AN ANALYSIS OF THE TANGIBLE PERSONAL PROPERTY TAX LAW OF THE STATE OF INDIANA
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Since ancient times, governments have used land and tangible personal property to provide a tax base. See Lynn, Property-Tax Development: Selected Historical Perspectives, in Property Tax USA 7, 8 (A. Lindholm ed. 1967). In Indiana, property taxes remain an important source of funding for units of local government and school corporations, although due to the distribution of state funds derived from other taxes to the counties and other political subdivisions, property taxes no longer constitute most of a taxpayer's tax liability. See Indiana Legislative Services Agency, Handbook of Taxes and Appropriations (1981).

Even though property taxes are collected locally, the state maintains strict control over local government and its method and rate of taxation by mandating which taxes can be imposed locally and what the rate of such taxes are. Rules formerly promulgated by the State Board of Tax Commissioners in Indiana were the basis for state tax collection. See I.C. 6-1.1-31-5. Effective January 1, 2002, the legislature promulgated new rules for the governance of assessment methods and the procedures for appealing assessments. See I.C. 6-1.5-2. These new provisions did away with the State Board of Tax Commissioners which formerly had the final word on the assessment of property values, administered the property tax control program through oversight of local unit budgets, construed the state's property tax statutes and issued all regulations pertaining to the assessment of property in the State of Indiana. See I.C. 6-1.1-30-14. The State Board of Tax Commissioners has been replaced by two entities, the Indiana Board of Tax Review and the Department of Local Government Finance. The Indiana Board of Tax Review's composition is governed by I.C. 6-1.5-2-1 which provides:

(a) A state agency to be known as the Indiana board of tax review is established. The Indiana board is composed of three (3) lay members. The governor shall appoint the members of the Indiana board. The members of the Indiana board shall elect a chairperson of the board.

(b) Two (2) members of the Indiana board must be members of one (1) major political party, and one (1) member of the board must be a member of the other major political party.

(c) Except as provided in subsections (d) and (e), the term of office of an Indiana Board member is four (4) years.

(d) The initial term of office of the Indiana board are as follows:
   (1) For one (1) board member, one (1) year.
   (2) For one (1) board member, two (2) years.
   (3) For one (1) board member, three (3) years.

(e) An Indiana board member appointed to fill a vacancy shall serve for the unexpired term of the member's predecessor.

(f) Any two (2) members of the Indiana board constitute a quorum for the transaction of business. Action may be taken by the Indiana board only upon a vote of a majority of the whole board.

The Department of Local Government Finance is separate and distinct from the Indiana Board. It consists of one commissioner, deputy commissioners, and division directors. Its role is to promulgate assessing rules, to assess certain properties, approve all local unit budgets and debt, and to conduct data analysis. I.C. 6-1.1-30-14 specifically states:

(a) The department of local government finance:
   (1) shall see that the property taxes due this state are collected;
   (2) shall see that the penalties prescribed under this article are enforced;
   (3) shall investigate the property tax laws and systems of other states and countries; and
   (4) may recommend changes in this state’s property tax laws to the general assembly.

(b) The department of local government finance shall see that personal property assessments are correctly and completely reported by annually conducting audits of a sampling of personal property assessment returns throughout the state. Audits under this subsection shall be conducted by department personnel. I.C. 6-1.1-31-1 goes on to provide the duties of the department and states:
(a) The department of local government finance shall do the following:
   (1) Prescribe the property tax forms and returns which taxpayers are to complete and on which the taxpayer’s assessment will be based.
   (2) Prescribe the forms to be used to give taxpayers notice of assessment actions.
   (3) Adopt rules concerning the assessment of tangible property.
   (4) Develop specifications that prescribe state requirements for computer software and hardware to be used by counties for assessment purposes. The specifications developed under this subdivision apply only to computer software and hardware systems purchased for assessment purposes after July 1, 1993.
   (5) Adopt rules establishing criteria for the revocation of a certification under IC 6-1.1-35.5-6
(b) The department of local government finance may adopt rules that are related to property taxation or the duties or the procedure of the department.
(c) Rules of the state board of tax commissioners are for all purposes rules of the department of local government finance and the Indiana board until the department and the Indiana board adopt rules to repeal or supersede the rules of the state board of tax commissioners.

In effect, the Department of Local Government Finance is the entity that makes the rules. It was the goal of the legislature to establish separate entities; one to establish the rules and the other to interpret and enforce them. I.C. 6-1.5-5-1 involves the notice requirement for matters subject to board review and provides:
   (a) The Indiana board shall conduct impartial review of all appeals of final determinations of the department of local government finance made under the following:
      (1) IC 6-1.1-8
      (2) IC 6-1.1-12.1
      (3) IC 6-1.1-14
      (4) IC 6-1.1-16
      (5) IC 6-1.1-26-2
   (b) Each notice of final determination issued by the department of local government finance under a statute listed in subsection (a) must give the taxpayer notice of:
      (1) the opportunity for review under this section; and
      (2) the procedures the taxpayer must follow in order to obtain review under this section.
   (c) In order to obtain a review by the Indiana board under this section, the taxpayer must file a petition for review with the appropriate county assessor within forty-five (45) days after the notice of the department of local government finance’s action is given to the taxpayer.
   (d) The county assessor shall transmit the petition for review to the Indiana board within ten (10) days after it is filed.

I.C. 6-1.5-4-1 involves the matters which are subject to review by the Indiana board and provides:
   (a) The Indiana board shall conduct an impartial review of all appeals concerning:
      (1) the assessed valuation of tangible property;
      (2) property tax deductions;
      (3) property tax exemptions; or
      (4) property tax credits;
      that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law.
   (b) Appeals described in this section shall be conducted under IC 6-1.1-15.

I.C. 6-1.5-5-5 involves the notice of findings and procedure for court review. It provides as follows:

After the hearing, the Indiana board shall give the petitioner, the township assessor, the county assessor, the county auditor, and the department of local government finance:
notice, by mail, of its final determination, findings of fact, and conclusions of law; and
(2) notice of the procedures the petitioner or the department of local government finance must follow in order to obtain court review of the final determination of the Indiana board.

I.C. 6-1.5-5-8 provides that if an appeal arises from a final determination by the state board of tax commissioners, then I.C. 6-1.1-15, as in effect before January 1, 2002, shall apply and the department of local government finance shall be substituted for the state board of tax commissioners in such appeal.

Many aspects of real and personal property taxation in Indiana are similar, this chapter will focus on aspects pertinent to personal property. The Indiana Code provides that,

Except as otherwise provided by law, all tangible property which is within the jurisdiction of this state on the assessment date of a year is subject to assessment and taxation for that year. I.C. 6-1.1-2-1.

"Except as otherwise provided by law" means that taxation of property must be in conformity with both the United States Constitution and the Indiana Constitution.

In order for a state tax to be constitutional under the United States Constitution, the tax must not violate the Commerce Clause; state taxes on interstate commerce may not be "burdensome" or "discriminatory." See State of Minnesota v. Blasius, 290 U.S. 1, 8-10 (1933). The United States Supreme Court has stated that the tax must pass the following four prong test: there must be a substantial nexus with the state; the tax must be fairly apportioned; (the tax must not discriminate against interstate commerce; and, the tax must be fairly related to the services provided by the state. See Maryland v. Louisiana, 451 U.S. 725, 101 S. Ct. 2114, 68 L.Ed.2d 576, (1981); Huie v. Private Truck Council of America, Inc., 466 N.E.2d 435 (Ind. 1984).

Recently, in Huie, the Indiana motor carrier indefinite situs distributable property tax was struck down as an unconstitutional ad valorem personal property tax on the basis that it discriminated against interstate commerce. The motor carrier indefinite situs distributable property tax was a tax imposed on interstate trucks that use Indiana roads. The revenue generated by the tax was to be used to repair state roads which are worn down and damaged by trucks. This tax was to be apportioned according to a mileage-based formula. Intrastate trucks were exempt from the tax because intrastate carriers were already paying personal property tax on their trucks that travel on Indiana roads under the general business property tax, I.C. 6-1.1-3-1 et. seq. Those taxes are assessed on the basis of property value, "bearing no relation to road usage." See Huie v. Private Truck Council of America, Inc., 466 N.E.2d 435, 437.

Because the two taxes were not comparable in nature and purpose and were not designed to meet the same end -- the Indiana Supreme Court rejected the argument that there was a compensating tax which offset the tax on interstate activity. Thus, because the revenue from personal property tax on intrastate carriers was not used specifically to repair state roads as the tax on interstate carriers was and because the rates of the two taxes varied, the court held that the tax unfairly discriminated against interstate motor carriers and, therefore, violated the United States Constitution Commerce Clause. See Huie v. Private Truck Council of America, Inc., 466 N.E.2d 434, 437, 438.

Property tax statutes and regulations must also comply with Article 10, Section 1 of the Indiana Constitution, which reads:

The General Assembly shall provide, by law, for a uniform and equal rate of property assessment and taxation and shall prescribe regulations to secure a just valuation for taxation of all property, both real and personal.

Thus, in order for any tax statute to be valid in Indiana, it must meet three requirements: uniform and equal assessment; uniform and equal rate of taxation; and, just valuation in the taxation of all property.

The first requirement of uniformity and equality in assessment is also set out in the Indiana Code and echoes the language of the state constitution:


Sec. 2. All tangible property which is subject to assessment shall be assessed on a just valuation basis and in a uniform and equal manner . . . .

Indiana courts have held that uniformity and equality of assessment will be found only where the same basis of assessment is fixed for all property. See Davis v. Sexton, 210 Ind. 138, 200 N.E. 233 (1936). Prior to 1986,
the basis for such assessment in Indiana was the "true cash value" of the property. However, the 1986 legislature changed "true cash value" to "true tax value" effective September 1, 1986. P.L. 24. See also I.C. 6-1.1-31-5; 50 I.A.C. 4.2-1-1(f). The reason for the change was to clarify that Indiana uses an arbitrary method of valuation.

Identical property must also be assessed at the same tax value. See State Board of Tax Commissioners v. Lyon & Greenleaf Co., 172 Ind. App. 272, 359 N.E.2d 931 (1977); but, State Board of Tax Commissioners v. Key Motors Corp., 404 N.E.2d 52 (Ind. App. 1980). In Key Motors, identical property - automobiles, were held by individual consumers as personal property for individual use and by a business, an automobile dealership, as inventory. There the court allowed different methods of taxation of the identical property. The individual consumers were exempt from personal property tax on their motor vehicles on the basis that they instead were paying an excise tax on such vehicles. The automobile dealership was not exempt from payment of personal property tax on motor vehicles it held in inventory because it paid no excise tax on the vehicles. See State Board of Tax Commissioners v. Key Motors Corp., 404 N.E.2d 52 (Ind. App. 1980).

An unresolved question remains as to whether non-inventory motor vehicles, that are not subject to the excise tax, are taxable for personal property tax purposes. It is hard for one to think of non-inventory motor vehicles that are not subject to excise tax. One possible example is that of amateur race cars, which are not business inventory and are not subject to Indiana excise tax. The court stated in dicta that if such motor vehicles exist, the tax is unequal and likely will be found unconstitutional. As of yet, no such challenge has been made.

The tax court in the recent case of Harrington v. State Board of Tax Commissioners, 525 N.E.2d 360 (Ind. Tax 1988) reaffirmed the requirement to equally assess identical property. The taxpayer in Harrington presented evidence of the wide discrepancy in the assessments of the six other boat docking facilities in their township. The individual boat slips of two marinas in the township were not assessed; two others were assessed at $100 per slip; one was assessed at $50 per slip; and the other was assessed at $8 per square foot. Harrington's docking facility was also assessed at $8 per square foot. The Court invalidated this unequal assessment for two reasons. "First, the assessment of the Harrington's boat slips is not consistent with similar property of the same classification." Id. at 361. "Second, the assessment of docking facilities has not been based on ascertainable standards." Id. The ascertainable standards requirement was needed to satisfy due process for the administrative agency's decision. Id. The Harrington court said in conclusion that the State Board must"...heed the requirement of uniform and equal taxation as provided in the Indiana Constitution." Id. at 363.

The court in Meridian Hills Country Club v. State Board of Tax Commissioners, 512 N.E.2d 911 (Ind. Tax 1987) invalidated the assessment of golf course land on which the clubhouse and other improvements were located. The 6.5 acres in question, which contained a clubhouse and other improvements, were assessed at $10,000 per acre while the rest of the course was assessed at $750 per acre. The court, citing Greenleaf, found that "the State Board has not assessed like property in a uniform and equal manner. . . ." Meridian Hills, 512 N.E.2d at 914.

As a second requirement, a uniform and equal rate of taxation has been held to require only that the rate be uniform and equal throughout the locality in which the tax is levied. See Bright v. McCullough, Treas., etc., 27 Ind. 223, 230 (1866). "If the levy is for state purposes, then the rate must be uniform and equal in all parts of the State; and if the levy be for county purposes, the rate must be uniform and equal throughout the county in which the levy is made; and so in townships, when the levy is for township or road purposes." See Bright v. McCullough, Treas., etc., 27 Ind. 223, 230 (1866).

The court in Meridian Hills Country Club upheld the State Board's assessment of golf course land at $750 per acre. Evidence of a different rate of assessment for golf course land in other counties was ruled "irrelevant as the standard of uniform and equal applies to the locality in which the tax is levied." Meridian Hills, 512 N.E.2d at 913.

The third requirement of just valuation in the taxation of property has been construed to mean that the methods of valuation need not be uniform across the state, but, rather, that the method must result in the just valuation of all property. See The Louisville and N.A. R.R. Co. v. State ex. Re., McCarty, Auditor, etc., 25 Ind. 177, 87 Amer. Dec. 358 (1865). The Indiana Supreme Court has not permitted the classification of property for assessment purposes unless it is necessary to achieve a just and uniform valuation. See State Board v. Lyon & Greenleaf Co., 172 Ind. App. 272, 359 N.E.2d 931 (1977). Exceptions have been made in cases of valuation of railroad property and bank taxation. See Clark v. Vandalia R.R. Co., 172 Ind. 409, 86 N.E. 851 (1909); Board, etc. v. Johnson, 173 Ind. 76, 89.
N.E. 590 (1909). The court justified these classifications on the basis that it was the only way to achieve uniformity and equality in result. Such classifications cannot be arbitrary and they must be based on differences naturally inhering in the subject matter of the legislation. See State ex. rel v. Smith, 158 Ind. 543, 64 N.E. 18 (1902).

As noted supra, "... all tangible property which is within the jurisdiction of this state on the assessment date of a year is subject to assessment and taxation for that year." I.C. 6-1.1-2-1. The Indiana Administrative Code ("I.A.C.") states,

Generally, all property shall be taxed as either personal property, real estate, public utility, commercial vessel, mobile home, motor vehicle excise, aircraft excise, intangible or subject to the bank tax act unless specifically exempt by law. 50 I.A.C. 4.2-1-3(a).

Personal property that is subject to personal property tax is defined to include tangible personal property that is in any of the following categories: nursery stock (including grain) that has been severed from the ground; florist's stock of growing crops which are ready for sale as pot plants on benches; billboards and other advertising devices which are located on real property that is not owned by the owner of the billboards or device; motor vehicles (except motor vehicles upon which an excise tax is imposed under I.C. 6-6-5); recreational equipment, trailers, mobile homes, airplanes and boats (except commercial vessels taxed under I.C. 6-6-6); foundations (other than foundations which support a building or structure) on which machinery or equipment is installed; and all other tangible property (other than real property) which is being held for sale in the ordinary course of a trade or business, is held, used or consumed in connection with the production of income or is held as an investment. See I.C. 6-1.1-11(a).

Items which are not defined by statute as personal property are commercially planted and growing crops. See I.C. 6-1.1-1-11(b). The State Board of Tax Commissioners has stated that personal property also does not include property subject to taxation under the Public Utility Tax Act or household goods. See 50 I.A.C. 4.2-1-1(h).

Disputes frequently arise between the taxpayer and the assessor as to whether particular property is real or personal. The taxpayer usually wants the property treated as personal so that he can make valuation adjustments through depreciation. Similar depreciation deductions are not allowed for real property. See I.C. 6-1.1-31-7(a).

6-1.1-31-7. ASSESSMENT OF PERSONAL PROPERTY: CLASSIFICATION

Sec. 7. (a) With respect to the assessment of personal property, the rules of the state board of tax commissioners shall provide for the classification of personal property on the basis of:

(1) date of purchase;
(2) location;
(3) use;
(4) depreciation, obsolescence, and condition; and
(5) any other factor that the board determines by rules is just and proper. The assessor would prefer to have the value remain constant by treating the property as real and include the value in the total valuation of the real property.

In deciding whether a particular piece of property is real or personal, the State Board of Tax Commissioners has adopted a "use test". If the property in question "is directly used for manufacture or a process of manufacture, it is to be considered as personal property." See 50 I.A.C. 4.2-1-1(L). 50 I.A.C. 4.2-4-10 uses the same test and gives specific examples of types of real and personal property (i.e., pumps and motors are personal, property sanitary system is real, property sprinkler system is real, property fire alarm system is personal property.) See 50 I.A.C. 2.4-4-10. When it is clearly in question whether a piece of property is real or personal, the State Board of Tax Commissioners has adopted a policy of apportioning the value of the property. See Empire Gas, Inc. v. State of Indiana, 486 N.E.2d 1036, 1040 (Ind. App. 1985).

The recent Empire Gas case also discussed the distinctions between real and personal property. The Empire Gas Company alleged that LP tanks leased by them to property owners were real property and thus, taxable to the real property owners. The court held that the tanks were not land, an estate in land, a building or either fixtures
or appurtenances to land. The court also found that the leases involved were "operating" leases, and not "capital" leases and Empire Gas was the taxpayer liable for the personal property tax. Empire Gas, Inc. v. State of Indiana, 486 N.E.2d 1036, 1039, 1040 (Ind. App. 1985).

If a taxpayer is one who produces, stores and retails property such as grain and, therefore, may have personal property and/or real property depending on the stage the property is in (for example: if it is in the ground, it is real property, but if it is in the warehouse or in packages ready for sale, it is personal property) and the property tax is different depending on the stage of the property at the time it is assessed, an issue arises as to whether the taxpayer must, on assessment date, determined precisely the stage of the particular property or whether the taxpayer may assess all his personal property using the same method of valuation as if the property were all at the same stage. In State Board of Tax Commissioners v. Pioneer Hi-Bred International, 477 N.E.2d 939 (Ind. App. 1985), the court addressed this issue and held that Pioneer, a producer, warehouseman, and retailer of grain, could value all of its grain as a warehouseman. The court reasoned that to require Pioneer to assess all of its grain differently, depending on the stage of the property would cause identical property to be valued differently and would cause the same owner of identical property to be taxed differently. There was also no showing that the classification of property to a retailer as opposed to a producer is required to achieve a just valuation of all property. Thus, the court held that such treatment of Pioneer would violate the Indiana constitutional requirements of uniform and equal property assessment and rate of taxation. See State Board of Tax Commissioners v. Pioneer Hi-Bred International, 477 N.E.2d 939 (Ind. App. 1985).

The taxpayer in Thomas Dodge of Highland v. State Board of Tax Commissioners, 542 N.E.2d 245 (Ind. Tax 1989) successfully argued that property assessed by the Board as personal property was, in fact, real property. The items of property in question were an air conditioning and heating unit, sprinkler system, fence, unit heaters attached to building, lifts, exterior poles, and miscellaneous leasehold improvements. The court stated the Board's own regulation of 50 I.A.C. 4.1-2-9 (currently 50 I.A.C. 4.2-4-10) classified "the following items as real property: air conditioning, fence, sprinkler system, unit heaters and land improvements." Id. at 247, citing 50 I.A.C. 4.1-2-9 (repealed, currently cited as 50 I.A.C. 4.2-1-10). The court determined that "[t]he Board is bound by its own regulations and the property in question, except for the lifts and exterior light poles, is to be treated as real property for state tax purposes." Thomas Dodge, 542 N.E.2d at 247.

The Indiana Code provides specific exemptions for many categories of personal property. Many exemptions codify United States and Indiana constitutional prohibitions on state taxation. Many exemptions are also examples of the effects of special interest group lobbying efforts.

The property of the United States and its agencies and instrumentalities is exempt from property taxation to the extent that the state is prohibited by law from taxing it. However, any interest in tangible property of the United States shall be assessed and taxed to the extent Indiana is not prohibited from taxing it by the Constitution of the United States. See I.C. 6-1.1-10-1(a). No state has the right to tax property owned and used by the United States or its instrumentalities without permission of Congress. See Miller v. Bauer, 517 F.2d 27 (7th Cir. 1975). If the United States provides for the payment of money in lieu of property taxed upon tangible property which is exempt from taxation, the payment shall be made to and settled by the State Board of Tax Commissioners, who may make appraisements, assessments, and agreements and may do all acts necessary to the ascertainment, settlement and collection of such a payment. See I.C. 6-1.1-10-1(b).

Except as otherwise provided by law, the property owned by the state, a state agency, or a political subdivision of the state is exempt from property taxation. See I.C. 6-1.1-10-2 and 4. Property is exempt from property taxation if it is owned by a city or town and is used to provide a municipal service. Property used to provide a municipal service includes property upon which a public school or library, a municipally owned park, golf course, playground, swimming pool, hospital, waterworks, electric utility, gas or heating plant, sewage treatment or disposal plant, cemetery, auditorium or gymnasium is located, and any other municipally owned property, utility, or institution. See I.C. 6-1.1-10-5.

But, only such municipally owned property as is devoted to governmental purposes is exempt from taxation by the statute. If the property is used in a proprietary business enterprise, then the property is taxed as an individual or business corporation. See Borgman v. City of Ft. Wayne, 215 Ind. 201, 18 N.E.2d 762 (1939). But, see I.C. 6-1.1-10-6 (special rules for exemption of municipally owned water companies).

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Article 10, Section 1 of the Indiana Constitution exempts property used for religious, educational, scientific, literary or charitable purposes from tax. On this authority, the legislature has exempted from taxation property used for educational, literary, scientific, religious, medical or charitable purposes, I.C. 6-1.1-10-16; not-for-profit organizations supporting the fine arts, I.C. 6-1.1-10-18; not-for-profit organizations supporting health facilities, I.C. 6-1.1-10-18.5; public libraries, I.C. 6-1.1-10-19; and churches and parsonages, I.C. 6-1.1-10-21. The legislature has also used this authority to exempt a number of special interest organizations such as fraternities, sororities, I.C. 6-1.1-10-24; fraternal beneficiary associations such as the Elks Club Lodge or the local Masonic Temple, I.C. 6-1.1-10-23; veteran organizations, Y.M.C.A.'s, Y.W.C.A.'s and other similar organizations ("miscellaneous organizations"). See I.C. 6-1.1-10-25.

There are two key requirements before an exemption of property used for any of these purposes can be obtained. First, for the "miscellaneous organizations" listed under I.C. 6-1.1-10-25, the property must be used exclusively for the purposes for which it was exempted. See I.C. 6-1.1-10-25(b). Property of other types of exempt organizations used or occupied for one or more stated qualifying exempt purposes must be predominantly used or occupied for those purposes. See I.C. 6-1.1-10-36.3. "Predominantly" is defined by statute as more than 50% of the time that it is used or occupied in the year that ends on the assessment date of the property. If the property is not used "exclusively" if under I.C. 6-1.1-10-25(b), or "predominantly" under I.C. 6-1.1-10-36.3, the legislature can constitutionally disallow the exemption. Grand Lodge Hall Association I.O.O.F. of Indiana v. Moore, 224 Ind. 575, 70 N.E.2d 19 (1946), aff'd per curiam 330 U.S. 808 (1947) (case decided under I.C. 6-1.1-10-36, repealed. That code section used only the term "exclusively"). Second, if an exempt organization uses its property in a trade or business, such activity must be substantially related to the exercise or performance of the organization's exempt purpose to qualify for tax exemption. See I.C. 6-1.1-10-36.5.

The tax court in the Indiana Association of Seventh-Day Adventists v. Indiana State Board of Tax Commissioners, 512 N.E.2d 936 (Ind. Tax 1987) clarifies the parsonage exemption to real property for a religious group. To qualify for an exemption under I.C. 6-1.1-10-21 a parsonage must be "used to house one (1) of the church's or religious society's . . . ministers. . ." I.C. 6-1.1-10-21(b). The hearing officer in the Seventh-Day Adventists case denied the parsonage exemption because a teaching minister, and not a fully ordained minister, lived in the parsonage at the time of the hearing. The hearing officer believed that a teaching minister "did not qualify as a minister under the statute." Seventh-Day Adventists, 512 N.E.2d at 938. The court found the authority of other jurisdictions persuasive and accepted as a minister and thus come within the provision I.C. 6-1.1-10-21, the minimum which must be shown is that individuals residing in the parsonage perform the pastoral duties of an ordained minister." Id. However, after accepting this liberal definition of minister, the tax court denied the exemption in this case because the Seventh-Day Adventists did not present evidence to show that the people living in this duplex met this definition. Id.

The more relevant part of the Seventh-Day Adventist opinion to our focus on personal property tax was the suggestion that this duplex could fall under another exemption. Id. at 940. The case was remanded to see if the duplex fell under the exemption in I.C. 6-1.1-10-16. The court left the door open to this possibility by citing the case of State Board of Tax Commissioners v. Wright, 215 N.E.2d 57 (Ind. App. 1966): " . . . the court in Wright said that because the buildings did not qualify as parsonages did not mean that they could not find haven in another section." Seventh-Day Adventists, 512 N.E.2d at 940, citing Wright, 215 N.E.2d at 64.

An educational or charitable exemption was at issue in National Association of Miniature Enthusiasts v. State Board of Tax Commissioners, 671 N.E.2d 218 (Ind. Tax 1996). The Board assessed National Association of Miniature Enthusiasts’ (NAME’s) real and personal property and denied NAME’s claim for the charitable and/ or educational exemption under I.C. 6-1.1-10-16. The facts showed that NAME’s activities included publishing the Miniature Gazette; sponsoring a national house party and three to four regional house parties each year; promoting clubs; maintaining a permanent collection and museum at its headquarters; and conducting workshops on miniatures. These activities were stated in NAME’s Articles of Incorporation, which also stated numerous goals focusing on the stimulation of interest or education of the general public as to the creative art of miniature collection and creation. NAME had previously been granted a charitable exemption by the IRS.

The court examined the claims for the charitable and educational exemptions separately. In each analysis, the court recognized the underlying test for claiming such exemptions, that being, whether the “taxpayer
demonstrate[d] that it provides a ‘present benefit to the general public . . . sufficient to justify the loss of tax revenue.’” Id. at 220 quoting St. Mary’s Medical Center, 534 N.E.2d at 279. In denying the exemptions, it was the argument of the Board that NAME’s predominant use of property was promoting miniature construction and collection as a recreational activity and hobby. In analyzing the charitable exemption, the court noted that NAME must show “relief of human want . . . manifested by obviously charitable acts different from the everyday purposes and activities of man in general.” Id. at 220 quoting Indianapolis Elks, 251 N.E.2d at 683. The court held that merely declaring itself a charity was insufficient for claiming the charitable exemption as NAME’s activities do nothing to relieve human want and suffering.

In denying the claim for an educational exemption, the court stated, “[t]o qualify for an educational purpose exemption, NAME must show that it ‘provides at least some substantial part of the educational training which would otherwise be furnished by our tax supported schools.’” Id. at 220 quoting Fort Wayne Sport Club, 258 N.E.2d at 882. The court found any educational training provided through NAME’s museum, library, workshops, local clubs, and house parties, are merely incidental to its recreational and hobby activities. Therefore, the court denied the educational purpose exemption as well.

The Lincoln Hills Development Corporation v. Indiana State Board of Tax Commissioners, 521 N.E.2d 1360 (Ind. Tax 1988) case like Wright also supports the proposition that if you don’t qualify for one exemption you can qualify for another. The taxpayer in Lincoln Hills was a not-for-profit corporation which owned housing projects for low income elderly residents. The State Board argued that the existence of the specific exemption for charitable not-for-profit corporations in I.C. 6-1.1-10-18.5 precludes Lincoln Hills from qualifying for an exemption under I.C. 6-1.1-10-16. The court disagreed. The court held that a "not-for-profit corporation was not precluded from claiming exemptions under statute exempting property owned, occupied, and used for educational, literary, scientific, religious or charitable purposes by presence of unrelated exemption in another statute applicable to residential facilities for aged licensed under particular statute and operated by not-for-profit corporation." Id.

The Lincoln Hills and Indiana Ass’n of Seventh-Day Adventists cases say that a taxpayer who does not successfully qualify for one exemption may attempt to qualify for another exemption. The RCA Corporation v. State Board of Tax Commissioners, 528 N.E.2d 125 (Ind. Tax 1988) case goes one step further.

The RCA Corporation case supports the proposition that a taxpayer can qualify simultaneously for more than one exemption. In RCA the State Board argued that RCA could only choose one statutory exemption. The tax court disagreed. The tax court said that "taxpayers who qualify for one exemption may qualify for another as well." Id. at 129. The RCA court held that "taxpayer could take exemptions from personal property tax for property held for shipment to out-of-state destinations under each of the two applicable statutes, so long as it did not take the two exemptions for the same inventory." Id. at 125.

In the Community Christian Church v. State Board of Tax Commissioners, 523 N.E.2d 462 (Ind. Tax 1988) case, the church had entered into a contract to purchase land on which it planned to build a new church. The contract was entered into on February 5, 1986. The contract provided for a $22,750 down payment with an additional balance of $70,000 to be paid in two annual installments. The church sought an exemption under I.C. 6-1.1-10-16 and I.C. 6-1.1-10-16 because the church did not own the property on the assessment date as required by statute. The Board did not discuss the exemption of I.C. 6-1.1-10-21.

I.C. 6-1.1-10-21(a) requires that the tangible personal property be "owned by, or held in trust for the use of, a church or religious society. . . . " (emphasis added). The church argued that the land contract qualifies as property held in trust for the use of the church under I.C. 6-1.1-10-21(a). The court disagreed. The court said that "[t]he vendors do not hold the property in trust for the church within the meaning of I.C., 6-1.1-10-21(a) because their relation is contractual rather than fiduciary." Community Christian Church, 523 N.E.2d at 465.

The Community Christian Church also failed to get an exemption under I.C. 6-1.1-10-16(a). I.C. 6-1.1-10-16(a) also requires ownership. The court stated that "[t]he vendor, who holds legal title to the property, is the owner under I.C. 6-1.1-10-16a." Id.

However, the Community Christian Church finally obtained its exemption under I.C. 6-1.1-10-16(d). "I.C. 6-1.1-10-16(d) requires that the property be 'purchased for the purpose of erecting a building which is to be owned, occupied, and used [for religious purposes].'” (emphasis added) Community Christian Church, 523 N.E.2d at 465, citing I.C. 6-1.1-10-16(d). The court stated that "'[t]he statute does not require the church to hold legal title
to have 'purchased' property." Community Christian Church, 523 N.E.2d at 466. Therefore, the court granted the exemption for the land under I.C. 6-1.1-10-16(d). Id.

In the Indiana University Foundation v. State Board of Tax Commissioners, 527 N.E.2d 1166 (Ind. Tax 1988) case the university foundation was denied a 100% educational exemption for an apartment building under I.C. 6-1.1-10-16. The foundation leased the apartments to university students, staff, and faculty. The foundation operated the apartment building, was liable for all taxes and operating expenses, and received all the income. However, the foundation only owned 31% of the building. The court said "that ownership requires legal title for the purposes of I.C. 6-1.1-10-16." Indiana University Foundation, 527 N.E.2d at 1168. The court held that the "foundation was only entitled to exemption to degree it owned building." Id. at 1166. The foundation alternatively argued an Indiana Constitutional argument that the Constitution only requires use and not ownership. The Indiana University Foundation court rejected this argument saying that "[t]he legislature must enact legislation in order for property to be exempt from property taxation. Article X, section 1 is not self-executing, as the language used therein is permissive rather than mandatory." Id. at 1168. The court held the "exemption statute requiring ownership was not in violation of State Constitution." Id. at 1166.

The LeSEA Broadcasting Corporation v. State Board of Tax Commissioners, 525 n.E.2d 637 (Ind. Tax 1988) case also involved the denial of an exemption for an apartment complex. LeSEA is a religious broadcasting company. The apartment complex in question was located adjacent to LeSEA's broadcasting facilities. LeSEA sought the religious exemption of I.C. 6-1.1-10-16. The apartment building consisted of five units that housed ordained ministers, engineers, carpenters, electricians, and telethon speakers. All of the occupants were involved with the broadcasting of the television programs. The State Board denied the exemption by applying the predominant purpose test. However, the tax court adopted the standard in Wright. The Wright court "cited to cases from other jurisdictions which held personal living quarters to be exempt from taxation if 'incidental and necessary' for the effective welfare of the exempt religious institution." LeSEA, 525 N.E.2d at 639, citing Wright, 215 N.E.2d at 62. The LeSEA court said that "[t]he evidence indicates that the apartments are used exclusively by persons working to fulfill LeSEA's corporate purpose of religious broadcasting..." LeSEA, 525 N.E.2d at 639. The court remanded for the State Board to apply facts to the "'incidental and necessary' or 'reasonably necessary' standard which Wright establishes." Id.

The St. Mary's Medical Center of Evansville v. State Of Indiana Board of Tax Commissioners, 534 n.E.2d 277 (Ind. Tax. 1989) case reaffirms the "reasonably necessary" standard in LeSEA for making the predominant purpose evaluation for I.C. 6-1.1-10-16. The taxpayer in St. Mary's Medical Center was a nonprofit medical center that sought property tax exemptions for certain medical buildings. The court said that the LeSEA case "established the standard to be applied to I.C. 6-1.1-10-16. The issue in LeSEA was whether or not property owned and occupied by LeSEA was used predominantly for religious purposes." Id., citing LeSEA, 525 N.E.2d at 639. The St. Mary's Medical Center court stated that "[a]ccording to the standard established in LeSEA, the determination of whether or not the petitioners are entitled to property tax exemptions should be based on whether the medical office buildings are reasonably necessary for the maintenance of St. Mary's religious, educational or charitable purposes." St. Mary's Medical Center, 534 n.E.2d at 278. The St Mary's Medical Center court "held that buildings leased predominantly to physicians and medical service persons, for the conduct of their private practices, did not constitute property 'owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes' as required for exemption from property tax." Id. at 277.

The St. Mary's Medical Center case also demonstrates the narrow interpretation the courts of Indiana are now taking toward the doctrine of legislative acquiescence. The St. Mary's court said that "[t]he applicability of legislative acquiescence to cases such as this one is seriously in doubt after the Indiana Supreme Court's decision in Indiana State Board of Tax Commissioners v. Fraternal Order of Eagles Lodge No. 255 (1988), Ind., 521 N.E.2d 678." St. Mary's, 534 N.E.2d at 281. "According to the Indiana Supreme Court, the doctrine of legislative acquiescence is applied generally where there has been an administrative interpretation of ambiguous statutory language." Id., citing Eagles Lodge, 521 N.E.2d at 681. "The Indiana Supreme Court finds 'legislative acquiescence when the legislature is apprized of the interpretation of the ambiguous language and does nothing.'" Id. The St. Mary's court said that "[e]ven if petitioners are correct that there was an administrative interpretation, the doctrine of legislative acquiescence will not be applied unless the legislature is apprized of the interpretation and the
interpretation is of ambiguous statutory language." St. Mary's, 534 N.E.2d at 282. "Mere incorrect administrative interpretations will not invoke the doctrine." Id., citing Eagles, 521 N.E.2d at 681. The St. Mary's court concluded that "[t]he Indiana Supreme Court has directed the way toward a narrow application of the doctrine. The doctrine has no application to this case." St. Mary's Medical Center, 534 N.E.2d at 282.

Estoppel arguments against the State Board in the Eagles Lodge and West Publishing Company v. Indiana Department of Revenue, 524 N.E.2d 1329 (Ind. Tax 1988) cases were also not greeted with much success. The West case lists the elements required for a successful estoppel argument against the government: "1) a representation or concealment of material facts; 2) made with knowledge of the facts; 3) and made to a party ignorant of the facts; 4) which was made with the intention that the other party would act upon it; and 5) which induces the other party to act." Id. at 1334, citing State ex rel. Crooke v. Lugar, 354 N.E.2d 755 (Ind. App. 1976). "Estoppels against the state are disfavored." West, 524 N.E.2d at 1333.

The Indiana Supreme Court's decision in the Eagles Lodge case was discussed above as it related to the doctrine of legislative acquiescence; however, at the tax court level the Eagles Lodge, 512 N.E.2d 491 (Ind. Tax 1987) court addressed and rejected an estoppel argument. In this case the Eagles Lodge claimed that the state was estopped from denying its exemption because the state had granted this exemption in the ten previous years. The Eagles Lodge court was concerned that "[t]he application of estoppel here would put the Respondent in a position of waiving needed state revenue each time a taxpayer could show that an exemption claim had been previously granted." Eagles Lodge, 512 N.E.2d at 495, see Turner Transp. Inc. v. Indiana Employment Sec. Bd., 448 N.E.2d 300, 303 (Ind. App. 1983). The Eagles Lodge argument also failed because the taxpayer failed to prove reliance. Eagles Lodge, 512 N.E.2d at 495. The Eagles Lodge court then said that the Eagles Lodge's argument would be better characterized as a waiver argument. Id. "Whereas the existence of estoppel is determined by the conduct of both parties, the existence of waiver is dependent only upon the party making it." Id., citing City of Evansville v. Follis, 315 N.E.2d 724, 728 (Ind. App. 1974). However, the court also decided against the Eagles Lodge on this argument. "The taxing authorities of the state . . . could not by failing to do their duty, or by any act or failure to act, waive the right and the duty of the state to assess and collect taxes for the years following." Eagles Lodge, 512 N.E.2d at 495, quoting Walgreen Co. v. Gross Income Tax Division, 75 N.E.2d 784, 787 (Ind. 1947).

The taxpayer in West based its estoppel argument on a letter that a tax examiner mailed to West thanking West for providing him with a sufficient answer to his questions. West claimed that this letter was a representation that West was not liable for Indiana tax. The tax court decided that this letter did not amount to a representation that West was not liable for taxes. West, 524 N.E.2d at 1333. The court also decided that West failed to prove reliance on this purported representation, because West presented no evidence that it had any intention of paying the tax. "This was not a case where West paid the tax and the, upon reviewing [the tax examiner's] letter, ceased paying." Id. at 1334. "There is nothing which indicates that, but for the letter, West would have paid the tax. In short, West has totally failed to demonstrate reliance." Id.

In Porter's South Shore Cleaners, Inc. v. State of Indiana and Indiana State Board of Tax Commissioners, an Agency of the State of Indiana, 512 N.E.2d 895 (Ind. Tax 1987), the taxpayer put forth a collateral estoppel argument based upon res judicata or issue preclusion. There the Lake County Superior Court, in a prior decision, made a determination as to the character of the property at issue. The taxpayer argued that the Board's assessment was precluded as the issue had been decided by the Lake Court, albeit by default judgment. The Tax Court held, "inasmuch as the Lake Superior Court judgment was obtained by default, the Board is not precluded from reasserting the issues as to the character of the air coolers, the stack and boiler . . ." Id. at 898

Certain property held in the State as inventory is exempt if it is in "the stream of interstate commerce". The Constitution of the United States (Article 1, Section 8, Clause 3) gives to Congress the power to regulate interstate commerce. This power rests exclusively in Congress and no state may levy an ad valorem tax which imposes a burden on such commerce. However, the exemption ceases when the property comes to rest so as to acquire a situs in the state; . . . by reason of a break in the transit in interstate commerce, the property may come to rest within a State and become subject to the power of the State to impose a nondiscriminatory property tax. See State of Minnesota v. Blasius, 290 U.S. 1, 8-10 (1933).

Generally, property became taxable when the "continuity of transit" had been broken at the will or
convenience of the shipper. But, the property retained its exempt status if during the course of the interstate journey it came to rest because of circumstances which were beyond the control of the shipper.

Indiana courts have held if an interruption is to promote the "safe or convenient transit," the continuity of the interstate trip is unbroken: "[t]he use of modern marketing methods cannot be said to constitute a sufficient rest from transit so as to remove the goods from interstate commerce." See Indiana State Board of Tax Comm’rs v. Stanadyne, 435 N.E.2d 278, 282 (Ind. App. 1982), citing Arthur Walter Seed Co. v. McClure, Treas., etc., 236 Ind. 666, 672, 141 N.E.2d 847, 849 (1957). In Stanadyne, a corporation manufactured plumbing fixtures outside of Indiana for sale nationwide. The fixtures were produced on a "forecast of need" basis and then shipped by private carrier to an Indiana warehouse which was operated as a "clearing facility." The products were temporarily stored in the warehouse, while awaiting distribution in accordance with specific customer orders, processed through the corporation's computer center in yet another state. The court found that the shipping of goods to a distribution center at which no retailing was conducted showed an intent to transship such goods to another destination. See Indiana State Board of Tax Commissioners v. Stanadyne, 435 N.E.2d 278, 279, 281. This result has been codified in:

I.C. 6-1.1-10-29.3 PERSONAL PROPERTY SHIPPED INTO STATE FOR TRANSHIPMENT OUT OF STATE

Effective January 1, 1987
Sec. 29.3. Personal property shipped into Indiana is exempt from property taxation if the owner is able to show by adequate records that the property:

(1) is stored in an instate warehouse for the purpose of transhipment to an out-of-state destination; and

(2) is ready for transhipment without additional manufacturing or processing, except repackaging.

As added by P.L. 58-1986, Sec. 1.

But, the Indiana Supreme Court has stated that,

[the commerce clause does not extend to articles previously in interstate commerce but which are placed in the shipper's warehouse far in advance of the date of pretended delivery, so as to permit the shipper, without local tax liability, to engage in a warehouse business for his personal profit and benefit. See Arthur Walter Seed Co., etc. v. McClure, 236 Ind. 666, __, 141 N.E.2d 847, 852 (1957).

A state cannot tax the privilege of carrying commerce among the states. Neither can it tax property outside of its jurisdiction belonging to persons domiciled elsewhere. See Louisville, etc., Ferry Co. v. Kentucky, 188 U.S. 385, 399 (1903). On the other hand, it can tax property permanently within its jurisdiction although belonging to persons domiciled elsewhere and engaging in commerce among the states. See Board of Comm’rs of Brown County v. Standard Oil Co., 103 Ind. 302, 2 N.E. 758 (1885). However, property which continuously moves in interstate commerce, such as railroad cars, etc., may be subject to an ad valorem tax apportioned on the basis of time spent in or miles traveled in the various states. See Central R.R. Co. v. Pennsylvania, 370 U.S. 607 (1962).

Statutes and regulations have created what is known as the "Freeport Exemption" for goods placed in the stream of interstate commerce. Generally, these statutes codify judicial interpretations of the burden states may place on interstate commerce through taxation. In Indiana, by statute, personal property is exempt from property taxation if: the property has been placed in the original package in a public or private warehouse for the purpose of transshipment to an out-of-state destination; the property remains in the original package and in the public or private warehouse; and the property had been ordered and is ready for shipment in interstate commerce to a specific known destination to which the property is subsequently shipped. See I.C. 6-1.1-10-30(b).

Prior, the State Board of Tax Commissioners, through Regulation 16, required that for such exemptions the original bill of lading be attached to the property, indicating the ultimate destination. "Ultimate destination" was defined as "the place where the property is to finally come to rest and be used in a manufacturing process or kept available for use in a manufacturing process or held for resale in the ordinary course of business." However, this ultimate destination requirement was held invalid by the Indiana Supreme Court in State Board of Tax Commissioners v. Carrier Corp., 365 N.E.2d 1385 (1977), "as it added to the statute an element not contained therein." See Indiana
validity of the allocation. See I.C. 6-1.1-10-29.5(b); Regulation 16, Rule 3, Section 3.

If the taxpayer uses the allocation method, he must keep records which adequately establish the
assessment date. If the taxpayer uses the allocation method, he must keep records which adequately establish the
ratio is then applied to the taxpayer's total inventory of personal property which has been shipped into this state and
of all shipments of the taxpayer's property from the in-state public warehouse during the same period of time. This
personal property is determined by dividing the value of the taxpayer's property shipped from the in-state public
warehouse to out-of-state destinations during the 12 month period ending with the assessment date by, the total value
of the property for which exemption is sought." Id

Therefore, the court denied the Board's motion for summary judgment as ownership was a significant factor in the
II) it was determined the taxpayer stored grain for both Indiana and Illinois farmers. The grain was mixed together
and then stored by State Line at either their Indiana or Illinois location. State Line sought exemption under I.C. 6-1.1-
10-29. However, the exemption of I.C. 6-1.1-10-29 requires ownership: "personal property owned by a
manufacturer or processor. . ." (emphasis added). Id at 502. State Line did not own the grain for which it claimed
the exemption. The tax court denied the exemption because State Line did not meet the ownership requirement of I.C.
6-1.1-10-29. The court stated that "State Line is not entitled to utilize I.C. 6-1.1-10-29 because it is not the owner of
the property for which exemption is sought." Id at 503.

Whether a taxpayer was a manufacturer or a processor for purposes of claiming an interstate commerce
exemption was at issue in Encyclopedia Britannica, Inc. v. State Board of Tax Commissioners, 663 N.E.2d 1230 (Ind.
Tax 1996) (Encyclopedia Britannica I). Taxpayer performs editorial work on the encyclopedias it publishes and
sells. Taxpayer relegates the actual binding and printing of the books to a binding company. The taxpayer relied on
the definition of “manufacturer” and “processor” set out in I.C. 6-1.1-10-29(a) as:

a person who performs an operation or continuous series of operations on raw materials, goods, or other personal property to alter the raw materials, goods, or other personal property into a new or changed state or form. The operation may be performed by hand, machinery, or a chemical process directed or controlled by an individual.

In denying the claimed exemption, the court held that the taxpayer did not perform operations on raw materials, goods, or other tangible personal property as required. The court reasoned that taxpayer merely takes information and revises and updates that information. Alternatively, taxpayer argued that the language “directed or controlled by an individual” establishes that persons who relegate manufacturing work to others are entitled to claim the exemption provided by I.C. 6-1.1-10-29(b), so long as those persons direct and control the others’ work. The court rejected an interpretation of I.C. 6-1.1-10-29(a) which stretches the language to the language of the statute to such an extent. Id. at 1233.

In Encyclopedia Britannica, Inc. v. State Board of Tax Commissioners, Cause No. 49T10-9411-TA-00259 (Ind. Tax 1996) (Encyclopedia Britannica II), an unpublished opinion which cannot be cited as precedent, the parties returned to the tax court upon EBI’s request for a rehearing following the entry of summary judgment in favor of the State Board in Encyclopedia Britannica I. EBI made three arguments as to why the court’s prior decision was in error. Two of the arguments focused on the court’s interpretation of the terms “manufacturer” and “processor”. EBI’s contention was that the court’s interpretation was too narrow and the third argument was that the decision was based on out-dated authority. The court discussed the presumption that is created when the legislature amends a statute. The presumption is that the legislature intended to change the law unless it clearly appears the amendment was made only to express more clearly the original intention of the legislature. EBI attempted to rebut the presumption by arguing that the legislature was attempting to clarify the law. The court did not agree. Prior to the amendment, the statute did not include publishers as manufacturers or processors. Therefore, the amendment was held to be a change in the law and EBI’s request for rehearing was denied.

In the case of Mid-America Mailers, Inc. v. State Board of Tax Commissioners, 639 N.E.2d 380 (Ind. Tax 1994), the taxpayer put forth arguments opposing the assessment of business personal property to it. The taxpayer provided mailing services to businesses, not-for-profit organizations, and political groups from several Midwestern states. The customers were responsible for printing their materials and shipping them to the taxpayer. The customers also gave taxpayer mailing instructions, including addresses and mailing dates. Taxpayer did not pay for the printed materials and it could not sell them or otherwise dispose of them except to mail them in accord with customer instructions. If a customer decided not to send its printed materials, taxpayer was then free to dispose of the printed materials as scrap. This scrapped material accounts for approximately 25% of the printed materials that taxpayer receives. On some occasions taxpayer is able to sell the scrap paper, on other occasions, it must pay to have the scrap hauled away. It was the position of the taxpayer that it did not own or have a possessory interest in the printed materials, therefore, taxpayer tax liability is not triggered. The court disagreed and found that the printed materials fell squarely within the I.C. 6-1.1-1-11 as the property was the taxpayer’s main source of income and was held, used, or consumed in connection with the production of income. Further, the property was held by the taxpayer as a bailee. The right of disposition was determined to be one of the chief incidents of ownership.

Alternatively, the taxpayer put forth the argument that printed materials were part of interstate commerce and accordingly exempt from tax. Mid-America failed to follow the procedures necessary to claim the exemption, therefore, the court did not consider this argument and upheld the Board’s determination of liability. Id. at 386.

The tax court ruled favorably for the taxpayer in Keller Industries v. State Board of Tax Commissioners, 529 N.E.2d 1221 (Ind. Tax 1988). Keller manufactured outdoor aluminum furniture. Orders for the furniture were placed at Keller’s Miami, Florida office in the fall and winter to allow for delivery by early spring. Keller presented purchase orders taken before March 1 that matched up to its inventory. The tax court stated that "Keller should have been allowed an I.C. 6-1.1-10-30(b) exemption for inventory for which it had orders designating out-of-state shipment and which was in fact shipped out-of-state." Id. at 1224.

Monarch Steel Company v. State Board of Tax Commissioners, 611 N.E.2d 708 (Ind. Tax 1993)
(Monarch III) is also a case dealing with the interstate commerce exemptions, and it is the third of a series of cases between Monarch Steel and the State Board. See, Monarch Steel Co. v. State of Indiana Tax Commissioners, 527 N.E.2d 1171 (Ind. Tax 1988) (Monarch I), and Monarch Steel Co. v. State of Indiana Tax Commissioners, 545 N.E.2d 1148 (Ind. Tax 1989) (Monarch II). "The parties remain in litigation because they have consistently given different interpretations to the language in the interstate commerce exemptions, under which taxability or exempt status generally hinges on the 'processing' or 'packaging' the taxpayer performs on the property at issue." Id. at 711. The specific exemptions at issue for I.C. 6-1.1-10-29, I.C. 6-1.1-10-29.3, and I.C. 6-1.1-10-30.

The Monarch Steel Company bought pieces of steel from both in and out of state sources and resold this steel to customers both in and out of state. Sometimes Monarch made no changes to the steel; other times Monarch cut the steel into smaller pieces; and other times Monarch cut the steel into geometric shapes.

"The court in Monarch I held Monarch was not entitled to an exemption under I.C. 6-1.1-10-30(b) for steel it custom cut after the assessment date." Monarch III, 611 N.E.2d at 712-713, citing Monarch I, 527 N.E.2d at 1172-1173. "In Monarch II, the court held Monarch's use of a template to cut steel to meet customer specifications constituted 'further processing,' and that steel subjected to such cutting was therefore not exempt under I.C. 6-1.1-10-29." Monarch III, 611 N.E.2d at 713, citing Monarch II, 545 N.E.2d at 1152-1153. The first two Monarch cases established that inventory that is not cut by Monarch before shipment is not processed, and inventory that is cut with a template before shipment is processed. Monarch III, 611 N.E.2d at 713.

The Monarch III case deals with the steel that is cut without a template for the purpose of facilitating shipment. The court distinguished between "processing" and "packaging". Id. at 713-714. The court said that:

if Monarch cuts a sheet of steel to satisfy a customer's order, that is, to create a final saleable product, regardless of the use of a template and regardless of the customer's intent, Monarch has 'processed' that steel within the meaning of the interstate commerce exemptions. On the other hand, if Monarch cuts a sheet of steel simply and solely to facilitate shipment or storage, Monarch has 'packaged' that steel.

Id. at 714.

The court distinguished between "processing" and "packaging" "by former's emphasis on alteration of an article in preparation of a final saleable product and the latter's emphasis on the preparation of an already completed article for shipping or storage." Id. at 715. The court held that "steel was 'packaged,' and eligible for exemption, if it was cut for transport" and that "the steel was 'processed,' and ineligible for exemption, if it was cut for customer." Id. at 709.

Monarch Steel Co., Inc. v. State Board of Tax Commissioners, 669 N.E.2d 199, (Ind. Tax 1996) (Monarch IV) is the most recent decision of the tax court to decide the on-going inventory exemption issue between the State Board and Monarch Steel. There Monarch has identified the items in its inventory which are not "template cut" steel plates. Monarch had cited a series of exemption provisions and then generally asserted that all of the non-template cut plates fall within the terms of the cited exemption provisions (I.C. 6-1.1-10-29(b),(c); I.C. 6-1.1-10-29.3; I.C. 6-1.1-10-30(a),(b), and (d)). The court held this to be insufficient to prove that Monarch's items of inventory are exempt from property tax. Monarch erred by assuming that it may calculate the amount of its exemption by taking its total inventory, and subtracting the amount of "template cut" steel plates. In effect, Monarch had reversed the burden of proof for claiming an exemption. Therefore, the court held the State Board did not err in denying Monarch's claim for the inventory exemption as they offered no evidence or legal basis to support its claim for such an exemption.

Like the Monarch cases, Dav-Con, Inc. v. State Board of Tax Commissioners, 644 N.E.2d 192 (Ind. Tax 1994) (Dav-Con I) involved the processing and storage of steel. In its regular course of business, Dav-Con receives steel from its customers, processes the steel by applying treatments such as blast cleaning and cold finishing, and makes the steel available for pick up. In the event a customer does not wish to pick up its steel immediately after processing, Dav-Con has a storage facility and will store the customer's steel for a rental stipend. Dav-Con also rents space in its storage facility to customers who are not in need of Dav-Con's processing services, but simply require a place to store their steel. Dav-Con did not take title to the steel it processes and/or stores. The taxpayer argued was error for the State Board to assess not owned property that it held in its storage facility as it had no obligation
to file a Form 103-N. This argument failed for taxpayer failed to show that the property was being assessed and taxed to its owners or that the owners were liable for the taxes under contract. The court went on to deny an enterprise zone credit for failure to file a Form EZ1, and denied an interstate commerce exemption for failing to follow the procedures for claiming the exemption. The court sided with the taxpayer and remanded the case because the assessment was arbitrary and capricious as the Board assessed the “value” and not the “cost” of the inventory. \textit{Id.} at 198.

\textit{Dav-Con, Inc. v. Indiana State Board of Tax Commissioners}, 702 N.E.2d 1137 (Ind. Tax 1998) (\textit{Dav-Con II}) arose from the remand of \textit{Dav-Con I} and the resultant denial of the exemption for not-owned property. Dav-Con argued unsuccessfully that the State Board was required to hold the owners of the steel liable for the personal property tax before it may hold Dav-Con liable for the tax. Dav-Con alternatively argued that the true-cost of the steel was not properly obtained by the State Board because the correspondence with the true owners did not adequately define cost and, therefore, was flawed. The court looked to the dictionary definition of cost and found that the definition used by the State Board was not greatly different from the dictionary definition. It was held not to be an unreasonable method of determining cost.

Because two of the four true owners of the steel responded to the Board’s requests for information and two did not, the court was required to use two different types of analyses for interpreting the assessment of the steel. As for the assessment of the two companies who did not respond, the Board’s assessor made an estimated assessment based on the storage invoices. The court recognized the inherent uncertainty and opportunity for miscalculation when making estimates but found this to be the best available method of assessment when the taxpayer fails to present any evidence to the contrary. \textit{Id.} at 1143.

The unpublished opinion, \textit{Support Terminals Operating Partnership, L.P. v. Indiana State Board of Tax Commissioners}, Cause No. 49T10-9410-TA-00243 (Ind. Tax 1995) may not be cited as precedent, but it also involves a case of not owned property. The case arose from an assessment of S.T.C. Corporation and the final determination and finding of liability for not owned racing fuel which was stored at S.T.C.’s terminal for the use of S.T.C.’s customers. S.T.C. was bought by Support Terminals Operating Partnership, L.P. (STOP). Correspondences regarding the assessment and liability for tax were sent to STOP. STOP became concerned it was now being held liable for the tax despite the fact it is unrelated to S.T.C.. STOP moved for summary judgment which was denied. The court found that the STOP had misinterpreted the correspondences and that the State Board was not trying to evince the payment of the tax from STOP. Therefore, the court dismissed the action under Ind. Trial Rule 12(B)(6) for failure to state a claim upon which relief can be granted.

The case of \textit{Sony Music Entertainment, Inc. v. Indiana State Board of Tax Commissioners}, 681 N.E.2d 800 (Ind. Tax 1997) is yet another case where the taxpayer was denied the interstate commerce exemption. Sony Music manufactures audio compact discs and sells them at wholesale across the nation. To meet the demand for its products Sony Music, a Delaware Corporation with its principal place of business in New York, entered into an agreement with Digital Audio Disc Corporation (“DADC”) to produce additional discs. DADC has its principal facilities in Terre Haute, Indiana. Both DADC and Sony Music are subsidiaries of Sony Corporation of America. Sony Music purchased the artwork for the discs from out-of-state suppliers and passed the artwork on to DADC for packaging of the discs, which DADC produced. Sony Music claimed an interstate commerce exemption for approximately $4 million in artwork stored in DADC’s warehouse. Based on the preceding 12 months of sales, Sony Music argued that 98.12% of the artwork was ready for transshipment out of state, except for repackaging, and thus was exempt under I.C. 6-1.1-10-29.3. The Board denied the exemption, arguing that the artwork was not merely being stored for transshipment, but rather the artwork constituted “raw materials” that had to be assembled with the compact discs to form a saleable good.

Sony Music’s argument did not carry weight with the tax court, which recognized that I.C. 6-1.1-10-29.3 is an alternate exemption for taxpayers unable to qualify for the “original package” exemptions provided in sections I.C. 6-1.1-10-29(b) and I.C. 6-1.1-10-30(a)-(c), each of which require the goods in question to be stored in their original packages for the purpose of shipment or transshipment out of state. The court read I.C. 6-1.1-10-29.3 to state that all is not lost when the taxpayer opens the original package and later makes a transshipment. Against the background of the repackaging statutes, the court held the term “repackage to not include repackaging in the sense of combining different parts or components of a product for sale, but to repackaging in the sense of transferring to a different container for the purpose of transshipment. Therefore, the court held that DADC does more than repackaging
the property as DADC assembles the goods for sale to Sony Music’s ultimate consumer. Id. at 804.

In a case decided the same day as Sony Music, the tax court in Colwell/General, Inc. v. Indiana State Board of Tax Commissioners, 680 N.E.2d 892 (Ind. Tax 1997) again heard a case which involved the original package interstate commerce exemption. Colwell is a Minnesota corporation with operations in Indiana. Hardware stores contract with Colwell for their supply of paint color sample strips which Colwell manufactures. Some of the strips are referred to as “Pick-n-Pull” inventory. These are bundles of ten to fifteen strips packaged in small plastic wrappers and then placed into boxes or cartons and stored in warehouses until orders are made and the samples are removed from the carton or box and shipped to the customer. The “Pick-n-Pull” inventory was denied the interstate commerce exemption. Colwell argues that the plastic wrappers are the original package and therefore, fall within I.C. 6-1.1-10-29(b). The court looked to the regulation, 50 I.A.C. 4.2-12-5(d) to see that the “original package” is defined as, “the box, case, bale, skid, bundle, parcel, or aggregation thereof bound together and used by the seller, manufacturer, or packer for shipment.” Here, Colwell admits they do not use the plastic wrappers for this purpose. Therefore, Colwell was denied the interstate commerce exemption. Colwell made the alternative argument that the “Pick-n-Pull” inventory was exempt under I.C. 6-1.1-10-29(c) because the property value would be impaired if they were shipped in their original packages. The court denied the exemption under theory as well. The evidence presented by Colwell of possible value impairment involved the inability to sell the product or the waste that would occur. The intent of the legislature in enacting I.C. 6-1.1-10-29(c) was to prevent disallowing the exemption if shipping the product in its original package would cause harm to the product resulting in a lesser value. Id. at 897.

If the owner of exempt property desires the exemption, he must file a certified application with the County Auditor. The application must contain a description of the property claimed to be exempt in sufficient detail to afford identification, a statement showing the ownership, possession, and use of the property, the grounds for claiming the exemption, the name and address of the applicant, and any additional information which the Board may require. See I.C. 6-1.1-11-3. If the denial of an application for exemption is challenged in court, the court will strictly construe the statute in question. See State Board of Tax Commissioners v. Ft. Wayne Sport Club, Inc., 147 Ind. App. 129, 258 N.E.2d 874 (1970); State Board of Tax Commissioners v. Apex Steel and Supply Co., Inc., 176 Ind. App. 152, 375 N.E.2d 598 (1978).

Several other recent cases also help to clarify the tax court's methods of determining whether a taxpayer qualifies for an exemption denied by the State Board. "The interstate commerce exemptions, like all exemptions, must be strictly construed against the taxpayer and in favor of taxation." Monarch Steel Company v. State Board of Tax Commissioners, 611 N.E.2d 708, 713 (Ind. Tax 1993), citing Harlan Sprague Dawley, Inc. v. Indiana Department of State Revenue, 578 N.E.2d 399 (Ind. Tax 1991), aff'd, 599 N.E.2d 588 (Ind. 1992). "The court must nonetheless read an exemption to give full effect to the legislature's intent and avoid construing it so narrowly its application is defeated in cases rightly falling within its ambit." Id., see also Indianapolis Public Transportation Corp. v. Indiana Department of State Revenue, 512 N.E.2d 906, 908 (Ind. Tax 1987), aff'd 550 N.e.2d 1277, 1278 (Ind. 1990). "Moreover, all statutory words are to be given their plain, ordinary, and usual meaning unless the legislature’s intent reveals a contrary purpose...." Monarch, 611 N.E.2d at 713, citing Maurer v. Indiana Department of State Revenue, 607 N.E.2d 985, 987, citing Harlan Sprague, 605 N.E.2d at 1224. "Accordingly, the court is required, to the greatest extent possible, to give each word in a statute its full effect." Monarch, 611 N.E.2d at 713, citing Maurer, 607 N.E.2d at 987, citing Harlan Sprague, 605 N.E.2d at 1225.

In Gulf Stream Coach, Inc. v. State Board of Tax Commissioners, 519 N.E.2d 238 (Ind. Tax 1988), a taxpayer argued whether property should be treated as book inventory. At issue were finished units of manufactured homes, which had been manufactured in response to a binding, pre-existing purchase orders and removed from book inventory but remained on the taxpayer's premises. The court cited I.C. 6-1.1-11-1 and Regulation 50 I.A.C. 4.1-3-3(A)(5) stating, ‘[a]n exemption is a privilege which may be waived by persons who own tangible personal property that would qualify for the exemption. If the owner does not comply with statutory procedures to obtain the exemption, he waives the exemption.’ Id. The court read 50 I.A.C. 4.1-3-4 to require disclosure of all units still under the control of the taxpayer before it could claim the exemption. As the taxpayer failed to follow the procedure for claiming the exemption, it follows that the court denied the exemption for it had been waived.

The Kentron v. State Board of Tax Commissioners, 572 N.E.2d 1366 (Ind. Tax 1991) case further illustrates that a taxpayer must report property in order to claim an exemption for it. The Kentron case involved a
manufacturer of van chassis that sought an exemption for van chassis in inventory at the time of assessment that were destined for shipment out-of-state under purchase orders. However, Kentron failed to report this property and so did not claim an exemption. To obtain any exemption provided by this statute, a taxpayer must comply with I.C. 6-1.1-10-31 and I.C. 6-1.1-11-1. Id. at 1373. Since Kentron did not report this inventory or claim this exemption on his personal property tax return, these statutory provisions were not complied with; and the exemption was waived. Id. at 1374. "Failing to comply, Kentron has waived the exemption privilege as a matter of law." Id.

Kentron and other more recent cases show that failure to comply with the statutory procedures results in waiver of the exemption. "The procedures necessary to claim property tax exemptions, I.C. 6-1.1-11-1, et seq., expressly apply to all property tax exemptions, and the express penalty for non-compliance is waiver of the exemption." Caylor-Nickel Clinic v. Indiana Department of State Revenue, 569 N.E.2d 765, 770 (Ind. Tax 1991).

The Teddy Ruryk v. State Board of Tax Commissioners, Cause No. 39T10-9204-SC-00015 (Ind. Tax 1992) case also deals with the waiver of an exemption by failing to claim it. The Teddy Ruryk case was decided by an unpublished memorandum opinion which cannot be cited as precedent. The taxpayer in Ruryk in 1990 applied for an exemption for his home for the years of 1986, 1987, 1988, and 1989. The court quoted Stanadyne, "[i]t has long been established that an exemption unclaimed is forever lost." Ruryk, quoting Indiana State Board of Tax Commissioners v. Stanadyne, 435 N.E.2d 278, 283 (Ind. App. 1982). The court then decided that "Ruryk's failure to comply with I.C. 6-1.1-11-3(a) by not applying for exemptions in the years prior to 1990 results in a waiver of the exemptions for these years." Ruryk.

A type of tax exemption is embodied in tax abatement programs. The tax abatement program for real property used in redevelopment and rehabilitation projects has been in existence since 1977. It allows for deductions on the increase in assessed value resulting from the construction of new or expanded buildings for targeted "economic revitalization areas." See I.C. 6-1.1-12.1-2 and -2.5. "Redevelopment" is defined as the construction of new structures in economic revitalization areas, either on unimproved real estate, or on real estate upon which a prior existing structure is demolished to allow for a new construction. See I.C. 6-1.1-12.1-1(5). "Rehabilitation" means the remodeling, repair, or betterment of property in any manner or any enlargement or extension of property. See I.C. 6-1-12.1-1(6).

The abatement period extends for ten years from the date of completion of construction. See I.C. 6-1.1-12.1-3 and -4. Effective January 1, 1986, a manufacturer may obtain a deduction from assessed value equal to the increase in the assessed value of qualified personal property resulting from the rehabilitation or redevelopment, multiplied by the percentage described in the following table:

(1) For deductions allowed over a three year period:

<table>
<thead>
<tr>
<th>Year of Deduction</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st</td>
<td>100%</td>
</tr>
<tr>
<td>2nd</td>
<td>66%</td>
</tr>
<tr>
<td>3rd</td>
<td>33%</td>
</tr>
</tbody>
</table>

(2) For deductions allowed over a 6-year period:

<table>
<thead>
<tr>
<th>Year of Deduction</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st</td>
<td>100%</td>
</tr>
<tr>
<td>2nd</td>
<td>85%</td>
</tr>
<tr>
<td>3rd</td>
<td>66%</td>
</tr>
<tr>
<td>4th</td>
<td>50%</td>
</tr>
<tr>
<td>5th</td>
<td>34%</td>
</tr>
<tr>
<td>6th</td>
<td>17%</td>
</tr>
</tbody>
</table>

(3) For deductions allowed over a ten-year period:

<table>
<thead>
<tr>
<th>Year of Deduction</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st</td>
<td>100%</td>
</tr>
<tr>
<td>2nd</td>
<td>95%</td>
</tr>
<tr>
<td>3rd</td>
<td>80%</td>
</tr>
</tbody>
</table>
Prior to January 1, 1986, and after January 1, 1978, a manufacturer could get a similar deduction, but
the amount of the deduction was as follows for all classes of qualifying property:

<table>
<thead>
<tr>
<th>Year of Deduction</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st</td>
<td>100%</td>
</tr>
<tr>
<td>2nd</td>
<td>95%</td>
</tr>
<tr>
<td>3rd</td>
<td>80%</td>
</tr>
<tr>
<td>4th</td>
<td>65%</td>
</tr>
<tr>
<td>5th</td>
<td>50%</td>
</tr>
<tr>
<td>6th and thereafter</td>
<td>0%</td>
</tr>
</tbody>
</table>

See I.C. 6-1.1-12.1-4.

To qualify for the deduction, the manufacturer's property must be new manufacturing equipment, be
directly used in the production process, and the property must be located in an "Economic Revitalization Area."
These areas are declared by a local unit of government under I.C. 6-1.1-12.1-2.5. The amount of assessed valuation
that can be deducted is limited to the increase in assessed valuation above the assessed valuation reported in the prior
year. By "new equipment, the Board also considers used equipment that is brought in from out of state as new
equipment. This equipment is new to Indiana, because it was not previously on the tax rolls. The equipment must be
installed and operational before it is eligible for abatement. See 50 I.A.C. 4.2-13-1(e), 50 I.A.C. 4.2-13-3, and 50
I.A.C. 4.2-13-4. This program is designed to promote economic development in the State of Indiana by encouraging
new investment and expansion. It provides a significant tax break for manufacturing industries.

American Juice Co., Inc. v. State Board of Tax Commissioners, 527 N.E.2d 1169 (Ind. Tax 1988)
involved such a tax abatement program. The taxpayer claimed a deduction for new manufacturing equipment upon
the assurance of officials and representatives of the City of Gary that such deduction would be available to it. The
court stated, “I.C. 6-1.1-12-4.5 and I.C. 6-1.1-12.1-3 are available only if the new manufacturing equipment or other
property is located within an economic revitalization area.” Id. at 1170. Taxpayer did not proffer evidence that the
property sought to be deducted was within an economic revitalization area prior to the Board’s final determination.
The court held, at the time the taxpayer claimed the deduction, it did not follow the procedures for claiming the
deduction outlined in the statutes. Therefore, it follows that the deduction was denied. Id. at 1171.

The case of Knauf Fiber Glass, GMBH v. State Board of Tax Commissioners, 629 N.E.2d 959 (Ind.
Tax 1994) involved the issue of whether a taxpayer was entitled to the deduction for manufacturing equipment
installed before an area was officially declared an economic revitalization area. There the area in issue was declared
The State Board denied the ERA deduction to the taxpayer. The taxpayer argued that I.C. 6-1.1-12.1-1(3) establishes
a two-prong test for qualifying for the ERA deduction: (1) “new manufacturing equipment” be installed between
March 1, 1983, and December 31, 1991; (2) in an area declared an ERA sometime after February 28, 1983. The court
looked to the legislature’s intent and other provisions that make up I.C. 6-1.1-12.1 in concluding that deduction is only
available for equipment purchased after an area is declared an ERA. The court noted the purpose of the ERA
deduction is to encourage equipment installation and new employment opportunities in an area suffering from
economic decline. Id. at 962.

The case of GECOM Corp. v. Indiana State Board of Tax Commissioners, Cause No. 49T10-9603-
TA-00025 (Ind. Tax 2000) is an unpublished opinion which may not be cited as precedent. GECOM claimed to have
hand delivered the required paperwork for an ERA deduction before the due date of June 14, 1995. The deduction was denied by the State Board because the record reflected that the application for the ERA deduction was filed marked June 15, 1995 after the deadline for claiming such a deduction. The court denied GECOM motion for summary judgment but noted that the determination did not end the matter. It is possible for the State Board to consider the late filed application. The court found that it would be appropriate and just for the State Board to consider the totality of the relevant facts and make a determination as to whether the late filed ERA application should be approved. The State Board argued that it had not been given the opportunity to exercise its discretion in this matter. Therefore, the court remanded the case for further examination by the State Board, but the court noted that its decision did not necessarily require the State Board to grant the deduction.

Like Kentron and Caylor-Nickel Supplies supra, the case of Hi-Temp, Inc. of Decatur County, Indiana v. State Board of Tax Commissioners, 645 N.E.2d 680 (Ind. Tax 1995) involved the waiver of an exemption. In Hi-Temp, the taxpayer filed a late economic revitalization area deduction application with the Auditor which was denied by the State Board. The court applied I.C. 6-1.1-12.1-5.5 which requires the deduction application be filed between March 1 and May 15 of the year in which the equipment is installed and in each of the following 4 or 9 years, whichever applies. Taxpayer did not file the required application until February 16 of the year following the year for which the deduction was requested. Therefore, the court held deduction request was properly denied.

In an effort to encourage the recycling of solid waste, the legislature enacted Public Law 1979-52. Codified as I.C. 6-1.1-12-28.5, the law creates an incentive to recycle by offering a large property tax deduction on tangible personal property used to recycle waste into energy or some other “useful product”. This deduction is known as the resource recovery system or RRS deduction. Unfortunately, “useful product” is not defined and was the subject of litigation in Auburn Foundry, Inc. v. State Board of Tax Commissioners, 628 N.E.2d 1260 (Ind. Tax 1994). In Auburn Foundry, the taxpayer sought the benefit of the deduction because it melts scrap metal to make rough castings for appliances and the automobile industry. The legislature put the Indiana Department of Environmental Management in charge of granting this deduction. The IDEM granted the taxpayer the deduction for 1990. The taxpayer filed a State Form 5469R/Form RRS-1 with the DeKalb County Auditor, claiming the RRS deduction certified by IDEM. The State Board worried the taxpayer was trying to get a double deduction because it was also getting an ERA deduction for manufacturing equipment within an economic revitalization area. Hearings were conducted and State Board found IDEM had not determined the point in the recovery process at which the taxpayer created a useful product from the scrap metal. The Board further determined that IDEM had not determined whether the property on taxpayer’s certified property list was actually part of taxpayer’s resource recovery system. From these findings, the Board determined taxpayer was only entitled to an RRS deduction for equipment it uses in its recovery process up to and including the point of melting the scrap metal.

The taxpayer appealed this determination, arguing it is entitled to the RRS deduction for property it uses in its recovery process up to the point of casting, because it contends a useful product is not created until it actually casts the metal. Therefore, the issue was whether the State Board had the authority to change the scope of an IDEM certification. Citing Bielski, 627 N.E.2d at 884, the court stated, “[a]s broad as the State Board’s discretion is, it ends where the State Board’s authority ends. Administrative agencies have no common law or inherent powers; they have only the authority the legislature expressly or impliedly grants them. ” Auburn Foundry, Inc. 628 N.E.2d 1260 at 1263. The court noted that among other things, IDEM is responsible for approval of RRS deduction applications as provided by I.C. 6-1.1-12-35.

The court went on to discuss the efficiency problem this duty creates as the IDEM, having no expertise in tax matters, is charged with the task of administering a large property tax deduction. This was demonstrated by the fact that in the eight years prior to the decision the IDEM had failed to promulgate a single regulation concerning the RRS deduction. This created a dilemma for the State Board, which the court recognized. Nevertheless, the court held for the taxpayer, leaving the RRS deduction and the conflicting roles of the State Board and IDEM as matters for the legislature to resolve. Id. at 1267.

Property used for the control of pollution is exempt from personal property taxation if it is not involved in any way with the production of goods or property for sales, and it is used primarily to prevent, control, or eliminate pollution and to further comply with state, local, or federal environmental regulations. Examples of this type of property include an industrial waste control facility (See I.C. 6-1.1-10-9) and a stationary or unlicenced mobile air
pollution control system (see I.C. 6-1.1-10-12). The *Amax v. Indiana State Board of Tax Commissioners*, 552 N.E.2d 850 (Ind. Tax 1990) case allowed this exemption for coal washing equipment, which decreases air pollution by removing non-combustible material such as sulfur and ash from coal. The issue there involved the interpretation of an amendment to I.C. 6-1.1-10-12 which changed the exemption standard from “exclusively employed” to “employed predominantly” and from “not used in production” to “not primarily used in the production.” The court held the washing equipment was “employed predominantly” in the operation of the air pollution control system and not primarily for the production of property for sale, even though the coal does become more valuable after washing because it contains a higher percentage of BTU’s (heat units) and because Amax’s utility customers are able to meet EPA standards easier. *Id.* at 859.

Article 10, Section 1 of the Indiana Constitution exempts household goods because such property is not held for sale or investment and is not used in the production of income. As noted earlier, the legislature is also empowered to exempt certain vehicles provided that an excise tax is used in place of a property tax. The most obvious example of where the legislature has done so is in the area of motor vehicles. See I.C. 6-6-5. Other taxes, such as the bank building and loan tax, the public utility tax and the vessel tonnage tax are imposed in lieu of property taxes on certain items.

The State Board of Tax Commissioners or the legislature has created special classes of unique personal property whose values are determined in a particular manner to arrive at a fair and just valuation. These special classes are: depreciable personal property; personal property not in service, special tools, leasehold improvements, inventory, obsolete property, and non-personal property.

Depreciable Personal Property - This is property used in a trade or business, used for the production of income or held as an investment that should be, or is, subject to depreciation for federal income tax purposes. See 50 I.A.C. 4.2-4-1. An example of this type of property is machinery and equipment.

Personal Property Not In Service (Construction in Progress) is considered to be all property which has not been depreciated and is not eligible for federal income tax depreciation under section 167 of the Internal Revenue Code of 1954. An example of this type of property is the construction of a large acid holding tank for a metal plating manufacturer that is still being constructed and is not placed in service on the assessment date.

Special Tools - Special tools are defined to include: "tools, dies, jigs, fixtures, gauges, molds, and patterns acquired or made for the production of products or product models which are of such a specialized nature that their utility generally ceases with the modification or discontinuation of such products or models." See 50 I.A.C. 4.2-6-2(b). The tax court in Porter’s *South Shore Cleaners v. State*, supra, narrowly construed this special tool status. The taxpayer in Porter’s *South Shore Cleaners* was a dry cleaner that had purchased a "thermal ironer" for a particular customer. The taxpayer lost that customer's business and use of the thermal ironer fell to ten percent of its prior usage. The tax court denied this thermal ironer special tool status. *Id.* at 899. The court said that the thermal ironer "would have utility to the Petitioner if he had a customer who needed its use as it once did." *Id.* The court stated that "[s]ince the 'thermal ironer' is not used to produce products or product models which are of a specialized nature, the 'thermal ironer' does not meet the definition of special tool." *Id.*

Leasehold Improvements - "Whenever a taxpayer makes any expenditure for an improvement to the real or personal property not owned by such taxpayer, such expenditure will be assessable as personal property to the extent it is not real property..." See 50 I.A.C. 4.2-6-3(a).

Inventory - Inventory is defined as the aggregate of those elements of cost incurred to acquire or produce items of tangible personal property as defined in 50 I.A.C. 4.2-1-1(h) which are: held for sale in the ordinary course of business; currently in the process of production for subsequent sale; ultimately to be consumed in the production of goods or services to be available for sale, or; utilized in marketing or distribution activities. See 50 I.A.C. 4.2-5-1(a).

Obsolete Property - Obsolete property is defined as property that has had a reduction in value "through use, technological improvements, passage of time, changes in market value and physical deterioration or destruction." 50 I.A.C. 4.2-9-1. There are two types of obsolete property. First, there is normal obsolescence which includes the expected, declining value through use, gradual decline in value because of expected technological improvements, the gradual deterioration or obsolescence through the mere passage of time and the general assumption that such property will have a minimum value at the end of its useful life. See 50 I.A.C. 4.2-9-2.
Within the ambit of normal obsolescence is the concept of “economic obsolescence” which is the often the subject of litigation in public utility cases. The tax court joined two such cases in the opinion Thorntown Telephone Company, Inc. v. State Board of Tax Commissioners (Thorntown II) and Tri-County Telephone Company, Inc. v. State Board of Tax Commissioners, 629 N.E.2d 962 (Ind. Tax 1994). There the court, quoting Thorntown I, defined economic obsolescence as ‘the loss in value resulting from external economic factors such as decreased demand, governmental restrictions and social changes.’ Id. at 965. The taxpayers provided studies on the costs of reproduction less depreciation, capitalization of income, as well as “Blue Chip” studies which had been prepared by General Telephone (GTE). The Board did not rebut these studies because it considered they resulted in “widespread and unexplained differences” and because the “Blue Chip” studies were unverified and conducted by an “interested” party. The Board countered by arguing that it uses an accelerated federal tax depreciation method to assess telephone companies. Further, the Board argued that it follows that the method of depreciation used by telephone companies adequately reflects losses in the value of property from economic obsolescence and, therefore, that an adjustment for economic obsolescence is unnecessary in determining the unit value of telephone companies. In holding for the taxpayers, the court noted the complexity in calculating true tax values, depreciation reductions, and economic obsolescence percentages and found it imperative that the State Board supply an authoritative explanation and evidence demonstrating that economic obsolescence is indeed accounted for in its method. The Board failed to rebut the taxpayers’ prima facie showing of economic obsolescence.

The Board did not learn its lesson in the Thorntown II. Again, the case of GTE North Incorporated, and Contel of Indiana, Inc., D/B/A GTE Indiana v. State Board of Tax Commissioners, 634 N.E.2d 882 (Ind. Tax 1994), involved “Blue Chip” studies to show economic obsolescence. The Board made the same arguments as those made in Thorntown I and Thorntown II. Likewise, the court again held for the taxpayer as the Board failed to rebut the taxpayer’s evidence providing for economic obsolescence.

Secondly, there is abnormal obsolescence which is of a non-recurring nature and includes unforeseen changes in market values, exceptional technological obsolescence or destruction by catastrophe that has a direct effect upon the value of the personal property of the taxpayer at the tax situs in question on a going concern basis. See 50 I.A.C.. 4.2-9-3(a).

The Don Meadows Motors automobile dealership was the taxpayer in two tax court cases concerning abnormal obsolescence. In the first case of Don Meadows Motors v. State Board of Tax Commissioners, 518 N.E.2d 507 (Ind. Tax 1988) (Don Meadows I), the Board denied the claim because claimed obsolescence was neither nonrecurring nor unforeseeable. The court remanded the case because the Board applied 50 I.A.C. 4.1-7-1. The court determined that 50 I.A.C. 4.1-3-9 (repealed, currently cited as 50 I.A.C. 4.2-9-3) was the proper regulation to apply in making an abnormal obsolescence determination. Don Medow Motors v. Indiana State Board of Tax Commissioners (Don Meadows II), 545 N.E.2d 851 (Ind. Tax 1989), citing Don Meadows I, 518 N.E.2d 507. Don Medow Motors II applied 50 I.A.C. 4.1-3-9 (currently 50 I.A.C. 4.2-9-3) in determining whether the State Board wrongly denied the taxpayer deductions for abnormal obsolescence.

The Don Medow Motors II case states that 50 I.A.C. 4.1-3-9 (currently 50 I.A.C. 4.2-9-3) lays out three criteria for an abnormal obsolescence adjustment: "1. There must be a change in the value of the inventory; 2. The change in value must be unforeseen; and 3. The unforeseen change in value must be the result of exceptional technological obsolescence or destruction by catastrophe." Don Medow II, 545 N.E.2d at 852. The court said that even if it were to assume that the first two criteria were met, that Don Medow could not meet the third criteria. Id. at 853. "Medow does not assert that there has been any destruction by catastrophe, but rather contends that its excessive inventory was due to overpricing, adverse publicity, and consumer demand for larger vehicles." Id. Medow argued that these facts amount to exceptional technological obsolescence. Id. The court disagreed, and so Don Medow did not satisfy the third criteria for abnormal obsolescence. The court in Don Medow Motors II held that "excessive inventory due to overpricing, adverse publicity, and consumer demand for larger vehicles did not constitute exceptional technological obsolescence." Id. at 851.

The case of Glass Wholesalers, Inc. v. State of Indiana Board of Tax Commissioners, 568 N.E.2d 1116 (Ind. Tax 1991) involved a company that was denied an adjustment for abnormal obsolescence on its inventory of glass automobile windshields. Glass Wholesalers argued that "changes in demand, design and technical change, and age" satisfied the third criteria in Don Meadows Motors II of exceptional technological obsolescence for the inventory
of windshields. Glass Wholesalers, 568 N.E.2d at 1120. Glass Wholesalers also claimed that this exceptional technological obsolescence caused an unforeseen change in value of the inventory which, met the second criteria in Don Meadows Motors II. The court disagreed.

The Glass Wholesalers court first concluded that the second criteria of Don Meadows Motors II was not satisfied, because the change in value was foreseeable. Glass Wholesalers, 568 N.E.2d at 1120. The Glass Wholesalers court said that "the change in the size of new windshields, making the older model windshields unfit for newer model cars, was a foreseeable event." Id. at 1121. The court then determined that the third criteria of exceptional technological obsolescence was not met. Id. The windshields were not obsolete because the windshields were for sale and some were sold. Id. "The court rejects Glass' contention that the different size and style windshields produced for newer model cars could be classified as an exceptional or a technological advance." Id.

In the recent case of Harbor Food Plaza, Inc. v. State Board of Tax Commissioners, 638 N.E.2d 898 (Ind. Tax 1994), the tax court denied an abnormal obsolescence adjustment. There the taxpayer claimed the adjustment for old freezers, losses from spoiled food, and losses from stolen food. Taxpayer could not show an unforeseen change as required by the abnormal obsolescence adjustment under 50 I.A.C. 4.2-2-8. Further, the only physical evidence of stolen or spoiled food was a few receipts for the removal of spoiled food by a rendering company. It accordingly followed that the abnormal obsolescence claim was wholly unsubstantiated and was appropriately denied.

Non-Personal Property - As classified by the Attorney General of the State of Indiana this includes easements; business good will; stocks, bonds and securities; money; and accounts receivable. Easements are considered to be an estate or interest in land and are real property. See Budnick v. Indiana National Bank, 358 Ind. App. 752, 333 N.E.2d 131 Ind. App. (1975). Goodwill is not personal property, and is not subject to property taxation. See Hart v. Smith, 159 Ind. 182, 64 N.E. 661 (1902). Intangible personal property including stock in a foreign corporation, bonds, and securities are exempt from personal property tax. See I.C. 6-1.1-10-39. Neither money nor accounts receivable are within the definition of personal property subject to personal property tax. See I.C. 6-1.1-1-11.

Taxable personal property is reassessed annually in the State of Indiana. When compared to the reassessment of real property in Indiana, which occurs only once every four years, the annual reassessment of personal property causes personal property to be overburdened in its share of taxes during the three year interim between reassessment of real property. See I.C. 6-1.1-4-4. Nevertheless, the annual reassessment of personal property is performed by the taxpayer on March 1 of each year. Every person, including any firm, company, partnership, association, corporation, fiduciary or individual owning, holding, possessing or controlling personal property with a tax situs within the State of Indiana on March 1 of any year is required to file a personal property tax return on or before May 15 of that year unless an extension of time to file a return is obtained. It is the responsibility of the taxpayer to obtain forms from the assessor and file a timely return.

As a general rule, the owner of the property is the one liable for the taxes on the property. The owner is defined as one who holds legal title to the property. See I.C. 6-1.1-1-9: All classes of property owners, whether an individual, partnership, fiduciary, corporation, etc., are required to file a return and are subject to tax unless statutorily exempted. See I.C. 6-1.1-1-10.

The State Board of Tax Commissioners places the burden on the taxpayer to show that any property held, possessed, controlled or occupied by the taxpayer on the assessment date does not belong to him. See I.C. 6-1.1-2-4(b). The taxpayer must also show the property is being assessed and taxed in the name of the owner. If the taxpayer is unable to do so by the assessment deadline, he must pay the tax and seek out the true owner of the property and of the property and recover the amount paid on his own. In preparing the return, the taxpayer must separately list property that is not owned and give the name and address of the owner. See 50 I.A.C. 4.2-2-5(c).

Several court cases dealing with the question of ownership have been handed down that clarify some of the uncertain areas of determining ownership. Life tenants and mortgagors are still considered to be owners of property, although full title to the property may not exist. See Thompson v. Arnold, 238 Ind. 177, 147 N.E.2d 903 (1958); Schofield v. Green, 115 Ind. App. 160, 56 N.E.2d 506 (1944). When questions as to ownership of property arise, only the facts existing on the first day of March are material. The Board cannot look at other events preceding or following March 1st, but only the situation as it existed on the assessment date. See Stark v. Kreyling, 207 Ind.
128, 188 N.E. 680 (1934). As stated earlier, the State Board of Tax Commissioners requires a taxpayer to separately list all non-owned property in his possession on the assessment date, and identify the true property owner. According to I.C. 6-1.1-2-5(d), a taxpayer is required to provide any such information to the board so that the State Board of Tax Commissioners may make tax assessments. When a taxpayer refuses to do this, the State Board of Tax Commissioners may rightfully assess the property to the person in possession of the property on the assessment date. See I.C. 6-1.1-2-4; State Board of Tax Commissioners v. South Shore Marina, 422 N.E.2d 723 (Ind. App. 1981).

In South Shore Marina, the marina rented dock space to boat owners. The marina refused to divulge information concerning the owners’ of the boats on marina property on March 1 of the tax year. The Board then taxed the marina as the possessor of the property on the assessment date. The taxpayer may also be liable for a penalty of $25.00 for failure to include on a personal property tax return the information required under I.C. 6-1.1-3-9 or I.C. 6-1.1-5-13. See I.C. 6-1.1-37-7(d).

The South Shore Marina case takes a hard line against possessors of property owned by another that are uncooperative with the Department of Revenue. However, the Jewell Grain Company v. State Board of Tax Commissioners, 524 N.E.2d 49 (ind. Tax 1988) case shows that if the taxpayer is cooperative with the Department of Revenue they will be given leniency.

The taxpayer in the Jewell Grain Company case was assessed on grain that it possessed but did not own. Jewell Grain Company failed to file form 103-N which indicates when property owned by one is possessed by another. However, Jewell Grain Company subsequently identified the true owners of the grain to the State Board during an audit. The tax court found that Jewell’s giving notice of the true owners during an audit was sufficient. The tax court held that the “failure of taxpayers to timely file tax form listing owners of grain in its possession did not render it liable for taxes on grain when, upon request, it provided information which would have permitted State Board to assess owners of property.” Id. The court also stated that “[i]nformation which is sufficient to meet the requirement of [I.C. 6-1.1-2-4] (b)(1) on or before the due date of the return is also sufficient after that date as long as the lateness of the information does not preclude assessment to the owner under the applicable statute of limitations." Id. at 52.

More recently, South Shore Marina, not having learned its lesson, was again assessed for boats it possessed but did not own in South Shore Marina v. State Board of Tax Commissioners, 527 N.E.2d 738 (Ind. Tax 1988). South Shore Marina did not file Form 103-N to report boats it possessed for another. Unlike in South Shore I, here South Shore later provided the hearing officer with the requested storage agreement documents due to the assessor having took the dimensions of the taxpayer’s storage buildings and estimated storage potential to be fifty-four boats. The hearing officer assessed the marina, because the storage agreements "lacked information as to the date of storage, the description of particular property, or the specific storage space. ...” Id. at 740. The court upheld the assessment due to this lack of information. Id. at 742. The court said that "[t]he burden is on the apparent owner or possessor to establish nonliability." Id. at 741, citing South Shore I, 422 N.E.2d at 735. The court said that South Shore "failed to satisfy the burden of proof because the storage agreement did not contain information needed to correlate particular boats or other property in specific locations with particular owners on March 1, 1986." South Shore II, 527 N.E.2d at 741-742.

All persons owning personal property within the State of Indiana on March 1st, the "assessment date," are required to assess their own property and file a property tax return no later than May 15th. See I.C. 6-1.1-1-2; I.C. 6-1.1-1-4; I.C. 6-1.1-1-7; I.C. 6-1.1-3-7(a), 50 I.A.C. 4.2-1-1(e), and 50 I.A.C. 4.2-2-2. Whatever personal property is located in Indiana and is held, owned, controlled or occupied by the taxpayer on March 1st is subject to assessment unless the taxpayer has elected to use a perpetual method of inventory valuation. The taxpayer must assess the property at the place where it is located and regularly used. If there is a dispute as to where the property should be assessed, the County Assessor will resolve the question, if the location relates to the appropriate taxing district. If a question arises as to the appropriate county, then the State Board of Tax Commissioners will resolve the question. See I.C. 6-1.1-3-4; 50 I.A.C. 4.2-2-1; Paul Heuring Motors II, infra.

If a taxpayer has personal property subject to assessment in more than one township within a county and if the assessed value of the personal property in the county is more than $5,000, he may file a consolidated return with the county assessor listing his personal property in each township. "A taxpayer filing a consolidated return is not required to file a personal property return with the assessor of each township." I.C. 6-1.1-3-7(d). A taxpayer that
elects to file under this subsection shall provide the county assessor with sufficient information to enable the assessor to allocate the assessed value of personal property among the township assessors of each township in which his property is located and, at the same time, shall provide a copy of the consolidated return that is filed with the county assessor to the assessor of each township in which personal property covered by the return is located. Before May 25 of each year, the county assessor shall provide to each township assessor all information filed under this subsection that affects the assessed value of the personal property in his township, including the location of the property. The information shall be in sufficient detail to allow the township assessor to perform his duties as required by statute and regulation. See I.C. 6-1.1-3-7. This information may be in computer generated form, subject to prior approval by the Board. See 50 I.A.C. 4.2-2-9(c).

When the combined total assessed value of the personal property declared on all returns filed in the State by a taxpayer is $15,000 or more, each return must be filed in duplicate. Each township assessor receiving a personal property tax return where the total assessed valuation declared on all returns filed in the State is $15,000 or more must forward a copy of such return to the county assessor on or before July 31 of each year. The county assessor must then forward to the State Board of Tax Commissioners on or before August 31 of each year a copy of all such returns declaring a total assessed valuation of $15,000 or more. See 50 I.A.C. 4.2-2-7.

A taxpayer is entitled to file Form 103 Short Form if the taxpayer is not a manufacturer; the total business personal property assessment is less than $15,000; average or alternative inventory valuation reporting methods have not been elected; no exemption of business personal property is claimed; the taxpayer has no equipment not placed in service, special tools, permanently retired equipment, interstate carrier allocation, or abnormal obsolescence; and the taxpayer does not claim any special adjustments.

The short form allows all depreciable personal property to be combined into a single pool for determination of T.T.V. While the use of the short form is easier than the long form, the total assessed value of property computed thereon is often higher than that computed if the long form is used, due to the use of "average" T.T.V. percentages. Therefore, care should be exercised in its use to be certain that no materially different assessed valuations are yielded by its use.

However, if the taxpayer files a short form, the taxpayer has the duty to obtain these forms and file a timely return even though the assessor will normally mail the forms. If the taxpayer cannot file a timely return, a 30 day extension (to June 14) may be granted provided an extension is requested in writing prior to May 15 of the current year. The application of extension must clearly state the reason for the request, and the assessor may, at his discretion, approve or disapprove the request in writing. In order for the extension of time for filing the return to be effective, the return must be filed on or before June 14 following the assessment date, and the approved request or a copy thereof must be attached to each return required to be filed. See 50 I.A.C. 4.2-2-3.

Once the township assessor receives the return, it is forwarded to the county assessor for his review. If revisions in the taxpayer's assessment are made by either assessor, the State Board of Tax Commissioners must be notified that such a revision is being made. See 50 I.A.C. 4.2-2-7(d).

If a return is not filed or if property has been omitted, the township assessor must use whatever information he has been given to make an adjustment in the assessed value of the taxpayer's property. Usually the assessor will make a rough guess at the value of the personal property and assess the person who is in possession of the property. Once a person receives the notice of assessment, he may elect to file a return, or an amended return, depending on the situation involved. He will be subject to penalty provisions for failing to file the return or for omitting property on his return. The statute of limitations for a notice of assessment to be given to the taxpayer upon the taxpayer's failure to file a return is ten years from the date when the return should have been filed. See 50 I.A.C. 4.2-3-1.

The property tax assessment forms are to be preserved as public records and open to public inspection. Once the taxpayer's assessment has been approved, the taxes due are payable in the following year, in semi-annual installments. The due date for each installment is May 10 and November 10. See I.C. 6-1.1-22-9. For example, if a taxpayer is assessed $1,000 for personal property taxes in 1984, the first payment of $500 would be due on May 10, 1985 and the second payment of $500 would be due on November 10, 1985.

Regulation 16 sets out the methods of assessment and valuation to be used by the taxpayer. Under Regulation 16 tangible depreciable personal property is taxable and is a special class of property. In general,
"personal property will be deemed to become depreciable personal property when a depreciation deduction is allowable for federal income tax purposes." See 50 I.A.C. 4.2-4-1. The cost of depreciable property, both real and personal, as recorded on the taxpayer's books and records as of the assessment date, must be utilized in determining the value of the depreciable personal property subject to assessment. A taxpayer must be able to reconcile the cost of the depreciable personal property reported on the tax returns with the cost of all depreciable property as recorded on the taxpayer's books and records on the assessment date.

The adjusted cost of the assessable depreciable personal property must be reported at the tax basis of such property as defined in Section 1012 of the Internal Revenue Code of 1954. Therefore, if the tax basis of the taxpayer's assessable depreciable personal property is different than the cost per books of such property, an adjustment must be made to the cost per books of the assessable depreciable personal property reported on the Indiana property tax return. The adjustment must be designated as such and clearly shown in the taxpayer's return. The adjustment is required to be made regardless of whether it is an increase or decrease of the cost per books.

The adjusted cost of depreciable personal property is required to be segregated for Indiana property tax purposes into four separate pools: Pool No. 1 - all assets which have a life of 1 through 4 years for federal income tax purposes; Pool No. 2 - all assets which have a life of five through eight years for federal income tax purposes; Pool No. 3 - all assets which have a life of nine through twelve years for federal income tax purposes; and Pool No. 4 - all assets which have a thirteen year or longer life for federal income tax purposes. See 50 I.A.C. 4.2-4-5. For purposes of determining in which pool an asset is includable, the asset depreciation ranges in effect for federal income tax purposes prior to the adoption of the accelerated cost recovery system (ACRS) of depreciation must be used. See 50 I.A.C. 4.2-4-4(a).

After the allocation of adjusted cost of depreciable tangible personal property, it will be necessary to determine the cost by year of acquisition for each pool. The number of years which are required to be segregated by year of acquisition will depend upon the particular pool. Pool No. 1 requires the cost to be determined by year of acquisition for the three years immediately preceding the assessment date. The balance of the cost of the assets in this pool will be includable in the fourth category. Pool No. 2 requires that the cost by year of acquisition be determined for the six years preceding the assessment date. The balance of the cost would be includable in the seventh category. Pool No. 3 requires that the cost by year of acquisition be determined for the ten years preceding the assessment date. The balance of the cost would be includable in the eleventh category. Pool No. 4 requires that the cost by year of acquisition be determined for the twelve years preceding the assessment date with the balance of the cost of such pool includable in the thirteenth category. See 50 I.A.C. 4.2-4-6.

The year of acquisition for Indiana property tax purposes is a fiscal year March 2 to March 1 unless the taxpayer elects to use the same year as that utilized for federal tax purposes. If a taxpayer has a financial year that ends on December 31 or January 31, the taxpayer may elect to use the same year as that used for federal income tax purposes to determine the year of acquisition of assets for Indiana property tax reporting purposes. Otherwise, a taxpayer is not eligible to elect to use a federal year to compute the year of acquisition for Indiana personal property tax purposes and must use a fiscal year of March 2 to March 1. If a federal tax year election is made, the acquisitions made after the close of the taxpayer's federal taxable year through the assessment date must be included in a separate category on the return and clearly designated. See 50 I.A.C. 4.2-4-6(c).

The taxpayer in Rogers v. State Board of Tax Commissioners, 565 N.E.2d 398 (Ind. Tax 1991) claimed that the State Board improperly classified his inventory of tuxedos into Pool No. 2 pursuant to 50 I.A.C. 4.1-2-6(A)(b) (repealed, currently cited as 50 I.A.C. 4.2-4-5(b)). Regulation 50 I.A.C. 4.1-2-6(A)(6) (currently 50 I.A.C. 4.2-4-5(b)) says that [t]he useful life used to determine the proper classification of the pool in which an asset must be included is to be based upon the actual life utilized to compute depreciation on the federal income tax return of the taxpayer. ..." Rogers, 565 N.E.2d at 401, citing 50 I.A.C. 4.1-2-6(A)(6) (currently 50 I.A.C. 4.2-4-5(b)). However, Rogers did not compute his federal return depreciation based upon an actual life. "Rogers calculated federal depreciation according to a longstanding agreement with the Internal Revenue Service that expressed depreciation in a percentage of annual rental income rather than a term of years, meeting the requirements of I.R.C. § 168(f)(1)(B)." Rogers, 565 N.E.2d at 401-402. "Regulation 50 I.A.C. 4.1-2-6 [currently 50 I.A.C. 4.2-4-5] expressly links the determination of the proper pool classification to the useful life used to compute depreciation on the taxpayer's federal return. The regulation does not express, however, a standard to determine the proper pool when an actual useful life
is not used to compute federal depreciation." Id. at 402.

Consequently, the State Board's determination that Rogers' tuxedos must be placed in Pool No. 2 because he used a five year useful life on his federal return is unsupported by substantial evidence, is contrary to law, and is arbitrary and capricious. The State Board therefore must determine the proper pool classification of the tuxedos in light of all the facts and circumstances."

The following other special classes of property are, for various reasons, given special valuation treatment. The valuation of this property is not subject to the 30% floor limitation for depreciable personal property. See 50 I.A.C. 4.2-4-9. The special valuation procedures for these types of property are also set out in Regulation #16.

Equipment not placed in service by a tax situs within the state on the assessment date must be reported for property assessment purposes, however the T.T.V. of such property is considered to be 10% of the equipment's cost per books. See 50 I.A.C. 4.2-6-1(f). The value of personal property not placed in service, including construction in process, is the cost recorded on the taxpayer's books and records which is attributable to such personal property, including all expenses incurred in acquiring or producing the assets not yet placed in service. If the cost as recorded on the taxpayer's books and records does not reflect acquisitions and transfers since the end of the financial period immediately preceding the assessment date, such acquisitions and transfers are required to be included. Also, if the cost as recorded on the taxpayer's books reflects advance payments or deposits, and if such amounts were attributable to tangible personal property, these amounts shall be allowed as a deduction from book cost. See 50 I.A.C. 4.2-6-1. This special valuation is intended to cover situations where equipment has been purchased by the taxpayer, is in his possession on March 1st, but not yet installed.

Special tools are assessable whether the taxpayer elects to depreciate, amortize, treat as deferred cost, or expense at time of purchase or manufacture, and recovers cost through an increased unit price or any other method utilized in recapturing the costs. If the owner of the special tools is responsible for the payment of the tax, the possessor must identify the property, the owner and the address of the owner. If the possessor of the special tools is responsible for the payment of the tax, the T.T.V. must be reported in his return. If the original cost of the special tools is not available to the possessor, the value shall be based upon the best information available; however, the T.T.V. of special tools not owned by the taxpayer cannot be less than the insured value of such property. See 50 I.A.C. 4.2-6-2.

The total T.T.V. of special tools is the sum of 30% of the total valuation of special tools acquired between March 2 of the prior year and March 1 of the current assessment year which are on hand on the assessment date, plus three percent of the total valuation of all other special tools on hand. See 50 I.A.C. 4.2-6-2(e). The large difference in percentages between the first and succeeding years reflects the rapid decline in value that property of this type usually experiences after the first year of use.

Permanently retired property must have been removed from the manufacturing process on the
assessment date, or have been removed from services other than manufacturing on the assessment date, and awaiting disposition, and must be scheduled to be scrapped, removed or disposed of. Under such circumstances the T.T.V. of the property is not subject to the pool T.T.V. percentages, but is instead the net scrap or sale value of the property. See 50 I.A.C. 4.2-4-3(c) and (d). The taxpayer in Rogers v. State Board of Tax Commissioners, 565 N.E.2d 398 (Ind. Tax 1991) rents formalwear such as tuxedos. Rogers sought a property tax adjustment for tuxedos that he felt qualified as permanently retired property pursuant to 50 I.A.C. 4.1-2-4 (repealed, currently cited as 50 I.A.C. 42-4-3(c)). "To qualify for the adjustment, Rogers must prove that on the assessment date the property was: (1) removed from service, and (2) actually disposed of or scheduled for disposition." Id. at 400. However, Rogers did not remove these tuxedos from service because "they were still available for rental. . . ." Id. The court denied the adjustment, because the tuxedos did not qualify as permanently retired property. The court said that "personal property used to produce income is subject to tax regardless of whether its useful life or its economic life has ended. Property is taxable if it is in use." Id. at 400.

A taxpayer may claim an adjustment for abnormal obsolescence on either the T.T.V. of his inventory or his depreciable personal property. An adjustment for abnormal obsolescence will be allowed provided the taxpayer can substantiate the obsolescence. See 50 I.A.C. 4.2-9-6. A taxpayer may, prior to the filing of the property tax return for the year in question, petition the State Board of Tax Commissioners pursuant to 50 I.A.C. 4.2-9-7(a) for a ruling regarding an obsolescence adjustment. If the adjustment is granted, it will be effective only for the tax year in question, and will not be effective for subsequent assessments. If the taxpayer does not request an advance ruling, he may request an adjustment on the form prescribed by the State Board of Tax Commissioners when filing the tax return for the year in question. The adjustment request must identify specifically all property for which an adjustment is requested, indicate the original cost of the property, and indicate the T.T.V. of the property if no adjustment would be allowed. See 50 I.A.C. 4.2-9-7(b). No adjustment will be allowable for normal obsolescence because the methods of valuation of personal property automatically reflect this type of obsolescence. See 50 I.A.C. 4.2-9-6.

There are five methods of valuing inventory in Indiana. The method used will either be dictated by Regulation #16, or it will be determined by the taxpayer's status as a manufacturer or retailer and, in the case of a manufacturer, on the breakdown of the manufacturing costs that make up the products value.

The personal property tax is universally disliked by the state's business community because it creates artificial property shortages around the tax date of March 1st as manufacturers, wholesalers and retailers begin to rid themselves of as much inventory as possible in order to avoid paying the tax. In addition, this tax must be paid regardless of whether or not the taxpayer is making any profits at the time.

In the case of a manufacturer or processor of goods, 50 I.A.C. 4.2-5-7 requires the taxpayer to choose between the normal method of inventory valuation and the alternative method. In determining which method is most advantageous, the taxpayer should break down the various manufacturing costs that have gone into the taxpayer's finished goods and work in process. Generally accepted accounting principles break down the final cost of these items into material costs, labor costs and overhead (i.e. utility expenses, maintenance and upkeep, and other general day-to-day costs of owning and running a factory). These costs are called the "three components of value" for a manufacturer's inventory. Under the normal method of valuation, a manufacturer may reduce the value of his entire inventory (finished goods, work in process and raw materials) by 35%. The resulting value is considered to be the T.T.V. of the inventory for assessment purposes.

Under the alternative method, the manufacturer may take his raw materials inventory and reduce its value by 35% to obtain the T.T.V. for assessment purposes. The value of the property falling into the work in process and finished goods categories is figured differently. Using the three components of value discussed earlier, the manufacturer must allocate the percentage of each unit's cost to each category. The overhead portion is then removed, and the remaining percentages are added together. This percentage of value becomes the T.T.V. of the property for assessment purposes. In excluding from the taxpayer's inventory valuation his overhead costs, the taxpayer may deduct overhead costs as they relate to the overall production scheme in Indiana of the taxpayer and not merely as they relate to each of the taxpayers individual facility's production process. See State Board of Tax Commissioners v. Aluminum Company of America, 402 N.E.2d 1316 (Ind. App. 1980).
EXCISE TAX

Indiana imposes an annual license excise tax upon motor vehicles in lieu of the ad valorem property tax levied for state or local purposes. This excise tax is in addition to any registration fees imposed on such vehicles. See I.C. 6-6-5-2(a). The excise tax is administered and collected by the Bureau of Motor Vehicles ("BMV" or "Bureau"). The Bureau may use the services and facilities of license branches operated under I.C. 9-16 in its administration of the motor vehicle registration laws. See I.C. 6-6-5-9.

Even if the vehicle is not properly registered it will not be subject to personal property tax and no proof of payment of the ad valorem property taxes is required for registration. I.C. 6-6-5-2(c). Vehicles held as inventory for sale by a manufacturer, dealer, or distributor in the course of business are not subject to excise tax, but are subject to personal property tax as discussed in State of Board of Tax Commissioners v. Key Motors, Corp., 404 N.E.2d 52 (Ind. App. 1980). See also I.C. 6-6-5-2.

Exemptions from excise tax follow closely the exemptions allowed in property taxation: vehicles owned, leased or operated by the United States, the state or political subdivisions of the state; mobile homes and motor homes; vehicles assessed under 6-1.1-8 (taxation of public utility companies); vehicles subject to registration as trucks under the motor vehicle registration laws (except trucks having a declared gross weight not exceeding eleven thousand pounds, trailers, semitrailers, trucks, and buses; vehicles owned, leased, or operated by a volunteer fire company, a qualifying volunteer emergency ambulance service, or an institution of higher education; vehicles exempt from payment of registration fees under I.C. 9-18-3-1; and farm wagons. See I.C. 6-6-5-1(i).

Value for excise tax purposes is based on the price when first offered for sale as a new vehicle. The board is to use some uniform valuation for each particular make and model, using National Market Reports or any other similar nationally recognized publication. As examples, the statute gives the terms "factory advertised delivered price" and "port of entry price." See I.C. 6-6-5-3. If for some reason, the bureau is unable to ascertain a value for a vehicle, the bureau is to use any information available to determine the true tax value. This bureau determination is subject to review and adjustment by the State Board of Tax Commissioners.

There are seventeen classes of vehicles listed in the statute, from Class I with a value of less than $1,500; to Class XVII with a value of $42,500 and over. See I.C. 6-6-5-4. These classes and the age of the vehicle are used to determine the amount of excise tax. A schedule referencing the Class of the vehicle and the age with the applicable tax is set out in I.C. 6-6-5-5(c). A vehicle is taxed as a vehicle in its first year of manufacture throughout the calendar year in which vehicles of that make and model are first offered for sale in Indiana. But, if a new model year is offered after August 1 of the prior year, as is customary practice, the first year of manufacture continues until the end of the calendar year following the year in which it is first offered for sale. See I.C. 6-6-5-5(d).

Owners of passenger motor vehicles or passenger motor trucks who regularly rent those vehicles for periods under thirty days to others in the regular course of the owner's business are entitled to a credit against the motor vehicle excise tax liability. See I.C. 6-6-5-6.7. This section allows the bureau of motor vehicles to inspect the records of any person claiming such a credit. If any improper credit is found, the owner is liable for the unpaid excise tax as well as a penalty of ten percent. See I.C. 6-6-5-6.7(e). There is also a credit allowed for a vehicle which has been destroyed and not replaced. See I.C. 6-6-5-7.

To knowingly register a vehicle without paying the required excise tax is a Class B misdemeanor. A license branch employee who recklessly issues a registration without collecting excise tax also commits a Class B misdemeanor. See I.C. 6-6-5-11. Any such registration without payment of the required excise tax is void. The bureau may take possession of the registration certificate, license plate, and other evidence of registration until the excise taxes are paid, along with an additional ten dollar fee for processing by the bureau. See I.C. 6-6-5-12.

Aircraft are also subject to an excise tax under I.C. 6-6-6.5. This tax is administered by the Indiana Department of Transportation. Pleasure boats are also subject to an excise tax under I.C. 6-6-11.

By electing not to use the normal method and the 35% valuation adjustment provided thereby, the taxpayer using the alternative valuation method may instead adjust the value of his property by the percentage of his overhead. It must be remembered that the alternative method may be used only in the valuation of a manufacturer's work in process and finished goods inventories. In addition, once a taxpayer elects to use the alternative method of valuation, he cannot change to the normal method in subsequent tax years, unless the Board permits him to do so.

In State Board of Tax Commissioners v. Aluminum Co. of America, the court discussed the
application of the alternative method of valuation. Alcoa is a worldwide producer of aluminum and aluminum products with totally integrated operations. Alcoa operated three major facilities in different locations within Indiana. The Indiana operations performed different facilities, receiving some manufacturing materials from other Alcoa plants within Indiana and outside Indiana and from other suppliers. Alcoa, under the alternative method, excluded from valuation Alcoa's overhead associated with the property. This adjustment by Alcoa included overhead incurred at Alcoa plants other than the plants filing the return.

The State Board of Tax Commissioners contended that only the "on-site" burden at each filing plant could be excluded in assessing the value of Alcoa's inventory. The court disagreed, relying on plain language of the statute, I.C. 6-1.1-3-10(a) which provides;

(a) if a taxpayer owns, holds, possesses, or controls personal property which is located in two (2) or more townships, he shall file any additional returns with the state board of tax commissioners which the board may require by regulation.

(b) if a taxpayer owns, holds, possesses, or controls personal property which is located in two (2) or more taxing districts within the same township, he shall file a separate personal property return covering the property in each taxing district.

The court held that Alcoa was the "taxpayer" contemplated by the statute, not each separate facility and thus could exclude the overhead involved in other Alcoa sites. See State Board of Tax Commissioners v. Aluminum Co. of America (Ind. App. 1980) 402 N.E.2d 1316.

A retailer may use the retail method of valuation instead of reporting inventory on the basis of cost per books by using the normal method. See 50 I.A.C. 4.2-5-11. Use of this method allows the taxpayer to set the value of his inventory at the lower of cost or market value. The retail method is rarely used. Usually, only large retailers such as L.S. Ayres or Lazarus Department Stores will use the retail method. The retail method of valuation is best explained by using a step-by-step approach.

Step 1 - Take the retail selling price of all inventory on the assessment date that was acquired in the preceding 14 months.

Step 2 - Subtract the actual net sales and realized markdowns that have occurred and have been realized during this 14 month period. The remainder represents the retail value of the inventory as of the assessment date.

Step 3 - Compute the cost ratio. This is done by taking:

a. The taxpayer's cost of the goods made available for sale during the past 14 months.

b. This figure is then divided by the retail value of the goods available for sale. This is best expressed in an equation.

\[
\text{Owner's Cost} = \% \text{ cost ratio}
\]

\[
\text{Retail Cost}
\]

Whether a taxpayer is a retailer or manufacturer, inventory averaging method of valuation may be elected either with the normal or alternative method of valuation. Under this election, instead of taking the value of inventory on hand on the assessment date, the taxpayer may take the prior year's average of the value of his inventory. See I.C. 6-1.1-3-11(b). The averaging method applies to all categories of inventory (work in process, finished goods and raw materials). The election is binding on future years, and cannot be changed without the permission of the Board. See I.C. 6-1.1-3-11(c). The taxpayer must also use the averaging method in all of the taxpayer's inventory locations in the State, once the election has been made. See I.C. 6-1.1-3-11(d). This method is particularly advantageous to businesses that have fluctuating inventories that tend to peak around the assessment date. It also is attractive to those businesses that wish to avoid playing the game of running down inventories to dangerously low levels when the assessment date draws near.

If the average method of valuing inventory is elected under I.C. 6-1.1-3-11(b), the taxpayer is required to keep books clearly showing the inventory on hand and the true tax value of that inventory as of the last day of each accounting period. See I.C. 6-1.1-3-12.

There are several valuation adjustments that the State Board requires a taxpayer to make in determining
the T.T.V. of his inventory. These adjustments are required in order to avoid an artificially low valuation of the property. Taxpayers who use the L.I.F.O. (last in - first out) method of accounting for inventory are required to adjust the value of their inventory to reflect the value of their inventory as if the F.I.F.O. (first in - first out) method were used. This is required because, under L.I.F.O. methods, the items that are purchased last are generally the most expensive items, and if the most expensive inventory items are first to be removed upon sale, an artificial valuation is created. See 50 I.A.C. 4.2-5-4.

All manufacturing expenses, freight costs and excise taxes must be included in the inventory's value. Integrated manufacturers who operate retail outlets must adjust the value of their inventory to include all costs associated with producing and bringing the inventory to the retail location as well as any intracompany profit. Royalties, editorial, license or copyright fees must also be included in the value of the inventory. See 50 I.A.C. 4.2-5-4.

The taxpayer must include in his valuation of inventory any inventory that is on hand, but is not recorded on the books or expenses by the taxpayer. This typically includes such property as supplies, repair parts and expendable tools on hand on the assessment date. It can also include such larger items as inventory actually received but for which no book entry has been made to record the inventory's existence.

The State Board of Tax Commissioners is trying to close a loophole that would otherwise exist, by requiring all inventory that is physically present on the assessment date to be accounted for. In an audit, the State Board of Tax Commissioners will look at either the taxpayer's books or his shipping documents in order to account for the inventory. Without the unrecorded inventory requirement, the taxpayer could hide inventory that is delivered on or shortly before the assessment date. There is always a time lag between when the inventory is delivered and when the property is actually recorded on the taxpayer's books.

Unless the taxpayer can show otherwise, the valuation of unrecorded inventory is computed by taking the total expenditures for all unrecorded inventory items used by the taxpayer during the twelve months preceding the assessment date. (This figure is determined by examining the taxpayer's books and records). One-twelfth of this amount is then reported as the value for unrecorded inventory. See 50 I.A.C. 4.2-5-8.

In general, leased personal property includes those units of tangible personal property which are leased, rented or otherwise made available to a person other than the owner under a bailment agreement, written or unwritten, on the assessment date. Leased personal property includes but is not limited to business machines, postage meters, machinery, equipment, furniture, fixtures, coin-operated devices, tools, burglar alarms, signs and other advertising devices and motor vehicles to the extent taxable as personal property which are loaned, leased, used or otherwise held in the possession of a person other than the owner on the assessment date whether or not any fees are charged. See 50 I.A.C. 4.2-8-1.

All leased personal property must be reported in the tax return filed by the possessor in the taxing district where such property is situated on the assessment date. If the owner is responsible for the payment of tax, the possessor must identify the property, the owner and the address of the owner. If the possessor is responsible for the payment of tax, the T.T.V. and the property must be reported on his appropriate return. The person so holding, possessing or controlling the personal property on the assessment date is liable for the taxes on such property unless it is established that the property is being assessed and taxed in the name of the owner. The owner of the property is not relieved of the responsibility to report or pay the taxes if such taxes are not paid by the possessor. See 50 I.A.C. 4.2-8-5.

The nature of the lease will determine whether the tax liability should accrue to the lessor or the lessee. Determination of this liability hinges on whether the lease in question is a capital lease or an operating lease.

A capital lease is defined as a lease that can be capitalized for federal income tax purposes. In addition, a capital lease must meet at least one of the following conditions: ownership of the property must be transferred to the lessee at or before the end of the lease term; the lease must contain an option to purchase the property or renew the lease at a price or rental which is substantially less than the fair market value of the property at the end of the lease term; the lease term must be equal to 75% or more of the estimated economic life of the leased property; or the present value of the minimum lease payments must equal or exceed 90% of the fair market value of the leased property at the inception of the lease. See 50 I.A.C. 4.2-8-2.

Operating leases are all other types of leases which do not fall within one of the above categories.
In the case of capital leases, the property is taxed to the lessee because the nature of these leases are such that the lessee is considered to be the actual owner of the property. In the case of operating leases, the property is taxed to the lessor. This is because there is clearly no ownership interest created for the lessee under this type of lease agreement.

The case of *Kimco Leasing, Inc. v. State Board of Tax Commissioners*, 622 N.E.2d 590 (Ind. Tax 1993) (*Kimco I*) involves an operating lease situation. The taxpayer leases commercial equipment and a typical transaction involves a $5,000, thirty-six month lease. Throughout the lease, taxpayer retains legal title, while the lessee retains sole possession and control of the equipment. The lease provides that the lessee is responsible for payment of personal property tax, the risk of loss, any maintenance and repair, and insurance for the equipment. The leases are irrevocable and, in the event of default, the taxpayer has the right to repossess and make the entire lease agreement due and payable. Further, each lease contains a purchase option, under which the lessee pays a security deposit of 10 percent of the lease price at the beginning of the lease term. At the termination of the lease, legal title automatically passes to the lessee, unless the lessee demands return of the security deposit. The record showed that fewer than 30 out of 6,500 lessees decline to exercise the purchase option. The State Board assessed the business personal property tax to the taxpayer based on the I.C. 6-1.1-2-4 and the taxpayer’s ownership of certain leased property.

The taxpayer argues that it is not the owner of the leased equipment and the lease agreements are in substance financing transactions intended as security for debts. The court, citing *Marhoefer Packing Co.*, 674 F.2d at 1146, noted that although the lessees bore the risk of loss and were responsible for the payment of taxes and insurance, these factors are merely indicate bargaining power and are not dispositive. The court, citing *Empire Gas of Rochester, Inc. v. State of Indiana*, 486 N.E.2d 1036 (Ind. App. 1985), went on to discuss the distinction between capital and operating leases and the ensuing tax consequences, there the court held that the leases of LP tanks by Empire were operating leases and as the owner of the property Empire had the primary tax liability. The court in *Kimco I* also cited 50 I.A.C. 4.2-8-2 *supra* for the definitions of capital and operating leases. The court’s decision hinged on 50 I.A.C. 4.2-8-5, which provides the respective tax liabilities of lessors and lessees under capital and operating leases. Subsection (b) states:

. . . This section does not relieve the owner (lessor) of the responsibility to file a complete listing, on Form 103-O (50 I.A.C. 4.2-2-9), in the taxing district where the property was situated on the assessment date of all owned property which was in the possession of another person nor does it relieve the owner of the tax liability if not paid by the lessee.

The court reasoned the purpose of the filing requirement is to relieve the State Board of the burden of finding and identifying all the property in the state subject to taxation and to act as a verification and cross-reference showing that all property is being properly reported. Kimco did not file a Form 103-O in each county which contained its leased property, nor did Kimco provide evidence that lessees were being assessed and taxed. Therefore, the court held Kimco’s leased property was properly assessed.

In *Kimco Leasing, Inc. v. State Board of Tax Commissioners*, Cause No. 49T10-9111-TA-00056 (Ind. Tax 1996) (*Kimco II*), an unpublished opinion which may not be cited as precedent, the parties returned to the tax court. In an Application for Post-Trial Special Proceedings, Kimco was attempting to lower its tax liability from *Kimco I* by presenting new evidence of the property tax payments by some of its lessees. Further, Kimco requested relief under Trial Rules 64(A), 67(B), and/or 69(e). The court emphatically disagreed with Kimco’s contentions. In holding against Kimco, the court stated, “Kimco is wrong. . . . nothing in [Kimco I] provides that the judgment entered into against Kimco may be reduced or modified on some ongoing basis as Kimco develops new evidence. If Kimco has new evidence . . . that evidence simply comes too late.” The court went on to scold Kimco for trying to use Trial Rules 64, 67, and 69, all of which are available for those who have won money judgments and the other person will not or cannot pay the judgment. Here, the State Board, not Kimco, has won the money judgment and is entitled to the resources of Trial Rules 64, 67, and 69.

Kimco did not learn from *Kimco I* and *Kimco II* and again appealed to the tax court in *Kimco Leasing, Inc. v. State Board of Tax Commissioners*, 656 N.E.2d 1208 (Ind. Tax 1995) (*Kimco III*). Kimco’s appeal made several arguments but focused on Kimco’s position that its leases were security interests rather than true leases. The
court divided the issue into two categories: 1) leases written before July 1, 1991; and 2) leases written after July 1, 1991. For leases written before July 1, 1991 the court examined the leases to determine if they satisfied either the “nominal consideration” or “economic realities” tests. The court was not persuaded by Kimco’s nominal consideration arguments as the leases’ purchase options were not exercisable until the completion of the lease. The court noted, “. . . without some concrete information regarding the anticipated fair market value of the leased equipment at the time the purchase option is to be exercised, it is impossible to compare the purchase option price to the anticipated fair market value of the leased equipment at the time the purchase option it to be exercised.” Id. at 1213.

Under the economic realities test, the court must consider the relationship between the purchase option price to the original purchase or list price. A purchase option price of less than twenty-five percent 25% of the original purchase or list price constitutes evidence of a security interest. Kimco argues the deposit is 10% of the original or list price and therefore, the list price is easily ascertainable from the lease agreement by multiplying the deposit by 10. In addressing the argument, the court determined the deposit amount stated on the face of the lease agreement was not equal to 10% of the original purchase or list price. Therefore, the lease fails the economic realities test.

As for the leases written after July 1, 1991, the court examined them under an amended version of I.C. 26-1-1-201(37) which states: “Security interest” means an interest in personal property or fixtures which secures payment or performance of an obligation . . .. The court looked to the “bright line” test which provides a lease creates a security interest as a matter of law if:: 1) the lessee is obligated to perform for the length of the lease without being able to voluntarily terminate it; and 2) one of four enumerated terms are present. See I.C. 26-1-1-201 (37). The court examined the lease under the four terms and found that Kimco’s testimonial evidence was contradicted not only by the State Board’s records, but also by Kimco’s inability to produce tangible proof that it had filed the returns in question. Id.

The case of W.H. Paige & Co. v. Indiana State Board of Tax Commissioners, 711 N.E.2d 552 (Ind. Tax 1999) (W.H Paige I), involved an analysis by the tax court that was very similar to that in Kimco. W.H. Paige was in the business of selling and leasing musical instruments. One of their types of lease agreements were similar to rent-to-own leases. The court looked to the “bright line” and “meaningful residual interest” tests of Kimco in determining if the taxpayer was liable for the leased property. In taxpayers’ leases, the lessee had the option to break the lease at any time. Therefore, the leases clearly did not fall under the “bright line” test. Taxpayer argued that the leases fell under the “meaningful residual interest test” because the instrument could be purchased at a nominal price upon the conclusion of the lease agreement. Under such a situation it is thought that retention of title can only be looked upon as a means of securing payments due under the lease contract. The court held the lease agreements did not fall under the “meaningful residual interest” test as well. Taxpayer ignored the significance of the ability of the lessee to terminate the lease agreement at any time. The court noted that at the inception of the lease agreement, taxpayer’s customers were not bound by contract to see the lease agreements through to completion. Nor were they bound to do so by the economic realities of these agreements. Nothing compelled the customers to keep paying until the musical instruments could be purchased at a nominal price. Therefore, it could not be said that the customers were making illogical decisions if they chose to break the leases early. Id. at 560.

The parties were back in the tax court in W.H. Paige & Co. v. Indiana State Board of Tax Commissioners, 732 N.E.2d 269 (Ind. Tax 2000) (W.H. Paige II). At issue was whether interpretative differences existed between the taxpayer and the State Board which would preclude the imposition of the 20% undervaluation penalty. The court held that Paige erroneously understood its own agreements to be sales with security interests instead of leases. This resulted in undervaluation and was held not to be one of the exceptions to the mandatory undervaluation penalty and was not considered to be an interpretative difference. Id. at 273.

The procedure and method of valuing leased personal property is applicable to both the lessor and the lessee regardless of which party may be designated by agreement to pay the property taxes on the leased equipment. The base-year value of the leased property must be utilized in determining the value of the leased property subject to assessment. Base-year value is defined as the amount, measured in money, that a willing buyer in an arm’s length transaction would pay to acquire the item of tangible personal property subject to the lease under consideration at the time the lease or bailment was consummated. The amount stated in the agreement as the amount which the lessee
would have had to pay to acquire the leased property instead of leasing the property will be deemed to be the base-year value, provided that the State Board of Tax Commissioners does not determine that such amount is unrealistically low in relation to the other terms contained in the agreement. See 50 I.A.C. 4.2-8-7.

If an alternative acquisition cost is not shown in the lease agreement, the base-year value will be the factory delivered price for the personal property subject to the lease. If the factory delivered price cannot be determined, alternative factors will be used to determine the base-year value. See 50 I.A.C. 4.2-8-7. The insurable value in the year the lease was consummated and the capitalized value at eight items the annual lease or rental payment or a bulletin describing the base-year value which is prescribed by the Board will be considered to determine the base-year value. The base value of all leased personal property being reported in a tax return is required to be segregated for Indiana property tax purposes into four separate pools, consistent with the treatment of owned personal property. See 50 I.A.C. 4.2-8-8.

In many cases there exists property which has a readily ascertainable value, but is subject to wide fluctuations in value due to market changes or various interpretations of the value of the property. In these circumstances, the State Board of Tax Commissioners has ruled that they will determine for all owners of such property the T.T.V. of the property for tax purposes and publish these values in a directive or instructional bulletin. These bulletins or directives are usually issued for property such as agricultural commodities, fuel oil, livestock, used farm implements, etc. See 50 I.A.C. 4.2-15.

The Bailey Seed Farms, Inc. v. State Board of Tax Commissioners, 542 N.E.2d 1389 (Ind. Tax 1989) case speaks to the limits of judicial review of a decision of the State Board. Bailey filed a business property tax return in which Bailey claimed some seed that he possessed was owned by another, named Stine. The State Board accepted Bailey's evidence and assessed Stine for the seeds in question. Stine objected; and the hearing officer, without stating the basis for his decision in the record, determined the tax should be assessed to Bailey. Based upon the hearing officer's recommendation, the State Board assessed the tax to Bailey.

The tax court in Bailey Seed Farms reaffirmed that substantial deference is given to decisions of the State Board by applying a substantial evidence and arbitrary or capricious standards of review. Id. at 1391. However, in Bailey Seed Farms, no evidence was presented to contradict the claims of Bailey. The court said that "[t]he State Board has administrative discretion to make its determination but it is also required to make available to the court the evidence upon which the determination was based." Id. at 1392. "The court cannot properly review a determination unless it is apprized of the basis for the determination." Id. "The court finds that the State Board's final determination is not supported by substantial evidence and is 'arbitrary and capricious.'" Id. The tax court in Bailey Seed Farms made clear that, despite a great deference to the decisions of the State Board, the Board may face reversal by the tax court if no evidence is presented to support the decisions.

In Scheid v. State Board of Tax Commissioners, 560 N.E.2d 1283 (Ind. Tax 1990) the State Board was prevented from raising an issue for the first time on appeal to the tax court. The taxpayer in Scheid appealed a denial of a "petition for reassessment pursuant to I.C. 6-1.1-4-11 for property destroyed by a fire." Id. The State Board argued to the tax court that this property cannot be reassessed unless "a substantial amount of the township's total property" was destroyed. Id. at 1284. The Board had not raised this issue at the administrative level. The Board raised this issue for the first time on appeal to the tax court.

The court took a general position that new issues will not be allowed to be raised at the tax court level. The court said that "[a]n agency generally may not support its determination by referring to reasons which are not ruled on previously but which are offered as post hoc rationalizations." Id. The court also added that this Court has said "... on a number of occasions that the reviewing court should pass by, without decision, questions which were not urged before the Board of Tax Appeals..." Id. at 1285, quoting Hormel v. Commissioner, 312 U.S. 552, 556-557 (1941).

However, the court felt that in some cases it may be proper to allow some issues to be allowed for the first time at the tax court. The court again quoted the U.S. Supreme Court, "... [t]here may be exceptional cases or particular circumstances which will prompt a reviewing or appellate court, where injustice might otherwise result, to consider questions of law which were neither pressed nor passed upon by the court or administrative agency below." Id.

The court's main concern with permitting new issues to be raised a the tax court is the introduction of
new facts to the court. "Several factors should be considered before exercising the discretion to hear new issues. Perhaps foremost is whether the issue goes to the integrity of the fact finding process." Scheid, 560 N.E.2d at 1285, quoting In Re Hawaiian Land Co., 487 P.2d 1070, 1076 (1971), appeal dismissed, 405 U.S. 901 (1972). The Scheid court said that "several facts pertinent to the 'substantial amount' issue are now before the court which were not addressed at the administrative level." Scheid, 560 N.E.2d at 1285. "It is the integrity of the process by which these facts were found, rather than the facts themselves, with which this court is concerned." Id.

The Scheid court decided not to allow the State Board to raise this new issue at the tax court level. The Scheid court held that "the Board's claim that the taxpayer would have been entitled to relief only if a substantial amount of property within the township had been destroyed by fire would not be considered for the first time on appeal." Id. at 1283.

A group of recent cases resulted in taxpayers losing subject matter jurisdiction for failing to meet the requirements of I.C. 6-1.1-15-5(c)(3) and (d)(1). I.C. 6-1.1-15-5(c)(3) and (d)(1) require a taxpayer to serve the county assessor with a copy of the complaint within forty-five days after the State Board's notice of final determination. The Paul Heuring Motors v. State Board of Tax Commissioners, Cause No. 45T10-9111-TA-00059 (Ind. Tax 1992) (Paul Heuring I) case was decided in an unpublished memorandum decision that may not be cited as precedent. The taxpayer in Paul Heuring Motors v. State Board of Tax Commissioners did not serve the county assessor until 121 days after the notice of final determination. Paul Heuring Motors' failure to meet this procedural step resulted in the loss of subject matter jurisdiction by I.C. 33-3-5-11(a). Id. The court cites I.C. 33-3-5-11(a): "If a taxpayer fails to comply with any statutory requirement for the initiation of an original tax appeal, the tax court does not have jurisdiction to hear the appeal." Id. The Paul Heuring Motors court also quotes Harlan Sprague Dawley: "A taxpayer who skips a procedural step on the exclusive path to the courthouse door, is locked out of the forum." Id., quoting Harlan Sprague Dawley, 583 N.E.2d at 224. "Because Heuring Motors failed to timely serve the county assessor, as required by I.C. 6-1.1-15-5(c)(3) and (d)(1), its case is not among the class of cases within the court's subject matter jurisdiction." Id. "The court recognizes the harsh result of noncompliance with the requirements for initiation of an original tax appeal under I.C. 6-1.1-15-5; however, I.C. 33-3-5-11(c) mandates the court's adherence to these requirements." Id.

While the Paul Heuring Motors court found a lack of subject matter jurisdiction, the cases of Leo P. Knoerzer Corp. v. Indiana State Board of Tax Commissioners, Cause No. 49T10-9111-TA-00058 (Ind. Tax 1992) and Raintree Friends Housing v. State Board of Tax Commissioners, Cause No. 49T10-9204-TA-00014 (Ind. Tax 1993) showed a "judicial preference for deciding cases on their merits and giving parties their day in court." Knoerzer, quoting Department of Natural Resources v. Van Keppel, 583 N.E.2d 161, 162 (Ind. App. 1991), citing Green v. Karol, 344 N.E.2d 106, 110-111 (Ind. App. 1976). The Knoerzer and Raintree Friends Housing cases are also unpublished memorandum decisions, which cannot be cited as precedent.

The Knoerzer case also involves a loss of subject matter jurisdiction for failure to timely serve the county assessor as required by I.C. 6-1.1-15-5(c)(3) and (d)(1). However, in Knoerzer the taxpayer claimed to have timely mailed the county assessor service by U.S. mail. The assessor did not receive the complaint. To support its position the taxpayer offered the testimony of the employee who mailed the complaint to the county assessor. The court stated that "[j]urisdiction . . . is presumed to exist." Knoerzer, citing State Board of Tax Commissioners v. Oliverius, 294 N.E.2d 646, 650 (Ind. App. 1973). The State Board failed to impeach the employee and failed to show by a preponderance that the complaint was not timely mailed; therefore, the court found that the complaint was timely served upon the county assessor. Knoerzer. Therefore, the court in Knoerzer had subject matter jurisdiction.

The taxpayer in Raintree Friends did not serve the complaint to the county assessor within the forty-five day limit. However, the taxpayer successfully placed the blame upon the State Board. I.C. 6-1.1-15-4(d) requires that the State Board give taxpayers "notice of the procedures [taxpayers] must follow in order to obtain court review under [I.C. 6-1.1-15-5]." Raintree Friends, quoting I.C. 6-1.1-15-4(d). The State Board gave instructions for filing an appeal on Raintree's notice of final determination. These instructions failed to include the requirement of service upon the county assessor within forty-five days. Thus, the State Board in Raintree Friends did not fulfill its duty under I.C. 6-1.1-15-4(d). As a result the court upheld Raintree's subject matter jurisdiction. Raintree Friends. The court stated that "[a]ccordingly, a taxpayer's compliance with the incomplete requirements for appeal in the Indiana State Board of Tax Commissioners' notice of its final determination, satisfies the jurisdictional requirements..."
for the initiation of an appeal from the Indiana State Board of Tax Commissioners."  Id.

The case of Tri Creek Lumber Co. v. State Board of Tax Commissioners, 558 N.E.2d 1130 (Ind. Tax 1990) similarly to Knoerzer involved a taxpayer who claimed to have mailed a form to the township assessor, but the form was not received. However, in Tri Creek the court ruled against the taxpayer. The facts of Tri Creek can be distinguished from those in Knoerzer. Unlike the employee in Knoerzer, the secretary of Tri Creek who supposedly mailed the form did not submit an affidavit or testify. Tri Creek also had a history of late filings. As a result, Tri Creek was forced to pay a penalty for failing to timely file a self-assessment business tangible personal property tax return with the township assessor. The board cited I.C. 6-8.1-6-3(d) which states

If a document is mailed to, but not received by, the department, the person who mailed the document will have filed the document on or before the due date if the person who mailed the document will be considered to have filed the document on or before the due date if the person can show by reasonable evidence to the department that the document was deposited in the United States mail on or before the due date. . .

Applying this statute to the situation in Tri Creek, the court held that the "evidence was sufficient to support the Board's finding that the return was not filed with the township assessor."  Id.

The case of Hatcher v. Indiana State Board of Tax Commissioners, 561 N.E.2d 852 (Ind. Tax 1990) is an appeal from a denial of a petition for correction of mathematical error under I.C. 6-1.1-15-12(a)(7). The assessed property was an apartment building. After the apartment building was assessed, the building was robbed; and several items such as sinks, toilets, and carpets were stolen. The assessor failed to reassess the property. The taxpayer felt the failure to reassess after the damage to the building was mathematical error.

The Hatcher court "affirms the State Board's determination that errors arising from an assessor's judgment do not constitute mathematical errors in computing the assessment pursuant to I.C. 6-1.1-15-12(a)(7)."  Id. at 857.

The court's holding may entitled the Hatcher's to relief, however, from errors which can be corrected without resort to subjective judgment and according to objective standards. This standard manifests itself in Instructional Bulletin 84-7, which provides: 'An entry was made on the PRC [Property Record Card] with respect to a physical feature, and the fact that the entry was in error can be determined by a visual inspection of the structure or the land.

Id. Example (1) in the instructional bulletin is as follows: "Example (a): An entry was made for a fireplace where none exists."  Id. The Bulletin's example of a fireplace like sinks, toilets, and carpet can be corrected with an objective visual inspection.

The reason the type of correction provided by the fireplace example is within the purview of errors correctable by I.C. 6-1.1-15-12(a)(7) is because it can be judged and corrected objectively through a visual inspection. If a fireplace exists, then it is assessed. If no fireplace exists, then its value can be subtracted from the computation. Similarly, for any other item that exists and a value is assigned to that item by the property record card, if the item no longer exists, then the auditor should be permitted to subtract that value, as well.

Id. at 857-858.

"The alleged errors in the case at bar occurred after 1984, when the assessment computation indicated that certain stolen items existed when in fact they did not."  Id. at 858. The court ruled for the taxpayer and allowed for corrections of mathematical error. The court said that "[f]or the State Board to refuse to correct errors alleged and shown to exist which are similar to the examples set forth in Instructional Bulletin 84-7 is arbitrary and capricious."  Id. The court held that 'owners' allegation that property tax assessment included items which had been stolen from premises stated claim for correction of mathematical error."  Id. at 852.

The case of Hutchison v. Indiana State Board of Tax Commissioners, 520 N.E.2d 1281 (Ind. Tax 1988) declared regulation 50 I.A.C. 1-1-4 invalid.  Id. at 1283. John Hutchison was a third party that wanted to set aside the assessment of property owned by Public Service Indiana, Inc. and Wabash Valley Power Association, Inc. The State Board reduced the assessment from $26,431,660 to $2,179,260. Mr. Hutchison was a third party taxpayer.
"Hutchison contends that he was entitled to notice of the State Board's hearing as a 'party interested in the matter' under 50 I.A.C. 1-1-4 because he participated in the County Board hearing and because the State Board's reduction of the assessment could have affected the assessment of his property."  Id. at 1282. Regulation 50 I.A.C. 1-1-4 provides in relevant part that "[t]he secretary of the [State] Board [of Tax Commissioners] shall then fix the date for hearing of such appeal and notify all parties interested in the matter. . . ." Id. at 1282-1283. However, regulation 50 I.A.C. 1-1-4 was promulgated pursuant to a statute that has since been repealed. Id. at 1283. Thus, the court declared that regulation 50 I.A.C. 1-1-4 is also invalid. Id. The court states that "]by its failure to amend its regulations consistent with the restriction of the scope of the enabling legislation under which they were originally promulgated, an agency cannot retain power which it has lost through legislative amendment."  Id., citing Shultz v. State, 417 N.E.2d 1127, 1136 (Ind. App. 1981).  "Since the regulation is a nullity, Hutchison was not entitled to notice of the hearing."  Hutchison, 520 N.E.2d at 1283.

The court in Thomas Dodge offered great comfort to companies that have sales to reduce their inventories prior to the assessment date of March 1. The automobile dealership in Thomas Dodge appealed the assessment of 186 vehicles that it sold to the assessment date of March 1. This sale left Thomas Dodge with only 11 new vehicles in its inventory on March 1. Later in March, Thomas Dodge purchased 150 new vehicles to replenish its inventory. The Board believed that Thomas Dodge sold the 186 vehicles to avoid the property tax. The Board contended that the vehicles were still owned by Thomas Dodge since the 80% owner of Thomas Dodge also owned a 30% interest in the Illinois company that purchased the 186 vehicles. The Board assessed Thomas Dodge for the 186 vehicles under the authority of I.C. 6-1.1-3-16. I.C. 6-1.1-3-16 states:

If, from the evidence before him, a township assessor determined that a person has temporarily converted any part of his personal property into property which is not taxable under this article to avoid the payment of taxes on the converted property, the township assessor shall assess the converted property to the taxpayer.

Thomas Dodge, 542 N.E.2d 246, quoting I.C. 6-1.1-3-16.

The tax court ruled for the taxpayer. The court said that "many retailers engaged in legal 'tax sales' to decrease their inventory by March 1 of each year and then increase their inventory, thereafter."  Thomas Dodge, 542 N.E.2d 246. The court also added that "[m]ere tax avoidance is not tax evasion."  Id. The court held that the "dealership's sale of vehicles was not a 'temporary conversion of personal property' to avoid taxation."  Id. at 245. The court ruled for the taxpayer by finding that "the Board's determination with respect to the 186 vehicles is contrary to law."  Id. at 247.

In Paul Heuring Motors, Inc. v. State Board of Tax Commissioners, 620 N.E.2d 39 (Ind. Tax 1993) (Paul Heuring II), the taxpayer, a Lake County business, attempted to lower its inventory by moving fewer than half of its vehicles to another car lot for a special sale on February 26, 1991. The taxpayer returned the unsold vehicles to its lot 5 days later on March 1, 1991. As the special sale was held in Porter County, the taxpayer filed property tax returns with the officials in both Lake and Porter counties. The state board conducted an audit in January of 1992 and concluded the taxpayer had not established situs in Porter County. Therefore, the board found that the taxpayer had undervalued its inventory by over 5% and assessed a 20% undervaluation penalty for inventory on the Lake County return.

The taxpayer appealed the assessment of the penalty arguing the penalty was arbitrary and capricious as the taxpayer reported the inventory albeit in the two different counties. The court stated, "]the general rule is that a corporation’s domicile or residence, within the state of its creation, is the county or city, town, or district in which its principal office or place of business is located."  Paul Heuring Motors, Inc. citing Flournoy v. McKinnon Ford Sales (1974), 520 P.2d 600, 601-602. The court placed much emphasis on the language of I.C. 6-1.1-3-1 which provides the place for assessment:

(a) Except as provided in subsection (c) of this section, personal property which is owned by a person who is a resident of this state shall be assessed at the place where the owner resides on the assessment date of the year for which the assessment is made.

(c) Personal property shall be assessed at the place where it is situated on the assessment date of the year
which the assessment is made if the property is:

(1) regularly used or permanently located where it is situated.

The court went on to note that the Indiana personal property tax system is a self assessment system and is therefore heavily reliant on full disclosure and accurate reporting. Further, the court looked to the dictionary meaning of “regular” and found that the five day presence in Porter County did not constitute “regular use” of the vehicles in Porter County. Therefore, the court held taxpayer was mistaken when it reported the vehicles in Porter County and the resultant undervaluation in Lake County was subject to the 20% undervaluation penalty of I.C. 6-1.1-37-7.

The case of Coachmen Vans; Coachmen Industries, Inc.; Clarion Motors; and Shasta Industries v. State Board of Tax Commissioners, 639 N.E.2d 1066 (Ind. Tax 1994), involved the Board’s challenge to the jurisdiction of the tax court. Following a 1992 personal property tax assessment, the taxpayers filed a motion for summary judgment pursuant to Ind. Trial Rule 56. In response, the Board asserted that the court lacked subject matter jurisdiction for the taxpayers had not complied with the requirements of I.C. 6-1.1-15-5 necessary to invoke the court’s jurisdiction to hear appeals of State Board final determinations. I.C. 6-1.1-15-5 states in relevant part:

(c) If a person desires to initiate an appeal of the state board of tax commissioners’ final determination, the person shall:

(1) file a written notice with the state board of tax commissioners informing the board of his intention to appeal;

(2) file a complaint in the tax court; and

(3) serve the attorney general and the county assessor with a copy of the complaint.

(d) To initiate an appeal under this section, a person must take the action required by subsection (c) within:

(1) forty-five days after the state board of tax commissioner gives the person notice of its final determination.

In this case, the court held that the taxpayers had attempted to craft an argument by which they can slip through a “back-door” to jurisdictional relief, by only reading the first sentence of I.C. 33-3-5-11, which states “[a] taxpayer who wishes to initiate an original tax appeal must file a petition in the tax court to set aside the final determination of the department of state revenue or the state board of tax commissioners.” Yet I.C. 33-3-5-11 further states, “[i]f a taxpayer fails to comply with any statutory requirement for the initiation of an original tax appeal, the tax court does not have jurisdiction to hear the appeal.” Therefore, the Board’s motion for summary judgment was granted.

Cheryl Musgrave, Vanderburgh County Assessor, and Robert Harris, Scott Township Assessor v. State Board of Tax Commissioners and PPG Industries, Inc., 658 N.E.2d 135 (Ind. Tax 1995) is another case that challenged the jurisdiction of the tax court. There the Scott Township assessor challenged the decision of the Vanderburgh County Board of Review to dismiss an assessment and filed a Form 131 with the State Board pursuant to I.C. 6-1.1-15-15-3(b). The State Board dismissed the petition, basing its decision on its determination that was not statutorily conferred with a right to appeal. The assessors appealed to the tax court and this litigation ensued. The State Board and PPG filed separate motions to dismiss the petition on the ground that the court lacked subject matter jurisdiction to hear the claim. Citing I.C. 33-3-5-2(a)(2), the court claimed its right to, “exclusive jurisdiction over any case that arises under the tax laws of the state . . . is an initial appeal of a final determination made by . . . the state board of tax commissioners.” Id. at 136.

The State Board and PPG, citing I.C. 6-1.1-15-5, made the alternative argument that the assessors lack standing to bring the appeal to the tax court. I.C. 6-1.1-15-5 limits the tax appeals to the tax court to those brought by property owners, and in limited circumstances, county executives. The court looked to an Indiana Supreme court decision, Marion Superior Court, 271 N.E.2d 1161, and found that there is a distinction between: 1) cases in which counties and county officials seek to challenge the “allowance or disallowance of an exemption or a reduced assessment of a particular owner of property; and 2) cases in which counties and county officials seek to challenge the State Board’s interpretation of application of a statute. The tax court, in holding for the assessors, found the assessors’ petition fell squarely within the second type of appeal.

Once the court determined the assessor could bring an action in the tax court, the assessment by the assessor was challenged in PPG Industries, Inc. v. Indiana State Board of Tax Commissioners, 706 N.E.2d 611 (Ind.
Tax 1999). The taxpayer challenged the State Board and Scott Township Assessor’s assessment of tangible personal property stored in a Center Township warehouse. The taxpayer’s principle place of business is in Scott Township and claimed an interstate commerce exemption for approximately 98% of its property as it was to be shipped out of state and was being temporarily stored in Center Township warehouses. The court held the property was not taxable in Center Township because I.C. 6-1.1-3-1 requires more than ephemeral presence with a township in order to make it taxable there. The temporary nature of the property’s storage in Center Township makes the property assessable in the township of principle business (Scott). The taxpayer reported and claimed an exemption for the property in Scott Township. Therefore, the court held the State Board’s position could not stand and denied a 20% undervaluation penalty for Center Township. Id. at 613.