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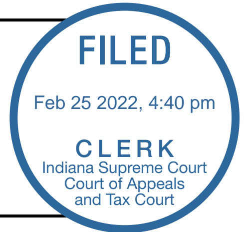

IN THE INDIANA TAX COURT

INGREDION, INCORPORATED,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. 20T-TA-00006
	)	
MARION COUNTY ASSESSOR,	)	
	)	
Respondent.	)	

ON APPEAL FROM A FINAL DETERMINATION
OF THE INDIANA BOARD OF TAX REVIEW

FOR PUBLICATION
February 25, 2022

WENTWORTH, J.

Ingredion, Incorporated challenges the Indiana Board of Tax Review's final determination that its 2012 and 2013 personal property tax returns did not "substantially comply" with the property tax statutes and regulations, and thus, upholding the timeliness of the Assessor's audit assessments under the three-year statute of limitations. In the alternative, Ingredion challenges the Indiana Board's failure to determine the Assessor was required to offset any 2012 and 2013 audit assessments by its 2011 tax

overpayment. Upon review, the Court reverses the Indiana Board's final determination.

FACTS AND PROCEDURAL HISTORY

Ingredion timely filed its Indiana Business Tangible Personal Property Assessment Returns reporting the assessed value of its tangible personal property located at its Indianapolis manufacturing facility for the 2011, 2012, and 2013 tax years. (See Cert. Admin. R. at 44-155.) On April 4, 2014, the Assessor sent Ingredion a letter initiating an audit of those returns and requesting certain documents necessary to reconcile Ingredion's reported values with its financial records. (See Cert. Admin. R. at 39, 156.)

During the course of the audit, Ingredion discovered that its former personal property tax preparation firm had incorrectly reported the costs of its assets by "using the original installed (aka "historical") cost basis, rather than its federal tax cost basis." (See Cert. Admin. R. at 40 ¶ 17, 173.) On June 30, 2014, Ingredion provided the Assessor with a written report comparing its personal property costs reported on its Indiana returns to its costs reported on its federal depreciation schedules. (See Cert. Admin. R. at 40 ¶ 18.) The comparison showed that upon correcting its reporting errors, Ingredion would owe additional personal property taxes for 2012 and 2013, but would have overpaid its taxes for 2011. (See Cert. Admin. R. at 40-41 ¶ 19.)

On April 14, 2015, the Assessor issued two Forms 113/PP (Notice of Assessment/Change) and a letter summarizing the final 2012 and 2013 audit findings, noting that Ingredion's "asset cost[s were] underreported for tax years 2012 and 2013[, and that Ingredion had o]mitted assets including outdoor lighting, process electrical, process piping, foundations, and dock equipment." (Cert. Admin. R. at 157-65, 167-68.) As a result, the Assessor increased Ingredion's assessments for both 2012 and 2013.

(See Cert. Admin. R. at 157, 167-68.) The record does not contain a Form 113/PP regarding Ingredion's 2011 return, nor did the Assessor's audit summary letter make any reference to the results for 2011. (See Cert. Admin. R.)

On May 28, 2015, Ingredion appealed the Assessor's 2012 and 2013 audit assessments to the Marion County Property Tax Assessment Board of Appeals (PTABOA) claiming, among other things, that the Assessor's increased assessments were untimely under the limitation periods prescribed in Indiana Code § 6-1.1-16-1. (See Cert. Admin. R. at 209-16.) The PTABOA denied Ingredion's appeals on December 15, 2017. (See Cert. Admin. R. at 219-22.)

On January 24, 2018, Ingredion appealed the PTABOA's final determinations to the Indiana Board. (See Cert. Admin. R. at 223-34.) Nearly eleven months later, on December 20, 2018, Ingredion filed a motion for summary judgment claiming the Assessor's 2012 and 2013 audit assessments were untimely as a matter of law under Indiana Code § 6-1.1-9-3(a) and Indiana Code § 6-1.1-16-1(a)(2) because its returns substantially complied with the applicable property tax statutes and regulations. (See Cert. Admin. R. at 14-37.) On January 14, 2019, Ingredion amended its motion to add a claim that even if the Indiana Board were to find the 2012 and 2013 audit assessments timely, the Assessor was required by Indiana Code § 6-1.1-9-10 to correct the improperly reported costs for 2011 discovered during the audit and either process a refund or apply a credit. (See Cert. Admin. R. at 241-43.)

The Assessor subsequently filed a cross-motion for summary judgment, contending that Ingredion's claim wrongly relied on the regulation defining "nonsubstantial compliance" rather than the Court's controlling interpretation of "substantial compliance"

in Lake County Assessor v. Amoco Sulfur Recovery Corp., 930 N.E.2d 1248, 1251-52 (Ind. Tax Ct. 2010), review denied. (Cert. Admin. R. at 244-51.) The Assessor further argued that Ingredion had waived raising any arguments other than its exclusive reliance on the regulation to support its claim that its returns substantially complied. (See Cert. Admin. R. at 248-49.)

On January 30, 2020, the Indiana Board issued its final determination finding the audit assessments timely and granting summary judgment to the Assessor. (See Cert. Admin. R. at 326 ¶ 1, 335 ¶ 25.) Specifically, the Indiana Board determined that Ingredion's use of the wrong cost basis made its returns "almost entirely inaccurate," because they accurately reported only about 1.6% of its 2012 and 2.2% of its 2013 property costs. (See Cert. Admin. R. at 328-29 ¶¶ 8-9.) Accordingly, the Indiana Board concluded that Ingredion's inaccurate returns did not substantially comply "to the extent necessary to assure the reasonable objectives of the [statute and] regulation" were met. (Cert. Admin. R. at 333 ¶ 20.) In addition, the Indiana Board concluded that it lacked the authority to order the Assessor to offset any underpayment of taxes owed for 2012 and 2013 by the amount of any overpaid taxes for 2011. (See Cert. Admin. R. at 334-35 ¶ 24.)

On March 13, 2020, Ingredion initiated this original tax appeal. The Court heard oral argument on October 8, 2020. Additional facts will be supplied as necessary.

STANDARD OF REVIEW

The party seeking to overturn an Indiana Board final determination bears the burden of demonstrating its invalidity. Hubler Realty Co. v. Hendricks Cnty. Assessor, 938 N.E.2d 311, 313 (Ind. Tax Ct. 2010). The Court will reverse a final determination if it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

contrary to constitutional right, power, privilege, or immunity; in excess of or short of statutory jurisdiction, authority, or limitations; without observance of the procedure required by law; or unsupported by substantial or reliable evidence. IND. CODE § 33-26-6(e)(1)-(5) (2022). Upon review, the Court will not reweigh the evidence or judge the credibility of witnesses, but will review questions of law arising from the Indiana Board's factual findings de novo. Kellam v. Fountain Cnty. Assessor, 999 N.E.2d 120, 122 (Ind. Tax Ct. 2013), review denied.

LAW

Taxpayers are required to file a personal property tax return each year. See IND. CODE § 6-1.1-3-7(a) (2011) (amended 2015). "In completing a personal property return for a year, a taxpayer [must] make a complete disclosure of all information required by the department of local government finance that is related to the value, nature, or location of [the] personal property." IND. CODE § 6-1.1-3-9(a) (2011) (emphasis added); see also 50 IND. ADMIN. CODE 4.2-2-5(a) (2011) ("The taxpayer shall, in completing the return, make a full and complete disclosure . . . relating to the value, nature, and location of all the personal property[. . ..]" (emphasis added)). Therefore, Indiana's personal property self-assessment tax system "relies on taxpayers to fully and accurately report their taxable property." Lake Cnty. Assessor v. Amoco Sulfur Recovery Corp., 930 N.E.2d 1248, 1252 (Ind. Tax Ct. 2010), review denied.

Upon giving proper notice, an assessing official or a county property tax assessment board of appeals may assess omitted or undervalued personal property or increase a taxpayer's personal property assessment within three years after the date the return is filed. IND. CODE § 6-1.1-9-3(a) (2011) (the "3-Year Limitation"). If a taxpayer's

return <u>substantially complies</u> with the property tax statutes and the Department's regulations, however, the 3-Year Limitation does not apply, giving way to the shorter time period prescribed in Indiana Code § 6-1.1-16-1. <u>See</u> I.C. § 6-1.1-9-3(a). Indiana Code § 6-1.1-16-1 provides that when a return substantially complies

> a county assessor or a county property tax assessment board of appeals must make a change in the assessed value, including the final determination by the board of an assessment changed by an assessing official, and give the notice of the change on or before the later of:
>
> (A) October 30 of the year for which the assessment is made; or
>
> (B) five (5) months from the date the personal property return is filed if the return is filed after May 15 of the year for which the assessment is made.

IND. CODE § 6-1.1-16-1(a)(2) (2011) (amended 2014) (the "5-Month Limitation"). In addition, Indiana Code § 6-1.1-16-1 expressly states that its 5-Month Limitation does not apply if a taxpayer's returns do not substantially comply. <u>See</u> I.C. § 6-1.1-16-1(d).

Despite being the fulcrum for determining whether the 3-Year Limitation or the 5-Month Limitation applies, the term "substantially complies" is not defined in either Indiana Code § 6-1.1-9-3 or Indiana Code § 6-1.1-16-1 (collectively the "Limitation Statutes"). <u>See</u> I.C. §§ 6-1.1-9-3, 16-1. Likewise, the Department has not promulgated a regulation interpreting the term "substantially complies" as used in the Limitation Statutes. <u>See, e.g.</u>, 50 IND. ADMIN. CODE 4.2-1-1.1(j) (2011) (amended 2020).

In the <u>Amoco</u> case, the Court addressed, in part, the timeliness of assessments under Indiana Code § 6-1.1-16-1. <u>See</u> <u>Amoco</u>, 930 N.E.2d at 1251, 1254, 1255. In that case, the Department intervened, providing a 2009 Memorandum "to express its interpretation of substantial compliance: '[s]ubstantial compliance with [statutory and]

regulatory requirements means compliance to the extent necessary to assure the reasonable objectives of the [statute and] regulation are met.'" Id. at 1251. The Court adopted the Department's definition and held that Amoco's returns substantially complied because they did not "substantially undermine[ ] the objectives of th[e property tax] statutes and regulations." See Id. at 1251-52, 1257.

On February 26, 2010, nearly five months before the Amoco opinion was issued, the Department promulgated a regulation with a bright-line threshold for when a personal property tax return is not in substantial compliance. 50 I.A.C. 4.2-1-1.1(j) (the "2010 Regulation"). This regulation defined "nonsubstantial compliance" as:

> a tax return that:
>
> (1) omits five percent (5%) or more of the cost per books of the tangible personal property at the location in the taxing district for which a return is filed;
>
> (2) omits leased property and other nonowned personal property assessable under 50 IAC 4.2-2-4(b) where such omitted property exceeds five percent (5%) of the total assessed value of all reported personal property; or
>
> (3) is filed with the intent to evade personal property taxes or assessment.

50 I.A.C. 4.2-1-1.1(j).

ANALYSIS

On appeal, Ingredion asks the Court to reverse the Indiana Board's final determination that the Assessor's 2012 and 2013 audit assessments were timely because the Indiana Board applied the wrong definition of "substantial compliance." (See Pet'r Br. at 3, 9-13.) Specifically, Ingredion claims its returns substantially complied because they did not exceed the threshold for nonsubstantial compliance under the 2010 Regulation,

which defines "substantial compliance" in the negative. (See Pet'r Br. at 9-23.) In addition, Ingredion asks the Court to direct the Indiana Board to order the Assessor to comply with the requirements of Indiana Code § 6-1.1-9-10(c) by offsetting the 2012 and 2013 assessments by the amount of tax the Assessor discovered Ingredion had overpaid for 2011 during the audit. (See Pet'r Br. at 9, 23-27.)

I. "Substantially Complies"

Ingredion claims the Assessor's 2012 and 2013 assessments were untimely because they were made after the 5-Month Limitation period applicable to returns that substantially comply with the property tax statutes and Department regulations. (Pet'r Br. at 2, 4-5, 9-11.) Specifically, Ingredion asserts that the Indiana Board abused its discretion in determining its returns did not substantially comply because it relied on the Court's definition of "substantially complies" in Amoco rather than the definition implied by the Department's 2010 Regulation. (See Pet'r Br. at 2, 9-13.) The definition in Amoco does not apply, Ingredion argues, because it is "prior law," superseded by the 2010 Regulation, which implicitly defined "substantial compliance" by defining its reverse (negative) meaning: "nonsubstantial compliance." (See Pet'r Br. at 2, 4, 9.)

Ingredion explains that in the absence of an interpreting regulation from 2000-2009, the Department intervened in Amoco to provide the Court with its 2009 Memorandum that defined its interpretation of "substantial compliance." (See Pet'r Br. at 11.) See also Amoco, 930 N.E.2d at 1251 (stating that "the [Department] intervened . . . to express its interpretation of substantial compliance."). The Court adopted the Department's interpretation and applied it to the 2004-2006 tax years at issue in Amoco. See Amoco, 930 N.E.2d at 1251-52. Ingredion maintains therefore that the significance

of the Amoco case is not its actual holding defining the term "substantially complies," but is instead that the Court deferred "to the [Department's] definition of substantial compliance" in reaching that holding. (See Pet'r Br. at 4.) Ingredion asks this Court to again defer to the Department's definition, arguing that the 2010 Regulation defines "substantially complies" in the negative, suggesting that the tail wags the dog, i.e., anything that does not fall within the definition of "nonsubstantial compliance" necessarily substantially complies. (See Pet'r Br. at 9-23.)

Ingredion's focus on the origin of the Court's definition in Amoco, rather than the definition itself, invites the Court to ignore its controlling precedent and defer to the definition in the Department's 2010 Regulation that was in effect for the years at issue here, just as it had deferred to the Department's 2009 Memorandum definition in Amoco. See Amoco, 930 N.E.2d at 1251-52. A promulgated regulation has the force of law, while non-promulgated, informal advice does not. State Bd. of Tax Comm'rs v. S. Shore Marina, 422 N.E.2d 723, 732 (Ind. Ct. App. 1981). See also Caylor-Nickel Clinic, P.C. v. Ind. Dept. of State Revenue, 569 N.E.2d 765, 767 n.2 (Ind. Tax Ct. 1991) (explaining that an information bulletin was advisory and did not have the force of law because it was "not adopted in conformity with the rulemaking procedures"). Nonetheless, this rule does not advance Ingredion's argument but is merely a diversion from what it asks the Court to do: find that the 2010 Regulation defeats what the Court has held the law says.

It has long been held that an administrative agency's interpretation is valid only if it is consistent with the law it is interpreting. Amoco, 930 N.E.2d at 1251. See also Hutchison v. Indiana State Bd. of Tax Comm'rs, 520 N.E.2d 1281, 1283 (Ind. Tax Ct. 1988) (stating that an administrative agency "cannot enlarge or vary the power given by

the legislature or create a rule out of harmony with the statute") (citing Blue v. Beach, 56 N.E. 89, 93 (Ind. 1900)). The plain language of the statutory term "substantially complies" is at issue, not the regulatory meaning of its opposite, "nonsubstantial compliance."

Ingredion has provided no legal authority to support its claim that the meaning of "nonsubstantial compliance" defines the term "substantial compliance" or to establish a more general concept that the definition of one thing necessarily defines its opposite. See Lowe's Home Ctrs., Inc. v. Monroe Cnty. Assessor, 160 N.E.3d 263, 273-74 (Ind. Tax Ct. 2020) (explaining that it is a party's duty, not the Court's, to present arguments and direct the Court to the record evidence and authorities that support its positions). In addition to being conclusory, Ingredion has not pointed to any language in the 2010 Regulation that indicates it defines the only errors necessary for a return to fail to substantially comply with the law. Accordingly, Ingredion's interpretation is unsupported by authority and would impermissibly broaden the meaning of "substantially complies" by limiting "nonsubstantial compliance" to an exclusive set of errors.

Most importantly, Ingredion's arguments attempt to do an end-run around the Court's controlling precedent that holds "[s]ubstantial compliance with [statutory and] regulatory requirements means compliance to the extent necessary to assure the reasonable objectives of the [statute and] regulation are met." Amoco, 930 N.E.2d at 1251 (citation omitted). Thus, once more, Ingredion's claim that the 2010 Regulation definition controls is unsupported and conclusory, failing to reference any legal authority requiring a judicial interpretation of a statute to cede to a regulatory interpretation of the same statute. The absence of supporting authority for this claim is understandable, however, because allowing an agency to override the Court's interpretation of a law is to

misappropriate the Legislature's central role to make law as well as the Court's fundamental role to say what the law is. See e.g., NIPSCO Indus. Grp. v. N. Indiana Pub. Serv. Co., 100 N.E.3d 234, 241 (Ind. 2018), modified on reh'g; Marbury v. Madison, 5 U.S. 137, 177 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is [and t]hose who apply the rule to particular cases, must of necessity expound and interpret that rule."). Accordingly, in determining whether Ingredion's returns substantially complied, the Indiana Board did not abuse its discretion by applying the Court's definition of the term "substantially complies" in Amoco rather than a definition implied from the definition of its negative in the 2010 Regulation.

II. Did Ingredion's Returns Substantially Comply?

In its final determination, the Indiana Board focused on the inaccuracy of Ingredion's returns, stating that "[b]ecause [they] showed almost all of [Ingredion's] personal property in either the incorrect pool and/or with an incorrect acquisition date, [ ] they did not substantially comply with the law." (See Cert. Admin. R. at 326 ¶ 1.) Rejecting the claim that the 2010 Regulation defines the term "substantially complies," the Indiana Board applied the definition in Amoco and found "when the taxpayer has submitted an almost wholly inaccurate return[,] as in this case[,]" the 3-Year Limitation applies. (See Cert. Admin. R. at 333-35 ¶¶ 22, 25.)

Ingredion claims that the Indiana Board wrongly relied on the definition in Amoco, however, stating that its returns substantially complied under the 2010 Regulation even though they "overstated the amount of its personal property costs, [because] they did not omit five percent or more of the cost of its personal property" that would make them non-compliant. (Pet'r Br. at 3.) Accordingly, Ingredion argues that its returns substantially

complied under Indiana Code § 6-1.1-9-3(a) and the Assessor was subject to the 5-Month Limitation. (See Pet'r Br. at 3, 19-21, 23.)

In support of the Indiana Board's determination, the Assessor indicates that the plain language of the 2010 Regulation defines "nonsubstantial compliance" not "substantial compliance" and was likely "only intended to define some ways in which [the] taxpayer could fail to substantially comply rather than [define] every conceivable way." (See Resp't Br. at 4 (citation omitted).) The Assessor argues that the Indiana Board correctly determined that "by listing its personal property in either the incorrect pool and/or with an incorrect acquisition date," Ingredion's returns did not substantially comply and that the 3-Year Limitation applies. (See Resp't Br. at 2.)

In Amoco, the Court instructed that returns substantially comply based on whether they "substantially undermined the objectives of th[e property] statutes and regulations." Amoco, 930 N.E.2d at 1251-52. Indiana's Legislature has explained the objectives of a personal property tax return require taxpayers to "make a complete disclosure of all information required by the [Department] that is related to the value, nature, or location of [their] personal property[.]" I.C. § 6-1.1-3-9(a) (emphasis added).[1]

[1] The Department of Local Government Finance's regulation interpreting this statute states "[t]he taxpayer shall, in completing the return, make a full and complete disclosure of such information as may be required by the [D]epartment, relating to the value, nature, and location of all the personal property of which the taxpayer was the owner[.]" 50 IND. ADMIN. CODE 4.2-2-5 (2012) (emphasis added). The regulation uses the conjunction "and" to join the three nouns, which means all of them are necessary; whereas, the statute joins the same three nouns with the conjunction "or," indicating that only one of the three is required. See Webster's Third New Int'l Dictionary 80 (defining the word "and" as "along with or together with"), 1585 (defining the word "or" as "a function word to indicate (1) an alternative between different or unlike things, states, or actions[;] . . . (2) [a] choice between alternate things, states, or courses") (2002 ed.). Accordingly, the portion of the regulation that is inconsistent with the statute (the "and") is invalid. See Universal Health Realty v. Fluty, 144 N.E.3d 857, 861 (Ind. Tax Ct. (2020) (explaining that the Department cannot make regulations that are inconsistent with, add to, or detract from Indiana's property assessment statutes).

Ingredion did disclose the value of its personal property on its returns. (Cert. Admin. R. at 44-155.) The Indiana Board found that Ingredion's returns did not substantially comply in part based on its incredulity that returns with markedly inaccurate costs could still substantially comply. (See Cert. Admin. R. at 333-34 ¶ 20 ("[w]e find that returns that have only 2.2% and 1.6% of actual costs correctly reported do not meet the reasonable objectives of the law.").) Nonetheless, the statute expressly requires disclosure, not accuracy. See I.C. § 6-1.1-3-9(a). Moreover, in Amoco, the Court rejected a similar claim that a significant amount of misreporting frustrates the manifest objectives of accurate self-reporting. See Amoco, 930 N.E.2d at 1254 (rejecting the Assessor's claim that inaccurate reporting that places a "significant amount of tax dollars at issue" does not substantially comply). The Court finds therefore that Ingredion's returns did disclose the value of its personal property (albeit inaccurately).

To disclose the nature of personal property, "[a] taxpayer simply needs to provide property descriptions that identify the property with particularity" to substantially comply with this statutory objective. Amoco, 930 N.E.2d at 1253. Ingredion's returns describe items related to air or water pollution control with particularity. (See, e.g., Cert. Admin. R. at 82-101.) The evidence does not show, however, that these disclosures included all of Ingredion's personal property. Moreover, Ingredion did not rebut the statement in the Assessor's Notice of Assessment/Change that certain outdoor lighting, process electrical, process piping, foundations, and dock equipment had been omitted from its returns. (See Cert. Admin. R. at 17-37, 241-43, 262-79.) Thus, the Court is not persuaded that Ingredion made a complete disclosure of all its personal property with particularity.

Finally, Ingredion's returns disclosed the location of its personal property on the

face of each of its Business Tangible Personal Property Returns, providing, as the Department requested, the "[a]ddress where property is located (number and street, city and state)[.]" (See Cert. Admin. R. at 44, 76, 104, 129.) Thus, Ingredion's returns properly disclosed the location of its personal property, as required by statute.

While taxpayers are only required to meet one of the three statutory objectives, the record reveals Ingredion made a complete disclosure regarding two: the value of its personal property and the location of its personal property. Accordingly, the Court finds that Ingredion's returns have met the statutory objectives of personal property tax returns required by Indiana Code § 6-1.1-3-9(a).

While the Assessor correctly claimed that the Indiana Board properly relied on the definition of "substantially complies" in Amoco, he failed to persuade the Court that the Indiana Board properly analyzed the record facts under the statutory objectives of the property tax statutes and the Department's regulations. Instead, the Indiana Board based its determination on a "substantial compliance" framework that improperly enlarged the Legislature's objectives under Indiana Code § 6-1.1-3-9 to include accuracy.[2] Having provided the required disclosures, the Court holds that Ingredion's returns did not substantially undermine the statute's objectives and did substantially comply with the property tax statutes and the Department's regulations. Accordingly, the assessments of Ingredion's 2012 and 2013 personal property that the Assessor made on April 14, 2015, were beyond the applicable 5-Month Limitation, and thus, untimely.

III. Offsets

In the alternative, Ingredion asks the Court to "order the Indiana Board to offset the

[2] Nonetheless, inaccurate reporting of property costs may subject a taxpayer to statutory penalties. See IND. CODE § 6-1.1-37-7(e) (2011).

tax from th[e audit] assessments by the amount of Ingedion's [2011] tax overpayments and refund any excess tax overpayment to Ingredion."[3] (See Pet'r Br. at 27.) Because they were untimely, however, there are no valid audit assessments to offset. Indeed, the same analysis that concludes the Assessor's audit changes to the 2012 and 2013 assessments were untimely applies to any offset the Assessor might have applied to those years.

CONCLUSION

The Indiana Board's final determination that Ingredion's 2012 and 2013 personal property tax returns were not in substantial compliance is contrary to law and arbitrary and capricious. Consequently, the Indiana Board's final determination is REVERSED and REMANDED to the Indiana Board to instruct the Assessor to reinstate the values reported by Ingredion on its original returns for the 2012 and 2013 tax years.

[3] Ingredion also appealed the Indiana Board's denial of its claim for refund of its 2011 overpayment under IND. CODE § 6-1.1-9-10(a), which the Court addressed in a companion case issued concurrently with this one. See Ingredion, Inc. v. Marion Cnty. Assessor, No. 20T-TA-00007, slip op. (Ind. Tax Ct. Feb. 25, 2022.)