SECTION I-010 - THE DEATH TAXES OF THE STATE OF INDIANA

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The Death Taxes Of The State Of Indiana

The Indiana Inheritance Tax

I. Definitions.

A. The following statutory definitions are applicable to the Indiana inheritance tax.

1. The term "resident decedent" refers to an individual who is domiciled in the State of Indiana at the time of the individual's death. See I.C. 6-4.1-1-11.

2. The term "nonresident decedent" refers to an individual who is not domiciled in the State of Indiana at the time of the individual's death. See I.C. 6-4.1-1-7.
   a. In order to substantiate the claim of nonresident status, the affiant filing the Indiana inheritance tax return must file, if requested by the Indiana Department of State Revenue, an affidavit of domicile on the form provided by the Indiana Department of State Revenue.
   b. The Indiana Department of State Revenue will make the determination of Indiana residency despite the fact that another state may have previously determined the decedent to be a resident of such other state. See 45 IAC 4.1-1-12.

3. The term "probate court" refers to a court of the State of Indiana which has jurisdiction over probate matters. See I.C. 6-4.1-1-10.

4. The term "appropriate probate court" refers to the probate court which has jurisdiction over the determination of the Indiana inheritance tax which is imposed as a result of a resident decedent's death. See I.C. 6-4.1-1-2 and 45 IAC 4.1-1-2.
   a. If two or more courts in a county have probate jurisdiction, then the first court acquiring jurisdiction has exclusive jurisdiction over the Indiana inheritance tax determination. See I.C. 6-4.1-12-1 and 45 IAC 4.1-1-2.
   b. According to the Indiana inheritance tax statutory provisions, the probate court which has jurisdiction over the determination of the Indiana inheritance tax is determined in accordance with I.C. 29-1-7-1 which provides that the venue for the probate of a last will and testament and for administration of an estate is in one of the following two places.
      (i) In the county in the State of Indiana in which the decedent had the decedent's domicile at the time of the decedent's death.
      (ii) Or, if the decedent is not domiciled in the State of Indiana at the time of the decedent's death, then in any county in the State of Indiana in which the decedent left any property at the time of the decedent's death or in the county in the State of Indiana into which any property, belonging to the decedent's estate, may come after the decedent's death.

5. The term "person" includes a sole proprietorship, partnership, association, corporation, fiduciary, individual, and the Indiana Department of State Revenue. See I.C. 6-4.1-1-8.

6. The term "personal representative" refers to the person (or persons) who is appointed to administer a decedent's estate by a court which has jurisdiction over the decedent's estate. See I.C. 6-4.1-1-9.

7. The term "Internal Revenue Code" or the reference to "I.R.C." refers to the Internal Revenue Code of 1986.

8. The term "taxable transfer" refers to a property interest transfer which is described in clauses (1) and (2) of I.C. 6-4.1-2-1 and which is not exempt from the Indiana inheritance tax under sections I.C. 6-4.1-3-1 through I.C. 6-4.1-3-7. See I.C. 6-4.1-1-14.

9. The term "tangible personal property" refers to corporeal personal property, such as goods, wares, and merchandise. See I.C. 6-4.1-1-13. Tangible personal property which has legal situs in the State of Indiana is subject to the Indiana inheritance tax regardless of where the property is physically located on the day of the decedent's death. See 45 IAC 4.1-2-4.
10. The term "intangible personal property" refers to incorporeal property, such as money, deposits, credits, shares of stock, bonds, notes, other evidences of indebtedness, and other evidences of property interests. See I.C. 6-4.1-1-5. Thus, the unpaid portion of the purchase price of real property sold under a conditional sales contract is treated as intangible personal property for Indiana inheritance tax purposes. All interests in oil and gas leases on lands and all interests created thereby or arising therefrom, are treated as intangible personal property interests for Indiana inheritance tax purposes. See 45 IAC 4.1-1-11(d). An interest in a true partnership, regardless of the nature of the partnership's property, is treated as intangible personal property for Indiana inheritance tax purposes. See 45 IAC 4.1-1-11(e). A beneficiary's equitable interest in trust property is normally treated as intangible personal property for Indiana inheritance tax purposes. However, if, under the terms of the trust instrument, the trustee is required or can be required at some time to distribute real property from the trust estate to the beneficiary, then the beneficiary's equitable interest is treated as real property for Indiana inheritance tax purposes. See 45 IAC 4.1-1-11(g).

11. The term "intestate succession" refers to a property interest transfer which is effected by the Indiana statute of descent and distribution or by operation of law as the result of the death of an individual who fails to make a complete disposition of the property under a last will and testament. See I.C. 6-4.1-1-6.

12. The term "federal death tax credit" refers to the maximum federal estate tax credit which is provided, with respect to estate, inheritance, legacy, or succession taxes, under I.R.C. section 2011(b) for residents of the United States of America or I.R.C. section 2102(b) for nonresidents (not citizens) of the United States of America. See I.C. 6-4.1-1-4 and 45 IAC 4.1-1-9.

II. Inclusions in gross inheritance

A. In general, the Indiana statutes provide that an inheritance tax, which is referred to as the "Indiana inheritance tax", is imposed at the time of a decedent's death on certain property interest transfers made by the decedent.

1. In general, the transfer of a property interest is subject to the Indiana inheritance tax if the property is described in I.C. 6-4.1-2-2 and if the property is transferred by a resident decedent or I.C. 6-4.1-2-3 if the property is transferred by a nonresident decedent.

2. However, the transfer of a property interest is also subject to the Indiana inheritance tax if the transfer is described in I.C. 6-4.1-2-4 and neither the transfer nor the property is exempt from Indiana inheritance tax under I.C. 6-4.1-3.

3. For purposes of I.C. 6-4.1-2, a transfer described in I.C. 6-4.1-2-4 is a transfer made by the deceased transferor regardless when the transferee acquires the property interest. See I.C. 6-4.1-2-1.

B. The transfer of a property interest is subject to the Indiana inheritance tax if the property transferred is described as a taxable transfer under the Indiana inheritance tax law, and if neither the transfer nor the property is specifically exempted from the Indiana inheritance tax under the Indiana statutes.

1. Specifically, the Indiana inheritance tax applies to a property interest transfer which is made by a resident decedent if the interest transferred is in real property which is located in the State of Indiana, or is in tangible personal property which does not have an actual situs outside the State of Indiana, or is in intangible personal property regardless where the intangible personal property is located. See I.C. 6-4.1-2-2.

   a. To be includible in the Indiana inheritance tax, real property must be located in Indiana, regardless of whether or not the real property is held in trust or the trustee is required to distribute the property in-kind. See I.C. 6-4.1-2-2(b)(1).

   2. Further, the Indiana inheritance tax applies to a property interest transfer which is made by a nonresident decedent if the interest which is transferred is in real property which is located in the State of Indiana or is in tangible personal property which has an actual situs in the

3. Technically, the Indiana inheritance tax is not imposed on the transferor's transfer of the property, but instead, on the transferee's right to receive an interest in the property. See Indiana Department of State Revenue v. Estate of Cohen, 436 N.E.2d 832 (Ind. Ct. App. 1982). Also, see In Re Grotrian's Estate, 405 N.E.2d 69 (Ind. Ct. App. 1980).
   a. Although the Constitution of the State of Indiana contains no provision pertaining to death taxes, the progressive Indiana inheritance tax rate provision has been held to be constitutional. Further, the provisions which discriminate between relatives and strangers (for example, the provisions which provide different exemptions for different relationships) have been held to be constitutional. See Crittenberger v. State Savings & Trust Co., 189 Ind. 411, 127 N.E. 552 (1920).

C. The Indiana inheritance tax applies to a property interest transfer which is made by a resident decedent if the interest transferred is real property which is located in the State of Indiana or is tangible personal property which does not have an actual situs outside the State of Indiana or is intangible personal property regardless of the situs or location of the intangible personal property. See I.C. 6-4.1-2-2.
   1. Example 1. The transfer of an interest in corporate stock by a resident decedent is subject to the Indiana inheritance tax regardless of: the location of the resident decedent's stock certificate; the domicile of the corporation which has issued the stock; and, the fact that another state imposes a death tax with regard to the death transfer of the stock. See 1913-1914 Op. Att'y. Gen. 72, 72-73.
   2. The Indiana inheritance tax applies to a property interest transfer which is made by a nonresident decedent if the interest is in real property which is located in the State of Indiana or in tangible personal property which has an actual situs in the State of Indiana. See I.C. 6-4.1-2-3.
   3. However, the Indiana inheritance tax is not imposed on the transfer of intangible personal property by a nonresident decedent. See I.C. 6-4.1-2-3.

D. According to I.C. 6-4.1-2-4, the Indiana inheritance tax applies to the following types of transfers of property interests.
   1. Transfers which are made under a deceased transferor's last will and testament or under the laws of intestate succession, as a result of the transferor's death.
   2. Transfers which are made in contemplation of the transferor's death.
   3. Transfers which are made in such a manner that the transfers are intended to take effect in possession or enjoyment at or after the transferor's death.
   4. Transfers which are made in payment of a claim against the transferor's estate if
      a. The claim results from a contract or antenuptial agreement which was made by the transferor, and
      b. If the payment of the amount claimed is due at or after the transferor's death under the terms of the transferor's last will and testament or under such contract or such antenuptial agreement.
   5. Certain transfers which are made through joint ownership of property with rights of survivorship. See I.C. 6-4.1-2-5.
   6. Certain transfers which are made by a deed of trust. See I.C. 6-4.1-2-6.
   7. Certain other transfers which are made to an executor or trustee in lieu of a fee. See I.C. 6-4.1-2-7.
   8. And, if at the time of death, a surviving spouse has been entitled to income from a property interest which was the subject of a previous transfer, which previous transfer was exempt from the Indiana inheritance tax under I.C. 6-4.1-3-7(b)-(c), then the value of the property interest at the time of the death of the surviving spouse is subject to the Indiana inheritance tax as if the transfer were a transfer of property which was owned by such surviving spouse. The value of a property interest which is subject to the Indiana inheritance tax under this
provision includes the value of each gift of any part of the property interest which is made by such surviving spouse in contemplation of death.

a. Note that this provision is probably not applicable if an estate had property in trust not otherwise subject to Indiana inheritance tax in the estate of a predeceased spouse but exempt under IRC sections 2056(b)(5)-(7), and either the surviving spouse moved to Indiana or the trust acquired Indiana property during the lifetime of the surviving spouse.

E. I.C. 6-4.1-2-4 further provides that if a transfer which is described in any of paragraphs 1 through 4, is made for valuable consideration, then the value of the property so transferred equals the remainder of: the total value of the property transferred, minus the equivalent in money value of the consideration received by the transferor.

1. And, for the purpose of this computation, the term "consideration" does not include love or affection.

F. As I.C. 6-4.1-2-4(a)(1) states, unless specifically exempted by an Indiana statute, transfers by devise are subject to the Indiana inheritance tax.

1. All devises are subject to the Indiana inheritance tax, unless specifically exempted therefrom, including devises in payment of a claim which would have been allowable against the estate of the decedent.

2. The Indiana inheritance tax must be assessed precisely as the property passed under the terms of the last will and testament, and in no other way. See 45 IAC 4.1-2-2(a).

a. Example 2. A taxable transfer even includes a devise which is made in payment of a claim of the transferee, which claim would otherwise be allowable against the estate of the decedent. See In Re Cohen’s Estate, 270 N.Y. 383, 1 N.E.2d 474 (1936).

b. A testamentary transfer to two or more specifically named transferees (such as children and their spouses) or to the survivor or survivors thereof is to be divided into equal shares for each named individual who survives the decedent, and taxed, under the Indiana inheritance tax law, according to the particular individual’s relationship to the decedent. See 45 IAC 4.1-2-5(b).

3. If property is transferred by a last will and testament, but is not specifically devised, the Indiana inheritance tax is imposed as if the property were transferred proportionately to all general devisees under the last will and testament, including the residuary clause. See I.C. 6-4.1-5-17.

G. Also, as stated in I.C. 6-4.1-2-4(a)(1), transfers of property by intestate succession are subject to the Indiana inheritance tax.

1. The term “intestate succession” refers to a property interest transfer which is effected by the Indiana statute of descent and distribution or by operation of law as the result of the death of an individual who fails to make a complete disposition of the property by the decedent’s last will and testament. See I.C. 6-4.1-1-6.

a. The Indiana statute which governs the distribution of transfers which are made by intestate succession is I.C. 29-1-2-1.

b. The Indiana inheritance tax also applies to property transfers which pass partially by a decedent's last will and testament and partially by intestate succession. See In re Estate of Richard, 419 N.E.2d 1012 (Ind. Ct. App. 1981) (transfer denied September 1, 1981).

H. The Indiana inheritance tax may be imposed on certain inter vivos transfers, but the Indiana inheritance tax is not subject to collection until the transferor's death. See In re Estate of Grotrian, 405 N.E.2d 69 (Ind. Ct. App. 1980) (transfer denied March 24, 1981).

1. The tax is imposed on the basis of the transferee at the time of the transfer, not the recipient or holder of the property at the time of the transferee’s death. Id.

2. That is, the Indiana inheritance tax is applicable to transfers which are made in contemplation
of the transferor's death and to transfers which are made in such a manner that the transfers
are intended to take effect in possession or enjoyment at or after the transferor's death. See
I.C. 6-4.1-2-4(a)(2)-(3).
3. Each transfer made by a resident decedent, or by a non-resident decedent of property
subject to the jurisdiction of the State of Indiana, is taxable if the transfer is made in
contemplation of death of the transferor.
4. A transfer is presumed to have been made in contemplation of the transferor's death if the
transfer is made within one year before the transferor's date of death.
   a. However, the presumption is rebuttable. See I.C. 6-4.1-2-4(b).
   b. That is, the Indiana inheritance tax law places the burden of proof on the decedent's
transferee to prove that the transfer was not in contemplation of death if the transfer
was made within one year of the decedent's death. See I.C. 6-4.1-2-4(a)(2). Also, see State v. Bower,
   c. If a transfer is made on a date which is more than one year prior to the transferor's
date of death, then the burden of proof is on the State of Indiana to prove that the
transfer was made in contemplation of death by the transferor.
   d. Transfers which are, in fact, sales or exchanges are not subject to the Indiana
inheritance tax. That is, the Indiana inheritance tax does not apply if the
consideration given in the transaction is equal in money or money's worth to the
value of the property so transferred.
5. A guideline to the meaning of the phrase "in contemplation of death" is that the phrase is not
so broad as to apply to transfers which are made with the general expectation of death which
is maintained by everyone and the phrase is not so narrow as to apply only to gifts causa
mortis.
   a. Whether a transferor makes a transfer, by gift, in contemplation of death depends
on the transferor's motive or motives for making the gift. See Conway's Estate v. State,
72 Ind. App. 303, 120 N.E. 717 (1918). Also, see Dept. of Revenue v. Estate of Flanders,
   b. And, in general, a transferor is not considered to have made a gift in contemplation
of death unless the transferor's principal reason or motive for making the gift is a
"death motive".
   c. However, it is not necessary, in order to have a gift in contemplation of death, that
the transferor believe that the transferor's death is imminent.
   d. If a transferor makes a gift of property for the principal purpose of avoiding the
Indiana inheritance tax, then the gift is made in contemplation of death. See 45 IAC
4.1-2-6(b).
6. In general, in order to determine whether a transfer is made in contemplation of death, the
following factors should be taken into consideration.
   a. The stated motive of the transferor for making the transfer;
   b. The mental and physical condition of the transferor;
   c. The age of the transferor;
   d. The length of time between the date of the transfer and the date of decedent's
death;
   e. The existence or non-existence of a pattern of making such transfers over an
extended period of time;
   f. The relative proportion of the transferor's estate transferred; and,
   g. and, whether the transfers were made to the natural objects of the transferor's
App. 1980). Also, see 45 IAC 4.1-2-6(e).
7. As a general rule, the value of property transferred in contemplation of death, is determined
as of the date of the transferor's death.

8. A gift, in the form of an advancement, without any other relevant facts, is not a transfer in contemplation of death.
   a. Thus, an advancement is treated as is any other inter vivos gift unless the transfer is made by the transferor due to a "death motive". See In re Fallon's Estate, 144 La. 299, 80 So. 544 (1919).

9. As with all other transfers, the value (for Indiana inheritance tax purposes) of an interest in property which is transferred in contemplation of death is the fair market value of the transferred interest in the property as of the date of the transferor's death.

I. A transfer in which the decedent reserves a life estate is a gift which is intended to take effect at or after death and, as a consequence, is subject to the Indiana inheritance tax. See Indiana Dept. of Revenue v. Mertz, 119 Ind. App. 601, 88 N.E.2d 917 (1949).
   1. The following examples are illustrations of transfers intended to take effect in possession or enjoyment at or after the death of the transferor, and taxable as such.
      a. A gift or grant of any personal property or real property, whereby the owner reserves any income from, interest in, or possession of such property for the owner's lifetime or for a period which does not end before the owner's death is taxable. Because the Indiana inheritance tax is based upon the benefit received by the transferee, the tax attaches when the transferee comes into possession or enjoyment. Under these circumstances, the full benefit is not received until the death of the donor or grantor.
      b. John purchases real estate from Paul and requests a deed to John for life with remainder to Peter. This is the same as a reserved life estate and is taxable to Peter at John’s death.
      c. When the transferee of a transfer of property, made without full consideration, in which the grantor retains a life estate or some other interest, dies before the grantor-life tenant, the transfer is taxable to whomever has title to such property at the date of death of the original grantor.
      d. A transfer to a trustee, whereby the income is to be accumulated during the life of the donor, and upon the donor's death to be paid to named beneficiaries along with the current income for such beneficiaries' natural lives and then the corpus is to pass to other beneficiaries, is taxable to the respective beneficiaries.
      e. Whenever real property which is held as tenants by the entireties is transferred, subject to joint and successive life estate in the grantors, without valuable and sufficient consideration in money or money's worth, such transfer is taxed, with the Indiana inheritance tax, in the estate of the last grantor to die.
      f. An annuity or other payment not described in I.R.C. section 2039 is taxable, for Indiana inheritance tax purposes, to the respective beneficiaries. However, an annuity or other payment described in I.R.C. section 2039 is taxable, for Indiana inheritance tax purposes, to the same extent that such annuity or other payment is taxable for federal estate tax purposes to the respective beneficiaries. See 45 IAC 4.1-3-4.
   2. If trust property consists of real property and the transferor retains any interest which would enable the transferor, either working alone or with others, to regain title to the real property, then, in so far as the Indiana inheritance tax is concerned, the transferor's interest in such trust property is in real property. See 45 IAC 4.1-2-10(a).
      1. All transfers by deed of trust are taxable to the beneficiaries of the trust, and not to the trustee, on the total value received by each beneficiary, and the Indiana inheritance tax rate is determined according to the relationship which each beneficiary has with the decedent. See 45 IAC 4.1-2-10(e).
      2. If the transferor puts real property into an irrevocable trust during the decedent’s lifetime,
the transferor retains no interest in the trust, and the transfer was not made in contemplation of death, then the property is not held by the transferor for purposes of the Indiana inheritance tax. See I.C. 6-4.1-2-2(b)(2).

K. The Indiana inheritance tax applies to the exercise of the right of survivorship upon the death of one joint tenant of property held or deposited in the joint names of two or more persons with rights of survivorship.

1. The Indiana inheritance tax is imposed as though the property had belonged wholly to the deceased joint owner and had passed by a last will and testament or intestate succession.

2. However, if the surviving joint owner can prove that all or any of the property was contributed by such surviving joint owner, the portion for which contribution is shown is deducted from the taxable amount.

3. When a surviving co-owner of jointly owned personal property or real property claims to have made a contribution toward the purchase of such property, such surviving co-owner must furnish the Indiana Department of State Revenue with proof of all facts relating to the amount alleged to have been contributed by the surviving co-owner.
   a. For purposes of contribution, affidavits and self-serving declarations or other statements of interested parties will be accorded only the weight to which such declarations or other statements are entitled under the rules of evidence in force in the courts of the State of Indiana.
   b. However, contribution to a joint bank account may be proven indirectly by federal forms for previous years, which forms list the social security number of the surviving joint owner thereon, for example, federal income tax returns of the survivor showing that the survivor had reported all income earned, thereby representing that such income belonged to the survivor.

4. A joint survivorship bank account is treated, for Indiana inheritance tax purposes, as having passed by a last will and testament rather than directly to the surviving joint tenant when the surviving joint tenant swears to the fact that the joint account was established for convenience only and provides evidence to that effect and the money in the account has been paid to the beneficiaries. See 45 IAC 4.1-2-9(c).

5. All jointly owned bonds issued by any federal, state, or municipal government unit are subject to the Indiana inheritance tax in the same manner are any other jointly owned personal property, except such bonds as are exempted from taxation by statute. See 45 IAC 4.1-2-9(d).

6. If there is not sufficient evidence that two joint tenants die otherwise than simultaneously, the property so held by such joint tenants is taxed, for Indiana inheritance tax purposes, fifty percent as if one of the joint tenants had survived and fifty percent as if the other joint tenant had survived.
   a. If there is more than two joint tenants and all of them have so died, then the property thus distributed is taxed, for Indiana inheritance tax purposes, in the proportion that one bears to the whole number of joint tenants.

7. Unless a deed recites otherwise, real property passing to joint tenants with rights of survivorship is taxed, for Indiana inheritance tax purposes, proportionately to each party named in the deed according to that party’s relationship to the decedent.
   a. A deed to a married couple is taxed fifty percent to each spouse.

8. Whenever real property which is held by the entireties is transferred without valuable and sufficient consideration in money or other sufficient consideration within one year prior to the death of the first grantor to die, such transfer is deemed to be made in contemplation of death and, unless shown to the contrary, it is be taxed in the estate of the first such grantor to die, except that the proportion of the original consideration given for such real property which is proved to have been contributed by the surviving tenant-transferor is excluded from Indiana inheritance taxation. See 45 IAC 4.1-2-6(f).
Further, if real property which is held as tenants by the entireties is transferred, subject to joint and successive life estates in the transferor-spouses without valuable and sufficient consideration, then such a transfer is subject to the Indiana inheritance tax in the estate of the last grantor-spouse to die. See Dept. of State Revenue v. Union Bank, 177 Ind. App. 632, 380 N.E.2d 1279 (1978). Also, see 45 I.A.C. 4-2-7(c).

a. Example 3. If a husband and wife hold real property as tenants by the entireties, and such spouses deed the real property to their child, reserving a joint life estate for possession and enjoyment, then the full value of the transferred property is includible in estate of the last of the transferor-spouses to die, for Indiana inheritance tax purposes.

b. This is because each spouse is seized of the whole and this interest is not enlarged by the death of the first spouse to die.

c. Thus, in this example, no interest passes to the child at the death of the first spouse to die because the ownership interest is vested entirely in the surviving spouse. The statutory phrase "at or after transferor's death" applies to the cessation of both spouses' ownership rights in a tenancy by entirety. See State Dept. of Revenue v. Union Bank, 177 Ind. App. 632, 380 N.E.2d 1279 (1978).

d. Further, the erroneous inclusion of fifty percent of the value of real property (which was transferred from a tenancy by the entireties in the estate of the first spouse to die) does not stop the application of 45 I.A.C. 4.1-2-7. That is, the entire value is includible in the estate of the last spouse to die, for Indiana inheritance tax purposes, regardless of the fact that a prior Indiana inheritance tax was assessed. See Ind. Dept. of Revenue, Inheritance Tax Div. v. Estate of Smith, 460 N.E.2d 980 (Ind. Ct. App. 1983). However, see Indiana Supreme Court decision regarding "equitable recoupment", in Indiana Dept. of State Revenue v. Smith, 473 N.E.2d 611 (Ind. 1985).

10. Under prior law, if a surviving joint owner could prove that all or any part of the property originally belonged to the survivor, and never belonged to the decedent, that part was excludable from the total value of the property in computing the Indiana inheritance tax. See State Dept. of Revenue v. Merriman, Unpublished Opinion No. 3-377 A79 (Ind. App. 1978).

a. Under current law, a surviving joint owner need only prove contribution to the joint property in order to exclude a percentage of the property's value from the Indiana inheritance tax and need not prove that the property did not belong to the decedent. See State Dept. of Revenue, Inheritance Tax Division v. George, 273 Ind. 26, 401 N.E.2d. 680 (1980).

b. However, the surviving joint owner has the burden of proving the amount of the surviving joint owner's contribution. See 45 I.A.C. 4.1-2-9.

c. Further, whenever real property owned by a decedent is conveyed in contemplation of death without valuable and sufficient consideration or devised to a husband and wife as tenants by the entireties, fifty percent of the value of the real property is assigned to each spouse and the Indiana inheritance tax personal exemption and rate of tax are determined by the blood relationship that each transferee bears to the transferor.

d. A very important Indiana case, held that an income tax refund check which was made payable by the federal government to a husband and wife jointly belongs (by operation of the law of the State of Indiana) to the surviving spouse at the death of the first spouse to die. See Rubeck v. American Fletcher National Bank, 489 N.E.2d 985 (Ind. Ct. App. 1986).

(i) That is, the court in the Rubeck case held that such a check is property which is within the scope of I.C. 32-4-1.5-15, which statutory provision provides that a printed instrument which evidences an interest in any
intangible personal property (other than an account) which is in the names of both the husband and wife is, upon the death of either of such husband and wife, is to become the sole property of the survivor, unless a clear and contrary intention is expressed in a written instrument.

L. A transfer which is made in payment of a claim against a resident decedent's estate is subject to the Indiana inheritance tax if the transfer results from a contract or antenuptial agreement which is made by the transferor and the payment is due at or after the transferor's death under the terms of the transferor's last will and testament or a contract. See I.C. 6-4.1-2-4(a)(4).
1. This includes an agreement entered into by the decedent with the decedent's spouse to provide for the spouse's children from a prior marriage upon the decedent's death.

M. Transfers of property to executors or lawyers or trustees in lieu of a fee are subject to the Indiana inheritance tax in some situations.
1. That is, the Indiana inheritance tax applies to the transfer of any portion of the value of the property transferred which exceeds the amount of the fee which would have been due if the transfer had not been made. See I.C. 6-4.1-2-7.
2. The value of the property transferred is determined as of the appraisal date. See I.C. 6-4.1-5-1.5.

N. The proceeds of a life insurance policy which are payable in such a manner as to subject the claims against the insured resident decedent's estate and to distribution through the estate are subject to the Indiana inheritance tax. See I.C. 6-4.1-3-6.
1. The term "proceeds" includes the face amount of the life insurance policy and the accrued policy dividends. See In re Estate of Cassner, 163 Ind. App. 588, 325 N.E.2d 487 (1975).
2. Life insurance policies which name a specific beneficiary (other than the insured's estate) are payable to a specific beneficiary, other than to the resident decedent's estate, so long as the named beneficiary survives the decedent. Therefore, no Indiana inheritance tax may be assessed with regard to the transfer of such life insurance proceeds. See In re Estate of Osland, 164 Ind. App. 282, 328 N.E.2d 448 (1975), in which the court held that life insurance proceeds are subject to the Indiana inheritance tax only if such proceeds become subject to claims against the estate and to distribution as a part of the probate estate.

O. The obligation, at a resident decedent's death, to make future annuity payments which are to be made under an annuity agreement in which the resident decedent had an interest during the resident decedent's life is a taxable transfer for Indiana inheritance tax purposes to the same extent that such obligation to make such annuity payments is taxable under the federal estate tax law. See I.C. 6-4.1-3-6.5 and I.R.C. section 2039.
1. Thus, the death transfer of an annuity, pension, profit-sharing plan, or other retirement fund is taxable under the Indiana inheritance tax. See I.C. 6-4.1-3-6.5.
2. However, if an employee has no interest in an annuity during the employee's life, which annuity is payable at the employee's death to the employee's spouse under terms of an employment agreement, then there is not a transfer from the employee-decedent and the annuity is not subject to the Indiana inheritance tax. See Matter of Estate of Bannon, 171 Ind. App. 610, 358 N.E.2d 215 (1976).
   a. Example 4. Beverly, an employee of X Corporation, dies and Beverly's heirs are awarded a death benefit by X Corporation. The payment of the benefit to Beverly's heirs at Beverly's death is not subject to the Indiana inheritance tax if Beverly did not possess an ownership interest in the death benefit at Beverly's death.
   b. Referring to example 4, during Beverly's employment, Beverly is awarded a pension which is payable to Beverly for 20 years, commencing with Beverly's retirement, and then to Beverly's heirs if Beverly dies within the 20 years. If Beverly dies ten years after retiring, and the retirement benefit is paid to Beverly's heirs, then the retirement benefit transfer is subject to the Indiana inheritance tax, because Beverly held an interest in the benefit at the time of Beverly's death.
P. Death benefits are subject to the Indiana inheritance tax as transfers which are made in such a manner that the transfers are intended to take effect in possession or enjoyment at or after the transferor's death. See I.C. 6-4.1-2-4(a)(3).
1. It is the State of Indiana's position that a death benefit which is payable as deferred payments under a retirement agreement, upon the death of a participating employee, passes to the beneficiary thereof as a transfer which takes effect at death, and may, therefore, be subject to the Indiana inheritance tax.
2. The Indiana Department of State Revenue deems that, by controlling and designating, directly or indirectly, prior to death, the manner in which and to whom death benefits are to be distributed after death, an employee makes a taxable transfer of such funds to the recipient thereof.
3. However, the lump sum death benefits under the Railroad Retirement Act and the Social Security Act are not subject to the Indiana inheritance tax when payable to eligible beneficiaries other than decedent's estate. See 45 IAC 4-3-3(d).
4. No corporation, institution, association, or other person may transfer, deliver, or pay employee death benefits, to any personal representative, trustee, or person beneficially interested therein, whether in a lump sum or annuity installments, without a consent to make the transfer, which consent is made by the Indiana Department of State Revenue or the county assessor, unless the beneficiary is the resident decedent's surviving spouse. See I.C. 6-4.1-8-4.

Q. Transfers by deed of trust whereby the transferor has reserved powers are subject to the Indiana inheritance tax.
1. That is, under I.C. 6-4.1-2-6 and 45 IAC 4.1-2-10(a)(2), if a transferor transfers property by a deed of trust, or the transferor reserves to the transferor any interest or provides the transferor and others with powers of revocation, alteration, or amendment, which if exercised would cause the property to revert to the transferor, then the Indiana inheritance tax is imposed at the transferor's death.
2. Such a transfer is taxable if the transferor reserved to the transferor any income or the right to any income, retained control of the use of the property, retained the right to direct the payment of income to persons other than the transferor or the original beneficiaries, reserved the right to change the beneficiaries, or retained the possibility of reverter, no matter how remote.
3. The value of the property so transferred is the value of the property which is subject to the powers and with respect to which the powers remain unexercised at the time of the transferor's death.
4. If the transferor retains any interest in property which is transferred by trust, then the entire value of the property is subject to the Indiana inheritance tax. See State Dept. of Rev. v. Daley, 434 N.E.2d 149 (Ind. Ct. App. 1982), which involves the possibility of a reverter.
   a. In the Daley case, the court held that the entire value of the property was subject to the Indiana inheritance tax, and not just the value of the reverter interest. Thus, if John transfers property to a trust for the benefit of Sue and if John is the trustee of the trust who has discretionary powers to distribute the trust estate to Sue, then, upon John's death, the transfer of the trust estate is subject to the Indiana inheritance tax.

R. If a decedent holds, at the time of the decedent's death, either an inter vivos general power of appointment or a testamentary general power of appointment, which general power of appointment was granted to the decedent by another person, and if the general power of appointment is not exercised by the decedent either in contemplation of death or at the death of the decedent by the decedent's last will and testament, then the value of the property to which the general power of appointment relates is not taxable in the decedent's estate for Indiana inheritance tax purposes. See Ind. Dept. of State Revenue v. Estate of Morris, 486 N.E.2d 1100 (Ind. Ct. App. 1985)(transfer
1. This is true even if the decedent-holder-of-the-power has an inter vivos income interest in the trust. See State Dept. of Rev. v. Monroe Co. State Bank, 181 Ind. App. 176, 390 N.E.2d 1104 (1979).

2. However, if the decedent's last will and testament creates a trust which grants a beneficiary of the trust the inter vivos power to invade the trust's principal for the benefit of the beneficiary and the beneficiary has the power to remove the trustee, then, because the decedent has granted the beneficiary such control (which is almost equivalent to a transfer in fee to the beneficiary) over the trust funds, the funds which are transferable to the trust from the decedent are taxable to the beneficiary, at the time of the decedent's death, under the Indiana inheritance tax law. See Matter of Estate of Newell, 408 N.E.2d 552 (Ind. Ct. App. 1980).

3. Further, if a decedent's last will and testament creates a trust which grants a beneficiary of the trust the inter vivos power to invade the trust's principal and also grants the beneficiary a testamentary general power of appointment, then the funds which are transferable to the trust from the decedent are taxable to the beneficiary of the trust, at the time of the decedent's death, under the Indiana inheritance tax law. See Ind. Dept. of State Revenue v. Estate of Hungate, 439 N.E.2d 1148 (Ind. Ct. App. 1982).

   a. The court in the Hungate case also held that if a decedent holds, at the decedent's death, an inter vivos power to invade a trust's principal and such decedent has, at the time of the decedent's death, a testamentary general power of appointment, and the decedent exercises the testamentary general power in favor of the decedent's estate, then the title to the trust funds vests in the decedent's estate and the trust estate is taxable to the beneficiaries of such decedent's estate under the Indiana inheritance tax law.

4. However, these decisions may still leave open the answers to at least the following three questions.

   a. First, if the decedent has no inter vivos power to invade the trust's principal but the decedent does have a testamentary general power of appointment over the trust estate which general power the decedent exercises, at the decedent's death, in favor of the decedent's estate, then are the beneficiaries of the decedent's estate taxable on the trust funds which are so appointed to the decedent's estate?

      (i) The answer appears to be yes.

   b. Second, if the decedent has no inter vivos power to invade the trust's principal, but the decedent does have a testamentary general power of appointment over the trust estate which general power of appointment is not exercised by the decedent at the decedent's death, then are the beneficiaries of the decedent's estate taxable on the trust funds?

      (i) The answer appears to be no.

   c. Third, if the decedent has (or does not have) an inter vivos power to invade the trust's principal and the decedent has a testamentary general power of appointment over the trust estate which the decedent exercises, at the decedent's death, in favor of a third party, then are the beneficiaries (in favor of whom, the decedent exercised the decedent's general power of appointment) taxable on the trust funds which are so appointed to such beneficiaries?

      (i) The answer appears to be no.

   d. The problem has been solved in part by I.C. 6-4.1-3-7, which provision exempts from the Indiana inheritance tax, each property interest which is transferred by a decedent to the decedent's surviving spouse.

      (i) The phrase "property interest which a decedent transfers to his surviving spouse" includes a property interest from which the surviving spouse is
entitled to income or annuity payments for life and which otherwise qualifies
as an estate tax marital deduction from the gross estate of the decedent
under I.R.C. section 2056(b)(5) or I.R.C. section 2056(b)(6).

(ii) The personal representative of a decedent's estate or the trustee or
transferee of property transferred by the decedent may, for the purpose of
the exemption, elect to treat property passing from the decedent, in which
the surviving spouse has a qualifying income interest for life, as a property
interest which a decedent transfers to the decedent's surviving spouse.

(iii) The phrase "qualifying income interest for life" means a "qualifying income
interest for life" as the latter term is defined in I.R.C. section 2056(b)(7).

(iv) The election must be made in writing and must be attached to the Indiana
inheritance tax return. Once the election is made, the election is
irrevocable. See Indiana Dept. of State Revenue v. Estate of Phelps, 697
N.E.2d 506 (Ind. Tax 1998). See also 45 I.A.C. 4.1-3-5(b). Failure to
make such an election results in the actuarial value of the spouse's income
interest is exempt, with the remainder being taxable to the remaindermen
under the terms of the will, trust or other document creating such life estate
in the surviving spouse. See Estate of Hibbs v. Indiana Department of
Revenue, 636 N.E.2d 204 (Ind. Tax 1994).

e. If, at the time of the death of a surviving spouse, the surviving spouse has
been entitled to income from a property interest, which was the subject of a previous
transfer which was exempt from the Indiana inheritance tax under I.C. 6-4.1-3-7(b)-
c, then the value of the property interest at the time of death of the surviving
spouse is subject to the Indiana inheritance tax as if the transfer of the property
were a transfer of property owned by the surviving spouse.

(i) The value of a property interest which is subject to the Indiana inheritance
tax includes the value of each gift of any part of the property interest which
is made by the surviving spouse in contemplation of death. See I.C. 6-4.1-
2-4(d).

S. The transfer of a decedent's interest in a contract, which contract is entered into prior to the
decedent's death and which contract sells the decedent's interest in real property, is treated as the
transfer of an interest in intangible personal property (under the doctrine of equitable conversion).

1. However, if the contract for the sale of the decedent's real property interest is entered into
by the decedent's guardian prior to the decedent's death, then the balance owed to the
decedent under the contract, at the decedent's death, is treated, for Indiana inheritance tax
purposes, as an interest in real property and not as an interest in intangible property. See In
re Estate of Richard, 419 N.E.2d 1012 (Ind. Ct. App. 1981)(transfer denied September 1,
1981). See also 45 I.A.C. 4.1-1-11(c).

T. A private agreement among a decedent's devisees (for example, among members of the decedent's
family) which agreement provides for the distribution of an estate in a manner which is other than
that which is provided by the decedent's last will and testament, does not affect the assessment of
the Indiana inheritance tax. See I.C. 29-1-9-1. Also, see Indiana Dept. of Revenue v. Binhack, 426

1. That is, the Indiana inheritance tax vests in the State of Indiana at the date of death of the
decedent and is not affected by changes of title, transfers, or agreements among the
individuals who succeed to the estate or among those individuals and third parties. See 45
IAC 4.1-2-1.

2. Such agreements usually result from the threat of a last will and testament contest.

3. Any money or property given or paid by devisees to other parties, by way of compromise or
otherwise, in a last will and testament contest or in a threatened last will and testament
contest or as not provided in the last will and testament, are not assigned to the recipients thereof for Indiana inheritance tax purposes nor is any such money or property an expense of administration or an allowable deduction of the estate in computing the Indiana inheritance tax liability. See Indiana Dept. of State Revenue v. Kitchin, 119 Ind. App. 422, 86 N.E.2d 96 (1949).

a. When the validity of the last will and testament is upheld or if such last will and testament is not set aside, the property interests of the decedent pass by virtue of the last will and testament to the devisees (in such last will and testament) and are taxable to such devisees.

b. If a last will and testament is held to be invalid, and as a result, the property of the decedent passes by a prior last will and testament or by the Indiana laws of intestate succession, then the Indiana inheritance tax is imposed by utilizing the transfers of interests under such prior valid last will and testament or under the laws of intestate succession, as the case may be. See 45 IAC 4.1-2-2.

c. Example 5. Peter and Sue agree to divide John's estate equally among themselves and to not follow the dispository provisions of John's last will and testament, which last will and testament leaves 60% of John's estate to Peter and 40% of John's estate to Sue. Peter and Sue are subject to the Indiana inheritance tax as if no such agreement had been made among them.

U. If a last will and testament states that all inheritance taxes are to be paid from the decedent's residuary estate, then in terms of actual distribution of a solvent estate, this type of last will and testament provision enables each specific devisee to receive his or her share of the estate's property free of Indiana inheritance tax liability.

1. However, for the purpose of computing the amount of Indiana inheritance tax which is owed to the State of Indiana, specific devisees and residuary devisees are subject to the Indiana inheritance tax, on their separate shares, without regard to how the Indiana inheritance taxes will actually be paid.

2. And, in the absence of sufficient residuary property to pay the full amount of the Indiana inheritance tax due, the transferees are liable to pay the Indiana inheritance tax deficit.

V. However, a potential transferee may disclaim the receipt of an interest in property and thereby eliminate the potential transferee's liability for the Indiana inheritance tax.

1. A disclaimer is a refusal to accept property initio. See Bel v. United States, 452 F.2d 683, (5th Cir. 1971).

2. The law concerning disclaimers is founded on the property law concept that a transfer of an interest in property is not complete until the interest is accepted by the recipient and that no person can be forced to accept property against the potential transferee's will. See Jewett v. Commissioner, 455 U.S. 305, 102 S.Ct. 1082, 71 L.Ed.2d 170 (1982). Also, see Probate Code Study Commission Comments accompanying I.C. 32-3-2-2 (West Supp. 2000).

3. In general, the following five requirements must be met in order to have an effective disclaimer for Indiana inheritance tax purposes.

a. First, the disclaimant must execute a written instrument which states that the disclaimant is disclaiming an interest in property and which written instrument describes the property and describes the interest in the property to be disclaimed. The written instrument must be signed by the disclaimant or by the disclaimant's personal representative, guardian, or conservator. See I.C. 32-3-2-2.

b. Second, the disclaimer must be filed in a court in which proceedings concerning the decedent's estate are pending, or, if no proceedings are pending, then in a court in which proceedings could be pending if such proceedings were commenced. See I.C. 32-3-2-3(a)(1).

c. Third, the disclaimer must be delivered in person or mailed by first class United States mail to the personal representative of the decedent or to the holder of the
legal title to the property to which the interest relates. See I.C. 32-3-2-3(a)(2).

(i) The phrase "holder of the legal title to the property to which the interest relates", which is used in the Indiana inheritance tax law, is identical to the phrase in I.R.C. section 2518 and the Indiana statutory provision is intended to have the same meaning as the phrase has under such federal tax law. See Probate Code Study Commission Comments accompanying I.C. 32-3-2-3 (West Supp. 2000).

d. Fourth, a disclaimer of an interest in real property is effective only if the written evidence of the disclaimer is recorded in each county in which the real property is located. See I.C. 32-3-2-3(b).

e. Fifth, a disclaimer of a present interest must be properly executed not later than nine months after the death of the decedent. See I.C. 32-3-2-3(c). A future interest must be disclaimed not later than nine months after the later of: the event by which the final taker of the interest is ascertained; or, the day on which the disclaimant attains the age of 21 years. See I.C. 32-3-2-3(c)(1)-(2).

4. A disclaimer relates back (for all purposes which relate to the interest disclaimed) to the time which is immediately prior to the death of the decedent. See I.C. 32-3-2-3(d).

a. If no provision is made for another devolution, then an interest which is disclaimed devolves as if the disclaimant had died immediately before the creation of the interest.

b. An interest disclaimed under Sec. 3 devolves as if the disclaimant had predeceased the decedent unless a contrary provision governs, in which event the contrary provision controls.

(i) Such a contrary provision governing the devolution of a disclaimed interest is often found in the instrument under which the interest devolves.

(ii) However, it can also be found in other circumstances including a will, an enforceable contractual obligation or a final court judgment. See Probate Code Study Commission Comments accompanying I.C. 32-3-2-3 (West Supp. 2000). Also, see Matter of Wisely's Estate, 402 N.E.2d 14 (Ind. Ct. App. 1980) and 45 IAC 4.1-2-3.

5. One aspect of I.C. 32-3-2-3 that is often overlooked is that frequently more than one disclaimer may be required. For example, if the person having previously disclaimed an interest dies prior to the decedent, then disclaimers may be required from the disclaimant's surviving spouse and children.

6. Special statutory provisions exist for disclaiming interests in life insurance policies and annuity policies, joint tenancies, future interests, and non-testamentary transfers. See generally, I.C. 32-3-2-4 through I.C. 32-3-2-14.

a. For a disclaimers of an interest which has devolved under a life insurance policy or annuity to be effective, the disclaiming document must be delivered in person or mailed by first class United States mail to the issuer of the life insurance policy or annuity not later than nine months after the death of the insured or annuitant. See I.C. 32-3-2-4(a).

b. If no provision has been made for another devolution, an interest disclaimed under this insurance-annuity statutory section devolves as if the disclaimant had predeceased the insured or annuitant.

c. A disclaimer under this insurance-annuity statutory section relates back for all purposes (which relate to the interest disclaimed) to the time immediately before the death of the insured or annuitant. See I.C. 32-3-2-4(b).

(i) The Probate Code Study Commission Comments provide that the phrase "for all purposes" in I.C. 32-3-2-4(b) (as well as in I.C. 32-3-2-3, I.C. 32-3-2-5, and I.C. 32-3-2-6) "means that creditors of the disclaimant or his estate
and taxing authorities have no claim against or right in the disclaimed property, nor does anyone claiming through the disclaimant or his estate.” See Probate Code Study Commission Comments accompanying I.C. 32-3-2-4 (West Supp. 2000).

d. I.C. 32-3-2-5 provides for the disclaiming of joint tenancy interests.

(i) Under the Indiana statute, the term "joint tenancy" means any interest with the right of survivorship and includes a: tenancy by the entireties; multiparty account (as defined in I.C. 32-4-1.5-1(5)), with the right of survivorship; and, a joint interest of spouses under I.C. 32-4-1.5-15. See I.C. 32-3-2-5(a).

(ii) A disclaimer of an interest in a joint tenancy created by any means (including an intestacy, a testamentary instrument, or the exercise of a power of appointment by testamentary instrument) is effective: only to the extent that the disclaimant did not furnish the consideration for the interest; and, only if the requirements of I.C. 32-3-2-7 are accomplished not later than nine months after the event by which the final taker of the entire interest is ascertained.

(iii) In the absence of clear and convincing evidence to the contrary, it is presumed that the disclaimant did not furnish any consideration for an interest. See 45 I.A.C. 4.1-2-9.

(iv) I.C. 32-3-2-7 provides that, in order for a disclaimer of an interest to be effective under I.C. 32-3-2-5 or I.C. 32-3-2-6, the disclaiming document must be delivered in person, or mailed by first class United States mail, either to the transferor of the interest, or to the transferor's personal representative, or to the holder of the legal title to the property to which the interest relates.

(v) Further, a disclaimer of an interest in real property is effective only if the disclaiming document is recorded in each county in which the real property is located. See I.C. 32-3-2-7(b).

(vi) If no provision has been made for another devolution, an interest disclaimed under this joint tenancy statutory section devolves as if the disclaimant had died immediately before the creation of the interest. A disclaimer under this joint tenancy statutory section relates back, for all purposes which relate to the interest disclaimed, to the time immediately before the creation of the interest. See I.C. 32-3-2-5(c).

(a) The date of the creation of the interest is the date on which the person creating the interest no longer has any control over its devolution. See I.C. 32-3-2-1.

(b) For instance, an interest in a joint bank account (where one co-owner can control the account without the consent of the other) would be created for this purpose not when the account is opened but when the ultimate taker of the account is finally ascertained, usually on the death of the last to die of all owners of the account other than the disclaimant. However, in the case of the usual joint tenancy, the date of creation of the interest would be the effective date of the instrument creating the tenancy. See Probate Code Study Commission Comments accompanying I.C. 32-3-2-5 (West Supp. 2000).

7. There is one area in which the Indiana disclaimer law differs from that of the federal law.

a. Under I.R.C. section 2518, the nine-month period in which a disclaimant has to disclaim a joint tenancy interest runs, according to the Internal Revenue Service,
from the date of the transfer creating the joint tenancy. See U.S. Treas. Reg. §25.2518-2(c)(4)(i).

b. This differs from I.C. 32-3-2-5(b), which states that the nine-month period begins to run after the event by which the final taker of the entire interest is ascertained.

(i) Under the Indiana provision, the event by which the final taker of the entire interest can be ascertained usually will be the death of one joint tenant.

(ii) Therefore, the surviving joint tenant has nine months from the decedent joint tenant's death in order to make an effective disclaimer under the Indiana disclaimer law.

(iii) But under the Internal Revenue Service's view, the transfer creating the interest will usually take place years before the death of one of the joint tenants.

(iv) This makes the use of disclaimers as a post-death estate planning tool with joint tenancies ineffective unless the tenancy is created within nine months of the decedent joint tenant's death.

c. Recently, a federal court held that a disclaimer of a survivorship interest within nine months of the decedent joint tenant's death was valid even though the transfer creating the interest had occurred 25 years previously. See Kennedy v. Commissioner, 804 F.2d 1332 (7th Cir. 1986).

(i) The court based its holding on the fact that the decedent had a right to partition under Illinois state law, and therefore, the transfer of the survivorship interest took place at the death of the first joint tenant to die.

(ii) Thus, the disclaimer by the other joint tenant was timely. This is in direct conflict with U.S. Treas. Reg. §25.2518-2(c)(4)(i), which is referred to above.

(iii) The court in the Kennedy case held that the U.S. Treas. Regulation involved therein was inconsistent with the other U.S. Treas. Regulations which were applicable to I.R.C. section 2518 disclaimers. See Kennedy v. Commissioner, 804 F.2d 1332, 1335-36 (7th Cir. 1986).

(iv) The Indiana disclaimer law and the Indiana law concerning an individual's right to partition concerning joint tenancy property are similar to the laws of the State of Illinois. Therefore, it would appear that the Kennedy holding would apply to Indiana disclaimers of joint tenancy survivorship interests.

(v) However, the Kennedy decision has been challenged by the Internal Revenue Service outside of the Seventh Circuit, and the same issue has recently been before the Eighth Circuit on an appeal in which the United States Tax Court held in favor of the applicable U.S. Treas. Regulation.

(vi) The United States Court of Appeals, Eighth Circuit, in McDonald v. Commissioner 853 F.2d 1494 (8th Cir. 1988) held that the relevant transfer, for the purpose of the disclaimer provisions, occurs at the death of the joint tenant, and not at the creation of the joint interest making the disclaimer a qualified disclaimer under the provisions of I.R.C. section 2518. Therefore, whether a valid disclaimer under Indiana law of a survivorship interest in joint tenancy property will also qualify under the federal disclaimer law is not clear. For a further discussion of this issue and the above cases, see Disclaimer of Joint Tenancy Interest - When Does the Nine Month Time Limit in I.R.C. Section 2518 Begin to Run?, 22 Ind. Law Rev. (1988).

8. I.C. 32-3-2-6 covers disclaimers of interests which have devolved by means other than those referred to in I.C. 32-3-2-3, I.C. 32-2-2-4, and I.C. 32-3-2-5, including an interest which has devolved under a nontestamentary instrument or the exercise of a power of appointment by a nontestamentary instrument.
a. To be effective, the requirements of I.C. 32-3-2-7 (discussed above) must be accomplished not later than nine months after the creation of the interest, if a present interest is disclaimed, or, if a future interest is disclaimed, then not later than nine months after the later of: the event by which the final taker of the interest is ascertained; or, the day on which the disclaimant attains the age of 21. See I.C. 32-3-2-6(a).

9. If no provision has been made for another devolution, then a future interest which would have taken effect in possession or enjoyment if the future interest had not been disclaimed, takes effect for all purposes as if the disclaimant had died before the event by which the final taker of the interest is ascertained. See I.C. 32-3-2-8.
   a. A future interest is accelerated if the preceding interest is disclaimed, in the absence of a contrary governing provision.
   b. For instance, absent a contrary governing provision, if one leaves his estate in trust to pay the income to his son for life, with a gift over to his son’s children who survive his son, and the son disclaims with children then living, the interest in the children living at the time accelerates, the trust terminates and the children living at the time of the disclaimer receive absolute title together with present possession and enjoyment, even though the son may subsequently have other children (subsequently born) living at his death or one or more of the children who are living at the time of the disclaimer may die during their father’s lifetime. See Probate Code Study Commission Comments accompanying I.C. 32-3-2-8 (West Supp. 2000).

10. When a disclaimer becomes effective, the disclaimer constitutes an unqualified irrevocable refusal to accept the disclaimed interest and is binding upon the disclaimant and all persons claiming through or under the disclaimant. See I.C. 32-3-2-9.
   a. In other words, once the steps required by I.C. 32-3-2 for an effective disclaimer have been completed, the disclaimer cannot be revoked or modified in any manner.
   b. One entitled to disclaim may waive such individual’s right of disclaimer in whole or in part.
   c. The waiver must be in writing and is irrevocable when signed by the person with the right to disclaim or by such individual’s personal representative, guardian, or conservator.
   d. A waiver has only a prospective effect; that is, a waiver has no effect on a previously effective disclaimer. See I.C. 32-3-2-9(b).

11. If a disclaimant accepts an interest or benefit in the property to be disclaimed, then the right to disclaim is barred to the extent that such an interest or benefit is accepted. See I.C. 32-3-2-11.
   a. An acceptance of a portion of an interest or a portion of the benefits from an interest, therefore, will not bar a disclaimant from disclaiming the remaining portion of the property interest.
   b. Acceptance is a bar only when it precedes the disclaimer. Receipt of a disclaimed interest or its benefits by the disclaimant as a result of the direction of someone other than the disclaimant does not affect the validity of the disclaimer. See Probate Code Study Commission Comments accompanying I.C. 32-3-2-11 (West Supp. 2000).
   c. The right to disclaim an interest can also be barred after any of the following events.
      (i) An assignment, conveyance, encumbrance, pledge or transfer of the interest.
      (ii) A contract for an assignment, conveyance, encumbrance, pledge, or transfer of the interest.
      (iii) A sale or other disposition of the interest under judicial process. See I.C. 32-3-2-10.
12. The right to disclaim exists regardless of a spendthrift provision or similar restriction on the interest of the person disclaiming. See I.C. 32-3-2-12.
   a. Also, I.C. 32-3-2 does not abridge the right of any person to assign, convey, release, disclaim, or renounce an interest arising under I.C. 32-3-2 or any other law. See I.C. 32-3-2-13.
   b. Indiana statutes not affected by I.C. 32-3-2 include I.C. 29-1-3-1 seq. relating to the right of a spouse to elect to take against a last will and testament, and I.C. 32-3-1-1, relating to renunciation, revocation, and exercise of powers of appointment. See Probate Code Study Commission Comments accompanying I.C. 32-3-2-13 (West Supp. 2000).
   (i) The official comments published by the Probate Code Study Commission may be consulted by the courts in order to determine the underlying reasons, purposes, and policies of I.C. 32-3-2 and may be used as a guide in such section's construction and application. See I.C. 32-3-2-14.

13. Because no basis exists for assessing the Indiana inheritance tax to a disclaiming person, the ultimate transfer of the property interest disclaimed is taxed, for Indiana inheritance tax purposes, according to the property interest's ultimate distribution. Thus, if the alternative transfer is a taxable transfer, then the Indiana inheritance tax rate which is to be used is the Indiana inheritance tax rate which is applicable to the alternative recipient (and not the Indiana inheritance tax rate which would have been applicable to the disclaimant). See Matter of Wisely's Estate, 402 N.E.2d 14 (Ind. Ct. App. 1980).
   a. However, the failure to effect a valid disclaimer results in the Indiana inheritance tax being assessed against the transferee as if the transferee had never attempted a disclaimer.

III. Exemptions from gross inheritance
   A. The Indiana inheritance tax statutory law specifically exempts certain transfers from being taxable transfers under the Indiana inheritance tax law.
   B. Each transfer which is described in I.R.C. section 2055(a) is exempt from the Indiana inheritance tax. See I.C. 6-4.1-3-1.
      1. Thus, in general, transfers of property for "public", "charitable", or "religious" uses (as such terms are described in I.R.C. section 2055) are exempt from the Indiana inheritance tax.
      2. This exemption includes transfers to the United States, any State, any political subdivision or the District of Columbia exclusively for public purposes.
      3. This exemption generally includes transfers to organizations operating solely for religious, charitable, scientific, literary and educational purposes.
         a. Though it is not often the case, an organization which limits the organization's benefits to one group of people might still be a charitable organization. See In re Albersmeier's Estate, 425 N.E.2d 245 (Ind. Ct. App. 1981).
      4. Organizations which are founded in order to encourage the arts may qualify as charitable organizations for Indiana inheritance tax purposes, as may organizations which are founded in order to prevent cruelty to children or animals.
      5. In general, transfers to a trust, which are to be used exclusively for charitable purposes, are exempt under I.C. 6-4.1-3-1.
         a. However, transfers to a "charitable" trust are not automatically "charitable transfers". See Department of State Revenue v. Estate of Wallace, 408 N.E.2d 150 (Ind. Ct. App. 1980).
         b. Example 6. Property which is transferred to a trust company for charitable purposes is not exempt if the trust company is purely a financial and fiduciary organization and not a charitable organization which is recognized by the Indiana statutes. See In re Arp's Estate, 83 Ind. App. 371, 147 N.E. 297 (1925).
c. On the other hand, property which is transferred to a trust company under such conditions that the property is to be invested for a specifically named charitable organization is exempt, if the trust is created by the decedent's last will and testament for the express purpose of administering distribution of the charitable funds. See Crittenden v. State Savings & Trust Co., 189 Ind. 411, 127 N.E. 552 (1920).

6. Transfers to a "cemetery association" are exempt from the Indiana inheritance tax if the property is to be used for "cemetery purposes". See I.C. 6-4.1-3-1.5.
   a. The terms "cemetery" and "cemetery purposes" have the same meanings as those terms have under I.C. 23-14-1-1.
   b. However, transfers in trust for the directed purpose of decorating specified burial plots are not exempt from the Indiana inheritance tax. See State v. Estate of Wallace, 408 N.E.2d 150 (Ind. Ct. App. 1980).
   c. Devises to or for the general use of a municipally owned cemetery, a church-owned cemetery, or a not-for-profit cemetery corporation or association are exempt from the Indiana inheritance tax, provided that no officer, member, shareholder, or employee is to receive any pecuniary profits from the operation thereof, other than reasonable compensation for services rendered and provided that such devises are for the general use of the cemetery and not limited for the use and maintenance of certain specifically defined lots. See 45 IAC 4.1-3-2.

C. The proceeds of a life insurance policy which insured the life of a decedent are exempt from the Indiana inheritance tax (which may be imposed as a result of the insured-decedent's death) unless the proceeds become subject to distribution as part of the insured-decedent's estate and subject to claims against the insured-decedent's estate. See I.C. 6-4.1-3-6.

1. That is, such life insurance proceeds are exempt from the Indiana inheritance tax unless the life insurance proceeds become subject to distribution as part of the insured-decedent's estate and subject to the claims against the insured-decedent's estate. See In re Estate of Cassner, 163 Ind. App. 588, 325 N.E.2d 487 (1975). Also, see In re Osland's Estate, 164 Ind. App. 282, 328 N.E.2d 448 (1975).

2. Example 7. Beverly purchases a life insurance policy, with a face amount of $100,000, on Beverly's life, naming Rebecca as the beneficiary. Upon Beverly's death, the $100,000 of life insurance proceeds is not subject to the claims of Beverly's estate, and therefore, is not subject to the Indiana inheritance tax.

D. An annuity, or other payment which is described in I.R.C. section 2039(a), is exempt from the Indiana inheritance tax to the same extent that the annuity or other payment is excludable from the decedent's federal gross estate under I.R.C. section 2039. See I.C. 6-4.1-3-6.5.

1. For instance, one case exempted, from the Indiana inheritance tax, annuity payments which were to be paid (to a third-party beneficiary) under a deferred compensation arrangement with the decedent, because the decedent did not have an ownership interest at the decedent's death. See Matter of Bannon's Estate, 171 Ind. App. 610, 358 N.E.2d 215 (1976).

2. However, I.R.C. section 2039 has been extensively amended, beginning in the year 1976, and as a consequence, the legal history of I.R.C. section 2039 must be carefully examined in attempting to determine whether a particular annuity payment is taxable under the Indiana inheritance tax law.

3. However, as a general rule, I.R.C. section 2039 provides that if a decedent has an interest in an annuity at the decedent's death and if such annuity payments terminate at the decedent's death, then no amount is includible in the decedent's gross estate for federal estate tax purposes.
   a. On the other hand, if the annuity is payable, at the decedent's death, either in lump sum or as an annuity, to another person, then the value of the annuity, at the decedent's death, is includible in the decedent's gross estate for federal estate tax
purposes with very few exceptions.

E. The Indiana inheritance tax law provides that each property interest which a decedent transfers to the decedent's surviving spouse is exempt from the Indiana inheritance tax which is imposed as a result of the decedent's death. See I.C. 6-4.1-3-7(a).

1. Thus, the transfer, at death, by one spouse to the other spouse, of personal property which is held by the spouses with rights of survivorship or of real property which is held by the spouses as tenants by the entireties or as joint tenants with rights of survivorship is exempt from the Indiana inheritance tax.

2. Further, any property which is devised by one spouse to the other spouse is exempt from the Indiana inheritance tax. See I.C. 6-4.1-3-7(a).

3. Further, for the purpose of this exemption, the term "property interest which a decedent transfers to the decedent's surviving spouse" includes a property interest from which the surviving spouse is entitled for life to income or payments and which otherwise qualifies for the federal estate tax marital deduction under I.R.C. section 2056(b)(5) or under I.R.C. section 2056(b)(6). See I.C. 6-4.1-3-7(b).

4. The personal representative of the decedent's estate or the trustee or transferee of property which is transferred by the decedent may, for the purpose of this exemption, elect to treat property passing from the decedent in which the surviving spouse has a qualifying income interest for life as a property interest which a decedent transfers to the decedent's surviving spouse. See I.C. 6-4.1-3-7(c).
   a. For purposes of this exemption, the term "qualifying income interest for life" means a qualifying income interest for life as defined in I.R.C. section 2056(b)(7). See I.C. 6-4.1-3-7(c).
   b. In order for the personal representative or the trustee or the transferee to make the election, the personal representative or the trustee or the transferee must make the election in writing and attach the election to the decedent's Indiana inheritance tax return, if an Indiana inheritance tax return is required to be filed. The election, once made, is irrevocable. See I.C. 6-4.1-3-7(d). See also Ind Dept. of State Revenue v. Estate of Carolyn Hunt Phelps, 697 N.E.2d 506 (Ind. Tax 1998).
   c. Further, the Indiana Department of State Revenue has determined that regardless whether the personal representative of a decedent's estate makes the election under I.R.C. section 2056(b)(7) to have a property interest of the decedent qualify for the federal estate tax marital deduction, the personal representative may elect or not elect, in the personal representative's discretion, to qualify the interest for the Indiana inheritance tax marital exemption.

5. Further, a surviving spouse's interest in the unpaid balance of a sales contract for the sale of real property (which had been held by the spouses as tenants by the entireties) is exempt from the Indiana inheritance tax. That is, the character of the property sold carries over to the sales contract. See State v. Estate of Weinstein, 141 Ind. App. 399, 229 N.E.2d 741 (1967).

6. The Indiana statutory survivor's allowance, which is provided under I.C. 29-1-4-1, is not an exemption under the Indiana inheritance law, but instead, the statutory survivor's allowance is treated as an Indiana inheritance tax deduction. Under the federal estate tax law, the Indiana statutory survivor's allowance qualifies for the federal estate tax marital deduction.

F. In addition, the Indiana inheritance tax law provides certain specific dollar-amount exemptions, which exemptions are dependent on the relationship between the decedent-transferor and the transferee at the date of the decedent's death.

1. For the purpose of imposing the Indiana inheritance tax, there are three classes of transferees, each of which is defined under I.C. 6-4.1-1-3. A transferee is a person who succeeds to property rights of a deceased individual because of the death of such deceased individual. See 45 IAC 4.1-1-14(a). The particular class within which a transferee falls is
determined by the relationship of the transferee to the transferor upon the date of the transferor's death. See 45 IAC 4.1-1-14(b).

a. A "Class A transferee" refers to a transferee who is a lineal ancestor or lineal descendant of the transferor.

b. A "Class B transferee" refers to a transferee who is a brother or sister of the transferor, or a descendant of a brother or sister of the transferor, or a spouse, widow, or widower of a child of the transferor.

c. A "Class C transferee" refers to a transferee (except a surviving spouse) who is neither a Class A nor a Class B transferee. See I.C. 6-4.1-1-3. Aunts and uncles are Class C transferees. See 45 IAC 4.1-1-5(a).

2. Specifically, the Indiana inheritance tax law provides that the first $100,000 of property interests, which are otherwise taxable transfers and which a decedent transfers to a Class A beneficiary for decedents dying after July 1, 1997. See I.C. 6-4.1-3-10. See also Indiana Department of Revenue v. Estate of Riggs, 735 N.E.2d 340 (Ind. Tax 2000).

a. Individuals included in this category include lineal ancestors or lineal descendants (grandparents of the decedent and grandchildren of the decedent). See I.C. 6-4.1-1-3(a).

b. For the purposes of these exemptions, a legally adopted child is treated as if the legally adopted child were the natural child of the child's adopting parent. See I.C. 6-4.1-1-3(d).

c. If the child is not either a natural child or an adopted child of the decedent, but a relationship of loco parentis has existed for at least ten years, which relationship began before the child's 15th birthday, then the child is considered to be the natural child of the loco parentis decedent under the Indiana inheritance tax. See I.C. 6-4.1-1-3(d).

d. It is the position of Indiana Department of State Revenue that the estate must show convincing evidence to prove that the beneficiary qualifies by meeting the two requirements of I.C. 6-4.1-1-3(d).

e. The following list represents the type of information which is needed in order for the Indiana Department of State Revenue to make a determination as to whether or not the relationship of loco parentis existed between the decedent and the transferee making such claim.

(i) The date and age at which the child was first taken into the household and a mutually acknowledged child-parent relationship assumed. A copy of the child's birth certificate and the alleged parent's marriage certificate, if applicable, should be attached to the return to substantiate this.

(ii) A complete statement of circumstances whereby the child was taken into the household.

(iii) The period of time for which the relationship continued with the dates given.

(iv) The child's parentage indicating whether such parents are alive and their address, or if deceased, the dates of death and their legal domicile at death.

(v) The source and cost of the child's support.

(vi) The person(s) who were established as parents of the child when the child registered for school. The person(s) who signed the child's report cards and similar documents. The person(s) who claimed the child on his (their) tax returns and the relationship claimed on the returns of such individual(s). Copies of the above documents, if available, should be attached to the return to substantiate this.

(vii) The affidavit of two or three disinterested persons having knowledge of the relationship setting forth the facts as known to such persons.

(viii) Any other details which will support the claim that a mutually acknowledged
relationship of parent and child existed.

(ix) This information should be attached to the Indiana inheritance tax return. See 45 IAC 4.1-1-10.

(x) The favorable tax treatment which is afforded a child of an loco parentis parent is limited to that child and any descendants. Thus, collateral heirs are not be granted a more favorable Indiana inheritance tax treatment due to the relationship. See 45 IAC 4.1-1-10(d).

3. Brothers, sisters, descendants of brothers and sisters, and sons-in-law and daughters-in-law of the decedent are Class B transferees. See I.C. 6-4.1-1-3(b). Brothers and sisters of the half blood and their descendants are in the same class as those of the whole blood. See 45 IAC 4.1-1-4(b).
   a. Class B transferees are entitled to an exemption of $500. See I.C. 6-4.1-3-11.
   c. Also, see 45 IAC 4.1-1-5(c) which provides that a widow or widower of a child of the decedent remains a Class B transferee even though he or she has remarried before the date of the decedent's death.
   d. Example 8. Paul marries Sue (who is John's daughter). Paul thereupon becomes the son-in-law of John. Also, Sue later dies, and Paul marries Beverly and, thereafter, John dies and that in John's last will and testament, John devises some land to Paul. Paul remains a Class B transferee as to John.
      (i) However, if the marriage of Sue (John's daughter) to Paul had ended due to a divorce, then the status of Paul as a Class B transferee would also have ended.
   e. If property is transferred by a decedent to a child and that child's spouse, the interest is taxed one-half to the child as a Class A beneficiary and one-half to the child's spouse as a Class B beneficiary. The tax cannot all be charged to the child as a Class A beneficiary when the property is left to the child and the child's spouse.

4. Further, the first $100 of property interests, which are otherwise taxable transfers and which a decedent transfers to a Class C transferee, is exempt from the Indiana inheritance tax. See I.C. 6-4.1-3-12.
   a. Persons who are included in this category are, for example, cousins, aunts, and uncles of the decedent. See I.C. 6-4.1-1-3(c).
   b. A transferee receiving property from a transferor (which transferor was a natural parent of the transferee) is taxed, under the Indiana inheritance tax law, as a Class C beneficiary, if such transferee was previously legally adopted or has previously qualified as a Class A beneficiary on the basis of a loco parentis relationship with a decedent. See 45 IAC 4.1-1-5(b). But See Indiana Department of State Revenue v. National Bank of Logansport, 402 N.E.2d 1008 (Ind. Ct. App. 1980).

IV. Deductions from gross inheritance
A. Once the amount of a decedent's gross taxable transfers, for Indiana inheritance tax purposes, is determined for each of the transferees, the personal representative must then determine the amount of claims, expenditures, etc. which may be deducted, for Indiana inheritance tax purposes, against such gross taxable transfers for each of the transferees. See I.C. 6-4.1-3-13(a).

B. The following items, and no others, may be deducted from the value of property interests transferred by a resident decedent under the last will and testament of the resident decedent or under the laws of intestate succession or under the provisions which govern a trust. See I.C. 6-4.1-3-13(b).
   1. The resident decedent's debts which are lawful claims against the resident decedent's
2. The taxes on the resident decedent's real property, which is located in the State of Indiana and which real property is subject to the Indiana inheritance tax, if the real property taxes are liens at the time of the resident decedent's death.

3. The taxes on the resident decedent's personal property which personal property is located in the State of Indiana and which personal property is subject to the Indiana inheritance tax, if the personal property taxes are a personal obligation of the resident decedent or a lien against the personal property and if the taxes are unpaid at the time of the resident decedent's death.

4. The taxes which are imposed on the resident decedent's income, which income taxes are applicable to a period or periods which are up to the date of the resident decedent's death, if the taxes are unpaid at the time of the resident decedent's death.

5. The inheritance, estate, or transfer taxes, other than federal estate taxes, which are imposed by other jurisdictions with respect to intangible personal property which is subject to the Indiana inheritance tax.

6. The mortgages or special assessments which, at the time of the resident decedent's death, are liens on any of the resident decedent's real properties, which real properties are located in the State of Indiana and which real properties are subject to the Indiana inheritance tax, but such amounts are deductible only from the value of the real property which is encumbered by the mortgage or special assessment.

7. The resident decedent's funeral expenses.

8. An amount, not in excess of $1,000, which is paid for a memorial for the resident decedent.

9. Expenses which are incurred in administering property which is subject to the Indiana inheritance tax, including, but not limited to, reasonable lawyer fees, personal representative fees, and trustee fees.

10. The amount of any allowance which is provided to the resident decedent's children by I.C. 29-1-4-1.

11. The value of any property which is actually received by a resident decedent's surviving spouse in satisfaction of the allowance which is provided by I.C. 29-1-4-1, regardless of whether or not a claim for that allowance is filed under I.C. 29-1-14.

a. The Indiana statutory survivor's allowance, which is provided under I.C. 29-1-4-1, is not an exemption under the Indiana inheritance law, but instead, the statutory survivor's allowance is treated as an Indiana inheritance tax deduction. Under the federal estate tax law, the Indiana statutory survivor's allowance qualifies for the federal estate tax marital deduction.

C. The following items, and no others, may be deducted from the value of property interests which are transferred by a resident decedent but which are not transferred by the resident decedent's last will and testament or under the laws of intestate succession or under the provisions which govern a trust. See I.C. 6-4.1-3-14.

1. The inheritance, estate, or transfer taxes, other than federal estate taxes, which are imposed by other jurisdictions with respect to intangible personal property which is subject to the Indiana inheritance tax.

2. The liens to which such property interests are subject.

3. However, the amount of the resident decedent's debts or funeral expenses which are paid by a surviving joint owner of property (held jointly with rights of survivorship with the resident decedent) may be deducted from the value of the jointly held property only if the assets of the resident decedent's estate are insufficient to pay the debts or funeral expenses of the decedent. See I.C. 6-4.1-3-14; 45 I.A.C. 4.1-3-7 and In re Estate of Arthur Smith, 460 N.E.2d 1263 (Ind. Ct. App. 1984).

D. In addition, any portion of the deduction for the amount of any allowance which is provided to the resident decedent's children by I.C. 29-1-4-1 and which is not needed to reduce to zero the value of
the property which is referred to in I.C. 6-4.1-3-13(b) may be deducted from the value of any other property which is transferred by the resident decedent to the resident decedent's children who are entitled to the allowance provided by I.C. 29-1-4-1.

1. If more than one of the resident decedent's children are entitled to the allowance, this deduction is to be divided equally among all the resident decedent's children who are entitled to the allowance. See I.C. 29-1-4-1 and I.C. 6-4.1-3-14.

E. The following items, and no others, may be deducted from the value of property interests transferred by a nonresident decedent. See I.C.6-4.1-3-15.

1. Taxes, other than federal estate taxes.
2. The expenses which are incurred in administering property which is subject to the Indiana inheritance tax, including, but not limited to, reasonable attorney fees, personal representative fees, and trustee fees.
3. Liens against the property so transferred.
4. Claims against the nonresident decedent's domiciliary estate which are allowed by the court having jurisdiction over that estate and which will not be paid from that estate because the funds of the estate are exhausted.

F. Taxes, other than federal estate taxes, which are imposed by other jurisdictions with respect to intangible personal property which is subject to the Indiana inheritance tax and liens which are attached to such property are deductible, for Indiana inheritance tax purposes, from the value of the property interests which are transferred by a resident decedent, even though such transfers are made other than by the resident decedent's last will and testament or under the laws of intestate succession or under the provisions which govern a trust. See I.C. 6-4.1-3-14.

1. Examples of such types of transfers are gifts in contemplation of death and transfers of property by rights of survivorship.

G. Unpaid personal property taxes on personal property of the decedent, which personal property is located (has a situs) in the State of Indiana, are deductible, for Indiana inheritance tax purposes, if the personal property taxes are personal obligations of the decedent or are liens against the property and if the personal property taxes are unpaid at the decedent's date of death. See I.C. 6-4.1-3-13(b)(3).

H. Indiana income taxes, and other state income taxes, and federal income taxes which have accrued with regard to the income of a resident decedent prior to the resident decedent's death are deductible for Indiana inheritance tax purposes. See I.C. 6-4.1-3-13(b)(4).

1. However, income taxes which accrue with regard to income which accrues during the administration of the resident decedent's estate (that is, on income which accrues after the date of death of the resident decedent) are not deductible, for Indiana inheritance tax purposes, because the right to that income is not subject to the Indiana inheritance tax.

I. Inheritance, estate, or transfer taxes, other than federal estate taxes, which are imposed by other jurisdictions on intangible personal property which is subject to Indiana inheritance tax are deductible. See I.C. 6-4.1-3-13(b)(5).

1. Example 9. John dies while domiciled in the State of Indiana and John devises, by John's last will and testament, 100 shares of WXY stock to John's son, Peter, who resides in the State of Illinois. Any transfer tax which is imposed by the State of Illinois due to the receipt of the stock by Peter is deductible for Indiana inheritance tax purposes.

J. Mortgage debts and special assessments which, at the time of the decedent's death, are liens on real property which is located in the State of Indiana, are deductible only from the value of the real property to which the mortgage debts and special assessments are attached. See I.C. 6-4.1-3-13(b)(6).

1. And, such mortgage debts and special assessments are allowable deductions, for Indiana inheritance tax purposes, only to the extent that such mortgage debts and special assessments do not exceed the total value of such real property.

2. Example 10. Peter dies while domiciled in the State of Indiana and Peter devises, by Peter's
last will and testament, some Indiana real property with a fair market value of $100,000 and with mortgage debts on such real property of $120,000. The mortgage debts are deductible, for Indiana inheritance tax purposes, only up to the amount of the fair market value of the real property, specifically, up to $100,000.

3. However, no mortgage debt, lien, or other unpaid indebtedness may be deducted, for Indiana inheritance tax purposes, if the related property is not includible in the decedent's gross taxable transfers for Indiana inheritance tax purposes.

K. Expenses which are incurred as a result of a resident decedent's last illness are deductible for Indiana inheritance tax purposes.

1. And, any reimbursement, under, for example, an insurance plan, for such expenses is includible in the resident decedent's gross taxable transfers for Indiana inheritance tax purposes. See 45 IAC 4.1-3-7.

2. Such expenses are deductible if such expenses are reasonable and necessary medical expenses of the last illness of the resident decedent, and this deduction includes compensation of persons who attend the resident decedent during the resident decedent's last illness. See I.C. 29-1-14-9(5).

L. The expenses for a resident decedent's funeral are deductible for Indiana inheritance tax purposes. See I.C. 6-4.1-3-13(b)(7).

1. However, with regard to expenditures for a grave headstone or a memorial, a deduction is allowable only for such expenditures which do not exceed $1,000. See I.C. 6-4.1-3-13(b)(8).

2. Further, no expenditures for flowers which are purchased for the funeral are deductible for Indiana inheritance tax purposes nor are expenditures for meals which are furnished to the funeral guests nor are expenditures which are spent in order to enable various individuals to attend the resident decedent's funeral. See 45 IAC 4.1-3-10.

M. Expenses which are incurred in administering property which is subject to the Indiana inheritance tax, including, but not limited, to expenses for reasonable lawyer fees, personal representative fees, and in certain cases, trustee fees, are deductible for Indiana inheritance tax purposes. See I.C. 6-4.1-3-13(b)(9). Also, see In re Estate of Newman, 174 Ind. App. 537, 369 N.E.2d 427 (1977).

1. However, the expenses of administering property which is not taxable under the Indiana inheritance tax law are not deductible for Indiana inheritance tax purposes. For instance, expenses for administering real property which is located outside of the State of Indiana are not deductible, because such real property is not subject to taxation under the Indiana inheritance tax law.

2. These administration expenses are required by the Indiana Department of State Revenue and are required to be itemized on the Indiana inheritance tax return.

N. Expenses which are incurred because of a necessary sale of a decedent's property are deductible for Indiana inheritance tax purposes.

1. A "necessary sale" includes a sale of property for the purpose of satisfying the decedent's debts, taxes, and other charges which are enforceable against the decedent's estate and the sale of property in a case in which the sale was necessary in order to carry out provisions of the decedent's last will and testament or of intestate succession.

2. A case indicated that when real property is sold by one beneficiary in an estate, because retaining the property would be inconvenient, cumbersome, or impractical to the beneficiary, the expenses incurred as a result of such a sale are allowable deductions for Indiana inheritance tax purposes. See Matter of Estate of Cook, 529 N.E.2d 853 (Ind. Ct. App. 1988).

a. The court held that the interest of the estate normally parallels the interest of the beneficiaries and that had the Indiana General Assembly intended these expenses to be nondeductible, the Indiana General Assembly would have specifically said so.

b. Therefore, a deduction is allowed in the sale of real property regardless of the number of beneficiaries, whether or not the decedent's will provided for the sale, and
whether or not the sale of the real property was required so that expenses of the estate could be paid from the proceeds of the sale.

c. These expenses will be challenged by the Indiana Department of Revenue if they are unreasonable.

d. Of course, whether or not such expenses are deductible, for Indiana inheritance tax purposes, with regard to a specific estate, is a factual issue which must be resolved on a case by case basis.

e. Also, the Indiana probate statutes do not necessarily control with regard to an Indiana inheritance tax dispute, except in cases in which the probate statutory provisions have been incorporated either directly or indirectly into the Indiana inheritance tax statutes and the Indiana inheritance tax cannot be determined without reference thereto.

   (i) For instance, I.C. 29-1-15-3 does not control the deductibility of selling expenses for Indiana inheritance tax purposes.

   (ii) However, if that statutory provision did control, then the sale of the asset still would have to be a "necessary" sale in order for the expenses to be deductible for Indiana inheritance tax purposes.

   (iii) If the purpose of a sale is to benefit one or more of the transferees, then the sale is not a "necessary sale".

O. The amount of the "survivor's allowance", which is provided for under I.C. 29-1-4-1, is a deduction for Indiana inheritance tax purposes. See I.C. 6-4.1-3-13(b)(10)-(11).

1. That is, the surviving spouse of a resident decedent is entitled to receive from the resident decedent's estate an allowance of $25,000 in personal property.

2. If there is no surviving spouse, then the resident decedent's children, who are under the age of 18 years at the time of the decedent's death, are entitled to the same allowance, which allowance is to be divided equally among such children.

3. If there is less than $25,000 in personal property in the resident decedent's estate, then the decedent's surviving spouse or the resident decedent's children, who are under the age 18 years at the time of the resident decedent's death, as the case may be, are entitled to any real property to the extent that it is necessary to make up the difference between the value of the personal property and the $25,000.

4. Further, the resident decedent's surviving spouse or the resident decedent's children (under the age of 18 years), as the case may be, is granted by law a lien on the real property in the amount of such difference.

5. The survivor's allowance is not chargeable against the distributive shares of either the decedent's surviving spouse or the children.

6. In addition, any portion of the "survivor's allowance", which would otherwise be deductible under I.C. 6-4.1-3-13(b)(10), but which is not needed in order to reduce to zero the value of the property referred to in I.C. 6-4.1-3-13(b), may be deducted from the value of any other property transferred by a resident decedent to the resident decedent's children who are entitled to the survivor's allowance of $25,000. See I.C. 6-4.1-3-14.

   a. If more than one of the resident decedent's children is entitled to the allowance, then the deduction (which is provided under I.C. 6-4.1-3-13(b)(10)) is to be divided equally among all the resident decedent's children who are entitled to the survivor's allowance. See I.C. 6-4.1-3-14.

P. If a resident decedent's last will and testament directs the resident decedent's executor to pay expenses from the residuary estate and the residuary assets are exhausted by paying such costs, any remaining deductions and costs may then be apportioned among the specific devises.

1. Deductions may not be prorated against the value of all probated interests, without first applying the deductions to the residuary estate. See Matter of the Estate of Pfeiffer, 452 N.E.2d 448 (Ind. Ct. App. 1983).
V. Disallowed deductions

A. Debts upon which the statute of limitations has run at the date of the decedent's death are not deductible, because once the statute of limitations has run, such debts are no longer enforceable. See I.C. 29-1-14-1(b).

1. Even if the personal representative of a decedent's estate chooses to pay such a debt, because the personal representative believes the debt to be "just and correct", such payment is not deductible.

2. Generally, all claims against a decedent's estate are forever barred, unless the claims are filed with the probate court within three months of the first published notice to creditors. See I.C. 29-1-14-1. Also, see In re Estate of Feusner, 411 N.E.2d 166 (Ind. Ct. App. 1980).

   a. A secured claim is not subject to this limitation, and as a consequence, a secured claim continues to exist even though the creditor does not file a claim with the probate court. For instance, real property taxes on Indiana real property of a resident decedent, which taxes are liens at the death of the resident decedent, are deductible from the total value of such property interests transferred by the resident decedent in computing the Indiana inheritance tax. See I.C. 6-4.1-3-13(b)(2) and 45 IAC 4-4-2.

B. Litigation expenses incurred by an heir or beneficiary in challenging a will are not deductible unless the heir or beneficiary is successful in challenging the will.

C. Taxes, mortgage debts, and other liens or unpaid indebtednesses on either real property or tangible personal property and which is held by a decedent and the decedent's spouse as tenants by the entireties (or as joint tenants with rights of survivorship) are not allowable deductions for Indiana inheritance tax purposes, nor is any such tax, mortgage debt, or other lien or unpaid indebtedness on either real property or tangible personal property which is owned by the decedent and which is located outside of the State of Indiana, an allowable deduction.


D. Generally, real property taxes on real property, in which a decedent holds a life estate (which life estate was transferred to the decedent by another person) at the date of the decedent's death, are not deductible for Indiana inheritance tax purposes.

   1. This is because, as previously indicated, the "transfer" of such property is not treated as a taxable transfer by the decedent.

   2. That is, such real property is not considered to pass from the decedent, at the decedent's death, but rather, such interests in such real property are considered to pass to the decedent and to the remainderman from the creator of the life estate and remainder interests pursuant to the instrument which creates the life estate and remainder interests.

   3. However, if the holder of the life estate creates the life estate and the remainder interest, then, at the death of the decedent-creator, the property is considered to be a taxable transfer by the decedent, and, as a consequence, such taxes on such real property, which are liens against such real property at the decedent's death, are deductible for Indiana inheritance tax purposes.

E. Inheritance taxes paid to the State of Indiana are generally not deductible.

   1. However, if, for instance, a brother and sister die closely together, and one sibling dies prior to payment of Indiana inheritance taxes on the other sibling's estate, then the payment of the Indiana inheritance taxes on the inheritance from the first sibling to die is deductible on the second sibling's Indiana inheritance tax return as a pre-existing liability.

VI. Computation of inheritance tax

A. In a nutshell, the Indiana inheritance tax is computed by determining the total amount of a decedent's
gross taxable transfers to a particular transferee or transferees and deducting from the gross taxable transfers the allowable deductions.

1. Thereafter, certain exemptions are allowable to certain transferees in order to determine the amount of the net taxable transfers which the decedent makes to the particular transferee or transferees.

2. Then, an Indiana inheritance tax rate is applied to the net taxable transfer, which Indiana inheritance tax rate is dependent upon the family relationship between the decedent and the transferee at the time of the decedent's death.

3. In general, the resulting amount is the Indiana inheritance tax which is owed by the particular transferee, because there are only two, seldom applicable (at that time), credits which are allowable against the Indiana inheritance tax.

   a. Specifically, a decedent's estate may claim, at any particular time, a credit against the Indiana inheritance tax for any prior payments of the Indiana inheritance tax.

   b. Also, a decedent's estate may claim - - - the amount of Indiana estate tax paid - - - as a credit against the Indiana inheritance tax which is imposed on the decedent's estate, if the Indiana inheritance tax is imposed after the Indiana estate tax is paid and if both taxes are imposed as a result of the same decedent's death. See I.C. 6-4.1-11-5.

B. After the amount of a decedent's net value of taxable transfers is determined, for Indiana inheritance tax purposes, the next step in making the computation of the Indiana inheritance tax is to apply the applicable Indiana inheritance tax rates to the net value of a resident decedent's taxable transfers or to the net value of a nonresident decedent's taxable transfers. The net taxable value of property interests which were transferred by a decedent to a particular transferee equals the remainder of: the total fair market value of the property interests transferred by the decedent to a particular transferee under a taxable transfer or transfers; minus, the total amount of the exemptions and deductions which are provided under I.C. 6-4.1-3-7 through I.C. 6-4.1-3-15 with respect to the property interests so transferred. See I.C. 6-4.1-5-1(a).

C. As stated above, the Indiana inheritance tax law uses the "classes of transferees" concept for the purpose of determining which of the specific dollar-amount exemptions is allowable to particular transferees of the decedent's property and for the purpose of determining which Indiana inheritance tax rate schedule is applicable to such transferees.

D. Under I.C. 6-4.1-5-1(b), the Indiana inheritance tax which is imposed upon a particular decedent's transfer of property interests to a particular Class A transferee is as follows.

<table>
<thead>
<tr>
<th>NET TAXABLE VALUE OF PROPERTY INTERESTS TRANSFERRED</th>
<th>INDIANA INHERITANCE TAX</th>
</tr>
</thead>
<tbody>
<tr>
<td>$25,000 or less ........................................</td>
<td>1% of net taxable value</td>
</tr>
<tr>
<td>Over $25,000 but not over $50,000 .....................</td>
<td>$250, plus 2% of net taxable value over $25,000</td>
</tr>
<tr>
<td>Over $50,000 but not over $200,000 ....................</td>
<td>$750, plus 3% of net taxable value over $50,000</td>
</tr>
<tr>
<td>Over $200,000 but not over $300,000 ...................</td>
<td>$5,250, plus 4% of net taxable value over $200,000</td>
</tr>
<tr>
<td>Over $300,000 but not over $500,000 ...................</td>
<td>$9,250, plus 5% of net taxable value over $300,000</td>
</tr>
<tr>
<td>Over $500,000 but not over $700,000 ...................</td>
<td>$19,250, plus 6% of net taxable value over $500,000</td>
</tr>
<tr>
<td>Over $700,000 but not over $1,000,000 ..................</td>
<td>$31,250 plus 7% of net taxable value over $700,000</td>
</tr>
<tr>
<td>Over $1,000,000 but not over $1,500,000 ...............</td>
<td>$52,250 plus 8% of net taxable value over $1,000,000</td>
</tr>
<tr>
<td>Over $1,500,000 ..........................................</td>
<td>$92,250, plus 10% of net taxable value over $1,500,000</td>
</tr>
</tbody>
</table>

E. Under I.C. 6-4.1-5-1(c), the Indiana inheritance tax which is imposed on a particular decedent's transfer of property interests to a particular Class B transferee is as follows.

<table>
<thead>
<tr>
<th>NET TAXABLE VALUE OF PROPERTY INTERESTS TRANSFERRED</th>
<th>INDIANA INHERITANCE TAX</th>
</tr>
</thead>
<tbody>
<tr>
<td>$100,000 or less ........................................</td>
<td>7% of net taxable value</td>
</tr>
<tr>
<td>Over $100,000 but not over $500,000 ....................</td>
<td>$7,000, plus 10% of net taxable value over $100,000</td>
</tr>
<tr>
<td>Over $500,000 but not over $1,000,000 ..................</td>
<td>$47,000 plus 12% of net taxable value over $500,000</td>
</tr>
<tr>
<td>Over $1,000,000 ...........................................</td>
<td>$107,000, plus 15% of net taxable value over $1,000,000</td>
</tr>
</tbody>
</table>
F. Under I.C. 6-4.1-5-1(d), the Indiana inheritance tax which is imposed on a particular decedent's transfer of property interests to a particular class C transferee is as follows.

<table>
<thead>
<tr>
<th>NET TAXABLE VALUE OF PROPERTY INTERESTS TRANSFERRED</th>
<th>INDIANA INHERITANCE TAX</th>
</tr>
</thead>
<tbody>
<tr>
<td>$100,000 or less</td>
<td>10% of net taxable value</td>
</tr>
<tr>
<td>Over $100,000 but not over $1,000,000</td>
<td>$10,000, plus 15% of net taxable value over $100,000</td>
</tr>
<tr>
<td>Over $1,000,000</td>
<td>$145,000, plus 20% of net taxable value over $1,000,000</td>
</tr>
</tbody>
</table>

VII. Inheritance tax procedure and valuation

A. Except for those property interests specified in I.C. 6-4.1-6-1 and I.C. 6-4.1-5-1.5, the value of any property interest, the transfer of which may be subject to the Indiana inheritance tax, is the fair market value of such property interest as of the date of death of the transferor, regardless of when the transferee acquires the property interest. See 45 IAC 4.1-5-2(a).

1. The term "fair market value", which is generally used for Indiana inheritance tax purposes, is the amount which a willing buyer, who is under no compulsion to buy, would pay to a willing seller, who is under no compulsion to sell - - - both parties having reasonable knowledge of the relevant facts. See Second National Bank of Richmond v. State Dept. of Revenue, Inheritance Tax Division, 174 Ind. App. 168, 366 N.E.2d 694 (1977).

   a. Inherent in this definition is that the parties exchanging property are dealing at arm's length. See 45 IAC 4.1-5-1(b).

2. For purposes of determining the fair market value of each property interest transferred by a decedent, the appraisal date for the property interest is the date which is used in order to value the property interest for federal estate tax purposes.

   a. Therefore, if the personal representative elects to use the date of the decedent's death as the valuation date for federal estate tax purposes, then the personal representative must use the date of the decedent's death as the valuation date for Indiana inheritance tax purposes.

   b. And, if the personal representative elects the alternate valuation date as the valuation date for federal estate tax purposes, then the personal representative must use the alternate valuation date for Indiana inheritance tax purposes.

   c. However, if no federal estate tax return is filed for the decedent's estate, then the appraisal date for each property interest transferred by the decedent, for Indiana inheritance tax purposes, is the date of the decedent's death. See I.C. 6-4.1-5-1.5(a).

B. The finally determined federal estate tax value of a property interest is presumed to be the fair market value of the property interest for Indiana inheritance tax purposes, unless the federal estate tax value is determined under I.R.C. section 2032A, which section concerns the special use valuation of certain real property. See I.C. 6-4.1-5-1.5(b).

1. However, the presumption is rebuttable.

2. As previously stated, a property interest which is valued for federal estate tax purposes under I.R.C. section 2032A is to be valued for Indiana inheritance tax purposes at the property interest's fair market value on the appraisal date which is prescribed by I.C. 6-4.1-5-1.5(a). See I.C. 6-4.1-5-1.5(b).


4. Promissory notes, which are payable to a decedent's estate, are valued according to the solvency of the debtor. If an insolvent debtor is made solvent by a testamentary disposition from the estate, then the full value of the notes is includible in the decedent's gross value of transfers. See Indiana Department of Revenue v. Estate of Cohen, 436 N.E.2d 832 (Ind. Ct. App. 1982).
5. If there is a market for corporate shares or bonds on a stock exchange, in an over-the-counter market, or otherwise, then the mean between the highest and lowest quoted selling prices on the valuation date is the fair market value per share or bond.

a. If there were no sales on the valuation date, but there were sales within a reasonable period before and after the valuation date, then the fair market value is determined by taking a weighted average of the mean between the highest and lowest sales on the nearest date before and the nearest date after the valuation date. Then, the average must be weighted inversely by the respective number of trading days between the selling date and the valuation date.

   (i) Example 11. Sales of shares nearest the valuation date (Friday, September 15) occurred two trading days before (Wednesday, September 13) and three trading days after (Wednesday, September 20) and on these days the mean sale prices per share were $20 and $25, respectively. The fair market value of the share on the valuation date is $22.

   (ii) Example 12. Referring to example 11, the decedent died on Sunday, June 7, and that Saturday and Sunday were not trading days. If sales of shares occurred on Friday, June 5, at a mean sales price of $20 per share and on Monday, June 8, at a mean sale price of $23 per share, then the fair market value of the share on the valuation date, Saturday, June 6, is $21.50. See 45 IAC 4.1-5-3(a).

   (iii) If the provisions of 45 IAC 4.1-5-3(a) are inapplicable because actual sales are not available during a reasonable period before and after the valuation date, then the fair market value may be determined by taking the mean between the bona fide bid and asked prices on the valuation date, or if there were no such bid and asked prices on such date, then by taking a weighted average of the means between the bona fide bid and asked prices on the nearest trading date before and the nearest trading date after the valuation date, if both such nearest dates are within a reasonable period of time. The weighted average is to be determined in the manner described in 45 IAC 4.1-5-3(a).

6. Whenever shares of a corporation (which are not traded on a recognized stock exchange or on an over-the-counter market) or an interest in a partnership or unincorporated business are included in the taxable estate of the decedent, statements of the net earnings or operating results and balance sheets for each of the five full years immediately preceding the valuation date are to be submitted with the Indiana inheritance tax return.

7. There is no fixed rule for determining the value of a partnership interest, unincorporated business, or closely held corporation, but rather, valuation in each case depends upon the particular circumstances or evidence produced.

   a. Any method used must stand the test of reason.

   b. Nor is there any rule requiring that any particular factor be given more weight than any other factor.

   c. However, the earning capacity of a business is very often the most important factor in determining the business' value, and the most recent earnings (those of the last five full years prior to the decedent's death) are more significant than those for the overall history of the business.

   d. The method of using earnings to establish fair market value has proven to be most reliable is the capitalization of earnings method. Therefore, this method is to be used whenever possible.

   (i) This is accomplished by dividing what is considered to be a reasonable average earnings yield for the type of business being valued into the actual earnings of the specific business.
(ii) Example 13. If earnings for a corporation in the last full years before death were two dollars per share, and it is determined that a reasonable yield is eight percent, then, by dividing .08 into two dollars per share, a value of $25.00 per share is determined. The most reliable source from which to determine the average earnings yield of the price-earnings ratio is comparable businesses for which these figures can be established.

(iii) It sometimes is impossible to find a comparable business for this purpose. In such a case, it is important to consider the nature of the business, the risk involved, and the stability or irregularity of earnings. See 45 IAC 4.1-5-4(c).

C. I.R.S. Rev. Rul. 59-60, 1959-1 C.B. 237, provides a comprehensive collection of factors which are to be considered when valuing the shares of a closely-held corporation. A list and discussion of some of the factors, follows.

1. The nature of the business and the history of the enterprise from its inception. The history of a corporate enterprise will show its past stability or instability, its growth or lack of growth, the diversity or lack of diversity of its operations, and other facts needed to form an opinion of the degree of risk involved in the business. For an enterprise which changed its form of organization but carried on the same or closely similar operations of its predecessor, the history of the former enterprise should be considered. The detail to be considered should increase with approach to the required date of appraisal, since recent events are of greatest help in predicting the future; but a study of gross and net income, and of dividends covering a long prior period, is highly desirable. The history to be studied should include, but need not be limited to, the nature of the business, its products or services, its operating and investment assets, capital structure, plant facilities, sales records and management, all of which should be considered as of the date of the appraisal, with due regard for recent significant changes. Events of the past that are unlikely to recur in the future should be discounted, since value has a close relation to future expectancy.

2. The economic outlook in general and the condition and outlook of the specific industry in particular. A sound appraisal of a closely held stock must consider current and prospective economic conditions as of the date of appraisal, both in the national economy and in the industry or industries with which the corporation is allied. It is important to know that the company is more or less successful than its competitors in the same industry, or that it is maintaining a stable position with respect to competitors. Equal or even greater significance may attach to the ability of the industry with which the company is allied to compete with other industries. Prospective competition which has not been a factor in prior years should be given careful attention. For example, high profits due to the novelty of its product and the lack of competition often lead to increasing competition. The public's appraisal of the future prospects of competitive industries or of competitors within an industry may be indicated by price trends in the markets for commodities and for securities. The loss of the manager of a so-called "one-man" business may have a depressing effect upon the value of the stock of such business, particularly if there is a lack of trained personnel capable of succeeding to the management of the enterprise. In valuing the stock of this type of business, therefore, the effect of the loss of the manager on the future expectancy of the business, and the absence of management-succession potentialities are pertinent factors to be taken into consideration. On the other hand, there may be factors which offset, in whole or in part, the loss of the manager's services. For instance, the nature of the business and of its assets may be such that they will not be impaired by the loss of the manager. Furthermore, the loss may be adequately covered by life insurance, or competent management might be employed on the basis of the consideration paid for the former manager's services. These, or other offsetting factors, if found to exist, should be carefully weighed against the loss of the manager's services in valuing the stock of the enterprise.
3. The book value of the stock and the financial condition of the business. Balance sheets should be obtained, preferably in the form of comparative annual statements for two or more years immediately preceding the date of appraisal, together with a balance sheet at the end of the month preceding that date, if corporate accounting will permit. Any balance sheet descriptions that are not self-explanatory, and balance sheet items comprehending diverse assets or liabilities, should be clarified in essential detail by supporting supplemental schedules. These statements usually will disclose to the appraiser (1) liquid position (ratio of current assets to current liabilities); (2) gross and net book value of principal classes of fixed assets; (3) working capital; (4) long-term indebtedness; (5) capital structure; and (6) net worth. Consideration also should be given to any assets not essential to the operation of the business, such as investments in securities, real estate, etc. In general, such nonoperating assets will command a lower rate of return than do the operating assets, although in exceptional cases the reverse may be true. In computing the book value per share of stock, assets of the investment type should be revalued on the basis of their market price and the book value adjusted accordingly. Comparison of the company's balance sheets over several years may reveal, among other facts, such developments as the acquisition of additional production facilities or subsidiary companies, improvement in financial position, and details as to recapitalizations and other changes in the capital structure of the corporation. If the corporation has more than one class of stock outstanding, the charter or certificate of incorporation should be examined to ascertain the explicit rights and privileges of the various stock issues including: (1) voting powers, (2) preference as to dividends, and (3) preference as to assets in the event of liquidation.

4. The earning capacity of the company. Detailed profit-and-loss statements should be obtained and considered for a representative period immediately prior to the required date of appraisal, preferably five or more years. Such statements should show (1) gross income by principal items; (2) principal deductions from gross income including major prior items of operating expenses, interest and other expenses on each item of long-term debt, depreciation and depletion if such deductions are made, officers' salaries, in total if they appear to be reasonable or in detail if they seem to be excessive, contributions (whether or not deductible for tax purposes) that the nature of its business and its community position require the corporation to make, and taxes by principal items, including income and excess profits taxes; (3) net income available for dividends; (4) rates and amounts of dividends paid on each class of stock; (5) remaining amount carried to surplus; and (6) adjustments to, and reconciliation with, surplus as stated on the balance sheet. With profit and loss statements of this character available, the appraiser should be able to separate recurrent from nonrecurrent items of income and expense, to distinguish between operating income and investment income, and to ascertain whether or not any line of business in which the company is engaged is operated consistently at a loss and might be abandoned with benefit to the company. The percentage of earnings retained for business expansion should be noted when dividend-paying capacity is considered. Potential future income is a major factor in many valuations of closely-held stocks, and all information concerning past income which will be helpful in predicting the future should be secured. Prior earnings records usually are the most reliable guide as to the future expectancy, but resort to arbitrary five-or-ten-year averages without regard to current trends or future prospects will not produce a realistic valuation. If, for instance, a record of progressively increasing or decreasing net income is found, then greater weight may be accorded the most recent years' profits in estimating earning power. It will be helpful, in judging risk and the extent to which a business is a marginal operator, to consider deductions from income and net income in terms of percentage of sales. Major categories of cost and expense to be so analyzed include the consumption of raw materials and supplies in the case of manufacturers, processors and fabricators; the cost of purchased merchandise in the case of merchants; utility services; insurance; taxes; depletion or depreciation; and interest.
5. The dividend-paying capacity of the company. Primary consideration should be given to the
 dividend-paying capacity of the company rather than to dividends actually paid in the past.
 Recognition must be given to the necessity of retaining a reasonable portion of profits in a
 company to meet competition. Dividend-paying capacity is a factor that must be considered
 in an appraisal, but dividends actually paid in the past may not have any relation to dividend-
 paying capacity. Specifically, the dividends paid by a closely held family company may be
 measured by the income needs of the stockholders or by their desire to avoid taxes on
 dividend receipts, instead of by the ability of the company to pay dividends. Where an actual
 or effective controlling interest in a corporation is to be valued, the dividend factor is not a
 material element, since the payment of such dividends is discretionary with the controlling
 stockholders. The individual or group in control can substitute salaries and bonuses for
 dividends, thus reducing net income and understating the dividend-paying capacity of the
 company. It follows, therefore, that dividends are less reliable criteria of fair market value
 than other applicable factors.

6. Whether or not the enterprise has goodwill or other intangible value. In the final analysis,
 goodwill is based upon earning capacity. The presence of goodwill and its value, therefore,
 rests upon the excess of net earnings over and above a fair return on the net tangible assets.
 While the element of goodwill may be based primarily on earnings, such factors as the
 prestige and renown of the business, the ownership of a trade or brand name, and a record
 of successful operation over a prolonged period in a particular locality, also may furnish
 support for the inclusion of intangible value. In some instances it may not be possible to
 make a separate appraisal of the tangible and intangible assets of the business. The
 enterprise has a value as an entity. Whatever intangible value there is, which is supportable
 by the facts, may be measured by the amount by which the appraised value of the tangible
 assets exceeds the net book value of such assets.

7. Sales of the stock and the size of the block of stock to be valued. Sales of stock of a closely
 held corporation should be carefully investigated to determine whether they represent
 transactions at arm’s length. Forced or distress sales do not ordinarily reflect fair market
 value nor do isolated sales in small amounts necessarily control as the measure of value.
 This is especially true in the valuation of a controlling interest in a corporation. Since, in the
 case of closely held stocks, no prevailing market prices are available, there is no basis for
 making an adjustment for blockage. It follows, therefore, that such stocks should be valued
 upon a consideration of all the evidence affecting the fair market value. The size of the
 block of stock itself is a relevant factor to be considered. Although it is true that a minority
 interest in an unlisted corporation’s stock is more difficult to sell than a similar block of listed
 stock, it is equally true that control of a corporation, either actual or in effect, representing
 as it does an added element of value, may justify a higher value for a specific block of stock.

8. The market price of stocks of corporations engaged in the same or a similar line of business
 having their stocks actively traded in a free and open market, either on an exchange or over-
 the-counter. Section 2031(b) of the Code states, in effect, that in valuing unlisted securities
 the value of stock or securities of corporations engaged in the same or a similar line of
 business which are listed on an exchange should be taken into consideration along with all
 other factors. An important consideration is that the corporations to be used for comparisons
 have capital stocks which are actively traded by the public. In accordance with section
 2031(b) of the Code, stocks listed on an exchange are to be considered first. However, if
 sufficient comparable companies whose stocks are listed on an exchange cannot be found,
 other comparable companies which have stocks actively traded in on the over-the-counter
 market also may be used. The essential factor is that whether the stocks are sold on an
 exchange or over-the-counter there is evidence of an active, free public market for the stock
 as of the valuation date. In selecting corporations for comparative purposes, care should be
 taken to use only comparable companies. Although the only restrictive requirement as to
comparable corporations specified in the statute is that their lines of business be the same or similar, yet it is obvious that consideration must be given to other relevant factors in order that the most valid comparison possible will be obtained. For illustration, a corporation having one or more issues of preferred stock, bonds or debentures in addition to its common stock should not be considered to be directly comparable to one having only common stock outstanding. In like manner, a company with a declining business and decreasing markets is not comparable to one with a record of current progress and market expansion.

D. The valuation of closely held corporate stock entails the consideration of all relevant factors as stated above. Depending upon the circumstances in each case, certain factors may carry more weight than others because of the nature of the company's business. To illustrate:

1. Earnings may be the most important criterion of value in some cases whereas asset value will receive primary consideration in others. In general, the appraiser will accord primary consideration to earnings when valuing stocks of companies which sell products or services to the public; conversely, in the investment or holding type of company, the appraiser may accord the greatest weight to the assets underlying the security to be valued.

2. The value of the stock of a closely held investment or real estate holding company, whether or not family owned, is closely related to the value of the assets underlying the stock. For companies of this type the appraiser should determine the fair market values of the assets of the company. Operating expenses of such a company and the cost of liquidating it, if any, merit consideration when appraising the relative values of the stock and the underlying assets. The market values of the underlying assets give due weight to potential earnings and dividends of the particular items of property underlying the stock, capitalized at rates deemed proper by the investing public at the date of appraisal. A current appraisal by the investing public should be superior to the retrospective opinion of an individual. For these reasons, adjusted net worth should be accorded greater weight in valuing the stock of a closely held investment or real estate holding company, whether or not family owned, than any of the other customary yardsticks of appraisal, such as earnings and dividend paying capacity.

3. Capitalization. In the application of certain fundamental valuation factors, such as earnings and dividends, it is necessary to capitalize the average or current results at some appropriate of other pertinent factors, and the end result cannot be supported by a realistic application of the significant facts in the case except by mere chance.

4. Average of factors. Because valuations cannot be made on the basis of a prescribed formula, there is no means whereby the various applicable factors in a particular case can be assigned mathematical weights in deriving the fair market value. For this reason, no useful purpose is served by taking an average of several factors (for example, book value, capitalized earnings and capitalized dividends) and basing the valuation on the result. Such a process excludes active consideration relationship of the parties, the relative number of shares held by the decedent, and other material facts, to determine whether the agreement represents a bona fide business arrangement or is a device to pass the decedent's shares to the natural objects of his bounty for less than an adequate and full consideration in money or money's worth. In this connection see Rev. Rul. 157 C.B. 1953-2, 255, and Rev. Rul. 189, C.B. 1953-2, 294.

5. Restrictive agreements. Frequently, in the valuation of closely held stock for estate and gift tax purposes, it will be found that the stock is subject to an agreement restricting its sale or transfer. Where shares of stock were acquired by a decedent subject to an option reserved by the issuing corporation to repurchase at a certain price, the option price is usually accepted as the fair market value for estate tax purposes. See Rev. Rul. 54-76, C.B. 1954-1, 194. However, in such case the option price is not determinative of fair market value for gift tax purposes. Where the option, or buy and sell agreement, is the result of voluntary action by the stockholders and is binding during the life as well as at the death of the stockholders, such agreement may or may not, depending upon the circumstances of each
case, fix the value for estate tax purposes. However, such agreement is a factor to be considered, with other relevant factors, in determining fair market value. Where the stockholder is free to dispose of his shares during life and the option is to become effective only upon his death, the fair market value is not limited to the option price. It is always necessary to consider the rate. A determination of the proper capitalization rate presents one of the most difficult problems in valuation. That there is no ready or simple solution will become apparent by a cursory check of the rates of return and dividend yields in terms of the selling prices of corporate shares listed on the major exchanges of the country. Wide variations will be found even for companies in the same industry. Moreover, the ratio will fluctuate from year to year depending upon economic conditions. Thus, no standard tables of capitalization rates applicable to closely held corporations can be formulated. Among the more important factors to be taken into consideration in deciding upon a capitalization rate in a particular case are: (1) the nature of the business; (2) the risk involved; and (3) the stability or irregularity of earnings. See Rev. Rul. 59-60, 1959-1 C.B. 237, 238-244.

E. Interest bearing instruments and accounts held by a decedent at death are reportable at face value (principal) plus accrued and unpaid interest attributable from the last interest payment to the date of the decedent's death. See 45 IAC 4.1-5-5.

F. The valuation of every future and contingent or limited estate, income, interest, or annuity for any life or lives in being is to be, so far as possible, determined by the rule, method, and standard of mortality and of value set forth in the actuarial tables in use by the Internal Revenue Service for estate tax purposes on October 1, 1988. See I.C. 6-4.1-6-1 and 45 IAC 4.1-5-10.

1. The value of any interest remaining after any temporary interest is to be determined by deducting the computed value of the temporary estate from the value of the entire property in which such interest exists.

2. Unless otherwise provided by the transferor, the Indiana inheritance tax on such temporary interest and remainder is to be payable out of the property in which such temporary interest and remainder exists.

3. In the case in which an estate may be divested by the act or omission of the transferee, the estate is liable for the Indiana inheritance tax, as if there were no possibility of divesting.

4. If it is impossible to compute the present value of any of the property transferred, or of any interest therein, or if the Indiana inheritance tax cannot be determined because of a contingency as to who will take, the Indiana Inheritance Tax Division may enter into an agreement with the taxpayer to compute the Indiana inheritance tax upon such terms as may be deemed equitable, and such amount may be payable out of the property transferred.

a. A personal representative may enter into such agreements on behalf of the estate without court authorization. See 45 IAC 4.1-9-6(c).

G. Annuities, life estates, and future interest are valued by using the rules, methods, mortality standards, and actuarial tables used by the Internal Revenue Service for federal estate tax purposes on October 1, 1988. See 6-4.1-6-1 and 45 IAC 4.1-5-10.

H. A property interest which may be divested because of an act or omission of the transferee is to be appraised by the county inheritance tax appraiser and the Indiana Department of State Revenue as if there were no possibility of divestment. See I.C. 6-4.1-6-2.

I. Except as otherwise provided, the value of a future interest in specific property equals the remainder of: the total value of the property; minus, the value of all the other interests in the property.

1. Unless otherwise provided by the transferor, the Indiana inheritance tax which is imposed on the transfer of each of the interests is payable from the property in which the interests exist. See I.C. 6-4.1-6-1.

J. The valuation tables which are used by the Internal Revenue Service for the valuations of interests of decedents who die after April 30, 1989, are prescribed in U.S. Treas. Reg. §20.2031-7, and the actuarial computations are uni-sex and based on the applicable Federal mid-term rate, compounded annually, for the month in which the valuation occurs, rounded to the nearest two-tenths of one
The valuation tables which are used by the Internal Revenue Service for the valuations of interests of decedents who die after November 30, 1983 but before May 1, 1989, are uni-sex and based on interest at the rate of ten percent a year.

The valuation tables used by the Internal Revenue Service are of special value in determining the respective shares which are devised by a decedent who has transferred joint and successive life estates to the decedent's beneficiaries.

The method for determining joint and successive life estate interests begins with the totaling of the individual remainder factors of the persons jointly sharing the life estate.

a. Then, the two-life remainder factor (of the persons sharing the life estate) is subtracted from that total.

b. Then, this latter result is subtracted from 1.0, and then, the latter resulting difference is divided by two.

c. Then, the quotient (from the division by two into such resulting difference) is subtracted from each of the individual life estate factors of the persons who share the life estate.

d. Each new difference (which results from the subtraction of the division by the two quotient from the individual life estate factors, multiplied times the date of death fair market value of the asset) is the share of the life estate being transferred to each person.

e. In order to determine whether or not the proper share of the life estate factors are correctly computed, it is advisable to add the two-life remainder factor to the sum of the differences which are determined by subtracting the division by the two quotient from the individual life estate factors. If the total is not 1.00, then there is an error in the computation and the life estate shares are not valid.

f. Example 14. John dies on March 20, 2000, and John's last will and testament devises a life estate to Mary (age 55) and Peter (age 38) jointly and to the survivor of them, with the remainder passing to Sue, and the asset devised has a fair market value of $500,000 at the time of John's death.

(i) The following computations demonstrate the method for calculating the joint and successive life estate shares which pass to Mary and Peter with the two-life remainder passing to Sue.

(1) .19954 Individual remainder factor for Mary, age 55.
    + .07433 Individual remainder factor for Peter, age 38.
    = .27387 Sum of the individual remainder factors for Mary & Peter.

(2) .27387 Sum of the individual remainder factors for Mary & Peter.
    - .04532 Two-life remainder factor for Mary & Peter.
    = .22855 Difference between the two-life remainder factor and the sum of the individual remainder factors.

(3) 1.00000
    - .22855 Difference from step 2.
    = .77145

(4) .77145 Difference from step 3.
    / 2
    = .385725 Quotient.

(5) a .800460 Life estate factor for Mary.
    - .385725 Quotient from step 4.
    = .414735 Multiplier factor for Mary's share of the joint and successive life estate.
(5) b  .925670  Life estate factor for Peter.
    .385725  Quotient from step 4.
    .539945  Multiplier factor for Peter's share of the joint and successive life estate.

(6) a  $500,000  Date of death fair market value of the asset devised by John.
    x  .414735  Multiplier factor for Mary's share of the joint and successive life estate.
    $207,367.50  Mary's dollar value share of the joint and successive life estate.

(6) b  $500,000  Date of death fair market value of the asset devised by John.
    x  .539945  Multiplier factor for Peter's share of the joint and successive life estate.
    $269,972.50  Peter's dollar value share of the joint and successive life estate.

(7)  $500,000  Date of death fair market value of the asset devised by John.
    x  .045320  Two-life remainder factor for Mary and Peter.
    $22,660.00  Dollar value of Sue's remainder share.

(8) a  $207,367.50  Mary's share.
    269,972.50  Peter's share.
    +  22,660.00  Sue's share.
    $500,000.00  Date of death fair market value of the asset devised by John.

(8) b  .539945  Peter's multiplier factor from step 5b.
    .414735  Mary's multiplier factor from step 5a.
    .045320  Two-life remainder factor for Mary and Peter.
    1.000000

4. The valuation tables which are used by the Internal Revenue Service are also valuable in determining the respective shares going to the life estate beneficiaries and remainderman in the case in which the decedent has devised successive life estates.

5. The method for determining two successive life estate interests begins by multiplying the individual life estate factor times the date of death fair market value of the asset.
   a. The resulting product is the dollar value of the first individual's life estate share of the asset.
   b. Then, the first individual's life estate factor is added to the two-life remainder factor and the sum is subtracted from 1.0.
   c. The resulting difference is the multiplier factor for the second life estate interest in the asset. Of course, the two-life remainder factor is the share passing to the beneficiaries who are the remaindermen.
   d. Example 15. John dies on March 20, 1987, and John's last will and testament devises successive life estates to Beverly (age 45) and Mary (age 58), with the remainder to be divided equally among Sue, Peter, and Rebecca, and the asset devised has a fair market value of $500,000 at the time of John's death. A sample of the wording used to make such a devise is: "to Beverly for Beverly's life, then to Mary for Mary's life, remainder to Sue, Peter, and Rebecca, in equal shares".
      i) The following computations demonstrate the method for calculating the value of each of the successive life estate shares which pass to Beverly, and then, to Mary.

(1)  $500,000.00  Date of death fair market value of the asset.
    x  .88558  Individual life estate factor for Beverly (age 45).
    $442,790.00  Dollar value of Beverly's life estate share of the asset.
(2) .88558 Individual life estate factor for Beverly.
+ .07016 Two-life remainder factor for Beverly and Mary.
.95574 Total to be subtracted from 1.0.

(3) 1.00000
- .95574 Total of Beverly's life estate and the two-life remainder factors.
.044260 Multiplier factor for the value of Mary's successive life estate interest in the asset.

(4) $500,000.00 Date of death fair market value of the asset.
x .044260 Multiplier factor for Mary's successive life estate interest.
$ 22,130.00 Dollar value of Mary's successive life estate interest.

(5) $500,000.00 Date of death fair market value of the asset.
x .07016 Multiplier factor for the two-life remaindermen's interest.
$ 35,080.00 Dollar value of the two-life remaindermen's interest.

(6) $ 35,080.00 Dollar value of the two-life remaindermen's interest.
/ 3.00 Number of remaindermen receiving equal shares.
$ 11,693.33 Dollar value of each share passing to Sue, Peter, & Rebecca.

(7) $442,790.00 Dollar value of the life estate share to Beverly.
 22,130.00 Dollar value of the life estate share to Mary.
+ 35,080.00 Dollar value of the two-life remainder.
$500,000.00 Date of death fair market value of the asset.

6. In cases in which it is impossible to determine the present value of a property interest transferred or in which the Indiana inheritance tax imposed on the transfers cannot be computed because a contingency makes it impossible to determine who the transferee of the property will be, the personal representative (or other appropriate person) and the Indiana Department of State Revenue may enter into an agreement as to the amount of the Indiana inheritance tax due with respect to such property interest. See I.C. 6-4.1-6-3(a).

a. The personal representative of an estate or the trustee of a trust does not need the probate court's authorization in order to enter into such an agreement with the Indiana Department of State Revenue on behalf of the estate or trust.

b. When the Indiana Department of State Revenue enters into such an agreement with, for example, the personal representative or trustee, the Indiana inheritance tax which is so agreed to is payable from the property interest transferred. See I.C. 6-4.1-6-3(b).

c. Procedurally, it is desirable for the persons who enter into such an agreement with the Indiana Department of State Revenue to make the agreement part of the probate court record of the estate.

d. In cases in which the personal representative and the Indiana Department of State Revenue fail to enter into such an agreement, I.C. 6-4.1-6-4 provides a means for making a final determination of the Indiana inheritance tax which is imposed on a decedent's transfer of specific property.

(i) It is the responsibility of the probate court, so far as possible, to determine the manner in which the property interest is to be distributed if a contingency makes it impossible to determine each transferee's exact interest in the property, and the Indiana Department of State Revenue and, for example, the personal representative fail, within a reasonable time, to enter into an agreement as to the amount of Indiana inheritance tax due under I.C. 6-4.1-6-3.
(ii) Unless the probate court's determination is appealed, the probate court's determination is final and binding on all of the parties. See I.C. 6-4.1-6-4.

(iii) However, if the value of an interest which is limited, contingent, dependent, or determinable upon a life in being (including, but not limited to, a life or remainder interest) cannot be determined by the probate court, then the probate court may file an application with the Indiana Department of State Revenue which requests the Indiana Department of State Revenue to appraise the property interest.

(iv) After filing the application, the Indiana Department of State Revenue is to appraise the property interest, if possible.

(v) The Indiana Department of State Revenue is to base the appraisal on the facts which are stated by the probate court in the application, and the Indiana Department of State Revenue is to certify the Indiana Department of State Revenue's appraisal in duplicate to the probate court. The Indiana Department of State Revenue's certification is competent evidence that the appraisal is correct. See I.C. 6-4.1-6-5.

(vi) However, such valuations are not binding on the probate court which, in such matters, still retains the probate court's discretion in determining a fair value.

e. If proceedings have not been instituted under I.C. 6-4.1-6 in order to determine the Indiana inheritance tax imposed on a resident decedent's transfer of a contingent or defeasible future interest in property or if the Indiana inheritance tax imposed on such a transfer is postponed under I.C. 6-4-1-6-6(b), then the county inheritance tax appraiser or the Indiana Department of State Revenue is (notwithstanding the provisions of I.C. 6-4.1-5) to appraise the property interest at the property interest's fair market value at the time when the transferee of the interest obtains the beneficial enjoyment or possession of the property.

f. The Indiana inheritance tax is imposed on a decedent's transfer of a contingent or defeasible interest in property, and the Indiana inheritance tax accrues and is due when the transferee of the interest obtains the beneficial enjoyment or possession of the property if the fair market value of the property interest (as of the appraisal date prescribed by I.C. 6-4.1-5-1.5) cannot otherwise be ascertained under I.C. 6-4.1-6. See I.C. 6-4.1-6-6(b).

K. Each county assessor is to serve as the county inheritance tax appraiser for the county for which the county inheritance tax appraiser serves.

1. However, the probate court is to appoint a competent and qualified resident of the county to appraise property transferred by a resident decedent if the county assessor is beneficially interested as an heir of the decedent's estate, is the personal representative of the decedent's estate, or is related to the decedent or a beneficiary of the decedent's estate within the third degree of consanguinity or affinity.

2. A person who is appointed to act as the county inheritance tax appraiser under I.C. 6-4.1-12-2 is to receive a fee for such person's services.

3. The county assessor is to receive funds from the county to pay the actual cost of equipment which the county assessor needs in order to perform the duties assigned to the county assessor under I.C. 6-4.1-12-4.

L. Before the county inheritance tax appraiser makes the appraisal which is required under I.C. 6-4.1-5-2(3), the county inheritance tax appraiser must give notice of the time and place of the appraisal, by United States mail, to each person who is known to have an interest in the property interests to be appraised, including the Indiana Department of State Revenue and any person who is designated by the probate court.

1. The county inheritance tax appraiser is to appraise the property interests at the time and
place stated in the notice. See I.C. 6-4.1-5-3.

a. However, such notice may be waived by filing a Waiver of Notice (Form IH-16).

2. The county inheritance tax appraiser is empowered to compel the attendance of witnesses and take evidence at the appraisal hearing.

3. In order to make the appraisal which is required by I.C. 6-4.1-5-2(3), the county inheritance tax appraiser may: issue subpoenas; compel the appearance of witnesses before the county inheritance tax appraiser; and, examine the witnesses under oath.

a. Each witness examined with respect to the appraisal is entitled to receive a fee in the same amount which is to be paid to a witness who is subpoenaed to appear before a court of record.

b. The county treasurer is to pay, from county funds not otherwise appropriated, the witness fee which is provided under I.C. 6-4.1-5-4 and which is allowed by the probate court under I.C. 6-4.1-5-10. See I.C. 6-4.1-5-4.

M. Upon completion of the duties which are assigned to the county inheritance tax appraiser under I.C. 6-4.1-5-2, the county inheritance tax appraiser must prepare an appraisal report.

1. The appraisal report is to contain a list of the property interests described under I.C. 6-4.1-5-2(3) and state the fair market value of the property interests. The report may be made on Form IH-7 or IH-7SF.

a. If the appraiser agrees with the schedule filed by the personal representative, then the appraiser will probably use the short form (IH-7SF) in which the appraiser will just incorporate the schedule filed by the personal representative.

b. In case of a disagreement, the appraiser will use the long form (IH-7) to point out the disagreement.

2. The county inheritance tax appraiser is to file one copy of the report with the probate court and file another copy of the report with the Indiana Department of State Revenue (preferably, directly with the Inheritance Tax Division).

3. The county inheritance tax appraiser is to attach the depositions (of any witnesses examined with respect to the appraisal) and any other information (which the probate court may require) to the appraisal report which the county inheritance tax appraiser files with the probate court. See I.C. 6-4.1-5-6.

4. Once the county inheritance tax appraiser has completed the final appraisal report, the probate court is to conduct a hearing concerning the contents of the appraisal report.

a. The probate court is to give a 20-day notice of the time and place of the hearing on the appraisal report, by mail, to each person who is known to be interested in the resident decedent's estate, including the Indiana Department of State Revenue. See I.C. 6-4.1-5-9(a).

b. Such hearings are often informal and, as a practical matter, are often waived by filing a Waiver of Notice (Form IH-16).

c. If the address of a person who is interested in a resident decedent's estate is unknown, and notice has not been waived by that person, then the probate court is to give notice of the time and place of the appraisal report hearing by publication.

(i) The probate court is to publish the notice not less than three successive weeks before the hearing in a newspaper which is published in the appropriate county. See I.C. 6-4.1-5-9(b).

5. After the probate court has conducted a hearing as to the county inheritance tax appraiser's report, the probate court is to issue a final order stating the amount of the Indiana inheritance tax due.

a. According to I.C. 6-4.1-5-10, the probate court is to determine the fair market value of the property interests transferred by the resident decedent and the amount of the Indiana inheritance tax due as a result of the resident decedent's death.

b. The probate court is to then enter an order stating the amount of Indiana inheritance
tax due and stating the amount of fees which are due witnesses under I.C. 6-4.1-5-4.

(i) If the probate court determines that there is no Indiana inheritance tax due, then the probate court is to include a statement to that effect in the probate court’s order. See I.C. 6-4.1-5-10(a).

6. The probate court is to prepare the order (required by I.C. 6-4.1-5-10) on Form IH-9 which is prescribed by the Indiana Department of State Revenue.
   a. The procedure for this varies with the different counties, with many counties waiting for the lawyer to prepare the order.
   b. The probate court is to include in the order a description of all Indiana real property which is owned by the resident decedent at the time of the resident decedent’s death.
   c. Also, the probate court is to spread the probate court’s order of record in the office of the clerk of the circuit court. The clerk is to maintain the orders in a looseleaf ledger. See I.C. 6-4.1-5-10(b).

7. Immediately after the probate court’s determination of the fair market value of the property interests which were transferred by a resident decedent and the Indiana inheritance tax due as a result of such transfers, the probate court is to mail a copy of the probate court’s order to all persons who are interested in the resident decedent's estate, including the Indiana Department of State Revenue and the appropriate county treasurer.
   a. Again, the procedure may vary with the county.
   b. Either the county assessor, county clerk, or in some cases, the lawyer for the estate may be responsible for forwarding the probate court’s order to the proper persons. See I.C. 6-4.1-5-11.

N. Pursuant to I.C. 33-19-5-6(a)(1), the clerk of courts is required to collect from the party filing for a determination of Indiana inheritance tax due a probate costs fee.
   1. Presently that fee is in the amount of $100.
   2. In addition to the probate costs fee collected under I.C. 33-19-5-6, the clerk is to collect, from the party filing the action, a document fee if the fee is required under I.C. 33-19-6. See I.C. 33-19-5-6(b).
   3. However, pursuant to I.C. 33-19-5-6(c)(2), the clerk may not collect a court cost fee for the filing of an Indiana inheritance tax return, unless proceedings other than the court's approval of the Indiana inheritance tax return becomes necessary.
   4. Also, the clerk may not collect a court costs fee for filing a petition to open a safety deposit box or a petition offering a last will and testament for probate under I.C. 29-1-7, unless proceedings other than admitting the last will and testament to probate become necessary. See I.C. 33-19-5-6(c).
   5. It is not clear when the clerk may or may not charge a fee in connection with an Indiana inheritance tax return or which fee may be charged. This will require further clarification.

O. In order to assure the collection of the proper amount of the Indiana inheritance tax, any person who has possession of or control over personal property which was held jointly with rights of survivorship by a resident decedent and another individual may not transfer the property to the surviving joint tenant, unless the surviving joint tenant is the decedent's surviving spouse or the property is money which is held in a joint checking account, without the written consent of the Indiana Department of State Revenue or the county assessor of the county in which the resident decedent was domiciled at the time of the resident decedent's death. See I.C. 6-4.1-8-4(a).
   1. Also, checking accounts may not be released to anyone (other than a surviving spouse) unless notice of the release is given to the Indiana Department of State Revenue or the county assessor. See I.C. 6-4.1-8-4.6.
   2. The Indiana Department of State Revenue or the county assessor may consent to transfer of the property if the Indiana Department of State Revenue or the county assessor believes
that the transfer will not jeopardize the collection of the Indiana inheritance tax.

a. If the Indiana Department of State Revenue consents to such a transfer, then the
Indiana Department of State Revenue must send a copy of the consent to the county
assessor of the county in which the resident decedent was domiciled at the time of
the resident decedent’s death. See I.C. 6-4.1-8-4.

3. The Indiana Department of State Revenue or county assessor deems that a consent to
transfer property (which property is held jointly with rights of survivorship), prior to payment
of any Indiana inheritance tax due thereon, may be made without prejudice to the rights of
the State of Indiana only under certain circumstances. See 45 I.A.C. 4-2-7.

a. For instance, such a prior consent to transfer property may be made without
prejudice of the rights of the State of Indiana in the case in which an estate
is opened and the personal representative agrees in writing to assume liability for
the payment of the Indiana inheritance tax.

b. Also, such a prior consent to transfer property may be made in the case in which an
application to make the transfer is made by the surviving joint tenant or by some
other person who has sufficient knowledge to make such application, under oath, on
the form which is prescribed by the Indiana Department of State Revenue, upon
which form it clearly appears that, in no event, could such person be liable for the
payment of any Indiana inheritance tax, because, for instance, the value of all
property transferred to such person is less than such person’s statutory exemption.

c. Finally, such a prior consent to transfer property may be made in the case in which
Indiana inheritance tax may be payable by a surviving joint tenant of property and
not more than the greater of eighty percent of the total value of all jointly owned
property is to be transferred to such person.

4. However, a person who has possession of or control over money which is held in a checking
account in which a resident decedent had a legal interest is to notify the Indiana Department
of State Revenue or the county assessor of the county in which the resident decedent was
domiciled at the time of the resident decedent’s death when any of the money is transferred
from the account to a person other than to the resident decedent's surviving spouse. See I.C.
6-4.1-8-4.6.

5. Further, a person who has possession of or control over a resident decedent's personal
property (except proceeds which are payable under a life insurance policy) may not transfer
the property to any other person, unless the other person is the resident decedent's surviving
spouse or the property is money which is held in a checking account, without the written
consent of the Indiana Department of State Revenue or the county assessor of the county
in which the resident decedent was domiciled at the time of the resident decedent's death.
See I.C. 6-4.1-8-4(b).

6. The Indiana Department of State Revenue is to send a copy of any consent to transfer which
the Indiana Department of State Revenue issues to the county assessor of the county in
which the resident decedent was domiciled at the time of the resident decedent's death. See
I.C. 6-4.1-8-4(d).

7. If a person violates a provision of I.C. 6-4.1-8-4 or I.C. 6-4.1-8-5 by transferring property
without proper consent, then that person is liable for the Indiana inheritance tax which is
imposed as a result of the resident decedent's death (the Indiana inheritance tax on the whole
estate, not just Indiana inheritance tax on the property transferred) and is subject to an
additional penalty which is not to exceed $1,000.

a. The Indiana Department of State Revenue is to initiate an action in the name of the
State of Indiana in order to collect the Indiana inheritance tax and the penalty for
which the person is liable under I.C. 6-4.1-8-7. I.C. 6-4.1-8-4 and I.C. 6-4.1-8-5
apply only to resident decedents.
b. No consent to transfer or notice is required before transferring a nonresident decedent's property.

8. A consent to transfer is still required with regard to a resident decedent when the provisions of I.C. 29-1-8-1 for the transferring of small estates are met. The statute requires that an affidavit be filed with the appropriate bank or other transferor of property, which affidavit states the following.
   a. That the value of the gross probate estate, wherever located, less liens and encumbrances, does not exceed $25,000.
   b. That forty-five days have elapsed after the death of the decedent.
   c. That no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction.
   d. And, that the claimant is entitled to payment or delivery of the property. See I.C. 29-1-8-1.

P. Certain individuals are protected by the Indiana statute which requires that the individuals receive the benefit of a special guardian in order to oversee such individuals' interests during the administration of an estate.

1. That is, a probate court is to appoint a special guardian in order to represent an individual if, at any time during the proceedings to determine the resident decedent's Indiana inheritance tax, the probate court finds that the individual is under the age of 18 or and has an interest in the resident decedent's estate, which interest is adverse to an interest which another person has in the resident decedent's estate. See I.C. 6-4.1-5-13.

2. An adverse interest for Indiana inheritance tax purposes is an interest, with regard to which, two persons stand to take the same property or parts of the same property, pending the probate court's determination.

Q. As to the Indiana inheritance tax which is due as the result of the death of a nonresident decedent, the Indiana Department of State Revenue is to make this determination.

1. Under I.C. 6-4.1-12-7 and I.C. 6-4.1-12-11, the Indiana Department of State Revenue has the power to subpoena witnesses and evidence in making investigations of a nonresident decedent's death similar to the power provided the county inheritance tax appraiser for resident decedents under I.C. 6-4.1-5-4.

2. It is the responsibility of the personal representative of the nonresident decedent's estate to provide the Indiana Department of State Revenue with a completed Indiana Inheritance Tax Return for a Nonresident Decedent (Form IH-12).

3. Attached to the return should be documentation which substantiates the appraised fair market value of the property transferred. If applicable, a copy of the decedent's last will and testament, trust instrument, and federal estate tax return should be sent to the Indiana Department of State Revenue.

4. The Indiana Department of State Revenue may appraise the property which was transferred by the nonresident decedent and determine the Indiana inheritance tax due without the intervention of a court. See I.C. 6-4.1-5-14.

5. Thus, the Indiana Department of State Revenue has original jurisdiction over the determination of Indiana inheritance tax with respect to a nonresident decedent's estate, and the Indiana Department of State Revenue is to enter an order, upon completion of the Indiana Department of State Revenue's determination, which states the fair market value of all property interests which were transferred by the nonresident decedent under taxable transfers; describes all of the Indiana real property so transferred by the decedent; and, states the amount of Indiana inheritance tax which is imposed as a result of the nonresident decedent's death. See I.C. 6-4.1-5-15.

6. The clerk of the circuit court of each county in which real property, which is described in the Indiana Department of State Revenue's order determining a nonresident decedent's Indiana inheritance tax is located is to spread a copy of the order of record. See I.C. 6-4.1-5-15.
a. No provision is made for a fee under I.C. 33-19, which provision governs court fees.

7. The Indiana Department of State Revenue is required to mail a notice to the personal representative of the decedent's estate or the trustee of the property transferred by the nonresident decedent which states the amount of the Indiana inheritance tax which is due as a result of the death of a nonresident decedent.
   a. However, if there is no personal representative or trustee, then the Indiana Department of State Revenue is to send the notice to each person who is liable for payment of the Indiana inheritance tax.

8. Also, unless an appeal is initiated under I.C. 6-4-1-7-5 within 90 days after the notice is given, the Indiana inheritance tax (which is stated by the Indiana Department of State Revenue in the notice to be due) is final. See I.C. 6-4-1-5-16.
   a. The Indiana Department of State Revenue is required to maintain as a public record a book indicating the inheritance tax due as a result of the death of nonresident decedents and to record therein the amount of tax due as stated in the notices required by I.C. 6-4-1-5-16. See I.C. 6-4-1-9-3.

R. I.C. 6-4-1-7-2 states the guidelines which are to be followed by a dissatisfied party who wishes to petition the probate court for a reappraisal of any property interest involved in a resident decedent's estate or any interest passing to a specific beneficiary.
1. In order to obtain the reappraisal, the dissatisfied person must file a petition for reappraisal with the probate court within one year after the probate court enters an order determining the Indiana inheritance tax due as a result of the resident decedent's death.
2. However, if the original appraisal is fraudulently or erroneously made, then the person may file the reappraisal petition within two years after the probate court enters the order. See I.C. 6-4-1-7-2.
3. It is within the discretion of the probate court to grant a reappraisal, and abuse of such discretion is subject to review on appeal. See Indiana Dept. of Revenue, Inheritance Tax Division v. Estate of Flanders, 408 N.E.2d 172 (Ind. Ct. App. 1980).
4. The property interest which a person receives may be reappraised under I.C. 6-4-1-7-2. Therefore, distribution problems among beneficiaries are not subject to the 120-day limitation in I.C. 6-4-1-7-1. See Matter of Estate of Waltz, 408 N.E.2d 558 (Ind. Ct. App. 1980).
5. When a reappraisal petition is filed under I.C. 6-4-1-7-2, the probate court may appoint a competent person to reappraise the property interests transferred by a resident decedent.
   a. The appraiser, who is so appointed by the probate court, has the same powers and duties, including the duty to give notice of the appraisal and the duty to make an appraisal report to the probate court, as the county inheritance tax appraiser.
   b. The appointed appraiser is entitled to receive an amount of compensation, fixed by the probate court and approved by the Indiana Department of State Revenue, for the appointed appraiser's services.
   c. After the probate court certifies to the county treasurer the amount of compensation which is due to the appointed appraiser, the county treasurer is to pay the appointed appraiser from county funds (which are not otherwise appropriated). See I.C. 6-4-1-7-3.
   d. After the appointed appraiser files the appointed appraiser's appraisal report with the probate court, the probate court is to redetermine the Indiana inheritance tax due with respect to the property interests transferred by the resident decedent.
   e. In making the redetermination, the probate court is to follow the same procedures which the probate court is required to follow under I.C. 6-4-1-5-9, I.C. 6-4-1-5-10, and I.C. 6-4-1-5-11, when making an original Indiana inheritance tax determination. See I.C. 6-4-1-7-4(a).
   f. The probate court is to file a copy of the redetermination with the clerk of the probate court. The probate court's redetermination of the Indiana inheritance tax
due supersedes the probate court's original determination. See I.C. 6-4.1-7-4(b).

S. In general, a person who is dissatisfied with an Indiana inheritance tax determination or appraisal which is made by the Indiana Department of State Revenue, concerning a nonresident decedent's Indiana inheritance tax due, may appeal either: to the probate court of the county, if any, in which administration of the nonresident decedent's estate is pending; or, to the probate court of any county in which any of the nonresident decedent's property was located at the time of the nonresident decedent's death, if no administration of the nonresident decedent's estate is pending in the State of Indiana. See I.C. 6-4.1-7-5.

1. In order to initiate an appeal to the probate court, the person must file a complaint within 90 days after the date on which the Indiana Department of State Revenue mails the notice (which notice is required by I.C. 6-4.1-5-16) and pay, or give security to pay, the probate court cost which will result from the appeal and the Indiana inheritance tax to be fixed by the probate court.

2. When an appeal is initiated under I.C. 6-4.1-7-5, the probate court may decide all questions concerning the fair market value of the property interests which were transferred by the nonresident decedent or concerning the Indiana inheritance tax due as a result of the nonresident decedent's death. See I.C. 6-4.1-7-5.

T. Further, such a determination may be appealed to the Indiana Tax Court. See I.C. 33-3-5-2.

1. The procedure for initiating an appeal to the Indiana Tax Court is not clear.

2. The statutes concerning other taxes administered by the Indiana Department of State Revenue declare specific time periods for appealing the Indiana Department of State Revenue's determination of such tax matters administered by the Indiana Department of State Revenue to the Indiana Tax Court, but the Indiana inheritance tax statutes do not specifically address the appeal of an inheritance tax determination of a nonresident decedent to the Indiana Tax Court.

3. The Indiana Tax Court, however, has taken the position that the Indiana Tax Court has jurisdiction.

4. Presumably, the Indiana Tax Court may decide, in such a case, the same questions which may be decided by a probate court.

U. I.C. 6-4.1-7-6 provides that the Indiana Department of State Revenue may accept a probate court's determination of the Indiana inheritance tax due as a result of a resident decedent's death as a provisional estimate of the Indiana inheritance tax imposed.

1. However, if the final determination of federal estate tax involves a change in the fair market value of an asset of a decedent's estate or a change in an allowable deduction, then the Indiana Department of State Revenue may petition the probate court which has jurisdiction for a redetermination of the Indiana inheritance tax imposed as a result of the resident decedent's death.

2. The petition must be filed within 60 days after a copy of the final determination of federal estate tax is filed with the Indiana Department of State Revenue (as required by I.C. 6-4.1-4-8).

3. An Indiana inheritance tax redetermination which is made under I.C. 6-4.1-7-6 is limited to modifications which are based on either a change in the fair market value of the assets of the resident decedent's estate or a change in the amounts which are deductible for the purpose of computing the Indiana inheritance tax.

4. In the case of a nonresident decedent, the Indiana Department of State Revenue usually will not issue the final order prior to the final determination of the federal estate tax.

5. In the case of a nonresident decedent, the Indiana Department of State Revenue usually will not issue the final order prior to the final determination of the federal estate tax.

6. In the case of a nonresident, the Indiana inheritance tax is determined by the Indiana Department of State Revenue and not by a probate court.

a. Therefore, the Indiana Department of State Revenue may be left without a
procedure for redetermination of such Indiana inheritance tax if the Indiana Department of State Revenue issues a final order prior to the final determination of the federal estate tax.

7. Certain adjustments which are made to the federal estate tax computation lead to adjustments in the Indiana inheritance tax computation. However, failure to file with the probate court within the time prescribed by statute is, in effect, a waiver of the right to the readjustments.

8. The 30-day statute of limitations does not begin to run until the State of Indiana (through the Inheritance Tax Division) has received a photocopy of the final federal estate tax determination from the personal representative, trustee, or transferee. See I.C. 6-4.1-4-8.
   a. In the Matter of the Estate of Adamson, 403 N.E.2d 355 (Ind. Ct. App. 1980), the court held that the 30-day statute of limitations (under prior I.C. 6-4.1-7-6(b)) does not start to run until the Indiana Department of State Revenue (through the Inheritance Tax Division) receives the final federal determination.
   b. The court further held that the State of Indiana may properly seek an Indiana inheritance tax redetermination, based upon the disclosure of any originally omitted assets which are revealed by the final determination of the federal estate tax, by filing a petition within 30 days after the date on which the copy of the final determination of the federal estate tax is filed with the Indiana Department of State Revenue.
   c. The statute of limitations cannot be tolled or waived.
      (i) In Matter of Compton's Estate, 406 N.E.2d 365 (Ind. Ct. App. 1980), the court held that the time limitations which are contained in the Indiana inheritance tax statutes are conditions precedent to the assertion of a claim and that these statutes of limitations cannot be tolled or waived. The court also held that the failure to comply with the statute is jurisdictional and results in a lack of jurisdiction in the court.

V. According to I.C. 6-4.1-8-1, the Indiana inheritance tax which is imposed as a result of a decedent's death is a lien on the property interests which are transferred by the decedent to the extent of the Indiana inheritance tax due.

1. Except as otherwise provided in I.C. 6-4.1-6-6(b), the Indiana inheritance tax accrues and the lien attaches at the time of the decedent's death.
2. The lien terminates when the Indiana inheritance tax is paid or five years after the date of the decedent's death, whichever occurs first.
   a. As a general rule, once a final determination is set by a probate court, nothing will dispose of an Indiana inheritance tax lien except payment in full or the running of the five-year statute of limitations.
   b. However, the Indiana inheritance tax lien may be extinguished by a bona fide sale of the property which is subject to the lien.
   c. According to I.C. 29-1-15-20, the lien for Indiana inheritance tax or Indiana estate tax does not extend to any interest which is acquired by a purchaser, mortgagee, or lessee through any transfer which is made by a personal representative under a power which is contained in a decedent's last will and testament, under I.C. 29-1-7.5-3, or under an order of the probate court.
   d. The lien, however, does attach to the proceeds of the sale for the remaining five-year period or until the tax (or taxes) is paid. If no proceeding is commenced within five years after the decedent's date of death, then the property interests become free and clear of the Indiana inheritance tax (or Indiana estate tax) lien.
3. In addition to the lien, the transferee of the property and any personal representative or trustee who has possession of or control over the property are personally liable for the Indiana inheritance tax and this personal liability continues beyond the five-year period. See
I.C. 6-4.1-8-1.

a. The statute of limitations for this personal liability was clarified by a 1985 amendment to I.C. 6-4.1-9-11, which became effective July 1, 1986.

b. Prior to the amendment, such personal liability for the Indiana inheritance tax accrued at the time of the decedent's death and was subject to the residual statute of limitations which is prescribed in I.C. 34-1-2-3. The statute provided for a 15-year statute of limitations for actions prior to September 1, 1982 and a ten-year statute of limitations for actions after August 31, 1982. The action was held by the court to accrue on the date of the decedent's death. See I.C. 34-1-2-3. See also, Indiana State Dept. of Revenue, Inheritance Tax Division v. Lees, 418 N.E.2d 226 (Ind. Ct. App. 1980); and, In re Estate of Dukes, 453 N.E.2d 1179 (Ind. Ct. App. 1983) (overriding the Lees decision).

c. The amendment to I.C. 6-4.1-9-11 has established a ten-year statute of limitations starting on the date of the order imposing the Indiana inheritance tax, if the provisions of I.C. 6-4.1-5-11 have been met.

d. I.C. 6-4.1-5-11 requires the court to mail a copy of the court's determination of the fair market value of the property interests transferred by a resident decedent and the Indiana inheritance tax due as a result of the decedent's death to all persons interested in the decedent's estate, including the Indiana Department of State Revenue and the appropriate county treasurer. See I.C. 6-4.1-5-11.

4. Generally, the residuary estate is not chargeable with the payment of the Indiana inheritance tax unless such charge is expressly stated in the decedent's last will and testament. See Nation v. Green, 188 Ind. 697, 123 N.E. 163 (1919).

5. Only limited transfers of property are allowable until the Indiana inheritance tax has been paid on the property to be transferred. I.C. 6-4.1-8-2 provides the guidelines for transfer of a decedent's property by the personal representative or the trustee of the property transferred, and this statutory provision states that neither of these persons may transfer or deliver property to a transferee until the Indiana inheritance tax imposed, with respect to the transfer, has been paid. See I.C. 6-4.1-8-2(a).

6. If money is transferred by a decedent to a transferee for a limited period of time, then the personal representative or the trustee is to retain the total Indiana inheritance tax which is imposed on all of the interests in the money. See I.C. 6-4.1-8-2(b).

7. If property other than money is transferred by a decedent to a transferee for a limited period of time, then the transferee of the property interests is to pay to the personal representative or the trustee the amount of the Indiana inheritance tax which is imposed on the transfer of the interests. The personal representative or the trustee is to apply to the probate court for a determination of the amount of Indiana inheritance tax which each transferee is required to so pay. See I.C. 6-4.1-8-2(c).

8. The personal representative is personally liable to any interested party to the extent of any transfers of property which are prohibited by statute. See I.C. 29-1-16-1.

9. In order to pay the Indiana inheritance tax which is imposed as a result of a decedent's death, the personal representative or the trustee of property transferred by the decedent may sell property transferred by the decedent, and the personal representative or the trustee may sell the property in the same manner as the personal representative or trustee is authorized to sell property to pay the decedent's debts. See I.C. 6-4.1-8-3.

a. The personal representative may also recover the decedent's interest in non-probate multiple party accounts if the funds are needed to pay claims against the estate, taxes, or expenses of administration, including the survivor's allowance. See I.C. 32-4-1.5-7.

b. However, this action may only be instituted when the personal representative has received a written demand by a surviving spouse, a creditor, or someone acting for
the dependent child of a decedent. The personal representative must also bring the action within one year of the date of the decedent's death. See I.C. 32-4-1.5-7.

W. Within ten days after life insurance proceeds are paid to a resident decedent's estate, the payor life insurance company is to give notice (on the appropriate federal form) of the payment to the Indiana Department of State Revenue. See I.C. 6-4.1-8-5(b).

VIII. Filing requirements
A. There are certain instances in which an Indiana inheritance tax return need not be filed for an estate even though the decedent makes transfers which are subject to the Indiana inheritance tax law.

1. For instance, under I.C. 6-4.1-4-0.5, no Indiana inheritance tax return is required to be filed unless the total fair market value of the property interests transferred by the decedent to any individual transferee under a taxable transfer or transfers exceeds the exemption allowance which is provided to the transferee by I.C. 6-4.1-3-10 through I.C. 6-4.1-3-12.
   a. Under I.C. 6-4.1.4-0.5(b), the department of state revenue shall prescribe the affidavit form (Form IH-EXEM) that may be used to state that no inheritance tax is due after applying the exemptions under IC 6-4.1-3. The affidavit may be:
      (i) recorded in the office of the county recorder if the affidavit concerns real property and includes the legal description of the real property in the decedent's estate; or
      (ii) submitted as required by IC 6-4.1-8-4 if the affidavit concerns personal property.
   b. If consent by the department of state revenue or the appropriate county assessor is required under IC 6-4.1-8-4 for the transfer of personal property, the affidavit must be submitted with a request for a consent to transfer under IC 6-4.1-8-4. See I.C. 6-4.1-4-0.5(b).
   c. The department of state revenue or the appropriate county assessor may rely upon an affidavit prescribed by the department of state revenue under subsection (b) to determine that a transfer will not jeopardize the collection of inheritance tax for purposes of IC 6-4.1-8-4(e). See I.C. 6-4.1-4-0.5(d).
   d. It is presumed that no inheritance tax is due and that no inheritance tax return is required if an affidavit described in subsection (b) was:
      (i) properly executed; and
      (ii) recorded in the decedent's county of residence or submitted under IC 6-4.1-8-4. See I.C. 6-4.1-4-0.5(e).
   e. Except as provided in subsection (h), a lien attached under IC 6-4.1-8-1 to the real property owned by a decedent terminates when an affidavit described in subsection (b) is:
      (i) properly executed; and
      (ii) recorded in the county in which the real property is located. See I.C. 6-4.1-4-0.5(f).
   f. Except as provided in subsection (h), a lien attached under IC 6-4.1-8-1 to personal property that is owned by the decedent terminates when:
      (i) an affidavit described in subsection (b) is properly executed;
      (ii) the affidavit described in subsection (b) is submitted to the department of state revenue or the appropriate county assessor in conformity with IC 6-4.1-8-4; and
      (iii) the department of state revenue or the appropriate county assessor consents to the transfer. However subdivision (3) does not apply if consent of the department of state revenue or the appropriate county assessor is not required under IC 6-4.1-8-4 before the property may be transferred. See I.C. 6-4.1-4-0.5(g).
g. A lien terminated under subsection (f) or (g) is reattached to the property under IC 6-4.1-8-1 if the department of state revenue obtains an order that an inheritance tax is owed. See I.C. 6-4.1-4-0.5(h).

2. For this purpose, the fair market value of a property interest is the fair market value of the interest as of the appraisal date which is prescribed by I.C. 6-4.1-5-1.5. It is the responsibility of the personal representative to secure a fair market value appraisal for each interest in property which was transferred by the decedent.

3. Another example occurs when the individual exemption allowances are less than the value of the property interests which are transferred by the decedent, but the excess property interest value is reduced to zero by the deductions allowed under I.C. 6-4.1-3-13, I.C. 6-4.1-3-14 and I.C. 6-4.1-3-15.

4. If it appears to the personal representative that in no event could there be an Indiana inheritance tax payable because of taxable transfers by a resident decedent, then the personal representative may file a verified petition with the probate court, stating: the value of all of the real property and personal property in which the resident decedent had an interest at the resident decedent's death; and, the reason why no Indiana inheritance tax is to be imposed. See I.C. 6-4.1-5-7.

a. Thereafter, the probate court may set a hearing on the petition and give notice of the hearing to the interested parties, or, the probate court may enter a finding upon the petition. If the probate court determines that in no event could there be an Indiana inheritance tax due by the resident decedent's estate, then the personal representative is relieved of the obligation of filing a petition for the determination of the Indiana inheritance tax.

(i) If the probate court elects to have a hearing, then the probate court is to give notice of the hearing in the same manner which is prescribed for the giving of the notice which is required under I.C. 6-4.1-5-9.

(ii) However, such notice can be waived by filing a Waiver of Notice (Form IH-16).

(iii) If the probate court determines that a hearing is to be held, then the probate court must normally give notice to all interested parties regarding the date, time, and place of the hearing. However, see In re Batt's Estate, 220 Ind. 193, 41 N.E.2d 365 (1942). Most probate courts make the personal representative responsible for preparing and sending the notice of hearing concerning a petition for no Indiana inheritance tax due.

b. However, such a finding does not prevent the State of Indiana or any other interested party from petitioning the probate court for a rehearing on the matter by the probate court. See I.C. 6-4.1-5-8.

c. A copy of such petition and such decree (that no Indiana inheritance tax is due) must be sent to the Indiana Department of State Revenue (preferably, directly to the Indiana Inheritance Tax Division) and to the appropriate county treasurer. See I.C. 6-4.1-5-7, I.C. 6-4.1-5-8, and I.C. 6-4.1-5-11.

d. After the probate court completes the probate court's examination of the "no Indiana inheritance tax due petition", the probate court may enter an order stating that no Indiana inheritance tax is due as a result of the resident decedent's death.

(i) If the probate court enters such an order, then the petitioner is not required to file an Indiana inheritance tax return.

(ii) However, a person may petition the probate court, under I.C. 6-4.1-7, for a rehearing on the probate court's order or for a reappraisal of the property interests which were transferred by the resident decedent. Whether such a hearing is to be held, and if it is, the evidence which may be presented at the hearing is at the discretion of the probate court.
B. The time which is prescribed for the filing of a resident decedent's Indiana inheritance tax return and the contents of a resident decedent's Indiana inheritance tax return are provided for under I.C. 6-4.1-4-1.

1. Except as otherwise provided by I.C. 6-4.1-4-0.5 or I.C. 6-4.1-5-8, the personal representative of a resident decedent's estate or the trustee or transferee of property transferred by the resident decedent is to file an Indiana inheritance tax return with the appropriate probate court within 12 months after the date of the resident decedent's death for decedents dying prior to 7/1/01 and within 9 months for decedents dying on or after 7/1/01.
   a. That is, the Indiana inheritance tax return is now due at the same time as the federal estate tax return.
   b. Although I.C. 6-4.1-4-1 says that the inheritance tax return shall be filed with the appropriate probate court; in most counties, the return is actually filed with the county assessor.

2. Further, the personal representative has the duty to list all property which is required to be set forth in the Indiana Inheritance Tax Return (Form IH-6). See Cullop v. City of Vincennes, 34 Ind. App. 667, 72 N.E. 166 (1905).

3. The person filing the Indiana inheritance tax return must file the return under oath.

4. The Indiana inheritance tax return is to:
   a. Contain a description of all property interests which were transferred as taxable transfers by the resident decedent;
   b. State the fair market value, as of the appraisal date prescribed by I.C. 6-4.1-5-1.5, of each property interest which is so described in the statement;
   c. Contain an itemized list of all Indiana inheritance tax deductions which are claimed with respect to each property interest which is so described in the statement;
   d. Contain a list of the name and address of each transferee of the property interests which are so described in the statement;
   e. State the value of each of such property interests which were transferred to each transferee; and,
   f. State the name and address of the lawyer for the personal representative or for the person filing the Indiana inheritance tax return. See I.C. 6-4.1-4-1.
   g. If a decedent devises a life estate, then the nearest age of the life tenant, as of the date of death of the transferor, must be set out in the Indiana inheritance tax return.

5. In cases in which the decedent was the settlor of an inter vivos trust or was a party to an antenuptial or postnuptial agreement, a copy of the instrument creating such trust or establishing the rights or obligations of the decedent and/or the decedent's heirs, beneficiaries, or devises is to be attached to the Indiana inheritance tax return. See 45 IAC 4-1-3.

6. If a decedent dies testate, then a copy of the decedent's last will and testament is to be attached to the Indiana inheritance tax return.
   a. This is required for both resident decedent's and nonresident decedent's estate.
   b. There are no exceptions to this even though, for instance, the last will and testament is not probated or only spread of record. See 45 IAC 4.1-4-3. Also, see I.C. 6-4.1-4-1 and I.C. 6-4.1-4-7.

7. In all cases in which a federal estate tax return is filed with the Internal Revenue Service, a signed copy of that federal estate tax return must concurrently be filed with the Indiana Department of State Revenue preferably, directly with the Indiana Inheritance Tax Division.
   a. This is true for both resident decedents and nonresident decedents.
   b. If no federal estate tax return is to be filed, a note to that effect should be made on the Indiana inheritance tax return to alert the Indiana Department of Revenue to the fact that there is no property outside the State of Indiana that would cause the estate
to file a federal estate tax return.

c. Also, the personal representative and any trustee or transferee of property of the
decedent must file a copy of the written final determination of federal estate tax with
the Indiana Department of State Revenu within 30 days after such final
determination is received, regardless whether such final determination is made by
the Internal Revenue Service or a federal court. See I.C. 6-4.1-4-8.

8. A formal appraisal of all taxable real property must accompany the Indiana inheritance tax
return and the fair market value of such real property as of the date of death of the
decedent.

a. However, if more than one appraisal is obtained on the same parcel of real property,
all such appraisals must accompany the Indiana inheritance tax return. See 45 IAC
4.1-4-3(g)(6).

9. Any other documents including trust instruments, contracts, deeds or antenuptial agreements
must also be attached to the Indiana inheritance tax return to aid the Indiana Department of
Revenue in the determination of inheritance tax due. Failure to attach these documents will
slow down the processing of the inheritance tax return.

10. Any person who is under a duty to file the Indiana inheritance tax return may be cited to
appear before the probate court in order to show cause for not doing so if an interested party
files a motion asking the probate court to take that action.

a. In addition, the probate court may, on the probate court's own motion, order the
person to enter such an appearance. See I.C. 6-4.1-4-3.

b. Further, the probate court may order the removal of the personal representative of
a resident decedent's estate and appoint a successor to take the removed personal
representative's place if:

(i) The personal representative fails to appear before the probate court in
response to an order issued by the probate court under I.C. 6-4.1-4-3; or,

(ii) The personal representative fails to file an Indiana inheritance tax return on
or before the date fixed by the probate court under I.C. 6-4.1-4-4. See I.C.
6-4.1-4-5.

11. Under I.C. 6-4.1-4-4, the probate court may order a personal representative of a resident
decedent's estate to file an Indiana inheritance tax return on or before a date, which is fixed
by the probate court, if the personal representative appears before the probate court in
response to an order which is issued by the probate court under I.C. 6-4.1-4-3.

12. If the probate court finds that, because of an unavoidable delay, an Indiana inheritance tax
return cannot be filed on or before the date due, then the probate court may extend the
period for filing the return.

a. After the expiration of the first extension period, the probate court may grant a
subsequent extension if the person seeking the extension files a written motion which
states the reason for the need for the delay in filing the Indiana inheritance tax
return.

b. For purposes of I.C. 6-4.1-4-3 and I.C. 6-4.1-4-6, an Indiana inheritance tax return
is not due until the last day of any extension period or periods granted by the probate
court under I.C. 6-4.1-4-2.

c. This does not, however, waive interest or extend the time within which a decedent's
estate may be entitled to the five percent discount. See I.C. 6-4.1-4-2.

13. A penalty of fifty cents per day, not to exceed $50, is imposed for each day during which the
Indiana inheritance tax return is not filed within the prescribed period plus any additional
period for filing which is granted by the probate court. See I.C. 6-4.1-4-6.

a. That is, the additional time which is granted by the probate court is considered to be
part of the prescribed period. See I.C. 6-4.1-4-2.

b. Except as otherwise provided by I.C. 6-4.1-4-0.5 or I.C. 6-4.1-5-8, this penalty
applies to each resident decedent's estate, including a resident decedent's estate with regard to which no Indiana inheritance tax is due, from either the resident decedent's estate or from the decedent's transferees.

c. The probate court is to include a statement of the amount of the penalty in the Indiana inheritance tax decree which the probate court issues with respect to the resident decedent's estate.

d. The person against whom the penalty is charged is to pay the penalty to the county treasurer of the county in which the probate court is sitting.

e. However, the probate court may waive the penalty if the probate court determines that the person had a justifiable excuse for not filing the Indiana inheritance tax return on or before the due date.

f. This penalty is imposed on resident decedents only. There are no penalty provisions applying to nonresidents. See I.C. 6-4.1-4-6.

14. Within ten days after an Indiana inheritance tax return for a resident decedent is filed with the probate court, the probate court is to refer the Indiana inheritance tax return to the county inheritance tax appraiser. See I.C. 6-4.1-5-2.

a. The county inheritance tax appraiser is to:

(i) Investigate the facts concerning taxable transfers which were made by the decedent before the decedent's death;

(ii) Review the Indiana inheritance tax return for mistakes and omissions; and,

(iii) Appraise each property interest, transferred by the decedent as a taxable transfer, at the property interest's fair market value as of the appraisal date prescribed by I.C. 6-4.1-5-1.5. See I.C. 6-4.1-5-2.

(iv) In determining the fair market value, the county inheritance tax appraiser is required to make diligent inquiry into all factors concerning the property. See I.C. 6-4.1-5-2.

(a) This may include checking: consents and notices to transfer, which are already filed with the county inheritance tax appraiser; a safe deposit box inventory, if the inventory has been taken; and, real property records which state that the real property which was in the decedent's name.

C. The time which is prescribed for the filing of a nonresident decedent's Indiana inheritance tax return and the contents of a nonresident decedent's Indiana inheritance tax return are provided for under I.C. 6-4.1-4-7.

1. The Indiana inheritance tax return is required to be filed within 12 months after the date of the nonresident decedent's death for decedents dying prior to 7/1/01 and within 9 months after the date of the nonresident decedent's death for decedents dying on or after 7/1/01.

a. Interest is required to be paid only with regard to a late payment, and not with regard to a late filing.

2. Except as otherwise provided by I.C. 6-4.1-4-0.5, the personal representative of a nonresident decedent's estate or the trustee or transferee of property which was transferred by a nonresident decedent must file an Indiana inheritance tax return with the Indiana Department of State Revenue, preferably, directly with the Indiana Inheritance Tax Division, but not with a county or with a resident return. See I.C. 6-4.1-4-7.

a. This differs from transfers to a resident decedent which are required to be filed with the probate court under I.C. 6-4.1-4-1.

3. The person filing the Indiana inheritance tax return is to prepare the Indiana inheritance tax return on the forms which are prescribed by the Indiana Department of State Revenue, currently, the Indiana Inheritance Tax Return for Nonresident Decedents (Form IH-12). See I.C. 6-4.1-4-7.

4. A person may not be required to pay a fee in order to file an Indiana inheritance tax return.
See I.C. 6-4.1-4-9.

a. However, I.C. 33-19-5-6 provides that for each action filed under I.C. 6-4.1-5 (determination of inheritance tax), I.C. 29 (probate), and I.C. 30 (guardianship), the clerk is to collect from the party filing the action a probate fee of $120.

b. In 1988, I.C. 33-19-5-6 was amended to exempt the filing of an Indiana inheritance tax return from such fee unless proceedings, other than the court's approval of the Indiana inheritance tax return, become necessary.

5. A nonresident decedent's Indiana inheritance tax return is to:

a. Contain a statement of all property interests which were transferred, as taxable transfers, by the nonresident decedent;

b. State the fair market value, as of the appraisal date prescribed by I.C. 6-4.1-5-1.5, of each property interest which is so described in the statement;

c. Contain an itemized list of all Indiana inheritance tax deductions which are claimed with respect to each property interest which is so described in the statement;

d. Contain a list of the name and address of each transferee of the property interests which are so described in the statement;

e. State the value of each of such property interests which were transferred to each transferee; and,

f. Contain the name and address of the lawyer for the personal representative or for the person filing the Indiana inheritance tax return. See I.C. 6-4.1-4-7.

D. After an Indiana inheritance tax return (which is filed for a resident decedent) is examined by the county inheritance tax appraiser and the probate court, the probate court is to order the person who is responsible for filing the Indiana inheritance tax return to complete the Indiana inheritance tax return and refile the Indiana inheritance tax return if the probate court finds that the Indiana inheritance tax return is incomplete.

1. When the Indiana inheritance tax return is refiled, the probate court is to refer the refiled Indiana inheritance tax return to the county inheritance tax appraiser for review. See I.C. 6-4.1-5-5.

E. If after filing the Indiana inheritance tax return, the personal representative can file an amended return as long as the final order has not been issued.

1. If the probate court has already issued the order, then the proper procedure is to petition the court for redetermination.

2. Certain procedures exist for the petitioning for a rehearing or reappraisal of an initial probate court finding.

3. A person who is dissatisfied with an Indiana inheritance tax determination which is made by a probate court with respect to a resident decedent's estate may obtain a rehearing on the determination.

a. In order to obtain the rehearing, the objecting person must file a petition for a rehearing with the probate court within 120 days after the determination is made by the probate court.

b. Notice of this petition must be given to all interested parties, including the Indiana Department of State Revenue.

c. In the petition, the petitioner must state the grounds for the rehearing. The probate court is to base the rehearing on evidence which is presented at the original hearing plus any additional evidence which the probate court elects to hear. See I.C. 6-4.1-7-1.

d. The purpose of such a petition for rehearing is to point out the errors of law or of fact which the petitioner claims that the probate court relied upon in reaching the probate court's conclusion. See Indiana Dept. of State Revenue, Inheritance Tax Division v. Bandelier, 122 Ind. App. 200, 104 N.E.2d 133 (1952).

e. Upon a request for rehearing, the petitioner bears the burden of showing error in the

f. Where a refund is claimed for Indiana inheritance tax determined in the manner provided in I.C. 6-4.1-6, the time limits prescribed in I.C. 6-4.1-10-1 do not apply to the claim. See I.C. 6-4.1-10-2.

g. Except as otherwise provided in I.C. 6-4.1-7-2 and I.C. 6-4.1-7-6, any petition for the redetermination of the Indiana inheritance tax assessment, regardless of the basis, must be filed within the 120-day period.

(i) Once the 120-day period has passed, the probate court no longer has jurisdiction over the matter and any such determination order which is issued by the probate court, after the time for filing has passed, is void. See *Matter of Estate of Waltz*, 408 N.E.2d 558 (Ind. Ct. App. 1980) (case involving I.C. 6-4.1-7-2).

h. A petition for the reduction of interest is within the purpose of the rehearing provision, and therefore, such a petition must be filed within the 120-day statutory period.

(i) In *Indiana Dept. of Revenue, Inheritance Tax Division v. Estate of Broyles*, 457 N.E.2d 250 (Ind. Ct. App. 1983), the court held that a petition for reduction of interest is within the scope of the rehearing provision and, as such, requires compliance with the provisions of I.C. 6-4.1-7-1. In other words, the reduction of interest must be a part of the probate court's order which determines the Indiana inheritance tax due or as a result of a petition which is filed therefor within 120 days of the date of the probate court's order. The court also stated that the interest may only be reduced for the late determination of the Indiana inheritance tax and not for the late payment of the Indiana inheritance tax. See *Indiana Dept. of Revenue, Inheritance Tax Division v. Estate of Broyles*, 457 N.E.2d 250 (Ind. Ct. App. 1983).

IX. Collection of inheritance tax

A. Under I.C. 6-4.1-9-1(a), except as otherwise provided in I.C. 6-4.1-6-6(b), the Indiana inheritance tax which is imposed as a result of a decedent's death is due 18 months after the day on which the decedent dies for decedent's dying prior to 7/1/01 and within 12 months for decedent's dying on or after 7/1/01.

1. If a person who is liable for payment of the Indiana inheritance tax does not pay the Indiana inheritance tax on or before the due date, then that person is required (except as provided in I.C. 6-4.1-9-1(b)) to pay interest on the delinquent portion of the Indiana inheritance tax at the rate of ten percent per year from the date of the decedent's death to the date on which the payment is made.

2. If a court order has not been issued, then the taxpayer may estimate the amount of the Indiana inheritance tax and pay the tax prior to the 12 or 18-month time limit as applicable so as to avoid paying any interest.

3. I.C. 6-4.1-9-1(b) prescribes that if an unavoidable delay, such as necessary litigation, prevents a determination of the amount of Indiana inheritance tax due, then the probate court, in the case of a resident decedent, or the Indiana Department of State Revenue, in the case of a nonresident decedent, may reduce the rate of interest which is otherwise imposed under I.C. 6-4.1-9-1(a), for the time period beginning on the date of the decedent's death and ending when the cause of the delay is removed, to six percent per year.

a. A petition for reduction of interest falls within the purpose of the rehearing provisions of I.C. 6-4.1-7-1 and, therefore, must be filed within the 90-day statutory period (under previous law). See *Indiana Dept. of Revenue, Inheritance Tax Division v. Griffith's Estate*, 129 Ind. App. 278, 156 N.E.2d 395 (1959).
4. For an extensive discussion of a trial court's authority to reduce interest rates, see Indiana Dept. of Revenue, Inheritance Tax Division v. Estate of Charlie Thornton, unpublished opinion No. 2-978-A-322 (Ind. App. 1979). In the Thornton case, the court held as follows.
   a. That the trial court may reduce the interest from ten percent to six percent for the period of time from the date of the decedent's death to the date of the probate court order in cases in which there are unavoidable causes of delay which prevent the Indiana inheritance tax from being determined, but, the trial court order may not waive interest entirely.
   b. That the trial court does not have the authority to reduce interest on the basis of unavoidable delay in the payment of the Indiana inheritance tax. The court's authority extends only to instances in which there is a delay in the determination of the Indiana inheritance tax.
   c. That after the determination of the Indiana inheritance tax, the trial court does not have the authority to make a reduction in the ten percent interest rate, because once the determination is finally made, there is no reason for delaying the payment of the Indiana inheritance tax.
   d. That after the date of the probate court's order determining the Indiana inheritance tax and reducing the interest to six percent, the interest remains at ten percent until the Indiana inheritance tax is paid, and that any payment made is to be applied first to the satisfaction of the interest and then to the principal.
   e. That in order for the State of Indiana to be bound by the 120-day statute of limitations, the State of Indiana must receive notice of the various steps involved and the proper statutory procedure must be followed.
   f. That the State of Indiana is entitled to relief from a void order pursuant to the Indiana Rules of Procedure, Trial Rule 60(B)(6).

5. Whenever the probate court reduces the interest from ten percent per year to six percent per year, the interest is to be computed at the rate of six percent per year only from the date of the decedent's death to the date of the issuance of the Order Determining Value of Estate and Amount of Tax.
   a. Thereafter, interest is to be computed at the rate of ten percent per year until the Indiana inheritance tax is paid. See 45 IAC 4.1-9-3.

6. If a partial payment is made, at a time when both the Indiana inheritance tax and interest thereon are due, such partial payment is to be applied first to the interest thereon and only the amount of the payment in excess of the interest due is to be applied to the principal amount of the Indiana inheritance tax due. See 45 IAC 4.1-9-4. Also, see Dept. of Revenue v. Estate of Rogers, 459 N.E.2d 69 (Ind. Ct. App. 1984).

7. If Indiana inheritance tax is imposed because a petition is filed under I.C. 6-4.1-7-6, then the Indiana inheritance tax so imposed is, notwithstanding I.C. 6-4.1-9-1, not due until 30 days after notice of the final determination of federal estate tax is received by a person who is liable for paying the Indiana inheritance tax.
   a. If any Indiana inheritance tax so imposed is not paid on or before the due date, then the person liable for paying the Indiana inheritance tax is to pay interest on the delinquent tax at the rate of six percent per year from the due date (not the date of death as under I.C. 6-4.1-9-1) until the Indiana inheritance tax is paid. See I.C. 6-4.1-9-1.5.

8. According to I.C. 6-4.1-9-2, if the Indiana inheritance tax which is imposed as a result of a decedent's death is paid within one year after the decedent's date of death for decedents dying prior to 7/1/01 and within 9 months for decedents dying on or after 7/1/01, then the person making the payment is entitled to a five percent reduction in the Indiana inheritance tax due.
a. When payment is so made, the person collecting the Indiana inheritance tax is to grant the five percent reduction to the payor.

b. The five percent discount is only allowable during the time period which is stated by statute. Payments which are made after the statutory time period do not receive the discount despite the reason for delay. See 1915-1916 Op. Att'y. Gen. 553.

9. If an Indiana inheritance tax payment is placed in the mail in a manner in which, under ordinary conditions, the payment should be received by the due date of the payment, then the payment is be considered to be paid by the due date, regardless of when the payment is actually received by the State of Indiana. See Nell et al. v. Tracy, 459 N.E.2d 432 (Ind. Ct. App. 1984). See also 45 IAC 4.1-9-3(d).

10. Under I.C. 6-4.1-9-3, the Indiana Department of State Revenue is to maintain a book which indicates the amount of Indiana inheritance tax due as a result of a nonresident decedent's death.

a. When the Indiana Department of State Revenue gives an Indiana inheritance tax notice required by I.C. 6-4.1-5-16, the Indiana Department of State Revenue is to concurrently enter in the book the amount of Indiana inheritance tax stated in the notice. The book required by I.C. 6-4.1-9-3 is a public record.

B. Under I.C. 6-4.1-9-4, a person who is liable for the Indiana inheritance tax which is imposed as a result of a nonresident decedent's death is to pay the Indiana inheritance tax directly to the Indiana Department of State Revenue.

1. The Indiana Department of State Revenue is to collect the Indiana inheritance tax and is to issue a receipt to the person who pays the Indiana inheritance tax.

2. On the first Monday of each month, the Indiana Department of State Revenue is to report and remit to the Indiana state treasurer, the Indiana inheritance tax which is collected by the Indiana Department of State Revenue during the preceding month. The report must list the names of the estates with regard to which the Indiana inheritance taxes were paid.

3. In some cases, the probate court has the authority to appoint a special administrator for a nonresident decedent's estate.

a. According to I.C. 6-4.1-9-12, the probate court of Marion County may appoint a resident or special administrator for a nonresident decedent's estate if the Indiana Department of State Revenue demonstrates that the Indiana Department of State Revenue has reason to believe that a property interest transferred by the nonresident decedent under a taxable transfer has not been appraised for Indiana inheritance tax purposes in the manner which is required and that the property involved is located in the State of Indiana or that the Indiana inheritance tax, as determined by the Indiana Department of State Revenue, which is imposed as a result of the nonresident decedent's death, has not been paid and that two years of time has past after the nonresident decedent died.

b. A resident or special administrator who is appointed by the probate court has the same powers and duties as a general administrator. See I.C. 6-4.1-9-12.

C. The Indiana statutes provide guidelines for the collection of resident decedents' Indiana inheritance tax by each county.

1. The Indiana inheritance tax is to be paid to the county treasurer in the county in which the resident decedent was domiciled at the time of the resident decedent's death. Under I.C. 6-4.1-9-5, a person who is liable for Indiana inheritance tax which is imposed as a result of a resident decedent's death is to pay the Indiana inheritance tax to the treasurer of the county in which the Indiana inheritance tax due is determined.

2. If such person believes that more Indiana inheritance tax is due (as a result of the resident decedent's death) than the amount which was determined to be due by the probate court under I.C. 6-4.1-5-10, then such person may, without obtaining another probate court determination, pay the additional Indiana inheritance tax, and any interest due on the
additional Indiana inheritance tax, to the county treasurer. See I.C. 6-4.1-9-5(a).
3. The county treasurer under I.C. 6-4.1-9-5(b) is to collect the Indiana inheritance tax, issue a receipt for the tax payment in duplicate and send the original receipt to the Indiana Department of State Revenue.
4. The Indiana Department of State Revenue is to countersign the receipt, affix the Indiana Department of State Revenue's seal to the receipt, and return the signed and sealed receipt to the payor.
5. In addition, the Indiana Department of State Revenue is to charge the county treasurer with the amount of the Indiana inheritance tax which is collected by the county treasurer.
6. The county, in which the Indiana inheritance tax is determined, is entitled to receive eight percent of the Indiana inheritance tax which is paid by the representatives of a resident decedent's estate. See I.C. 6-4.1-9-6
a. On the first day of January, April, July, and October of each year, each county treasurer is, except as provided in I.C. 6-4.1-9-6(b), to transfer to the county general fund the amount which is due to the county. See I.C. 6-4.1-9-6.
b. The State of Indiana is to receive the remaining 92% of the Indiana inheritance tax, and all of the interest charges which are collected under I.C. 6-4.1-9-1 and I.C. 6-4.1-9-1.5, and all of the penalties which are collected by the county treasurer under I.C. 6-4.1-4-6.
c. In a county having a consolidated city, the amount due to the county is to be transferred to the general fund of the consolidated city. See I.C. 6-4.1-9-6(b).
d. Under I.C. 6-4.1-9-7, on the first day of January, April, July, and October of each year, each county treasurer is to send a written Indiana inheritance tax report, under oath, to the Indiana Department of State Revenue.
   (i) Each report is to state the amount of Indiana inheritance tax collected by the county treasurer during the preceding three months and is to list: the names of the estates with regard to which the Indiana inheritance taxes were paid; the names of the persons who paid the Indiana inheritance taxes; and, the dates on which the Indiana inheritance taxes were paid.
   (ii) Also, each county treasurer is to prepare each report on the form which is prescribed by the Indiana State Board of Accounts. See I.C. 6-4.1-9-7(a).
   (iii) On the first day of January, April, July, and October of each year, each county auditor is to issue a warrant to the Indiana state treasurer for the amount of Indiana inheritance tax, interest charges, and penalties which the State of Indiana is to receive. The county treasurer is to stamp and countersign the warrant and is to send the warrant to the Indiana Department of State Revenue with the county treasurer's Indiana inheritance tax report for the preceding three months. See I.C. 6-4.1-9-7(b).
   (iv) According to I.C. 6-4.1-9-8, the Indiana Department of State Revenue is to receipt and account for each warrant which the Indiana Department of State Revenue receives under I.C. 6-4.1-9-7(b).
   (v) The Indiana Department of State Revenue is to then forward the warrant to the Indiana state treasurer.
   (vi) The Indiana state treasurer is to deposit the warrants in a special account within the State of Indiana's general fund, which account is titled the "Inheritance Tax Account". See I.C. 6-4.1-9-8(a).
   (vii) At the end of each month, the Indiana state auditor is to issue a quietus to the Indiana Department of State Revenue for the money which is so collected by the Indiana Department of State Revenue under I.C. 6-4.1-9-7(b). The Indiana state auditor is to issue the quietus under the same terms
7. The Indiana Department of State Revenue is to audit all reports which the Indiana Department of State Revenue receives from the counties.
   a. Under I.C. 6-4.1-9-9, the Indiana Department of State Revenue is to audit the quarterly Indiana inheritance tax reports which are required by I.C. 6-4.1-9-7.
   b. And, the Indiana Department of State Revenue is to report any shortage which the Indiana Department of State Revenue discovers to the appropriate county treasurer and county auditor.
   c. If the Indiana Department of State Revenue notifies a county treasurer and a county auditor of a shortage, then the county treasurer and county auditor are to promptly issue a warrant to the Indiana state treasurer for the balance which is due to the State of Indiana.
   d. If the Indiana Department of State Revenue, through an audit, discovers that an excessive payment has been made, then the amount of the excess is to be refunded in the same manner in which refunds are made under I.C. 6-4.1-10. See I.C. 6-4.1-9-9.

8. The department of state revenue may enforce payment of the Indiana inheritance tax which is due by notifying the local prosecutor.
   a. Under I.C. 6-4.1-9-11, if the department of state revenue believes that a person has failed to pay the Indiana inheritance tax for which such person is liable, then the department may file an action in the appropriate probate court in the name of the state to enforce the payment.
   b. This action must be commenced within ten years after the date of the order which imposes the Indiana inheritance tax unless the probate court has not complied with I.C. 6-4.1-5-11.
   c. Every person who is liable for the Indiana inheritance tax is liable to the county in whose name the action is initiated. See I.C. 6-4.1-9-11(a).

X. Refunds of Indiana inheritance and estate tax
   A. Under I.C. 6-4.1-10-1, a person may file with the Indiana Department of State Revenue a claim for the refund of Indiana inheritance tax or Indiana estate tax which has been erroneously or illegally collected.
      1. A person must file the claim for refund within three years after the Indiana inheritance tax or Indiana estate tax is paid or within one year after the Indiana inheritance tax or Indiana estate tax liability is finally determined, whichever is later.
      2. Claims for refunds should be filed with the Indiana Department of State Revenue and not the county probate court.
      3. The time limits prescribed in I.C. 6-4.1-10-1 for filing a refund claim do not apply if the claim is for the refund of Indiana inheritance tax which has been determined in the manner provided in I.C. 6-4.1-6, which covers agreements entered into with the Indiana Department of State Revenue on the valuation of assets. See I.C. 6-4.1-10-2.
   B. In certain instances, the Inheritance Tax Return may be amended and a new inheritance tax order issued.
      1. However, if more than 120 days have passed since the filing of the original Inheritance Tax Return has been filed, then this procedure is improper.
      2. In that instance, the claim for refund form must be filed directly with the Indiana Department of State Revenue.
   C. The amount of the refund to which a person is entitled equals the amount of the erroneously or illegally collected Indiana inheritance tax or Indiana estate tax, plus interest at the rate of six percent per annum computed from the date on which the Indiana inheritance tax or Indiana estate tax was
paid to the date on which the Indiana inheritance tax or Indiana estate tax is refunded. See I.C. 6-4.1-10-1(b).

D. The filing of a petition for a redetermination of the Indiana inheritance tax due or the filing of a claim for refund and appealing the Indiana Department of State Revenue's determination to the probate court within the time fixed under I.C. 6-4.1-7-1 and I.C. 6-4.1-10-4 or to the Indiana Tax Court is jurisdictional and a pre-condition to or the essence of the right itself, and after the passage of the time which is allotted by I.C. 6-4.1-7-1, I.C. 6-4.1-10-4, and I.C. 6-4.1-10-1, the right is lost. See Matter of Estate of Compton, 406 N.E.2d 365 (Ind. Ct. App. 1980).

1. In this case, the court decided that the time limitations in the statutes were conditions precedent and not statutes of limitation, the difference being that statutes of limitation can be waived while a condition precedent cannot be waived.

2. Once the applicable time limit (for filing a claim for refund) has run, neither the probate court nor the Indiana Tax Court has the jurisdiction to hear the petition, and such jurisdiction cannot be conferred upon either the probate court or the Indiana Tax Court by an agreement. See Matter of Estate of Compton, 406 N.E.2d 365 (Ind. Ct. App. 1980).

E. The Indiana Department of State Revenue is required to review each claim for a refund of the Indiana inheritance tax or Indiana estate tax.

1. Under I.C. 6-4.1-10-3, the Indiana Department of State Revenue is to review each claim for refund and is to enter an order either approving, partially approving, or disapproving the claim for refund.

2. If the Indiana Department of State Revenue either approves or partially approves a claim for refund, then the Indiana Department of State Revenue is to send a copy of the order: to the county treasurer who collected the tax, if the refund applies to Indiana inheritance tax which was collected as a result of a resident decedent's death; or, to the Indiana state treasurer, if the refund is a result of other Indiana death taxes, including a nonresident decedent's inheritance tax, which are collected by the Indiana Department of State Revenue. See I.C. 6-4.1-10-3(a).

F. The Indiana state treasurer is to pay the refund from money which is under Indiana state treasurer's control and which money has not otherwise been appropriated.

1. The Indiana state treasurer is to receive a credit for the amount so refunded.

2. The county treasurer is to claim the credit on the county treasurer's Indiana inheritance tax report for the quarter in which the refund is paid. See I.C. 6-4.1-10-3(a).

3. Amounts sufficient to pay the refunds under I.C. 6-4.1-10 are annually appropriated. See I.C. 6-4.1-10-6.

G. Within five days after entering an order with respect to a claim for refund filed under I.C. 6-4.1-10-1, the Indiana Department of State Revenue is to send a copy of the order to the person who filed the claim. See I.C. 6-4.1-10-3(b).

1. The person claiming a refund may appeal an adverse determination (concerning such refund claim) of the Indiana Department of State Revenue to the probate court, under I.C. 6-4.1-10-4 or to the Indiana Tax Court under I.C. 33-3-5-2.

2. Under I.C. 6-4.1-10-4, a person who files a claim for refund of Indiana inheritance tax or Indiana estate tax may appeal an adverse refund order which the Indiana Department of State Revenue enters with respect to such person's claim.

a. To initiate the appeal, the person must, within 90 days after the Indiana Department of State Revenue enters the order, file a complaint in the appropriate court, in which complaint the Indiana Department of State Revenue is named as the defendant.

b. In general, such an adverse determination (concerning a refund claim) by the Indiana Department of State Revenue may be appealed, under I.C. 6-4.1-10-4, to: (i) The probate court of the county, if any, in which administration of the decedent's estate is pending; or,
(ii) To the probate court of any county in which the resident decedent was domiciled at the resident decedent's date of death, if no administration of the estate is pending in the State of Indiana; or,

(iii) In the probate court of any county in which any of the nonresident decedent's property was located at the nonresident decedent's date of death, if no administration of the nonresident decedent's estate is pending in the State of Indiana. See I.C. 6-4.1-10-4(b).

c. The Indiana Tax Court or the probate court, as the case may be, which hears an appeal brought by a person claiming a refund under I.C. 6-4.1-10-4(a) has jurisdiction to determine the amount of refund, if any, and either party may appeal the decision. See I.C. 6-4.1-10-5. Also, see I.C. 6-4.1-12-1.

XI. The Indiana Tax Court.

A. On July 1, 1986, the Indiana Tax Court was created by the Indiana General Assembly's enactment of I.C. 33-3-5-1, et. seq., in order to provide uniformity in adjudication of State of Indiana tax litigation by establishing a court, in which the judge would have the knowledge and expertise required to interpret a variety of complex tax laws.

B. Although designated an "appellate court" by the Indiana General Assembly (see I.C. 33-3-5-1), the Indiana Tax Court actually serves as the exclusive trial court to hear tax appeals from final determinations of the Indiana Board of Tax Review and from the Indiana Department of State Revenue. See I.C. 33-3-5-2b.

C. Specifically, the Indiana Tax Court is a court of limited jurisdiction, and has exclusive jurisdiction over "any case that arises under the tax laws of the state and that is an initial appeal of a final determination made by: (1) the department of state revenue; or (2) the Indiana Board of Tax Review." See I.C. 33-3-5-2b.

D. The Indiana Supreme Court, pursuant to the Court's inherent authority to adopt rules of procedure governing the practice of all courts in the State of Indiana, has promulgated rules of practice and procedure for the Indiana Tax Court.

1. These Indiana Tax Court rules do not replace the Indiana Rules of Trial Procedure, except to the extent that particular Indiana Tax Court rules "are clearly inconsistent with the Indiana Rules of Trial Procedure." See Rule TC-1.

2. In general, the Indiana Tax Court rules provide for one form of civil action which is referred to as an "original tax appeal". See Rule TC-2(A).
   a. An original tax appeal is an action that arises under the tax laws of the State of Indiana by which an initial judicial appeal of a final determination of the Department of State Revenue or the Indiana Board of Tax Review is sought. See Rule TC-2(B).

E. An original tax appeal is commenced by the filing of a petition in the Indiana Tax Court. See Rule TC-3(A).

1. In addition to such filing, a fee is to be paid to the clerk of the Indiana Tax Court, which fee is to be equal to the fee which is provided in I.C. 33-19-5-6 for an action which is filed in an Indiana probate court. See I.C. 33-3-5-16.

2. Currently, I.C. 33-19-5-6 provides that such filing fee is $120.00.

F. The Indiana Tax Court judge hears each original tax appeal without the intervention of a jury. See I.C. 33-3-5-13. All decisions of the Indiana Tax Court are required to be rendered in writing.

G. There are other prerequisites for initiating an original tax appeal with the Indiana Tax Court, which prerequisites depend on the governmental unit from which the cause of the appeal originates and the type of tax involved. That is, there are different procedures and time requirements for original tax appeals from final determinations of the Indiana Department of State Revenue and from final determinations of the Indiana Board of Tax Review.

H. Although it appears that the Indiana Tax Court has jurisdiction over final determinations made by the
Indiana Department of State Revenue, there is a jurisdictional problem involving a final determination made by the Indiana Department of State Revenue concerning the Indiana inheritance tax or the Indiana estate tax.

1. Unlike other Indiana statutory provisions which pre-date the creation of the Indiana Tax Court and which were amended at the time of the creation of the Indiana Tax Court in order to provide for appeals of final determinations to the Indiana Tax Court (see, for instance, I.C. 6-1.1-15-5 and I.C. 6-8.1-9-1), the statutory provisions governing the Indiana inheritance tax and the Indiana estate tax were not amended when the Indiana Tax Court was created. See I.C. 6-4.1-10-4; I.C. 6-4.1-10-5; and, I.C. 6-4.1-7-5.

2. Indeed, although the original proposed legislation for the creation of the Indiana Tax Court specifically addressed appeals of the Indiana inheritance tax and Indiana estate tax final determinations, all such references to the Indiana inheritance tax and the Indiana estate tax were deleted prior to enactment of the final legislation.

3. An appeal of a final determination (made by the Indiana Department of State Revenue) concerning the Indiana inheritance tax or the Indiana estate tax must be taken to the appropriate county probate court.
   a. For instance, as previously stated, I.C. 6-4.1-10-1 provides that a person may seek a refund of erroneously collected Indiana inheritance tax or Indiana estate tax by filing a claim for refund with the Indiana Department of State Revenue.
   b. Then, if the taxpayer's refund claim is denied by the Indiana Department of State Revenue, the taxpayer may appeal (under I.C. 6-4.1-10-4) such final determination of the Indiana Department of State Revenue.
      (i) However, such an appeal is to be filed in the appropriate county probate court, and no mention is made of the Indiana Tax Court. See I.C. 6-4.1-10-4 and discussion of its provisions, above.
      (ii) Under a plain reading of the Indiana inheritance tax and Indiana estate tax statutes, then, it appears that the Indiana Tax Court's jurisdiction might not be exclusive in such cases.
      (iii) An appeal to the Tax Court may be taken by either party in accordance with the rules of appellate procedure if the probate court issues an adverse ruling.

I. All appeals from the Indiana Tax Court are to be appealed directly to the Indiana Supreme Court. See I.C. 33-3-5-15.

1. However, the statute creating the Indiana Tax Court is silent as to what procedures should be followed in order to initiate an appeal from the Indiana Tax Court to the Indiana Supreme Court. Because of this silence, the Indiana State Board of Tax Commissioners (or what is now known as the Indiana Board of Tax Review), prior to initiating an appeal to the Indiana Supreme Court in a 1987 Indiana Tax Court case, requested pertinent instructions from the Indiana Supreme Court. Specifically, the Board was uncertain whether it should follow the basic "motion to correct errors" procedure, which is set forth in the Indiana Rules of Trial Procedure, or should follow the "transfer" provisions of the Indiana Rules of Appellate Procedure.

2. On April 21, 1987, the Indiana Supreme Court issued an order which clarifies this important procedural issue, in the case of Indiana State Board of Tax Commissioners v. Fraternal Order of Eagles Lodge No. 255, 521 N.E.2d 678 (Ind. 1988). The order provides as follows: "This Court now orders that appeals of final orders from the Indiana Tax Court shall be filed in the Indiana Supreme Court under the following guidelines: Counsel for appellant shall file a motion to correct errors and praecipe, in the Tax Court, in accordance with T.R. 59 and A.R. 2(A). The Record of Proceedings and briefs shall be filed in the Indiana Supreme Court in accordance with A.R. 3(B) and A.R. 8.1, respectively. Pre-Appeal Statements under A.R. 2(C) shall not be filed. Normal rules forfeited. Normal rules for preparation of
the Record and briefs shall apply.”
a. Thus, when appealing a decision of the Indiana Tax Court to the Indiana Supreme Court, the taxpayer must first follow the Indiana Rules of Trial Procedure for filing a motion to correct errors with the Indiana Tax Court. Then, when the appeal proceeds to the Indiana Supreme Court, the Indiana Supreme Court must entertain the appeal, and cannot refuse to hear the case, as the Indiana Supreme Court can under the transfer rules.

3. The Indiana Tax Court is becoming a decisive voice on Indiana tax law, and will play an ever-expanding, important role in Indiana tax developments as the Indiana Tax Court's caseload grows. Although there are certain to be specific modifications and adjustments made to its statutory scheme in the future, it is doubtful that the Indiana General Assembly will repudiate its noble attempt at establishing uniformity in Indiana tax litigation.

XII. Compromise agreements
A. Under certain conditions, the Indiana Department of State Revenue may, with the advice and approval of the Indiana attorney general, enter into a compromise agreement concerning the amount of the Indiana inheritance tax or the interest charges on delinquent Indiana inheritance tax.
B. The Indiana Department of State Revenue may enter into such an agreement with the personal representative of a decedent's estate or with the transferee of property transferred by the decedent. See I.C. 6-4.1-12-5(a).
C. The Indiana Department of State Revenue can enter a compromise if the Indiana Department of State Revenue and the Indiana attorney general believe that a substantial doubt exists as to any one of the following.
   1. The right to impose the tax under applicable Indiana law.
   2. The constitutionality, under either the Indiana or United States Constitutions, of the imposition of the Tax.
   3. The correct value of property transferred under a taxable transfer.
   4. The correct amount of tax due.
   5. The collectability of the tax.
   6. Whether the decedent was a resident decedent. See I.C. 6-4.1-12-5(b).
D. After payment of the Indiana inheritance tax is agreed to by the parties to a compromise agreement, the issue as to the amount of tax to be collected can be re-opened only if the agreement was entered into fraudulently. See I.C. 6-4.1-12-5(c).

XIII. Confidentiality
A. Under I.C. 6-4.1-12-12, the Indiana Department of State Revenue, the Indiana Department of State Revenue's counsel, agents, clerks, stenographers, other employees, or former employees, or any other person who gains access to the Indiana inheritance tax files may not divulge any information disclosed by the documents required to be filed under I.C. 6-4.1 seq.
B. Disclosure may be made in the following cases.
   1. To comply with an order of the court.
   2. To the members and employees of the Indiana Department of State Revenue.
   3. To the members and employees of county offices and courts to the extent they need the information for inheritance tax purposes. I.C. 5-14-3-6.5 does not apply to this subdivision.
   4. To the Indiana governor.
   5. To the Indiana attorney general.
   6. To any legal representative of the State of Indiana in any action pertaining to the tax due under I.C. 6-4.1. seq.
   7. To any authorized officer of the United States of America, when the recipient agrees that the information is confidential and will be used solely for official purposes.
   8. Upon the receipt of a certified request, to any designated officer of a tax department of any
other state, district, territory, or possession of the United States of America, when the state, district, territory, or possession permits the exchange of like information with the taxing officials of Indiana and when the recipient agrees that the information is confidential and will be used solely for tax collection purposes.

9. Upon receipt of a written request, to the director of the department of family and children and to any county director of family and children, when the recipient agrees that the information is confidential and will be used only in connection with their official duties.

10. To the attorney listed on the Indiana inheritance tax return under I.C. 6-4.1-4-1 or I.C. 6-4.1-4-7. See I.C. 6-4.1-12-12.

C. Any person who knowingly violates this section commits a Class C misdemeanor and is subject to a $500 fine and imprisonment for 60 days and is to be immediately dismissed from the person’s office or employment, if the person is an officer or employee of the State of Indiana.

D. The Indiana Department of State Revenue, through the Indiana Inheritance Tax Division, may correspond with the lawyer for the estate during an audit, without benefit of a power of attorney being completed by the personal representative and filed with the Indiana Department of State Revenue.

1. However, if a lawyer is not listed on the Indiana inheritance tax return, correspondence is to be sent only to the personal representative or person filing the Indiana inheritance tax return.

2. The 1988 amendment to I.C. 6-4.1-12-12 allows the Indiana Department of State Revenue, through the Indiana Inheritance Tax Division, to correspond with the lawyer listed on the Indiana inheritance tax return during an audit without a power of attorney completed by the personal representative and filed with the Indiana Department of State Revenue. This amendment became effective July 1, 1988.
I. The Indiana statutes provide that an estate tax, which is referred to as the "Indiana estate tax", is imposed at the time of a decedent's death on the decedent's estate if the federal death tax credit, which is allowable under Internal Revenue Code section 2011 as a credit for state death taxes (and as limited, in the case of a nonresident non-citizen of the United States of America by I.R.C. section 2102) against the federal estate tax which is imposed as a result of the decedent's death, exceeds the total state death taxes which are actually paid as a result of the decedent's death. See I.C. 6-4.1-11-1.

A. A credit is allowable against the federal estate tax for any estate, inheritance, legacy, or succession tax actually paid to any state or the District of Columbia, and which tax is attributable to any property which is included in a decedent's federal gross estate. See I.R.C. section 2011(a).

1. The allowable credit is computed by using the amount of the decedent's "adjusted taxable estate". A decedent's "adjusted taxable estate" is the amount of the decedent's taxable estate reduced by $60,000.
   a. The amount of $60,000 has no relevance to any current concept in the estate tax law. The amount of $60,000 was related to the former flat-amount exemption which was granted to decedents for estate tax purposes, under prior law.

2. The credit for state death taxes may not be more than the amount of the total estate tax minus only the unified estate tax credit. See I.R.C. section 2011(f).

3. The amount of a decedent's adjusted taxable gifts, which is added to the decedent's taxable estate in order to compute the federal estate tax, is not considered in computing the state death tax credit.

4. If a state imposes a death tax on a charitable transfer and a deduction is claimed for the tax then the credit for state death taxes is limited to the smallest amount of: (1) the amount of state death taxes paid minus the state death tax as imposed in a charitable transfer for which a deduction was claimed; (2) the minimum amount of the state death tax credit which is allowable to the decedent's estate using the following table for credit for state death taxes; and, (3) a fraction with the numerator being all of the state death taxes minus the state death taxes imposed on the charitable transfer and the denominator being all state death taxes multiplied by the maximum credit computed without deduction for state death taxes.

5. The maximum allowable credit for state and local death taxes is as follows.

<table>
<thead>
<tr>
<th>Adjusted Taxable Estate Equal To Or More Than</th>
<th>Adjusted Taxable Estate Less Than</th>
<th>Credit On Column (1)</th>
<th>Rates Of Credit On Amount In Column (1) Excess Over</th>
<th>Maximum Credit For State Death Taxes</th>
</tr>
</thead>
<tbody>
<tr>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>(1)</td>
</tr>
<tr>
<td>0</td>
<td>40,000</td>
<td>0</td>
<td>0.8</td>
<td>None</td>
</tr>
<tr>
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<td>90,000</td>
<td>0</td>
<td>0.8</td>
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<td>400</td>
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</tr>
<tr>
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<td>10,000</td>
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<td></td>
</tr>
<tr>
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<td>18,000</td>
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<td></td>
</tr>
<tr>
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<td>2,040,000</td>
<td>70,800</td>
<td>7.2</td>
<td></td>
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</tbody>
</table>
B. The Indiana estate tax is a device, which is indirectly allowable by I.R.C. section 2011, whereby death taxes, which would otherwise be payable to the federal government, can effectively be paid to, for instance, the State of Indiana.

C. Under I.C. 6-4.1-11-3, the Indiana estate tax accrues at the time when a decedent dies. In general, the Indiana estate tax is due 18 months after the date of the decedent's death for decedent's dying prior to 7/1/01 and within 12 months for decedent's dying on or after 7/1/01.

1. However, any amount of the Indiana estate tax, which results from a final change (for instance, due to a final agreement with the Internal Revenue Service) in the amount of federal estate tax, is due at the later of: 18 months after the date of the decedent's death; or, one month after the final notice (the federal final determination letter or notice from the Internal Revenue Service, which states that the so determined federal estate tax is due) is given to the person who is liable for the payment of such federal estate tax.

2. The person to whom such letter or notice is sent must also send a copy of such letter or notice to the Indiana Department of State Revenue Inheritance Tax Division.

3. If the Indiana estate tax is not paid on or before such due date, then the person who is liable to pay the Indiana estate tax is required to pay interest on the delinquent portion of the Indiana estate tax, which interest runs from such due date (not the date of death, as in the case of the Indiana inheritance tax) until the Indiana estate tax is paid, at the rate of six percent per year. See I.C. 6-4.1-11-4.

D. In the case of a resident and nonresident decedent, the Indiana estate tax equals the product of such remainder multiplied by a fraction, the numerator of which is the value of the decedent's Indiana gross estate and the denominator of which is the value of the nonresident decedent's total gross estate. See I.C. 6-4.1-11-2(b).

E. For purposes of the Indiana estate tax, the value of a decedent's Indiana gross estate (that is, gross taxable transfers) equals the total fair market value on the appraisal date of real property and tangible personal property which had an actual situs within the State of Indiana at the time of the nonresident decedent's death and which is includible in the decedent's gross estate for federal estate tax purposes under I.R.C. section 2031 through I.R.C. section 2044, whether or not the property is subject to Indiana inheritance tax. See I.C. 6-4.1-11-2(c).

1. For purposes of determining the value of a decedent's Indiana gross estate (gross taxable transfers) and the decedent's total federal gross estate, the appraisal date for each property interest is the date on which the property interest is valued for federal estate tax purposes. See I.C. 6-4.1-11-2(e).

2. For both resident decedents and nonresident decedents, the total fair market value means the full fair market value. Therefore, even though I.R.C. section 2032A is used in valuing certain real property in the federal gross estate, nevertheless, the fair market value of the real property must be used for Indiana inheritance tax purposes and for the purpose of calculating the Indiana estate tax of a nonresident decedent.

3. Real property located outside Indiana is not subject to Indiana estate tax, regardless of whether the property was placed in trust or whether the trustee is required to distribute the
property in-kind.

4. For resident decedents, intangible personal property is subject to Indiana inheritance

5. In addition, real property located in Indiana is not subject to Indiana estate tax if the Indiana
real property was placed in an irrevocable trust during the decedent’s life in which the
decedent has no retained interest, and the transfer was not made in contemplation of death

F. A decedent is entitled to claim the amount of the Indiana estate tax paid as a credit against the
Indiana inheritance tax which is imposed on the decedent's estate if the Indiana inheritance tax is
imposed after the Indiana estate tax is paid and if both taxes are imposed as a result of the same
decedent's death. See I.C. 6-4.1-11-5.

G. Pursuant to I.C. 6-4.1-11-6, the Indiana Department of State Revenue, not the local county treasurer
with whom the Indiana inheritance tax is paid, is to collect the Indiana estate tax and any interest
which is applicable thereto.

1. Further, the Indiana Department of State Revenue is to remit such money which the Indiana
Department of State Revenue so collects to the Treasurer of the State of Indiana, and the
Treasurer is to deposit the money in the Indiana state general fund.

H. "Pick-up" taxes which are paid to other states are not deductible in determining the amount of the

1. However, this case does not resolve the issue as to whether the term "pick-up tax" refers
only to the additional estate tax for credit under I.R.C. section 2011 or whether the term also
refers to an estate tax for federal credit only.

2. That is, does the particular death tax serve as the basic death tax for the foreign state or
does the particular death tax serve as a death tax which is in addition to the foreign state's
basic death tax?

3. Currently, the Indiana Department of State Revenue considers all such death taxes to be
non-deductible in determining the amount of the Indiana estate tax due.

4. Further, an Indiana case held that the basic death tax of the State of Florida, which death tax
is also a pick-up tax, is not deductible in determining the amount of the Indiana estate tax
App. 1986).
The Indiana Generation-Skipping Transfer Tax.

I. An Indiana generation-skipping transfer tax is imposed upon every generation-skipping transfer. See I.C. 6-4.1-11.5-7.

A. The transfer tax is the amount determined in the following formula:

1. STEP ONE: Divide:
   (A) the value of the transferred property that is legally located in Indiana; by
   (B) the total value of the transferred property.

2. STEP TWO: Multiply:
   (A) the quotient determined under STEP ONE; by
   (B) the federal generation-skipping transfer tax credit.

3. STEP THREE: Determine the remainder of:
   (A) the federal generation-skipping transfer tax credit; minus
   (B) the generation-skipping transfer taxes paid to states other than Indiana.

4. STEP FOUR: Determine the greater of:
   (A) the STEP TWO amount; or
   (B) the STEP THREE amount.

C. The value of the transferred property equals the final value of the property determined for federal generation-skipping transfer tax purposes. See I.C. 6-4.1-11.5-8.

D. The transfer tax is due twelve (12) months after the date of death of the person whose death resulted in the generation-skipping transfer. See I.C. 6-4.1-11.5-9.

E. The transfer tax shall be paid to the department of state revenue. See I.C. 6-4.1-11.5-10.

F. A person who is required to file a return reporting a generation-skipping transfer that reflects a federal generation-skipping transfer tax credit under federal statutes and regulations shall, on or before the date specified in section 9 of this chapter, file the following with the department of state revenue:

   1. A copy of the federal return.
   2. A schedule indicating:
      a. the value of the transferred property legally located in Indiana; and
      b. the results of the formula set forth in section 8 of this chapter. See I.C. 6-4.1-11.5-11.

G. If the transfer tax is not paid on or before the due date set under section 9 of this chapter, the person who is required to pay the tax shall pay, in addition to the tax, interest on the delinquent portion of the tax at the rate of six percent (6%) per year. Interest under this section shall be charged from the due date of the tax until the date the tax is paid. See I.C. 6-4.1-11.5-12