

Some Very Significant Developments in Indiana Taxation

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I. INTRODUCTION

Certain recent legislative enactments and judicial decisions promise to have a material impact upon the structure of Indiana tax law. This Article will discuss three areas that promise to have the most extensive effects. The first topic is those changes in procedure created along with Indiana's new tax court. The next area of discussion will be Indiana's response to world-wide taxation of multinational corporations. Finally, two recent decisions on the issue of uniformity of property tax valuation will be analyzed.

II. THE NEW INDIANA TAX COURT—HOW WILL IT WORK?

A. *Some Basic Observations Regarding the Court*

After years of debate, the Indiana Legislature finally created a special tax court which commenced business on July 1, 1986.¹ Over the years, proponents for the establishment of a special tax court had vigorously argued that state tax litigation requires adjudications by a tribunal that has a first-hand working knowledge of the intricacies of Indiana's tax laws. Conversely, opponents had critically viewed the prospect of a tax court as removing locally elected judges from a grass roots determination as to the propriety or impropriety of assessments by the State of tax liabilities against the citizenry.

The debate is over. The right decision was reached by the Legislature but, as shall be discussed in this Article, the 1985 act creating the court provides a number of unanswered questions that may plague the court in its infancy.

The two critical questions concerning the new tax court are (a) what is the real scope of the court's so-called "exclusive jurisdiction"² and (b) what will be the kind or character of judicial review to be followed by the court in adjudicating tax appeals. Each of these key questions is separately discussed later in the Article. However, some preliminary

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¹1985 Ind. Acts 2278, Pub. L. No. 291-1985 (codified at IND. CODE §§ 33-3-5-1 to 33-3-5-19 (Supp. 1986)).

²"The tax court has exclusive jurisdiction over any case that arises under the tax laws of this state" IND. CODE § 33-3-5-2(a) (Supp. 1986).

observations regarding the structure of the court and its statutory powers are initially appropriate.

First, the tax court, while denominated an appellate court in the tax court act,³ will essentially serve as the exclusive trial court to hear statutory tax appeals from final determinations of the revenue department and the state tax board, i.e. tax appeals that prior to the creation of the tax court were filed in the state's trial courts of general jurisdiction.⁴ Thus, the basic thrust of the tax court act is simply to substitute the tax court for the state's trial courts as the tribunal to hear tax appeals filed pursuant to existing tax appeal statutory procedures. Cases falling within the court's exclusive jurisdiction are denominated "original tax appeals."⁵

As established in the 1985 statute, the tax court consists of one judge.⁶ The original tax court bill, as introduced in the legislature, had provided for three judges,⁷ and it may prove necessary to enlarge the court if the case load of the court develops to the magnitude many anticipate. The principal office of the court is in Indianapolis, but the act requires taxpayers to elect any one of seven designated counties as the place where evidentiary hearings will be held by the court.⁸ The clerk of the supreme court and court of appeals serves as the clerk of the tax court and the tax court is vested with authority to employ necessary court personnel.⁹

The supreme court has adopted modified trial rules of practice, known as the Rules for the Indiana Tax Court, which are essentially those provisions of the Indiana Rules of Trial Procedure that would be applicable to the tax court's judicial review function.¹⁰ Tracking the statute, Rule TC-2 and Rule TC-3 provide the fundamentals for the form and commencement of an action in the tax court as follows:

RULE TC-2 ONE FORM OF ACTION

(A) In the Indiana Tax Court, there shall be one form of

³"An appellate court to be known as the 'Indiana Tax Court' is established." *Id.* § 33-3-5-1.

⁴*Compare* IND. CODE § 6-8.1-9-1(c) (1982) with IND. CODE 6-8.1-9-1(c) (Supp. 1986).

⁵IND. CODE § 33-3-5-2(b) (Supp. 1986).

⁶*Id.* § 33-3-5-3. The Honorable Thomas G. Fisher has been appointed by the governor to serve as judge of the new court.

⁷H. 1861 (1985) (as introduced).

⁸Those counties are Allen, Jefferson, Lake, Marion, St. Joseph, Vanderburgh, and Vigo. IND. CODE § 33-3-5-1(c) (Supp. 1986).

⁹*Id.* § 33-3-5-10.

¹⁰The rules for the Indiana Tax Court were formally adopted on July 18, 1986. They are reprinted in IND. CODE ANN, *Interim Ann. Serv. No. 1*, 66 (West, October 1986).

action in the nature of a civil action to be known as an "original tax appeal."

(B) An original tax appeal is an action that arises under the tax laws of the State of Indiana by which an initial judicial appeal of a final determination of the Department of State Revenue or the State Board of Tax Commissioners is sought.¹¹

RULE TC-3 COMMENCEMENT OF AN ACTION

(A) An original tax appeal is commenced by filing a petition in the Tax Court.¹²

Rule TC-4 eliminates the necessity to serve a summons on the attorney general, the revenue department, or the state tax board in an original tax appeal in the tax court and instead provides that the clerk of the court shall promptly transmit copies of the taxpayer's petition to the attorney general and to the agency named as defendant in the petition.¹³

The Indiana Tax Court Rules also address the exclusive venue of the tax court as follows:

RULE TC-13 VENUE

The Tax Court has exclusive statewide jurisdiction over all original tax appeals, and venue of all original tax appeals shall lie only in the Tax Court.¹⁴

All tax court trials are to be tried without the intervention of a jury,¹⁵ and the tax court is required to render its decisions in writing.¹⁶ As shall be discussed, the court is granted limited authority to enjoin tax collections,¹⁷ and the tax court is directed to establish a simplified procedure for the handling of small tax claims.¹⁸

But, as noted, the real question regarding the new tax court concerns the actual scope of its jurisdiction and the nature of its judicial review.

B. The Tax Court's Exclusive Jurisdiction— Is It Really Exclusive?

Effective July 1, 1986, the tax court has been vested with "exclusive

¹¹*Id.* at 66.

¹²*Id.*

¹³*Id.* at 66-67.

¹⁴*Id.* at 69.

¹⁵IND. CODE § 33-3-5-13(a) (Supp. 1986).

¹⁶*Id.* § 33-3-5-15.

¹⁷See *infra* notes 82-90 and accompanying text.

¹⁸See *infra* notes 91-95 and accompanying text.

jurisdiction'' over any case that arises under the tax laws of the state and that is an initial appeal of a final determination made by (1) the Indiana Department of Revenue or (2) the Indiana State Board of Tax Commissioners.¹⁹ Under section 20 of the act creating the court,²⁰ the court does not have jurisdiction over any case before July 1, 1986, but a case that is pending in another court on or after June 30, 1986, and that is otherwise within the exclusive jurisdiction of the court may be transferred to the tax court if all parties agree to the transfer.²¹

The tax court's exclusive jurisdiction clearly applies to all appeals of final assessment determinations made by the state tax board pursuant to Indiana Code sections 6-1.1-15-4²² and 6-1.1-15-5,²³ and indeed the act creating the tax court explicitly amended the latter to specify that appeals from a final assessment determination by the state tax board shall be lodged with the new tax court.²⁴

Likewise, the tax court's exclusive jurisdiction clearly applies to all appeals of a denial of a tax refund claim by the revenue department. The provision that empowers the revenue department to receive and grant or deny claims for the refund of income taxes, sales and use taxes, intangibles taxes, and several listed excise taxes was similarly amended in the 1985 tax court act to specify that appeals from the department's denial of any such claims for refund shall be filed with the tax court.²⁵

Although the tax court's exclusive jurisdiction to hear statutory appeals from the revenue department and the state tax board is plain on the face of the act creating the court,²⁶ jurisdiction is nonetheless still contingent upon the taxpayer having first complied with all of the statutory preconditions for initiation of the action.²⁷

Contrary to popular belief, however, the tax court's exclusive jurisdiction may not be exclusive as to all tax litigation. As noted, the court's jurisdiction is statutorily restricted to initial appeals of final

¹⁹IND. CODE § 33-3-5-2(a) (Supp. 1986).

²⁰1985 Ind. Act. 2278, 2290, Pub. L. No. 291-1985, § 20.

²¹*Id.*

²²This section provides for an appeal when the state tax board does not act on a taxpayers request for review. IND. CODE § 6-1.1-15-4 (1982).

²³This section provides for judicial review of the state tax board's final determination. IND. CODE § 6-1.1-15-4 (Supp. 1986).

²⁴1985 Ind. Acts 2278, 2283, Pub. L. No. 291-1985, § 5.

²⁵*Id.* at 2286-87, Pub. L. No. 291-1985, § 12 (amending IND. CODE § 6-8.1-9-1 (1982)).

²⁶*Id.* at 2279, Pub. L. No. 291-1985, § 1 (codified at IND. CODE § 33-3-5-2(a) (Supp. 1986)).

²⁷"If a taxpayer fails to comply with any statutory requirement for the initiation of an original tax appeal, the tax court does not have jurisdiction to hear the appeal." IND. CODE § 33-3-5-11(a) (Supp. 1986).

determinations by either the state tax board or the revenue department.²⁸ However, not all tax cases will involve a "final determination" by one or the other of these state agencies.

The first jurisdictional question that will require resolution is whether the tax court has jurisdiction over property tax refund claims. An Indiana statute allows a taxpayer to file a claim for a refund of all or a portion of property tax paid.²⁹ The property tax refund claim must be filed within three years after the tax was paid and must be filed with the auditor of the county in which the taxes were originally paid. This statutory property tax refund procedure establishes three grounds upon which a refund claim may be based:

- (1) Taxes on the same property have been assessed and paid more than once for the same year;
- (2) The taxes, as a matter of law, were illegal; or
- (3) There was a mathematical error either in the computation of the assessment upon which the taxes were based or in the computation of the taxes.³⁰

The statutory procedure further provides that a property tax refund claim may or in some instances shall be forwarded to the state tax board for its review and its approval or disapproval.³¹ The county board of commissioners is, however, vested with the authority to take the final administrative step in the allowance or disallowance of a property tax refund claim, and an Indiana statute explicitly states that "when the county board disallows a claim, the claimant may appeal that decision to the county circuit court."³² Unlike the explicit amendments to both Indiana Code sections 6-1.1-15-5 and 6-8.1-9-1, which expressly substituted the tax court as the court to which appeals under those sections were to be taken, section 6-1.1-26-4 was left unamended. It therefore appears that a sound argument can be made that the new tax court has no jurisdiction over property tax refund claims since (1) the state tax board does not make the final determination of the refund claim, and (2) the judicial review provision specifying appeals to the circuit court was left intact.

A similar cloudy situation exists as to the tax court's jurisdiction relative to the correction by a county auditor of errors found in tax duplicates respecting either the proper assessment of property or the

²⁸*Id.* § 33-3-5-2(a).

²⁹IND. CODE § 6-1.1-26-1 (1982).

³⁰*Id.* § 6-1.1-26-1(4).

³¹*Id.* § 6-1.1-26-2.

³²*Id.* § 6-1.1-26-4(c).

correct imposition of property tax. An Indiana statute requires a county auditor, subject to certain limitations, to correct errors that are discovered in the tax duplicate for any one or more of the following reasons:

- (1) The description of the real property was in error.
- (2) The assessment was against the wrong person.
- (3) Taxes on the same property were charged more than one (1) time in the same year.
- (4) There was a mathematical error in computing the taxes or penalties on the taxes.
- (5) There was an error in carrying delinquent taxes forward from one (1) tax duplicate to another.
- (6) The taxes, as a matter of law, were illegal.
- (7) There was a mathematical error in computing an assessment.
- (8) Through an error of omission by any state or county officer the taxpayer was not given credit for an exemption or deduction permitted by law.³³

This correction of errors procedure does not provide a specific statutory judicial review remedy. However, as to the sixth, seventh and eighth grounds for correction, as noted above, the auditor is prohibited from correcting an error without first obtaining the approval of the state tax board if either (1) the challenged tax is "based on an assessment made or determined by the state board of tax commissioners,"³⁴ or (2) if the requested correction has failed to receive the approval of any two of the following officials: the township assessor, the county auditor, the county treasurer, and the county assessor.³⁵ As to corrections requiring state tax board approval, it is possible that the tax court has jurisdiction over any state tax board disapproval of a requested correction of error. Such disapproval should constitute a "final determination" by the board so as to come within the tax court's "exclusive jurisdiction." But as to the other grounds for corrections of error and possibly even as to corrections requiring state tax board approval, it would appear that taxpayers should have a mandamus remedy entitling the taxpayer to seek relief in his local circuit or superior court by way of a mandate to compel the auditor to discharge his statutory duty to make the required correction.³⁶ Consequently, there is substantial doubt whether the tax

³³IND. CODE § 6-1.1-15-12(a) (Supp. 1986).

³⁴*Id.* § 6-1.1-15-12(d).

³⁵*Id.*

³⁶"The action for mandate may be prosecuted against any . . . public or corporate officer . . . to compel the performance of . . . any duty resulting from any office" IND. CODE § 34-1-58-2 (1982). See *State ex. rel. Land v. Board of Trustees of Springs Valley School Corp.*, 430 N.E.2d 791, 794 (Ind. Ct. App. 1982).

court possesses jurisdiction as to either the property tax refund procedure³⁷ or to the property tax correction of errors procedure.³⁸

Compounding this uncertainty as to the real scope of the tax court's so-called "exclusive jurisdiction" is a body of well-established Indiana law that has long recognized that apart from the statutory assessment appeals procedures and apart from the statutory property tax refund procedures, a property taxpayer may be entitled to enjoin the collection of property taxes, at least if the property was not lawfully assessable in the first instance.³⁹

In the seminal case of *Croop v. Walton*,⁴⁰ the Indiana Supreme Court rejected a contention that the property tax refund procedure was the exclusive remedy for challenging an unlawful property tax levy: "[W]here the property is not subject to taxation, the assessment is void, and its collection can be restrained by injunction, regardless of the [statutory] right to appeal."⁴¹ This right to injunctive relief would appear still to be available to enjoin an attempted imposition of property taxes on (1) property not subject to assessment (such as property not in the state on the assessment date), (2) property that has been misclassified as being taxable and therefore erroneously assessed, and possibly (but importantly) (3) property that is exclusively used in interstate commerce and that has been assessed at 100% of its value. It is, of course, problematic whether the Indiana appellate courts, with the advent of the tax court, will continue to adhere to this principle, but if it remains a recognized exception to the basic statutory procedures for challenging assessments and seeking property tax refunds, jurisdiction for equitable injunctive relief will not lie with the tax court but rather with the general trial courts of the state.

In the case of appeals from revenue department tax determinations, the tax court's jurisdiction will be virtually exclusive, but there may be perplexing exceptions. The first such question is whether taxpayers will have recourse to the trial courts of general jurisdiction for injunctive relief. Shortly after the 1933 enactment of the Indiana gross income tax,⁴² the Indiana Supreme Court, in *Department of Treasury of Indiana*

³⁷IND. CODE §§ 6-1.1-26-1 to 6-1.1-26-6 (1982).

³⁸IND. CODE § 6-1.1-15-12 (Supp. 1986).

³⁹See *Croop v. Walton*, 199 Ind. 262, 157 N.E. 275 (1927); *Board of Comm'rs of County of Sullivan v. Heap*, 155 Ind. App. 633, 294 N.E.2d 182 (1973); *Scott v. Abke*, 130 Ind. App. 199, 163 N.E.2d 257 (1960); *Sluder v. Mahan*, 124 Ind. App. 661, 121 N.E.2d 137 (1954). Cf. *Board of Comm'rs of Madison County v. Midwest Assocs., Inc.*, 253 Ind. 551, 255 N.E.2d 807 (1970) (no right to enjoin collection of real estate taxes when taxing unit is a third party beneficiary of a contract provision that requires purchaser of land to pay real estate taxes).

⁴⁰199 Ind. 262, 157 N.E. 275 (1927).

⁴¹*Id.* at 265, 157 N.E. at 276.

⁴²1933 Ind. Acts, ch. 50.

v. Ridgely,⁴³ faced the question of whether a taxpayer could seek to enjoin an attempted imposition of the gross income tax by the revenue department, even though the gross income tax act contained a specific procedure for court review of denied refund claims. In *Ridgely*, the state argued that the statutory procedure for appealing denials by the revenue department of gross income tax refund claims was the exclusive procedure for challenging an imposition of gross income tax. Rejecting the state's position, the Indiana Supreme Court held:

The fact that the statute provides a method of obtaining a refund if the taxpayer sees fit to pay the tax does not necessarily make this remedy exclusive, nor does it rob a court of equity of jurisdiction to afford equitable relief by way of injunction.

. . . So we conclude the remedy afforded a taxpayer who has paid tax for which he is not liable either voluntarily or involuntarily, to recover the unauthorized tax, is additional and cumulative and not exclusive.⁴⁴

The 1937 General Assembly quickly responded to the *Ridgely* decision and enacted the following anti-injunction provision:

No injunction to restrain or delay the collection of any tax claimed to be due under the provisions of this act [the gross income tax act] shall be issued by any court, but in all cases in which, for any reason, it be claimed that any such tax about to be collected is wrongful or illegal in whole or in part, the remedy, except as otherwise expressly provided in this act, shall be by payment and action to recover such tax as provided in this section.⁴⁵

In 1963, this same anti-injunction provision was incorporated into the then newly enacted Indiana sales and use tax⁴⁶ and the Indiana adjusted gross income tax.⁴⁷

Citing the 1937 anti-injunction provision, the Supreme Court in 1971 emphatically confirmed that the statutory tax refund appeal procedure was to be considered the sole and exclusive remedy for challenging a gross income tax imposition.⁴⁸ The court accordingly said:

It is clear that the remedy thus provided by the Legislature is and is intended to be the sole and exclusive remedy available

⁴³211 Ind. 9, 4 N.E.2d 557 (1936).

⁴⁴*Id.* at 15, 4 N.E.2d at 560.

⁴⁵1937 Ind. Acts, ch. 117, § 14(d).

⁴⁶1963 Ind. Acts (Spec. Sess.), ch. 30, § 16.

⁴⁷1963 Ind. Acts. (Spec. Sess.), ch. 32, § 604.

⁴⁸State *ex rel.* Indiana Dep't of Revenue v. Marion Circuit Court, 255 Ind. 501, 265 N.E.2d 241 (1971).

to question the legality of the imposition of a tax under the Indiana Gross Income Tax Law.

We hold, therefore, that the respondent court is without subject matter jurisdiction to enjoin or restrain the petitioner from attempting to collect the taxes in question from the plaintiff.⁴⁹

This holding, of course, also directly confirmed the exclusivity of the sales and use tax and the adjusted gross income tax statutory refund appeal procedures.

Consequently, it would seem that the tax court's exclusive jurisdiction is indeed exclusive, at least to the judicial disposition of taxpayers' challenges to the imposition of the major state taxes administered by the revenue department, namely, the gross income tax, the sales and use tax, and the adjusted gross income tax, along with its companion, the supplemental net income tax. Such is not the case, however.

First, a cloud has been cast on the exclusivity of these statutory refund appeal procedures as the result of the enactment of the 1980 Tax Administration Code⁵⁰ that established uniform provisions for the administration by the revenue department of most of the taxes administered by that agency, including particularly the income taxes and the sales and use taxes. The 1980 Tax Administration Code repealed the anti-injunction provision as enacted in 1937⁵¹ and substituted therefor the following provision:

(d) *The* court [referring to the court to which the appeal is taken] shall hear the appeal de novo [referring to the refund claim appeal] and without a jury, and after the hearing may order or deny any part of the appealed refund. . . . *The* court may not enjoin, restrain or delay collection of any of the listed taxes, regardless of the facts or legal theory on which the suit requesting that relief is brought. The only relief that *a* court may grant is to allow a refund of taxes, interest and penalties that have been paid to and collected by the department.⁵²

At first blush, this substituted provision would seem to be substantively a virtual replication of the forerunner 1937 anti-injunction provision. But, on scrutiny, the provision does not prohibit the issuance of an injunction "by any court;"⁵³ instead, it literally prohibits the issuance of an injunction only by the court to which the refund claim

⁴⁹*Id.* at 504, 265 N.E.2d at 243.

⁵⁰1980 Ind. Acts 660, Pub. L. No. 61.

⁵¹1937 Ind. Acts, ch. 117, § 14(d).

⁵²1980 Ind. Acts 660, 679, Pub. L. No. 61 (codified at IND. CODE § 6-8.1-9-1(d) (Supp. 1980)) (emphasis added).

⁵³1937 Ind. Acts, ch. 117, § 14(d).

is appealed, in stark contrast to the original language of the 1937 provision, which stated:

No injunction to restrain or delay the collection of any tax claimed to be due under the provisions of this act *shall be issued by any court*, but *in all cases* in which, for any reason, it be claimed that any such tax about to be collected is wrongful or illegal in whole or in part, the remedy, except as otherwise expressly provided in this act, shall be by payment and action to recover such tax as provided in this section.⁵⁴

While the last sentence of the Tax Administration Code's reworded anti-injunction provision might have saved the dichotomy between the old and the new anti-injunction provisions,⁵⁵ the 1980 Tax Administration Code's anti-injunction provision was in fact expressly deleted in the 1985 enactment of the tax court act. The provision, as amended in 1985, now reads as follows:

The tax court shall hear the appeal de novo and without a jury, and after the hearing may order or deny any part of the appealed refund. The court may assess the court costs in any manner that it feels is equitable. The court may enjoin the collection of any of the listed taxes under IC 33-3-5-11. The court may also allow a refund of taxes, interest, and penalties that have been paid to and collected by the department.⁵⁶

The 1985 deletion of any express prohibition on the issuance of injunctions by any court could resurrect the *Ridgely* holding.⁵⁷ The judicial and legislative history concerning the *absence*, then the *presence*, and now once again, the *absence* of an express anti-injunction provision may allow taxpayers to contend that in the absence of an express anti-injunction provision, the refund appeal procedure is no longer the exclusive procedure and, consequently, injunctive relief under *Ridgely* is available from the general trial courts.

It would seem that if the Indiana appellate courts are disposed to focus state tax litigation in the new tax court, there is a strong likelihood that the ultimate outcome of this question will be a recognition that the deletion of an express anti-injunction provision does not alter the

⁵⁴*Id.* (emphasis added).

⁵⁵The last sentence of the 1980 Tax Administration Code's anti-injunction provisions provides as follows: "The only relief that a court may grant is to allow a refund of taxes, interest and penalties that have been paid to and collected by the department." *Id.* This sentence, unlike the prior language in the provision, can be read to apply to all courts, thus impliedly restricting any court from issuing injunctive relief.

⁵⁶IND. CODE § 6-8.1-9-1(d) (Supp. 1986).

⁵⁷See *supra* notes 43-44 and accompanying text.

exclusivity of the statutory refund procedures and that the limited authority granted to the new tax court to enjoin collection of a contested tax is to be construed as the sole and exclusive means *for a taxpayer* to obtain injunctive relief *in any court*.

The tax court's "exclusive jurisdiction" may also be diluted by two relatively recent judicially recognized exceptions to the exclusivity of the statutory refund procedures. In *Mathis v. Cooperative Vendors, Inc.*,⁵⁸ the Indiana Court of Appeals held that a retail merchant could properly initiate a declaratory judgment action to challenge the revenue department's attempt to hold the retailer liable for uncollected sales tax. The court reasoned that a retailer who is statutorily identified as an agent of the state to collect sales tax⁵⁹ is *not* the taxpayer and, therefore, the retailer in the *Mathis* case was not obliged to follow the refund appeal procedure established for "taxpayers."⁶⁰ The *Mathis* court concluded that the retailer could properly challenge the revenue department's attempted assessment by way of a declaratory judgment action without having first to pay the assessed tax as would be otherwise required pursuant to the conventional statutory refund appeal procedure.⁶¹ Under the reasoning of *Mathis*, the tax court would not have jurisdiction of such declaratory judgment actions, particularly since Indiana Code section 33-3-5-11 expressly provides that "the tax court does not have jurisdiction to hear the appeal" unless the taxpayer has complied with all statutory pre-appeal conditions⁶² and, of course, the key statutory condition to a revenue department appeal is the payment of the contested tax, a condition avoided by the employment of a declaratory judgment action.

The *Mathis* precedent could conceivably be answered by a broad brush response that the overriding intention of the legislature was to vest exclusive jurisdiction in the tax court "over any case that arises under the tax laws of this state and that is an initial appeal of a final determination made by . . . the department of state revenue."⁶³ However, the context of the entire law, including the requirement that all statutory preconditions to an appeal must be first satisfied, strongly suggests that the focal point of the court's jurisdiction was indeed limited, in the case of revenue department determinations, to "taxpayers" who are seeking redress of tax refund denials.⁶⁴

⁵⁸170 Ind. App. 659, 354 N.E.2d 269 (1976).

⁵⁹The statutory identification of the retail merchant as an agent of the state is contained in IND. CODE § 6-2.5-2-1(b) (Supp. 1986).

⁶⁰*Mathis*, 170 Ind. App. at 666, 354 N.E.2d at 274.

⁶¹*Id.*

⁶²IND. CODE § 33-3-5-11 (Supp. 1986).

⁶³*Id.* § 33-3-5-2.

⁶⁴It should be noted that the holding in *Mathis* was distinguished by the court of appeals in *Ind. Dep't of State Revenue v. Indiana Gamma Gamma*, 181 Ind. App. 664, 394 N.E.2d 187 (1979), where the court held that an association charged with failure to

*State v. Indianapolis Airport Authority*⁶⁵ portends a second exception to the tax court's jurisdiction. In this case, the court of appeals first concluded that the Airport Authority was not a person or taxpayer within the purview of the statutory tax refund appeal procedure; the court accordingly held that because the refund appeal procedure did not apply to the Airport Authority, it could properly seek and obtain an injunction permanently enjoining the revenue department from attempting to impose the gross income tax on the Authority's gross receipts from its operations.⁶⁶ The *Indianapolis Airport Authority* decision, by reason of its narrow application to just those entities that can claim they are neither a "taxpayer" nor a "person" should not have significant impact on the tax court's jurisdiction. And, as in the case of *Mathis*, this ruling may eventually be overridden by an ultimate appellate holding that notwithstanding these possible technical deficiencies, the pervasive intention of the legislature was to empower the tax court to hear all appeals from final determinations by the revenue department, whether affecting taxpayers or others against whom the department has sought to assess tax liability.

One final observation about the new tax court's jurisdiction regards the availability of mandamus actions by taxpayers to compel the performance of ministerial functions of the taxing agencies and to assure that the taxpayer has been accorded full due process of law in the administrative process.⁶⁷ To the extent appropriate, trial courts of general jurisdiction should continue to have jurisdiction over taxpayer mandamus actions that seek equitable relief against a taxing agency before the agency has issued a final determination.⁶⁸ Clearly, the tax court will not have such jurisdiction because its authority is expressly limited to appeals from final determinations. While resort to mandamus should indeed be rare, that remedy is available in Indiana.⁶⁹ For example, in *State ex rel. Montgomery Ward & Co. v. Indiana Department of State Revenue*,⁷⁰ the Marion Superior Court entered a judgment mandating the revenue department to hold a hearing and to make a final determination of the taxpayer's duly filed claim for refund as required by the statutory procedures.⁷¹

collect sales tax could not seek declaratory judgment relief because the association had voluntarily paid the tax and filed a claim for refund, thereby bringing itself within the exclusive judicial remedy afforded by the statute.

⁶⁵173 Ind. App. 55, 362 N.E.2d 200 (1977).

⁶⁶*Id.* at 59, 362 N.E.2d at 202.

⁶⁷IND. CODE § 34-1-58-2 (1982) provides the statutory authority for mandamus action. See *supra* note 36.

⁶⁸See *supra* notes 33-36 and accompanying text.

⁶⁹IND. CODE § 34-1-58-1 (1982).

⁷⁰No. S482-1606 (Marion Superior Court 1983).

⁷¹The applicable procedure is codified at IND. CODE § 6-8.1-9-1(b) (1982) (amended 1985). See *State Tax Bd. v. Oliverius*, 156 Ind. App. 46, 294 N.E.2d 646 (1973).

*C. The Kind of Judicial Review
to Be Conducted by the Tax Court*

The new Indiana statute provides that the character or kind of judicial review to be conducted by the tax court shall be determined by the statutory law governing the particular original tax appeal.⁷² This provision is especially significant because of the existing disparity in the character of the procedure statutorily established for appeals from the revenue department as compared to the character of the procedure statutorily established for appeals from the state tax board.⁷³

Revenue department tax appeals are statutorily denominated *de novo* appeals.⁷⁴ No administrative record is made (and none is required) by the revenue department in its disposition of tax refund claims. Indeed, the statutory procedure governing the department's disposition of tax refund claims does not even require a hearing,⁷⁵ and the department frequently, if not customarily, determines a refund claim without a hearing. Commenting on this revenue department tax appeal procedure, the Indiana Court of Appeals, in *United Artists Theatre Circuit, Inc. v. Indiana Department of State Revenue*,⁷⁶ has recently said:

[T]he right to administrative hearing is discretionary with the Department. Furthermore, there is nothing within the language of the Gross Income Tax Act to indicate that the refund procedure is a review of an administrative determination. Moreover, we have previously reviewed the trial court's findings as findings from a trial *de novo*. In *Wayne Pump Co. v. Department of Treasury*, (1953) 232 Ind. 147, 110 N.E.2d 284, the supreme court held it was the trial court's duty to determine the issues in tax refund suits upon the merits. . . .⁷⁷

Taxpayers, the department, and the courts have accordingly approached judicial reviews of revenue department final determinations as a *de novo* fact-finding process.

Conversely, court appeals from the state tax board have been subjected to a much narrower scope of judicial review. The principal reason for this more limited scope of review is that the statutory procedure

⁷²Sec. 14. With respect to determinations as to whether any issues or evidence may be heard in an original tax appeal that was not heard in the administrative hearing or proceeding, the tax court is governed by the law that applied before the creation of the tax court to appeals to trial courts of final determinations made by the department of state revenue and the state board of tax commissioners.

IND. CODE § 33-3-5-14 (Supp. 1986).

⁷³Compare IND. CODE § 6-8.1-9-1 (Supp. 1986) with IND. CODE § 6-1.1-15-4 (1982).

⁷⁴IND. CODE § 6-8.1-9-1(d) (Supp. 1986).

⁷⁵*Id.* § 6-8.1-9-1.

⁷⁶459 N.E.2d 754 (Ind. Ct. App. 1984).

⁷⁷*Id.* at 759 (citations omitted).

for the administrative determination of assessment challenges requires the state tax board to hold a hearing, with at least ten days notice to the taxpayer, and then to render its decision after the hearing.⁷⁸ Stressing the existence of this administrative hearing requirement, the Indiana Court of Appeals has emphasized that in appeals from the state tax board, the taxpayer is confined to the matters presented to the state tax board.⁷⁹ This more limited scope of judicial review was described as follows:

We conclude that . . . only those witnesses who testified at the board's hearing may testify at the judicial review hearing, and they may testify only to those facts to which they testified at the board's hearing. Similarly, only those exhibits introduced at the board's hearing may be introduced on judicial review.⁸⁰

The preservation of these two distinct judicial review procedures is desirable. But taxpayers and taxpayers' counsel must remain especially alert to the necessity to make a complete factual record in proceedings before the state tax board because that record will govern the scope of the tax court's judicial review of the tax board's final determination.

D. The Tax Court's Authority to Enjoin the Collection of Tax

Indiana Code section 33-3-5-11 now provides that a taxpayer who wishes to enjoin the collection of tax *pending the original tax appeal* may petition the tax court for such relief.⁸¹ The petition must set forth a summary of the issues and a statement of the equitable considerations for which the tax court should enjoin collection of the tax.⁸² However, the tax court may enjoin collection only if the court finds:

- (1) The issues raised by the original tax appeal are substantial;
- (2) The petitioner has a reasonable opportunity to prevail in the original tax appeal; and
- (3) The equitable considerations favoring the enjoining of the collection of the tax outweigh the state's interests in collecting the tax pending the original tax appeal.⁸⁴

This provision was a last minute insertion by the Legislature in the

⁷⁸IND. CODE § 6-1.1-5-4 (1982). See *Whirlpool Corp. v. State Bd. of Tax Comm'rs.*, 167 Ind. App. 216, 338 N.E.2d 501 (1975).

⁷⁹*State Bd. of Tax Comm'rs. v. Gatling Gun Club, Inc.*, 420 N.E.2d 1324 (Ind. Ct. App. 1981).

⁸⁰*Id.* at 1328.

⁸¹IND. CODE § 33-3-5-11(b) (Supp. 1986).

⁸²*Id.*

⁸³*Id.* § 33-3-5-11(c).

⁸⁴*Id.* § 33-3-5-11(a).

tax court bill; consequently, it is fundamentally flawed. First, it simply disregards the fact that the tax court does not have jurisdiction to hear an appeal unless the taxpayer has complied with all of the statutory requirements for the initiation of the tax appeal. In the case of appeals from the revenue department, the taxpayer is statutorily required first to pay the challenged tax, then to file a claim for refund; the statutory appeal lies from the department's denial of the refund claim.⁸⁵ If the taxpayer cannot initiate his appeal without first paying the contested tax, the stark question is: what purpose is served by the injunction procedure?

Obviously, this is a technical snafu, and it is understood that with the department's cooperation, the tax court is going to receive and consider petitions to enjoin the collection of taxes assessed by the revenue department, notwithstanding this jurisdictional cloud. However, the further question remains that if the court actually preliminarily enjoins the collection of tax, does it have jurisdiction to proceed to hear the case since the statute explicitly states that "if a taxpayer fails to comply with any statutory requirement for the initiation of the tax appeal, the tax court does not have jurisdiction to hear the appeal."⁸⁶ Presumably this paradox will be corrected by the 1987 General Assembly.

Another fundamental inconsistency with the new tax collection injunction provision is that it is unnecessary in the case of a taxpayer appeal challenging property tax assessment increases by the state tax board. Under Indiana Code section 6-1.1-15-10, property tax taxpayers are basically relieved from paying tax on contested assessment increases during the pendency of a court appeal challenging such increases.⁸⁷ Arguably, the new law could be construed as an implied repeal of the existing law, but in view of the general judicial admonition that implied repeals are not favored,⁸⁸ it seems unlikely the courts would apply this principle to defeat the long-established statutory provision that exonerates taxpayers from paying property taxes on an assessment or assessment increase that is being challenged either at the administrative level or in the courts.⁸⁹

Nonetheless, for taxpayers appealing revenue department final determinations, the new procedure for the granting of injunctive relief by the tax court, assuming the technical glitches are quickly solved, should

⁸⁵*Id.* § 6-8.1-9-1(c).

⁸⁶*Id.* § 33-3-5-1(a).

⁸⁷*Id.* § 6-1.1-15-10.

⁸⁸"Repeals of statutes by implication are not favored, and in construing statutes the courts will avoid a construction effecting a repeal by implication, if possible." 26 IND. L. ENCY. *Statutes* § 83 (1953).

⁸⁹IND. CODE § 6-1.1-15-10 (Supp. 1986).

be helpful relief if the statutory conditions permitting the issuance of an injunction can indeed be met.

E. Small Tax Claims

The tax court has been empowered, indeed directed, to establish a small claims docket for processing (a) refund claims from the revenue department that do not exceed \$5,000 for any year, and (b) appeals from the state tax board of assessments of property that do not exceed \$15,000 for any year.⁹⁰ While commendable in its objective, the efficacy of this new small claims procedure remains to be seen. Presumably, the goal of the tax court will be to establish simplified procedures for the filing and administration of small tax claims but, with the simplification of procedures, the court may find itself faced with a ponderous burden. If such occurs, the Legislature will have to provide the court with the necessary resources to carry out the program.

The Supreme Court has adopted special rules for the filing of small tax claims.⁹¹ These rules are denominated "Small Tax Case Rules" and they incorporate to the extent not inconsistent with the tax court's jurisdiction the "Indiana Rules for Small Claims." Rule STC-2 provides a simplified form of notice for the filing of a small tax claim as follows:

RULE STC-2 NOTICE OF CLAIM

The notice of claim to be used under Small Claims Rule 2 shall contain:

- (1) the name of the Tax Court;
- (2) the name, address and telephone number of claimant;
- (3) a designation of the type of tax the claim involves;
- (4) a statement of the taxable period involved or, in the case of a claim relating to property taxes, the effective date of any assessment at issue;
- (5) a brief statement of the nature of the claim;
- (6) a statement of the amount of tax at issue or, in the case of a claim relating to property taxes, the assessed value of the property at issue; and
- (7) any additional information which may facilitate proper service or processing of the claim.⁹²

The filing of the notice of claim is considered to be a summons as to

⁹⁰*Id.* § 33-3-5-12.

⁹¹These rules were formally adopted on July 18, 1986. They are reprinted in IND. CODE ANN., *Interim Ann. Serv. No. 1*, 71 (West, October 1986).

⁹²IND. SMALL TAX CASE R. 2.

the state agency,⁹³ but rule STC-3 requires that the notice of claim shall be served upon the attorney general by registered or certified mail, return receipt requested.⁹⁴

II. INDIANA'S RESPONSE TO THE ISSUE OF WORLD-WIDE TAXATION OF MULTINATIONAL CORPORATIONS

Following a series of decisions by the United States Supreme Court in the early 1980's that addressed the issue of state taxation of the world-wide or foreign source income of multicorporate unitary businesses,⁹⁵ Indiana has grappled with the economically sensitive question of how far Indiana should expand its now recognized constitutional jurisdiction to impose the Indiana adjusted gross and supplemental income taxes on the taxable income of unitary businesses. Coupled with this question is the companion question of how far Indiana should go in taxing the foreign source income of United States domestic companies.

In 1984, Governor Orr, in order to allay expressions of grave concern by many taxpayers as to what Indiana's policy would be in view of the 1983 United States Supreme Court decision in *Container Corp. of America v. Franchise Tax Board*⁹⁶ issued the following statement:

The attached Indiana Department of Revenue directive is in response to the many reports that have greatly misrepresented Indiana's unitary tax policy. I wish to make Indiana's position absolutely clear. Except when requested by the taxpayer or in cases where there is evidence of a blatant attempt to avoid Indiana taxes, Indiana has not, does not, and will not require combined reporting of taxpayers conducting unitary businesses. This has been our policy. The United States Supreme Court decision in the Container Corporation of America case has not altered that policy.⁹⁷

The revenue department directive identified in Governor Orr's statement further explained the department's policy as to its application of the unitary business taxation method as follows:

The Department has no intention of using combined income of unitary businesses as a means of gaining additional tax revenues,

⁹³IND. SMALL TAX CASE R. 3.

⁹⁴*Id.*

⁹⁵*Container Corp. of America v. Franchise Tax Bd.*, 463 U.S. 159 (1983); *F.W. Woolworth Co. v. Taxation & Revenue Dep't*, 458 U.S. 354 (1982); *ASARCO, Inc. v. Idaho State Tax Comm'n*, 458 U.S. 307 (1982); *Exxon Corp. v. Department of Revenue*, 447 U.S. 207 (1980); *Mobil Oil Corp. v. Commissioner of Taxes*, 445 U.S. 425 (1980).

⁹⁶463 U.S. 159 (1983).

⁹⁷Public announcement by Governor Robert D. Orr of Indiana (February 23, 1984).

but will only use the method for the fair reporting and reflection of income attributed to Indiana when the standard three-factor formula clearly does not fairly reflect income. To categorize Indiana as a "unitary state" is not an accurate description of the policy Indiana has followed for years.⁹⁸

In 1985, the Indiana Legislature further addressed the issue of unitary business taxation and enacted an amendment to the adjusted gross income tax act (popularly called the "Sony amendment")⁹⁹ that essentially provides that Indiana will not impose the unitary business tax concept on a world-wide basis, but restricts the revenue department's application of that concept to a "water's edge" jurisdiction.¹⁰⁰ Broadly speaking, "water's edge unitary taxation" essentially means that the revenue department may apply the unitary business method to combine the income of a multicorporate business only to the extent such business is conducted within the United States. Conversely stated, the department may not tax a unitary business on the basis of world-wide income. Because numerous articles,¹⁰¹ as well as numerous court decisions,¹⁰² have dealt with this unitary business concept, the objective of this comment is to focus on where Indiana stands today on the issue of unitary taxation.

The 1985 enactment of a "water's edge" unitary business taxation limitation has produced two unresolved serious concerns. First, Indiana has not dealt with the question of the taxability of foreign source income (generally dividends and royalties) of United States based multinational businesses. American multinationals may well argue that "water's edge" taxation will place them at a great tax disadvantage with foreign-based multinationals if Indiana taxes the domestic companies' foreign source income while exempting from taxation the overseas income of the foreign multinationals. It is significant at this point to note that all of the states bordering Indiana have provided tax relief for the foreign source income of American companies.¹⁰³ This issue has been presented to our legislature but no action has yet been taken by the General Assembly to rectify the asserted disparity in the taxation of U.S. incomes vs. foreign companies.

⁹⁸Commissioner's Directive No. 10 (Ind. Revenue Dep't, Feb. 1984).

⁹⁹1985 Ind. Acts 658, 663, Pub. L. No. 75-1985, § 4 (codified at IND. CODE § 6-3-2-2(o) (Supp. 1986).

¹⁰⁰*Id.*

¹⁰¹*See, e.g.,* Buresh & Weinstein, *Combined Reporting: The Approach and Its Problems*, J. STATE TAX'N, Spring 1981, at 5; Corrigan, *Interstate Corporate Income—Recent Revolutions and a Modern Response*, 29 VAND. L. REV. 423 (1976); Frankel, *Basic Principles and Significant Issues in State Taxation of Unitary Corporate Income*, 37 TAX EXEC. 1 (1984).

¹⁰²*See supra* note 95.

¹⁰³*See, e.g.,* ILL. ANN. STAT ch. 120, para. 15-1501(a)(28) (Smith-Hurd Supp. 1986).

The second unresolved problem emanating from the 1985 enactment of the "water's edge" unitary business limitation concerns a companion limitation that restricts the department's application of the unitary concept even as to domestic multicorporate businesses.

[T]he department may not require that income, deductions, and credits attributable to a taxpayer and another entity . . . be reported in a combined income tax return for any taxable year, unless the department is unable to fairly reflect the taxpayer's adjusted gross income for the taxable year through use of other powers granted to the department¹⁰⁴

This provision has received little attention to date, but it may bear considerable significance as to the department's real authority to apply the unitary business concept.

The legislative history behind the enactment of this provision reflects that it was adopted to ensure that the state's application of the unitary business concept was to be a last resort tool to determine the Indiana taxable income of a multistate, multicorporate business. The provision requires the department first to seek to establish whether Indiana taxable income can be fairly determined without resort to the unitary method.¹⁰⁵ For example, the department may now be required to determine whether Indiana taxable income is ascertainable on a separate accounting basis (such as making adjustments for intercompany transactions) before the department may fall back on the unitary method.

It can be argued that this statute is nothing more than a recitation of the existing law and that it imposes no new limitations on the department. The answer to such a contention should be that under long-established principles of statutory construction, the legislature is presumed not to have enacted a useless, redundant, or meaningless law and that it is incumbent on agencies and the courts to attribute a meaningful purpose to an enactment of the legislature.¹⁰⁶

Assuming that the new provision is to be given a meaningful interpretation, the legislature has imposed a more restrictive standard upon the revenue department as to its employment of the unitary tax method; therefore, Indiana taxpayers facing unitary taxation by the department may be well advised to seek factually to demonstrate that such taxation is unwarranted. If so construed, this law is certainly consistent with and responsive to Governor Orr's statement that "except when requested by

¹⁰⁴IND. CODE § 6-3-2-2-(p) (Supp. 1986).

¹⁰⁵*Id.*

¹⁰⁶"It is a rule of statutory interpretation that courts will not presume the legislature intended to do a useless thing or to enact a statute that is a nullity." *Northern Ind. Bank v. State Bd. of Finance*, 457 N.E.2d 527, 532 (Ind. 1983).

the taxpayer or in cases where there is evidence of a blatant attempt to avoid Indiana taxes, Indiana has not, does not, and will not require combined reporting of taxpayers conducting unitary businesses."¹⁰⁷

III. UNIFORMITY IN VALUATION— A MOUNTING PROPERTY TAX ASSESSMENT PROBLEM

The Indiana Court of Appeals in two recent decisions has relied upon article 10, section 1 of the Indiana Constitution¹⁰⁸ to set aside the state tax board's assessment of business inventory for lack of uniformity in the valuation of property of like kind. In *State Board of Tax Commissioners v. Pioneer Hi-Bred International, Inc.*,¹⁰⁹ the court examined regulation 16's¹¹⁰ mandatory trade leveling adjustment to inventory for manufacturers who have assumed the role of retailers. *State Board of Tax Commissioners v. PolyGram Records, Inc.*,¹¹¹ involved regulation 16's mandatory adjustment for royalty fees in determining the valuation of inventory. In both of these cases, the court found that the application of regulation 16 resulted in identical or similar property being assessed at different assessed values. Absent evidence that this was necessary to achieve equality among different taxpayers, the court concluded that this result violated the Indiana Constitution's mandate that there be "a uniform and equal rate of assessment and taxation and . . . a just valuation for all property, both real and personal."¹¹²

In *Pioneer Hi-Bred International*,¹¹³ Pioneer (the taxpayer) produced and sold various types of seed grain. On the assessment date, Pioneer owned seed grain that was stored at its Indiana production facilities and also owned seed grain in the hands of its Indiana sales representatives for retail sale. Pioneer reported the assessed value of all of its seed in Indiana on the assessment date (whether held at its facilities or held by its salesmen) at the same value. The state tax board rejected Pioneer's valuation on the basis of rule 3, section 2(A) of regulation 16, which requires a manufacturer or processor who assumes the role of a retailer to value its inventory located at the retail level of trade differently than

¹⁰⁷Public Announcement by Governor Robert D. Orr of Indiana (February 23, 1984).

¹⁰⁸"The General Assembly shall provide, by law, for a uniform and equal rate of property assessment" IND. CONST. art. 10, § 1.

¹⁰⁹477 N.E.2d 939 (Ind. Ct. App. 1985).

¹¹⁰Regulation 16 was enacted by the state board of tax commissioners pursuant to the authority granted by IND. CODE § 6-1.1-31-1 (1982). It requires that manufacturers or processors who also act as retailers must value inventory at the retail level as though purchased from the manufacturing plant. It is codified at IND. ADMIN. CODE tit.50, § 4.1-3-2 (1984).

¹¹¹487 N.E.2d 444 (Ind. Ct. App. 1985).

¹¹²IND. CONST. art. 10, § 1.

¹¹³477 N.E.2d 939 (Ind. Ct. App. 1985).

inventory not ready for retail.¹¹⁴ The state tax board then valued Pioneer's seed at the production level on a cost per books method, but in valuing the seed in the hands of Pioneer's sales representatives (at the retail level), the tax board included the cost of materials, labor, manufacturing and operating expenses, and intracompany profit (essentially the costs of distribution to the retail level).¹¹⁵

The state tax board argued that this trade leveling adjustment was justified because it assured that all seed at the retail level of trade would be valued equally whether it was owned by a retailer who purchased it from a producer or by a producer assuming the role of retailer. The board asserted that "[t]he inequality of tax liability assessed against the same property of a single taxpayer is justified because equality of assessment occurs among different taxpayers."¹¹⁶ The state tax board, however, never presented any evidence to the court that substantiated its argument. No evidence was introduced comparing the valuation of similar inventory owned by a retailer with Pioneer's assessed values, nor did the state provide any evidence showing that uniformity and equality between Pioneer and other retailers was achieved by regulation 16's trade-leveling adjustment.¹¹⁷ Therefore, the court rejected the state tax board's contention that regulation 16's trade leveling adjustment leads to uniformity and equality among taxpayers.¹¹⁸

The court then addressed the issue of whether the disproportionate tax liability assessed against Pioneer's seed is legally permissible. Relying upon the 1977 decision in *State Board of Tax Commissioners v. Lyon & Greenleaf Co.*,¹¹⁹ the court ruled that the state tax board's classification and different valuations of Pioneer's seed based upon its level of trade violated article 10, section 1 of the Indiana Constitution.¹²⁰ Observing that the state tax board had failed to show that such classification was required to achieve a just valuation of all property, the court concluded:

Inventory stored at Pioneer's facilities is distinguished from the same inventory in the hands of Pioneer's sales representatives. Such a distinction is probably more artificial than in *Lyon & Greenleaf*. In this case, not only is identical property valued differently but the same owner of identical property is taxed

¹¹⁴IND. ADMIN. CODE tit. 50, § 4.1-3-2(A)(5) (1984).

¹¹⁵*Pioneer Hi-Bred Int'l*, 477 N.E.2d at 941.

¹¹⁶*Id.* at 942.

¹¹⁷*Id.*

¹¹⁸*Id.* at 943.

¹¹⁹172 Ind. App. 272, 359 N.E.2d 931 (1977). In this case, the Indiana Court of Appeals ruled that the assessing of fungible, commingled grain stored in the same warehouse at different values depending upon whether the grain was owned by the warehouse itself or by farmers was violative of the Indiana Constitution. *Id.*

¹²⁰*Pioneer Hi-Bred Int'l*, 477 N.E.2d at 943.

differently. We therefore conclude that the Board's higher valuation of Pioneer's seed grain at the retail level of trade was impermissible and the trial court properly set it aside.¹²¹

In *PolyGram Records*,¹²² the court of appeals again held that the state tax board's assessment of tangible personal property violated article 10, section 1 of the Indiana Constitution. PolyGram is a company that produces, promotes, and distributes records and tapes. It operates a distribution center for its products in Beech Grove, Indiana. In the record and tape industry, the artist first contracts with a record label company to make a master copy of the recording. The record label company then contracts with companies like PolyGram to produce, promote, and distribute the recording. According to the court, PolyGram generally subcontracted out the actual manufacturing of the record to record-pressing companies.¹²³ PolyGram was compensated by retaining a percentage of the wholesale price with the remainder going to the record label company, which in turn used the funds for expenses, including the payment of royalties to the artist. The court found that the record label company was solely responsible for any royalty payments to the recording artist and that PolyGram was in no way involved with royalty agreements between the record label company and the artist.¹²⁴

The state tax board increased PolyGram's business inventory assessment by 127% to cover the value of royalties on the records that PolyGram held on the assessment date in Indiana.¹²⁵ This adjustment was made in accordance with rule 3, section 2(A)(6) of regulation 16,¹²⁶ which provides that if the taxpayer's cost per books of inventory excludes any royalty fees, an adjustment increasing such cost to reflect those fees must be made.¹²⁷

The taxpayer prevailed in this case by establishing (1) that it was not responsible for any royalties on its records, (2) that if a record was in its inventory, no royalty had accrued because there had been no sale (the event that triggered the obligation to pay royalty), and (3) *most importantly*, that PolyGram was in no different position than an Indiana record-presser, i.e. the manufacturer of recordings, and that the state tax board did not include royalty values in assessing records owned by record-pressers.¹²⁸

¹²¹*Id.*

¹²²487 N.E.2d 444 (Ind. Ct. App. 1985).

¹²³*Id.* at 445.

¹²⁴*Id.*

¹²⁵*Id.*

¹²⁶IND. ADMIN. CODE tit.50, § 4.1-3-2(A)(6) (1984).

¹²⁷*PolyGram Records*, 487 N.E.2d at 445.

¹²⁸PolyGram is in no different position, according to the record, than an Indiana located record-presser, i.e., the manufacturer, of recordings, where royalty values

The sum of these recent valuation decisions casts a mounting threat to the valuation standards employed by the state tax board. If the courts mean that all property of like kind must be valued at the same amount, then the board's "cost" approach to valuation is certainly jeopardized. But if the decisions stand only for the proposition that property similarly situated in the same marketplace is to be assessed pursuant to uniform valuation standards, then the board's general procedures may withstand further judicial scrutiny. In the board's defense, its use of "cost" as a starting point for valuation has considerable merit, not only as to the uniformity of the standard, but also, and importantly, this starting point permits a sound and defensible audit procedure.

are not assessed. We believe the situation is sufficiently similar to the seed corn in *State Bd. of Tax Com'rs. v. Pioneer Hi-Bred*, (1985) Ind. App., 477 N.E.2d 939, and the stored wheat in *Ind. St. Bd. of Tax Com'rs. v. Lyon & Greenleaf Co.*, (1977) 172 Ind. App. 272, 359 N.E.2d 931, that these cases control the PolyGram inventory because the Board has created an artificial distinction which results in an assessment which is not uniform or results in a just valuation. As a result, the PolyGram assessment contravenes Ind. Const. Art. 10, § 1.

Id. (footnote omitted).

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