

REPRESENTATIVE FOR PETITIONER:  
Carla D. Bishop, Meritax Property Tax Consultants

REPRESENTATIVE FOR RESPONDENT:  
Marilyn S. Meighen, Meighen & Associates, P.C.

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

CVS Corporation #6697-02,	)	Petition No.:	53-005-06-1-4-00027
Petitioner,	)		
	)		
v.	)	Parcel:	013-11310-00
	)		
Bloomington Township Assessor,	)	County:	Monroe
Respondent.	)	Township:	Bloomington
	)	Assessment Year:	2006
	)		

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Appeal from the Final Determination of  
Monroe Property Tax Assessment Board of Appeals

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**October 3, 2008**

**FINAL DETERMINATION**

The Indiana Board of Tax Review having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

**INTRODUCTION**

1. CVS Corporation #6697-02 contested an improved property's assessment by offering an appraisal valuing that property as if it were vacant land. While the cost approach to value requires appraisers to separately value land and improvements to reach an overall estimate, CVS's approach mixed and matched a single-property land appraisal with a mass-appraisal estimate of its improvements' value. Because we find CVS's approach

suspect and because the appraisers ignored a sale involving the subject property in reaching their valuation opinion, we deny CVS's appeal.

### **BACKGROUND AND PROCEDURAL HISTORY**

2. On December 26, 2006, CVS filed a Form 130 petition asking the Monroe County Property Tax Assessment Board of Appeals ("PTABOA") to review the subject property's March 1, 2006, assessment. On May 2, 2007, the PTABOA issued its determination increasing the property's assessment. Less than one month later, CVS filed a Form 131 petition with this Board. We have jurisdiction over CVS's appeal under Ind. Code §§ 6-1.1-15 and 6-1.5-4-1.
3. On April 16, 2008, our designated Administrative Law Judge, Rick Barter ("ALJ"), held a hearing in Bloomington, Indiana.
4. The following people testified under oath:
  - For CVS:
    - Carla Bishop, Meritax Property Tax Consultants
    - Rich Correll, Correll Real Estate Services
  - For the Bloomington Township Assessor:
    - Ken Surface, Nexus Group
5. Judith A. Sharp, the Monroe County Assessor, was sworn but did not testify. Marilyn S. Meighen appeared as counsel for the Bloomington Township Assessor.<sup>1</sup>
6. CVS offered the following exhibits, which were admitted without objection:
  - Petitioner Exhibit 1 – Summary of issues,

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<sup>1</sup> Ms. Meighen also appeared for the Monroe County Assessor. But the Monroe County Assessor apparently did not make the original determination under review and did not intervene as a party. Thus, under Ind. Code §§ 6-1.1-15-3(b) and 6-1.1-15-4(h)(2006), which apply to appeals from PTABOA determinations issued before July 1, 2007, the Monroe County Assessor was not a party. Had CVS appealed from a PTABOA determination issued after June 30, 2007, the Monroe County Assessor, rather than the Bloomington Township Assessor, would have been the respondent. Ind. Code §§ 6-1.1-15-3(b)(2008); P.L. 219-2007 § 156(c).

- Petitioner Exhibit 2 – Summary appraisal of the subject property by Correll Real Estate Services,
- Petitioner Exhibit 3 – List of assessments and property detail reports for three properties at the intersection of East 3rd Street and State Road 46,
- Petitioner Exhibit 4 – Form 131 petition with attachments,
- Petitioner Exhibit 5 – Property record card (“PRC”) the subject property.

7. The Bloomington Township Assessor offered the following exhibits which were admitted without objection:

- Respondent Exhibit 1 – PRC and photograph of the subject property,
- Respondent Exhibit 2 – Sales disclosure for parcel 013-11310-00 dated June 25, 2001,
- Respondent Exhibit 3 – Sales disclosure for parcel 013-11531-03 dated May 8, 2003
- Respondent Exhibit 4 – Sales disclosure for parcel 013-11531-03 dated May 19, 2003,
- Respondent Exhibit 5 – Sales disclosure for parcel 013-11315-00 dated January 28, 2004,
- Respondent Exhibit 6 – Map with the subject property and other nearby parcels identified,
- Respondent Exhibit 7 – Sales disclosure for the subject property dated January 1, 2003,
- Respondent Exhibit 8 – Sales disclosure for parcel 007-31720-00 dated January 16, 2008,
- Respondent Exhibit 9 – LoopNet online listing for Walgreens property in Delaware County,
- Respondent Exhibit 10 – LoopNet online listing for Walgreens property in Vanderburgh County.

8. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

- Board Exhibit A – Form 131 petition with attachments,
- Board Exhibit B – Notice of rescheduled hearing dated February 4, 2008,
- Board Exhibit C – Hearing sign-in sheet.

9. Neither we nor the ALJ inspected the subject property.

10. In its determination, the PTABOA listed the following values for the subject property:

Land: \$1,994,600    Improvements: \$963,500    Total: \$2,958,100.

11. CVS does not contest the value of its improvements. It requests a land value of \$1,150,000, which when combined with the existing improvement value would yield a total assessment of \$2,113,500.

#### FINDINGS OF FACT

12. The subject property is a 1.97-acre tract that contains a pharmacy and other site improvements. *Resp't Ex. 1.* It sits at the northeast corner of the intersection of East 3rd Street and State Road 46, and it can be accessed from both streets. *Surface testimony; Correll testimony.* Because it is near the College Mall shopping center, the intersection is in one of Bloomington's two prime retail areas. *Id.* The other properties at that intersection have land assessments ranging from \$657,143 per acre to \$675,053 per acre. *Pet'r Ex. 3.* The subject land is assessed at \$1,012,487 per acre.
13. In 2001, Loewen (Indiana), LP, owned a larger parcel that included the subject property. The evidence about that parcel's size is a little unclear. Mr. Surface testified that it was 3.07 acres. *Surface testimony.* But he also testified that CVS later sold a 1.35-acre tract from that larger parcel. *Id.* Given the subject property's size (1.97 acres), that would make the larger parcel at least 3.32 acres (1.97 acres + 1.35 acres). We therefore find that the parcel was between 3.07 and 3.32 acres. Whatever its size, the parcel contained a funeral home. *Surface testimony.*
14. On June 25, 2001, Hook-Superx, Inc. bought the larger parcel for \$4.4 million. *Surface testimony; Resp't Ex. 2.* Hook-Superx appears to be related to CVS, although the parties did not explain how. Given that the parties treated the two entities interchangeably, we will follow suit. Unless otherwise indicated, any reference we make to CVS also refers to Hook-Superx. In any event, CVS razed the funeral home and built a pharmacy on the property. *Surface testimony.*
15. On February 26, 2003, CVS filed a sales disclosure with the Monroe County Auditor indicating that it had recently sold the subject property to SCP 2002 E-19, LLC for

\$6,191,614.71. *Resp't Ex. 7.* The Assessor's witness, Ken Surface, believed that the disclosure represented an "interdivisional transaction." *Surface testimony.* We, however, find that the transfer was a sale-leaseback transaction whereby Hooks-Superx leased the property after selling it to SCP. Indeed, Richard Correll, one of the appraisers who valued the property for CVS, testified that CVS often uses sale-leasebacks to free-up capital. *Id.*

16. On May 8, 2003, CVS sold an approximately 1.35-acre tract to Best Buy for \$745,000. *Surface testimony; Resp't Ex. 3.* As already explained, CVS had carved that tract from the rear portion of the larger parcel that it had bought from Loewen. *Surface testimony.* That carved-out portion had no independent street access. *Surface testimony; Resp't Ex. 6.*
17. First American Tax Valuation, apparently on CVS's behalf, hired Richard R. Correll and Michael Schlemmer of Correll Real Estate Services to appraise the subject property and prepare a summary report of their findings. *See Pet'r Ex. 2 at cover letter.* Although the property contains a pharmacy and various site improvements, the Correll appraisers were engaged to value the land as if it were vacant. *Correll testimony; Pet'r Ex. 2 at cover letter, 3.* The Correll appraisers estimated that the land was worth \$1,150,000 (\$582,000 per acre) as of January 1, 2005. *Correll testimony; Pet'r Ex. 2.*
18. The appraisers relied exclusively on the sales-comparison approach. *Correll testimony; Pet'r Ex. 2 at 18-31.* To apply that approach, they identified four properties that they believed were comparable to the subject property. Three had sold as vacant parcels, although two had later been developed for improvements. *Id.* The fourth property was listed for sale but had not yet sold. None of those properties was from the College Mall area—two were on the way to Ellettsville, one was on South Walnut Street, and one was on West 2nd Street. *Surface testimony.* Those areas were less desirable for retail businesses than the College Mall area. *Id.* Nonetheless, the Correll appraisers thought that the properties were comparable to the subject property because they were located in areas with traffic counts that were similar to the traffic count at the intersection of East 3<sup>rd</sup> Street and State Road 46. *Correll testimony; Pet'r Ex.2 at 29.*

19. The Correll appraisers adjusted the comparable properties' sale and listing prices to account for differences between those parcels and the subject property. For example, they adjusted the comparable parcels' sale and listing prices between 5% and 60% to account for their relatively inferior locations. *Pet'r Ex. 2 at 30*. The appraisers also increased one property's sale price by 5% to account for appreciation between its March 2001 sale date and the appraisal's January 1, 2005, valuation date. *Id. at 29*.
20. The Correll appraisers, however, did not consider the \$4.4 million sale by which CVS obtained its interest in the subject property. They disregarded that sale because (1) it involved an improved parcel rather than vacant land and (2) they assumed that the sale price included the seller's business. *Correll testimony*.

#### CONCLUSIONS OF LAW AND ANALYSIS

##### **A. CVS's burden of proof**

21. A taxpayer seeking review of an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect and what the 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). If the taxpayer meets that burden, the assessing official must offer evidence to impeach or rebut the taxpayer's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479. But the burden of persuasion remains with the taxpayer. *See Thorntown Tel. Co. v. State Bd. of Tax Comm'rs*, 629 N.E.2d 962, 965 (Ind. Tax Ct. 1995).
22. Of course, that begs the question of how a taxpayer may go about meeting its burden of proof. To answer that question, we turn to the 2002 Real Property Assessment Manual and the basic principles underlying Indiana's assessment system.

23. Indiana assesses real property based on its true tax value, which Manual defines as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has used three methods to determine a property’s market value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass-appraisal version of the cost approach set forth in the Real Property Assessment Guidelines for 2002 – Version A.
24. A property’s market value-in-use, as determined using the Guidelines, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh’g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). A taxpayer may rebut that presumption with evidence that is consistent with the Manual’s definition of true tax value. MANUAL at 5. A market-value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (“USPAP”) often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 506 n.6. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
25. Whatever method a taxpayer uses in trying to rebut its property’s assessment, the taxpayer must explain how its evidence relates to the property’s market value-in-use as of the relevant valuation date. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating a property’s value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment). For the March 1, 2006, assessments, that date is January 1, 2005. IND. ADMIN. CODE tit. 50, r. 21-3-3.

**B. CVS did not prove that its property was assessed for more than its true tax value**

26. Here the Correll appraisers estimated the value of the subject land, as if vacant, using a generally accepted appraisal methodology—the sales-comparison approach. They certified that their analyses, conclusions, and report complied with USPAP. And they estimated the land’s value as of the correct valuation date for the March 1, 2006, assessment.

27. But as the Assessor pointed out, that estimate suffers from at least two major problems that make it unreliable as evidence of the property’s market value-in-use. First, the appraisers addressed the subject property as if it were vacant land rather than as what it actually was—an improved property. Second, they ignored the 2001 sale of the property, opting instead to rely exclusively on sales of purportedly comparable vacant parcels.

**1. CVS did not show that appraising its property as if it were vacant land complied with generally accepted appraisal principles**

28. CVS did not offer any evidence to show that appraising an improved property as if it were vacant land conformed to generally accepted appraisal principles. True, the Correll appraisers certified that they complied with USPAP in performing their engagement—to estimate the value of the subject land as if it were vacant. *Pet’r Ex. 2 at 3, 10; see also Correll testimony*. But that was not the question that CVS needed to address in its appeal. To meet its burden, CVS needed to show that the property’s assessment did not accurately reflect its true tax value. And the property’s true tax value is measured by the utility that CVS or a similar user derived from the property as it existed on the assessment date. On the March 1, 2006, assessment date, the subject property contained a building that CVS used to operate a retail pharmacy. CVS—not the Correll appraisers—extrapolated an overall value for the property by adding the assessed value of its improvements to the Correll appraisers’ estimated land value.



29. CVS's approach did at least track the cost approach's basic format. The cost approach assumes that potential buyers will pay no more for a property than it would cost to buy an equally desirable substitute parcel of vacant land and to build an equally desirable substitute improvement. MANUAL at 13. Thus, an appraiser or assessor separately determines the value of the land, as if vacant, and the depreciated cost new of any improvements to arrive at the property's total value. *Id.*
30. But by simply adopting the Assessor's valuation of the subject improvements, CVS mixed and matched single-property-appraisal and mass-appraisal techniques. While both techniques are exercises in applied economic theory, they differ in the areas of market analysis, valuation, and quality control. *See* MANUAL at 13; *see also* MASS APPRAISAL OF REAL PROPERTY 1 (International Association of Assessing Officers, 1999).<sup>2</sup> Mass appraisal requires assessors to develop models for assessing large groups of properties using common data, standard procedures, and statistical testing. MANUAL at 13, MASS APPRAISAL at 1. Those models reflect supply and demand patterns for groups of properties rather than for any single property. MASS APPRAISAL at 12. And in measuring the quality of a mass appraisal, the focus is not on individual properties; an appraisal is considered good if most values fall within a pre-determined range of actual sale prices. *Id.*; *see also* MANUAL at 21 (stating that the median assessment ratio should fall between 90% and 110% of true tax value to be considered accurate).
31. Given those differences, we will not simply assume that generally accepted appraisal principles allow CVS's mix-and-match approach.
32. That being said, we understand why CVS took the approach that it did. The assessment from which CVS appealed was listed in separate land and improvement components. Indeed, our Form 131 invited CVS to list the land and improvement components of its assessment separately. Because CVS had no qualms about the improvement value, it hired the Correll appraisers to value only the land.

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<sup>2</sup> The Manual directs readers to the Mass Appraisal of Real Estate for a more detailed discussion on mass-appraisal methods and models. MANUAL at 13.

33. Thus, CVS's approach appears to stem from the fact that local officials generally value land and improvements separately in determining a property's overall assessment. To some degree, our statutory assessment scheme may even require that. For example, Indiana Code § 6-1.1-31-6 requires the Department of Local Government Finance's rules to provide for classifying land and improvements on the basis of several enumerated factors. For land, those factors include things like size, location, and use. IND. CODE § 6-1.1-31-6 (a). For improvements, they include age, condition, and the cost of reproduction. *Id.* Similarly, the Department of Local Government Finance and local assessing officials must set values for various land classifications. IND. CODE § 6-1.1-4-13 (agricultural land) IND. CODE § 6-1.1-4-13.6 (commercial industrial and residential).<sup>3</sup> Those statutes dovetail with the methodology that most assessors have adopted for valuing properties within their jurisdictions—the mass-appraisal version of the cost approach set forth in the Guidelines.
34. But those statutes and the Guidelines are a means to an end—determining a property's true tax value. To accomplish that end, assessors may use generally accepted valuation approaches other than the cost approach. *See* 50 IAC 2.3-1-1(c)(allowing county assessors to adopt specific guidelines for assessing real property other than the Guidelines). In some instances, the General Assembly has affirmatively directed assessors to use other approaches. *See* Ind. Code § 6-1.1-4-39 (stating that the true tax value of certain rental properties is the lowest of the values determined using the cost, sales-comparison and income-capitalization approaches). Unlike the cost approach, those other approaches do not require appraisers or assessors to value land and improvements separately. *See* MANUAL at 13-14 (describing the sales-comparison and income approaches to value).
35. Ultimately, the methodology used in determining a property's assessment matters little. To win an assessment appeal, a taxpayer must show that the resulting assessment does

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<sup>3</sup> Various other statutes contemplate properties being assigned separate land and improvement values. *See e.g.*, I.C. § 6-1.1-4-24 (requiring a county PTABOA to give the auditor notice of the assessed values of a property's land and improvements immediately after the property is assessed); I.C. § 6-1.1-12-18 classifying the eligibility for certain rehabilitation deductions to the assessed values of improvements); I.C. § 6-1.1-12-22 (allowing taxpayers to deduct a percentage of the costs of rehabilitation from the assessed value of its building, but not its land).

not accurately reflect the property's market value-in-use. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). For the reasons we have already discussed, mixing and matching single-property-appraisal and mass-appraisal techniques is a suspect way of doing that. In this case, where the Assessor actively contested the validity of CVS's mix-and-match approach<sup>4</sup> and CVS failed to show how that approach conformed to generally accepted appraisal principles, we find that it was insufficient.

**2. The appraisers' valuation opinion was unreliable because they ignored an earlier sale involving the subject property**

36. Even if we were to accept CVS's mix-and-match approach, the Correll appraisers' decision to ignore the 2001 sale of a larger parcel that included the subject property rendered their opinion too unreliable for us to assign it any probative weight.
37. CVS bought that parcel for \$4.4 million. Even if we assume that the parcel was 3.32 acres (as opposed to the 3.07 acres to which Mr. Surface testified), that sale price equals \$1,325,301 per acre, or more than double the assessment CVS wants. Granted, the parcel had a funeral home on it at the time. But CVS soon razed that funeral home to build a pharmacy. We therefore infer that the funeral home contributed little or nothing to the sale price. Also, while CVS sold a tract carved out of the rear portion of that parcel for approximately \$550,000 per acre, the carved-out tract had no independent street access.
38. CVS's 2001 purchase of the larger parcel may not, by itself, establish the subject land's value. But it strongly suggests that the \$582,000 per acre estimated by the Correll appraisers is far too low. At a minimum, the Correll appraisers needed to seriously consider that sale in their analysis. That is particularly true given that they were relying on sales of vacant land parcels from less desirable retail locations.
39. The Correll appraisers, however, only cursorily pondered that sale before deciding not to use it in their analysis. In fact, their appraisal report does not even mention the sale. When questioned about the sale at the hearing, Mr. Correll gave two reasons for rejecting it: (1) the property was improved with a funeral home and he was appraising the

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<sup>4</sup> At different points in the hearing, the Assessor's counsel argued that we should focus on the property's "bottom line value" rather than its separate land and improvement values. *Meighen argument*.

appealed property as vacant land; and (2) he assumed that the sale price included the seller's business.

40. Neither of those reasons withstands even minimal scrutiny. As already explained, CVS promptly razed the funeral home. Thus, the improvement contributed little or nothing to the property's sale price. Given that fact, and the fact that CVS opened an entirely different business at the site, Mr. Correll's assumption that CVS was buying the seller's business makes no sense. At the very least, he should have investigated the matter to confirm his assumption.
41. We also note that the sale's removal from the January 1, 2005, valuation date should not have posed an obstacle. The Correll appraisers themselves used a sale from March 2001 in their sales-comparison analysis. *Pet'r Ex. 2 at 30*. They simply increased that price by 5% to account for appreciation. *Id.*
42. The Assessor also offered evidence that CVS sold the subject property to SCP for more than \$6 million in 2003. By itself, that sale has limited evidentiary value. The Assessor offered almost no evidence about the circumstances surrounding that sale. Indeed, its own witness believed, albeit without foundation, that the sale was an "interdivisional transaction." *Surface testimony*. Nonetheless, the sale at least partially belies CVS's claim that the subject property was worth only \$2,113,500.

**C. CVS did not show a lack of uniformity and equality in assessments**

43. Finally, CVS pointed, in passing, to what it viewed as the inequity between its land assessment and the land assessments for the other properties at the same intersection.
44. We are not sure what CVS intended to claim when it made that observation. To the extent CVS was claiming a lack of uniformity and equality, it fell woefully short of meeting its burden. Given the market-value-in-use universe in which we now live, the clearest, and perhaps only, way to prove a lack of uniformity and equality is to show that the property under appeal was assessed at a higher percentage of its market value-in-use than other properties. *See Westfield Golf Practice Center, LLC v. Washington Twp.*

*Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007)(denying a taxpayer lack-of-uniformity-and-equality claim where the taxpayer simply contested the assessor's methodology and did not show the market values-in-use of its own property or of any purportedly comparable properties). CVS, however, did not show the market values-in-use of the other properties at the intersection. And as we already explained, it did not even show the subject property's market value-in-use.

45. Even if a taxpayer could show a lack of uniformity and equality without comparing assessment-to-market-value-in-use ratios, it would have to compare relevant physical characteristics of its property to those of the properties that are purportedly receiving more favorable treatment. But CVS did not explain how its property compared to the other three properties except to say that all four properties were located at the same intersection. That is insufficient.

#### **SUMMARY OF FINAL DETERMINATION**

46. CVS did not show that its mix-and-match approach combining a single-property appraisal of its land with the mass-appraisal valuation of its improvements complied with generally accepted appraisal principles. Regardless, the land appraisal was unreliable because the appraisers unjustifiably ignored a sale involving the subject property that indicated a per-acre price of more than double what they estimated in their appraisal. We therefore find for the Bloomington Township Assessor.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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Commissioner, 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

### IMPORTANT NOTICE

- Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>.