

REPRESENTATIVE FOR PETITIONER:

Robert Wildman, Attorney

REPRESENTATIVE FOR RESPONDENT:

Gail Brown, Hendricks County Assessor

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Harlan Development – RSGS, LLC,	)	Petition No. 32-031-11-2-8-00001
	)	
Petitioner,	)	Parcel No. 32-10-12-226-001.000-031
	)	
v.	)	
	)	
Hendricks County Assessor,	)	Hendricks County
	)	
Respondent.	)	2011 Assessment Year

Appeal from the Final Determination of the  
Hendricks County Property Tax Assessment Board of Appeals

**January 23, 2014**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

**ISSUE**

Is the subject property predominantly owned, occupied, and used for educational purposes so that it is exempt from property tax under Indiana Code § 6-1.1-10-16?

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **PROCEDURAL HISTORY**

1. On January 19, 2010, Harlan Development - RSGS, LLC (Petitioner), filed its initial Form 136, Application for Property Tax Exemption, seeking a 100% exemption for real and personal property.<sup>1</sup> The Hendricks County Property Tax Assessment Board of Appeals (PTABOA) issued its determination (Form 120) on January 9, 2012, finding the Petitioner's real property is 100% taxable. (On November 15, 2013, the parties filed a stipulation stating, "The Hendricks County Property Tax Appeal Board of Appeals Notice (Form 120) was actually mailed on January 9, 2012, despite the date on the document indicating January 9, 2011, ... the Petitioner timely filed its appeal.") On February 6, 2012, the Petitioner filed a Form 132 Petition to the Indiana Board of Tax Review for Review of Exemption requesting a review of the 2011 exemption request.

### **HEARING FACTS AND OTHER MATTERS OF RECORD**

2. Commissioner Ted J. Holaday held a hearing on this matter on September 13, 2013. The Board did not conduct an on-site inspection of the subject property.
3. Robert Cummins, Owner of LCG Childcare, LLC and Paul Hayden, Secretary and CFO of Harlan Development – RSGS, LLC testified for the Petitioner. Hendricks County Assessor Gail Brown also testified.
4. The Petitioner presented the following exhibits:
  - Petitioner Exhibit 1 – Affidavit of Paul Hayden,
  - Petitioner Exhibit 2 – Affidavit of Robert Cummins,
  - Petitioner Exhibit 3 – Lease,

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<sup>1</sup> The Form 136 does not designate the assessment year, but both the Form 120 and Form 132 indicate that 2011 is the assessment year under appeal. During the hearing, the parties confirmed that the appeal concerned the 2011 assessment year.

Petitioner Exhibit 4 – Goddard School Lesson Plans,  
Petitioner Exhibit 5 – Goddard School Information Brochure,  
Petitioner Exhibit 6 – Indiana Rules for Limited Childcare Centers,  
Petitioner Exhibit 7 – Goddard School Teacher Requirements,  
Petitioner Exhibit 8 – Goddard School Child Education Plans,  
Petitioner Exhibit 9 – Operating Agreement of Harlan Development - RSGS, LLC,  
Petitioner Exhibit 10 – Site Plan,  
Petitioner Exhibit 11 – Initial Application for Exemption (Filed January 19, 2010),  
Petitioner Exhibit 12 – Petitioner’s Pre-Hearing Brief,  
Petitioner Exhibit 13 – LCG Income Statement,  
Petitioner Exhibit 14 – Learning Outcomes for Children at the Goddard School Childcare.

5. The Respondent presented the following exhibits:

Respondent Exhibit A – Barry Wood Memo “Supreme Court Exemption Ruling,”  
Respondent Exhibit B – Harlan Development – RSGS LLC letter to Respondent dated October 15, 2012,  
Respondent Exhibit C – PTABOA Response to Harlan Development October 15, 2012 Letter,  
Respondent Exhibit D1 – Form 120 Page 1,  
Respondent Exhibit D2 – Form 120 Page 2,  
Respondent Exhibit E – LCG Childcare, LLC 2011 Form 103-Long,  
Respondent Exhibit F – LCG Childcare Center License,  
Respondent Exhibit G – Page 1 of Petitioner’s Pre-Hearing Brief,  
Respondent Exhibit H – Harlan Development – RSGS, LLC September 14, 2008 Certificate of Amendment,  
Respondent Exhibit I – Operating Agreement,  
Respondent Exhibit J – Section 3.11 Tax Status of Operating Agreement,  
Respondent Exhibit K – Hendricks County Presentation.

6. The following additional items are recognized as part of the record of proceedings:

Form 132 Petitions with attachments,  
Notice of Hearing on Petition, dated August 1, 2013,  
Hearing sign-in sheet,  
Petitioner’s Post-Hearing Brief,  
Respondent’s Post Hearing Brief,  
Hearing Notice dated November 1, 2013,  
Stipulation received November 15, 2013.

7. The Petitioner objected to the admission of Respondent's Exhibits A and K and the testimony of the Respondent's witnesses because the Respondent failed to provide a copy of the exhibits and witness list to the Petitioner. Indiana Administrative Code, title 52, rule 2-7-1(b) requires parties to an appeal to provide all other parties with copies of documentary evidence at least five (5) business days before the hearing. Ind. Admin. Code, tit. 52, r. 2-7-1(b)(1). Witness lists and exhibits lists are to be provided to opposing parties at least fifteen (15) business days before the hearing. 52 IAC 2-7-1(b)(2).
  
8. The Respondent mailed its evidence, exhibit list, and witness lists to the Petitioner approximately two days prior to the hearing. The Petitioner waived objections to Respondent's Exhibits B through Exhibit J and those exhibits were admitted as part of the record. The ALJ sustained the Petitioner's objections to Respondent's Exhibit A and Exhibit K and to all testimony from the Respondent's witnesses, except for the Respondent, Gail Brown. Accordingly, Respondent's Exhibit A and Exhibit K were marked, but not admitted as part of the record. The ALJ overruled the objection as to Ms. Brown's testimony.
  
9. The property at issue is an 8,000 square-foot facility commonly known as The Goddard School and located at 8547 East US Highway 36 in Avon. Prior to 2011, the Petitioner's property was exempt from taxation. For the 2011 assessment, however, the Hendricks County PTABOA determined the Petitioner's real property is 100% taxable. The Petitioner contends the property is entitled to a 100% exemption.

#### **SUMMARY OF PETITIONER'S CASE**

10. The subject property is owned by Harlan Development - RSGS, LLC (Petitioner), which was organized by the Harlan family for the purpose of constructing and leasing the building to LCG Childcare LLC (LCG) d/b/a The Goddard School. LCG is owned and

operated by Robert Cummins. Mr. Cummins has a familial relationship with the Harlan family.<sup>2</sup> *Hayden testimony; Cummins testimony; Pet'r Exs. 1 and 2.*

11. LCG is a licensee of Goddard Systems, an early childhood education company. The improvement on the subject property is a single purpose building built to conform to the design and specifications required by the Goddard Systems. The Petitioner does not own any other property. The Petitioner constructed the property for the sole purpose of assisting Mr. Cummins with opening a Goddard School. *Hayden testimony; Cummins testimony; Pet'r Exs. 1 and 2.*
  
12. The Petitioner entered into a fifteen-year, triple net lease agreement with LCG on March 1, 2008. The lease agreement specifies that the property should only be used as The Goddard School by the lessee and for no other purpose. Under the lease agreement, LCG paid a \$9,200 base monthly rent for the first two years of the agreement. For the eight years thereafter, the base rent is adjusted by 3% of the prior year's base monthly rent. In years 11-15, the base monthly rent will be the greater of the 3% adjustment or market rent. The average base rent was \$9,594.45 per month (\$14.39 per square foot) for 2011 and \$9,882.28 per month (\$14.82 per square foot) for 2012. The Petitioner believes that the actual 2011 and 2012 rent is below the market rate. In addition to the rent, LCG is responsible for paying real estate taxes, insurance, and maintenance costs. *Hayden testimony; Pet'r Ex. 1.*
  
13. When the lease agreement originated, the Petitioner was a pass-through entity. The Petitioner got a mortgage for the property and was passing through a rent that covered the interest and principle. Initially, the Petitioner did not make a profit, but as the principle is paid down and interest rates decrease, the Petitioner makes a small profit, but it is less than \$5,000. The Petitioner agreed to allow LCG to be up to three payments behind in the summer and then make up the difference during the rest of the year. The Petitioner subsidizes any shortfalls when LCG fails to pay. *Hayden testimony.*

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<sup>2</sup> Harlan Development - RSGS, LLC was organized by Hal Harlan, Hugh Harlan and Doug Harlan. Mr. Cummins is Hal Harlan's nephew and Hugh and Doug Harlan's cousin. *Cummins testimony.*

14. LCG began using and occupying the subject property exclusively for the operation of The Goddard School on January 5, 2009. The Goddard School presents itself as a school that provides early childhood education for children from six weeks to six years of age and provides a kindergarten class. Educational activities occur from the time the facility opens at 7:00 a.m. until 6:00 p.m., Monday through Friday. In addition, children at The Goddard School have lunch, nap, and outside breaks throughout the day. *Cummins testimony; Pet'r Exs. 5 and 11.*
15. The Goddard School separates children into classrooms based on age. Each classroom is required to have a lead teacher. Classrooms with more than ten children also have an assistant teacher. Each lead teacher has a four-year degree or two-year degree in early childhood education or a similar course of study or a Child Development Associates (CDA) certificate. Assistant teachers are required to at least be enrolled in a teaching or CDA program. *Cummins testimony; Pet'r Exs. 6 and 7.*
16. The Goddard School utilizes a Fun Learning Experience (F.L.EX.) program that has a “learning through play” curriculum. Children attending The Goddard School receive instruction in various areas such as math, science, writing, manners, American Sign Language, Spanish, and yoga. Teachers in each classroom are required to prepare lesson plans implementing activities designed to meet age-specific curriculum goals. *Cummins testimony; Pet'r Exs. 2, 4, and 5.*
17. Teachers routinely assess children shortly after they enter a new classroom. Children also are assessed using computer-based games that measure academic progress. Teachers evaluate each child and hold parent/teacher conferences twice each year to discuss progress. *Cummins testimony.*
18. The Goddard School has a Level 3 accreditation certification in the Paths to Quality program. The Goddard School is working toward accreditation through the National Association for the Education of Young Children (NAEYC). The Goddard School has an Indiana Child Care Center License and is supervised by the state. The Goddard School is

also subject to Goddard Systems corporate quality assurance assessments. *Cummins testimony; Pet'r Ex. 2.*

19. The Goddard School prepares children for kindergarten or an upper grade. According to Children's Progress Academic Assessment (CPAA), an early childhood assessment system, "Goddard School students consistently outperform the general population of Pre-Kindergarten and Kindergarten CPAA users." As a result, an educational exemption should be granted. *Cummins testimony; Pet'r Exs. 2, 5 and 14.*

#### **SUMMARY OF RESPONDENT'S CASE**

20. All tangible property is subject to taxation unless it is excluded by law. To obtain an exemption from taxes, a taxpayer must prove that the property is owned, occupied, and used for a purpose that has been exempted by the Indiana Code. *Brown testimony.*
21. The subject property was previously exempt from property tax because it was reported as a school. The exemption was removed for the 2011 assessment based on the decision in *Hamilton County Property Tax Assessment Board of Appeals v. Oaken Bucket Partners*, 938 N.E.2d 654 (Ind. 2010). The exemption also was removed because LCG identified its business as child services on its 2011 personal property return. *Brown testimony; Resp Exs. B, C, D, and E.*
22. The Petitioner has not proven that it is a not-for-profit, educational, literary, scientific, religious or charitable organization for the benefit of the public. The Petitioner owns the property because the Harlan family wanted to help Mr. Cummins. In addition, the Operating Agreement infers that the Petitioner intended to pay property taxes. *Brown testimony; Resp Exs. G and J.*
23. Schools provide education and training to students that parents generally are not qualified or able to provide. Childcare, on the other hand, is a service for parents. Childcare enables parents to generate income by working outside of the home. *Brown testimony.*

24. LCG occupies and uses the property as a childcare facility, not a school. LCG has an Indiana Child Care Center License. The Goddard School does not accept children once they reach the age for public school. LCG does nothing more than what parents do with their children in their homes, but parents are not given property tax exemptions. *Brown testimony. Resp. Ex. E and F.*
25. There are ten Goddard Schools in Marion, Johnson, Boone and Hamilton counties. Nine of the ten schools are paying property taxes. Another Goddard School in Hendricks County also pays property tax. A ruling that the Petitioner is entitled to an exemption could cause a chain reaction of other facilities requesting an exemption. If so, counties may lose hundreds of thousands of dollars in tax revenue. *Brown testimony.*
26. Granting this exemption would place an additional tax burden on other taxpayers. The Petitioner has not shown that the property is owned, occupied, and predominately used for an exempted purpose. *Brown testimony.*

#### **BASIS OF EXEMPTION AND BURDEN**

27. The general rule is that all property is subject to taxation. Ind. Code § 6-1.1-2-1. The General Assembly may exempt any property used for municipal, educational, literary, scientific, religious, or charitable purposes from property taxation. IND. CONST., art. 10 § 1. Property that is owned, occupied, and used for educational purposes is allowed an exemption from property taxation under Indiana Code § 6-1.1-10-16. To qualify, the property must pass the predominant use test in Indiana Code § 6-1.1-10-36.3. Property that is predominantly used for an exempt purpose is exempt in proportion to the amount of time it was used for exempt purposes during the year that ends on the assessment date. Ind. Code § 6-1.1-10-36.3(c)(3).
28. When a property is exempt from taxation, the effect shifts the amount of taxes that exempt property would have paid to other parcels that are not exempt. *See generally, Nat'l Assoc. of Miniature Enthusiasts v. State Bd. of Tax Comm'rs*, 671 N.E.2d 218, 220-



221 (Ind. Tax Ct. 1996). Therefore, a taxpayer seeking exemption bears the burden of proving that the property is specifically within the statutory authority for the exemption. *See Monarch Steel Co. v. State Bd. of Tax Comm'rs*, 611 N.E.2d 708, 714 (Ind. Tax Ct. 1993); *Indiana Assoc. of Seventh-Day Adventists v. State Bd. of Tax Comm'rs*, 512 N.E.2d 936, 938 (Ind. Tax Ct. 1987).

29. Exemptions must be strictly construed in favor of taxation. Nevertheless, determinations must "give full effect to the legislature's intent and avoid construing [the exemption] 'so narrowly its application is defeated in cases rightly falling within its ambit.'" *Monarch Steel*, 611 N.E.2d at 713 (quoting *Harlan Sprague Dawley, Inc. v. Dep't of State Rev.*, 605 N.E.2d 1222, 1225 (Ind. Tax Ct. 1992)).

#### ANALYSIS

30. In this case, the Petitioner owns the real property, while LCG occupies and uses it. Both the Petitioner and LCG are for-profit entities. Nevertheless, the involvement of for-profit entities does not preclude a property tax exemption. *See College Corner, L.P. v. Dep't of Local Gov't Fin.*, 840 N.E.2d 905, 908 (Ind. Tax Ct. 2006). *See also Sangralea Boys Fund, Inc. v. State Bd. of Tax Comm'rs*, 686 N.E.2d 954, 956 n.2 (Ind. Tax Ct. 1997). In addition, being owned, occupied, and used by a single entity is not a requirement for exemption. "Importantly however, 'when a unity of ownership, occupancy, and use is lacking (as is the case here), both entities must demonstrate that they possess their own exempt purposes[.]'" *Hamilton Co. Property Tax Assessment Bd. of Appeals v. Oaken Bucket Partners, LLC*, 938 N.E.2d 654, 657 (Ind. 2010).
31. The Petitioner was organized to build and lease the subject property to LCG for the purpose of operating a Goddard School. The Petitioner built the property to the design and specifications of the Goddard Systems. The Petitioner does not own any other property. Its sole business is to own and lease the property for use as The Goddard School. Indeed, the lease agreement specifies that the property will only be used as The Goddard School.

32. The Petitioner charges LCG rent that is enough to cover the interest and principle on a mortgage loan that the Petitioner secured to build the facility for LCG. The Petitioner makes a small profit, but also subsidizes LCG's shortfalls on occasion. Ultimately, the record establishes that the Petitioner and LCG share the same overarching purpose for the property, even though two entities are involved. Furthermore, no substantial evidence in the record disputes that the subject property is owned, occupied and used for the sole purpose of operating The Goddard School. Accordingly, the case turns on whether that operation is predominantly or entirely educational within the meaning of Indiana Code § 6-1.1-10-16.
33. As the term is broadly understood, "education" can occur anywhere, including private homes, but a more restrictive definition is required to avoid irrationally applying the exemption. *See St. Bd. of Tax Comm'rs, et. al. v. Fort Wayne Sports Club, Inc.*, 258 N.E.2d 874, 881 (Ind. Ct. App. 1970). Accordingly, applicants for the educational exemption must show their use of the property provides some public benefit. *See Oaken Bucket*, 938 N.E.2d at 658; *Dep't of Local Gov't Fin. v. Roller Skating Rink Operators Ass'n*, 853 N.E.2d 1262, 1266 (Ind. 2006). Examining "the public benefits that accrue from a property's use [is] a method of determining whether the predominant use of a property is educational." *Trinity School of Natural Health, Inc. v. Kosciusko Co. Property Tax Assessment Bd. of Appeals*, 799 N.E.2d 1234, 1237 (Ind. Tax Ct. 2003).
34. The closer the activity is to traditional educational programs offered in public schools, the more obvious is the public benefit. *St. Bd. of Tax Comm'rs v. Prof'l Photographers of Am., Inc.*, 268 N.E.2d 617 (Ind. Ct. App. 1971). "The educational exemption is available to taxpayers who provide instruction and training equivalent to that provided by tax supported institutions of higher learning and public schools because to the extent such offerings are utilized, the state is relieved of its financial obligation to furnish such instruction." *Miniature Enthusiasts*, 671 N.E.2d at 221 (quoting *Ft. Wayne Sport Club*, 258 N.E.2d 874, 881-882).

35. While the public benefit test can be met by providing courses found in tax-supported institutions, it also can be met by providing “related” programs and courses. Indeed, “a taxpayer need only relieve the State’s burden ‘*to some limited extent*’ with programs and courses merely ‘*related*’ to those found in tax-supported schools.” *Trinity School*, 799 N.E.2d at 1238 (*italics in original*); see also *Roller Skating Rink Operators Ass’n*, 853 N.E.2d at 1266 (*stating that* “educational” programs need not be the same as offerings of public schools).
36. The Board has made prior determinations with similar facts that provide guidance for the issue presented in this case. For example, in *Richmond Day Nursery* (March 2004), the Board held that Richmond Day Nursery was entitled to an exemption in connection with its operation of a daycare and pre-school facility. In that case, the Board relied on evidence that Richmond Day Nursery provided scheduled educational training, employed teachers with educational degrees, offered educational opportunities to children from lower income families who attended the daycare on a government voucher program, and provided a program similar to the government sponsored Head Start program. Approximately five to six hours each school day were devoted to age-related education for children enrolled at Richmond Day Nursery, where a program similar to typical preschool education was provided. The Board concluded that Richmond Day Nursery “demonstrated that their educational activities and curriculum confer a benefit to the general public, (e.g. families, children, public schools, community) similar to the government based Head Start program, but with the added bonus of onsite training in conjunction with the child’s full time day care.” As a result, Richmond Day Nursery’s property was determined to be 100% exempt.
37. Similarly, in *KC Propco LLC, d/b/a KinderCare Learning Center* (November 2011), the Board held that a facility was entitled to an exemption based on the educational use of the property. Specifically, the Board found that the use of the subject property was substantially related to the programs and courses public schools provide. In doing so, the Board noted that the petitioner employed teachers with educational degrees, scheduled educational training, and offered educational opportunities to children from lower income

families who attended the early learning center on the government voucher program. The Petitioner also was able to show that at least to “some limited extent” the curriculum, goals, and educational and physical activities provided a benefit to the public. Thus, the Board found that KinderCare Learning Center was 100% exempt.

38. Recently, in *Charles Duke* (August 2013), the Board also found a similar use of another property was entitled to an exemption. Specifically, the Board relied on evidence that the programs involved were accredited, provided scheduled educational learning, had detailed lesson plans prepared by teachers with post secondary education training, and had a curriculum that taught reading, writing, math, science, history, physical education, language arts, social studies, music and art. The Board also relied on evidence that teachers evaluated students’ academic progress and reported the progress to parents and conducted parent-teacher conferences. The Board found that the programs were a complement to and prepared children for enrollment in school.
39. In the instant case, LCG/The Goddard School presents itself as a *school* that provides educational programs to preschool aged children. The Goddard School also provides a kindergarten class within its facility. Specifically, the Goddard School provides a curriculum of instruction in various areas such as math, science, writing, manners, American Sign Language, Spanish, and yoga. The teachers at The Goddard School have post secondary education. They prepare lesson plans for each class. They assess and evaluate children. The teachers also communicate with parents about academic progress during parent/teacher conferences twice each year. The Goddard School has a Level 3 certification in the Paths to Quality program and is working toward other accreditations.
40. The Goddard School’s programs prepare children for kindergarten or an upper grade within the community. Accordingly, the Petitioner has shown that the use of the subject property is related to programs that public schools provide. In turn, the Petitioner has also shown that at least to “some limited extent” the curriculum, goals, and educational activities provide a benefit to the public.

41. Significantly, the Respondent failed to effectively impeach or rebut the Petitioner's evidence about its motives and purpose for the subject property or about the curriculum, teaching staff, accreditation, and programs at The Goddard School.
42. Instead, the Respondent claims that the property is no longer exempt because the LCG's personal property return identifies the nature of its business as "child services" and LCG has a Child Care Center License. According to the Respondent, that fact shows the business is not primarily education and it is primarily childcare. The weight of the evidence, however, does not lead the Board to that same conclusion. The Respondent's evidence and conclusory argument do not overcome the Petitioner's stronger evidence regarding the educational activities that actually occur on the property.
43. The Respondent also argues that the activities taking place at The Goddard School are the same learning activities that are taught by parents in their homes or at other childcare centers. Again, this argument does not effectively discredit the Petitioner's evidence. After considering all of the evidence, it is clear that educational programs and child care both take place at The Goddard School. Furthermore, in this case the Board concludes that the educational programs are the main focus and the child care activities are merely incidental.
44. The Respondent argues that the property is not providing a public benefit because a fee is charged to attend The Goddard School. The Respondent merely touched on this point and did virtually nothing to develop the argument. Although fee arrangements might have some relevance to the question, the Respondent provided no authority or support for fees to be a bright line test to deny exemption. And the Board has found other facilities are tax exempt even though fees were charged. (*See KC Propco, LLC*. (November 2011)).
45. According to the Respondent, the Board should deny an exemption in this case to prevent a chain reaction of appeals for exemption by similar facilities, but this point is entirely unpersuasive. Indeed, every exemption case depends on its own facts and, ultimately, how those facts were presented. *See Jamestown Homes of Mishawaka, Inc. v. St. Joseph Co.*

*Assessor*, 914 N.E.2d 13, 15 (Ind. Tax Ct. 2009). Here, the Respondent simply has not provided enough evidence or argument to impeach or rebut the Petitioner’s case. The Petitioner’s point of view is more persuasive—the weight of the evidence establishes that use of the subject property is almost entirely focused on education.

46. Therefore, the subject property is owned, occupied and used for an exempt purpose. As a result, an educational exemption should be granted.

**SUMMARY OF FINAL DETERMINATION**

47. The Petitioner proved the subject property qualifies for 100% exemption based on educational use. Its claim for exemption must be allowed.

The Final Determination of the above captioned matter is issued on the date written above.

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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>>.