

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition:** 50-020-14-1-5-00059-16  
**Petitioner:** VanVector Farms, Inc.  
**Respondent:** Marshall County Assessor  
**Parcel:** 50-41-36-000-014.000-020  
**Assessment Year:** 2014

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**Procedural History**

1. Petitioner initiated its appeal with the Marshall County Property Tax Assessment Board of Appeals (“PTABOA”) on August 11, 2014. The PTABOA failed to issue a final notice of determination within 120 days of the PTABOA hearing. Petitioner then filed a Form 131 with the Board on January 20, 2016.
2. Petitioner elected to have its appeal heard under the Board’s small claims procedures. Respondent did not elect to have the proceeding removed from those procedures.
3. Ellen Yuhan, the Board’s Administrative Law Judge (“ALJ”), held a hearing on July 20, 2016. Neither the ALJ nor the Board inspected the property.
4. Roy Michael Roush appeared as counsel for Petitioner. Kathleen Sheely, owner of the improvements and lessee of the property, and Patricia Wright, land owner, were sworn as witnesses for Petitioner.<sup>1</sup> Debra Dunning, Marshall County Assessor, and Mindy Penrose, Deputy Assessor, were sworn and testified for Respondent.

**Facts**

5. The subject property is a modular home located at 2980 Miller Drive in Plymouth.
6. For 2014, the land was assessed at \$180,600, and the improvements were assessed at \$96,200, for a total of \$276,800.
7. For 2014, Petitioner requested the improvements be classified as personal property held as inventory and, therefore, not subject to assessment.

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<sup>1</sup> Patricia Wright did not testify at the hearing.

## Record

8. The official record contains the following:

- a. Digital recording of the hearing,
- b. Petitioner Exhibit A: Photographs of the subject property
- Petitioner Exhibit B: Aerial photograph, parcel information and property record card (“PRC”) for the Slabaugh property in Elkhart County
- Petitioner Exhibit C: Aerial photograph, parcel information, and PRC for the Beadle Huffman property in Elkhart County
- Petitioner Exhibit D: Aerial photograph and PRC for the Quest Development property in LaPorte County
- Petitioner Exhibit E: Aerial photograph and PRC for the Homes Express, LLC property in Clay County
- Petitioner Exhibit F: Aerial photograph and PRC for the Rochester Homes property in Fulton County
- Petitioner Exhibit G: Standard Zoning District Intent, Uses, & Standards
- Petitioner Exhibit H: Six exterior photographs of the properties in Petitioner Exhibit B
- Petitioner Exhibit I: Aerial photograph of the subject property
  
- Respondent Exhibit 1: Subject PRC for 2014
- Respondent Exhibit 2: Department of Local Government Finance (“DLGF”) memo dated January 9, 2008
- Respondent Exhibit 3: DLGF memo dated July 13, 2009
- Respondent Exhibit 4: Form 130 petition
- Respondent Exhibit 5: Form 134 Joint Report by Taxpayer/Assessor to the County Board of Appeals of Preliminary Informal Meeting
- Respondent Exhibit 6: Aerial photograph of .14 acre ditch and revised PRC
- Respondent Exhibit 7: PTABOA minutes from February 19, 2015 hearing
- Respondent Exhibit 8: Form 131 petition
- Respondent Exhibit 9: Letter requesting exchange of evidence
- Respondent Exhibit 10: Application for Model Residence Deduction
- Respondent Exhibit 11: Photographs of the subject property
- Respondent Exhibit 12: 50 IAC 4.2-5-1, “Inventory” defined

### Respondent Rebuttal Exhibits

- Respondent Exhibit 1A-1B: 2007 and 2015 aerial photographs of the Slabaugh property in Elkhart County (Pet’r Ex. B)
- Respondent Exhibit 1C-1F: Photographs of Slabaugh property, July 2016
- Respondent Exhibit 1G-1H: Photographs of garages on the Slabaugh property, July 2016

Respondent Exhibit 1I-1L:	Photographs of the Décor Center on the Slabaugh property
Respondent Exhibit 1M-1Q:	Photographs of foundations at the Slabaugh property
Respondent Exhibit 2A-2D:	Imagery of the Quest Development property in LaPorte County (Pet'r Ex. D)
Respondent Exhibit 3A-3B:	2005 and 2013 aerial photographs of the Home Express property in Clay County (Pet'r Ex. E)
Respondent Exhibit 4A-4D:	Photographs of the Rochester Homes property in Fulton County (Pet'r Ex. F)
Board Exhibit A:	Form 131 Petition and attachments
Board Exhibit B:	Notice of Hearing
Board Exhibit C:	Hearing sign-in sheet.

c. These Findings and Conclusions.

#### **OBJECTIONS**

9. Petitioner's counsel objected to Respondent's rebuttal exhibits because they were not exchanged before the hearing and, as a result, he did not have time to form an argument. Ms. Penrose contended that the exhibits were merely close-up photos of the homes Petitioner had submitted. While the Board's procedural rules do not specifically exempt rebuttal evidence from the exchange requirements, the Board does recognize a general exception for rebuttal evidence. Rebuttal evidence is evidence offered to explain, contradict, or disprove the evidence presented by an adverse party. *McCullough v. Archbold Ladder Co.*, 605 N.E.2d 175, 180 (Ind. 1993). The Board may exclude evidence offered in rebuttal when it should have been presented in the party's case-in-chief, but is not required to do so. *Id.* Here, the exhibits were specifically offered to challenge the validity of the comparable properties Petitioner had presented. Furthermore, there is nothing in the record to suggest that the exhibits should have been presented as part of Respondent's case-in-chief. Thus, Petitioner's objection is overruled and Respondent's rebuttal exhibits are admitted.
10. Petitioner's counsel also objected to the fact that some of the rebuttal exhibits were photos that were taken before the year under appeal and some were taken after, and that there is nothing to show what happened during the intervening years. Petitioner's objection goes more to the weight of the evidence than to its admissibility and is thus overruled.
11. Petitioner's counsel objected to Respondent Exhibit 10 because the exhibit is a 2016 version of the application and the appeal is for 2014. Petitioner's objection goes more to the weight of the evidence than to its admissibility and is thus overruled.

## **Burden**

12. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what its correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to the rule.
13. First, Ind. Code § 6-1.1-15-17.2 (a) "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Under Ind. Code § 6-1.1-15-17.2(b), "the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indianan board of tax review or to the Indiana tax court."
14. Second, Ind. Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code 6-1.1-15." Under those circumstances: if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.
15. There was no change in the assessment from 2013 to 2014. Consequently, Petitioner has the burden of proof.

## **Summary of Contentions**

16. Petitioner's case:
  - a. Petitioner contends that the property at issue is a mobile home and should not be assessed as real property. The property is inventory held for sale in the normal course of business and, therefore, should not be subject to tax. *Roush argument; Sheely testimony.*
  - b. The mobile home was built in a factory, transported on trailers in four pieces, and placed by a crane on its current location. It is situated on a permanent foundation but not permanently attached. Petitioner contends that it was never meant to be a permanent fixture and that it will be dismantled and moved from the site when the lease expires, when the factory changes production and the model becomes obsolete, or when a customer purchases it. *Sheely testimony.*

- c. Petitioner contends that there is no office in the garage and that the garage is used as a selection room for customers to view the options that are available for purchase, such as doors, shutters, and other similar items. *Sheely testimony.*
- d. Petitioner contends that there was another model home on this site when this issue arose in a previous year's appeal. Petitioner contends the county said that unit could not be moved, but it was in fact eventually sold to another party, moved, and affixed to the new owner's property. Petitioner contends that, in a matter of four hours, this home could be disassembled, put on trucks, moved, and reassembled somewhere else. *Sheely testimony.*
- e. The PRC indicates the property is 100% complete. Petitioner contends that information is incorrect. The model has no water or sewer, and it could not be used as a home because the City of Plymouth has not issued a certificate of occupancy. Petitioner contends that the property is in a C-3 zoning district and the ordinance does not allow residential housing in a C-3 zoning district. *Roush argument; Sheely testimony; Pet'r Ex. G.*
- f. In Respondent's Exhibit 2, which is the 2008 DLGF memorandum, the word "permanent" is used twice. Petitioner contends that first, the word is describing a permanent attachment to a foundation and, second, it is describing a permanent foundation. Petitioner is not questioning the permanent foundation, but the permanent placement of the manufactured home on the property. *Roush argument; Resp't Ex. 2.*
- g. Petitioner contends Respondent is trying to claim that the subject property cannot be considered inventory as described in the 2009 DLGF memorandum because it qualifies as real property. Petitioner disagrees with that characterization. Petitioner argues that the mobile home is not real property and does qualify as inventory under the memorandum. *Roush argument; Resp't Ex. 3.*
- h. Petitioner finally argues that the property at issue is not being uniformly and equally assessed as is required by Article 10, Section 1 of the Indiana Constitution. Specifically, Petitioner contends that various manufactured model homes on concrete foundations or block foundations are not taxed as real property in other counties such as Elkhart, LaPorte, Clay, and Fulton. Rather, they are treated as inventory. *Roush argument, Sheely testimony; Pet'r Exs. B-F, G.*

17. Respondent's case:

- a. Respondent contends that Ms. Sheely leases 1.78 acres for her business, Dream Maker Homes, and she has had this model home there for display since 2009. Respondent claims that the dwelling sits on a permanent foundation and that Ms. Sheely uses the heated garage for her business office. *Dunning testimony.*

- b. Respondent contends the county has not assessed the land with a well or sewer. If the property were being assessed with those amenities, that portion of the land would be “primary” on the PRC as opposed to “secondary.” The 100% completion factor has no bearing on the assessment. The \$96,200 value, which has been in place since 2012, is based on an auction sale of a similar modular home. *Dunning testimony; Penrose testimony; Resp’t Ex. 1.*
- c. Respondent contends that the DLGF directs assessors to assess all mobile homes and manufactured homes that are permanently attached to a foundation as real property. The DLGF describes a permanent foundation as “any structural system capable of transposing loads from a structure to the earth at a depth below the established frost line.” Respondent uses this description to decide whether to assess the structure as inventory or real estate. *Dunning testimony; Resp’t Ex. 2.*
- d. The 2009 DLGF definition of inventory includes mobile and manufactured homes if they do not qualify as real property. Respondent contends that, because the structure is on a permanent foundation with a depth below the frost line, it is real property and thus not inventory. *Dunning testimony; Resp’t Ex. 3.*
- e. Respondent cites the Indiana Code definition of inventory which is “the aggregate of those elements of costs incurred to acquire or produce items of personal property that are held for sale in the ordinary course of business.” It is Ms. Dunning’s contention that the model home at issue is not going to be sold immediately to someone who is interested in buying a home. Instead, an interested buyer would order one to erect at their location. She contends that when this home is sold, it will be at a reduced rate because of the cost to move it and because it has been there for some time. *Dunning testimony; Resp’t Ex. 12.*
- f. Of the homes shown in Petitioner Exhibit B, only one of the four homes originally there in 2007 remains in 2016, and that is the home with the concrete block foundation. The newer houses are on wood foundations that appear to be at ground level. Respondent contends this shows that a temporary foundation is different than a permanent foundation. The homes displayed on temporary foundations are easily removed, whereas homes on a permanent foundation are not as easily replaceable and, therefore, cannot be considered inventory. *Penrose testimony; Resp’t Rebuttal Exs. 1A-1Q.*
- g. Respondent contends that the LaPorte County homes shown in Petitioner’s exhibits are not on foundations built under the frost line, but sit on concrete blocks or piers above the ground. The homes in Fulton County also do not appear to be on permanent foundations. In Clay County, the only two homes that are the same in the aerial photos are the ones that are used for offices. She contends that of those homes, one can only assume they were not on crawl spaces because, when moved, the crawl

spaces would still be visible. *Penrose testimony; Resp't Rebuttal Exs. 2A-2D, 3A-3B, and 4A-4D.*

- h. In summary, Respondent's position is that the model home at issue is placed in a desirable location for the purpose of advertising and is used as a model home for future sales. It qualifies as real property and should not be assessed as inventory. *Dunning testimony.*

### **Analysis**

- 18. Petitioner failed to make a prima facie case for changing the assessment. The Board reached this decision for the following reasons:
  - a. Real property is assessed based on its "true tax value", which means "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2); *see also* Ind. Code § 6-1.1-31-6(c). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques used to calculate market value-in-use. MANUAL at 2. Assessing officials primarily use the cost approach. MANUAL at 3. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. MANUAL at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment, including an appraisal prepared in accordance with generally recognized appraisal standards. MANUAL at 3.
  - b. Regardless of the method used to prove true tax value, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date was March 1, 2014. Ind. Code § 6-1.1-4-4.5(f).
  - c. Petitioner contends that the model home is inventory and therefore should not be taxed or assessed. Petitioner is correct that Indiana no longer assesses or taxes inventory. Ind. Code § 6-1.1-2-7(b)(6). But, only personal property qualifies as inventory. A home is generally considered real property. *See* Ind. Code § 6-1.1-1-15 (defining real property as, among other things, "a building or fixture situated on land located within this state.").
  - d. Nonetheless, the legislature recognizes that certain homes, such as mobile or manufactured homes, may be treated as personal property, and even as inventory. *See* Ind. Code § 6-1.1-1-11(3) and (4) (defining personal property to include mobile homes that do not qualify as real property and are not otherwise depreciable property

or being held as an investment); Ind. Code § 6-1.1-1-8.4(b) (defining mobile and manufactured homes that are not real property and that are held for sale by the owner of a mobile home community in the regular course of business as inventory). The regulations of the DLGF likewise classify some mobile and manufactured homes as personal property. *See* 50 IAC 3.3-2-2 and -4 (defining “real property mobile home(s)” and “annually assessed mobile home(s);” *see also*, 50 IAC 3.3-3-1 (providing rules for assessing real property and annually assessed mobile homes and further providing that mobile homes held for sale in the ordinary course of a trade or business shall be treated as inventory).

- e. Thus, Petitioner needed to show that the model home in question qualifies as a mobile or manufactured home. The DLGF treats those types of homes together under the heading of mobile homes, which it defines as dwellings described in Ind. Code § 6-1.1-7-1(b) and manufactured homes defined by Ind. Code § 9-13-9-26. The first statute provides:

- (b) For purposes of this chapter, “mobile home” means a dwelling which:
- (1) is factory assembled;
  - (2) is transportable;
  - (3) is intended for year round occupancy;
  - (4) exceeds thirty-five (35) feet in length; and
  - (5) *is designed either for transportation on its own chassis or placement on a temporary foundation.*

Ind. Code § 6-1.1-7-1(b)(emphasis added). The second statute provides:

- (a) “Manufactured home” means, except as provided in subsection (b), a structure that:
- (1) is assembled in a factory;
  - (2) *bears a seal certifying that it was built in compliance with the federal Manufactured Housing Construction and Safety Standards Law (42 U.S.C. 5401 et seq.);*
  - (3) is designed to be transported from the factory to another site in one (1) or more units;
  - (4) is suitable for use as a dwelling in any season; and
  - (5) is more than thirty-five (35) feet long.
- (b) “Manufactured Home” for purposes of Ind. Code § 9-17-6, means either of the following:
- (1) A structure having the meaning set forth in the federal Manufactured Housing Construction and Safety Standards Law of 1974(42 U.S.C. 5401 et seq.).

(2) A mobile home.<sup>2</sup>

Ind. Code § 9-13-2-96 (emphasis added). The Manufactured Housing Construction and Safety Standards Law, in turn, defines a “manufactured home” as follows:

[A] structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and *which is built on a permanent chassis* and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, and air-conditioning, and electrical systems contained therein; except that such term shall include any structure which meets all the requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary and complies with the standards established under this chapter; and except that such term shall not include any self-propelled recreational vehicle[.]

42 U.S.C. §5402(6) (emphasis added).

- f. The PRC shows that the home is more than thirty-five feet long. Petitioner testified that it was assembled in a factory and transported to the site in four sections. The home was then placed by crane on to the foundation. Petitioner admits the foundation is permanent but contends the home is not permanently attached to the foundation. Ms. Sheely claims that it was never meant to be permanently attached to the real estate because the zoning ordinances do not allow residential use on the site and there are no water or sewer connections to the home.
- g. Petitioner offered no evidence to show that the model home was designed for transportation on its own chassis or placement on a temporary foundation. Ms. Sheely said nothing about whether the home even had a chassis. Furthermore, it was actually placed on a permanent, rather than a temporary, foundation. Thus, Petitioner failed to prove the elements necessary to show that the model home at issue is a mobile home within the meaning of Ind. Code § 6-1.1-7-1(b).
- h. Petitioner failed to make a prima facie case showing that the model home meets either of the definitions of a manufactured home from Ind. Code § 9-13-2-96. There is no evidence to show that the home bears a seal certifying that it was built in compliance with the Manufactured Housing Construction and Safety Standards Law or that it was built on a permanent chassis.

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<sup>2</sup> This chapter’s definition of a mobile home mirrors Ind. Code § 9-13-2-96(a), except that it does not require a seal if the home was built before the effective date of the Manufactured Housing Construction and Safety Standards Law of 1974. Ind. Code § 9-13-2-103.2.

- i. It is possible that the model home really is a mobile or manufactured home. But Petitioner had the burden of proving that fact, and it offered very little argument to do so. We cannot make Petitioner's case. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Ass'r*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) ([I]t is the taxpayer's duty to walk the Indiana Board...through every element of the analysis").
- j. Because Petitioner failed to make a prima facie case that the model home was a mobile or manufactured home, we need not decide whether its placement on a permanent foundation made it real property. See 50 IAC 3.3-1-2-5 (defining a real property mobile home, in part, as a mobile home that "has a certificate of title issued by the bureau of motor vehicles under IC 9-17-6 and is attached to a permanent foundation.").
- k. Petitioner also argues that the property at issue is not being uniformly and equally assessed as is required by Article 10, Section 1 of the Indiana Constitution. Specifically, Petitioner contends that various manufactured model homes on concrete or block foundations are not taxed as real property in other counties such as Elkhart, LaPorte, Clay, and Fulton. Rather, they are treated as inventory.
- l. The Property Taxation Clause of the Indiana Constitution requires "[t]he General Assembly [to] provide, by law, for a uniform and equal rate of property assessment and taxation and [to] prescribe regulations to secure a just valuation for taxation of all property...." IND CONST. ART. 10 § 1; *see also*, Ind. Code § 6-1.1-2-2(a) ("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 long held that the provision requires: "(1) uniformity and equality in assessment, (2) uniformity and equality as to the rate of taxation, and (3) a just valuation of all property." *Westfield Golf Practice Center, LLC v. Washington Twp. Ass'r*, 859 N.E.2d 396, 397 (Ind. Tax Ct. 2007).
- m. In *Westfield Golf*, the Indiana Tax Court held that under the prior assessment system, "true tax value" was determined by Indiana's assessment regulations and "bore no relation to any external, objectively verifiable standard of measure." *Id.* at 398. Properties within the same neighborhood in a land order were presumed to be comparable to each other, and the principles of uniformity and equality were therefore violated when those properties were assessed and taxed differently. *Id.* Therefore, "the only way to determine the uniformity and equality of assessments was to determine whether the regulations were applied similarly to comparable properties." *Id.*
- n. That changed under the new system. Presently, "Indiana's overhauled property tax assessment system incorporates an external, objectively verifiable benchmark – market value-in-use." *Id.* at 399. As a result, the "system shifts the focus from

examining how the regulations were applied (i.e., mere methodology) to examining whether a property's assessed value actually reflects the external benchmark of market value-in-use.” *Id.* Thus, “the end result – a uniform and equal *rate* of assessment – is required, but there is no requirement of uniform procedures to arrive at that rate.” *Id.* (quoting *State ex. Re. Att’y Gen. v. Lake Superior Court*, 820 N.E.2d 1240, 1250 (Ind. 2005) (emphasis in original).

- o. Thus it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. Instead, the taxpayer must present probative evidence to show that the assessed value, as determined by the assessor, does not accurately reflect the property’s market value-in-use. *Id.* See also *P/A Builders & Developers, LLC v. Jennings Co. Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (The focus is not on the methodology used by the assessor, but instead on determining whether the assessed value is actually correct.)
- p. Petitioner merely argued that the purportedly comparable properties were assessed differently than the subject property and, at best, described a few characteristics of those properties. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the properties. *Long*, 821 N.E.2d at 470. Instead, the proponent of the evidence must explain how the characteristics of the subject property compare to, or differ from, those of the purportedly comparable properties. *Id.* at 471. Because she failed to offer more detailed comparisons of the model home at issue to the various properties in Elkhart, LaPorte, Clay, and Fulton counties, Petitioner has not made a case that the subject property has not been uniformly and equally assessed for 2014.

### **Conclusion**

- 19. Petitioner failed to make a prima facie case for a change in the assessment. The Board therefore finds for Respondent and orders no change to the 2014 assessed value.

## Final Determination

In accordance with the above findings of fact and conclusions of law, the 2014 assessed value will not be changed.

ISSUED: October 18, 2016

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

### - APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The *Indiana Code* is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>.