

# RECENT DEVELOPMENTS IN INDIANA TAXATION

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## INTRODUCTION—SOME ABBREVIATION REFERENCES

This Article highlights the major tax developments that occurred through the calendar year of 2007.<sup>1</sup> Whenever the term “GA” is used in this Article, such term refers only to the 115th Indiana General Assembly. Whenever the term “Governor” is used in this Article, such term refers only to the Governor of Indiana who was serving in office during the 115th Indiana General Assembly. Whenever the term “Tax Court” is referred to in this Article, such term refers only to the Indiana Tax Court. Whenever the term “DLGF” is used in this Article, such term refers only to the Indiana Department of Local Government Finance. Whenever the term “BTR” is used in this Article, such term refers only to the Indiana Board of Tax Review. Whenever the term “SBTC” is used in this Article, such term refers only to the Indiana State Board of Tax Commissioners. Whenever the term “DOSR” is used in this Article, such term refers only to the Indiana State Department of Revenue. Whenever the term “I.C.” is used in the text of this Article, such term refers only to the Indiana Code which is in effect at time of the publication of this Article. Whenever the term “ERA” is used in this Article, such term refers only to an Indiana Economic Revitalization Area. Whenever the term “CAGIT” is used in this Article, such term refers only to the Indiana County Adjusted Gross Income Tax. Whenever the term “COIT” is used in this Article, such term refers only to the Indiana County Option Income Tax. Whenever the term “EDC” is used in this Article, such term refers only to the Indiana Economic Development Corporation. Whenever the term “CDC” is used in this Article, such term refers only to the Indiana Community Development Corporation. Whenever the term “CEDIT” is used in this Article, such term refers only to the Indiana County Economic Development Income Taxes. Whenever the term “EDIT” is used in this Article, such term refers only to the Indiana Economic Development Income Tax. Whenever the term “BMV” is used in this Article, such term refers only to the Indiana Bureau of Motor Vehicles. Whenever the term “IRC” is used in this Article, such term refers only to the

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1. For comprehensive information concerning the Indiana Tax Court, the Indiana Department of State Revenue, the Indiana Board of Tax Review, the Indiana Department of Local Government Finance, and a variety of other tax-related information, visit Professor Jegen’s Taxsite at <http://www.iupui.edu/~taxsite> and the State of Indiana’s official website at <http://www.state.in.us>.

Internal Revenue Code which is in effect at the time of the publication of this Article. Whenever the term “AOPA” is used in this Article, such term refers only to the Indiana Administrative Orders and Procedures Act. Whenever the term “CBTCPR” is used in this Article, such term refers only to the County Board of Tax and Capital Projects. Whenever the term “PTABOA” is used in this Article, such term refers only to a Property Tax Assessment Board of Appeals.

## I. INDIANA GENERAL ASSEMBLY LEGISLATION

The 115th GA passed several pieces of legislation affecting various areas of state and local taxation, e.g., state income taxes, county property taxes, sales and use taxes, and local taxes. The most significant changes occurred in the area of property tax appeal procedures. However, most of the amendments to the property tax laws are very technical ones, and it takes a fairly knowledgeable individual about property taxes to fully understand these amendments.

### A. Property Tax<sup>2</sup>

The GA enacted a variety of changes to property tax legislation. For 2007 taxes payable in 2008, the GA amended the statute to keep the standard deduction for the homestead credit at \$45,000, the same amount allowable for the previous tax year.<sup>3</sup> The GA also amended the provision that would reduce the standard deduction to \$35,000 starting in the 2007 assessment year to a gradually declining schedule beginning in the 2008 assessment year for taxes payable in 2009 and future years.<sup>4</sup> The standard deduction is to gradually be reduced annually by \$1000 until 2012 when the deduction levels off at \$40,000.<sup>5</sup>

Counties continue to have the option to authorize a “circuit breaker” that limits residential property taxes. The GA amended the “circuit breaker” provision to provide that for 2008 and 2009, the credit for taxes greater than 2% applies to “homestead property” instead of “qualified residential property.”<sup>6</sup> Further, after 2009, the circuit breaker credit for taxes greater than 2% applies to homestead property while a circuit breaker credit for taxes greater than 3% applies to property other than homestead property.<sup>7</sup> The GA also removed tuition support levies from the circuit breaker calculations,<sup>8</sup> removed the ability of the Property Tax Replacement Fund Board to raise the percentage of the homestead

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2. For an additional list of the property tax provisions enacted by the GA in 2007, see Memorandum from Ind. Dep’t of Local Gov’t Fin. to Political Subdivisions, County Auditors, Assessors, and Treasurers, and Twp. and Tr. Assessors (June 2007), available at <http://www.in.gov/dlgf/memos/pdfs/memos/LegislationMemoJune2007.pdf>.

3. IND. CODE § 6-1.1-12-37 (Supp. 2007) (as amended by 2007 Ind. Acts 3870-71).

4. *Id.*

5. *Id.*

6. *Id.* § 6-1.1-20.6-6.5 (as amended by 2007 Ind. Acts 3918-19).

7. *Id.* § 6-1.1-20.6-7 (as amended by 2007 Ind. Acts 3919-21).

8. *Id.*

credit,<sup>9</sup> and amended I.C. § 6-1.1-21.2-15 to prohibit the inclusion of a tax increment replacement tax in the calculation of the circuit breaker credit.<sup>10</sup>

After December 31, 2008, the County Board of Tax Adjustment is to be abolished.<sup>11</sup> Beginning January 1, 2009, a CBTCPR is to be established in each county.<sup>12</sup> Each CBTCPR is to consist of nine members, all of whom are to be voting members.<sup>13</sup> The county auditor will make any necessary tie-breaking vote.<sup>14</sup> Depending on the number of municipalities and school corporations within a county, there are to be four alternative membership formulations for the CBTCPR.<sup>15</sup> However, all appointed members must be elected officials serving on the fiscal body of a taxing unit or group of taxing units except for two county residents that are to be separately elected to the CBTCPR by the voters.<sup>16</sup> A petitioning political subdivision is required to submit a proposed financial plan to the CBTCPR.<sup>17</sup> The CBTCPR

may: (1) increase the threshold at which the circuit breaker credit applies to a person's property tax liability; or (2) provide for a uniform percentage reduction to circuit breaker credits otherwise provided in the county; if the governing boards of all political subdivisions in the county agree to that plan.<sup>18</sup>

The GA also amended I.C. § 6-1.1-10-16(d) to extend the period of time when property tax exemptions apply to vacant land which is intended to be developed in order to erect exempt structures.<sup>19</sup> The provision was also amended to provide for a property tax recapture if certain exempt property is sold within four years of its purchase.<sup>20</sup>

As stated above, the majority of changes to property tax legislation occurred in the area of property tax appeal procedures.<sup>21</sup> The GA made significant changes to the procedures at both the local and state levels.

The GA made the following changes to local procedure. The changes affect review notices filed after June 30, 2007, and later proceedings connected with

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9. *Id.* § 6-1.1-20.9-2 (as amended by 2007 Ind. Acts 3921-23).

10. 2007 Ind. Acts 3923-24.

11. IND. CODE § 6-1.1-29-1 (Supp. 2007) (as amended by 2007 Ind. Acts 3924).

12. *Id.* § 6-1.1-29-1.5 (as added by 2007 Ind. Acts 3924-27).

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. TERESA LUBBERS, 2007 SUMMARY OF NEW LAWS: FIRST REGULAR SESSION OF THE 115TH INDIANA GENERAL ASSEMBLY 2007, at 114, available at [http://www.in.gov/legislative/senate\\_republicans/homepages/newlaws/2007/Lubbers.pdf](http://www.in.gov/legislative/senate_republicans/homepages/newlaws/2007/Lubbers.pdf) (citing IND. CODE § 6-1.1-29.5 (Supp. 2007) (as added by 2007 Ind. Acts 3933-39)).

18. *Id.*

19. 2007 Ind. Acts 2825-29.

20. *Id.*

21. A majority of the information provided for this section was provided by the BTR.

those notices.<sup>22</sup> First, taxpayers are no longer required to request a preliminary conference with the local official (usually the township assessor) to initiate a property tax appeal.<sup>23</sup> Taxpayers are now only required to file written notice with the official who made the assessment being challenged.<sup>24</sup>

The GA also clarified and provided uniformity to portions of I.C. § 6-1.1-15-1 regarding the filing deadlines that determine the effective date of an appeal.<sup>25</sup> The deadlines are separated into two broad categories: appeals where a notice of assessment or change of assessment was issued and appeals without such notice.<sup>26</sup> When such notice has been issued, the taxpayer can appeal the assessment for the date specified in the assessment notice by filing a written request for review within forty-five days after the notice was given.<sup>27</sup> If no notice was issued, then the filing deadline differs based upon the assessment date challenged. If the assessment date is before 2009, then the taxpayer must file a request for review on or before May 10.<sup>28</sup> If the assessment date is after 2008, then the taxpayer must file a request either before May 10 or forty-five days after the date the county auditor mails the statement as required by I.C. § 6-1.1-17-3(b), whichever is later.<sup>29</sup>

The deadlines for county boards to act upon taxpayers' written requests for review under I.C. § 6-1.1-15-1 also changed. County boards now have 180 days to conduct a hearing and 120 days to issue a determination.<sup>30</sup> The deadlines are no longer based upon the county's population or the year of appeal. Taxpayers were also given recourse if a county board fails to act within the designated deadlines. Taxpayers can now appeal to the BTR without any action by the county board if the county board does not meet its deadline for holding a hearing or issuing a determination.<sup>31</sup>

The following changes were made to the property tax appeal procedures at the state level under I.C. § 6.1.1-15-3. Most of these changes only apply to petitions to the BTR based on county board determinations issued after June 30, 2007, and later proceedings connected with those petitions.<sup>32</sup> First, taxpayers seeking review of a county board determination must now file the request directly with the BTR instead of the county assessor.<sup>33</sup> Previously, taxpayers were

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22. IND. CODE § 6-1.1-15-1 (Supp. 2007) (as amended by 2007 Ind. Acts 3779-80).

23. *Id.* (as amended by 2007 Ind. Acts 3611-17). Taxpayers are not precluded, however, from continuing to request this hearing. *Id.* Once a hearing is requested by a taxpayer, the official is required to meet with the taxpayer. *Id.*

24. *Id.*

25. *See* 2007 Ind. Acts 3611-17.

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.* at 3779-80.

33. *Id.* at 3617-19.

required to file such requests with the county assessor who forwarded the request to the BTR. Further, the person who files the petition, and not the county assessor, must now serve the opposing party with a copy of the petition, which is similar to court proceedings.<sup>34</sup>

Taxpayers also have more time for filing a review petition. The GA amended the deadline from thirty days to forty-five days to make the requirement more uniform with other appeal statutes.<sup>35</sup> The GA also changed the requirements for the named government party in BTR proceedings. An amendment to I.C. § 6-1.15-3 now provides that the county assessor is the party responsible for defending the county board's determination, regardless of who made the original assessment.<sup>36</sup> Additionally, if the county assessor dissented from the county board's determination, then the county assessor also may petition the BTR for review of the decision.<sup>37</sup>

The GA also clarified what evidence the BTR may use to base its decisions as well as the required content of BTR written decisions. First, the BTR must base its final determinations in appeals from DLGF decisions on the preponderance of the evidence.<sup>38</sup> Moreover, the BTR's written determinations regarding those appeals must include findings of fact and be based exclusively on "the evidence on the record in the proceedings," and "matters officially noticed in the proceeding."<sup>39</sup>

The GA also made changes to the procedures for obtaining judicial review of BTR final determinations. The changes discussed only affect petitions based on BTR determinations issued after June 30, 2007, and later proceedings connected with those petitions.<sup>40</sup> Most importantly, taxpayers are no longer required to comply with AOPA in filing a Tax Court petition and filing the administrative record with the Tax Court.<sup>41</sup> Instead, the revised provision provides that taxpayers must file a petition with the Tax Court; serve a copy of the petition to the county assessor, attorney general, and any entities that have filed amicus curiae briefs with the BTR; and notify the BTR in writing of the intent to seek judicial review.<sup>42</sup> Similar to the change made at the BTR review level, the GA also changed the named party in a petition for judicial review to the county assessor instead of the assessing official that made the original assessment determination.<sup>43</sup> Lastly, changes were also made to the deadlines for initiating judicial review. Taxpayers now have forty-five days to appeal BTR

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34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. IND. CODE § 6-1.1-15-4 (Supp. 2007) (as amended by 2007 Ind. Acts 3619-23).

39. *Id.* § 6-1.5-5-4 (as amended by 2007 Ind. Acts 3685-86).

40. *Id.* § 6-1.1-15-5 (as amended by 2007 Ind. Acts 3779-80).

41. *See id.* § 6-1.1-15-5 (as amended by 2007 Ind. Acts 3623-25).

42. *Id.*

43. *Id.*

determinations, whether or not the determinations were issued on a rehearing.<sup>44</sup>

### B. Utility Receipts Tax

The GA passed legislation clarifying and expanding portions of the utility receipts tax. First, the GA expanded the definitions of an “affiliated group” and a “controlled group” under I.C. §§ 6-2.3-1-2 and 6-2.3-1-2.5, respectively, to be consistent with the IRC definitions of these terms.<sup>45</sup> The GA then added I.C. § 6-2.3-4-6, which provides that gross receipts from the sale of utility services between members of a controlled group of corporations are exempt from the utility receipts tax if the seller is the producer of the utility service, and the purchaser is the end user, and the seller and user exist in the same or adjacent locations.<sup>46</sup>

The GA clarified I.C. § 6-2.3-5-3 when it amended it to provide that the resource recovery tax deduction allowed for the utility receipts tax shall be disallowed if the taxpayer is convicted of a *criminal* violation under I.C. § 13 (environmental law).<sup>47</sup>

Finally, the GA amended I.C. § 6-2.3-6-1 to increase the threshold for the annual unpaid utility receipts tax liability from \$1000 to \$2500 before quarterly estimated payments are required to be made and reduce the threshold for electronic funds transfer (“EFT”) payments from \$10,000 to \$5000 for taxable years beginning after December 15, 2007.<sup>48</sup>

### C. Sales and Use Tax

Indiana is a full member of the Streamlined Sales and Use Tax (“SST”) Agreement. Thus, some of the changes made to Indiana sales tax law were made to make the law consistent with the SST Agreement.

1. *Telecommunications Services*.—One area that received attention this year was telecommunications services. Several definitions were added to provide clarification in this area. First, effective January 1, 2008, the term “telecommunications services” is defined as the “electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points.”<sup>49</sup> “The term includes a transmission . . . in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission . . . whether the service: (1) is referred to as voice over internet protocol services; or (2) is classified by the [FCC] as enhanced or value added.”<sup>50</sup> However, the term does not include:

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44. *Id.*

45. 2007 Ind. Acts 978.

46. *Id.*

47. 2007 Ind. Acts 1936-37.

48. 2007 Ind. Acts 3025-27.

49. IND. CODE § 6-2.5-1-27.5 (Supp. 2007) (as added by 2007 Ind. Acts 2179-80).

50. *Id.*

(1) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser . . . [;] (2) Installation or maintenance of wiring or equipment on a customer's premises[;] (3) Tangible personal property[;] (4) Advertising, including but not limited to directory advertising[;] Billing and collection services provided to third parties[;] (6) Internet access service[;] (7) Radio and television audio and video programming services, regardless of the medium . . . [,] includ[ing] cable service . . . and audio and video programming services delivered by commercial mobile radio service providers . . . [;] (8) Ancillary services[; or] (9) Digital products delivered electronically including . . . [A] Software, [B] Music, [C] Video, [D] Reading materials, and [E] Ring tones.<sup>51</sup>

Further, the term "intrastate telecommunications service" is defined as telecommunications service that originates and terminates in Indiana.<sup>52</sup>

The GA also added definitions to coincide with the definitions in the SST Agreement. All of these definitions are effective as of January 1, 2008. The GA added a definition of telecommunications "ancillary services" to I.C. § 6-2.5-1-11.3.<sup>53</sup> This term is defined to include detailed telecommunications billing, directory assistance, vertical services, and voice mail services.<sup>54</sup> "Prepaid wireless calling service" is now defined in I.C. §§ 6-2.5-1-22.4 and 6-2.5-12-11.5 as "a telecommunications service that provides the right to use mobile wireless services . . . [that] must be paid for in advance [] and are sold in predetermined units or dollars, the balance of which declines with use."<sup>55</sup> Further, the definition of "post paid calling service" was amended to exclude "a prepaid wireless calling service" for purposes of sourcing telecommunications.<sup>56</sup> Additionally, I.C. § 6-2.5-1-29 defines "value added nonvoice data service" to mean "a service that otherwise meets the definition of telecommunications services in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing."<sup>57</sup>

The GA also modified the perimeters for what is considered to be a telecommunications retail transaction. The GA amended I.C. § 6-2.5-4-6 to provide that as of January 1, 2008, a person is making a retail transaction when the person sells an intrastate telecommunications service and receives gross retail income from billings or statements rendered to customers.<sup>58</sup> In contrast, a person

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51. *Id.*

52. *Id.* § 6-2.5-1-20.3 (as added by 2007 Ind. Acts 2178).

53. 2007 Ind. Acts 2178.

54. *Id.*

55. *Id.* at 2178-79, 2185.

56. IND. CODE § 6-2.5-12-10 (Supp. 2007) (as amended by 2007 Ind. Acts 2185).

57. 2007 Ind. Acts 2180.

58. *Id.* at 2180-81.

is not providing telecommunications services when “the person furnishes telecommunications services to another person who is providing prepaid calling services or prepaid wireless calling services in a retail transaction to customers who access the services through the use of an access number,” the person “sells telecommunications services to a public utility, the person furnishes intrastate mobile telecommunications service . . . to a customer with a place of primary use that is not located in Indiana,” or the person “sells value added nonvoice data services in a retail transaction to a customer.”<sup>59</sup> Changes were also made to the general sourcing provisions regarding telecommunications services. The GA amended I.C. § 6-2.5-12-16 to determine the manner of sourcing for prepaid wireless calling services<sup>60</sup> and I.C. § 6-2.5-13-1 to provide that Internet access services and ancillary services are to be sourced in accordance with the telecommunications sourcing provisions.<sup>61</sup> Finally, the GA repealed I.C. § 6-2.5-13-2, which provided for the multiple point of use exemption provision in regards to sourcing of digital goods and computer software delivered electronically.<sup>62</sup>

2. *Exemptions.*—Select sales tax exemption provisions were also amended. A few of these modifications concern aircraft exemptions. The GA amended I.C. § 6-2.5-3-2 to provide a limited use tax exemption for an aircraft that is titled or registered in another state and is temporarily brought to Indiana to be repaired, refurbished, remanufactured, or subjected to a pre-purchase evaluation.<sup>63</sup> The GA amended I.C. § 6-2.5-5-8 to provide that an aircraft acquired by a person for rental or leasing is not exempt from the sales tax unless the person establishes that the annual amount of the lease revenue derived from leasing the aircraft is equal to or greater than 10% of the cost of the aircraft if the cost was less than \$1,000,000 or 7.5% if the cost is equal to or greater than \$1,000,000.<sup>64</sup> This section was also amended to provide that the provision concerning aircraft purchased exempt from the sales tax for leasing and required to meet certain financial thresholds to be considered engaged in leasing does not take effect until July 1, 2008 instead of July 1, 2007.<sup>65</sup> The GA also added I.C. § 6-2.5-5-42, which provides that effective July 1, 2007, an aircraft is exempt from the sales tax if the purchaser is a nonresident and the purchaser takes the aircraft outside of Indiana within thirty days after accepting delivery or a repair, refurbishment, or remanufacture of the aircraft is completed.<sup>66</sup> The purchaser is required to supply the seller with a copy of the purchaser’s registration or title for the state where the aircraft is registered or titled within sixty days.<sup>67</sup> The GA also eliminated the exemption for exporting an aircraft from Indiana within thirty days and then

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59. *Id.*

60. *Id.* at 2185-87.

61. *Id.* at 2187-91.

62. *Id.* at 2191.

63. 2007 Ind. Acts 3030-31.

64. *Id.*

65. 2007 Ind. Acts 3089.

66. 2007 Ind. Acts 3033-34.

67. *Id.*



reinstated it in I.C. § 6-2.5-5-42.<sup>68</sup>

Other sales tax exemption changes include the addition of a sales tax exemption for purchases of tangible personal property related to collection plant and expenses; system pumping plant and expenses; treatment and disposal plant and expenses; and the purchases made by a public utility or a person who contracts with a municipality for the collection, treatment, or processing of wastewater.<sup>69</sup> This new provision replaced the wording contained in I.C. § 6-2.5-5-12 and subsequently deleted the provision which provided a sales tax exemption for public utilities that operate wastewater treatment plants.<sup>70</sup> The GA also amended I.C. § 6-2.5-5-3 to clarify that distribution equipment and transmission equipment of a public utility engaged in generating electricity is not exempt from the sales tax as equipment directly used in direct production of electricity.<sup>71</sup> An amendment to I.C. § 6-2.5-5-35 clarifies that electricity, gas, water, and steam are not considered a consumable exempt from the sales tax if used by restaurants or hotels.<sup>72</sup> Furthermore, the GA added a provision to I.C. § 6-2.5-3-7 providing that as of July 1, 2007, a purchaser purchasing tangible personal property for use in public transportation may verify the purchaser's exemption by providing the purchaser's name, address, and motor carrier number; USDOT number; or any other identifying number authorized by the DOSR.<sup>73</sup> Finally, the sales tax exemption for the low-income home energy assistance program was extended until July 1, 2009.<sup>74</sup>

3. *Miscellaneous Sales Tax Changes.*—The GA amended I.C. § 6-2.5-4-14 to provide that the department of administration and universities are required to provide a list to the DOSR of every person desiring to sell tangible personal property to the state or to a university, and to eliminate the provision requiring that a person providing services be included on the list.<sup>75</sup> The DOSR is also required to notify the department of administration or the university if the person is not a registered retail merchant or is delinquent in remitting sales tax.<sup>76</sup>

The GA reduced the threshold for remitting the sales tax by EFT from \$10,000 to \$5000.<sup>77</sup> The collection allowance provided by the state to retailers in I.C. § 6-2.5-6-10 also changed.<sup>78</sup> The allowance remains at 0.83% on the first \$60,000 in sales tax liability accrued, but changes to 0.6% on the sales tax liability between \$60,001 and \$600,000, and for sales tax remittances greater than

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68. *Id.* at 3032-33.

69. IND. CODE § 6-2.5-5-12.5 (Supp. 2007) (as added by 2007 Ind. Acts 1364-67).

70. 2007 Ind. Acts 1364.

71. 2007 Ind. Acts 3029-30.

72. *Id.* at 3031.

73. *Id.* at 3028-29.

74. IND. CODE § 6-2.5-5-16.5 (Supp. 2007) (as amended by 2007 Ind. Acts 1128).

75. 2007 Ind. Acts 3029.

76. *Id.*

77. IND. CODE § 6-2.5-6-1 (Supp. 2007) (as amended by 2007 Ind. Acts 3034-36).

78. *See* 2007 Ind. Acts 3036-37.

\$600,000, the collection allowance is now 0.3%.<sup>79</sup>

The following changes were also made to the E85 sales tax deduction. The E85 sales tax deduction may now be claimed until June 30, 2020.<sup>80</sup> Additionally, the amount of the E85 sales tax deduction was increased from \$.10 to \$.18 per gallon, and the total amount of sales tax deductions that are available to all retail merchants for all years was reduced from \$2,000,000 to \$1,000,000.<sup>81</sup> The GA added a provision that provides that to the extent that funds are available from the corn market development account, the \$1,000,000 cap for the E85 sales tax deduction does not apply.<sup>82</sup> The DOSR is required to annually publish in the Indiana Register a notice of the amount of funds available for the reimbursement required from the corn market development fund for the E85 deduction.<sup>83</sup>

Beginning January 1, 2008, I.C. § 6-2.5-8-8 provides “[a] seller that accepts an incomplete exemption certificate . . . is not relieved of the duty to collect gross retail . . . tax on the sale unless the seller obtains a fully completed exemption certificate within ninety (90) days after the sale.”<sup>84</sup> “If the seller has accepted an incomplete exemption certificate,” then the DOSR is to request the seller to “substantiate the exemption,” and the seller is to have 120 days to provide a completed exemption certificate or prove by other means that the transaction was an exempt transaction.<sup>85</sup>

The GA also amended I.C. § 6-2.5-11-10 to provide that a certified service provider (“CSP”) or “a seller using a certified automated system that obtains a certification from the [DOSR] is not liable for sales . . . tax collection errors that result from reliance on the [DOSR’s] certification.”<sup>86</sup> “The [CSP] or the seller using a certified automated system must revise the incorrect classification within ten (10) days after receiving notice of the determination from the [DOSR].”<sup>87</sup> If the error is not corrected within ten days, then the CSP or the seller using a certified automated system is liable for failure to collect the correct amount of sales tax due.<sup>88</sup> A new provision, I.C. § 6-2.5-11-11, was also added to provide that a purchaser is relieved from liability for penalties for failure to pay the amount of tax due if the purchaser’s seller, a purchaser with a direct pay permit, or a purchaser relied on information provided by the DOSR regarding tax rates or the taxability matrix.<sup>89</sup> A purchaser is also relieved from liability and interest for failure to pay the correct amount of sales tax due.<sup>90</sup>

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79. *Id.*

80. IND. CODE § 6-2.5-7-5 (Supp. 2007) (as amended by 2007 Ind. Acts 2647-49).

81. *Id.*

82. *Id.* § 6-2.5-7-5.5 (as added by 2007 Ind. Acts 2990-91).

83. *Id.*

84. 2007 Ind. Acts 2181-82.

85. *Id.*

86. *Id.* at 2182-83.

87. *Id.*

88. *Id.*

89. *Id.* at 2183-84.

90. *Id.*

The GA also passed the following miscellaneous sales tax provisions. Effective January 1, 2008, I.C. § 6-2.5-8-1 provides the county assessor shall receive the information related to new sales tax registrations if the duties of the township assessor are transferred to the county assessor.<sup>91</sup> Further, I.C. § 6-2.5-8-7 was amended to stipulate that the DOSR shall revoke a registered retail merchant after five days notice to the retail merchant if the DOSR finds in a public hearing that the holder of the permit has violated any of the professional gambling statutes.<sup>92</sup> This requirement is eliminated with the adoption of the memorandum of understanding with the gaming commission. The GA also appropriated one hundred twenty-five thousandths of one percent to the public mass transportation fund from the deposits of the sales tax in the general fund.<sup>93</sup> Lastly, the GA repealed I.C. § 6-2.5-8-10, which required a person to register as a retail merchant even if they were not located in Indiana, but solicited business, sold property to the state or a university, or was closely related to another entity that maintained a place of business in Indiana.<sup>94</sup>

#### *D. Adjusted Gross Income Tax*

During 2007, the GA clarified many provisions regarding military income. A new provision, I.C. § 6-3-1-34, defines “qualified military income” as wages paid to a member of the reserve component of the armed forces or the National Guard for full-time service on involuntary orders, the period during which the member is mobilized and deployed, or the period during which the person’s National Guard unit is federalized.<sup>95</sup> Effective January 1, 2008, I.C. § 6-3-1-3.5 provides that qualified military income that was included in federal adjusted gross income is deducted for purposes of determining Indiana adjusted gross income.<sup>96</sup> The military pay and military retirement income tax deduction in I.C. § 6-3-2-4 shall also increase from \$2000 to \$5000 in 2008.<sup>97</sup>

Adjusted gross income tax legislation in 2007 also addressed patents. One new addition is a modification to adjusted gross income to provide a subtract-off for patent income that is included in federal adjusted gross income or federal taxable income for corporations.<sup>98</sup> The GA added an exemption from income for “qualified patents” in I.C. § 6-3-2-21.7 effective January 1, 2008.<sup>99</sup> A “qualified patent” is a “utility patent” or a “plant patent” issued after December 31, 2007, “for an invention resulting from a development process conducted in Indiana.”<sup>100</sup>

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91. 2007 Ind. Acts 3686-88.

92. 2007 Ind. Acts 4129-31.

93. IND. CODE § 6-2.5-10-1 (Supp. 2007) (as amended by 2007 Ind. Acts 4455-70).

94. 2007 Ind. Acts 3089.

95. 2007 Ind. Acts 2163.

96. *Id.* at 2155-63.

97. *Id.*

98. IND. CODE § 6-3-1-3.5 (Supp. 2007) (as amended by 2007 Ind. Acts 3841-49).

99. 2007 Ind. Acts 3849.

100. *Id.*

The “term does not include a design patent.”<sup>101</sup> A “qualified taxpayer” is an individual or corporation with less than 500 employees or a nonprofit organization, which is in either case domiciled in Indiana.<sup>102</sup> The exemption includes “[l]icensing fees or other income received for the use of a qualified patent, [r]oyalties received for the infringement, receipts from the sale of a qualified patent, and income from the taxpayer’s own use of the taxpayer’s qualified patent to produce the claimed invention.”<sup>103</sup> However, the total amount of exemptions claimed by a taxpayer in a taxable year may not exceed \$5,000,000, and it may not be claimed for more than ten years.<sup>104</sup> For the first five years, 50% of the amount of income received from the patent is exempt, and the percentage declines by 10% each year starting in the sixth year that the exemption is claimed.<sup>105</sup> The taxpayer is required to claim the exemption on the qualified taxpayer’s state tax return and is to submit all information the DOSR determines necessary for the determination of the exemption.<sup>106</sup>

Additionally, the GA passed the following miscellaneous provisions. The GA amended I.C. § 6-3-1-3.5 to require corporations to add back any deduction for dividends paid to shareholders of a captive real estate investment trust.<sup>107</sup>

A new provision, I.C. § 6-3-1-34.5, defines a “captive real estate investment trust” as

a corporation, a trust, or an association: (1) that is considered a real estate investment trust for the taxable year under Section 856 of the IRC; (2) that is not regularly traded on an established securities market; and (3) in which more than fifty percent (50%) of the: (A) voting power; (B) beneficial interests; or (C) shares; are owned or controlled . . . by a single entity.<sup>108</sup>

A retroactive amendment to I.C. § 6-3-3-12 provides that an owner of a college choice 529 education savings plan that makes a non-qualified withdrawal must repay all or part of the credit in the taxable year in which the non-qualified withdrawal was made.<sup>109</sup>

The amount the taxpayer must repay is equal to the lesser of: (1) twenty percent (20%) of the total amount of non-qualified withdrawals made during the taxable year from the account; or (2) the excess of . . . the cumulative amount of all credits provided by this section that are claimed by a taxpayer with respect to the taxpayer’s contributions to the account

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101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. 2007 Ind. Acts 3037-45.

108. *Id.* at 3045-46.

109. *Id.* at 3051-53.

for all taxable years beginning on or after January 1, 2007. . . .<sup>110</sup>

Any required repayment shall be made “on the account owner’s annual income tax return for any taxable year in which a non-qualified withdrawal is made.”<sup>111</sup>

The GA added I.C. § 6-3-4-1.5 to provide that if a professional preparer files more than 100 tax returns in a calendar year for individuals, then the paid preparer is to file returns for individuals in an electronic format for the subsequent year as specified by the DOSR.<sup>112</sup>

The following amendments concern estimated payments. An amendment to I.C. § 6-3-4-4.1 provides that if an individual’s annual unpaid liability is less than \$1000, the taxpayer is not required to file quarterly estimated payments.<sup>113</sup> The previous amount was \$400.<sup>114</sup> A corporation for taxable years beginning after December 15, 2007, is also not required to file quarterly estimated payments if its annual unpaid liability is less than \$2500.<sup>115</sup> The previous limitation was \$1000.<sup>116</sup> Corporations required to make quarterly estimated payments are permitted to use “the annualized income installment calculated in the manner provided by section 6655(e) of the Internal Revenue Code as applied to the corporation’s liability for adjusted gross income tax.”<sup>117</sup> Furthermore, this section also reduces the filing threshold for EFT payments for corporate estimated taxes from \$10,000 to \$5000.<sup>118</sup>

The GA changed the requirement for monthly withholding taxes to be remitted by EFT from \$10,000 to \$5000.<sup>119</sup> Partnerships that have nonresident partners are also required to file a composite return which includes all nonresident partners.<sup>120</sup> A nonresident is not prohibited from being part of the composite return if they have other income from Indiana.<sup>121</sup> S corporations that have nonresident shareholders are also required to file a composite return for all nonresident shareholders, including nonresident shareholders that have no other income from Indiana.<sup>122</sup>

The GA also updated the definition of “adjusted gross income” in I.C. § 6-3-1-11 to correspond to the federal definition of “adjusted gross income” which is contained in the IRC.<sup>123</sup> Provisions that are incorporated into the definition of

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110. *Id.*

111. *Id.*

112. *Id.* at 3053.

113. *Id.* at 3053-55.

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. IND. CODE § 6-3-4-8.1 (Supp. 2007) (as amended by 2007 Ind. Acts 3055-56).

120. *Id.* § 6-3-4-12 (as amended by 2007 Ind. Acts 3057-58).

121. *Id.*

122. *Id.* § 6-3-4-13 (as amended by 2007 Ind. Acts 3059-61).

123. 2007 Ind. Acts 4613-14.

adjusted gross income include an extension of the deduction for higher education expenses, a temporary extension of the deduction for teachers' classroom expenses, a deduction for environmental remediation expenses, and depreciation of leasehold and restaurant improvements.<sup>124</sup>

### *E. Tax Credits*

The GA created the following new tax credits in 2007. One new retroactive tax credit contained in I.C. § 6-3.1-31 rewards employers offering health benefit plans.<sup>125</sup> An employer that did not provide health insurance to its employees prior to January 1, 2007, and makes health insurance available to the employees is entitled to a credit for the first two years in which the taxpayer makes the plan available if the employer provides that participation is at the employee's election. The employee may have the premiums withheld from his paycheck.<sup>126</sup> The amount of the credit is the lesser of \$2500 or \$50 multiplied by the number of employees enrolled in the health benefit plan.<sup>127</sup> A taxpayer is to claim the credit on the taxpayer's state tax return, and the taxpayer is required to make health insurance available to the employer's employees for at least two years after the taxable year for which the employer first offers the health benefit plan.<sup>128</sup>

The GA also added I.C. § 6-3.1-31.2, which creates a small employer qualified wellness program tax credit that is retroactive.<sup>129</sup> A "small employer" is "an employer that: (1) is actively engaged in business; and (2) . . . employed at least two (2) but not more than one hundred (100), eligible employees, the majority of whom work in Indiana."<sup>130</sup> A small employer is entitled to a tax credit "equal to fifty percent (50%) of the costs incurred by the [employer] during the taxable year for providing a qualified wellness program for the [employer's] employees during the taxable year."<sup>131</sup> The credit can be carried forward but cannot be carried back or refunded.<sup>132</sup> To receive the credit the employer must provide a copy of the certificate received from the State Department of Health and claim the credit on the taxpayer's state income tax return.<sup>133</sup> The provision also contains reporting provisions for the DOSR.<sup>134</sup>

Another new tax credit passed concerns expenditures on energy star heating and cooling equipment incurred by taxpayers.<sup>135</sup> The tax credit effective January

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124. *Id.*

125. *See* 2007 Ind. Acts 3491-94.

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.* at 3494-96.

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. *See* IND. CODE § 6-3.1-31.5 (Supp. 2007) (as added by 2007 Ind. Acts 2578-80).

1, 2008, is “equal to the lesser of . . . (1) twenty percent (20%) of the amount of expenditures for energy star heating and cooling equipment incurred by the taxpayer in a taxable year[] or (2) one hundred dollars (\$100).”<sup>136</sup> A pass through entity is also eligible for the credit, and the credit may not exceed the taxpayer’s tax liability.<sup>137</sup> There is no carry back, carry forward, or refund of any unused credit, and the total amount of tax credits may not exceed \$1,000,000 in a state fiscal year.<sup>138</sup> Further, the credit may not be awarded to a taxpayer for taxable years beginning after December 31, 2010.<sup>139</sup>

The GA also passed a new retroactive tax credit for alternative fuel manufacturers.<sup>140</sup> This new tax credit provides a credit of up to 15% of the “qualified investment.”<sup>141</sup> A “qualified investment” includes “the purchase of new telecommunications, production, manufacturing, fabrication, assembly, finishing, distribution, transportation, or logistical distribution equipment.”<sup>142</sup> The term also includes computer equipment, “costs associated with modernization” of equipment and facilities, “onsite infrastructure improvements,” construction of new manufacturing facilities, retooling existing machinery and equipment, and costs associated with the construction of special purpose buildings that are certified by the EDC as being eligible for the credit.<sup>143</sup> An “alternative fuel vehicle” is any vehicle designed to operate using methanol, denatured ethanol, E85, natural gas, liquefied petroleum gas, hydrogen, coal derived liquid fuels, non-alcohol fuels derived from biological material, P-Series fuels, or electricity.<sup>144</sup> The EDC may make credit awards to foster job creation, reduce dependency on foreign oil, and reduce air pollution.<sup>145</sup> A taxpayer may carry forward an unused credit for nine years.<sup>146</sup> A person that proposes a project to manufacture or assemble alternative fuel vehicles may apply to the EDC before the qualified investment is made.<sup>147</sup> After receipt of the application, the EDC may enter into an agreement with the applicant.<sup>148</sup> A taxpayer claiming the credit is required to submit a copy of the certificate of verification from the EDC.<sup>149</sup> If a taxpayer does not comply with the agreement, then after notification from the EDC, the DOSR may make an assessment against the taxpayer up to the amount

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136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.* § 6-3.1-31.5-13 (as amended by 2007 Ind. Acts 3061).

140. *See id.* § 6-3.1-31.9 (as added by 2007 Ind. Acts 3852).

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*

of previously allowed credits.<sup>150</sup> The EDC may not award any credits for qualified investments made after December 31, 2012.<sup>151</sup> Moreover, the GA amended I.C. § 6-3.1-1-3 to include this tax credit as one that the taxpayer cannot claim multiple credits for the same project.<sup>152</sup>

The GA created a new tax credit to provide \$20,000,000 for all taxable years for all taxpayers who produce at least 20,000,000 gallons of cellulosic ethanol in a taxable year.<sup>153</sup> The credit may only be applied against the state tax liability attributable to business activity taking place at the Indiana facility at which the cellulosic ethanol was produced.<sup>154</sup> The GA amended I.C. § 6-3.1-27-9.5 to clarify that the credit created for cellulosic ethanol is not included in the \$50,000,000 cap for biodiesel production and blending and for ethanol production.<sup>155</sup> Further, under I.C. § 6-3.1-28-9 ethanol production credit may not be sold, assigned, conveyed, or otherwise transferred.<sup>156</sup>

The GA made the following changes to other fuel-related credits. The GA amended I.C. § 6-3.1-29-6 to state that the coal gasification tax credit includes a facility that is located in Indiana and that converts coal into synthesis gas that can be used as a substitute for natural gas.<sup>157</sup> Additionally, I.C. § 6-3.1-29-15 now provides that the coal gasification tax credit shall be awarded for the development of a facility that will serve gas utility consumers, in addition to electric utility consumers that are already allowed for in the statute.<sup>158</sup> A new provision, I.C. § 6-3.1-29-20.5, provides that all or part of the integrated coal gasification power plant tax credit to which a taxpayer is entitled is assignable to one or more utilities if the assignment has been approved by the utility regulatory commission and provides for the purchase of electricity or substitute natural gas by the utility from the taxpayer.<sup>159</sup> If the credit is assigned, then the credit must be taken in twenty annual installments.<sup>160</sup> The total amount of credit that may be assigned is the total credit awarded divided by twenty and then multiplied by the percentage of Indiana coal used in the taxpayer's integrated coal gasification power plant.<sup>161</sup>

The GA also amended I.C. § 6-3.1-24-9 to extend the time period for which investments must be made to claim the venture capital investment tax credit for providing qualified investment capital from January 1, 2009, to January 1, 2013.<sup>162</sup>

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150. *Id.*

151. *Id.*

152. 2007 Ind. Acts 3858-62.

153. *See* IND. CODE § 6-3.1-28-11 (Supp. 2007) (as added by 2007 Ind. Acts 2573-74).

154. *Id.*

155. 2007 Ind. Acts 2573.

156. *Id.*

157. *Id.* at 2574-75.

158. *Id.* at 2575.

159. *Id.* at 2577-78.

160. *Id.*

161. *Id.*

162. 2007 Ind. Acts 3061.



### F. Local Taxation

1. *County Adjusted Gross Income Tax ("CAGIT")*.—The GA amended several dates for county ordinances seeking to impose or adjust the CAGIT. First, a county wishing to impose CAGIT must adopt an ordinance after March 31 and before August 1 of a particular year.<sup>163</sup> The ordinance shall then take effect on October 1.<sup>164</sup> Similarly, an ordinance to rescind CAGIT must be adopted after March 31 and before August 1 to be effective on October 1 of the year the ordinance is adopted.<sup>165</sup> Ordinances to increase<sup>166</sup> or decrease<sup>167</sup> CAGIT must also be adopted after March 31 and before August 1 to be effective on October 1 of the year the ordinance is adopted. Counties may also adopt an ordinance by August 1 to impose an additional CAGIT effective on October 1.<sup>168</sup> The additional rate that is determined is effective for two years.<sup>169</sup> A county may not decrease or rescind the tax rate once it is imposed.<sup>170</sup> One-half of the revenue from the tax rate imposed is to be deposited in the county stabilization fund. The maximum rate that a county may impose under this section to replace property tax levy growth is 1%.<sup>171</sup> A county may also now impose an additional CAGIT rate of up to 1% imposed at increments of 0.05% to be used for property tax replacement credits for all property, homestead credits, or property tax replacement credits for qualified residential property.<sup>172</sup> The rate is in addition to any other rate imposed.<sup>173</sup> A county is not required to impose any other tax before imposing a tax rate under this section.<sup>174</sup> The rate is to be imposed, rescinded, increased, or decreased in the same manner and at the same time as required under I.C. § 6-3.5-1.1-24.<sup>175</sup> Additionally, if a county has imposed a tax rate under I.C. § 6-3.5-1.1-24 for property tax replacement credits and I.C. § 6-3.5-1.1-26 for property tax relief, then the county may adopt an ordinance to provide an additional tax rate for public safety.<sup>176</sup> The maximum tax rate is the lesser of 0.25% or the rate imposed under I.C. § 6-3.5-1.1-26.<sup>177</sup> The tax rate may be imposed or rescinded by adopting an ordinance by August 1 of a year to be

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163. IND. CODE § 6-3.5-1.1-2 (Supp. 2007) (as amended by 2007 Ind. Acts 3940-41).

164. *Id.*

165. *Id.* § 6-3.5-1.1-4 (as amended by 2007 Ind. Acts 3947-48).

166. *Id.* § 6-3.5-1.1-3 (as amended by 2007 Ind. Acts 3945).

167. *Id.* § 6-3.5-1.1-3.1 (as amended by 2007 Ind. Acts 3945-46).

168. *Id.* § 6-3.5-1.1-24 (as amended by 2007 Ind. Acts 3955-59).

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.* § 6-3.5-1.1-26 (as amended by 2007 Ind. Acts 3962-64).

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.* § 6-3.5-1.1-25 (as amended by 2007 Ind. Acts 3960-62).

177. *Id.*

effective on October 1 of the same year.<sup>178</sup>

The GA also passed the following county-specific CAGIT provisions. The GA amended I.C. § 6-3.5-1.1-2.3 to provide that if Jasper County desires to increase CAGIT to fund a jail, then the ordinance must be adopted before August 1 to be effective on October 1 of the year of adoption.<sup>179</sup> If the ordinance is adopted after August 1, then the increased tax rate shall not be effective until October 1 of the subsequent year.<sup>180</sup> Further, the I.C. § 6-3.5-1.1-2.6 was added to provide that Parke County may adopt an ordinance to impose additional CAGIT up to 0.25% for the cost of a capital trial.<sup>181</sup>

2. *Levy Freeze Limits*.—The GA added I.C. § 6-3.5-1.5, which requires the DOSR to be involved with the DLGF in determining the levy freeze limits that are created.<sup>182</sup>

3. *County Wheel Tax*.—Effective July 1, 2007, an owner of a commercial motor vehicle paying an apportioned registration under the International Registration Plan that is required to pay a wheel tax must now pay an apportioned wheel tax based on Indiana miles compared to total miles.<sup>183</sup> The apportioned wheel tax must be paid at the same time and in the same manner as the commercial motor vehicle excise tax.<sup>184</sup> This provision only applies to a wheel tax adopted after June 30, 2007.<sup>185</sup> A voucher from the DOSR showing proof of payment may be accepted by the BMV in lieu of the payment.<sup>186</sup> If a wheel tax for a commercial vehicle is collected directly by the DOSR, then the DOSR is to remit the wheel tax, file a wheel tax collections report with the appropriate county treasurer, and file a wheel tax collections report with the county auditor by the tenth day of the month following the month in which the wheel tax was collected.<sup>187</sup>

4. *County Option Income Tax (“COIT”)*.—Similar to the CAGIT, the GA amended the dates when counties have to impose or adjust the COIT. First, a county imposing COIT must adopt an ordinance after March 31 and before August 1 to be effective on October 1.<sup>188</sup> Counties must also adopt ordinances increasing,<sup>189</sup> decreasing,<sup>190</sup> freezing,<sup>191</sup> or rescinding<sup>192</sup> the COIT between March

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178. *Id.*

179. 2007 Ind. Acts 3941-44.

180. *Id.*

181. *Id.* at 3944-45.

182. *Id.* at 3965-67.

183. IND. CODE § 6-3.5-5-9.5 (Supp. 2007) (as added by 2007 Ind. Acts 3062).

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.* § 6-3.5-5-13 (as added by 2007 Ind. Acts 3063).

188. IND. CODE § 6-3.5-6-8 (Supp. 2007) (as amended by 2007 Ind. Acts 3967-68).

189. *Id.* § 6-3.5-6-9 (as amended by 2007 Ind. Acts 3968).

190. *Id.* § 6-3.5-6-12.5 (as amended by 2007 Ind. Acts 3970).

191. *Id.* § 6-3.5-6-11 (as amended by 2007 Ind. Acts 3968-69).

192. *Id.* § 6-3.5-6-12 (as amended by 2007 Ind. Acts 3969-70).

31 and August 1 to be effective on October 1. The GA also added provisions allowing counties to impose additional COIT rates. A county can impose an additional COIT rate of up to 1% with the additional funds to be used partially for homestead credits and partially to be deposited into the county stabilization fund (one-third of the tax revenue for Marion County and 50% of the tax revenue in all other counties).<sup>193</sup> A county may also impose an additional COIT rate for public safety.<sup>194</sup> The additional rate for public safety in Marion County may be imposed at a rate of up to 0.5% if Marion County imposed the additional rate provided for in I.C. § 6-3.5-6-30.<sup>195</sup> In all other counties, each county can impose an additional rate for public safety of up to 0.25% or the tax rate imposed under I.C. § 6-3.5-6-32, whichever is less.<sup>196</sup> All counties other than Marion County must impose an additional rate under I.C. § 6-3.5-6-30 and I.C. § 6-3.5-6-32 before they are eligible to impose the additional rate for public safety.<sup>197</sup> Furthermore, a county may impose an additional COIT rate of up to 1% to be used to provide property tax relief.<sup>198</sup> A county is not required to adopt any other tax before imposing a tax rate under this section.<sup>199</sup> Finally, the GA amended I.C. § 6-3.5-6-18 to prohibit the use of the additional COIT revenues provided by these new provisions to finance a qualified economic development tax project under I.C. § 36-7-27.<sup>200</sup>

The GA also passed the following county-specific provisions. The GA amended I.C. § 6-3.5-6-28 to provide that, effective retroactively, Howard County's additional COIT that was previously authorized to be imposed at 0.25% may now be imposed at any increment up to 0.25%.<sup>201</sup> This section also requires the DOSR to separately designate a tax rate imposed under this section in any tax form as the Howard County jail operating and maintenance income tax.<sup>202</sup> The GA also amended I.C. § 6-3.5-6-29 to provide that Scott County has until July 31 to adopt an ordinance to impose the additional COIT authorized for a county jail revenue fund to be imposed on October 1.<sup>203</sup> The GA added I.C. § 6-3.5-6-33, which authorizes Monroe County to impose an additional COIT rate of up to 0.25% for a juvenile detention center.<sup>204</sup>

5. *County Economic Development Income Tax ("CEDIT")*.—To provide uniformity, the GA amended I.C. § 6-3.5-7-5 to change the dates for adopting an

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193. *Id.* § 6-3.5-6-30 (as added by 2007 Ind. Acts 3980-85).

194. *Id.* § 6-3.5-6-31 (as added by 2007 Ind. Acts 3985-88).

195. *Id.*

196. *Id.*

197. *Id.*

198. IND. CODE § 6-3.5-6-32 (Supp. 2007) (as added by 2007 Ind. Acts 3988-91).

199. *Id.*

200. 2007 Ind. Acts 3974-76.

201. *Id.* at 3976-78.

202. *Id.*

203. *Id.* at 3978-80.

204. *Id.* at 3991-93.

ordinance to impose, increase, decrease, or rescind the CEDIT.<sup>205</sup> An ordinance must be adopted after March 31 and before August 1 to be effective on October 1.<sup>206</sup> The GA also added I.C. § 6-3.5-7-28, which authorizes a county that is a member of a regional development authority to adopt an ordinance to increase the county's CEDIT rate by 0.05% and requires the revenue to be deposited in the county regional development authority fund.<sup>207</sup>

### G. Inheritance Tax

The GA clarified I.C. § 6-4.1-10-1, providing that if an inheritance tax payment that was "erroneously or illegally collected is not refunded within ninety (90) days after the date on which the refund claim is filed," then interest accrues at 6% per annum from the date the claim was filed until the refund is paid.<sup>208</sup>

### H. Financial Institutions Tax

The GA added a modification to the financial institutions tax to provide a subtract-off for patent income that is included in adjusted gross income for financial institutions.<sup>209</sup> The GA also changed I.C. § 6-5.5-6-3 to provide that a taxpayer subject to the financial institutions tax is not required to make quarterly estimated tax payments if the annual tax liability is less than \$2500 instead of the previous amount of \$1000.<sup>210</sup> This section also reduces the threshold for filing EFT payments from \$10,000 to \$5000.<sup>211</sup>

### I. Motor Fuel and Vehicle Excise Taxes

1. *Gasoline Tax.*—The GA reduced the threshold for making EFT payments in regard to gasoline and special fuel taxes from \$10,000 to \$5000.<sup>212</sup>

2. *Special Fuel Tax.*—The GA passed a new exemption from the special fuel tax for special fuel that has a nominal biodiesel content of at least 20%, is only used for personal use, and the individual using the special fuel produced the special fuel.<sup>213</sup> The maximum number of gallons that the person may claim exempt is equal to 2000 gallons divided by "the average percentage volume of biodiesel in each gallon used by the individual."<sup>214</sup>

3. *Motor Carrier Fuel Tax.*—The GA amended I.C. § 6-6-4.1-2 to provide an exemption from the motor carrier fuel tax for a pickup truck that is modified

205. *Id.* at 3993-98.

206. *Id.*

207. 2007 Ind. Acts 4215-17.

208. 2007 Ind. Acts 3063.

209. IND. CODE § 6-5.5-1-2 (Supp. 2007) (as amended by 2007 Ind. Acts 4215-17).

210. 2007 Ind. Acts 3063-64.

211. *Id.*

212. IND. CODE § 6-6-1.1-502 (Supp. 2007) (as amended by 2007 Ind. Acts 3063-64).

213. *Id.* § 6-6-2.5-30.5 (as added by 2007 Ind. Acts 1130-31).

214. *Id.*

to include a third free rotating axle where the gross vehicle weight is less than 26,000 pounds and the vehicle is operated for personal and not commercial use.<sup>215</sup>

4. *Aircraft License Excise Tax.*—The GA amended I.C. § 6-6-6.5-1 to define a “repair station” to be “a person who holds a repair station certificate that was issued to the person by the Federal Aviation Administration under 14 CFR Part 145.”<sup>216</sup> Additionally, the GA amended I.C. § 6-6-6.5-2 to provide that if a nonresident bases an aircraft in Indiana with a repair station solely for repairing, remodeling, or refurbishing the aircraft, then the nonresident is not required to register the aircraft with the DOSR.<sup>217</sup> The repair station is required to report quarterly to the DOSR the “N” number of the aircraft that were based in the State at the end of each calendar quarter.<sup>218</sup>

### J. Tobacco Taxes

Effective July 1, 2007, the cigarette tax increased from \$.555 to \$.995 per pack.<sup>219</sup> The tax on other tobacco products increased from 18% to 24% of the wholesale price of the other tobacco products.<sup>220</sup> The discount that cigarette distributors are allowed to retain also increased from two-thirds of a cent per pack to one and two-tenths cents per pack.<sup>221</sup>

Distribution of the cigarette tax also changed. Starting August 1, 2007, 27.05% of the money is deposited in the Indiana check-up plan trust fund, 2.46% is deposited in the state general fund to pay for Medicaid provider reimbursements, 4.1% is deposited in the state general fund to be used to pay for any appropriation for a health initiative, and 2.46% is used to reimburse the general fund for the income tax credit for offering health benefit plans.<sup>222</sup> All funds currently receiving cigarette tax funding shall have their percentage of distribution reduced.<sup>223</sup> Also effective August 1, 2007, 25% of the taxes, fees, fines, or penalties relating to the other tobacco products are to be transferred to the affordable housing and community development fund.<sup>224</sup>

The GA added a new provision allowing a bad debt deduction if a cigarette distributor fails to collect from a retailer the cigarette tax for cigarettes that the distributor has distributed to the retailer.<sup>225</sup> A bad debt deduction is also allowed if another tobacco products distributor fails to collect from a retailer the other tobacco products tax for the other tobacco products that the distributor has

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215. 2007 Ind. Acts 1004-05.

216. *Id.* at 1005-07.

217. *Id.* at 1007.

218. *Id.*

219. IND. CODE § 6-7-1-12 (Supp. 2007) (as amended by 2007 Ind. Acts 3488-89).

220. *Id.* § 6-7-2-7 (as amended by 2007 Ind. Acts 4723).

221. *Id.* § 6-7-1-17 (as amended by 2007 Ind. Acts 3065-66).

222. *Id.* § 6-7-1-28.1 (as amended by 2007 Ind. Acts 3490-91).

223. *Id.*

224. *Id.* § 6-7-2-17 (as amended by 2007 Ind. Acts 4723-24).

225. *Id.* § 6-7-1-17.5 (as added by 2007 Ind. Acts 3066-68).

delivered to the retailer.<sup>226</sup>

### *K. Tax Administration*

1. *Collection.*—The GA added a new provision, I.C. § 6-8.1-8-8.7, which requires the DOSR to operate a data match system with each financial institution doing business in Indiana.<sup>227</sup> Each financial institution doing business in Indiana must provide information to the DOSR regarding all account holders on a quarterly basis.<sup>228</sup> The information must be supplied by comparing records maintained by the financial institution with records provided by the DOSR or by having the Child Support Bureau make its reports available to the DOSR.<sup>229</sup> When there is a determination that a match has been made, the DOSR shall provide a notice of the match if action is to be initiated to levy the account.<sup>230</sup> The DOSR or the collection agency is then required to pay the financial institution performing the data match a fee established by the DOSR of at least five dollars for each data match.<sup>231</sup>

2. *Refunds.*—The GA amended I.C. § 6-8.1-9-1 to require the DOSR to hold a hearing if the taxpayer requests a hearing concerning a claim for refund by changing the discretionary language of “may” to “shall.”<sup>232</sup>

The GA also amended both I.C. §§ 6-8.1-9-14 and 6-8.1-9.5-10 to provide that the DOSR “may not assess a fee to a state agency or a custodial parent for seeking a setoff to a state . . . tax refund for past due child support.”<sup>233</sup>

3. *Penalties and Interest.*—A retroactive amendment to I.C. § 6-8.1-10-1 provides that the interest rate that the DOSR charges on a tax deficiency and the interest rate that the DOSR pays on an excess tax payment shall be the same. Further, this amendment requires the treasurer of state to notify the commissioner on or before October 1 of the average investment yield of the State for the previous fiscal year.<sup>234</sup> Further, starting January 1, 2008, a penalty of \$500 shall be imposed under I.C. § 6-8.1-10-2.1 for a partnership or S corporation that fails to file a composite return for all nonresident shareholders.<sup>235</sup>

4. *Miscellaneous.*—Under I.C. § 6-8.1-3-2.5 the DOSR may adopt production quotas or goals for employees, but it is still prohibited from basing an employee evaluation on the amount of revenue collected or tax liability assessed.<sup>236</sup>

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226. *Id.* § 6-7-2-14.5 (as added by 2007 Ind. Acts 3068-70).

227. 2007 Ind. Acts 4070-72.

228. *Id.*

229. *Id.*

230. *Id.*

231. *Id.*

232. 2007 Ind. Acts 3072-73.

233. 2007 Ind. Acts 1678-80.

234. 2007 Ind. Acts 3073-74.

235. *Id.* at 3074-76.

236. *Id.* at 3071.

The GA amended I.C. § 6-8.1-6-3 to state that an electronic payment shall be considered timely “on the date the taxpayer issues the payment order for the electronic funds transfer, instead of current law which provides that the payment is considered timely on the date the taxpayer’s bank account is charged.”<sup>237</sup>

The GA amended I.C. § 6-8.1-1-1 to include the slot machine wagering tax as a listed tax for purposes of tax administration by the DOSR.<sup>238</sup>

The GA added a new provision that requires the DOSR to enter into “a memorandum of understanding with the Indiana gaming commission authorizing the commission’s unlawful gaming enforcement division to conduct actions to revoke retail merchant certificates” in the manner specified in the memorandum of understanding.<sup>239</sup>

The GA amended I.C. § 6-8.1-7-1 to provide that the county assessor is included along with the township assessor as an office that can receive the name and address of retail merchants.<sup>240</sup>

#### *L. Innkeepers’ and Food and Beverage Taxes*

Effective January 1, 2008, the Lake County innkeepers’ tax distribution method changes to reflect increases in the various distributions.<sup>241</sup>

Starting July 1, 2007, Vanderburgh County may increase its maximum innkeepers’ tax rate from 6% to 8%.<sup>242</sup> Additionally, from July 1, 2007 through December 31, 2009, the Vanderburgh County treasurer is to deposit in the tourism capital improvement fund the amount of revenue generated from a 3.5% rate, and from January 1, 2010, the fund is to receive the amount of tax generated from a rate of 4.5%.<sup>243</sup>

Allen County may also increase its innkeepers’ tax starting July 1, 2007, from 6% to 7% to provide grants to the convention and visitor bureau.<sup>244</sup>

#### *M. Motor Carrier Services*

Definitions of “freight forwarders,” “brokers,” and “leasing companies” are now included in I.C. §§ 8-2.1-17-2, 8-2.1-17-7.5, and 8-2.1-17-9.1.<sup>245</sup> Under revised I.C. § 8-2.1-20-4, the freight forwarders, brokers, and leasing companies are all subject to regulation by the DOSR if they hold themselves out as a provider of transportation or property for compensation.<sup>246</sup>

A new retroactive provision added to I.C. § 8-2.1-20-9 clarifies that if there

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237. *Id.* at 3071-72.

238. 2007 Ind. Acts 4303-04.

239. IND. CODE § 6-8.1-3-20 (Supp. 2007) (as added by 2007 Ind. Acts 4131).

240. 2007 Ind. Acts 3688-90.

241. IND. CODE § 6-9-2-2 (Supp. 2007) (as amended by 2007 Ind. Acts 3076-80).

242. *Id.* § 6-9-2.5-6 (as amended by 2007 Ind. Acts 4008-09).

243. *Id.* § 6-9-2.5-7.5 (as amended by 2007 Ind. Acts 4009-10).

244. *Id.* § 6-9-9-3 (as amended by 2007 Ind. Acts 4010-11).

245. 2007 Ind. Acts 1190-91.

246. *Id.* at 1191.

is a conflict between Indiana law and the unified carrier registration system and the regulations adopted by the United States Secretary of Transportation, then the federal statute and regulations control.<sup>247</sup>

Another retroactive provision provides that household movers, transporters of non-liquid bulk fertilizers, trucks transporting chemicals for snow removal, and aggregate transporters whose trucks weigh less than 46,000 pounds shall be subject to the statutes regulating motor carriers that operate intrastate.<sup>248</sup>

The GA amended I.C. § 8-2.1-24-4 to provide that the DOSR may certify a motor carrier transporting passengers and may regulate and supervise safety, insurance, methods, and hours of operation of a motor carrier providing transportation of passengers.<sup>249</sup>

The GA amended I.C. § 8-2.1-24-21 to specify that a motor carrier must display a United States Department of Transportation number on each motor vehicle that the motor carrier operates.<sup>250</sup>

Finally, the GA amended I.C. § 8-2.1-24-18 to incorporate federal regulations concerning drug and alcohol testing, consumer protection regulations for interstate household movers, and special training requirements for longer combination vehicles into the motor carrier laws.<sup>251</sup> The amendment also provides that a person engaged in the construction business is not required to have a commercial driver's license.<sup>252</sup>

#### *N. Miscellaneous Provisions*

To help the effort to secure Indianapolis a bid for Super Bowl XLV, the GA enacted I.C. § 6-8-12, which adds a new chapter to provide the NFL and all of the NFL's affiliates with an exemption from all taxes for property owned, revenues received, and expenditures and transactions of the entities.<sup>253</sup> This chapter also provides that the sales of tickets for the Super Bowl are not to be subject to the admissions tax.<sup>254</sup>

The GA also added I.C. § 4-33-19, which creates the license control division within the gaming commission.<sup>255</sup> The division is established to conduct administrative enforcement actions against licensed entities engaged in unlawful gambling.<sup>256</sup> A licensed entity includes a holder of a retail merchant's certificate.<sup>257</sup> The division shall conduct a license revocation hearing on behalf

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247. *Id.* at 1192.

248. IND. CODE § 8-2.1-24-3 (Supp. 2007) (as amended by 2007 Ind. Acts 1194-95).

249. 2007 Ind. Acts 1195-96.

250. *Id.* at 1196-97.

251. 2007 Ind. Acts 991-95.

252. *Id.*

253. 2007 Ind. Acts 3070-71.

254. *Id.*

255. 2007 Ind. Acts 4116-18.

256. *Id.*

257. *Id.*



of the DOSR.<sup>258</sup> A memorandum of understanding between the commission and the DOSR is required to authorize the division's license revocation actions.<sup>259</sup> The memorandum of understanding must be completed before January 1, 2008, and must describe the responsibilities of each participating agency.<sup>260</sup>

The GA added I.C. § 4-35-8-1 to create the slot machine wagering tax and require the tax to be remitted to the DOSR on a daily basis.<sup>261</sup> The deposit must be made by the close of the business day following the day the wagers were made.<sup>262</sup> Further, the DOSR may require the payments to be made by electronic funds transfer and allows the licensee to file a monthly report to reconcile the amounts remitted to the DOSR.<sup>263</sup> The payment of the tax is to be accompanied by a form prescribed by the DOSR, and the money from the slot machine tax is to be deposited by the DOSR in the property tax reduction trust fund.<sup>264</sup>

The GA amended I.C. § 5-22-16-4 to eliminate the provision that a person selling services to the state must get a tax clearance from the DOSR.<sup>265</sup> However, the clearance is still required for a person selling tangible personal property.<sup>266</sup>

The GA amended I.C. § 9-28-4-6 to clarify the due date for vehicles registered under the International Registration Plan to be due within fifteen days after the mailing date on the bill.<sup>267</sup>

The GA repealed the annual \$2.00 renewal fee for a permanent semitrailer registration.<sup>268</sup>

The GA amended I.C. § 15-4-10-24.5 to provide that the corn market development account shall reimburse the state for the E85 sales tax deduction.<sup>269</sup> Annually beginning on July 1, 2008, the budget agency shall transfer from the corn market development account an amount equal to the lesser of 25% of the amount in the account or the sum of all deductions allowed for the E85 sales tax deduction.<sup>270</sup>

### *O. Noncode Provisions*

Public Law 3-2007, Section 1 extends the nursing home quality care assessment fee from August 1, 2007 until August 1, 2009.<sup>271</sup>

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258. *Id.*

259. *Id.*

260. *Id.*

261. 2007 Ind. Acts 4266-4302.

262. *Id.*

263. *Id.*

264. *Id.*

265. 2007 Ind. Acts 3023-24.

266. *Id.*

267. 2007 Ind. Acts 1197-98.

268. IND. CODE § 9-29-5-6 (Supp. 2007) (as amended by 2007 Ind. Acts 1283).

269. 2007 Ind. Acts 2999-3000.

270. *Id.*

271. 2007 Ind. Acts 951-55.

Public Law 211-2007, Section 54 retroactively provides that a retail merchant that accepted Form ST-135 as a sales tax exemption certificate for a person engaged in transportation can request a refund for taxes, penalties, and interest paid to the DOSR or request the DOSR to satisfy any outstanding liabilities.<sup>272</sup> These options are available until December 31, 2008.<sup>273</sup>

Public Law 145-2007, Section 17 was added to provide that the Governor and DOSR Commissioner “shall take the steps necessary for Indiana to become an associate member of the Multistate Tax Commission.”<sup>274</sup>

Public Law 16-2007, Section 4 provides that the exemption provided in I.C. § 6-2.3-4-6 (Utility Receipts Tax) does not mean that the gross receipts were taxable before the enactment of this exemption.<sup>275</sup>

Public Law 224-2007, Section 142 provides that any ordinance adopted between January 1, 2007 and April 1, 2007, concerning CAGIT, COIT, or CEDIT that was to be effective on July 1, 2007, is to now be effective on October 1, 2007.<sup>276</sup>

Public Law 224-2007, Section 145 provides that if Monroe County adopts an ordinance to impose the additional COIT authorized, then the tax is to take effect on July 1, 2007, or fifteen days after the DOSR receives a notice that the ordinance was adopted, whichever is later.<sup>277</sup>

Public Law 224-2007, Section 146 provides that an ordinance adopted before April 29, 2007, by Howard County that provided for a rate that was less than 0.25% is legalized and validated.<sup>278</sup>

Public Law 218-2007, Section 54 provides that revenue stamps paid for before July 1, 2007, and in the possession of a distributor may be used if the full amount of the tax increase is remitted to the DOSR.<sup>279</sup>

Public Law 42-2007, Section 20 is retroactive and repeals I.C. § 8-2.1-21 which regulated armored car companies that are now regulated under I.C. § 8-2.1-24-18.<sup>280</sup>

## II. INDIANA TAX COURT DECISIONS

The Tax Court rendered a variety of opinions from January 1, 2007 to December 31, 2007. Specifically, the Tax Court issued eleven published opinions and decisions: six of which concerned the Indiana real property tax, one of which concerned the Indiana inheritance tax, two of which concerned Indiana sales and use tax, one of which concerned the controlled substance excise tax, and one of

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272. 2007 Ind. Acts 3089-90.

273. *Id.*

274. 2007 Ind. Acts 2191.

275. 2007 Ind. Acts 978-79.

276. 2007 Ind. Acts 4048.

277. *Id.* at 4050.

278. *Id.* at 4051.

279. 2007 Ind. Acts 3561-62.

280. 2007 Ind. Acts 1198.

which concerned several state and local taxation issues. The Tax Court also issued twenty-three unpublished opinions: twenty of which concerned Indiana real property tax, one of which concerned Indiana personal property tax, and two of which concerned Indiana corporate income tax. A summary of each opinion and decision appears below.

### A. Real Property Tax

1. *Westfield Golf Practice Center, LLC v. Washington Township Assessor.*<sup>281</sup>—Westfield Golf Practice Center, LLC (“Westfield”) initiated this action on July 7, 2005, appealing the 2002 assessment of fifteen acres of land it owns in Hamilton County, Indiana, used to operate a commercial driving range.<sup>282</sup> The Hamilton County Property Tax Board of Appeals assessed the land at \$403,800, classifying it as “usable undeveloped.”<sup>283</sup> The rate per acre was \$35,100.<sup>284</sup> Westfield sought review by the BTR because Westfield thought that the assessment was too high and violated article X, section I of the Indiana Constitution.<sup>285</sup> This appeal followed the BTR’s final determination that upheld the assessment.<sup>286</sup> Westfield argued that the assessment violated the article X, section I requirement that assessments be uniform and equal, because its property was not assessed the same as comparable Hamilton County properties.<sup>287</sup> To support its argument, Westfield provided evidence in the form of property cards for five other driving ranges.<sup>288</sup> Westfield, however, “‘duffed’ the proverbial ball.”<sup>289</sup> Indiana real property is assessed according to its market value-in-use.<sup>290</sup> The focus of this assessment method “is to measure a property’s value using objectively verifiable data.”<sup>291</sup> “[Market value-in-use] may be thought of as the ask price of property by its owner[.]”<sup>292</sup> Assessment guidelines are used, but they are only a starting point for an assessor’s determination of the property’s market value-in-use.<sup>293</sup> While it is required that a uniform and equal rate of assessment be used, uniform *procedures* are not required to arrive at the rate.<sup>294</sup> Westfield’s

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281. 859 N.E.2d 396 (Ind. Tax Ct. 2007).

282. *Id.* at 396-97.

283. *Id.* at 397.

284. *Id.*

285. *Id.*

286. *Id.*

287. *Id.*

288. *Id.*

289. *Id.* at 398.

290. *Id.* at 399.

291. *Id.*

292. *Id.* at 399 n.2 (alteration in original) (quoting IND. TAX COMM’RS, 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (2002)).

293. *Id.* at 399.

294. *Id.* (citing *State ex rel. Att’y Gen. v. Lake Superior Court*, 820 N.E.2d 1240, 1250 (Ind. 2005)).

sole argument was that the *methodology* used by the assessor was not uniform and equal.<sup>295</sup> Westfield failed to offer evidence regarding the property's market value-in-use and the market value-in-use of comparable properties, which resulted in Westfield's failure to prove that its assessment was unconstitutional under article X, section I.<sup>296</sup>

2. *Methodist Hospitals, Inc. v. Lake County Property Tax Assessment Board of Appeals*.<sup>297</sup>—Methodist Hospitals (“Methodist”) initiated this action on November 2, 2004, appealing the denial of a charitable purposes exemption for the 2000 tax year for two medical offices it owns and operates.<sup>298</sup> Methodist is a nonprofit corporation, which is recognized by the Internal Revenue Service as a 501(c)(3) organization.<sup>299</sup> In addition to owning and operating two acute care hospitals, Methodist owns and operates two Primary Care Associates (“PCA”) medical offices.<sup>300</sup> These PCA offices are located in Griffith, Indiana and Merrillville, Indiana.<sup>301</sup> Methodist employees staff PCA and perform many of the administrative functions such as billing and collections.<sup>302</sup> PCA offices offer medical services to the general public.<sup>303</sup> Physicians at PCA may admit their patients to Methodist's acute care hospitals, but patients are not sent to PCA from Methodist.<sup>304</sup> Methodist applied for a charitable purposes exemption in May 2000 for both PCA sites.<sup>305</sup> The application was denied by the Lake County PTABOA and the BTR.<sup>306</sup> Methodist argued that PCA qualified for the exemption for three reasons: “(1) because it uses the PCAs to provide traditional medical services, (2) because the PCAs provide medical services as a part of Methodist's ‘overall continuum of care[,]’ and (3) because the PCA physicians do not use the offices ‘for personal gain.’”<sup>307</sup> The Tax Court noted that mere ownership of other property by an exempt hospital does not automatically entitle the other property to a charitable purposes exemption.<sup>308</sup> To make a *prima facie* case that PCA is entitled to a charitable purposes exemption, Methodist was required to show that PCA was “substantially related to or supportive of

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295. *Id.*

296. *Id.*

297. 862 N.E.2d 335 (Ind. Tax. Ct.), *review denied*, 869 N.E.2d 456 (Ind. 2007).

298. *Id.* at 336-37.

299. *Id.* at 336.

300. *Id.*

301. *Id.*

302. *Id.*

303. *Id.*

304. *Id.*

305. *Id.*

306. *Id.* at 336-37.

307. *Id.* at 339 (alteration in original) (quoting and citing Cert. Admin. R. at 465-66; Oral Argument Transcript at 11, *Methodist Hospitals*, 862 N.E.2d 335; Petitioner's Brief at 7-9, 12-14, *Methodist Hospitals*, 862 N.E.2d 335)).

308. *Id.* at 338.

Methodist's inpatient facilities."<sup>309</sup> The term "inpatient" defined by I.C. § 6-1.1-10-16(h) includes only that portion of the hospital that provides meals and services to admitted patients.<sup>310</sup> Further, the phrase "substantially related to or supportive of" "means that the other property is associated, to a considerable degree, to a hospital's inpatient facility *or* that the other property provides considerable aid to, or promotes to a considerable degree, the interests of a hospital's inpatient facility."<sup>311</sup> The evidence provided by Methodist regarding the employment of PCA staff and the administrative functions provided to PCA failed to demonstrate what relationship the inpatient facilities had to PCA and how the interests of the inpatient facilities were promoted by PCA.<sup>312</sup> In addition, Methodist did not demonstrate how merely offering the services at PCA resulted in PCA being "*substantially* related to or supportive of" the inpatient facilities.<sup>313</sup> It "will not [be] presume[d] that a *substantial* relationship or supportive network arises merely because two entities are engaged in the same type of business activity."<sup>314</sup> Methodist failed to establish the prima facie case and the denial of the charitable purposes exemption for PCA was affirmed.<sup>315</sup>

3. French Lick Township Trustee Assessor v. Kimball International, Inc.<sup>316</sup>—The township assessor initiated an appeal of the BTR's final determination of the value of Kimball's real property in 2002 on April 27, 2006.<sup>317</sup> The assessment concerned Kimball's vacant industrial plant located in French Lick Township, Orange County, Indiana.<sup>318</sup> Kimball appealed the original assessment conducted by the assessor, which valued the plant at \$2,912,300, to the Orange County PTABOA claiming the property's market value-in-use was not accurately reflected by the assessment.<sup>319</sup> The PTABOA ultimately reduced the assessed value to \$2,595,200, but Kimball petitioned the BTR for a further reduction.<sup>320</sup> The BTR further reduced the assessment to \$1,685,000.<sup>321</sup> During the administrative hearing, Kimball provided evidence of the property's market value-in-use by presenting an appraisal, along with letters from its realty company that supported a valuation of \$1,685,000.<sup>322</sup> The appraiser used three approaches to estimate the property's value: the cost approach, the income

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309. *Id.*

310. *Id.* at 338-39.

311. *Id.* at 339.

312. *Id.*

313. *Id.* (emphasis added).

314. *Id.* at 339-40 (emphasis added).

315. *Id.* at 340.

316. 865 N.E.2d 732 (Ind. Tax Ct. 2007).

317. *Id.* at 734.

318. *Id.*

319. *Id.*

320. *Id.*

321. *Id.*

322. *Id.* at 736.

approach, and the sales comparison approach.<sup>323</sup> The realty company letters which were provided discussed Kimball's 2002 asking price of \$2,500,000 and how the property would be difficult or not possible to sell at that price, as well as Kimball's decision in 2004 to reduce the price.<sup>324</sup> The reliability of the appraisal was questioned at the hearing by the assessor.<sup>325</sup> The BTR agreed with the assessor's concerns about Kimball's application of the income approach, but found the other methods provided the necessary probative evidence of the property's market value-in-use.<sup>326</sup> In contrast, the assessor did not provide any evidence to contradict Kimball's evidence of the property's market value-in-use.<sup>327</sup>

The assessor argued the BTR's final determination was not supported by substantial evidence.<sup>328</sup> The assessor asserted that Kimball failed to make a prima facie case, citing Tax Court cases holding a prima facie case was not established because the taxpayer did not provide a thorough presentation of its evidence and because the BTR accepted Kimball's appraisal "at face value" without considering its reliability.<sup>329</sup> However, the cases cited by the assessor are applicable in circumstances when the BTR determines the taxpayer did not establish a prima facie case.<sup>330</sup> For evidence presented to the BTR to be considered probative, taxpayers must ensure the BTR understands the evidence.<sup>331</sup> In contrast, BTR's determination that a taxpayer established a prima facie case is not to be overturned unless there has been an abuse of discretion if the BTR understands the evidence and finds it has probative value.<sup>332</sup> Because the assessor challenged the BTR's final determination, the assessor had the burden to demonstrate the determination was invalid.<sup>333</sup> The assessor did not satisfy this burden.<sup>334</sup> The assessor's evidence was not sufficient to rebut evidence presented by Kimball regarding the property's market value-in-use, and the assessor did not contradict Kimball's evidence with its own market value-in-use evidence.<sup>335</sup> "[A]ssessing officials should be prepared to defend their assessments by providing their own evidence of value at the administrative level, rather than counting on a taxpayer's failure to make a prima facie case."<sup>336</sup> Therefore, the

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323. *Id.*

324. *Id.* at 737.

325. *Id.*

326. *Id.* at 738.

327. *Id.*

328. *Id.*

329. *Id.* at 738-39 (citing Petitioner's Brief at 6-7, 13, *French Lick*, 865 N.E.2d 732).

330. *Id.* at 739.

331. *Id.*

332. *Id.*

333. *Id.*

334. *Id.*

335. *Id.*

336. *Id.* at 739 n.13.

BTR's final determination was affirmed.<sup>337</sup>

4. *Shoot v. Anderson Township Assessor*.<sup>338</sup>—The Shoots initiated an appeal on August 2, 2006, challenging the BTR's dismissal of forty-five property assessment appeals challenging the 2002 assessments for its property located in Madison County, Indiana.<sup>339</sup> The BTR dismissed the appeals on the ground that they were not timely filed.<sup>340</sup> The Tax Court agreed with the BTR's determination that the appeals were not timely filed.<sup>341</sup> The Shoots originally challenged the assessments on approximately seventy parcels of land to the Madison County PTABOA. The PTABOA denied all the appeals and mailed its determination to the Shoots on March 29 or March 30, 2004.<sup>342</sup> The BTR claimed the Shoots' appeals were required to be filed with the Madison County Assessor by May 3, 2004, but were not received by the assessor's office until May 6, 2004.<sup>343</sup> The Shoots, on the other hand, contended they delivered the appeals to the assessor's office on May 3, 2004, but did not have a receipt to corroborate this contention.<sup>344</sup> The administrative record showed that all of the Shoots' appeals had two file stamps: one that stated the appeals were received May 6, 2004 and another that stated the appeals were received May 28, 2004 and contained the BTR's name.<sup>345</sup> The BTR had prima facie evidence the appeals were not filed until May 6, 2004.<sup>346</sup> The Shoots had the burden to rebut the evidence of the May 6, 2004 date with probative evidence the appeals were actually filed on May 3, 2004.<sup>347</sup> The Shoots provided no probative evidence to support their assertion that the appeals were filed May 3, 2004, and the BTR's final determination was affirmed.<sup>348</sup>

5. *Lakes of the Four Seasons Property Owners' Ass'n v. Department of Local Government Finance*.<sup>349</sup>—Lake of the Four Seasons Property Owners' Association, Inc. ("LOFS") initiated this appeal concerning the 2002 real property

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337. *Id.* at 739.

338. 868 N.E.2d 79 (Ind. Tax Ct. 2007).

339. *Id.* at 79.

340. *Id.*

341. *Id.* at 82.

342. *Id.* at 79.

343. *Id.* The Indiana Code requires that appeals must be filed with the county assessor within thirty days after the taxpayer receives notice of the PTABOA action. *Id.* at 80 n.1 (citing IND. CODE. ANN. § 6-1.1-15-3(c) (West 2004)). "Because the Shoots received notice of the PTABOA's final determinations through the mail, another three days was added to the thirty-day period." *Id.* (citing 52 IND. ADMIN. CODE § 2-3-1(e) (2004)). The due date fell on a weekend date, so the appeals were not due until the next business day. *Id.* (citing 52 IND. ADMIN. CODE § 2-3-1-(b)).

344. *Id.* at 81.

345. *Id.* at 80-81.

346. *Id.* at 81.

347. *Id.*

348. *Id.* at 81-82.

349. 875 N.E.2d 833 (Ind. Tax Ct. 2007).

assessment of its streets on June 22, 2006.<sup>350</sup> LOFS property is a private, gated community that consists of approximately 2500 residences and 26 miles (or 107.6 acres) of streets in Lake County, Indiana.<sup>351</sup> In 2002, the streets were valued at \$70,290 utilizing the Neighborhood Valuation Form.<sup>352</sup> The assessed base rate was reduced from \$6,534.00 per acre to \$650.00 after a 90% negative influence factor was applied.<sup>353</sup> LOFS appealed the assessment to the BTR alleging that the streets should have been valued at zero, because the streets had no value due to the fact they were so encumbered by easements and restrictions.<sup>354</sup> The BTR upheld the DLGF assessment.<sup>355</sup> LOFS argued the BTR's determination was not supported by substantial evidence, because the BTR ignored the LOFS's evidence that demonstrated the streets had no value.<sup>356</sup> During the hearing, LOFS provided evidence that many jurisdictions have acknowledged that a "common area property" can be rendered valueless if it is burdened by too many restrictions, the streets are owned only for the homeowners' benefit, the streets cannot be sold or conveyed to another party, and LOFS pays at least \$200,000 a year to maintain the streets but LOFS cannot charge for use of the streets.<sup>357</sup> In contrast, the DLGF argued that LOFS claim that the streets had zero value was merely a conclusory statement and had no merit without an appraisal.<sup>358</sup> The Tax Court disagreed with the DLGF and found that LOFS did provide sufficient evidence to support its prima facie case that the assessment was incorrect.<sup>359</sup> The evidence LOFS provided was objective, factually-based, and supported its opinion that the streets had no value.<sup>360</sup> "It is well settled in Indiana that an owner's testimony as to the value of his or her property will carry probative force if it is based upon facts and not speculation."<sup>361</sup> The DLGF failed to rebut LOFS's evidence.<sup>362</sup> Instead of establishing that its assessment was an accurate reflection of the property's market value-in-use, the DLGF merely explained how it computed the assessed value of the property.<sup>363</sup> It could not, therefore, be said that the BTR's final determination was supported by the evidence, and its determination was subsequently reversed.

6. Brothers of Holy Cross, Inc. v. St. Joseph County Property Tax

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350. *Id.* at 833-34.

351. *Id.* at 833.

352. *Id.* at 834.

353. *Id.*

354. *Id.*

355. *Id.*

356. *Id.* at 836.

357. *Id.*

358. *Id.*

359. *Id.*

360. *Id.*

361. *Id.* (citing *Court View Ctr., LLC v. Witt*, 753 N.E.2d 75, 82 (Ind. Ct. App. 2001)).

362. *Id.* at 837.

363. *Id.*



Assessment Board of Appeals.<sup>364</sup>—The Brothers of Holy Cross, Inc. (“BCH”) initiated this appeal on July 20, 2005, challenging the BTR’s final determination which upheld the St. Joseph County PTABOA decision to only allow a 17% charitable purposes real property tax exemption in 2002 for BCH’s retirement community located in Notre Dame, Indiana.<sup>365</sup> BCH was only granted the exemption for its administrative center and the retirement community’s underlying land.<sup>366</sup> BCH argued that the BTR’s decision regarding the 2002 exemption was erroneous, because BCH provided probative evidence at the administrative hearing demonstrating that the retirement community was predominately used for a charitable purpose.<sup>367</sup> The evidence provided primarily consisted of copies of the community’s “2003-2005 monthly newsletters and activity calendars, summaries of the services and activities offered to the [community] residents, and lists of residents that had utilized some of those services and activities.”<sup>368</sup> However, the Tax Court upheld the BTR determination, finding BHC failed to establish that during the year at issue the retirement community was “owned, occupied, and used for a charitable purpose.”<sup>369</sup> The evidence was clear regarding the services and activities available to community residents in 2003-2005, but the evidence did not have the requisite probative value for 2002, the year at issue, because the evidence did not establish what activities and services were available to residents during that time period.<sup>370</sup> In contrast, much of the evidence established that many of the activities and services BHC claimed demonstrated its charitable purpose were not available until some time after the 2002 tax year.<sup>371</sup> Thus, the BTR’s final determination was not erroneous.<sup>372</sup>

7. *Krooswyk Brothers, LLC v. North Township Assessor*.<sup>373</sup>—Krooswyk Brothers, LLC (“Krooswyk”) initiated this appeal of the 2000 assessment of its real property on May 24, 2002.<sup>374</sup> Krooswyk’s land is located in Highland, Indiana, and has an improvement on the land that is used as an office/light storage facility.<sup>375</sup> The North Township Assessor (“assessor”) used both the General Commercial Mercantile (“GCM”) and the General Commercial Industrial (“GCI”) pricing schedules to value the improvement. Krooswyk appealed the assessment arguing that the GCK model should have been used to price two

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364. 878 N.E.2d 548 (Ind. Tax Ct. 2007).

365. *Id.* at 549.

366. *Id.*

367. *Id.* at 550-51.

368. *Id.* at 551 (citing Cert. Admin. R. at 202-317).

369. *Id.* at 553.

370. *Id.* at 552.

371. *Id.*

372. *Id.* at 553.

373. No. 49T10-0205-TA-55, 2007 WL 34903 (Ind. Tax Ct. Jan. 5, 2007) (unpublished table decision).

374. *Id.* at \*1.

375. *Id.*

sections of the improvement.<sup>376</sup> This appeal follows the BTR's final determination that upheld the assessment.<sup>377</sup> The party challenging a final determination of the BTR must submit probative evidence regarding the alleged error in the assessment to make a prima facie case.<sup>378</sup> The regulations in effect at the time of Krooswyk's assessment explained that the GCK pricing schedule should be used for "valuing preengineered and predesigned pole buildings which are used for commercial and industrial purposes."<sup>379</sup> However, the GCK pricing schedule cannot be used for buildings "classified as a special purpose design[.]"<sup>380</sup> Even though there is little guidance in the regulation as to when improvements qualify for the GCK schedule, taxpayers have been instructed by the Tax Court that a link must be shown between the components in the taxpayer's improvement and the components listed in the regulation.<sup>381</sup> Krooswyk first argued that section "D" of its improvement was entitled to GCK pricing, because the improvement contained z-channels, x-bracing, and metal walls.<sup>382</sup> In spite of the fact the improvement contained these characteristics, the GCK schedule did not *overall* contemplate a section "D" improvement, and section "D" improvements are not priced under the GCK schedule.<sup>383</sup> The BTR's final determination regarding the section "D" improvement was affirmed.<sup>384</sup> Krooswyk also argued that section "E" of its improvement was entitled to the GCK schedule, because the improvement is a pre-engineered Armco building that is finished without heat, contains tapered ceiling beams, z-channels, x-bracing wall girts, and a tapered beam.<sup>385</sup> In contrast to the section "D" improvement, the BTR's final determination that the section "E" improvement should not be priced under GCK scheduled was reversed.<sup>386</sup> The BTR's determination that Krooswyk's evidence "lack[ed] basic facts" was based on a preference for *different* evidence, not features that would result in disqualification from the GCK pricing schedule.<sup>387</sup> By basing the denial on this preference, the BTR did not deal with Krooswyk's evidence in a meaningful manner.<sup>388</sup>

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376. *Id.*

377. *Id.* Krooswyk's administrative hearing was originally conducted with the SBTC on May 17, 2001; however, the BTR issued the final determination, because the legislature abolished the SBTC on December, 31, 2001, and created the BTR as its "successor." *Id.* at \*1 & n.2.

378. *Id.* at \*1 (citing *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 468 (Ind. Tax Ct. 2005)).

379. *Id.* at \*2 (quoting 50 IND. ADMIN. CODE § 2.2-10-6.1(a)(1)(D) (1996)).

380. *Id.* (alteration in original) (quoting 50 IND. ADMIN. CODE § 2.2-10-6.1(a)(1)(D)).

381. *Id.*

382. *Id.* at \*2-3.

383. *Id.* at \*3.

384. *Id.*

385. *Id.*

386. *Id.*

387. *Id.*

388. *Id.*

8. *Coller v. Perry Township Assessor*.<sup>389</sup>—Coller initiated this action on January 23, 2006, challenging the 2002 assessment of his residential real property located in Monroe County, Indiana.<sup>390</sup> In 1995, Coller purchased the property and subsequently completely demolished the existing house on the property and built a new house that measured over 8100 square feet.<sup>391</sup> The neighborhood where the house is located in Perry Township is considered to be very desirable.<sup>392</sup> The Perry Township Assessor (“assessor”) assessed the house at \$1,543,200 and applied a 1.60 neighborhood factor to arrive at that value.<sup>393</sup> This neighborhood factor was applied to the other properties in the surrounding neighborhood as well.<sup>394</sup> Coller challenged the assessment with the Monroe County PTABOA on the basis that the assessed value exceeded the property’s replacement cost.<sup>395</sup> The PTABOA disagreed and sustained the assessment.<sup>396</sup> Coller challenged the PTABOA finding to the BTR claiming that the application of the 1.60 neighborhood factor is what resulted in the property’s assessed value exceeding that of the improvement’s replacement cost.<sup>397</sup> This appeal followed the BTR’s final determination that denied Coller relief.<sup>398</sup> Coller argued his house should be classified as its own neighborhood and the neighborhood factor applied to this neighborhood should be 1.00 because his property was “‘dramatically newer, bigger, and more expensive’ than the other homes in the surrounding neighborhood.”<sup>399</sup> Indiana real property is assessed based on its “true tax value,” which is based on “[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property[.]”<sup>400</sup> A taxpayer cannot merely challenge a property assessment based on the misapplication of the regulations, rather evidence that demonstrates the property’s actual market value-in-use is required.<sup>401</sup> Coller’s evidence consisted solely of an affidavit in which he stated the property cost \$956,000 to build in 1995.<sup>402</sup> This sole piece of evidence provided by Coller, which contained only one sentence, was not sufficient probative evidence regarding the property’s

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389. No. 49T10-0601-TA-10, 2007 WL 106491 (Ind. Tax Ct. Jan. 17, 2007) (unpublished table decision).

390. *Id.* at \*1.

391. *Id.*

392. *Id.*

393. *Id.*

394. *Id.*

395. *Id.*

396. *Id.*

397. *Id.*

398. *Id.*

399. *Id.* at \*3 (quoting Cert. Admin. R. at 84-91).

400. *Id.* at \*2 (alteration in original) (quoting 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (2004)).

401. *Id.* at \*3.

402. *Id.*

market value-in-use.<sup>403</sup> Collier provided no documentation of the construction costs to support the figure in his affidavit nor did he attempt to subsequently explain the figure.<sup>404</sup> Because Collier did not demonstrate that his property's market value-in-use was not accurately reflected by the assessment, the BTR's final determination was affirmed.<sup>405</sup>

9. *Johnston v. Gerard*.<sup>406</sup>—The Johnstons initiated this action on June 26, 2002, appealing the 1996 and 1997 real property assessments of their apartment complex located in Center Township, Vanderburgh County, Indiana.<sup>407</sup> The Johnstons claimed that the Center Township Assessor (“assessor”) applied the wrong obsolescence depreciation adjustment.<sup>408</sup> The assessor valued the property at \$452,330 with a 5% obsolescence adjustment.<sup>409</sup> The Johnstons appealed the Vanderburgh County Board of Review's decision to uphold the 5% obsolescence adjustment to the BTR, which denied the Johnstons' request for a 67.5% obsolescence adjustment.<sup>410</sup> The apartment complex at issue contained a total of thirteen buildings, twelve of which were constructed between 1979 and 1983 and one constructed in 1996.<sup>411</sup> It was discovered after the last building was constructed that problems existed with the land beneath the buildings.<sup>412</sup> Prior to the complex's original construction, the property's site was not properly prepared, because the fill used to help lay the buildings' foundations was not properly drained and compacted.<sup>413</sup> This failure to properly prepare the site resulted in the fill, which was made up of debris, soil, and trees, to decay and rot over time, ultimately resulting in the fill becoming soft and causing the foundations to begin collapsing.<sup>414</sup> During the BTR hearing, the Johnstons provided the following evidence to support their request for the 67.5% adjustment.<sup>415</sup> First, the study and testimony of a geotechnical engineer was presented.<sup>416</sup> The engineer used a standard preparation test, an unconfined compressive strength test, and natural moisture content test to investigate the property.<sup>417</sup> Based on the results of these tests, the engineer testified why the soil was soft and concluded, “[T]he site

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403. *Id.* at \*4.

404. *Id.*

405. *Id.*

406. No. 82T10-0206-TA-80, 2007 WL 106493 (Ind. Tax Ct. Jan. 17, 2007) (unpublished table decision).

407. *Id.* at \*1.

408. *Id.*

409. *Id.*

410. *Id.*

411. *Id.*

412. *Id.*

413. *Id.*

414. *Id.*

415. *Id.* at \*3.

416. *Id.*

417. *Id.* at \*3 & n.2.

[was] properly prepped prior to [the] construction of the buildings.”<sup>418</sup> He concluded that the installation of a “mini-pile” system would be the most economical method to stabilize the property and cure the problem with the complex.<sup>419</sup> Next, the Johnstons also provided evidence of the approximate cost to install a “mini-pile” system with the testimony of an estimator, project manager, and vice-president of a construction company.<sup>420</sup> This expert witness testified that a “very conservative” estimate would be \$936,000 to install the system, not including remedial repairs necessary after installation.<sup>421</sup> The final evidence provided by the Johnstons concerned an appraisal, incorporating both the geotechnical investigation and estimated remedy, conducted by a licensed appraiser in which the appraiser concluded that “the poor site preparation of the property was functional obsolescence, which causes severe physical depreciation, and that ‘[t]he buildings simply [cannot] function as they were designed.’”<sup>422</sup> The appraiser also stated that property’s marketability is decreased because of the loss of value caused by the defect and that no one would be willing to buy the property with the defect, and if a person did buy the property, the sale price would have to be reduced to account for the cost to fix the problem.<sup>423</sup> The amount of obsolescence was subsequently quantified by a cost to cure method.<sup>424</sup>

A taxpayer seeking to make an obsolescence claim must meet the following two-pronged test: 1) the cause of the alleged obsolescence must be identified and 2) the amount of obsolescence to be applied to the improvement(s) must be quantified.<sup>425</sup> Both prongs require “a connection to an actual loss in property value.”<sup>426</sup> The BTR’s determination that the Johnstons were not entitled to the additional obsolescence depreciation adjustment, because the property’s deficiency was part of the land and thus not functional obsolescence<sup>427</sup> was “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with

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418. *Id.* at \*3 (alteration in original) (quoting Cert. Admin. R. at 308-09).

419. *Id.*

420. *Id.* at \*4.

421. *Id.*

422. *Id.* (alteration in original) (footnote omitted) (quoting Cert. Admin. R. at 177; 333-34).

423. *Id.*

424. *Id.* The 67.5% obsolescence figure was determined by the following method:

[The appraiser] took the cost of the existing improvements as determined by the Marshal and Swift Valuation Handbook (\$1,981,540) less the estimated physical depreciation of all buildings (30%, or \$594,462) to arrive at the value after physical depreciation (\$1,387,078). [The appraiser] then divided [the construction company witness’] estimated cost to cure the functional obsolescence (\$936,000) by the value after physical depreciation (\$1,387,078) to arrive at a 67.5% obsolescence depreciation adjustment.

*Id.* (citations and footnote omitted) (citing Cert. Admin. R. at 182; 341-42).

425. *Id.* at \*2 (citing *Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230, 1238, 1241 (Ind. Tax Ct. 1998)).

426. *Id.* (citing *Clark*, 694 N.E.2d at 1238).

427. *Id.* at \*5.

the law.”<sup>428</sup> Indiana’s assessment regulations provide that site preparation is priced as part of a property’s improvement.<sup>429</sup> The BTR also should not have ignored the appraiser’s 67.5% quantification simply because it was not computed from a firm quote.<sup>430</sup> The appraiser stated that the estimate was “very conservative” and did not even include work that might need to be done after the system was installed.<sup>431</sup> Therefore, the Johnstons established a prima facie case that their property was entitled to the 67.5% functional depreciation adjustment, and the assessor failed to rebut the Johnstons’ evidence with its own evidence or alternate calculations.<sup>432</sup> The BTR’s final determination, therefore, was reversed.<sup>433</sup>

10. *Bank of Highland Trust 13-3085 v. Department of Local Government Finance*.<sup>434</sup>—Bank of Highland Trust 13-3085 (“BOHT”) initiated this appeal on June 2, 2006, appealing its 2002 real property assessments for two commercial parcels located in Lake County, Indiana.<sup>435</sup> The two parcels consisted of a 4269 square foot parking lot and a 9500 square lot containing a two-story office building.<sup>436</sup> BOHT believed the DLGF’s assessments of the two parcels was too high and appealed the assessments to the BTR, which denied BOHT relief.<sup>437</sup> During the BTR hearing, BOHT presented evidence in the form of four property appraisals and two realtor statements regarding the property’s estimated value and asking price.<sup>438</sup> The appraisals and statements both valued the property during the following years: 1988, 1990, 1996, 1997, and 2005.<sup>439</sup> This documentation valued the property between \$250,000 and \$540,000 during those years.<sup>440</sup> To overturn a BTR final determination, “the party seeking reversal must have submitted, during the administrative hearing process, probative evidence regarding the alleged assessment error.”<sup>441</sup> Real property in Indiana is assessed

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428. *Id.* at \*6.

429. *Id.* at \*5 (citing 50 IND. ADMIN. CODE 2.2-10-6.1(a)(3)(A) (1996) (repealed 2002)).

430. *Id.* The Tax Court cited *Canal Square Limited Partnership v. State Board of Tax Commissioners*, 694 N.E.2d 801, 805 (Ind. Tax Ct. 1998), for the proposition that the BTR must deal with a taxpayer’s probative evidence in a meaningful manner when it is offered and cannot simply ignore the evidence. *Id.*

431. *Id.*

432. *Id.* at \*6.

433. *Id.*

434. No. 49T10-0606-TA-52, 2007 WL 247813 (Ind. Tax Ct. May 18, 2007) (unpublished table decision), *trans. denied*, 869 N.E.2d (Ind. 2007).

435. *Id.* at \*1.

436. *Id.*

437. *Id.* The parking lot was assessed at \$33,700 and the lot containing the office building was assessed at \$572,000. *Id.*

438. *Id.* at \*2.

439. *Id.*

440. *Id.*

441. *Id.* at \*1 (citing *Osolo Twp. Assessor v. Elkhart Maple Lane Assocs.*, 789 N.E.2d 109, 111 (Ind. Tax Ct. 2003)).

based on its “true tax value,” which is determined by the property’s market value-in-use for its current use.<sup>442</sup> Even if an assessor errs in applying the promulgated guidelines, the assessment is not to be invalidated unless it is an inaccurate reflection of the property’s market value-in-use.<sup>443</sup> Therefore, the taxpayer challenging an assessment must provide evidence that the property’s assessed value is not an accurate reflection of its market value-in-use.<sup>444</sup> BOHT failed to meet its burden because the evidence that BOHT provided did not reflect the property’s market value-in-use as of January 1, 1999.<sup>445</sup> “Indiana’s assessment regulations provide that a 2002 general assessment is to reflect a property’s market value-in-use as of January 1, 1999.”<sup>446</sup> Without explaining how the evidence regarding the years presented by BOHT relate to the January 1, 1999 value, the evidence BOHT provided means nothing.<sup>447</sup> The line graph submitted by BOHT charting the trend of the appraisals and estimates of value is only a “guesstimate” of the property’s 1999 value and does not specify the property’s market value-in-use for January 1, 1999, even if it does indicate a downward trend.<sup>448</sup> The Tax Court affirmed the BTR’s final determination.<sup>449</sup>

11. *Scherwood Golf Concessions, Inc. v. Department of Local Government Finance*.<sup>450</sup>—*Scherwood Golf Concessions, Inc.* (“Scherwood”) initiated this action on February 21, 2006, appealing the 2002 assessment of two of its parcels which were located in Lake County, Indiana.<sup>451</sup> One of the parcels contained an eighteen hole golf course on forty acres and the other parcel contained a commercial clubhouse and parking lot on 5.85 acres.<sup>452</sup> Scherwood appealed the DLGF’s assessments of the parcels based on the belief that the assessed values were too high.<sup>453</sup> This appeal follows the BTR’s final determination that upheld the DLGF’s assessment.<sup>454</sup> Scherwood argued that the BTR’s determination was erroneous, because that determination, which was established during the administrative hearing meant that golf courses in the township were not “assessed in a uniform, equal or consistent manner.”<sup>455</sup> Scherwood’s argument was based on the fact that a nearby “nicer and newer” golf course had a lower assessed

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442. *Id.* at \*2 (citing 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (2004)).

443. *Id.*

444. *Id.*

445. *Id.*

446. *Id.* (citing 2002 REAL PROPERTY ASSESSMENT MANUAL 4 (2004)).

447. *Id.*

448. *Id.* at \*3.

449. *Id.*

450. No. 49T10-0602-TA-18, 2007 WL 247809 (Ind. Tax Ct. Jan. 30, 2007) (unpublished table decision).

451. *Id.* at \*1.

452. *Id.*

453. *Id.* The golf course was assessed with a total value of \$860,500 and the clubhouse and parking lot were assessed with a total value of \$574,100. *Id.*

454. *Id.*

455. *Id.*

value.<sup>456</sup> To support its argument, Scherwood provided evidence in the form of property records cards for the “nicer and newer” golf course and the testimony of its attorney representative regarding both of the courses’ characteristics.<sup>457</sup> No market value-in-use evidence was offered.<sup>458</sup> Article X, section 1 of the Indiana Constitution “has long been held to require: (1) uniformity and equality in assessment, (2) uniformity and equality as to the rate of taxation, and (3) a just valuation for taxation of all property.”<sup>459</sup> Prior to 2002, the uniformity and equality of assessments was determined by looking at how the regulations were applied to comparable properties.<sup>460</sup> However, the Indiana property tax assessment system changed in 2002, and a new system was developed that could objectively determine the true tax value of property through its market value-in-use.<sup>461</sup> Now, there is a presumption that the assessment process accurately measures a property’s market value-in-use.<sup>462</sup> If a taxpayer offers relevant evidence of the property’s market value-in-use, then this presumption may be rebutted.<sup>463</sup> There is no requirement that uniform procedures be used to arrive at a “uniform and equal rate” of assessment.<sup>464</sup> Scherwood did not provide evidence that its assessment was erroneous or that it was assessed in a “non-uniform manner” with the other township golf courses, because Scherwood did not demonstrate the market value-in-use of its golf course or the comparable golf course.<sup>465</sup> The BTR’s final determination was affirmed.<sup>466</sup>

12. *Indianapolis Racquet Club, Inc. v. Lawrence Township (Marion County) Assessor.*<sup>467</sup>—*Indianapolis Racquet Club, Inc. (“IRC”)* initiated three tax appeals on December 12, 2003, appealing the 1989, 1991, and 1995 property assessments of its tennis facility improvement located in Marion County, Indiana.<sup>468</sup> IRC’s tennis facility consisted of eight indoor tennis courts.<sup>469</sup> IRC’s tennis facility was assessed during the years at issue with the General Commercial Industrial (“GCI”) light warehouse cost schedule and the forty-year life expectancy table by the Lawrence Township Assessor (“assessor”).<sup>470</sup> This appeal followed the

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456. *Id.*

457. *Id.* at \*2.

458. *Id.*

459. *Id.* (citing *Indianapolis Historic Partners v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1224, 1228 (Ind. Tax Ct. 1998)).

460. *Id.*

461. *Id.*

462. *Id.*

463. *Id.*

464. *Id.* at \*3.

465. *Id.*

466. *Id.*

467. No. 49T10-0312-TA-59, 2007 WL 772936 (Ind. Tax Ct. Mar. 15, 2007) (unpublished table decision).

468. *Id.* at \*1.

469. *Id.*

470. *Id.*



BTR's determination that upheld the assessment.<sup>471</sup> "IRC maintain[ed] that it [was] entitled to: 1) a grade factor reduction equivalent to 50% of the tennis facility's reproduction cost for the 1989 tax year; 2) a kit building adjustment for the 1991 tax year; and 3) application of the [general commercial kit] cost schedule for the 1995 tax year,"<sup>472</sup> because it "prima facie established that its tennis facility is a light, pre-engineered building that qualified as a kit building."<sup>473</sup> The Tax Court consolidated the several issues raised by IRC into one issue: whether or not IRC's tennis facility is eligible for a reduction in its property's assessed value for the years at issue because the improvement is a light, pre-engineered building.<sup>474</sup> To support its argument, IRC's president presented evidence in the forms of oral and written testimony and photographs demonstrating the characteristics of the building.<sup>475</sup> The evidence IRC provided "demonstrate[d] that the tennis facility's columns, roof supports, and other features are consistent with the features that qualify light, pre-engineered buildings for the kit building adjustment."<sup>476</sup> In contrast, the evidence that the assessor provided, which the BTR used to support its holding that the building was something other than an economical kit building, only pointed to features that would not necessarily disqualify the improvement for the kit building qualification, such as the fact that the facility had a block concrete foundation, two of the walls were concrete block or brick, and the roof pitch was well above what is seen in a typical kit building.<sup>477</sup> "[A]ssessing officials must quantify the effect of the subject improvement's deviations from the basic kit model in order

471. *Id.*

472. *Id.* at \*3.

473. *Id.*

474. *Id.* at \*1.

475. *Id.* at \*3. The photographs showed the following building attributes:

- (1) a rigid beam steel framing system; (2) cold form open "Z" channels; (3) two "H" columns; (4) "X" bracing; (5) 26-28 gauge metal sidewalls and roof; (6) 14-16 gauge steel purlins and girders; (7) a 120' width; (8) a 20' eave height; (9) 25' uniform bay spacing between its rigid frame components; (10) no concrete floor; (11) no load bearing walls or interior poles; (12) no columns or roof beams; (13) no foundation, and (14) a three row, concrete block sealant surrounding its perimeter.

*Id.* (citing 1989 Cert Admin R. at 33-42, 399-416; 1991 Cert. Admin R. at 33-42, 393-410; 1993 Cert. Admin R. at 32-41, 397-414).

476. *Id.* (citing *Hamstra Builders, Inc. v. Dep't of Local Gov't Fin.*, 783 N.E.2d 387, 390-91 (Ind. Tax Ct. 2003)). The property tax assessment regulations were amended in 1995 to include a General Commercial Kit ("GCK") cost schedule for valuing kit buildings, but the regulations do not provide much detail concerning what constitutes the essential characteristics of a kit building. *Id.* at \*2. Therefore, even though Instructional Bulletin 91-8 was issued prior to the new regulations, it continues to offer valuable guidance in determining when a building may be assessed under the GCK schedule, because the bulletin provides information concerning the types of light, pre-engineered buildings that qualify for a kit adjustment. *Id.*

477. *Id.* at \*3 (citing 1989 Cert. Admin. R.; 1991 Cert. Admin. R.; 1995 Cert. Admin. R.).

to determine whether those deviations rendered it no longer economical.”<sup>478</sup> The Tax Court determined that the BTR’s final determination was not “supported by substantial evidence,” and therefore, the Tax Court reversed the BTR’s final determination, because the assessor did not rebut the prima facie case which IRC established.<sup>479</sup>

13. *Caldwell v. Department of Local Government Finance*.<sup>480</sup>—Caldwell initiated this original tax appeal on April 17, 2006, to challenge the DLGF’s denial of its October 2005 objection to the Union County/College Corner Joint School District’s (“School District”) 2006 budget.<sup>481</sup> The School District fixed its 2006 budget in September 2005 after the requisite public hearings.<sup>482</sup> Union County taxpayers were informed of the proposed tax rates necessary to fund the School District’s budget by the county auditor through public notice.<sup>483</sup> Caldwell objected to the tax rate increase.<sup>484</sup> On appeal, Caldwell argued the proposed tax rates were unfairly burdensome to the county taxpayers and that there should not be levies for the School District to “1) provide health insurance benefits to its school board members; and 2) make payments on its [guaranteed energy savings account] from the capital projects fund.”<sup>485</sup> The Tax Court first considered the health insurance issue. Caldwell argued that school board members should not be provided health insurance benefits because I.C. § 20-26-4-7 limits annual compensation for school board members to \$2000 per year plus a per diem.<sup>486</sup> The Tax Court rejected this argument and affirmed the DLGF’s final determination regarding this issue.<sup>487</sup> The crucial consideration was the definition of the word “compensation.” Caldwell’s argument was “based on the premise that the term ‘compensation’ includes *both* ‘salary’ and ‘fringe benefits.’”<sup>488</sup> While “salary” and “fringe benefits” can be considered categories or types of compensation, legislative intent revealed when reviewing the whole statute that the term “compensation” in I.C. § 20-26-4-7 was meant to have a more restricted meaning.<sup>489</sup> The language of the statute, which defines “compensation” as “a reasonable amount for service . . . not to exceed . . . \$2,000[] per year[] and [] a per diem,”<sup>490</sup> leads to the conclusion that the statute was only referring to

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478. *Id.* (citing *Barker v. State Bd. of Tax Comm’rs*, 712 N.E.2d 563, 571 (Ind. Tax Ct. 1999)).

479. *Id.* at \*4.

480. No. 49T10-0604-TA-41, 2007 WL 731336 (Ind. Tax Ct. Mar. 12, 2007) (unpublished table decision).

481. *Id.* at \*1.

482. *Id.*

483. *Id.*

484. *Id.*

485. *Id.*

486. *Id.*

487. *Id.* at \*3.

488. *Id.* at \*2 (emphasis added).

489. *Id.* at \*2-3.

490. *Id.* at \*3 (quoting IND. CODE ANN. § 20-26-4-7 (West 2005)).

“salary” because the amount is fixed and is paid at stated intervals and because there is a relation between the time worked or service provided.<sup>491</sup> In contrast, providing health insurance is a “fringe benefit.”<sup>492</sup> Fringe benefits are a distinct form of compensation, separate from and supplemental to salary.<sup>493</sup> The School District did not violate Indiana law when it paid a portion of the school board members’ health insurance premiums because salary does not include fringe benefits.<sup>494</sup>

Next, the Tax Court considered the issue regarding the School District’s use of its capital funds project for payment on its government energy savings account (“GESC”).<sup>495</sup> The School District had two contracts with Honeywell for energy saving projects.<sup>496</sup> One of the contracts covered a five-year period, and the other contract covered a ten-year period, but the two were eventually combined sometime between October 2000 and January 2002.<sup>497</sup> Caldwell stated the remaining contract had “approximately eight [more] years at \$46,880 per year[.]”<sup>498</sup> Caldwell argued the School District should be “punished” for not having to date any documentation regarding the savings resulting from GESC, because at the end of the contract term there would be no method to determine whether Honeywell was required to reimburse the School District.<sup>499</sup> The “punishment” suggested by Caldwell was to require the School District to make any remaining GESC payments to Honeywell from the general fund instead of the capital projects fund.<sup>500</sup> The Tax Court disagreed with Caldwell’s request for “punishment,” because the Tax Court determined that “the School District has done nothing yet for which it should be punished.”<sup>501</sup> When a School District’s

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491. *Id.*

492. *Id.*

493. *Id.*

494. *Id.*

495. *Id.* The Tax Court described a GESC as follows:

Essentially, a GESC is a method by which a school corporation can finance the implementation of certain conservation energy methods. More specifically, a school corporation contracts with a “qualified provider” to make some type of facility alteration or technological upgrade designed to reduce the school’s energy, water, wastewater, or other operating costs. As part of the contract, however, the qualified provider must make two “guarantees.” First, it must guarantee that the savings resulting from the conservation measures (“guaranteed savings”) will cover the costs of implementing those measures. Second, the qualified provider must guarantee that if the actual savings resulting from the conservation measures are less than the guaranteed savings, it will reimburse the school corporation for the difference.

*Id.* (citations and footnotes omitted).

496. *Id.* at \*4.

497. *Id.*

498. *Id.* (quoting Petitioner’s Brief at 2, *Caldwell*, 2007 WL 731336).

499. *Id.*

500. *Id.*

501. *Id.* at \*4-5.

actual savings from a GESC are less than the savings guaranteed, the School District can be reimbursed by the qualified provider pursuant to I.C. § 36-1-12.5-5.<sup>502</sup> However, the *entire* contract term must expire before such a determination can be made.<sup>503</sup> Because the School District's GESC contract term had not yet expired, the School District was not yet required to document actual savings during the GESC term.<sup>504</sup> Therefore, the DLGF's final determination rejecting Caldwell's request for "punishment" was affirmed.<sup>505</sup>

14. *Beta Steel Corp. v. Scott*.<sup>506</sup>—Beta Steel Corporation ("BSC") initiated this action on November 1, 2002, appealing the denial of an obsolescence adjustment for the 1999 assessment year.<sup>507</sup> BSC is an Indiana corporation that "owns and operates a steel manufacturing plant located in Porter County, Indiana."<sup>508</sup> The plant's primary facility was the manufacturing facility, constructed in the early 1990s which housed a hot rolling mill.<sup>509</sup> This primary facility was expanded in 1995 when an electric arc furnace and various satellite buildings were added.<sup>510</sup> BSC's plant was valued at \$5,474,270 by the Portage Township Assessor ("assessor"), and no obsolescence adjustment was assigned to the facility.<sup>511</sup> BSC's requests for an obsolescence adjustment were denied by the Porter County PTABOA and the BTR.<sup>512</sup> During the administrative hearing, BSC argued that BSC was entitled to a 75% obsolescence adjustment for both economic and functional obsolescence present in its primary facility.<sup>513</sup> BSC believed that BSC was entitled to a functional obsolescence adjustment, because the primary facility had been "designed to accommodate 'obsolete' production equipment and it was overbuilt."<sup>514</sup> BSC also believed that economic obsolescence was present, because "'the U.S. [steel] market' has been negatively affected by foreign steel imports, technological advances, the Clean Air Act, and the fact that 'newer [steel] mills are built with shorter life spans[.]'"<sup>515</sup> To establish a *prima facie* case for its requested obsolescence adjustment, BSC provided evidence in the form of an Obsolescence Analysis that had been

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502. *Id.* at \*4 (citing IND. CODE ANN. § 36-1-12.5-5(d)(2)(B) (West 2005)).

503. *Id.* (citing IND. CODE ANN. § 36-1-12.5-5(d)(2)(B)).

504. *Id.* at \*5.

505. *Id.*

506. No. 71T10-0211-TA-127, 2007 WL 778863 (Ind. Tax Ct. Mar. 16, 2007) (unpublished table decision).

507. *Id.* at \*1.

508. *Id.* (footnote omitted).

509. *Id.*

510. *Id.*

511. *Id.*

512. *Id.*

513. *Id.*

514. *Id.* at \*3 (footnotes omitted) (alteration in original) (citing Cert. Admin. R. at 606, 608, 616-18).

515. *Id.* (internal quotation marks omitted) (alteration in original) (quoting Cert. Admin. R. at 331, 662-65).

presented by a certified Member of the Appraisal Institute.<sup>516</sup> The analysis showed the 75% figure was computed by comparing the sales prices and replacement costs of six other steel manufacturing plants located outside Indiana, all of which had been sold within the past eight years.<sup>517</sup> The amount of obsolescence in those six facilities was attributed to the differences between the sales prices and replacement costs.<sup>518</sup> The appraiser's conclusion was that BSC's property had 75% obsolescence, because the range of obsolescence in those six facilities was between 62.03% and 87.8%.<sup>519</sup> This evidence, however, failed to prima facie establish BSC was entitled to an obsolescence adjustment.<sup>520</sup> Indiana real property is assessed based on its "true tax value."<sup>521</sup> During the year at issue, 1999, "a property's true tax value was not its fair market value, but rather the value as determined under Indiana's assessment regulations."<sup>522</sup> Additionally, the assessment regulations in 1999 defined obsolescence as either a property's functional or economic loss of value.<sup>523</sup> To obtain an obsolescence adjustment, a taxpayer must first identify the obsolescence causes and then quantify the obsolescence amount, connecting both "to an *actual* loss of value to its property."<sup>524</sup> If the obsolescence is quantified using a comparable sales approach, then similar forms of functional obsolescence should exist in the comparable properties.<sup>525</sup> However, BSC did not demonstrate the comparable facilities had similar obsolescence causes.<sup>526</sup> Further, BSC did not even "attempt to identify what kind(s) of obsolescence caused six other facilities to lose value."<sup>527</sup> Instead, BSC's analysis was based on the *assumption* that obsolescence caused the discrepancies in sales prices and replacement costs.<sup>528</sup> Not only did BSC fail to demonstrate its facility experienced a loss in value similar to the reasons the other facilities experienced this loss, but BSC also failed to demonstrate its facility could be compared to the other facilities.<sup>529</sup> BSC failed to establish comparability with its assertions that similarities existed between its facility and the others, because all of the facilities were used to manufacture steel and one of the facilities was similarly constructed.<sup>530</sup> Because BSC did not establish a prima facie case

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516. *Id.*

517. *Id.*

518. *Id.*

519. *Id.*

520. *Id.*

521. *Id.* at \*2 (citing IND. CODE ANN. § 6-1.1-31-6(c) (West 2007)).

522. *Id.* (citing IND. CODE ANN. § 6-1.1-31-6(c) (West 1999)).

523. *Id.* (citing IND. ADMIN. CODE § 2.2-10-7(e) (1996) (repealed 2002)).

524. *Id.* "In other words, the taxpayer *must show* how these factors are causing an *actual* loss of value to its property." *Id.*

525. *Id.* at \*3 (citing Cert. Admin. R. at 49).

526. *Id.*

527. *Id.*

528. *Id.*

529. *Id.* at \*3-4.

530. *Id.* at \*4.

for its requested obsolescence adjustment, the BTR's final determination was affirmed.<sup>531</sup>

15. *Washington Township Assessor (Washington County, Indiana) v. Kimball International, Inc.*<sup>532</sup>—The Washington Township Assessor (“assessor”) initiated this action on April 27, 2006, appealing the BTR’s final determination which reduced Kimball International’s (“Kimball”) 2002 real property assessment from \$8,004,000 to \$4,500,000.<sup>533</sup> Kimball’s real property consisted of an industrial plant located in Washington County, Indiana.<sup>534</sup> Kimball appealed the 2002 assessment to the Washington County PTABOA, claiming the incorrect amount of accrued depreciation had been applied to the improvements resulting in an inaccurate reflection of the property’s market value-in-use.<sup>535</sup> The PTABOA denied Kimball’s request, and Kimball subsequently appealed the decision to the BTR.<sup>536</sup> To support its claim, Kimball presented evidence at the BTR hearing of the property’s market value-in-use in the form of both a cost approach analysis and a sales comparison analysis.<sup>537</sup> The true tax value of the property was computed under the cost approach “by reducing the replacement cost new of the improvements (RCN), as determined by the Assessor, by the improvements’ accrued depreciation.”<sup>538</sup> Depreciation was computed based on calculations of depreciation from eleven properties that were alleged to be comparable and were sold between 1996 and 2002.<sup>539</sup> The sales comparison analysis used the same comparable properties.<sup>540</sup> This method accounted for the differences between the comparable properties and Kimball’s property through the adjustment of the sales prices, as well as the sales prices were adjusted to their 1999 values based on the Consumer Price Index.<sup>541</sup> The two approaches were then compared and reconciled, which resulted in a final estimate of Kimball’s property.<sup>542</sup> The assessor argued the BTR’s final determination was not supported by substantial evidence due to Kimball’s failure to make a prima facie case, “because Kimball did not properly explain/establish the comparability of the properties used in its cost and sales comparison approaches, nor did it establish the validity of its accrued depreciation calculation.”<sup>543</sup> However, the assessor

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531. *Id.*

532. No. 49T10-0604-TA-43, 2007 WL 1289623 (Ind. Tax Ct. May 3, 2007) (unpublished table decision).

533. *Id.* at \*1.

534. *Id.*

535. *Id.*

536. *Id.*

537. *Id.* at \*2.

538. *Id.*

539. *Id.*

540. *Id.*

541. *Id.* at \*3.

542. *Id.*

543. *Id.* (citing Petitioner’s Brief at 4-8, *Kimball Int’l*, 2007 WL 1289623).

failed to meet its burden and the BTR's final determination was affirmed.<sup>544</sup> The Tax Court noted that a BTR determination that a taxpayer established a prima facie case will not typically be overturned unless it finds an abuse of discretion.<sup>545</sup> The assessor presented claims during its rebuttal at the administrative hearing, but never substantiated those claims.<sup>546</sup> The assessor only challenged Kimball's evidence without offering any contradictory market value-in-use evidence.<sup>547</sup> Further, the assessor did rebut the calculations Kimball presented.<sup>548</sup> "Here, the Assessor has done nothing more than raise open-ended questions concerning Kimball's evidence."<sup>549</sup> The assessor bore the burden of demonstrating the invalidity of the BTR's final determination as the party challenging the determination.<sup>550</sup>

16. The Pedcor Investments Cases.<sup>551</sup>—The Pedcor Investments cases consisted of four separately issued unpublished opinions, all of which were issued on the same day and all of which addressed the following issue: the BTR's denial of Pedcor Investments' ("Pedcor") claim for an obsolescence depreciation adjustment for its low-income housing projects.<sup>552</sup> In all of the cases, Pedcor argued that Pedcor presented its prima facie case during the administrative hearings, and because the township assessors did not rebut Pedcor's evidence, the BTR's determinations were invalid because the determinations were not supported by substantial evidence.<sup>553</sup> Further, in all of the cases, Pedcor claimed that Pedcor was entitled to economic obsolescence adjustments for the apartment complexes, because the rental restrictions had a negative impact on the complexes' ability to generate income.<sup>554</sup>

Pedcor initiated the action in *Pedcor I* on June 4, 2002, appealing the

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544. *Id.* at \*4.

545. *Id.*

546. *Id.* at \*3.

547. *Id.* at \*4.

548. *Id.*

549. *Id.* (citing Petitioner's Brief, *Kimball Int'l*, 2007 WL 1289623).

550. *Id.*

551. *Pedcor Invs.-1990-XIII, L.P. v. Franklin Twp. Assessor (Pedcor I)*, No. 49T10-0206-TA-64, 2007 WL 1364424 (Ind. Tax Ct. May 9, 2007) (unpublished table decision); *Pedcor Invs.-1994-XVII, L.P. v. Portage Twp. Assessor (Pedcor II)*, No. 49A10-0206-TA-65, 2007 WL 1364426 (Ind. Tax Ct. May 9, 2007) (unpublished table decision); *Pedcor Invs.-1995-XXIII, L.P. v. Portage Twp. Assessor (Pedcor III)*, No. 49T10-0206-TA-66, 2007 WL 1364425 (Ind. Tax Ct. May 9, 2007) (unpublished table decision); *Pedcor Invs.-1996-XXV, L.P. v. Jackson Twp. Assessor (Pedcor IV)*, No. 49T10-0205-TA-56, 2007 WL 1364449 (Ind. Tax. Ct. May 9, 2007) (unpublished table decision).

552. *Pedcor I*, 2007 WL 1364424, at \*1; *Pedcor II*, 2007 WL 1364426, at \*1; *Pedcor III*, 2007 WL 1364425, at \*1; *Pedcor IV*, 2007 WL 1364449, at \*1.

553. *Pedcor I*, 2007 WL 1364424, at \*2; *Pedcor II*, 2007 1364426, at \*2; *Pedcor III*, 2007 WL 1364425, at \*2; *Pedcor IV*, 2007 WL1364449, at \*2.

554. *Pedcor I*, 2007 WL 1364424, at \*3; *Pedcor II*, 2007 WL 1364426, at \*3; *Pedcor III*, 2007 WL 1364425, at \*3; *Pedcor IV*, 2007 WL 1364449, at \*3.

assessment of its apartment complex located in Franklin, Indiana, for the March 1, 1995, 1996, and 1997 assessment dates.<sup>555</sup> The apartment complex at issue was the Lakeview Apartments, which consisted of two phases.<sup>556</sup> Phase I contained 160 apartments, a portion of which were low-income housing, and Phase II contained sixty-four apartments, all of which were low-income housing.<sup>557</sup> The low-income housing portions qualified for federal tax credits under the Low Income Housing Tax Credit Program (“LIHTC program”).<sup>558</sup> During the administrative hearing, one of Pedcor’s vice-presidents presented evidence of the differences in rents for the rent-restricted and non-restricted apartments.<sup>559</sup> Pedcor attempted to demonstrate how the loss of income was translated into an obsolescence adjustment.<sup>560</sup> Pedcor submitted a three-page worksheet used to quantify the obsolescence adjustment for Phase I for the 1995 tax year and stated the quantifications were “made pursuant to ‘generally accepted appraisal methods.’”<sup>561</sup> The Tax Court disagreed that the BTR improperly denied Pedcor’s request for relief.<sup>562</sup> At the administrative level, a taxpayer makes a prima facie case for obsolescence when the taxpayer “1) identifies the causes of obsolescence from which its property suffers and 2) quantifies the amount of obsolescence to which it believes it is entitled.”<sup>563</sup> Probative evidence is required to demonstrate

555. *Pedcor I*, 2007 WL 1364424, at \*1.

556. *Id.*

557. *Id.*

558. *Id.* This federal tax credit can be found at 26 U.S.C.A. § 42 (West 2005). *Id.* at \*1 & n.1. “The LIHTC Program authorizes individual states to issue federal income tax credits to developers as an incentive for the acquisition, rehabilitation, or new construction of affordable rental housing.” *Id.* at \*1 & n.1.

559. *Id.* at \*3.

560. *Id.*

561. *Id.* at \*3-4 (footnote omitted) (quoting Cert. Admin. R. at 1555). The worksheet showed the 3.49% obsolescence adjustment for the 1995 tax year as arrived after the vice-president:

- 1) multiplied the difference in rental income between the non rent-restricted apartments in Phase I and the rent-restricted apartments in Phase I by the total number of rent-restricted units in Phase I to arrive at an annual rent loss of \$56,670;
- 2) reduced the annual rent loss of \$56,670 to \$51,414 to account for a “standard industry” vacancy of 5% and a management fee of 4.5%;
- 3) converted the annual rent loss of \$51,414 to “a present value” of \$589,729 by applying a “10.5[% capitalization rate] for the entire [thirty year] period;”
- 4) reduced the \$589,729 by \$392,897 (Hougland’s valuation of the unused tax credits) to arrive at an obsolescence figure for the 199[sic] assessment year of \$196,832; and then
- 5) divided the \$196,832 by \$5,635,019 (Hougland’s “estimated appraised value” of the property) to arrive at an obsolescence adjustment of 3.49% for the 1995 assessment year.

*Id.* (alterations in original) (footnotes omitted) (quoting Cert. Admin R. at 408-10).

562. *Id.* at \*3.

563. *Id.* at \*2 (citing *Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230, 1238 (Ind. Tax Ct.



how the property lost its value due to the alleged obsolescence causes,<sup>564</sup> and generally recognized appraisal methods are required when an improvement's market value is calculated and obsolescence is converted into a percentage.<sup>565</sup> Pedcor's evidence merely consisted of conclusory statements, which are not considered probative evidence.<sup>566</sup> When Pedcor presented its calculations, Pedcor did not explain every element of the analysis.<sup>567</sup> Additionally, Pedcor did not lay a foundation to support the assertion that the method used was really pursuant to generally accepted appraisal methods, something that Pedcor was required to do.<sup>568</sup> Failure to lay this foundation resulted in Pedcor's assertion being a conclusory statement.<sup>569</sup> Pedcor also failed to explain how it arrived at a present value of 10.5% for the rent loss or how the capitalization rate was derived.<sup>570</sup> Therefore, these statements were merely conclusory statements.<sup>571</sup> Based on the entire administrative record, it could not be said that it was error for the BTR to deny Pedcor's requests for obsolescence adjustments for the apartment complex for the 1995, 1996, and 1997 tax years.<sup>572</sup>

Pedcor initiated the action in *Pedcor II* on June 4, 2002, appealing the March 1, 1998 assessment of Phase II of its apartment complex located in Portage, Indiana.<sup>573</sup> Phase II of the apartment complex at issue, Port Crossing, contained a portion of low-income housing subject to the LIHTC program.<sup>574</sup> Pedcor claimed that the complex was entitled to a 28.28% obsolescence adjustment.<sup>575</sup> Pedcor calculated this percentage by "averaging the amount of obsolescence it asserts is present in the property from 1998 through 2027."<sup>576</sup> According to Pedcor's testimony, the obsolescence for these years was averaged throughout the deed restriction term so that it would not have to come to an administrative hearing every year.<sup>577</sup> However, in using this "easier" method, Pedcor "failed to provide a quantification that complied with the rule of law."<sup>578</sup> Indiana bases its

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1998)).

564. *Id.* (citing *Miller Structures, Inc. v. State Bd. of Tax Comm'rs*, 748 N.E.2d 943, 953-54 (Ind. Tax Ct. 2001)).

565. *Id.* (citing *Clark*, 694 N.E.2d at 1242 n.18).

566. *Id.* at \*4-5.

567. *Id.* at \*4.

568. *Id.*

569. *Id.*

570. *Id.* at \*4-5. "Indeed, without knowing *how* the number was derived, one cannot determine, at the very minimum, if Pedcor's 'math' is correct." *Id.* at \*4 n.11.

571. *Id.*

572. *Id.* at \*5.

573. *Pedcor II*, No. 49A10-0206-TA-65, 2007 WL 1364426, at \*1 (Ind. Tax Ct. May 9, 2007).

574. *Id.*

575. *Id.* at \*3.

576. *Id.* (footnote omitted) (citing Cert. Admin R. at 410).

577. *Id.* (citing Cert. Admin R. at 576).

578. *Id.*

assessments on the property's condition on the *assessment date*.<sup>579</sup> The use of this average failed to provide an accurate reflection of the Phase II's obsolescence as of the March 1, 1998 assessment date.<sup>580</sup> However, even if Pedcor's method were used, no obsolescence would be found because the tax credits received for 1998 outweighed Pedcor's loss of income due to the rental restrictions.<sup>581</sup> Based on the record's entirety, the BTR's final determination was supported by substantial evidence.<sup>582</sup>

Pedcor initiated a separate action on June 4, 2002, in *Pedcor III* to appeal the March 1, 1998 assessment of Phase III of the Port Crossing apartment complex.<sup>583</sup> Like Phase II, Phase III contained a portion of low-income housing subject to tax credits under the LIHTC program.<sup>584</sup> The evidence Pedcor presented to support its obsolescence calculation of 17.19% in a three-page worksheet involved the same methodology Pedcor used to quantify obsolescence for the Lakeview Apartments in *Pedcor I*.<sup>585</sup> The Tax Court did not address Pedcor's attempt to quantify the applicable obsolescence based on an average of obsolescence computed for future years because of its rejection of this methodology in *Pedcor II*, discussed *supra*, and *Pedcor IV*, discussed *infra*.<sup>586</sup> Additionally, for the same reasons stated in *Pedcor I*, the Tax Court found the BTR properly rejected Pedcor's obsolescence adjustment claim.<sup>587</sup> The evidence was not probative, because the evidence consisted only of conclusory statements due to Pedcor's failure to explain every element of its analysis, lay a foundation regarding the obsolescence quantification methodology utilized, or explain the present value calculation or capitalization rate.<sup>588</sup>

Lastly, Pedcor initiated the action involved in *Pedcor IV* on May 30, 2002, appealing the March 1, 1998 assessment of an apartment complex located in Seymour, Indiana.<sup>589</sup> The apartment complex, Sycamore Springs, consisted of two phases.<sup>590</sup> Phase I was designed as low-income housing under the LIHTC program and was completed in early 1998, while Phase II was not low-income housing.<sup>591</sup> Pedcor claimed the complex was entitled to a 30.39% obsolescence adjustment based on an average derived by determining the amount of

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579. *Id.* (citing *Pedcor Invs.-1990-XIII, L.P. v. State Bd. of Tax Comm'rs*, 715 N.E.2d 432, 435 n.5 (Ind. Tax Ct. 1999)).

580. *Id.*

581. *Id.*

582. *Id.*

583. *Pedcor III*, No. 49T10-0206-TA-66, 2007 WL 1364425, at \*1 (Ind. Tax Ct. May 9, 2007).

584. *Id.* at \*1.

585. *Id.* at \*3-4.

586. *Id.* at \*4 n.7.

587. *Id.* at \*4-5.

588. *Id.*

589. *Pedcor IV*, No. 49T10-0205-TA-56, 2007 WL 1364449, at \*1 (Ind. Tax Ct. May 9, 2007).

590. *Id.* at \*1.

591. *Id.*

obsolescence present in the complex from 1999 through 2009, which would be the “tax credit period.”<sup>592</sup> This same quantification method was rejected by the Tax Court in *Pedcor I*, and the method was rejected again for the same reasons by the Tax Court in this case.<sup>593</sup> This method does not accurately reflect the complex’s obsolescence as of the March 1, 1998 assessment date, which is required by Indiana law.<sup>594</sup> Again, “[i]n its effort to make things easier for itself . . . Pedcor failed to provide a quantification that complied with the rule of law.”<sup>595</sup> Therefore, the BTR’s final determination was supported by substantial evidence, and the BTR did not err when it denied Pedcor’s request for an obsolescence adjustment.<sup>596</sup>

17. *United Ancient Order of Druids-Grove #29 v. Wayne County Property Tax Assessment Board of Appeals*.<sup>597</sup>—The United Ancient Order of Druids-Grove #29 (“UAOD”) initiated this action on May 24, 2004, appealing the denial of its request for a 2002 property tax exemption as a fraternal beneficiary association under I.C. § 6-1.1-10-23.<sup>598</sup> UAOD “is an Indiana not-for-profit corporation that owns real and personal property in Richmond, Indiana.”<sup>599</sup> The Richmond property is used for charitable fundraising, as well as to provide its members with meals and private social events.<sup>600</sup> In April 2002, UAOD filed a property tax exemption with the Wayne County PTABOA, which was subsequently denied.<sup>601</sup> UAOD appealed this decision to the BTR which also denied the request.<sup>602</sup> In this appeal, UAOD challenged the BTR’s conclusion that the organization did not have a representative form of government because neither a supreme governing body nor a board of directors elected the

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592. *Id.* at \*3.

593. *Id.*

594. *Id.* (citing *Pedcor Investments-1990-XIII, L.P. v. State Bd. of Tax Comm’rs*, 715 N.E.2d 432, 435 n.5 (Ind. Tax Ct. 1999)).

595. *Id.*

596. *Id.* at \*4.

597. No. 49T10-0406-TA-25, 2007 WL 1439560 (Ind. Tax Ct. May 17, 2007) (unpublished table decision).

598. *Id.* at \*1.

599. *Id.* According to the organization’s Articles of Incorporation, its purpose is:

“[t]o unite men together irrespective of nation, tongue or creed, for mutual protection and improvement, to assist socially and materially by timely counsel and instructive lessons, by encouragement of business, by assistance to obtain employment when in need; to foster among its members the spirit of fraternity and good fellowship, and by a well regulated system of dues and benefits, to provide for the relief of the sick and destitute, the burial of the dead and the protection of the widows and orphans of its deceased members.”

*Id.* (quoting Cert. Admin. R. at 65).

600. *Id.* Examples of the private social events include card games, dances, bingo, and pool tournaments. *Id.*

601. *Id.*

602. *Id.*

organization's officers, rather the officers were elected by local members, and officer positions were not exclusive to benefit members.<sup>603</sup> UAOD argued that UAOD had a representative form of government because "the General Assembly could not have intended to disqualify a fraternal organization because its local officers are directly elected by the local members," and it provided evidence during the administrative hearing that social members could not hold officer positions.<sup>604</sup> The Tax Court rejected these assertions, and the BTR's final determination was affirmed.<sup>605</sup> The legislature's intent is clear and unambiguous in I.C. § 27-11-2-2(2).<sup>606</sup> The statute specifically provides that for a fraternal beneficiary association to have a representative form of government, the association's officers must either be elected by the supreme governing body or the board of directors.<sup>607</sup> UAOD conceded officers are elected by local members.<sup>608</sup> This concession proves UAOD does not have a representative form of government as required by the statute.<sup>609</sup> Further, UAOD argued that social members could not be officers, but evidence regarding this argument was not found in the administrative record, and UAOD did not provide direction to the evidence's location.<sup>610</sup> Because UAOD did not have a representative government, it did not meet the requirements of a "fraternal beneficiary association," and thus, UAOD did not qualify for the fraternal beneficiary association exemption under I.C. § 6-1.1-10-23.<sup>611</sup>

18. *HCPI Indiana, LLC v. Hamilton County Property Tax Assessment Board of Appeals*.<sup>612</sup>—*HCPI Indiana, LLC* ("HCPI"), a foreign limited liability

603. *Id.* at \*2. A representative form of government is just one requirement an association must meet in order to be considered a "fraternal beneficiary association" under I.C. § 27-11-1-1. *Id.* The statute defines "fraternal beneficiary organization" as:

- 1) any incorporated society, order, or supreme lodge without capital stock, whether incorporated or not,
- 2) [that is] conducted solely for the benefit of its members and their beneficiaries, and [is]
- 3) not-for-profit,
- 4) operated on a lodge system with [a] ritualistic form of work,
- 5) having a representative form of government, and
- 6) that provides benefits in accordance with [Indiana Code § 27-11].

*Id.* (alteration in original) (quoting IND. CODE ANN. § 27-11-1-1 (West 2002)).

604. *Id.* (quoting Petition for Judicial Review at 4, *United Order of Ancient Druids*, 2007 WL 1439560).

605. *Id.* at \*3.

606. *Id.*

607. *Id.* (citing IND. CODE ANN. § 27-11-2-2(2) (West 2002)).

608. *Id.*

609. *Id.*

610. *Id.*

611. *Id.*

612. No. 49T10-0604-TA-36, 2007 WL 1559294 (Ind. Tax Ct. May 31, 2007) (unpublished table decision).

company, initiated this action on April 6, 2006, appealing the denial of its request for a charitable or educational purposes exemption for the 2004 tax year for the portion of its property leased to Clarian Health Partners, Inc. (“Clarian”), a nonprofit corporation.<sup>613</sup> The property at issue was located in Carmel, Indiana and consisted of 7.77 acres containing the Methodist Medical Plaza of Carmel (“MMP”) and a parking lot.<sup>614</sup> Clarian rented 59% of MMP to provide various surgical and medical care, as well as to provide free or reduced medical care to indigent patients and medical students with a “experiential educational setting.”<sup>615</sup> HCPI’s request for the exemption was denied by the Hamilton County PTABOA and the BTR.<sup>616</sup> During the administrative hearing, HCPI claimed that the property was owned “for a charitable purpose and that Clarian occupied and used it for both charitable and educational purposes,” because it freed up money for Clarian to use for charitable care and medical student education.<sup>617</sup> HCPI argued this was further demonstrated by the fact that Clarian rented its portion of MMP at a below market rate.<sup>618</sup> In addition, HCPI reasoned that MMP was occupied for charitable purposes, because MMP was used by Clarian to provide indigent care.<sup>619</sup> The evidence HCPI used to support this argument consisted of Clarian’s 2003 Annual Fiscal Report, which stated that Clarian’s total charity care and community benefits for that year was over \$29 million.<sup>620</sup> The report included care provided by MMP as well as Methodist Hospital, Indiana University Hospital, and Riley Hospital.<sup>621</sup> Clarian’s website promoting its participation in the Indiana University School of Medicine’s residency program was submitted as evidence of medical student involvement with MMP.<sup>622</sup> HCPI argued that Clarian would be the “true beneficiary” of any exemption received for MMP, because the exemption would decrease Clarian’s operating expenses owed to HCPI under its lease.<sup>623</sup> The Tax Court rejected HCPI’s arguments, holding that the BTR’s final determination was not in error, because the evidence provided by HCPI “merely demonstrates that Clarian used the MMP to provide an *unspecified* amount of educational and charitable activity.”<sup>624</sup> The evidence provided did not demonstrate MMP was used to provide charitable health care or education to

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613. *Id.* at \*1. “Clarian is ‘organized exclusively for charitable, educational, and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code[.]’” *Id.* (alteration in original) (quoting Cert. Admin. R. at 434).

614. *Id.*

615. *Id.*

616. *Id.*

617. *Id.* at \*2.

618. *Id.*

619. *Id.* at \*3.

620. *Id.*

621. *Id.*

622. *Id.*

623. *Id.*

624. *Id.* (emphasis added).

medical students more than 50% of the time.<sup>625</sup> Further, the fiscal report was not specific to MMP, but instead, the fiscal report covered several Clarian facilities.<sup>626</sup> HCPI failed to show that the property was *predominantly* used for charitable care and education.<sup>627</sup> The Indiana Supreme Court has explained that it is not the *distribution of income* for charitable purposes that matters according to the statute, but instead, it is the *predominant use* of the facility.<sup>628</sup>

19. *Kosciusko County Property Tax Assessment Board of Appeals v. Hime's-Miller's & Strombeck's 3rd Additions, Inc.*<sup>629</sup>—The Kosciusko County PTABOA initiated this action on May 23, 2006, appealing the BTR's final determination which granted Hime's-Miller's & Strombeck's 3rd Additions, Inc. ("HMS") a 100% property tax exemption for the 2004 tax year for land located in North Webster, Indiana.<sup>630</sup> The HMS land was made up of three non-contiguous lots used as easements for access to Webster Lake.<sup>631</sup> The land totaled less than one acre and was assessed in 2004 at \$80,500.<sup>632</sup> HMS initially requested the property tax exemption from the PTABOA and appealed the PTABOA's subsequent denial to the BTR.<sup>633</sup> In this appeal, the PTABOA challenged the BTR's determination that HMS was entitled to the exemption because HMS met the requirements of I.C. § 6-1.1-10-16(c)(3).<sup>634</sup> The PTABOA argued the BTR's determination was "erroneous because it applied the requirements of [the statute] without consideration of the constitutional requirement that the property must be used for an exempt purpose (i.e., a municipal, educational, literary, scientific, religious, or charitable purpose)."<sup>635</sup>

625. *Id.*

626. *Id.*

627. *Id.*

628. *Id.* (citing *State Bd. of Tax Comm'rs v. New Castle Lodge #147*, 765 N.E.2d 1257, 1263 (Ind. 2002)).

629. No. 49T10-0605-TA-50, 2007 WL 1821713 (Ind. Tax Ct. June 26, 2007) (unpublished table decision).

630. *Id.* at \*1.

631. *Id.*

632. *Id.*

633. *Id.*

During the administrative hearing process, HMS claimed that, pursuant to Indiana Code [section] 6-1.1-10-16(c)(3), its land was exempt because: (1) HMS is a nonprofit corporation established for the purpose of 'aid[ing] in and protect[ing] in any way possible the environment and ecology of Webster Lake' and 'to develop, protect and improve the easement to Webster Lake dedicated to the lot owners' of HMS; (2) the parcel was less than one acre; and (3) it did not use the land to make a profit. HMS's resident agent, Mr. David Berger, also testified that HMS allows the public to use the property/easements for fishing or docking boats at no cost, and the local fire department uses one of the easements to get water from the lake.

*Id.* at \*2 (citations omitted).

634. *Id.* at \*2.

635. *Id.* (citing Petitioner's Brief at 1, 5, *Himes-Millers & Strombecks 3rd Additions*, 2007 WL

According to the Tax Court, the PTABOA was essentially arguing that unless a “use for an exempt purpose” is read into the statute when it is applied, the statute is unconstitutional.<sup>636</sup> However, the PTABOA failed to meet its burden of demonstrating the unconstitutionality of the statute, which resulted in the affirmation of the BTR’s final determination.<sup>637</sup> Instead of arguing why the statute or its application was unconstitutional as PTABOA was required to do, the PTABOA only argued that both the PTABOA and HMS failed to explain how or why the property’s use qualified as a municipal, education, literary, scientific, religious, or charitable purpose.<sup>638</sup> Further, the PTABOA’s argument also failed, because the PTABOA assumed that retaining and preserving land and water’s natural characteristics was considered by the legislature to fit into one of the exempt purposes and that no use requirement is contained in I.C. § 6-1.1-10-16(c)(3).<sup>639</sup> It is evident from a general reading of the statute that the legislature intended retaining and preserving land and water’s natural characteristics to fit into one of the exempt purposes.<sup>640</sup> Further, the second assumption “defies logic,” because “if a taxpayer used the property in a manner inconsistent with its stated purpose for existence (such as making a profit), the exemption does not apply.”<sup>641</sup> The PTABOA’s failure to overcome the constitutional presumption of the statute and to demonstrate that the BTR erroneously applied the statute resulted in the affirmation of the BTR’s final determination.<sup>642</sup>

20. *Sisters of St. Francis Health Services, Inc. v. Lake County Property Tax Assessment Board of Appeals.*<sup>643</sup>—The Sisters of St. Francis Health Centers, Inc. (“SSFHC”) initiated this action on February 24, 2004, appealing the SBTC’s final determination that upheld the PTABOA’s decision to revoke the charitable purposes exemption for its offsite fitness center located in Schererville, Indiana, for the 1999 tax year.<sup>644</sup> SSFHC, a nonprofit corporation and recognized as a 501(c)(3) organization, is the owner and operator of two northwest Indiana hospitals as well as eighteen “offsite” facilities.<sup>645</sup> SSFHC conceded that portions of the facility used as a fitness/wellness center did not qualify for the exemption, and the PTABOA conceded that the portion of the facility used for a pediatric rehabilitation program did qualify for the exemption.<sup>646</sup> The portion of the facility at issue was a public roller skating rink, which made up 22.6% of the total

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1821713).

636. *Id.*

637. *Id.* at \*2-3.

638. *Id.* at \*3.

639. *Id.*

640. *Id.*

641. *Id.*

642. *Id.*

643. No. 49T10-0402-TA-6, 2007 WL 1874778 (Ind. Tax Ct. June 29, 2007) (unpublished table decision).

644. *Id.* at \*1.

645. *Id.* at \*1 & n.1.

646. *Id.* at \*1.

facility.<sup>647</sup> SSFHC argued the skating rink was entitled to the exemption, because the skating rink was operated as a community recreational facility and any excess revenue generated was used to subsidize SSFHC's hospital operations, including charity care.<sup>648</sup> The Tax Court disagreed. Noting its past acknowledgment that "charity" includes more than "giving to the poor,"<sup>649</sup> the Tax Court emphasized that merely holding the skating rink open to the public was not enough to qualify for the charitable exemption.<sup>650</sup> The key test remains whether or not a facility is being predominately used for a charitable *purpose*.<sup>651</sup> SSFHC did not demonstrate how the skating rink relieved human want and suffering or how the public actually benefited from the facility. The Tax Court also rejected SSFHC's invitation to reject the requirement that a party provide evidence of relief from human want and instead use a new test consisting of the inquiry of whether or not property is a "gift" to the general public.<sup>652</sup> SSFHC failed to carry its burden, and the Tax Court upheld the SBTC's decision.<sup>653</sup>

21. *Miller Beach Investments, LLC v. Department of Local Government Finance*.<sup>654</sup>—On February 24, 2006, Miller Beach Investments ("MBI") initiated three appeals of seventeen final determinations made by the BTR regarding assessment of MBI's real property for the 2002 tax year.<sup>655</sup> The seventeen properties at issue were unimproved residential parcels located in Gary, Indiana.<sup>656</sup> During the year at issue, the parcels were owned by another party, James Nowacki, who sold the parcels to MBI in 2005 and assigned his appeal rights.<sup>657</sup> MBI sought to overturn the BTR's final determinations, arguing that MBI provided evidence during the administrative process that the DLGF's assessments were incorrect.<sup>658</sup> First, MBI argued that evidence of the price paid by Nowacki at a commissioner sale in 2002 reflected the properties' 2002 market values, because the sale was open, competitive, and the parcels were sold to the highest bidder.<sup>659</sup> Nowacki purchased the parcels in 2002 for \$11,565, and the DLGF assessed the properties at \$81,700.<sup>660</sup> Next, MBI argued that the evidence

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647. *Id.*

648. *Id.* at \*2.

649. *Id.* at \*3 (citing *Coll. Corner, L.P. v. Dep't of Local Gov't Fin.*, 840 N.E.2d 905, 909 (Ind. Tax Ct. 2006)).

650. *Id.*

651. *Id.*

652. *Id.* (citing Oral Argument Transcript at 6, 11, 17-21, *Sisters of St. Francis Health Servs.*, 2007 WL 1874778).

653. *Id.*

654. Nos. 49T10-0602-TA-14, 49-T10-0602-TA-15, 49T10-0602-TA-16, 2007 WL 2405271 (Ind. Tax Ct. Aug. 22, 2007) (unpublished table decision).

655. *Id.* at \*1.

656. *Id.*

657. *Id.*

658. *Id.* at \*2.

659. *Id.*

660. *Id.*



of the price that MBI paid for the parcels in 2005 also demonstrated that the 2002 assessments were incorrect.<sup>661</sup> The parcels sold for only \$13,030 in 2005.<sup>662</sup> The Tax Court, however, upheld all seventeen BTR final determinations.<sup>663</sup> Assessment regulations require a 2002 property assessment to reflect a property's market value-in-use as of January 1, 1999.<sup>664</sup> MBI failed to explain how the evidence which MBI presented regarding the 2002 and 2005 sale prices related to the parcels' values as of January 1, 1999.<sup>665</sup> As a result, MBI did not demonstrate that the BTR's determinations were either "arbitrary, capricious, or unsupported by substantial evidence."<sup>666</sup>

22. *Parks v. Licking Township Assessor*.<sup>667</sup>—The Parkses initiated this tax appeal on March 15, 2006, challenging the 2002 real property assessment of the land and two apartment buildings that Parkses owned in Hartford City, Indiana.<sup>668</sup> The Parkses' main argument on appeal was that the apartment buildings should have been valued using the General Commercial Residential ("GCR") pricing schedule instead of the residential pricing guidelines, because the buildings had always been used and listed as apartments, and thus, the buildings were commercial buildings.<sup>669</sup> The Tax Court found the Parkses "missed the point" in their argument.<sup>670</sup> It is not sufficient for a taxpayer to claim that an assessor misapplied the assessment guidelines, rather a taxpayer must provide evidence that the assessed value of a property does not accurately reflect its market value-in-use.<sup>671</sup> Here, the Parkses only focused the assessment methodology and provided no evidence of the property's market value-in-use.<sup>672</sup> Failure to present such evidence resulted in the Parks' failure to present a prima facie case that the assessment was incorrect.<sup>673</sup>

23. *Lake County Assessor v. United States Steel Corp.*<sup>674</sup>—The Lake County Assessor ("assessor") initiated this tax appeal on March 29, 2007, to appeal a final determination of the BTR regarding the 2001 real property assessment of United States Steel's ("USS") steel manufacturing plant located in Lake County,

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661. *Id.*

662. *Id.*

663. *Id.* at \*3.

664. *Id.* (citing IND. TAX COMM'RS, 2002 REAL PROPERTY ASSESSMENT MANUAL REVISION AAA 4 (2004)).

665. *Id.*

666. *Id.*

667. No. 49T10-0603-TA-29, 2007 WL 2398587 (Ind. Tax Ct. Aug. 23, 2007) (unpublished table decision).

668. *Id.* at \*1.

669. *Id.* at \*3.

670. *Id.*

671. *Id.*

672. *Id.* at \*4.

673. *Id.*

674. No. 49T10-0703-TA-19, 2007 WL 2713642 (Ind. Tax Ct. Sept. 19, 2007) (unpublished table decision).

Indiana.<sup>675</sup> This decision was on a motion for partial summary judgment filed by USS.<sup>676</sup> The assessor argued on appeal that the BTR erred when it failed to admit evidence and documentation regarding a settlement agreement reached with USS with respect to a 2001 personal property tax appeal.<sup>677</sup> Both the real property and personal property appeals involved USS's claim that it was entitled to additional obsolescence depreciation.<sup>678</sup> The assessor claimed that the evidence regarding the personal property appeal established that *res judicata* should apply to USS's real property appeal.<sup>679</sup> USS disagreed, moving for partial summary judgment regarding this claim.<sup>680</sup> USS argued the BTR properly excluded the evidence at issue and that neither claim preclusion nor issue preclusion applied to the 2001 real property assessment.<sup>681</sup> First, USS argued claim preclusion did not apply, because the personal and real property appeals involved different effects of increased operating costs.<sup>682</sup> It argued in its personal property appeal that excess operating costs were the cause of the machinery and equipment's decreased value, but argued in its real property appeal that the operating costs contributed to the reduced value of its improvements.<sup>683</sup> The assessor, however, argued that appeals were the same because the appeals were based on the same excess operating costs and the same methodology was used in both to establish the relationship between the increased costs and the loss of property value.<sup>684</sup> The Tax Court agreed with USS and held claim preclusion did not apply to the real property appeal based on the principle that "real and personal property are distinct."<sup>685</sup> Because these types of properties are distinct, the claims challenging the assessments of these types of properties are distinct.<sup>686</sup> "Consequently, evidence that establishes an error on a personal property assessment does not necessarily establish an error on a real property assessment."<sup>687</sup> USS next argued in its motion that issue preclusion did not apply to its real property appeal because the issues involved in two appeals were not identical.<sup>688</sup> The issue in the real property appeal, according to USS, was whether or not the operating costs constituted *functional obsolescence*, whereas the issue in the personal property appeal was whether or not the operating costs constituted *abnormal*

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675. *Id.* at \*1.

676. *Id.*

677. *Id.*

678. *Id.*

679. *Id.*

680. *Id.*

681. *Id.* at \*2.

682. *Id.*

683. *Id.*

684. *Id.*

685. *Id.* at \*3 (citing *W. Select Props., L.P. v. State Bd. of Tax Comm'rs*, 639 N.E.2d 1068, 1073 (Ind. Tax Ct. 1994)).

686. *Id.*

687. *Id.*

688. *Id.*

*obsolescence*.<sup>689</sup> On the other hand, the assessor argued that the issues were identical, because the same cause of obsolescence was claimed to reduce the value of both the real and personal property.<sup>690</sup> Again, the Tax Court sided with USS and found that issue preclusion did not apply to the real property appeal.<sup>691</sup> The two issues were not combined into one issue simply because USS claimed both its real and personal property were impacted by the same causes of obsolescence.<sup>692</sup> The forms of obsolescence are different and are defined as such in the assessment regulations.<sup>693</sup> Further, the regulations provide that functional obsolescence applies to real property and abnormal obsolescence applies to personal property.<sup>694</sup> “Therefore, establishing the presence of abnormal obsolescence with respect to personal property is not the same as establishing the presence of functional obsolescence with respect to real property—even when the causes of that obsolescence are the same.”<sup>695</sup> Because neither claim preclusion nor issue preclusion applied to USS’s real property appeal, its motion for partial summary judgment was granted.<sup>696</sup>

24. *Curtis v. Indiana Board of Tax Review*.<sup>697</sup>—In this opinion, the Tax Court ruled on the BTR’s motions to dismiss and strike Curtis’s motions to amend and supplement.<sup>698</sup> Curtis initiated a tax appeal on April 9, 2007, appealing five BTR final determinations regarding the assessment of Curtis’s real property located in Lake County, Indiana, for the 1998, 1999, and 2000 tax years.<sup>699</sup> The BTR moved to dismiss Curtis’s claim on several grounds, all of which the Tax Court denied.<sup>700</sup> The BTR first argued the appeal should be dismissed for failure to name the proper parties in the petition under Indiana Trial Rules 12(B)(1) and 12(B)(6), because Curtis named the BTR as the respondent instead of the township assessor or the PTABOA, which is required by the AOPA and Tax Court Rule 4(B).<sup>701</sup> The BTR also argued that Curtis could not cure the defects by amending the petitions because the amended petitions were filed after the statute of limitations had run, and therefore, the amending petitions would be precluded from relating back to the original petition.<sup>702</sup> The Tax Court denied the BTR’s motions to dismiss and strike, finding a statement

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689. *Id.*

690. *Id.*

691. *Id.* at \*4.

692. *Id.*

693. *Id.*

694. *Id.*

695. *Id.*

696. *Id.*

697. No. 71T10-0704-SC-21, 2007 WL 2758754 (Ind. Tax Ct. Sept. 24, 2007) (unpublished table decision).

698. *Id.* at \*1.

699. *Id.*

700. *Id.* at \*1-4.

701. *Id.* at \*1.

702. *Id.*

regarding the township assessor as a party to the BTR proceeding in the body of Curtis's original petition and Curtis's attachment of the BTR's findings and conclusions to the original petition naming the assessor as a respondent sufficient to satisfy the AOPA and Tax Court rule requirements.<sup>703</sup> The Tax Court also dismissed the BTR's argument that the appeal should be dismissed for lack of personal jurisdiction due to the fact that Curtis failed to attach a certificate of service with his petition and to properly serve the parties.<sup>704</sup> The Tax Court found the BTR waived this assertion when the BTR failed to raise the issue at the first opportunity, either in its answer or in its motion to dismiss.<sup>705</sup> The Tax Court next addressed the BTR's claim that the appeal should be dismissed under Indiana Trial Rule 41(E) for failure to prosecute.<sup>706</sup> The Tax Court disagreed with the BTR's claim that Curtis failed to diligently pursue the appeal.<sup>707</sup> While there was delay on Curtis's part in remitting the fee for the certified administrative record to the BTR, such delay did not warrant a dismissal of the case as it was unintentional and had only a *de minimis* effect on the BTR's ability to prepare a defense.<sup>708</sup> Conversely, the case should be decided on the merits in the interests of justice.<sup>709</sup> The Tax Court subsequently denied Curtis's motion to amend his petition to the extent that Curtis sought to add the auditor and PTABOA as respondents, but the Tax Court granted Curtis's motions to supplement.<sup>710</sup>

25. *Dowell v. Washington Township Assessor*.<sup>711</sup>—The Dowells initiated this tax appeal on November 17, 2006, challenging the 2002 assessment of their commercial real property located in Nashville, Indiana.<sup>712</sup> The Dowells argued that the assessor improperly increased the base rate used to determine land assessments from \$10 per square foot to \$20 per square foot without conducting the required public hearing under I.C. § 6-1.1-4-13.6.<sup>713</sup> In support of their claim, the Dowells provided a Neighborhood Valuation Form they received from the assessor's office, which indicated a \$10 base rate.<sup>714</sup> The Dowells argued this rate was the final value approved by the PTABOA during the land valuation process; however, they admitted they were provided with a different Neighborhood Valuation Form during the PTABOA hearing that listed the approved final value as \$20.<sup>715</sup> The Tax Court held the Dowells did not establish the criteria for a

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703. *Id.* at \*2.

704. *Id.*

705. *Id.*

706. *Id.* at \*3.

707. *Id.*

708. *Id.*

709. *Id.*

710. *Id.*

711. No. 49T10-0611-TA-100, 2007 WL 2955738 (Ind. Tax Ct. Oct. 11, 2007) (unpublished table decision).

712. *Id.* at \*1.

713. *Id.*

714. *Id.* at \*2.

715. *Id.*

required public hearing were met before the value was modified.<sup>716</sup> To succeed in their claim, the Dowells had to either demonstrate that the \$20 base rate used to assess their property was not the PTABOA's established final value or that the final established value was the \$10 base rate.<sup>717</sup> The Dowells did not establish either of these facts.<sup>718</sup> In contrast, there was no evidence that the form provided to the Dowells by the assessor's office included the final approved value.<sup>719</sup> There was, however, an indication that the form listing the \$10 base rate was the form submitted during the land valuation process, and the Dowells admitted there had been a public hearing regarding the \$10 rate.<sup>720</sup> Because the Dowells did not show

that the \$20 value was not the result of a modification by the PTABOA as part of the land valuation process. Consequently, the Dowells have neither demonstrated that the Neighborhood Valuation Form with the \$10 base rate was the final value as approved by the PTABOA, nor that the form with the \$20 base rate was *not* the final value.<sup>721</sup>

Subsequently, the BTR's final determination was affirmed.<sup>722</sup>

A factually similar appeal based on the same arguments was also made in the case of *Miller v. Washington Township Assessor*.<sup>723</sup> The Tax Court decided both cases on the same date and came to the same conclusion in both cases.<sup>724</sup>

26. *First Bank v. Department of Local Government Finance*.<sup>725</sup>—First Bank of Whiting Trust No. 1857, along with several other petitioners, initiated this appeal on August 14, 2006, challenging the 2002 valuation of their real property located in Lake County, Indiana.<sup>726</sup> The properties at issue were condominium units located in a complex named Cedar Point.<sup>727</sup> The petitioners argued on appeal that the market value-in-use of their condominium units was not accurately reflected in the units' assessed values, because the units were not assessed according to their current use as apartments.<sup>728</sup> To support their argument, at the BTR hearing the petitioners provided an appraisal conducted by a Certified General Real Estate Appraiser who used the income capitalization approach to

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716. *Id.*

717. *Id.* at \*1.

718. *Id.* at \*2.

719. *Id.*

720. *Id.*

721. *Id.*

722. *Id.* at \*3.

723. No. 49T10-0611-TA-101, 2007 WL 2955734 (Ind. Tax Ct. Oct. 11, 2007) (unpublished table decision).

724. *See id.* at \*2.

725. No. 49T10-0608-TA-75, 2007 WL 4151846 (Ind. Tax Ct. Nov. 26, 2007) (unpublished table decision).

726. *Id.* at \*1.

727. *Id.*

728. *Id.* at \*2.

value the complex.<sup>729</sup> The properties were valued as of April 1999.<sup>730</sup> The appraiser “opined that the January 1 values would ‘probably not’ have been any different than the April 1 values.”<sup>731</sup> The Tax Court held the petitioners failed to prima facie establish that their assessments were improper, because the petitioners provided no probative evidence regarding how the April 1 values related to the January 1 values of the properties.<sup>732</sup> Regardless of the fact the appraiser was an expert witness, his statements were merely conclusory and were not sufficient to relate the two values together because no explanation was offered.<sup>733</sup>

*B. Personal Property Tax: Perdue Farms, Inc. v. Boone Township Assessor*<sup>734</sup>

Perdue Farms, Inc. (“Perdue”) initiated this action on July 7, 2006, appealing thirteen BTR final determinations denying its requests for personal property tax inventory exemptions for the 2003 tax year for turkeys located at its Dubois County, Indiana, growing facilities.<sup>735</sup> Perdue, which is incorporated in Maryland, is engaged in the business of turkey production in Indiana.<sup>736</sup> This turkey production business takes place throughout the state. The turkeys are bred in Lebanon, Indiana, the eggs are shipped to a hatchery in Vincennes, Indiana, and then some of the baby turkeys (poults) are shipped to facilities in Dubois County where they are raised until maturity.<sup>737</sup> After the turkeys mature, they are sent to Washington, Indiana, to be slaughtered, processed, packaged, and shipped.<sup>738</sup> During the year at issue, 94% of the Washington, Indiana, processing plant’s final turkey product was shipped out of state.<sup>739</sup> Perdue timely filed its 2003 personal property tax returns with the proper township assessors in Dubois County, but later filed amended returns with the assessors requesting an interstate commerce inventory exemption for 94% of its turkeys located in DuBois County facilities. Perdue appealed to the BTR after all of its requests for exemptions were denied by the Dubois County PTABOA.<sup>740</sup> The BTR subsequently denied the exemptions finding “the turkeys located at each of the Dubois County growing facilities were not the inventory of the processing plant because Perdue’s ‘turkey raising operations [were] separate and distinct from its turkey processing

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729. *Id.*

730. *Id.*

731. *Id.* (citing Cert. Admin. R. at 4198).

732. *Id.*

733. *Id.*

734. No. 49T10-0607-TA-65, 2007 WL 1874791 (Ind. Tax Ct. June 29, 2007) (unpublished table decision), *trans. denied*, 878 N.E.2d 217 (Ind. 2007) (unpublished table decision).

735. *Id.* at \*1-2.

736. *Id.* at \*1.

737. *Id.*

738. *Id.*

739. *Id.*

740. *Id.*

operations.”<sup>741</sup> In this appeal, Perdue argued the turkeys located at Dubois County facilities constituted inventory because the turkeys were later processed by the company at its Washington, Indiana facility, and therefore, the BTR improperly denied its exemption.<sup>742</sup> In contrast, the assessors argued that because the turkeys constituted “farming inventory” based on their location at agricultural sites and being reported on tangible personal property tax returns, the turkeys are not exempted as inventory under I.C. § 6-1.1-10-29 as this provision does not specifically exempt “farming inventory.”<sup>743</sup> The Tax Court agreed with Perdue and dismissed the assessors’ “farming inventory” argument.<sup>744</sup> “The plain language of Indiana Code § 6-1.1-10-29(b)(2) exempts inventory, as defined by Indiana Code § 6-1.1-3-11, owned by a manufacturer or processor that *will be used* in manufacturing or processing operations.”<sup>745</sup> Furthermore, the statute’s plain language does not indicate a loss of status for personal property just because it is not located at a processing or manufacturing site.<sup>746</sup> What I.C. § 6-1.1-3-11 *does* require is that inventory be “held for processing or for use in production[.]”<sup>747</sup> Perdue established by overwhelming evidence that its turkeys qualified for the interstate commerce inventory exemption, because the turkeys were owned and held for the sole purpose of meat processing and 94% of the turkey meat was processed, packaged, and shipped out of state.<sup>748</sup> If the turkeys held at the Dubois County facilities were not inventory, then there would not be anything for Perdue to process.<sup>749</sup> The BTR’s final determination was subsequently reversed.<sup>750</sup>

*C. Inheritance Tax: Indiana Department of State Revenue v.  
Estate of Brandewiede*<sup>751</sup>

The DOSR initiated this appeal on August 2, 2006, challenging the Bartholomew County Superior Court’s order allowing the estate to allocate inheritance tax deductions to beneficiaries before allocating them to the residuary.<sup>752</sup> The decedent died testate, and the estate filed an Indiana inheritance tax return on November 29, 2005.<sup>753</sup> The return calculated the decedent’s gross estate at \$113,835.79, \$46,059.25 of which was allocated in the form of

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741. *Id.* (alteration in original) (footnote omitted) (quoting Cert. Admin. R. at 312-15).

742. *Id.* at \*2.

743. *Id.*

744. *Id.* at \*2-3.

745. *Id.* at \*3.

746. *Id.* (citing IND. CODE ANN. § 6-1.1-3-11 (West 2003)).

747. *Id.* (alteration in original) (quoting IND. CODE ANN. § 6-1-1-3-11 (West 2003)).

748. *Id.*

749. *Id.*

750. *Id.*

751. 873 N.E.2d 209 (Ind. Tax Ct. 2007).

752. *Id.* at 210-11.

753. *Id.* at 210.

combined probate and non-probate property to six named beneficiaries.<sup>754</sup> The decedent provided in her will for the residuary of the estate to be paid to the Columbus Ward of the Church of Jesus Christ of Latterday Saints.<sup>755</sup> The estate calculated the total deductions at \$50,228.75 and applied \$46,059.25 of this amount to the amount allocated to the named beneficiaries, resulting in no inheritance tax liability for the named beneficiaries.<sup>756</sup> The remaining amount of deductions was allocated to the residuary, but because the residuary was transferred to a church, it was exempt from any inheritance tax.<sup>757</sup> The DOSR argued the estate failed to properly apply the deductions under I.C. § 29-1-17-3.<sup>758</sup> Instead of applying the deductions to the shares of the named beneficiaries first, the DOSR argued I.C. § 29-1-17-3, addressing the issue of abatement, required the estate to apply the deductions to the residuary first because the purpose of the statute is to prohibit haphazard payments from any estate item so that specific bequests are protected as much as possible.<sup>759</sup> The estate argued that the DOSR could not rely on this statute because it applies to the issue of abatement, not the allocation of deductions, and that the allocation of deductions was within the estate's discretion.<sup>760</sup> The Tax Court disagreed noting that even though there is no statutory provision providing for the allocation of deductions, "the Court of Appeals has previously explained that '[l]ogic dictates that [the] deduction must be attributed only to the party which expends the resources which constitute the deduction,'" which means that the deduction should be allocated to the actual expenditure.<sup>761</sup> Here, the expenses for which the deduction was being claimed were actually paid from the residuary, not the specific bequests.<sup>762</sup> Therefore, the estate improperly allocated the deductions, and the superior court's order was reversed.<sup>763</sup>

#### *D. Sales and Use Tax*

1. *Horseshoe Hammond, LLC v. Indiana Department of State Revenue.*<sup>764</sup>—Horseshoe Hammond ("HH") initiated this appeal after the DOSR failed to issue a final determination regarding its claim for refund, which included

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754. *Id.*

755. *Id.*

756. *Id.* at 210-11.

757. *Id.* at 211.

758. *Id.* at 212.

759. *Id.* at 212-13.

760. *Id.* at 213.

761. *Id.* (alteration original) (quoting *In re Estate of Pfeiffer*, 452 N.E.2d 448, 451 (Ind. Ct. App. 1983)).

762. *Id.*

763. *Id.* at 213-14.

764. 865 N.E.2d 725 (Ind. Tax Ct.), *trans. denied*, 878 N.E.2d 207 (Ind. 2007) (unpublished table decision).



\$87,635.17 in use tax paid for complimentary merchandise and meals.<sup>765</sup> HH, an Indiana corporation located in Hammond, Indiana, is a licensed riverboat operator that operates an excursion gaming riverboat.<sup>766</sup> The boat is docked on Lake Michigan and provides gaming, a gift shop, and several bars and restaurants.<sup>767</sup> In order to “cultivate customer relations so that customers w[ould] stay on the property, come to the property, or return to the property[,]” HH offered complimentary merchandise and meals to members of its Player’s Club.<sup>768</sup> HH calculated use tax based on the retail price of these complimentary items and remitted the proper use tax to the DOSR.<sup>769</sup> HH filed a motion for summary judgment,<sup>770</sup> and the DOSR’s response brief was treated by the Tax Court as a cross-motion for summary judgment.<sup>771</sup> The Tax Court discussed the complimentary merchandise and meals separately. HH did not dispute that it owed use tax on the complimentary merchandise, rather it disputed the amount of use tax owed.<sup>772</sup> The DOSR, however, first argued that HH was required to remit sales tax on the merchandise because it was making a disguised retail transaction.<sup>773</sup> The DOSR’s maintained that there was a disguised retail transaction, because, even though the merchandise was not transferred to the customers for money, the merchandise was still transferred for consideration, which was in the continued gaming and loyalty from the customers.<sup>774</sup> Further, the DOSR cited *Monarch Beverage Co. v. Indiana Department of State Revenue*,<sup>775</sup> which stated there is sufficient consideration if there is a benefit to the promisor or a detriment to the promisee.<sup>776</sup> The DOSR argued there was sufficient consideration between the customers and HH, because the benefit to the customers was free merchandise and the detriment to HH was providing the free merchandise.<sup>777</sup> The Tax Court rejected DOSR’s argument as unconvincing.<sup>778</sup> No evidence was found that there had been a *bargained* for exchange.<sup>779</sup> “[T]he

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765. *Id.* at 726-27. Horseshoe Hammond filed its refund claim on March 13, 2003, and had not received a final determination on November 30, 2004. *Id.*

766. *Id.* at 726.

767. *Id.*

768. *Id.* (alteration in original) (quoting Petitioner’s Post Hearing Brief at 3, *Horseshoe Hammond*, 865 N.E.2d 725). The Player’s Club is a free membership program that is open to the casino’s patrons who are over twenty-one years of age. *Id.* at 726 n.1.

769. *Id.* at 726.

770. *Id.*

771. *Id.* at 727 n.3.

772. *Id.* at 728.

773. *Id.*

774. *Id.* (citing Respondent’s Brief at 7, 9, *Horseshoe Hammond*, 865 N.E.2d 725).

775. 589 N.E.2d 1209 (Ind. Tax Ct. 1992).

776. *Horseshoe Hammond*, 865 N.E.2d at 728-29 (citing Respondent’s Brief at 8, *Horseshoe Hammond*, 865 N.E.2d 725).

777. *Id.* at 729.

778. *Id.*

779. *Id.*

casino patrons never agreed or promised Horseshoe that they would continue their gaming activity for free merchandise.”<sup>780</sup> While HH may have *hoped* that providing this merchandise would enhance customer relations, such merchandise was never *promised* to any customer, so the customer’s decision was discretionary.<sup>781</sup> Therefore, because there was no consideration, there was no retail transaction, and the merchandise was not subject to sales tax.<sup>782</sup> Because HH conceded it owed use tax on the merchandise, the next issue to be decided was how the use tax should be calculated.<sup>783</sup> Citing the Indiana Administrative Code sections 6-2.5-3-2(a) and -3, the Tax Court determined that the use tax should be based on the price HH paid for the property and not the merchandise’s retail price.<sup>784</sup> HH was entitled to a refund of use tax paid for the merchandise because it had remitted the tax based on the retail price.<sup>785</sup>

The DOSR made the same consideration argument regarding the imposition of sales tax for the complimentary meals that HH provided to Player’s Club members, and the argument was again rejected by the Tax Court.<sup>786</sup> The DOSR argued in the alternative that HH was not entitled to a refund for use tax it paid for the storage, use, and consumption of meal components that were eventually incorporated into the meals.<sup>787</sup> This argument was also rejected, because the purchase and *later* use of the meal components were held to be exempt under I.C. § 6-2.5-5-20(a), which provides an exemptions for food purchased for human consumption.<sup>788</sup> A distinction was made between this use of food and the intended exclusion from the exemption of *prepared* food.<sup>789</sup> “[H]ow Horseshoe uses the items is irrelevant (i.e., whether Horseshoe uses the food to prepare meals that are to be sold, uses them to prepare meals that are to be given away, or it simply throws the food away), as its *use of those items* is not taxable.”<sup>790</sup> Thus, HH was entitled to a refund for use tax paid on the meal components used for the complimentary meals,<sup>791</sup> and summary judgment was granted in favor of HH.<sup>792</sup>

2. *Lafayette Square Amoco, Inc. v. Indiana Department of State Revenue.*<sup>793</sup>—Lafayette Square Amoco, Inc. (“LSA”) initiated this action on October 12, 2005, appealing the DOSR’s final determination denying LSA’s

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780. *Id.*

781. *Id.*

782. *Id.*

783. *Id.*

784. *Id.* at 730.

785. *Id.*

786. *Id.*

787. *Id.*

788. *Id.* at 731-32.

789. *Id.* at 731.

790. *Id.* at 732 n.12.

791. *Id.* at 732.

792. *Id.*

793. 867 N.E.2d 289 (Ind. Tax Ct. 2007).

protest of sales tax liability for income received from oil changes during the 1999-2001 tax years.<sup>794</sup> LSA is the operator of a gas station located in Lafayette, Indiana.<sup>795</sup> LSA provided general automotive services during the tax years at issue, including oil changes.<sup>796</sup> The DOSR audited LSA in 2002 and, as a result, issued proposed assessments of sales tax based on the determination that LSA did not charge sales tax for oil changes during the years at issue, which resulted in the incorrect amount of sales tax being remitted to the DOSR.<sup>797</sup> Prior to and throughout the audit, the DOSR requested (both orally and through written communication) that LSA provide records so that the proper amount of sales tax could be calculated.<sup>798</sup> LSA provided some documentation, but the documentation was not related to the tax years at issue.<sup>799</sup> LSA offered DOSR access to its computer to inspect invoices despite its own admission that inspecting the documents through this method would be difficult and time-consuming.<sup>800</sup> The DOSR requested paper copies of invoices, but they were never provided.<sup>801</sup> To make a Best Information Available assessment, the DOSR relied on one invoice from September 1999, which indicated LSA had not charged any sales tax on the oil change.<sup>802</sup> LSA protested the assessment in December 2002 and provided fifty-seven oil change invoices that showed sales tax had been charged on those transactions.<sup>803</sup> However, during a supplemental audit in January 2005, LSA was not able to provide all the service center invoices, claiming the invoices were no longer available, because the computer automatically purged them after three years.<sup>804</sup> LSA was not able to meet its burden to prove the assessment was wrong.<sup>805</sup> I.C. § 6-8.1-5-4 requires taxpayers that are subject to a listed tax to “keep books and records so that the [DOSR] can determine the amount, if any, of the person’s liability for that tax by reviewing those books and records.”<sup>806</sup> When LSA failed to submit all of its invoices for the years at issue, and the invoices were unable to be reviewed during the audit or during this appeal, LSA was unable to meet its burden of proof.<sup>807</sup> LSA was entitled to receive credit for the fifty-seven invoices which LSA did submit; however, these invoices did not prove that the rest of the tax assessment was

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794. *Id.* at 290.

795. *Id.*

796. *Id.*

797. *Id.*

798. *Id.* at 291.

799. *Id.*

800. *Id.*

801. *Id.* at 292.

802. *Id.*

803. *Id.*

804. *Id.*

805. *Id.*

806. *Id.* at 292-93 (quoting IND. CODE ANN. § 6-8.1-5-4 (West 2001)).

807. *Id.* at 293.

incorrect.<sup>808</sup> Additionally, LSA did not demonstrate that such fifty-seven invoices were a representative sample of all of the invoices for the years at issue.<sup>809</sup> Further, the invoices were selected by LSA's president, which was in contrast to the auditor's testimony that indicated the DOSR typically selects the representative sample.<sup>810</sup> LSA was also not entitled to a waiver of the 10% negligence penalty imposed under I.C. § 6-8.1-10-2.1, because LSA did not demonstrate that LSA had reasonable cause for its failure to remit the amount of deficient sales tax, and its lack of awareness that sales tax had not been applied to at least one invoice indicated LSA was actually negligent.<sup>811</sup> Therefore, the DOSR's final determination was affirmed.<sup>812</sup>

### *E. Corporate Income Tax*

1. *Miller Brewing Co. v. Indiana Department of State Revenue.*<sup>813</sup>—Miller Brewing Co. ("Miller") initiated this action on July 24, 2006, appealing the DOSR's denial of Miller's request for a refund of adjusted gross income tax and supplemental net income tax ("AGIT") paid during the 1997, 1998, and 1999 tax years.<sup>814</sup> This opinion followed Miller's motion for summary judgment filed December 15, 2006.<sup>815</sup> Based on the Tax Court's July 27, 2005 opinion in *Miller Brewing Co. v. Indiana Department of State Revenue*,<sup>816</sup> Miller argued the DOSR was barred from denying its refund due to issue preclusion.<sup>817</sup> The issue in this case involved the sales factor of the apportionment formula.<sup>818</sup> Miller, a Wisconsin corporation, is a seller of malt beverage products to customers in several states and is headquartered in Milwaukee, Wisconsin.<sup>819</sup> Customers place orders with Miller through the Milwaukee office and have three options for transferring the products from the breweries to the customers' chosen destinations: pick up the products with their own trucks, arrange transportation by a third-party common carrier, or have Miller arrange transportation by common carrier.<sup>820</sup> Miller filed corporate income tax returns for the 1997, 1998,

808. *Id.*

809. *Id.* at 293 n.6.

810. *Id.*

811. *Id.* at 294.

812. *Id.*

813. (*Miller II*), No. 49T10-0607-TA-69, 2007 WL 1667128 (Ind. Tax Ct. June 8, 2007) (unpublished table decision).

814. *Id.* at \*1-2.

815. *Id.* at \*2. The Tax Court instructed the parties to limit their briefs to a discussion of issue preclusion. *Id.*

816. (*Miller I*), 831 N.E.2d 859 (Ind. Tax Ct. 2005).

817. *Miller II*, 2007 WL 1667128, at \*2.

818. *Id.* at \*1 n.2.

819. *Id.* at \*1.

820. *Id.* "Regardless, the customers decided how to transport the goods, as possession and title to the products transferred to them at the breweries." *Id.*

and 1999 tax years because of its income from sales to Indiana customers.<sup>821</sup> However, Miller only reported sales on its 1997 return when it arranged the common carrier, and Miller did not report any Indiana sales on its 1998 or 1999 returns.<sup>822</sup> Later, Miller amended its 1997 return to request a refund of \$13,391 plus any statutory interest.<sup>823</sup> The DOSR audited Miller, which resulted in a proposed AGIT assessment of \$806,366.23 for the 1997, 1998, and 1999 tax years.<sup>824</sup> The assessment only excluded sales when the customers used their own trucks to pick up products.<sup>825</sup> Miller protested the assessment in November 2001.<sup>826</sup> The *Miller I* opinion, which involved the 1994, 1995, and 1996 tax years, was issued while the protest was pending and held that “pursuant to the [DOSR’s] own regulation, Miller’s sales of products that were transported by customer-arranged common carriers to Indiana customers were not made in Indiana and, therefore, were not to be included in the numerator of Miller’s sales factor of its adjusted gross income tax apportionment formula.”<sup>827</sup> The DOSR conducted an administrative hearing to review Miller’s protest for the 1997, 1998, and 1999 tax years, in which Miller requested a net refund of \$1,138,488, but ultimately the DOSR denied the entire protest and request.<sup>828</sup> This appeal followed the DOSR’s determination. The Tax Court disagreed with Miller that issue preclusion barred the DOSR from denying Miller’s refund request regarding sales involving customer-arranged common carriers.<sup>829</sup> Focusing on the doctrine that “each tax year stands alone,” the Tax Court held that issue preclusion does not apply to revenue cases.<sup>830</sup> Additionally, the Tax Court dismissed Miller’s argument that the Tax Court’s decision in *Lindemann v. Wood*<sup>831</sup> stands for the proposition that issue preclusion can still apply despite the “each tax year stands alone doctrine,”<sup>832</sup> though *Lindemann* was a property tax case.<sup>833</sup> Issue preclusion did not conflict with the doctrine in that case because property tax assessments

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821. *Id.*

822. *Id.*

823. *Id.*

824. *Id.*

825. *Id.*

826. *Id.*

827. *Id.*

828. *Id.* at \*2. The administrative hearing was conducted on March 24, 2006 and the DOSR issued its final determination on June 12, 2006. *Id.*

829. *Id.* at \*3.

830. *Id.*

831. 799 N.E.2d 1230 (Ind. Tax Ct. 2003).

832. *Miller II*, 2007 WL 1667128, at \*3. In *Lindemann*, “the Court held that issue preclusion barred an assessor from increasing the grade of the taxpayers’ improvement in a property tax assessment prior to the next general reassessment absent a change of circumstances in the improvement because the taxpayers had already successfully appealed their improvement’s grade.” *Id.* (citing *Lindemann*, 799 N.E.2d at 1232-34).

833. *Id.*

do not change every year.<sup>834</sup> The assessments do not change until a general reassessment.<sup>835</sup> In contrast, AGIT assessments change annually.<sup>836</sup> “Therefore, it stands to reason that while issue preclusion may be appropriate in certain property tax cases, it is generally not applicable in revenue cases.”<sup>837</sup> Miller’s motion for summary judgment was consequently denied.<sup>838</sup>

2. *Welch Packaging Group, Inc. v. Indiana Department of State Revenue.*<sup>839</sup>—Welch, an Indiana corporation with a principal place of business in Elkhart, Indiana, initiated this tax appeal on March 11, 2005, appealing the DOSR’s imposition of additional corporate income tax for the 1998, 1999, and 2000 tax years.<sup>840</sup> The Tax Court heard the case on the parties’ cross motions for summary judgment.<sup>841</sup> Welch is the parent company of two subsidiaries subject to the Michigan Single Business Tax (“MSBT”) because of the subsidiaries’ employment of salespeople who both solicit business in and deliver products to Michigan.<sup>842</sup> For the years at issue, Welch and its subsidiaries filed consolidated Indiana adjusted gross income tax returns and excluded Michigan sales from the numerator of their sales factor when using the three-factor apportionment formula to compute their combined tax liability.<sup>843</sup> The DOSR determined during an audit that Welch should have included the Michigan sales in the numerator and issued proposed assessments totaling \$64,612.13 against Welch.<sup>844</sup> Welch protested the proposed assessments, but the DOSR denied its request.<sup>845</sup> Welch argued on appeal that “pursuant to the plain language of Indiana Code [section] 6-3-2-2(n)(1), [Welch] was taxable in Michigan—and therefore was not required to place the Michigan sales in the numerator of its sales factor—because [Welch] was subject to the MSBT,” which is a franchise tax on the privilege of doing business in Michigan.<sup>846</sup> Conversely, the DOSR argued the Michigan sales were subject to the “throwback rule,”<sup>847</sup> because the MSBT is not a franchise tax on the

834. *Id.* (citing *Lindemann*, 799 N.E.2d at 1233 nn.4, 6).

835. *Id.*

836. *Id.*

837. *Id.*

838. *Id.*

839. No. 49T10-0503-TA-21, 2007 WL 3348012 (Ind. Tax Ct. Nov. 13, 2007) (unpublished table decision).

840. *Id.* at \*1.

841. *Id.*

842. *Id.*

843. *Id.*

844. *Id.*

845. *Id.*

846. *Id.* at \*2 (citing Petitioner’s Brief in Support of Its Motion for Summary Judgment at 8-9, *Welch Packaging Group*, 2007 WL 3348012).

847. The “throw-back rule” is contained in I.C. § 6-3-2-2(e)(2) and provides that “sales will be ‘thrown-back’ to Indiana if . . . the taxpayer who made the sales is not taxable in the state of the purchaser.” *Id.* at \*2 n.2 (citing IND. CODE ANN. § 6-3-2-2(e)(2) (West 2002)).

privilege of doing business in Michigan.<sup>848</sup> The DOSR argued the MSBT could not be a franchise tax because it was a value-added tax, not a tax based on income.<sup>849</sup> The Tax Court rejected the DOSR's arguments, citing both the definition of a franchise tax and I.C. § 6-3-2-2(n)(1), which provides that that a franchise tax can be measured by net income or another standard,<sup>850</sup> as well as finding that "[t]he MSBT is a franchise tax on the privilege of doing business in Michigan."<sup>851</sup> Because the MSBT is a franchise tax on the privilege of doing business in Michigan, Welch was correct in omitting its Michigan sales in the numerator of its sales factor when it applied the Indiana three-factor apportionment formula.<sup>852</sup>

*F. Controlled Substance Excise Tax ("CSET"): Harrison v. Indiana Department of State Revenue*<sup>853</sup>

The Harrisons, who were married to each other, initiated this action on September 24, 2004, appealing the DOSR's denial of the Harrisons' protest of a CSET assessment of \$48,912.33 following criminal plea agreements.<sup>854</sup> In December 2000, the Harrisons were arrested and charged with possession of marijuana with intent to deliver and reckless possession of paraphernalia.<sup>855</sup> Mr. Harrison was also charged with maintaining a public nuisance.<sup>856</sup> In June 2003, Mrs. Harrison entered into a pretrial diversion agreement, and Mr. Harrison entered into a plea agreement with the state which resulted in a guilty plea for the Class D felony of maintaining a common nuisance that was subsequently accepted by the circuit court.<sup>857</sup> Upon written notification of the plea agreements, the DOSR assessed the Harrisons with the CSET and levied on several accounts.<sup>858</sup> The Tax Court issued an opinion after cross motions for summary judgment.<sup>859</sup> In their motion, the Harrisons argued that "because a CSET assessment constitutes a criminal offense and punishment for double jeopardy

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848. *Id.* (citing Respondent's Brief in Support of Its Motion for Summary Judgment at 10, *Welch Packaging Group*, 2007 WL 3348012).

849. *Id.* (citing Respondent's Brief in Support of Its Motion for Summary Judgment at 6, 10-12, *Welch Packaging Group*, 2007 WL 3348012).

850. *Id.* at \*3 (citing IND. CODE ANN. § 6-3-2-2(n)(1) (West 2002)). The Tax Court also noted that "for purposes of . . . [the] throw-back rule, the way the franchise tax is measured is of no significance." *Id.*

851. *Id.* (emphasis added) (citing *Trinova Corp. v. Dep't of Treasury*, 445 N.W.2d 428, 431-32 (Mich. 1989)).

852. *Id.*

853. 876 N.E.2d 814 (Ind. Tax Ct. 2007).

854. *Id.* at 815.

855. *Id.*

856. *Id.*

857. *Id.*

858. *Id.*

859. *Id.* at 816.

purposes, Indiana's joinder and successive prosecution statutes . . . apply to CSET proceedings."<sup>860</sup> The Tax Court rejected this argument, holding that "Indiana's joinder and successive prosecution statutes do not apply to CSET proceedings."<sup>861</sup> First, an individual's conduct is not considered to be criminal unless the legislature defines the conduct as such.<sup>862</sup> The GA has not defined the CSET as a statutory criminal offense and even removed past references to such conduct constituting a felony.<sup>863</sup> On the contrary, the GA has actually indicated frequently in I.C. § 6-7-3-1 and following that the CSET is not considered a criminal offense, because neither an arrest nor a criminal conviction are required for the CSET to be imposed, payment of the tax does not legalize the activity for which the tax is imposed or shield the taxpayer from being criminally prosecuted, and because the statute explicitly states the CSET is intended to be imposed in addition to criminal penalties.<sup>864</sup> Because the CSET is primarily civil in nature and not a statutory criminal offense, the joinder and successive prosecutions do not apply to proceedings involving the CSET, and the Harrison's motion for summary judgment was denied.<sup>865</sup>

*G. Miscellaneous: Goldstein v. Indiana Department of Local  
Government Finance*<sup>866</sup>

Goldstein, along with several other petitioners, initiated this action on September 6, 2007, challenging the legality and constitutionality of several state and local taxation practices in the form of a verified petition for judicial review.<sup>867</sup> The petition included the following challenges:

- 1) the legality of the vote, taken by the Indianapolis-Marion County City-County Council, which raised Marion County's income tax from 1% to 1.65%, effective October 1, 2007;
- 2) the constitutionality of the directive, issued by Indiana Governor Mitchell E. Daniels, Jr. (and upon which the [DLGF] acted), which extended the statutorily prescribed deadline for Indiana counties to adopt local option income taxes;
- 3) the constitutionality of the multiple tax district system utilized within Indiana's counties;
- 4) the constitutionality of taxing Indiana residences for the purpose of raising monies for the Common School Fund; and
- 5) the constitutionality of numerous property assessment and taxation

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860. *Id.* (citing Petitioner's Motion for Summary Judgment at 3, *Harrison*, 876 N.E.2d 814).

861. *Id.* at 817 (emphasis added).

862. *Id.*

863. *Id.* (citing 1996 Ind. Acts 1579, 1580-81).

864. *Id.* (citing IND. CODE ANN. §§ 6-7-3-1, -5, -8, -9, -10, -20 (West 2001)).

865. *Id.* at 817-18.

866. 876 N.E.2d 391 (Ind. Tax Ct. 2007).

867. *Id.* at 392.



practices in Indiana.<sup>868</sup>

Additionally, Goldstein also sought an emergency order to enjoin the imposition of a 1.65% local income tax rate in Marion County as well as an order preventing the DLGF from notifying counties that local option income taxes could be adopted after the statutory deadline while the case was pending.<sup>869</sup> The DLGF countered with motions to dismiss for lack of subject matter jurisdiction based on Goldstein's failure to exhaust administrative remedies and for failure to state a claim upon which relief could be granted.<sup>870</sup> Goldstein conceded the lawsuit did not arise after any final determination by the BTR or DOSR, which is a prerequisite for exhausting administrative remedies, but argued that that the petitioners were still entitled to judicial review for several reasons and should be excused from exhausting administrative remedies.<sup>871</sup> Goldstein argued the petitions should be excused from exhausting administrative remedies because such remedies would be either inadequate or futile because administrative agencies implicated do not have the power to rule on such "global" constitutional challenges, the issues raised in their petition is of an "unparalleled public interest" that warrants a decision by the Tax Court, and because the Tax Court "might" have jurisdiction over the claims pursuant to I.C. § 36-4-4-5.<sup>872</sup> The Tax Court subsequently rejected all three arguments and dismissed the case for lack of subject matter jurisdiction.<sup>873</sup> First, the Indiana Supreme Court has made clear that even if a taxpayer only raises constitutional claims, the taxpayer is still required to seek administrative remedies before it can proceed to the Tax Court.<sup>874</sup> The legislature has not conferred original jurisdiction on the Tax Court for unconstitutional taxation claims.<sup>875</sup> Similarly, the Tax Court also has not been given subject matter jurisdiction over issues that are in the public's interest.<sup>876</sup> Even if the Tax Court were to examine the claims, doing so would be purely advisory, and the Tax Court is not allowed to issue advisory opinions.<sup>877</sup> Finally, I.C. § 36-4-4-5 does not apply to the Tax Court, because the Tax Court is not a court of general jurisdiction and the case does not involve an issue of whether or not the executive or legislative branch should have exercised a particular power.<sup>878</sup> In contrast, the statute "appears to relate to a court of general jurisdiction's authority to assign responsibility for an act to the appropriate

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868. *Id.*

869. *Id.*

870. *Id.* & n.2.

871. *Id.* at 394.

872. *Id.* at 394-95.

873. *Id.* at 396.

874. *Id.* at 394 (citing *State Bd. of Tax Comm'rs v. Montgomery*, 730 N.E.2d 680, 686 (Ind. 2000)).

875. *Id.*

876. *Id.* at 395.

877. *Id.*

878. *Id.* at 396.

executive or legislative body.”<sup>879</sup> The case was, therefore, dismissed for lack of subject matter jurisdiction.<sup>880</sup> Moreover, because the Tax Court lacked subject matter jurisdiction over the claim, the Tax Court did not have the authority to grant the requested injunction.<sup>881</sup>

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879. *Id.* (citing IND. CODE ANN. § 36-4-4-5 (West 2007)).

880. *Id.*

881. *Id.* at 396 n.6.