirmed the Indiana Board's determination with respect to the classification of Kildsig's property.²³⁸

9. *Kellam v. Fountain County Assessor*.²³⁹—In July 2009, Roderick E. Kellam and Carol Meyers, an unmarried couple, bought a house together in Fountain County.²⁴⁰ When applying for homestead and mortgage deductions at the Fountain County Auditor's office, Kellam and Myers were instructed to only print their names, addresses, and sign the application for the homestead deduction.²⁴¹ An Auditor's employee informed them the Auditor's office "would fill everything else out."²⁴² As such, neither Kellam nor Myers filled out the section on the homestead deduction application pertaining to other properties owned by the applicant in other counties. Kellam and Myers were instructed to complete the entire mortgage deduction application, which required them to list the other properties they owned in Indiana. Kellam received a homestead deduction on the Fountain County property in 2009 and the March 2011 Fountain County property tax statement included the homestead deduction for the 2010 tax year as well. On March 16, 2011, "the Fountain County Treasurer sent a letter to Kellam and Myers stating that the 'Assessor has requested a C of E to correct your parcel' . . . [and] 'a new tax statement [is enclosed] for the above mentioned parcel.'"²⁴³ The new property tax statement did not include the homestead deduction, and Kellam was informed it was because he still had a homestead deduction on his Wells County property. On May 9, 2011, Kellam "faxed the Fountain County Assessor a 'corrected' Wells County property tax statement indicating that he had successfully removed the Wells County homestead deduction."²⁴⁴ Regardless, the Auditor denied Kellam's homestead deduction because "Myers already had a homestead deduction on her Grant County residence and had signed the Fountain County application."²⁴⁵ Kellam filed a Petition for Correction of Error but the Fountain County PTABOA denied the petition. Kellam appealed to the Indiana Board, a hearing was conducted, and a

236. *Id.* at 766-67.

237. *Id.* at 767.

238. *Id.*

239. 999 N.E.2d 120 (Ind. T.C. 2013).

240. *Id.* at 120-21.

241. *Id.* at 121.

242. *Id.*

243. *Id.*

244. *Id.*

245. *Id.*

final determination was issued denying Kellam's deduction.²⁴⁶ Kellam subsequently appealed to the Tax Court.²⁴⁷

On appeal, Kellam argued the Indiana Board's final determination was unsupported by substantial evidence and contrary to the law.²⁴⁸ The Tax Court agreed, finding the Indiana Board incorrectly determined Kellam was not individually eligible for a homestead deduction on the co-owned Fountain County property.²⁴⁹ The Court determined Kellam presented sufficient evidence he was eligible for a homestead deduction for the Fountain County property.²⁵⁰ Specifically, Kellam presented a document demonstrating he did not receive a homestead deduction for his Wells County property in 2010. "[A]lthough the document indicated that [Kellam] received a \$29,760 homestead deduction in 2010 [for the Wells County property], it also showed that he paid \$477.08 in property taxes: the total amount of property tax due if the \$29,760 homestead deduction was not applied."²⁵¹ At the Indiana Board hearing, the Assessor agreed with Kellam and presented no contradictory evidence. As such, the Court determined "a finding that Kellam did not qualify for a homestead deduction on the 2010 Fountain County property because he had a 2010 homestead deduction on a Wells County property is unsupported by substantial or reliable evidence."²⁵² Accordingly, the Tax Court reversed and remanded the Indiana Board's final determination.

10. *Hutcherson v. Ward*.²⁵³—In May 2003, the Hutchersons filed for the homestead standard deduction with the Hamilton County Auditor.²⁵⁴ When the Hutchersons paid their property taxes on November 9, 2012, they were informed their homestead deduction was not "active." Upon further investigation, the Hutchersons discovered they had not received the homestead deduction for the years since they filed their application.²⁵⁵ The County Auditor corrected the error for the immediately preceding three tax years (2008, 2009, 2010).²⁵⁶ To correct the error for the 2004 through 2007 tax years, the Hutchersons filed four petitions to correct error with the County Auditor, claiming that through an error of omission by a county official, they were not given credit for the homestead deduction as permitted by law. The Hutchersons did not file any claims for refund with the petitions. The Hamilton County PTABOA denied all four petitions and the Hutchersons appealed to the Indiana Board. Likewise, the Indiana Board denied the petitions, stating they were not timely filed within the three-year

246. *Id.* at 121-22.

247. *Id.* at 122.

248. *Id.*

249. *Id.* at 122-24.

250. *Id.* at 124.

251. *Id.*

252. *Id.*

253. 2 N.E.3d 138 (Ind. T.C. 2013).

254. *Id.* at 139.

255. *Id.* at 139-40.

256. *Id.* at 140.

statute of limitation. The Hutchersons appealed to the Tax Court and the Assessor subsequently filed a motion to dismiss pursuant to Indiana Trial Rules 12(B)(1) and 12(B)(6).²⁵⁷

In its motion, the Assessor argued both that the Tax Court lacked subject matter jurisdiction and the Hutchersons failed to state a claim upon which relief could be granted because the Hutchersons had failed to timely file.²⁵⁸ The Tax Court determined it had subject matter jurisdiction despite the Hutchersons failure to timely file because such a failure does “not rob the Court of subject matter jurisdiction, but would merely prevent the Court from exercising its subject matter jurisdiction to resolve the matter.”²⁵⁹ Next, the Tax Court determined that, unlike Indiana’s Refund Statute, “no statutory language limiting the time in which to file a petition to correct error exists” in the Petition to Correct Error Statute.²⁶⁰ Therefore, the Court refused to read into the statute a three-year limitation requirement when one did not exist.

Although the Hutchersons had not filed a claim for refund with their petition to correct error, the Assessor contended the Hutchersons claim was nonetheless time barred by the Refund Statute, which expressly imposes a three year limitation period for filing a refund.²⁶¹ The Court noted several distinctions between the Refund Statute and the Petition to Correct Error Statute and determined these “disparate requirements . . . suggest their independence.”²⁶² Therefore, because the Hutchersons had not filed a refund, the Court refused to apply the Refund Statute to their case.²⁶³ The Court acknowledged it was “well aware that this decision has the potential to open the floodgates for petition to correct error appeals.”²⁶⁴ However, the Court explained that while it supports the public policy favoring limitations of claims, it “declines to invade the domain of the Legislature and write in a limitations period where none exists.”²⁶⁵ Accordingly, the Tax Court denied the Assessor’s motion to dismiss.

*11. Grabbe v. Carroll County Assessor.*²⁶⁶—Vern Grabbe owns two contiguous parcels of agricultural land in Carroll County, one consisting of 3.664 acres and containing one hog building and the other parcel consisting of 19.266 acres and containing two hog buildings and a utility shed.²⁶⁷ For the 2009 tax year, the subject property was assessed at \$274,500, which Grabbe challenged first with the Carroll County PTABOA and then with the Indiana Board. At the Indiana Board hearing, Grabbe “presented four self-prepared analyses to

257. *Id.*

258. *Id.* at 140-41.

259. *Id.* at 141.

260. *Id.* at 142.

261. *Id.* at 143.

262. *Id.* at 143-44.

263. *Id.* at 144.

264. *Id.*

265. *Id.*

266. 1 N.E.3d 226 (Ind. T.C. 2013).

267. *Id.* at 227.

demonstrate that the assessed value of the subject property should only be \$218,262.²⁶⁸ The Indiana Board issued a final determination finding Grabbe's analyses lacked probative value and upholding the assessment. Grabbe appealed to the Tax Court.

On appeal, Grabbe contended that "because he presented probative evidence consisting of his analyses using an allocation approach, a cost approach, an income approach, and a market data approach, the Indiana Board erred in upholding his property's \$274,500 assessment."²⁶⁹ The Tax Court analyzed each of Grabbe's approaches in turn. First, the Court noted Grabbe's allocation approach "appeared to incorporate two different appraisal methodologies, the allocation method and the abstraction method," but the administrative record did not indicate whether "these two methodologies comported with any generally accepted appraisal principles, which is required to rebut the presumption of accuracy accorded to an assessment made pursuant to Indiana's assessment guidelines."²⁷⁰ As such, the Court determined Grabbe's allocation approach lack probative value.

With respect to his cost approach, Grabbe estimated the value of the property "by taking an obsolescence depreciation adjustment for the hog buildings' antiquated designs and use of lagoon manure storage systems."²⁷¹ The Tax Court determined the Indiana Board was correct in finding "that Grabbe's cost approach lacked probative value because it failed to link the identified causes of obsolescence to an actual loss in property value."²⁷² Similarly, the Tax Court determined the Indiana Board properly rejected Grabbe's income approach "because Grabbe improperly deducted property taxes as an expense and he did not support his use of a 20% capitalization rate."²⁷³

Finally, the Indiana Board had found Grabbe's market data approach lacked probative value "because he neither explained nor submitted any documentary evidence to indicate how he determined the value of the homes, the other land, and the tool sheds on the comparison farms."²⁷⁴ Grabbe contended the certified administrative record contained evidence of the values and items, but because Grabbe had failed to present such evidence to the Indiana Board, the Tax Court was not permitted to consider it. Accordingly, the Tax Court determined all four of Grabbe's approaches lack probative value and affirmed the Indiana Board's determination.²⁷⁵

12. *Grabbe v. Carroll County Assessor*.²⁷⁶—Vern Grabbe owns two contiguous parcels of agricultural land in Carroll County, one consisting of 3.664

268. *Id.*

269. *Id.* at 228.

270. *Id.* at 229.

271. *Id.*

272. *Id.* at 230.

273. *Id.* at 230-31.

274. *Id.* at 232.

275. *Id.* at 232-33.

276. 1 N.E.3d 233 (Ind. T.C. 2013).

acres and containing one hog building and the other parcel consisting of 19.266 acres and containing two hog buildings and a utility shed.²⁷⁷ For the 2010 tax year, the subject property was assessed at \$306,900, which was an 11% increase over the previous year's assessment of \$274,500.²⁷⁸ Grabbe challenged the assessments first with the Carroll County PTABOA and then with the Indiana Board.²⁷⁹ At the Indiana Board hearing, Grabbe presented “four self-prepared analyses as evidence to demonstrate that the assessed value of the subject property should only be \$218,862. In response, the Assessor conceded that the valuations of the hog buildings on [one] parcel were incorrect, but argued that the original assessment should nonetheless be upheld.”²⁸⁰ The Indiana Board issued a final determination, which valued Grabbe’s property for 2010 the same as its 2009 assessed value of \$274,500. Grabbe appealed to the Tax Court.

On appeal, Grabbe requested the Tax Court reduce his assessment to \$218,862 for the 2010 tax year, the value for which Grabbe argued before the Indiana Board.²⁸¹ First, Grabbe argued the Indiana Board incorrectly determined his evidence lacked probative value and thus incorrectly found he had failed to make a *prima facie* case.²⁸² The Tax Court noted Grabbe had previously appealed an assessment before the Tax Court using the same four-factor analyses.²⁸³ In the previous case, the Court determined Grabbe’s evidence lacked probative value because “he failed to show that his analyses comported with generally accepted appraisal principles.”²⁸⁴ Therefore, given Grabbe used the same four analyses to estimate the property’s 2010 value, the Tax Court agreed with the Indiana Board that the evidence lacked probative value. Next, Grabbe argued the Indiana Board’s determination that the 2010 assessment should be the same as the 2009 assessment was contrary to the law. The Court disagreed, explaining it was reasonable for the Indiana Board to apply the property’s 2009 assessment “given that neither of the parties presented probative evidence as to the subject property’s market value-in-use for the 2010 tax year.”²⁸⁵ Accordingly, the Tax Court affirmed the Indiana Board’s final determination.

B. Local Tax

I. *Brown v. Department of Local Government Finance*.²⁸⁶—Gregg Township is a rural township located in Morgan County, Indiana with a population of

277. *Id.* at 233.

278. *Id.* at 233-34.

279. *Id.* at 234.

280. *Id.*

281. *Id.* at 234-35.

282. *Id.* at 234.

283. *Id.* at 235.

284. *Id.*

285. *Id.* at 236.

286. 989 N.E.2d 386 (Ind. T.C. 2013).

approximately 3,000 and no incorporated municipalities within its borders.²⁸⁷ The Township contracts with a private volunteer fire department for its fire protection services. In June 2009, the Gregg Township Board issued a resolution authorizing the Township to incur a loan for the purchase of a fire engine to replace the Township's current 1992 Darley.²⁸⁸ The loan proceeds were not to exceed \$400,000. Dora Brown, Ben Kindle, and Sonjia Graf, as residents of Gregg Township, filed an objection petition.²⁸⁹ The petition argued the Township's current fire engine was sufficient to service the Township's needs and, even if the fire engine needed replaced, Gregg Township taxpayers should not bear the entire cost of the loan for the fire engine since it would also be used by the fire department to service other townships.²⁹⁰ The DLGF held a hearing and issued a final determination approving the loan in its entirety.²⁹¹ The Petitioners appealed to the Indiana Tax Court.²⁹²

On appeal, Petitioners raised three arguments.²⁹³ First, the Petitioners asserted the DLGF's final determination failed to consider the eight factors set forth in Indiana Code section 36-6-6-14(d) in concluding the Township was authorized to borrow money.²⁹⁴ The Tax Court determined the DLGF was not required to consider these eight factors because it approved the Townships loan under a different statute, Indiana Code section 36-8-13, which did not require analysis of the eight factors.²⁹⁵ Second, the Petitioners argued the DLGF'S final determination was not supported by substantial evidence.²⁹⁶ The Tax Court declined to entertain this argument because it determined the Petitioners were asking the Court to reweigh the evidence, which it would not do.²⁹⁷ Finally, the Petitioners contended the DLGF's final determination violated article 1, section 23 and article 10, section 1 of the Indiana Constitution because it required Gregg Township taxpayers to bear the entire cost of the loan even though the fire department would use the new fire engine to respond to calls outside of Gregg Township.²⁹⁸ Although the Petitioners had raised this argument at the administrative hearing, the DLGF failed to address it in its final determination and the Tax Court noted the parties had presented competing evidence on the issue.²⁹⁹ Therefore, the Tax Court remanded the issue to the DLGF to review the evidence and make a final determination regarding the constitutionality issue. As

287. *Id.* at 387.

288. *Id.*

289. *Id.* at 386-87.

290. *Id.* at 387.

291. *Id.* at 387-88.

292. *Id.* at 388.

293. *Id.*

294. *Id.* at 388-89.

295. *Id.* at 389.

296. *Id.*

297. *Id.* at 390.

298. *Id.*

299. *Id.* at 391.

such, the Tax Court affirmed in part and remanded in part the DLGF's final determination.³⁰⁰

2. *Board of Commissioners of County of Jasper v. Vincent*.³⁰¹—On June 7, 2010, the Jasper County Board of Commissioners issued a resolution seeking to establish a cumulative building fund and levy for equipping and remodeling the Jasper County Hospital.³⁰² The Commissioner's resolution requested Jasper County Council "to levy a tax, not to exceed \$0.007 on each \$100 of assessed value, on all taxable property within the county for up to three years."³⁰³ The Council approved the Commissioners request but the DLGF subsequently denied it. The Commissioners filed an appeal with the Tax Court and moved for summary judgment.³⁰⁴

On appeal, the Commissioners argued the plain language of Indiana Code section 16-22-5-4³⁰⁵ does not limit the number of times a county hospital board may seek to establish a cumulative building fund and levy.³⁰⁶ The DLGF's interpretation of the statute was that it provides for only one cumulative building fund and levy during the service life of a county hospital.³⁰⁷ The DLGF raised three arguments in support of its interpretation: (1) "because other cumulative building fund statutes lack term limits entirely and use lower tax rates, the term limits and higher tax rates in Indiana Code [section] 16-22-5-4 necessarily create a one-time, non-renewable fund and levy;"³⁰⁸ (2) "because the county hospital cumulative building fund's statutory scheme provides alternative financing options (i.e., bonds and loans), Indiana Code [section] 16-22-5-4 must restrict county hospital cumulative building funds to one 12 year period;"³⁰⁹ and (3) a restrictive interpretation of the statute protects taxpayers from continually paying for large cumulative building fund levies.³¹⁰ However, the Tax Court was not persuaded. Instead, the Court looked to the statutory history of Indiana Code section 16-22-5-4, determining the statute's purpose intended to allow recurring cumulative building funds and levies and did not seek to limit the number of funds and levies that may be established during the life of a county hospital.³¹¹ As such, the Tax Court reversed and remanded the DLGF's final determination

300. *Id.*

301. 988 N.E.2d 1280 (Ind. T.C. 2013).

302. *Id.* at 1281.

303. *Id.*

304. *Id.*

305. "To provide for the cumulative building fund, a tax on all taxable property within the county may be levied annually for not more than twelve (12) years and may not exceed eleven and sixty-seven hundredths cents (\$0.1167) on each one hundred dollars (\$100) of assessed valuation of property in the county." IND. CODE § 16-22-5-4 (2010).

306. *Vincent*, 988 N.E.2d at 1281.

307. *Id.* at 1282.

308. *Id.* at 1283.

309. *Id.* at 1284.

310. *Id.*

311. *Id.* at 1282-83.

denying the Commissioner's request.³¹²

C. Inheritance Tax

1. *Odle v. Indiana Department of State Revenue*.³¹³—On February 12, 2009, Floyd L. Odle died testate.³¹⁴ Because Odle's wife preceded him in death and the couple never had children of their own, Floyd left his entire estate to several collateral relatives, including nephews, great nieces, and great nephews. The Estate filed its Indiana inheritance tax return classifying each beneficiary as either Class B or Class C transferees. After remitting its inheritance tax payment, the Estate filed a refund claim with the Department, alleging all of Odle's beneficiaries should have been classified as Class A transferees. The Department denied the refund claim and the Estate appealed to the probate court. The probate court determined Odle's beneficiaries had been properly classified as Class B and Class C transferees. The Estate subsequently appealed to the Indiana Tax Court.³¹⁵

On appeal, the Estate argued “the creation of ‘classes’ for the determination and collection of inheritance tax that base both the amount of exemption and tax rate on the relationship between a decedent and a transferee violates Indiana's Constitution Article 1, Sections 1, 12, 23, and Article 4, Section 22.”³¹⁶ The Department maintained the Indiana Supreme Court had found the inheritance tax classification scheme constitutional in *Crittenberger v. State Savings & Trust Company*, over ninety years ago. The Tax Court agreed with the Department in so much as the holding in *Crittenberger* resolved the Estate's Article 1, Section 1 and Article 1, Section 23 claims in favor of the Department.³¹⁷ Specifically, *Crittenberger* provided that inheritance tax classification schemes distinguishing between lineal relatives, collateral relatives, and strangers are both equitable and reasonable when the classifications and statutory schemes operate on the classes uniformly.³¹⁸

With respect to the Estate's remaining constitutional claims, the Tax Court determined the inheritance tax classification scheme did not violate Section 12 by imposing inequitable administration costs and remedies because the Legislature had “provided the Estate with four alternative remedies by which to challenge the determination and collection of inheritance tax.”³¹⁹ The Court expressly noted the Estate had already taken advantage of one such remedy, the claim for refund process. The Tax Court also determined the inheritance tax classification scheme did not violate Article 4, Section 22 by enacting “special”

312. *Id.* at 1284.

313. 991 N.E.2d 631 (Ind. T.C.), *review denied*, 997 N.E.2d 356 (Ind. 2013).

314. *Id.* at 633.

315. *Id.*

316. *Id.* at 634.

317. *Id.* at 635.

318. *Id.*

319. *Id.* at 636.

laws regarding “the assessment and collection of taxes for State, county, township, or road purposes.”³²⁰ Specifically, the Tax Court explained the inheritance tax classification scheme was a general law because it applies to beneficiaries throughout the entire state in the same manner.³²¹ Accordingly, the Court determined the Estate failed to prove the inheritance tax classification scheme violated the Indiana Constitution.³²² As such, the Court affirmed the probate court’s determination that Odle’s beneficiaries were properly classified as Class B and Class C transferees.³²³

D. Sales and Use Tax

1. *Miller Pipeline Corp. v. Indiana Department of State Revenue.*³²⁴—On September 10, 2009, the Department completed an audit of Miller Pipeline for tax years 2005 through 2007.³²⁵ The Department issued proposed assessment against Miller Pipeline for tax years 2006 and 2007, which Miller Pipeline paid in their entirety. On March 24, 2010, Miller Pipeline filed a claim with the Department seeking a refund of sales and use taxes it paid between 2005 and 2007. The Department denied the refund claim and Miller Pipeline appealed to the Indiana Tax Court.³²⁶ Miller Pipeline subsequently filed a motion for summary judgment asserting its refund claim had been erroneously denied and provided the Tax Court with 15 documents, exhibits 13 through 27, to show there was no genuine issue of material fact.³²⁷

The Tax Court did not reach the merits of Miller Pipeline’s motion, but instead denied the motion due to “numerous infirmities” with Miller Pipeline’s designated evidence, exhibits 13 through 27.³²⁸ To address the infirmities yet conserve judicial resources, the Tax Court only specifically addressed two of Miller Pipeline’s issues. In the first issue addressed by the Court, Miller Pipeline designated Exhibits 13, 14, and 15 as its evidence.³²⁹ However, (1) Miller Pipeline did not identify the specific parts of those exhibits containing the material fact or facts upon which it relied; (2) none of the exhibits were paginated, despite being six and eleven pages long; and (3) none of the exhibits or any of the documents within each of the exhibits were sworn to in any way.³³⁰ Due to these infirmities, the Tax Court determined Exhibits 13, 14, and 15 were inadmissible. In the second issue addressed by the Court, Miller Pipeline

320. *Id.*

321. *Id.* at 636-37.

322. *Id.* at 637.

323. *Id.*

324. 995 N.E.2d 733 (Ind. T.C. 2013).

325. *Id.* at 734.

326. *Id.*

327. *Id.* at 734-35.

328. *Id.* at 735.

329. *Id.* at 735-36.

330. *Id.* at 736.

designated Exhibit 26, a photocopy of a one-page form letter, as its designated evidence.³³¹ The Court determined Exhibit 26 did not provide any facts that would support the “legal conclusion” Miller Pipeline was advancing.³³² The Court also noted the “mere fact that the letter was signed and affirmed does not make it an affidavit.”³³³ Due to these infirmities, the Court determined Exhibit 26 was inadmissible. As such, the Tax Court denied Miller Pipeline’s motion for summary judgment because the evidence submitted in support of the motion had not been properly designated and was inadmissible.³³⁴

2. *Orbitz, LLC v. Indiana Department of State Revenue*.³³⁵—At issue in this matter was Orbitz, LLC’s request to have certain documents within the judicial record placed under seal so the general public could not access them.³³⁶ Orbitz is a Delaware corporation providing online travel reservation services with its principal place of business in Chicago, Illinois.³³⁷ Between 2004 and 2006, Orbitz’s customers booked hotel rooms in Indiana through Orbitz’s website (“bookings at issue”). In 2007, the Department completed an audit of Orbitz, determined Orbitz had been deficient in remitting Indiana’s gross retail sales and county innkeeper taxes on the bookings at issue, and issued proposed assessments against Orbitz. Orbitz protested the assessments, but the Department, in two Letters of Findings, denied Orbitz’s protest. Orbitz appealed to the Tax Court. Orbitz subsequently filed a motion for summary judgment with designated evidence in support thereof. Orbitz also requested the Court to hold a hearing and issue an order, pursuant to Indiana Code section 5-14-3-5.5(c), declaring certain designated evidence was “confidential information” and restricting it from public access.³³⁸ Orbitz explained its designated evidence included contracts it had with three Indiana hotels, which contained trade secrets and financial information to which the public should not have access.³³⁹

On September 17, 2013, the Court held a hearing on Orbitz’s request and issued an order determining whether Orbitz’s contracts are, or contain, “trade secrets.”³⁴⁰ The Court determined Orbitz’s contracts had four characteristics of trade secrets: (1) the contracts contain and are thus “information”;³⁴¹ (2) Orbitz derived “independent economic value from this pricing information”;³⁴² (3) “the pricing information contained in the contracts is not readily ascertainable through proper means by others who can obtain economic value from the information’s

331. *Id.* at 737.

332. *Id.* at 738.

333. *Id.*

334. *Id.*

335. 997 N.E.2d 98 (Ind. T.C. 2013).

336. *Id.* at 98-99.

337. *Id.* at 99.

338. *Id.* at 99-100.

339. *Id.* at 99.

340. *Id.* at 100.

341. *Id.* at 101.

342. *Id.*

disclosure or use”,³⁴³ and (4) Orbitz had taken reasonable steps to maintain the confidentiality of the information contained within the contracts.³⁴⁴ Therefore, because the contracts had four characteristics of trade secrets, the Court determined “they fall within the mandatory exceptions to the general rule of public access set forth in APRA and Administrative Rule 9.”³⁴⁵ As such, the Court granted Orbitz’s request to prohibit public access to the information in the court record.³⁴⁶

3. *Garwood v. Indiana Department of State Revenue*.³⁴⁷—This case was Virginia Garwood’s second appeal to the Indiana Tax Court.³⁴⁸ On June 2, 2009, the Department served Garwood and her daughter with several jeopardy tax assessments, stating Garwood and her daughter owed over \$250,000 in sales tax, interest, and penalties on their sales of dogs for the January 1, 2007 through April 30, 2009 tax period. After Garwood and her daughter indicated that they could not immediately pay the liability, the Department seized all 240 dogs on their premises pursuant to jeopardy tax warrants and subsequently sold them to the U.S. Humane Society for a total of \$300.00. The Department applied \$175.48 of the proceeds to Garwood’s purported tax liability.³⁴⁹

On June 29, 2009, Garwood filed her first appeal with the Tax Court and the Department moved to dismiss, alleging the Court lacked subject matter jurisdiction because the same action was pending in Harrison Circuit Court.³⁵⁰ The Tax Court denied the Department’s motion. On August 19, 2011, the Tax Court affirmed its holding in *Garwood I* and found the jeopardy assessments void as a matter of law because they were not issued in accordance with Indiana Code section 6-8.1-5-3. Accordingly, on August 29, 2011, Garwood filed a refund request with the Department for \$122,684.50.³⁵¹ While Garwood’s claim was pending, the Department filed a Petition for Review with the Indiana Supreme Court. Although the Petition was initially granted, five days after oral arguments, the Supreme Court vacated its order granting review because it had been “improvidently” granted.³⁵²

In June 2012, Garwood received a refund check from the Department for \$175.48.³⁵³ The next month, the Department “issued several proposed assessments to Garwood, providing that she owed nearly \$60,000 in sales tax, interest, and penalties for the January 1, 2007 through June 30, 2009 tax

343. *Id.* at 102.

344. *Id.*

345. *Id.*

346. *Id.* at 103.

347. 998 N.E.2d 314 (Ind. T.C. 2013).

348. *Id.* at 316.

349. *Id.*

350. *Id.*

351. *Id.* at 317.

352. *Id.*

353. *Id.*

period.”³⁵⁴ Garwood protested the assessments and the Department held a hearing, but it did not issue a final determination. On August 27, 2012, Garwood filed her second appeal with the Tax Court, claiming the Department had failed to rule on her claim. The Department filed a motion to dismiss, alleging the Tax Court did not have subject matter jurisdiction of Garwood’s case.³⁵⁵

In its motion to dismiss, the Department claimed the Court lacked subject matter jurisdiction because Garwood’s case did not satisfy the “arising under” requirement of Indiana Code section 33-26-3-1.³⁵⁶ Specifically, the Department maintained Garwood’s case was neither a “valid” refund claim nor involving the collection of a tax. The Department argued Garwood’s case, instead, sought to recover monies allegedly not paid or credited to her by mistake. The Tax Court was not persuaded by the Department’s claims, explaining “Indiana Code [section] 6-8.1-9-1 provides, in relevant part, ‘[i]f a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for a refund with the department.’”³⁵⁷ Not only did the Court determine Garwood’s case fell within the statute, but the Court also noted that “in petitioning the Indiana Supreme Court to review *Garwood II*, the Department acknowledged that Garwood had already filed a refund claim.”³⁵⁸ Furthermore, the Court explained the Indiana Supreme Court has held “that the ‘arising under Indiana’s tax law’ requirement is to be broadly construed.”³⁵⁹ Accordingly, the Court determined Garwood’s case was both a valid refund claim and arose under the Indiana tax laws.

Finally, the Court explained that although the Department had yet to issue a final determination in Garwood’s case, Indiana Code section 6-8.1-9-1 allows a claim to be filed with the Tax Court if the Department has failed to issue a final determination within 180 days of the claim’s filing.³⁶⁰ Given Garwood filed her second appeal with the Tax Court more than 180 days following the filing of her claim with the Department, she satisfied the final determination or exhaustion of administrative remedies requirement of Indiana Code section 33-26-3-1.³⁶¹ Therefore, the Court denied the Department’s motion to dismiss.

E. Corporate Income Tax

*I. Vodafone Americas Inc. v. Indiana Department of State Revenue.*³⁶²— During 2005 through 2008, Vodafone was a Delaware corporation not domiciled in Indiana, owning a 45% interest in Cellco Partnership, a general partnership

354. *Id.*

355. *Id.*

356. *Id.* at 318.

357. *Id.* at 319.

358. *Id.*

359. *Id.* at 320.

360. *Id.* at 320-21.

361. *Id.* at 321.

362. 991 N.E.2d 626 (Ind. T.C. 2013).

also organized in Delaware.³⁶³ Cellco, which was doing business as Verizon Wireless, provided wireless voice and data services and communication equipment to customers throughout the United States, including Indiana.³⁶⁴ After receiving its distributive shares of Cellco income, Vodafone filed Indiana adjusted gross income tax returns as a portion of its income was attributable to and taxable in Indiana. Vodafone subsequently amended its returns, seeking a refund on the basis it had erroneously determined its income was derived from sources in Indiana. The Department denied the claim for refund. Vodafone appealed to the Indiana Tax Court and filed a motion for summary judgment.³⁶⁵

On appeal, Vodafone argues it did not have adjusted gross income derived from sources within Indiana, under Indiana Code section 6-3-2-2(a)(1)-(5),³⁶⁶ because its interest in Cellco was intangible personal property and such income was not attributable to Indiana under Indiana Code section 6-3-2-2.2(g).³⁶⁷ Indiana Code section 6-3-2-2.2(g) provides that “[r]eceipts in the form of dividends from investments are attributable to this state if the taxpayer’s commercial domicile is in Indiana.”³⁶⁸ Being that Vodafone was not commercially domiciled in Indiana, it argued its income received from Cellco was not derived from sources within Indiana and thus not taxable.³⁶⁹ The Tax Court determined “dividends from investments” as used in Indiana Code section 6-3-2-2.2(g) was different than the general term “dividends” as used in Indiana Code section 6-3-2-2, which is Indiana’s sourcing statute. Specifically, “‘dividends from investments’ reflects the distinction between operational income and investment income, a key constitutional concept in the attribution of income among the states.”³⁷⁰ As such, the Court determined the key question was whether the income from Cellco “had the character of operational income or investment income because if it was operational income, it was not income in the form of ‘dividends from investments’ under Indiana Code [section] 6-3-2-2(g).”³⁷¹

The Tax Court determined that because Vodafone was a partner in Cellco, a general partnership, the income received from the partnership has the character of operational income, making Vodafone’s income not income in the form of

363. *Id.* at 626.

364. *Id.* at 627.

365. *Id.*

366. “[A]djusted gross income derived from sources within Indiana” meant: “(1) income from real or tangible personal property located in [Indiana]; (2) income from doing business in [Indiana]; (3) income from a trade or profession conducted in [Indiana]; (4) compensation for labor or services rendered within [Indiana]; and (5) income from . . . intangible personal property if the receipt from the intangible [was] attributable to Indiana under [Indiana Code § 6-3-2-2.2].” IND. CODE § 6-3-2-2(a)(1)-(5) (2005) (amended 2011).

367. *Vodafone*, 991 N.E.2d at 627.

368. IND. CODE § 6-3-2-2.2(g) (2005).

369. *Vodafone*, 991 N.E.2d at 628.

370. *Id.*

371. *Id.*

“dividends from investment” under Indiana Code section 6-3-2-2(g).³⁷² The Court further noted Vodafone was not a “passive investor” in Cellco, contrary to Vodafone’s assertion, because it participated in Cellco’s management by appointing Cellco’s chief financial officer and it held certain veto rights by which it could block Cellco from taking specifically identified actions, such as entering new lines of business.³⁷³ Therefore, the Court concluded Vodafone’s income received as a partner of Cellco was not income in the form of “dividends from investments” under Indiana Code section 6-3-2-2(g).³⁷⁴ As such, the Court denied Vodafone’s motion for summary judgment.

2. *United Parcel Serv., Inc. v. Indiana Department of State Revenue*.³⁷⁵—United Parcel Service, Inc. (“UPS”), a package delivery company, excluded the income of its two foreign reinsurance companies, UPINSCO, Inc. and UPS Re Ltd (“the Affiliates”), on its 2001 consolidated Indiana corporate income tax returns.³⁷⁶ UPS also amended its 2000 Indiana return to exclude the income of the Affiliates, requesting a refund in income tax initially paid. The Department audited UPS’s tax returns and disallowed UPS’s exclusion of the Affiliates’ income, denying UPS’s refund and issuing a proposed assessment for underpaid taxes. After protesting the assessment, UPS filed an appeal with the Tax Court, which issued summary judgment in UPS’s favor, stating because UPS was “subject to” the premium tax, it was exempt from the adjusted gross income tax.³⁷⁷ The Department appealed the Tax Court’s decision to the Indiana Supreme Court. In June 2012, the Indiana Supreme Court reversed the Tax Court’s grant of summary judgment to UPS, explaining the “the plain language of Indiana Code section 27-1-18-2 requires that all insurance companies—like UPINSCO and UPS Re—not ‘organized under the laws of this state’ must, at the very least, show they are ‘doing business within this state’ before the companies are entitled to an exemption from adjusted gross income [tax].”³⁷⁸ The Indiana Supreme Court remanded the case for further proceeding after determining the evidence failed to show whether the Affiliates were doing business within Indiana.³⁷⁹ In April 2013, UPS moved again for summary judgment and the Department filed a cross motion for summary judgment.

In ruling on the motions, the Tax Court was presented with two questions to resolve: “(1) whether foreign reinsurance companies must be physically present in Indiana to satisfy the statutory requirement of ‘doing business’ under Indiana Code [section] 27-1-18-2;” and (2) if so, whether providing an exemption from Indiana’s corporate income tax to those companies “doing business” in Indiana

372. *Id.* at 628-29.

373. *Id.* at 629-30.

374. *Id.* at 630.

375. 995 N.E.2d 20 (Ind. T.C. 2013).

376. *Id.* at 21.

377. *Id.*

378. *Id.* at 21-22.

379. *Id.* at 22.

violates the Commerce Clause of the United States Constitution.³⁸⁰ First, the Tax Court reviewed U.S. Supreme Court case law, Indiana case law, and other jurisdictions case law in determining a physical presence standard applies for purposes of a premiums tax.³⁸¹ Accordingly, the Tax Court “conclude[d] that foreign reinsurers must be physically present in Indiana to satisfy the statutory requirement of ‘doing business’ under Indiana Code [section] 27-1-18-2.”³⁸² Next, the Tax Court determined the exemption provided in Indiana Code section 6-3-2-2.8(4) did not violate the Commerce Clause because insurance transactions were protected from commerce clause challenges.³⁸³ Specifically, Congress’s enactment of the McCarran-Ferguson Act and the U.S. Supreme Court’s interpretation of the Act demonstrated the exemption provide in Indiana Code section 6-3-2-2.8(4) is not subject to commerce clause challenges.³⁸⁴ Accordingly, the Tax Court denied UPS’s motion for summary judgment and granted summary judgment to the Department.³⁸⁵

3. *Caterpillar, Inc. v. Indiana Department of State Revenue*.³⁸⁶—This case concerned the proper calculation of net operating losses (NOLs) available for carryover when a corporation receives dividend income from its foreign subsidiaries.³⁸⁷ Caterpillar is a Delaware corporation commercially domiciled in Illinois.³⁸⁸ Caterpillar manufactures construction and mining equipment, conducting its operations from several international and domestic locations, which includes a manufacturing plant in Lafayette, Indiana. During 2000 through 2003, Caterpillar directly or indirectly owned over 250 subsidiaries. Caterpillar received dividends from both its domestic subsidiaries and its foreign subsidiaries in each of the loss years at issue. When Caterpillar calculated its Indiana adjusted gross income tax liability for the loss years, it started with its federal taxable income, which did not include its U.S. Source Dividends but did include its Foreign Source Dividends (FSDs). As such, Caterpillar took the Foreign Source Dividend deduction under Indiana Code section 6-3-2-12 and reported Indiana NOLs on a separate company basis in each of the loss years. After an audit by the Department, it was determined Caterpillar's Indiana NOL deductions were inaccurate because they deducted Caterpillar's FSD income. The Department recalculated Caterpillar’s NOLs for the loss years at issue by adding back the FSD income, which reduced the NOL amount available for carryback and carryforward.³⁸⁹ Caterpillar protested the recalculation and the Department issued

380. *Id.* at 21.

381. *Id.* at 23-24.

382. *Id.* at 24.

383. *Id.* at 24-26.

384. *Id.* at 25-26.

385. *Id.* at 26.

386. 988 N.E.2d 1269 (Ind. T.C. 2013), *trans. granted, opinion vacated*, 2014 WL 519607 (Ind. Feb. 6, 2014).

387. *Id.* at 1269-70.

388. *Id.* at 1270.

389. *Id.*

its Letter of Findings denying Caterpillar's protest.³⁹⁰ Caterpillar appealed to the Tax Court and moved for summary judgment.³⁹¹ The Department subsequently filed a cross-motion for summary judgment.

On appeal, the only dispute was whether the deduction of FSDs under the FSD Statute applies when calculating Indiana NOLs under the NOL Statute.³⁹² The Department claimed "Caterpillar was not entitled to deduct its FSDs in calculating its Indiana NOLs because the NOL Statute neither expressly incorporates the FSD Statute nor specifically references deducting FSDs as a modification in Indiana Code [section] 6-3-1-3.5."³⁹³ Conversely, Caterpillar argued "the method of calculating Indiana NOLs necessarily triggered the statutory deduction of FSDs because its FSD income was included in its adjusted gross income in calculating its Indiana NOL for each of the Loss Years."³⁹⁴ The Tax Court determined it must answer two questions to determine whether deduction of FSD income is proper in calculating Indiana NOLs: (1) "is 'adjusted gross income' a component of the Indiana NOL Statute and, if so, (2) is Caterpillar's FSD income included in that adjusted gross income."³⁹⁵

Although "adjusted gross income" does not appear in the Indiana NOL Statute, the Tax Court determined the components of the NOL calculation established its presence.³⁹⁶ Specifically, Indiana Code section 6-3-1-3.5(b) provides that a corporation's adjusted gross income "is the same as '[federal] taxable income' as modified under Indiana Code [section] 6-3-1-3.5."³⁹⁷ As such, the Tax Court determined "adjusted gross income" is a component of the Indiana NOL Statute if the calculation includes "federal taxable income" that is modified by Indiana Code section 6-3-1-3.5.³⁹⁸ Accordingly, "adjusted gross income" is indirectly present in the NOL Statute.³⁹⁹ Next, the Court determined Caterpillar's FSDs were included in its federal taxable income, in its federal NOL, and in its adjusted gross income within the Indiana NOL Statute.⁴⁰⁰ Therefore, Caterpillar was entitled to deduct its FSD income under Indiana Code section 6-3-2-12 in

390. *Id.* at 1270-71.

391. *Id.* at 1271.

392. *Id.*

393. *Id.*

394. *Id.* at 1272.

395. *Id.*

396. *Id.*

397. IND. CODE § 6-3-1-3.5(b) (2003).

398. *Caterpillar*, 988 N.E.2d at 1272.

399. *Id.*

400. *Id.* at 1272-73.

calculating its Indiana NOLs.⁴⁰¹ Accordingly, the Tax Court granted summary judgment to Caterpillar and denied summary judgment to the Department.⁴⁰² On February 6, 2014, the Indiana Supreme Court granted transfer and vacated the Tax Court's opinion.⁴⁰³

401. *Id.* at 1273.

402. *Id.* at 1274.

403. *Caterpillar, Inc. v. Ind. Dep't of State Revenue*, 2014 WL 519607 (Ind. Feb. 6, 2014).