DENTONS

Indiana Tax Developments: Fall 2023

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Key Contacts

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I. SELECTED NEW LEGISLATION AND JUDICIAL APPOINTMENTS

Senate Enrolled Act No. 417: Various Tax Matters (signed by Governor May 4, 2023)

Creates a $100,000 threshold for a nonprofit organization's sales tax to be exempt. Authorizes counties to impose a local income tax rate for county staff expenses, provided that the revenue does not comprise more than half of the county's total budgeted operational staffing expenses. Imposes a 3-business day grace period after the postmark date during which the Department of Revenue will consider the document timely filed.

Justin L. McAdam appointed Judge of the Indiana Tax Court

Justin L. McAdam was appointed Judge of the Indiana Tax Court by Governor Eric Holcomb in July 2023. Judge McAdam earned his juris doctor from Harvard Law School. He served as a judicial law clerk to then Chief Justice Brent E. Dickson of the Indiana Supreme Court. Prior to his appointment to the Tax Court, Judge McAdam served as Deputy Director & Chief Legal Counsel of the Indiana Office of Management & Budget, helping to lead Indiana's tax and fiscal policy system.

II. SELECT ADMINISTRATIVE AND CASE UPDATES

A. SALES AND USE

Memorandum of Decision Number 04-20221012 (March 31, 2023) (Sales Tax) – Purchases of Prewritten Computer Software and Software Maintenance Agreements

An Indiana management company sought a refund of sales or use tax it paid on the purchase of certain software on the ground that it was paying for the right to use or simply access that software; and a sales tax refund for the purchase of software maintenance agreements on the ground that such sales tax liability could be apportioned based on the number of the software's in-state and out-of-state users.

The Department acknowledged that, under the current law, transactions for the right to use or access software are not subject to the sales tax because IC 6-2.5-4-16.7(b)(2) defines them as transactions that do not constitute a retail transaction. However, that law was not directly relevant because all the 2017 transactions at issue occurred before the law's effective date, and the law has no "look back" effect. Under the law that applied at the time, the subject transactions may or may not be subject to the sales tax depending on the degree of control or possession the buyer exerts over the software. In considering whether the software transactions represented the purchase of software or software services, the Department noted the Agreement contained several provisions wherein the seller retained rights and/or limited the buyer's ownership rights. The Department agreed that payments made pursuant to those provisions were not subject to sales tax because there was sufficient information to verify that the Company was only paying for the right to use or access the software, not for tangible personal property. Therefore, the Company's protest of sales or use tax it paid on the purchase of such software was sustained.

The Department denied the tax refund sought by the Company for software maintenance agreements. The Department acknowledged that, as explained in Sales Tax Information Bulletin 8, it has taken the position that, if the software maintenance only applies to prewritten computer software included in the contract which is strictly remotely accessed, then the transaction is not a retail transaction because the software maintenance only applies to remotely accessed software. However, the Department rejected the Company's claim for exemption because the Company's "instate/out-of-state" analysis did not establish that the underlying computer software was exempt. The Department also rejected the Company's argument that the maintenance agreements' sales tax liability could be apportioned based on the number of the software's in-state and out-of-state users. Therefore, the Company was not entitled to a refund of sales tax paid on the purchase of software maintenance agreements.

Revenue Ruling # 2022-06ST (April 12, 2023) (Sales Tax) – Clean Rooms

A Company constructing a manufacturing facility in Indiana sought a determination regarding the application of the sales tax exemption for manufacturing and production as it applies to certain purchases for use in a clean room environment at its new manufacturing facility. The Company is a manufacturer and wholesaler of glass primary packaging for the pharmaceutical industry, whose products include vials, cartridges, and syringes that must meet strict international sterilization standards for use in pharmaceutical delivery. The Company's products must be manufactured to be free of detectable contamination, and maintenance of manufacturing conditions that minimize the risk of contamination to the Company's products is critical. Therefore, a clean room environment is required during the manufacturing process. The Company's clean rooms are separate and self-contained areas in which the manufacturing process occurs. The clean room and the equipment therein will be used to create a specific manufacturing environment required for the manufacture of the Company's products.

In analyzing whether the purchases of property that will be used to construct the Company's clean room met the exemption for manufacturing machinery, tools, and equipment, the Department considered whether such property was essential and an integral part of an integrated process which produces the Company's products. Referring to Indiana regulations, the Department noted that regulations clarify that machinery, tools, and equipment qualify for the exemption only if they have an "immediate effect" on the article produced and are an essential and integral part of an integrated process which produces tangible personal property.

The Department recognized that it has previously held that equipment, materials and supplies used to maintain a clean room can be exempt if the nature of the manufactured product requires that a stage of the production process occur in a dust-free, particle-free environment in order to produce a saleable product, rather than to maintain the environment; however, the Department reiterated the analysis is a fact-specific inquiry. Here, the Department determined that the manufactured product required a clean room because the nature of the items that the Company produces need to meet strict sterilization standards. Therefore, the Department agreed that machinery and equipment that are incorporated into a clean room at the Company's manufacturing facility are essential and an integral part of an integrated process which produces their vials, cartridges, and syringes, and are therefore exempt from sales tax. However, the Department also noted that flooring, ductwork, and other construction materials incorporated into real property would not be exempt, because they are not machinery, tools, or equipment.

Information Bulletin No. 96 (posted April 26, 2023) (Sales Tax) – Sourcing Rules

This bulletin describes various sourcing rules for sales tax purposes. The rules differ depending on whether the transaction is a sale or a lease/rental. There are also different rules for sourcing various types of tangible personal property, including advertising and promotional material, motor vehicles, and floral products.

In addition to providing an overview of the sourcing rules under IC 6-2.5-13-1, the bulletin provides one example for: each of the five ways a retail sale, excluding lease or rental, of a product is sourced pursuant to IC 6-2.5-13-1(d); the general sourcing rules for rentals and leases of tangible personal property under IC 6-2.5-13-1(e); and sourcing of rules for retail sales of floral products pursuant to IC 6-2.5-13-1(h).

Final Order Denying Refund: 04-20231228 and 04-20231229 (May 8, 2023) (Sales Tax) – Research and Development Exemption

A Company in the business of conducting medical research operating multiple locations – including one in Indiana – protested the Department's partial denial of its refund claims for sales tax paid on utilities consumed in research and development (R&D) activities. The Company had filed two refund claims seeking a combined refund of approximately $47,000 in sales tax it paid on the purchase of utilities consumed in R&D activities. After the Department partially approved the refund claim, the Company protested the Department's denial of $5,000 on the grounds that it was entitled to a full refund of the sales tax paid on utilities because it established that the majority of its utilities were consumed in R&D activities.

In its analysis rejecting the protest, the Department explained that the predominant use standard applies to the exemption for utilities consumed in "an integrated production process." The predominant use standard does operate to fully exempt utility purchases where more than 50% of the utility services and commodities were used in the listed excepted uses [i.e., consumed in "an integrated production process"]. However, the listed excepted uses do not include R&D. Here, the Company's initial refund claims for sales tax on utility purchases had been granted to the extent that it qualified as tangible personal property utilized in qualifying R&D activities. Utilities consumed in qualifying R&D activities are entitled a straight-forward, dollar-for-dollar sales tax exemption. The Department also pointed out that there is no provision allowing taxpayers conducting both production and R&D activities to "stack" the two exemptions in order to meet the predominant use standard. By way of example, the Department explained that taxpayers consuming 30 percent of utilities in production and 25 percent in R&D activities are entitled to a combined 55 percent exemption and not a 100 percent predominant use exemption.

Revenue Ruling # 2023-02ST (June 19, 2023) (Sales Tax) –Equipment Rented for Use in Construction

A Company that rents construction equipment throughout the country, with several locations in Indiana, sought a determination regarding whether it should collect sales tax on transactions involving the rental of construction equipment to contractors that are working on behalf of an exempt governmental entity. The Company rented equipment to a contractor who was building a school in Indiana who refused to pay the sales tax on the Company's invoice. After being advised by the Company that an exempt sale could not be made without a valid exemption certificate, that a certificate would only apply to building materials and supplies that were incorporated into real property, and that the exemption didn't extend to rental equipment, the Contractor provided the school's exemption certificate. The Company reiterated that sales tax must be collected on the rental transaction, but the contractor still refused to pay sales tax.

The Department ruled that the Contractor may not rent equipment exempt from sales tax. The "ultimate purchaser" exemption permits contractors to purchase construction materials exempt from sales tax when their customer could have purchased construction material exempt from sales tax.

The Department acknowledged that an agency or instrumentality of a political subdivision of the state of Indiana could purchase construction material exempt from sales tax as long it predominantly uses the construction material to perform its governmental functions, which would include construction materials purchased in order to build a school. However, the Department explained that the ultimate purchaser exemption is clearly limited to construction material that will be incorporated into real property, and not to other tangible personal property used or consumed in fulfilling the contract, meaning the Contractor may not rent equipment exempt from sales tax from the Company or any other rental company in order to fulfill the contract with the school corporation. Additionally, citing Sales Tax Information Bulletin #60, the Department explained that even if the rental of equipment been exempt, the Contractor would have been required to provide its own exemption certificate to the Company, not its exempt customer's exemption certificate.

Information Bulletin Nos. 7, 10, 32, and 68 (posted June 23, 2023) (Sales Tax) – Changes to Selling Rules for Nonprofits

These bulletins were updated to reflect changes to the selling rules for nonprofits in Senate Enrolled Act 417 (2023) (SEA 417). Specifically, Bulletin No. 10 was updated to reflect changes to the sales threshold for sales by a nonprofit in SEA 417, and Bulletin Nos. 7, 32, and 68 were updated to reflect the impact of these changes.

As detailed in Bulletin No. 10, until July 1, 2022, sales of tangible personal property by qualified nonprofit organizations carried on for a total of not more than 30 days in a calendar year and engaged in as a fundraising activity to raise funds to further the qualified nonprofit purposes of the organization are exempt from sales tax. However, effective July 1, 2022, the 30-day rule was repealed and replaced with a different threshold: sales of tangible personal property by qualified nonprofit organizations of not more than $20,000 in a calendar year used to raise funds to further the qualified nonprofit purposes of the organization were exempt from sales tax. SEA 417 changed the $20,000 per year threshold to $100,000 in either the current or previous calendar year. Additionally, while the $20,000 rule applied to all sales by any qualified nonprofit organizations, the $100,000 current or previous calendar year threshold in SEA 417 applies to all qualified nonprofits except for six types: (1) Churches and other places of worship; (2) Monasteries; (3) Convents; (4) Schools that are a part of the Indiana public school system; (5) Parochial schools regularly maintained by a recognized religious denomination; and (6) A youth organization focused on agriculture. Now, these six types of nonprofits are exempt from the requirement to collect and remit sales tax regardless of the dollar amount of sales in a year.

Bulletin No. 68 was updated to reflect how the changes in SEA 417 apply to nonprofit and state colleges and universities. Under the changes to the sales threshold for sales by a nonprofit in SEA 417, a nonprofit college or university is required to collect sales tax if they reached the

$100,000 threshold in the previous calendar year or after they reach the $100,000 threshold in the current calendar year on an ongoing basis for the remainder of the calendar year and each calendar year thereafter until the organization makes less than $100,000 in sales for two consecutive years. However, when a nonprofit organization sells items that further the educational, cultural, or religious purposes of the organization and the sales are not used in carrying out a private or proprietary business, the $100,000 threshold does not apply, and the nonprofit is not required to collect and remit sales tax on such sales, even if it had already exceeded the threshold. Additionally, an exception to the $100,000 threshold is made for sales of food and food ingredients by nonprofit colleges or universities.

Bulletin No. 32 was updated to reflect how the changes in SEA 417 apply to public school corporation purchases and sales. Under the SEA 417 threshold, independent school organizations, clubs, or groups that conduct selling activities need not collect sales tax if the funds are to be used by the organization in furtherance of a nonprofit purpose and the organization makes $100,000 or less in sales in the current or previous calendar year. The Bulletin notes that this exemption typically removes the requirement to collect sales tax for most fundraising and student activities conducted during the school year, such as athletic event concession sales, as long as the concessions are sold directly by the school organization. If more than $100,000 in sales are made in the current or previous calendar year, the organization or group is required to collect sales tax on sales on an ongoing basis for the remainder of the calendar year. Any independent nonprofit school organization, club, or group that makes $100,000 in sales during the current or previous calendar year (with the exception of a youth organization focused on agriculture) must register with the Indiana Department of Revenue as a nonprofit organization.

Bulletin No. 7 was updated to reflect how the changes in SEA 417 apply to sales of meals and banquets. Due to the changes in SEA 417, meals purchased, prepared, and/or sold by a qualified nonprofit organization as a fundraising activity are exempt from sales tax when purchased and sold if: (1) the proceeds from the sales are used to raise funds for the purpose for which such organization is granted exemption from sales tax; and (2) beginning May 4, 2023, such organization does not make more than $100,000 in sales in the current or previous calendar year. The six types of qualified nonprofits are not subject to these restrictions and are not required to collect sales tax no matter the purpose or the annual amount of sales they make.

B. PROPERTY TAX

O'Day Holdings, LLC v. Lake Cnty. Assessor, Pet. Nos. 45-023-18-1-3-00719-19, et al. (Ind. Bd. Tax Rev. April 27, 2023) – Appraisal Methodology; Quality of Comparables

The subject property of this assessment appeal spanning assessment years from 2014 to 2020 is an industrial manufacturing and storage facility comprised of 6 buildings totaling roughly 91,500 square feet, on approximately 5.49 acres of land, assessed at approximately $1.4M to $1.6M during the years at issue. The taxpayer and the Assessor offered the testimony of independent appraisers, each of whom developed the cost and comparable sales approaches to value.

The taxpayer's appraiser had vast experience with industrial properties and offered a nuanced understanding of the Chicago market for industrial properties and how the Northwest Indiana submarket fit within that greater market.

The comparables selected by the taxpayer's appraiser ranged from 48,650 square feet to 405,791 square feet, with five sales having more than twice the subject property's total building space. Nonetheless, most were used for similar industrial fabrication and storage operations, and in that respect, the Indiana Board was persuaded that the comparables would compete with the subject property for the same types of buyers.

The Indiana Board noted some problematic aspects of the taxpayer's appraisal, such as four of the eight sales having taken place three or more years after the relevant valuation date. The Indiana Board also noted that the taxpayer's appraiser acknowledged that cranes could have been included in the sale prices that he used, even though cranes and craneways used in the manufacturing process are classified as personal property in Indiana.

On the other hand, the Assessor's appraiser had comparatively less knowledge and experience with industrial properties. The Indiana Board noted that five of the eight sales used in that appraiser's comparable sales approach had less than 15,000 square feet of building space compared to the subject property's more than 91,000 square feet, thus requiring "astronomical adjustments to the sale prices just to account for size differences." Also, three sales involved buildings leased to multiple tenants at the time of sale, and the Assessor's appraiser could not determine whether the leases were at market rates. Moreover, the Assessor's appraiser failed to even attempt to talk to the parties or brokers involved in his comparable sales.

On balance, the Indiana Board was more persuaded by the opinion of the taxpayer's appraiser and reduced the assessed values to $800,000 to $870,000 for the years at issue.

Wendy H. Elwood Trust v. Bartholomew Cnty. Assessor, No. 23T-TA-00002 (Ind. Tax Ct. Aug. 7, 2023) – Appraisal Methodology; Developer's Discount

Taxpayer entered oral agreement with Seller to purchase vacant lots to build a personal residence. Although Taxpayer secured an existing home and attempted to withdraw from the oral agreement, Taxpayer proceeded with purchase with the intention of reselling the lots. At the time of sale, the lots were subject to the "developer's discount." After the sale, Assessor removed the discount, increasing the assessment valuations for 2018 and 2019. After the valuations decreased in 2020, Taxpayer initiated re-platting of the lots to facilitate the resale and appealed the removal of the developer's discount for 2018, 2019, and 2020. The Bartholomew County Property Tax Assessment Board of Appeals (PTABOA) reinstated the developer's discount for all three years. Assessor appealed.

The Indiana Board of Tax Review found in favor of Assessor for the 2018 and 2019 appeals because Taxpayer's appeals were untimely due to the subjective judgment required in determining a taxpayer's eligibility for the developer's discount. The Indiana Board found in favor of Taxpayer for the 2020 appeal as it determined that Assessor failed to meet its burden of proof and make a prima facie case for changing the PTABOA's determinations. The Indiana Tax Court affirmed the Indiana Board's decision as Taxpayer failed to demonstrate Taxpayer was engaged in the trade or business of land development outside of owning land it intended to resell. Moreover, Taxpayer did not develop any of the land; rather the Seller did.

C. INCOME TAX

Information Bulletin No. 97 (posted April 26, 2023) (Income Tax) – Headquarters Relocation Tax Credit

This bulletin replaces its prior version—Bulletin #97, dated July 2013. Aside from nonsubstantive, technical changes, this bulletin was changed to reflect legislation that has been enacted since the last time this bulletin was updated that affects the Headquarters Relocation Tax Credit, including the removal of the employee threshold and expansion of the definition of "eligible business," which affects further elements of the credit depending on how the taxpayer fits within that definition.

"Eligible business," means a business that is engaged in intrastate or interstate commerce, maintains a corporate headquarters outside Indiana, has not previously maintained a headquarters inside Indiana, and meets either of the following thresholds:

(1) had annual worldwide revenues of at least $50,000,000 for the immediately preceding taxable year; or

(2) commits contractually to relocating its corporate headquarters to Indiana or the number of jobs that equals 80% of the business's total payroll during the immediately preceding quarter to a location in Indiana, and either:

- received at least $4,000,000 in venture capital in the six months immediately preceding the business's application for this tax credit; or
- closes on at least $4,000,000 in venture capital not later than six months after submitting the business's application for this tax credit.

See IC 6-3.1-30-1, *et seq*.

Supplemental Letter of Findings: 02-20200395 (May 18, 2023) (Partnership Income Tax) – Composite Returns

An Indiana Partnership protested the Department's assessments of penalties and additional withholding taxes for failing to include a nonresident partner on the composite return. The Partnership consisted of five partners, with its sole out-of-state partner being a corporation organized under the laws of another nation. The Department held that the Partnership was subject to penalties for failing to include a nonresident partner on the composite return, but was not required to withhold taxes on nonresident partner's behalf because nonresident partner is a captive insurer not subject to adjusted gross income tax.

In its analysis, the Department agreed with the Partnership that the nonresident partner was not subject to adjusted gross income tax in Indiana; however, the Department explained that partnerships are still required to file a composite adjusted gross income tax return on behalf of all nonresident partners, regardless of whether the nonresident partner has Indiana sourced income. Therefore, the Department upheld the penalties for failing to include a nonresident partner on the composite return. As to the withholding taxes, the Department agreed that the partner qualified as a captive insurer and thus was only subject to taxes prescribed by the Indiana Department of Insurance. Accordingly, the Partnership was not required to withhold taxes on that partner's behalf.

Letter of Findings: 01-20221035; 01-20221036; 01-20221037 (June 5, 2023) (Income Tax) – Qualified Research Expenses Credit

Shareholders in an Indiana S-Corporation protested the Department's reduction of the Corporation's research expense credits and the assessment of additional tax related to two tax years, which flowed through to the individual shareholders. In tax years 2017 and 2018, Company reported approximately $2,700,000 in qualifying research expenses ("QRE"), which translated into approximately $164,000 in research expense credits ("REC"). Because the REC amounts flow through to the shareholders of an S-Corporation, Taxpayers collectively claimed the approximately $164,000 in RECs on their individual income tax returns for the two-year audit period. The Department denied the protests because it determined that Company had no QRE activity, which resulted in no RECs available to Taxpayers, and even if there were QREs and related RECs, the Company lacked contemporaneous to support its position regarding either.

The Department determined that under 26 U.S.C. § 41(d), the Company did not meet any portion of the four-part test set forth in the statute because the work performed by Company was part of the routine course of business provided by the engineering and construction industry. Regarding the projects reviewed in the audit, the Department explained that it was unable to determine what new and innovative business components were developed and implemented during the course of either project. Instead, the Department determined that the Company was duplicating/adapting existing business components and processes that the Company and other companies in the industry employ on a regular basis.

Additionally, the Department explained that even if a taxpayer has QREs, the taxpayer must fulfill the recordkeeping requirements in order to claim related RECs. The shareholders argued that oral testimony was an adequate method of providing REC documentation and that the requirements were met because the Company timely responded to all requests during the audit and provided requested documentation to substantiate its claim for the REC. However, the Department explained that the Company's estimates of wages for QREs were calculated by taking ten percent of the annual income of the employees. Because a breakdown of QRE wages by project was not provided during the audit, the Department determined that the shareholders could not relate the QREs to the relevant business component as required by federal law.

D. ADMINISTRATIVE/PROCEDURAL

LD Farms, LLC v. Dekalb Cnty. Assessor, Pet. Nos. 17-002-19-1-1-00617-22, et al. (Ind. Bd. Tax Rev. May 8, 2023) — Appeal Deadline

On January 13, 2022, the taxpayer filed appeals of his assessments for years 2019 and 2020.

Generally, a taxpayer must file its appeal by the earlier of "(A) June 15 of the assessment year, if the notice of assessment is mailed by the county before May 1 of the assessment year; or (B) June 15 of the year in which the tax statement is mailed by the county treasurer, if the notice of assessment is mailed by the county on or after May 1 of the assessment year." Ind. Code § 6-1.1-15-1.1(b)(2).

However, the statute provides a much longer deadline for filing appeals raising claims of error related to certain enumerated categories. A taxpayer can file an appeal seeking to correct those types of errors up to three years "after the taxes were first due." Ind. Code § 6-1.1-15-1.1(b). The taxpayer argued that "[a] clerical, mathematical, or typographical mistake" had been made because the subject property should have been assessed as agricultural land.

By reference to case law, the Indiana Board explained that if a "simple true or false finding of fact" dictated an issue's resolution, the claimed error was considered objective and could properly be challenged as a correction of error up to three years after the taxes were first due. If, on the other hand, subjective judgment is required to correct the alleged error, then the shorter appeal deadline applies.

Because the taxpayer sought to show that its property should have been classified as agricultural, such a determination would require an assessor to consider various factors such as the use and zoning of the land, as well as the owner's purpose in acquiring the land. Because these determinations are inherently subjective, the Indiana Board concluded that the taxpayer's appeals were untimely.

Terre Haute Area Association of Realtors, Inc. v. Vigo Cnty. Assessor, Pet. Nos. 84-002-22-2-8-00587-22, et al. (Ind. Bd. Tax. Rev. May 12, 2023) — Application for Property Tax Exemption

The taxpayer sought a property tax exemption and asserted a charitable purpose for ten parcels. The taxpayer filled out a Form 136 Application for Property Tax Exemption, listing one parcel number on the first page and the other nine parcel numbers on the third page in a section for "additional information." The taxpayer labeled the nine parcels as "Additional Parcel Numbers of adjoining and neighboring lands." According to the Indiana Board of Tax Review, "[n]othing included in that section indicates the [taxpayer] was seeking an exemption on those [nine] parcels."

Some key elements of an exemption application include a statement showing the ownership, possession, and use of a parcel; and attestation under the penalties of perjury that a parcel is not predominantly used in connection with a trade or business that is not substantially related to the organization's exempt purpose. The Indiana Board found those elements were lacking as to the nine separately listed parcels. Because exemptions are strictly construed against taxpayers, the Indiana Board concluded that the taxpayer waived its exemption request for those nine parcels.

For the remaining parcel, the Indiana Board determined that the taxpayer failed to show that it owned the property on the assessment date, and therefore failed to show that the property was owned for a charitable purpose as required by Indiana Code § 6-1.1-10-16. The exemption request was denied.

The X Count Properties, LLC v. Allen Cnty. Assessor, Pet. No. 02-073-20-2-8-00529-21 (Ind. Bd. Tax. Rev. Aug. 8, 2023) — Application for Property Tax Exemption

The X Count Properties, LLC ("Properties") sought a 100% exemption for an indoor rifle range it owned, claiming The X Count Inc. ("X Count") exclusively used it for charitable and educational purposes. Properties is an Indiana limited liability company that is wholly owned by X Count.

After the hearing, the parties stipulated that the subject property qualified for a 5% exemption for charitable purposes. However, the Board still needed to decide whether the educational purpose exemption applied.

The Assessor argued that the Board should dismiss the application because the Form 136 Application for Property Tax Exemption was filled out by X Count rather than Properties, and Indiana Code§ 6-1.1-11-3(a) specifies that the property owner must be the one to apply for an exemption. Properties raised several arguments involving substantial compliance with the statute and the Assessor's purported untimeliness in raising the issue. The Board decided not to resolve these arguments and relied instead on the Assessor's stipulation to the eligibility of the property to receive a 5% charitable exemption. Because this was based on the Form 136 application originally filed, the Assessor effectively stipulated to the sufficiency of the exemption application upon which the exemption was granted, even though it was not completed by the owner.

On the merits, the Board found that Properties failed to demonstrate a sufficient amount of the subject property's use was devoted to educational purposes. Thus, the subject property was found to be 5% exempt based on the stipulation of the parties.

Elkhart Cnty. Assessor v. Lexington Square, LLC, No. 22T-TA-00007 (Ind. Tax Ct. Sept. 1, 2023) – Burden of Proof

Taxpayer bought the subject property in 2016. Assessor doubled the property's assessment for tax years 2016-2018 due to Assessor's removal of an obsolescence adjustment. Taxpayer argued that the proper valuation came from the capitalization rate to the property's net operating income. The Indiana Board of Tax Review ordered that the contested valuations revert to the 2015 assessed value since neither party proved the property's correct assessed value. Assessor petitioned for a rehearing, arguing that the Indiana Board erroneously applied the statutory burden of proof by relying on Indiana Code § 6-1.1-15-17.2 (Old Code), which was repealed and replaced by Indiana Code § 6-1.1-15-20 (New Code). New Code stated it applied only to cases filed after March 21, 2022 and did not contain a savings clause for cases pending.

The Tax Court determined that the Board did not err in finding that the Old Code applied to Taxpayer's assessment appeals because an express savings clause is not required where the legislature's intention to preserve those rights is otherwise apparent. The Tax Court found that the legislature merely intended that the Old Code would not apply to appeals filed after the Old Code's repeal date; therefore, Assessor had the burden of proving the assessment was correct, and the Indiana Board's ruling was affirmed.

Marion Assets 2020, LLC v. Fiascone Family LP, 211 N.E.3d 1 (Ind. Ct. App. 2023) — Sufficient Notice of Tax Sale

Fiascone Family, the principals of which are Florida residents, failed to pay property taxes on a condominium in northwest Indiana. The county treasurer sold the condominium to Marion Assets at a tax-sale auction. Marion Assets sent several notices of Fiascone Family's redemption rights via certified letter and first-class mail to the Florida address and the condominium's address. The letters, except for one of the first-class letters sent to the condominium, were returned as vacant, unable to forward, insufficient address, and unclaimed. Marion Assets sent a process server to post notice on the condominium's front door.

After the trial court granted Marion Assets a tax deed, Marion Assets attempted to change the locks. The condominium's management company contacted Fiascone Family, who filed a motion to set aside the tax deed for want of notice. The appellate court affirmed the trial court determination that Marion Assets complied with the Indiana Code by sending notice via certified mail to the last known address. The appellate court reversed the trial court's use of its equitable authority to extend Fiascone Family's redemption period because there was no evidence that this was an exceptional situation and Marion Assets had no notice that it should formulate an argument against an equitable theory of relief.

October 5, 2023

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