

Indiana Inheritance Tax Regulations with Annotations

Editor's Note: These Death Taxation rules and regulations are the version as of May 23, 2014. We have pointed out in the notes that follow those rules that are inconsistent with current statutes.

ARTICLE 4.1. DEATH TAXATION

Rule 1. Definitions

45 IAC 4.1-1-1 Applicability

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1

Sec. 1. (a) Unless otherwise defined, all terms used in this article shall have the same meaning as those terms are defined in IC 6-4.1.

(b) The definitions in this rule apply throughout this article. (*Department of State Revenue; 45 IAC 4.1-1-1; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2022*)

45 IAC 4.1-1-2 "Appropriate probate court" defined

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-1-2; IC 6-4.1-4; IC 6-4.1-12-1

Sec. 2. "Appropriate probate court" means the probate court of the county in which a resident decedent was domiciled at the time of the decedent's death. If two (2) or more courts in a county have probate jurisdiction, the first court acquiring jurisdiction is the appropriate probate court. (*Department of State Revenue; 45 IAC 4.1-1-2; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2022*)

45 IAC 4.1-1-3 "Class A transferee" defined

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-1-3

Sec. 3. (*Repealed by Department of State Revenue; filed Dec 5, 2012, 10:01 a.m.: 20130102-IR-045120429FRA*)

State, Dept. of State Revenue v. National Bank of Logansport, 402 N.E.2d 1008 (Ind. Ct. App. 1980), rehearing denied May 1, 1980, 406 N.E.2d 260.

In re Estate of Quackenbush, 926 N.E.2d 127 (Ind. Tax Ct. 2010).

Crittenberger v. State Savings & Trust Co. 189 Ind. 411, 127 N. E. 552 (1920).

Estate of Odle v. Ind. Dept. of Revenue, 991 N.E.2d 631 (Ind. Tax Ct. 2013).

45 IAC 4.1-1-4 "Class B transferee" defined

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-1-3

Sec. 4. (a) "Class B transferee" means a transferee who is a:

- (1) brother or sister of the transferor;
- (2) descendant of a brother or sister of the transferor; or
- (3) spouse, widow, or widower of a child of the transferor.

(b) Brothers and sisters of the half blood and their descendants are Class B transferees.

(c) A widow or widower of a child of the transferor remains a Class B transferee even though the widow or widower remarries before the date of the transferor's death. (*Department of State Revenue; 45 IAC 4.1-1-4; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2022*)

Matter of Souder's Estate, 421 N.E.2d 12 (Ind. Ct. App. 1981).

Estate of Odle v. Ind. Dept. of Revenue, 991 N.E.2d 631 (Ind. Tax Ct. 2013).

45 IAC 4.1-1-5 "Class C transferee" defined

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-1-3

Sec. 5. (a) "Class C transferee" means a transferee who is neither a Class A nor a Class B transferee.

(b) A transferee receiving property from a transferor who was the transferee's natural parent shall be taxed as a Class C transferee if such transferee was previously legally adopted.

(c) The term includes an aunt and uncle of the decedent. (*Department of State Revenue; 45 IAC 4.1-1-5; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2022*)

In re Estate of Quackenbush, 926 N.E.2d 127 (Ind. Tax Ct. 2010).

Estate of Odle v. Ind. Dept. of Revenue, 991 N.E.2d 631 (Ind. Tax Ct. 2013).

45 IAC 4.1-1-6 "County assessor" defined

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-12-2

Sec. 6. "County assessor" means the assessor of the county in which a resident decedent was domiciled at the time of the decedent's death. (*Department of State Revenue; 45 IAC 4.1-1-6; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2022*)

45 IAC 4.1-1-7 "County treasurer" defined

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-9-5

Sec. 7. "County treasurer" means the treasurer of the county in which the inheritance tax due is determined. (*Department of State Revenue; 45 IAC 4.1-1-7; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2022*)

45 IAC 4.1-1-8 "Department" defined

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1

Sec. 8. "Department" means the department of state revenue. (*Department of State Revenue; 45 IAC 4.1-1-8; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2022*)

45 IAC 4.1-1-9 "Federal death tax credit" defined

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-1-4; IC 6-4.1-11-2

Sec. 9. "Federal death tax credit" means the maximum credit allowable as determined by the calculation set forth under Section 2011(b) through 2011(f) of the Internal Revenue Code for a resident of the United States and under Section 2102(b) of the Internal Revenue Code for a

nonresident, noncitizen of the United States. (*Department of State Revenue; 45 IAC 4.1-1-9; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2023*)

45 IAC 4.1-1-10 "In loco parentis parent" defined

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-1-3

Sec. 10. (a) "In loco parentis parent" means a person who takes the place of a parent; charged, factitiously, with a parent's rights, duties, and responsibilities.

(b) The in loco parentis relationship must have been established prior to the child's fifteenth birthday and have continued for a period of at least ten (10) years.

(c) Except as otherwise provided in section 5 of this rule, if the in loco parentis relationship is established, the child, for the purpose of inheritance tax determination only, will be considered the natural child of the in loco parentis parent.

(d) The favorable tax treatment afforded by an in loco parentis relationship is limited to the parties of the relationship and to the descendants of the in loco parentis child of the in loco parentis parent. (*Department of State Revenue; 45 IAC 4.1-1-10; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2023*)

State, Dept. of State Revenue v. National Bank of Logansport, 402 N.E.2d 1008 (Ind. Ct. App. 1980), rehearing denied May 1, 1980, 406 N.E.2d 260.

45 IAC 4.1-1-11 "Intangible personal property" defined

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-1-5; IC 30-4-2-7

Sec. 11. (a) "Intangible personal property" means a property interest that only exists in legal rights.

(b) Except as provided in subsection (c), the right to the unpaid portion of the purchase price of realty sold under a conditional sales contract is intangible personal property.

(c) The unpaid portion of the purchase price of realty sold under a conditional sales contract that was entered into prior to the decedent's death by the decedent's guardian shall be treated as an interest in realty.

(d) An interest in an oil and gas lease, and an interest created thereby or arising therefrom, is an intangible personal property interest.

(e) An interest in a partnership, regardless of the nature of the partnership's holdings, is an intangible personal property interest.

(f) Except as provided in subsection (g), a beneficiary's equitable interest in a trust is an intangible personal property interest.

(g) If, under the terms of a trust instrument, a trustee is or can be required at some time to distribute realty from the trust corpus to a beneficiary, that beneficiary's interest shall be treated as an interest in realty. (*Department of State Revenue; 45 IAC 4.1-1-11; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2023*)

Indiana Dept. of State Revenue, Inheritance Tax Div. v. Estate of Nichols, 659 N.E.2d 694 (Ind. Tax Ct. 1995).

Indiana Dept. of State Revenue, Inheritance Tax Div. v. Estate of Puschel, 582 N.E.2d 923 (Ind. Tax Ct. 1991).

Blood v. Poindexter, 534 N.E.2d 768 (Ind. Tax Ct. 1989).

45 IAC 4.1-1-12 "Nonresident decedent" defined

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-1-7

Sec. 12. (a) "Nonresident decedent" means an individual who was not domiciled in Indiana on the date of the individual's death.

(b) The determination of Indiana residency is independent of another state's determination of the decedent's residence. (*Department of State Revenue; 45 IAC 4.1-1-12; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2023*)

45 IAC 4.1-1-13 "Resident decedent" defined

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-1-11

Sec. 13. (a) "Resident decedent" means an individual who was domiciled in Indiana on the date of the individual's death.

(b) The determination of Indiana residency is independent of another state's determination of the decedent's residence.

(*Department of State Revenue; 45 IAC 4.1-1-13; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2023*)

45 IAC 4.1-1-14 "Transferee" defined

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-1-3

Sec. 14. (a) "Transferee" means a person who succeeds to property rights of a deceased individual before or after the death of the deceased individual.

(b) A transferee, except a surviving spouse, will fall into one (1) of three (3) classes determined by the relationship of the transferee to the transferor on the date of the transferor's death.

(*Department of State Revenue; 45 IAC 4.1-1-14; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2023*)

In re Grotrian's Estate, 405 N.E.2d 69 (Ind. Ct. App. 1980), transfer denied March 24, 1981.
Estate of Stowers v. Indiana Dept. of Revenue, 533 N.E.2d 1306 (Ind. Tax Ct. 1989).

Rule 2. Imposition of the Inheritance Tax

45 IAC 4.1-2-1 Time of imposition

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-2-1; IC 6-4.1-6-6

Sec. 1. (a) Except as provided in subsection (b), the inheritance tax is imposed at the time of the decedent's death.

(b) The inheritance tax is imposed on a decedent's transfer of a contingent or defeasible interest in property when the transferee of the interest obtains the beneficial enjoyment or possession of the property if the fair market value of the property interest cannot otherwise be ascertained under 45 IAC 4.1-5 as of the appraisal date prescribed by 45 IAC 4.1-5-2. (*Department of State Revenue; 45 IAC 4.1-2-1; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2024*)

Crittenberger v. State Savings & Trust Co. 189 Ind. 411, 127 N. E. 552 (1920).

45 IAC 4.1-2-2 Will contest

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-2-1; IC 29-1-7; IC 29-1-9-1

Sec. 2. (a) A will contest may be settled by agreement under IC 29-1-9-1. However, if a will is admitted to probate and never set aside, the inheritance tax shall be imposed on the transfers under the will and not on the transfers by agreement.

(b) If a will is held to be invalid by a court under IC 29-1-7, the inheritance tax shall be imposed pursuant to a prior valid will or the laws of intestate succession. (*Department of State Revenue; 45 IAC 4.1-2-2; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2024*)

Indiana Department of State Revenue v. Kitchin, 119 Ind. App. 422, 86 N.E. 2d 96 (1949).

Indiana Dept. of Revenue, Inheritance Tax Division v. Binhack's Estate, 426 N.E.2d 714 (Ind. Ct. App. 1981).

In re Estate of Dunnick, 855 N.E.2d 1087 (Ind. Tax Ct. 2006).

Indiana Dept. of Revenue v. Estate of Pickerill, 855 N. E.2d 1082 (Ind. Tax Ct. 2006).

Estate of McNicholas v.State, 580 N.E.2d 978 (Ind. Ct. App. 1991).

45 IAC 4.1-2-3 Disclaimer (See Current Statute I.C. 32-17.5-3-1)

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-2-1; IC 32-17-7

Sec. 3. (a) Except as provided in subsection (b), the imposition of the inheritance tax is not affected by a change of title, a transfer, or an agreement among those who succeed to the decedent's property.

(b) A transferee may disclaim any interest in a decedent's property under IC 32-3-2

[Ed. Note: IC 32-3 was repealed by P.L.2-2002, SECTION 128, effective July 1, 2002. See IC 32-17.5-3-1 for current provision.]

(c) If a disclaimer is effective under IC 32-3-2, and the decedent has not provided for another devolution, then the disclaimed interest shall devolve as follows:

[Ed. Note: IC 32-3 was repealed by P.L.2-2002, SECTION 128, effective July 1, 2002. See IC 32-17.5-3-1 for current provision.]

(1) Except as provided in subdivision (2), as if the disclaimant had predeceased the decedent.

(2) If the disclaimant is a fiduciary, as if the disclaimed interest had never been created in the disclaimant.

(*Department of State Revenue; 45 IAC 4.1-2-3; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2024*)

Indiana Dept. of Revenue v. Estate of Parker, 485 N.E.2d 1387 (Ind. Ct. App. 1985).

Matter of Wisely's Estate, 402 N.E.2d 14 (Ind Ct. App 1980), rehearing denied April 30, 1980.

Matter of Newell's Estate, 408 N.E.2d 552 (Ind. Ct. App. 1980).

45 IAC 4.1-2-4 Situs of tangible personal property

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-2-2; IC 6-4.1-2-3

Sec. 4. (a) The inheritance tax applies to a property interest transfer of tangible personal property which has an actual situs in Indiana.

(b) The inheritance tax applies to tangible personal property even though it is temporarily located outside of Indiana. However, tangible personal property is not subject to the inheritance tax if it is permanently located outside of Indiana. (*Department of State Revenue; 45 IAC 4.1-2-4; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2024*)

Indiana Dept. of State Revenue, Inheritance Tax Div. v. Estate of Puschel, 582 N.E.2d 923 (Ind. Tax Ct. 1991).

Blood v. Poindexter, 534 N.E.2d 768 (Ind. Tax Ct. 1989).

45 IAC 4.1-2-5 Transfer by will or otherwise

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-2-4

Sec. 5. (a) The inheritance tax applies to a devise in payment of a claim, even though such claim would have been allowable as a deduction in the estate of the decedent.

(b) A transfer by will, or otherwise, of a property interest to two (2) or more specifically named transferees shall be divided into equal shares for each transferee, if not specifically provided otherwise, and taxed according to each transferee's relationship to the decedent. (*Department of State Revenue; 45 IAC 4.1-2-5; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2024*)

In re Arp's Estate, 83 Ind. App. 371, 147 N.E. 297 (1925).

45 IAC 4.1-2-6 Transfer in contemplation of death

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-2-4

Sec. 6. (a) The inheritance tax applies to a transfer of a property interest made in contemplation of the transferor's death.

(b) A transfer of a property interest is made in contemplation of death if it is made primarily due to any of the following reasons:

(1) To avoid death taxes.

(2) As a substitute for a testamentary disposition.

(3) For any other motive associated with death.

(c) As used in this section, "in contemplation of death" does not mean the general expectation of death which a person entertains. However, its meaning is not restricted to an apprehension that death is imminent.

(d) A transfer of an interest in property within one (1) year of the date of the transferor's death is presumed to be made in contemplation of death. The presumption is rebuttable, but the burden of proof is on the transferee to prove that the transfer was not made in contemplation of death.

(e) To determine whether a transfer was made in contemplation of death, all relevant circumstances, including the following, will be taken into consideration:

(1) The mental and physical condition of the transferor, including the cause of death and whether that condition was known to the transferor on the date of the transfer.

(2) The age of the transferor.

(3) The length of time between the transfer and death.

- (4) The existence of a pattern of making gifts.
 - (5) The portion of the transferor's estate transferred.
 - (6) Whether the property interest was transferred to a transferee who would have otherwise received the property on the transferor's death.
- (f) Unless otherwise exempt, a transfer in contemplation of death of an interest in realty which is held by the entirety is taxable in the estate of the first grantor to die, except for the portion of the original consideration given for the realty by the surviving grantor. (*Department of State Revenue; 45 IAC 4.1-2-6; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2024*)

Indiana Dept. of State Revenue, Inheritance Tax Div. v. Estate of Baldwin, 652 N.E.2d 124 (Ind. Tax Ct. 1995).

Indiana Dept. of State Revenue, Inheritance Tax Div. v. Cohen's Estate, 436 N.E.2d 832 (Ind Ct. App. 1982).

Indiana Dept. of Revenue, Inheritance Tax Division v. Flanders' Estate, 408 N.E.2d 172 (Ind. Ct. App. 1980).

State v. Bower, 175 Ind.App. 540, 372 N.E.2d 1227 (1978).

Conway's Estate v. State, 72 Ind. App. 303, 120 N.E. 717, (1918).

45 IAC 4.1-2-7 Transfer to take effect in possession or enjoyment at or after death

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-2-4

Sec. 7. (a) The inheritance tax applies to a transfer of an interest in property intended to take effect in possession or enjoyment at or after the transferor's death.

(b) The following are illustrations of transfers of a property interest intended to take effect in possession or enjoyment at or after the transferor's death:

(1) A gift or grant of an interest in property whereby the transferor reserves income from, an interest in, or possession of such property for a period which does not end before the transferor's death.

(2) A transferor purchases realty from the owner and requests a deed to the transferor for life with the remainder to the transferee. This is the same as a transfer from the transferor to the transferee with a retained life estate.

(3) A transfer to a trustee who is required to accumulate the income of the trust during the life of the transferor and transfer the trust corpus to a named beneficiary upon the death of the transferor.

(c) Whenever a transfer described in subsection (a) is an interest in realty held by the entirety subject to joint and successive life estates in the grantors, the transfer is taxable in the estate of the last grantor to die. (*Department of State Revenue; 45 IAC 4.1-2-7; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2025*)

Indiana Dept. of State Revenue, Inheritance Tax Division v. Mertz, 119 Ind.App. 601, 88 N.E.2d 917 (1949).

Indiana Dept. of State Revenue, Inheritance Tax Div. v. Estate of Parker, 924 N.E.2d 230 (Ind. Tax Ct. 2010). Indiana Dept. of State Revenue, Inheritance Tax Div. v. Smith, 460 N.E.2d 980 (Ind. Ct. App. 1984), aff'd in part, 473 N.E.2d 611 (Ind. 1985).

State, Dept. of State Revenue, Inheritance Tax Division v. Union Bank & Trust Co., 177 Ind.App. 632, 380 N.E.2d 1279 (1978).

Conway's Estate v. State, 72 Ind. App. 303, 120 N.E. 717, (1918).
In re Grotrian's Estate, 405 N.E.2d 69 (Ind. Ct. App. 1980), transfer denied March 24, 1981.

45 IAC 4.1-2-8 Qualified terminable interest property

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-2-4; IC 6-4.1-3-7

Sec. 8. (a) An interest in property held at the death of a surviving spouse, which was the subject of a previous exemption under IC 6-4.1-3-7, is reportable and taxable in the surviving spouse's estate. The property interest is valued at its full fair market value on the appraisal date established under 45 IAC 4.1-5-2.

(b) A transfer by gift of an interest in property, which was the subject of a previous exemption under IC 6-4.1-3-7, is reportable and taxable if such transfer was made in contemplation of death. The transfer of the property interest is subject to section 6 of this rule. (*Department of State Revenue; 45 IAC 4.1-2-8; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2025*)

Estate of Hagerman v. Indiana Dept. of State Revenue, 771 N.E.2d 120 (Ind. Tax Ct. 2002).
Department of State Revenue, Inheritance Tax Div. v. Phelps, 697 N.E.2d 506 (Ind. Tax Ct. 1998).

Estate of Hibbs v. Indiana Dept. of State Revenue, Inheritance Tax Div., 636 N.E.2d 204 (Ind. Tax Ct. 1994).

In re Estate of Young, 851 N.E.2d 393 (Ind. Tax Ct. 2006).

45 IAC 4.1-2-9 Joint ownership with rights of survivorship

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-2-5; IC 29-2-14-3

Sec. 9. (a) The inheritance tax applies to the exercise of the rights of survivorship upon the death of one (1) joint tenant of property held or deposited in joint names with rights of survivorship. Except to the extent that contribution can be shown by the surviving joint owner, the tax is imposed on the total value of the property.

(b) If two (2) or more joint tenants die simultaneously, the jointly held property shall be distributed under IC 29-2-14-3, for inheritance tax purposes, unless a different distribution is shown to be appropriate.

(c) If it is shown that a joint bank account was established for the convenience of the decedent and that the rights of survivorship were not intended, the joint bank account shall pass pursuant to will or the laws of intestate succession.

(d) Jointly owned bonds issued by a federal, state, or local governmental unit are subject to the inheritance tax unless exempted from the inheritance tax by statute. (*Department of State Revenue; 45 IAC 4.1-2-9; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2025*)

State v. George, 273 Ind. 26, 401 N.E.2d 680 (1980).

State v. Weinstein's Estate, App.1967, 228 N.E.2d 23, 141 Ind.App. 395, rehearing denied 229 N.E.2d 741, 141 Ind.App. 399.

Indiana Dept. of State Revenue, Inheritance Tax Div. v. Smith, 460 N.E.2d 980 (Ind. Ct. App. 1984), aff'd in part, 473 N.E.2d 611 (Ind. 1985).

Department of State Revenue, Inheritance Tax Div. v. Estate of Hardy, 703 N.E.2d 705 (Ind. Tax Ct. 1998).

45 IAC 4.1-2-10 Transfer by deed of trust

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-2

Sec. 10. (a) The inheritance tax applies to a transfer of property under a deed of trust in which the transferor reserves:

(1) any interest; or

(2) any powers of revocation, alteration, or amendment which if exercised would cause the property to revert to the transferor.

(b) The inheritance tax does not apply to a transfer of property under a deed of trust under the following circumstances:

(1) The property is realty located outside of Indiana.

(2) The property is realty located within Indiana that was transferred to an irrevocable trust during the decedent's lifetime but not transferred:

(A) in contemplation of death; or

(B) with a retained interest in the trust held by the decedent.

(c) As used in subsection (b), "retained interest" means the possession of some right in or to the trust property and includes the following:

(1) The right to receive income from the trust.

(2) The right to control or use the trust property.

(3) The right to direct payment of the trust income.

(4) The right to change the trust beneficiaries.

(5) The possibility of reverter of the trust property, even when very remote.

(d) As used in subsection (b), "irrevocable trust" means that the transferor has not reserved a power to revoke or modify the trust as provided under IC 30-4-3-1 [*IC 30-4-3-1 was repealed by P.L.238-2005, SECTION 63, effective July 1, 2005.*] or IC 30-4-3-28 [*IC 30-4-3-28 was repealed by P.L.238-2005, SECTION 63, effective July 1, 2005.*].

(e) A transfer by trust is taxable to the beneficiaries of the trust and not to the trustee. The tax rate is determined by the relationship of the beneficiary to the transferor. (*Department of State Revenue; 45 IAC 4.1-2-10; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2025*)

Rule 3. Exemptions and Deductions

45 IAC 4.1-3-1 Charitable exemptions

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-3-1

Sec. 1. (a) If a transfer of property qualifies as a deduction from the value of the federal gross estate under Section 2055(a) of the Internal Revenue Code, it will be exempt from the inheritance tax.

(b) A transferee claiming the exemption provided by subsection (a) has the burden of proof, and any ambiguity will be strictly construed against the transferee.

(c) The fact that the benefits flowing from an organization are limited to a particular group or a limited number of people does not void the exemption provided by subsection (a). For example, a transfer to a masonic lodge for the purpose of constructing a temple for the lodge is exempt from the inheritance tax. (*Department of State Revenue; 45 IAC 4.1-3-1; filed Apr 28, 1994, 9:30 a.m.:17 IR 2026*)

Crittenberger v. State Savings & Trust Co. 189 Ind. 411, 127 N. E. 552 (1920).
Indiana Dept. of Revenue v. Estate of Wallace, 408 N.E.2d 150 (Ind. Ct. App. 1980).

45 IAC 4.1-3-2 Cemetery association

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-3-1.5

Sec. 2. (a) Except as provided otherwise in this section, a transfer to a cemetery association is exempt from the inheritance tax if the property transferred is used for cemetery purposes.

(b) As used in this section, "cemetery" means any land or structure in Indiana dedicated to and used, or intended to be used, for the interment of human remains.

(c) As used in this section, "cemetery purpose" means any and all things requisite or necessary for or incident or convenient to the establishment, maintenance, management, operation, improvement, and conduct of a cemetery, the preparation for interment and the interment of the human dead, and the care, preservation, and embellishment of cemetery property.

(d) A transfer designated for a private purpose and not for public or general cemetery purposes is not exempt from the inheritance tax. For example, a transfer designated for the perpetual care of an individual plot is not exempt from the inheritance tax.

(e) A transfer designated for exempt and nonexempt purposes is subject to the inheritance tax unless the provisions creating the purposes are severable. (*Department of State Revenue; 45 IAC 4.1-3-2; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2026*)

Indiana Dept. of Revenue v. Estate of Wallace, 408 N.E.2d 150 (Ind. Ct. App. 1980).

45 IAC 4.1-3-3 Life insurance proceeds

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-3-6

Sec. 3. (a) Except as provided otherwise in this section, a transfer of proceeds from insurance on the life of a decedent payable either directly to or in trust for the use of any person is exempt from the inheritance tax.

(b) As used in this section, "proceeds" means the amount payable under a contract of insurance in one (1) sum and includes dividends and the cash surrender value payable under a whole life insurance policy.

(c) A transfer of proceeds from insurance on the life of a decedent payable to the decedent's estate or in any other manner that would subject the proceeds to distribution as a part of the decedent's estate and subject to claims against the decedent's estate is subject to the inheritance tax.

(d) As used in this section, "insurance on the life of a decedent" means a contract in which the risk insured against is the death of a particular person; upon which event, if it occurs under the terms of the contract, the insurer agrees to pay a stipulated sum to the beneficiary of the contract.

(e) Proceeds payable from a contract described in subsection (c) are not exempt from the inheritance tax if the risk factor for payment by the insurance company does not exist or has ceased to exist. The following contracts are examples in which the risk for the insurance company has terminated:

(1) An endowment policy that has matured.

(2) An annuity contract in which the company agrees to pay back the money deposited plus earnings less loading expenses.

(3) A combination annuity life insurance contract where the amount paid in or deposited is available to the insured during the insured's lifetime.

(f) The cash surrender value, on the decedent's date of death, of a policy owned by a decedent on the life of another is subject to the inheritance tax.

(g) Company-paid death benefits are treated in the same manner as any other transfers. For example, the payment of death benefits that are not life insurance proceeds are not exempt under subsection (a). However, the payment of life insurance proceeds through a retirement plan in which the plan trustee acts only as a conduit will not change the tax status of the insurance proceeds.

(h) The lump sum death benefits under the Railroad Retirement Act and the Social Security Act are not subject to the inheritance tax. (*Department of State Revenue; 45 IAC 4.1-3-3; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2026*)

In re Cassner's Estate, 163 Ind.App. 588, 325 N.E.2d 487 (1975).

State Dept. of Revenue, Inheritance Tax Division v. Estate of Powell, 165 Ind. App. 482, 333 N.E.2d 92 (1975).

In re Osland's Estate, 164 Ind.App. 282, 328 N.E.2d 448 (1975).

Ind. Dept. of State Revenue, Inheritance Tax Div. v. Estate of Biddle, 943 N.E.2d 932 (Ind. Tax Ct. 2011).

45 IAC 4.1-3-4 Annuity payments

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-3-6.5

Sec. 4. (a) Except as provided in subsection (b), the value of an annuity or other payment receivable by a beneficiary by reason of surviving the decedent, under any form of contract or agreement (other than an insurance policy on the life of the decedent) is subject to the inheritance tax if the contract or agreement provides that an annuity or other payment is payable to the decedent or that the decedent possesses the right to receive such annuity or payment, either alone or in conjunction with another for the decedent's life or for any period not ascertainable without reference to the decedent's death or for any period which does not in fact end before the decedent's death.

(b) The value of an annuity or other payment described in subsection (a) is exempt from the inheritance tax only to the extent that it is excluded from the decedent's federal gross estate under Section 2039 of the Internal Revenue Code. Therefore, the exemption does not apply to that part of the value of an annuity or other payment described in this section as is proportionate to that part of the purchase price of such contract or agreement contributed by the decedent. As used in this subsection, "contributed by the decedent" includes any contribution by the decedent's employer or former employer if made by reason of the decedent's employment.

(*Department of State Revenue; 45 IAC 4.1-3-4; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2027*)

Ind. Dept. of State Revenue, Inheritance Tax Div. v. Estate of Biddle, 943 N.E.2d 932 (Ind. Tax Ct. 2011).

45 IAC 4.1-3-5 Transfers to a surviving spouse

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-2-4; IC 6-4.1-3-7

Sec. 5. (a) A property interest which a decedent transfers to a surviving spouse is exempt from the inheritance tax. This exemption includes an interest which qualifies for the federal marital deduction under Section 2056(b)(5) or 2056(b)(6) of the Internal Revenue Code.

(b) The exemption provided by subsection (a) includes the total value of a property interest in which the surviving spouse has a qualifying income interest for life as defined in Section 2056(b)(7) of the Internal Revenue Code if the following conditions are met:

(1) An election is made to treat the transfer as qualified terminable interest property (QTIP).

(2) The election is made for all or a percentage of the qualified property and it specifically states which property is being included in the election.

(3) The election must be in writing, signed by a person authorized to make the election, and attached to the original Indiana inheritance tax return at the time it is filed.

(4) The election must be in form and content substantially as follows:

Pursuant to IC 6-4.1-3-7, an election is hereby made to treat the following property passing from the decedent in which the surviving spouse has a qualifying income interest for life as a property interest which a decedent transfers to the decedent's surviving spouse:

Qualified Property Percentage

It is understood that this QTIP election is irrevocable and cannot be reversed.

Signature _____

Title _____

(c) A QTIP election is irrevocable and cannot be made on an amended inheritance tax return.

Also, an election for federal estate tax purposes does not constitute an election for Indiana inheritance tax purposes.

(d) An inheritance tax return shall be filed when a QTIP election is made even though it would not otherwise have been required.

(e) The failure to comply with subsection (b) as to any property that would qualify under Section 2056(b)(7) of the Internal Revenue Code means that an irrevocable election has been made not to treat the transfer as a QTIP transfer.

(f) A transfer that is exempt from the inheritance tax in a decedent's estate due to a QTIP election is subject to 45 IAC 4.1-2-8.

(Department of State Revenue; 45 IAC 4.1-3-5; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2027)

Department of State Revenue, Inheritance Tax Div. v. Phelps, 697 N.E.2d 506 (Ind. Tax Ct. 1998).

In re Estate of Young, 851 N.E.2d 393 (Ind. Tax Ct. 2006).

Estate of Hagerman v. Indiana Dept. of State Revenue, 771 N.E.2d 120 (Ind. Tax Ct. 2002).

Estate of Hibbs v. Indiana Dept. of State Revenue, Inheritance Tax Div., 636 N.E.2d 204 (Ind. Tax Ct. 1994).

45 IAC 4.1-3-6 Personal exemptions (See Current Statutes)

Sec. 6. (Repealed by Department of State Revenue; filed Dec 5, 2012, 10:01 a.m.: 20130102-IR-045120429FRA)

45 IAC 4.1-3-7 Debt deductions

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-3-13; IC 29-1-14-1

Sec. 7. (a) A debt of a resident decedent is deductible for inheritance tax purposes if it is a lawful claim against the decedent's resident estate. As used in this subsection, "lawful claim against the decedent's resident estate" means a claim allowed or allowable under IC 29-1-14.

(b) A debt is deductible only to the extent that it is actually paid after the date of death. The following are examples of this limitation:

(1) An unliquidated claim that is compromised for a sum less than the full amount claimed is limited to the compromised amount.

(2) Medical expenses of the decedent's last illness that are partially or fully reimbursed under an insurance plan are not deductible to the extent reimbursed.

(3) If a claim for an unsecured note is not filed as required by IC 29-1-14-1 but the note is partially or totally renewed and not paid, it is not deductible.

(4) A joint obligation to the extent it is subject to contribution from a co-obligor is not deductible. This limitation applies even though the full amount is paid by the estate and regardless whether such contribution is pursued by the estate.

(c) The following are examples of debts that are not deductible even though paid by the estate:

(1) A debt relating to property which is not included in the decedent's taxable estate.

(2) A debt upon which the statute of limitations had run at the date of the decedent's death.

(3) A debt which is, or can be, paid by proceeds from a credit life insurance policy.

(d) A secured claim is deductible only to the extent of its security if it is not filed under IC 29-1-14-1. (*Department of State Revenue; 45 IAC 4.1-3-7; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2028*)

Matter of Estate of Saylor, 671 N.E.2d 905 (Ind. Ct. App. 1996).

Matter of Estate of Cook, 529 N.E.2d 853 (Ind. Ct. App. 1988).

In re Feusner's Estate, 411 N.E.2d 166 (Ind. Ct. App. 1980).

Indiana Dept. of State Revenue, Inheritance Tax Division v. Kitchin, 119 Ind.App. 422, 86 N.E.2d 96 (1949).

Indiana Dept. of State Revenue, Inheritance Tax Div. v. Estate of Brandewiede, 873 N.E.2d 209 (Ind. Tax Ct. 2007).

Matter of Estate of Pfeiffer, 452 N.E.2d 448 (Ind. Ct. App. 1983).

Indiana Department of State Revenue, Inheritance Tax Division v. Estate of Daugherty, 938 N.E.2d 315 (Ind. Tax Ct. 2010).

45 IAC 4.1-3-8 Tax deductions

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-3-13

Sec. 8. (a) A tax on the decedent's property which is located in Indiana or has a legal situs in Indiana is deductible if such property is subject to the inheritance tax and the tax is due and unpaid at the time of the decedent's death.

(b) The following are examples of taxes that are deductible or not deductible depending upon the circumstances:

- (1) Taxes on property passing to a surviving spouse are not deductible to the extent such property passes to the surviving spouse.
- (2) Taxes on property in which the decedent held a life estate as a devisee are not deductible.
- (3) Taxes imposed on a resident decedent's income to date of death are deductible if the taxes were unpaid at the time of the decedent's death.
- (4) Income taxes on income earned during the administration of a decedent's estate are not deductible. Also, such taxes are not deductible as an expense of administration.
- (5) Inheritance, estate, or transfer taxes, other than the federal estate tax, paid or payable to another jurisdiction on intangible personal property are deductible if such property is subject to the Indiana inheritance tax. Interest on late payment of these taxes is not deductible as a tax.
- (6) The federal estate tax is not deductible. Also, interest payments due on deferred federal estate taxes are not deductible as taxes.
- (7) The federal gift tax is not deductible unless the property on which it is determined is subject to the Indiana inheritance tax and such tax is a legal obligation of the decedent's and remains unpaid at the time of the decedent's death. (*Department of State Revenue; 45 IAC 4.1-3-8; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2028*)

Estate of Hagerman v. Indiana Dept. of State Revenue, 771 N.E.2d 120 (Ind. Tax Ct. 2002).

45 IAC 4.1-3-9 Mortgage deduction

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-3-13

Sec. 9. (a) Except as otherwise provided in this section, a mortgage or special assessment is deductible if it was, at the time of the decedent's death, a lien on Indiana real property owned by the decedent and subject to the inheritance tax.

(b) The deduction is limited to the extent of the decedent's ownership interest in the property. In other words, if the decedent's ownership interest in the property is fifty percent (50%), the deduction is limited to fifty percent (50%) of the mortgage.

(c) If the fair market value is less than the amount of the mortgage or special assessment, the deduction is limited to the fair market value of the property or to the extent of the decedent's interest in the fair market value of the property, whichever is less.

(d) A mortgage or special assessment is not deductible to the extent that it is, or can be, paid by proceeds from a credit life insurance policy. (*Department of State Revenue; 45 IAC 4.1-3-9; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2029*)

Indiana Dept. of Revenue, Inheritance Tax Division v. Security Bank & Trust Co., 181 Ind.App. 543, 393 N.E.2d 197 (Ind. Ct. App. 1979).

45 IAC 4.1-3-10 Funeral expenses deduction

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-3-13

Sec. 10. (a) Except as provided otherwise in this section, a resident decedent's funeral expenses are deductible in full.

(b) The amounts expended must be reasonable and paid after the date of the decedent's death. Amounts used to purchase the following items or similar items are not funeral expenses and therefore not deductible:

- (1) Flowers.
- (2) Lodging and meals for funeral guests.
- (3) Any expenses necessary for a person to attend the funeral.
- (c) An amount, not to exceed one thousand dollars (\$1,000), paid for a memorial for the decedent is deductible. An individual mausoleum is a memorial and thus subject to this limitation. However, a crypt is the same as a grave and therefore deductible at its full cost. (*Department of State Revenue; 45 IAC 4.1-3-10; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2029*)

45 IAC 4.1-3-11 Deduction for administrative expenses

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-3-13; IC 29-1-15

Sec. 11. (a) Reasonable expenses incurred in administering property subject to the inheritance tax may be deducted from the value of such property.

(b) As used in this section, "reasonable expenses" means expenditures that are actually and necessarily incurred to effect the settlement of the estate and the transfer of property of the estate to an individual transferee or to a trustee. The term does not include expenditures for the individual benefit of a transferee such as the expense of litigation by a transferee as an individual or by claimants against the estate. Except as provided in subsection (f), the term includes the expense of preparing the fiduciary income tax return.

(c) Expenses incurred in selling property are reasonable expenses only when the sale is authorized under IC 29-1-15.

(d) Expenses incurred in operating a business owned by the decedent are not reasonable expenses even though indirectly incurred to preserve the value of the business.

(e) Interest incurred because of the late payment of taxes is not a reasonable expense and therefore not deductible.

(f) Expenses that are deducted, or will be deducted, against the estate's fiduciary income are not reasonable expenses for purposes of subsection (a).

(g) Property given or paid, by way of compromise or otherwise, in a will contest or threatened will contest is not deductible as an expense of administration. (*Department of State Revenue; 45 IAC 4.1-3-11; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2029*)

Estate of Hagerman v. Indiana Dept. of State Revenue, 771 N.E.2d 120 (Ind. Tax Ct. 2002).

45 IAC 4.1-3-12 Deductions against nonprobate property not transferred by a trust agreement

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-3-14; IC 29-1-4-1

Sec. 12. (a) Except as otherwise provided in this section, the following items, and no others, may be deducted from the value of nonprobate property transferred by a resident decedent:

- (1) The decedent's debts as authorized under section 7 of this rule.
- (2) Inheritance, estate, or transfer taxes, other than the federal estate tax, paid or payable to another jurisdiction on intangible personal property subject to the Indiana inheritance tax.
- (3) The mortgage deduction as authorized under section 9 of this rule and all other valid liens against the property.
- (4) The funeral expenses deduction as authorized under section 10 of this rule.
- (5) The deduction for administrative expenses as authorized under section 11 of this rule.

- (6) The balance of any allowance provided under IC 29-1-4-1 not otherwise used as a deduction against a taxable transfer of the decedent's property.
- (b) The deductions provided under subsection (a)(1) through (a)(5) are limited to the amount actually expended by the transferee of the nonprobate property.
- (c) The limitations provided under this section do not apply to nonprobate property transferred under a trust agreement. (*Department of State Revenue; 45 IAC 4.1-3-12; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2029*)

Indiana Dept. of Revenue, Inheritance Tax Division v. Security Bank & Trust Co., 181 Ind.App. 543, 393 N.E.2d 197 (1979).

In re Estate of Arthur Smith, 460 N.E.2d 1263 (Ind. Ct. App. 1984).

45 IAC 4.1-3-13 Deductions allowable in estates of nonresidents

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-3-15

Sec. 13. The following items, and no others, are deductible from the value of a property interest transferred by a nonresident decedent:

- (1) The tax deductions as authorized under section 8 of this rule.
- (2) The deduction for administrative expenses as authorized under section 11 of this rule.
- (3) Valid liens against the property transferred.
- (4) Valid claims against the decedent's domiciliary estate which will not be paid by the domiciliary estate because it is exhausted. (*Department of State Revenue; 45 IAC 4.1-3-13; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2030*)

Rule 4. Returns

45 IAC 4.1-4-1 Inheritance tax return

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-1-2; IC 6-4.1-4; IC 6-4.1-5-1.5; IC 6-4.1-5-8; IC 6-4.1-12-1

Sec. 1. (a) Except as provided in subsection (b), an inheritance tax return is required to be filed within twelve (12) months after the date of the decedent's death in the following manner:

[Ed. Note: "Twelve months" was changed to "nine months" in the underlying statute, IC 6-4.1-4-1, by P.L.252-2001, SECTION 2, effective July 1, 2001.]

- (1) With the appropriate probate court if the decedent is a resident of Indiana.
- (2) With the department if the decedent is a nonresident of Indiana.
- (b) An inheritance tax return is not required to be filed under the following conditions:
 - (1) The total fair market value of the property interests transferred to each transferee is equal to or less than the transferee's personal exemption under 45 IAC 4.1-3-6.
 - (2) The probate court enters an order stating that no inheritance tax is due under IC 6-4.1-5-8.
 - (3) The entire fair market value of the decedent's estate is being transferred to a surviving spouse and a qualified terminable interest property election has not been made under 45 IAC 4.1-3-5.
- (c) A copy of the inheritance tax return for a resident decedent should be filed with the county assessor's office at the same time it is filed with the court. Otherwise, the court must refer a copy of the return to the county inheritance tax appraiser within ten (10) days after it is received.

(d) The fair market value of a property interest shall be determined on the appraisal date prescribed under IC 6-4.1-5-1.5. (*Department of State Revenue; 45 IAC 4.1-4-1; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2030; errata filed Jun 17, 1994, 4:30 p.m.: 17IR 2656*)

Estate of Neterer v. Ind. Dept. of Revenue, 956 N.E.2d 1214 (Ind. Tax Ct. 2011).

45 IAC 4.1-4-2 Extension of filing time

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-4-2

Sec. 2. (a) The appropriate probate court, or the department in the case of a nonresident decedent, may extend the period for filing the inheritance tax return if it finds that the return cannot be filed when due because of an unavoidable delay.

(b) As used in this section, "unavoidable delay" means the delay is due to an event which could not have been foreseen and prevented by using ordinary diligence and resulting without negligence. In other words, a cause growing out of conditions or circumstances that prevented a party or counsel from doing something that, except therefor, would have been done. The term does not include mistakes or errors of judgment growing out of misconstruction or understanding of the law, or the failure of a party or counsel through mistake to take advantage of a remedy which, if resorted to, would have prevented the cause of the delay.

(c) A subsequent extension may be granted if the person seeking the extension files a written motion which states the reason for the further delay in filing the return.

(d) An extension of time to file the inheritance tax return does not affect the due date for payment of the tax or the period during which a five percent (5%) discount may be taken for early payment of the tax. (*Department of State Revenue; 45 IAC 4.1-4-2; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2030*)

Sibbitt v. Indiana Dept. of Revenue, 563 N.E.2d 146 (Ind. Ct. App. 1990), rehearing denied January 17, 1991, transfer denied August 16, 1991.

45 IAC 4.1-4-3 Attachments to the inheritance tax return

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-4-1; IC 6-4.1-4-7

Sec. 3. (a) The following documentation shall be attached to the inheritance tax return:

(1) A copy of the decedent's last will and testament.

(2) A copy of any trust instrument under which a property interest is transferred due to the death of the decedent.

(3) A copy of any antenuptial or postnuptial agreement under which a property interest is controlled at the death of one (1) of the parties.

(4) A copy of any divorce decree controlling the ownership of property and which has an effect upon the transfer of that property in the decedent's estate.

(5) Form 712 of the Internal Revenue Service, or a similar type form, properly prepared by the insurance company for all proceeds paid due to the death of the decedent.

(6) A formal appraisal, by a licensed appraiser, setting forth the fair market value of all tangible property reported on the return. All such appraisals obtained shall be attached to the return.

(7) The deed for real estate held other than in the decedent's name alone, and the deed for real estate in which the decedent is the grantor.

(8) Statements of the net earnings or operating results and balance sheets for each of the five (5) full years immediately preceding the valuation date for the following property when included in the taxable estate:

(A) Shares of a corporation which are not publicly traded.

(B) An interest in a partnership.

(C) An interest in an unincorporated business.

(b) All other documentation, such as a consent to transfer, a buy-sell agreement, or a claim verification, necessary to clarify a given situation shall be submitted to the department when requested. (*Department of State Revenue; 45 IAC 4.1-4-3; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2031*)

Indiana Dept. of State Revenue v. Estate of Ogle, 923 N.E.2d 493 (Ind. Tax Ct. 2010).

Indiana Dept. of State Revenue, Inheritance Tax Div. v. Estate of Parker, 924 N.E.2d 230 (Ind. Tax Ct. 2010).

45 IAC 4.1-4-4 Federal estate tax return

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-4-8

Sec. 4. (a) A copy of the federal estate tax return, any amendments thereto, and all its attachments shall be filed with the department at the same time that the return or amendment is filed with the Internal Revenue Service.

(b) A copy of a final determination of federal estate tax, including all documentation necessary to determine how the tax was calculated, shall be filed with the department within thirty (30) days after it is received.

(c) As used in this section, "final determination of federal estate tax" means any notice of a redetermination of the tax due issued by the Internal Revenue Service or a federal court, whether or not agreed to by the estate. The term includes a redetermination of the tax as reported on the original federal estate tax return, as reported later on an amended return, or as previously redetermined by the Internal Revenue Service or a federal court.

(d) A final determination of federal estate tax that is the result of a court decision or compromise of the tax due shall be presumed to consist of property subject to the inheritance tax. All documentation leading up to either a court decision or a compromise is considered a part of the final determination and required to be filed with the department under subsection (b).

(*Department of State Revenue; 45 IAC 4.1-4-4; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2031*)

Matter of Adamson's Estate, 403 N.E.2d 355 (Ind. Ct. App. 1980).

Rule 5. Valuation of Property Interests

45 IAC 4.1-5-1 "Fair market value" defined

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-5

Sec. 1. (a) Except as otherwise provided in this rule, "fair market value" means the price at which a willing buyer and a willing seller would arrive, after negotiation for a sale, where neither is acting under compulsion and both have a reasonable knowledge of all the facts affecting value.

- (b) The term does not include a price established by a sale where the parties exchanging the property are not dealing at arm's length.
- (c) Except as provided in subsections (d) and (e), the fair market value of a property interest for Indiana inheritance tax purposes is presumed to be the same as the value finally determined for federal estate tax purposes. However, the presumption is rebuttable.
- (d) A property interest value determined under Section 2032A of the Internal Revenue Code shall not be used for Indiana inheritance tax purposes.
- (e) Each future, contingent, defeasible, or life interest in property and each annuity shall be appraised by using the rules, methods, standards of mortality, and actuarial tables used by the Internal Revenue Service on October 1, 1988, for federal estate tax purposes. (*Department of State Revenue; 45 IAC 4.1-5-1; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2031*)

Estate of Neterer v. Ind. Dept. of Revenue, 956 N.E.2d 1214 (Ind. Tax Ct. 2011).

45 IAC 4.1-5-2 Appraisal date

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-5-1.5; IC 6-4.1-6-1

Sec. 2. (a) Except as provided in subsection (b), the appraisal date for determining the fair market value of each property interest transferred by a decedent is the date used to value the property interest for federal estate tax purposes.

(b) If a federal estate tax return is not filed, the appraisal date is the date of the decedent's death. (*Department of State Revenue; 45 IAC 4.1-5-2; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2032*)

45 IAC 4.1-5-3 Actively traded stocks or bonds

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-5

Sec. 3. (a) Except as otherwise provided in this section, the fair market value of actively traded stocks or bonds shall be determined by using one (1) of the following methods:

(1) By calculating the mean between the highest and lowest quoted selling prices on the appraisal date.

(2) If there were not any sales on the appraisal date, by calculating a weighted average of the means between the highest and lowest selling prices on the nearest date before and the nearest date after the appraisal date. These sales must be within a reasonable period before and after the appraisal date. The average shall be weighted inversely by the respective number of trading days between the selling date and the appraisal date.

(3) If there were not any sales within a reasonable period before and after the appraisal date, by calculating the mean between the bona fide bid and asked prices on the appraisal date.

(4) If there were not any bona fide bid and asked prices on the appraisal date, by calculating a weighted average of the means between the bona fide bid and asked prices on the nearest trading date before and the nearest trading date after the appraisal date, if both such nearest trading dates are within a reasonable period. The average shall be weighted in the same manner as in subdivision (2).

The following is an example of the calculation necessary under subdivisions (2) and (4). Assume that the sales of stock nearest the appraisal date occurred two (2) trading days before with a mean sale price of twenty dollars (\$20) and three (3) trading days after with a mean sale price of

twenty-five dollars (\$25). The fair market value per share of stock would be twenty-two dollars (\$22) and would be calculated as follows:

$$\frac{20 \times 3 + 25 \times 2}{5} = \frac{60 + 50}{5} = \frac{110}{5} = 22$$

(b) As used in this section, "reasonable period" means six (6) months or less.

(c) The fair market value of a share of an open-end investment company, commonly known as a mutual fund, shall be the bid price at which the company is required to redeem an outstanding share.

(d) The fair market value of a United States treasury bond, commonly known as a flower bond, or any similar type bond, shall be valued at the redemption price accepted by the Internal Revenue Service in payment of the federal estate tax. (*Department of State Revenue; 45 IAC 4.1-5-3; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2032*)

45 IAC 4.1-5-4 Closely held corporations, partnership interests, and unincorporated businesses

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-5

Sec. 4. (a) Unless there is a sale in part or in total during the administration of the estate, the fair market value of a closely held corporation, a partnership interest, or an unincorporated business shall be determined by calculating the operational worth of the business.

(b) The preferred method for determining the operational worth of a business is the capitalization of earnings method. Therefore, this method shall be used where possible. The calculation is accomplished by dividing the average earnings yield for the type of business being valued into the actual earnings of the specific business. For example, if the actual earnings of the business in the last full taxable year before the decedent's death is two dollars (\$2) per share and the average earnings yield for this type of business is determined to be eight percent (8%), the value of each share would be twenty-five dollars (\$25), calculated by dividing the earnings per share by the average earnings yield ($2/.08=25$). The most reliable source for determining the average earnings yield of the price earnings ratio is comparable businesses for which these figures can be established.

(c) If it is not reasonable to use the capitalization of earnings method, then any other method that is reasonable may be used to establish the operational worth of the business. The department will look at the following factors in attempting to establish the operational worth of a business:

(1) The nature of the business.

(2) The economic outlook and condition of the industry.

(3) The earning capacity of the business.

(4) The fair market value of the assets of the business, including good will.

(d) Proceeds from an insurance policy on the life of the decedent payable to a business described in subsection (a) shall be included as an asset of the business for purposes of establishing the operational worth of that business. (*Department of State Revenue; 45 IAC 4.1-5-4; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2032*)

45 IAC 4.1-5-5 Interest and dividends

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-5

Sec. 5. (a) The fair market value of an interest bearing instrument or account such as a savings account, certificate of deposit, savings bond, or contract of sale is the face or principal amount plus accrued and unpaid interest from the date interest was last credited or paid to the appraisal date.

(b) The fair market value of a share of stock includes a declared but unpaid dividend if the date of record occurs before the appraisal date. (*Department of State Revenue; 45 IAC 4.1-5-5; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2033*)

45 IAC 4.1-5-6 Mineral interests

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-5

Sec. 6. (a) Except as otherwise provided in subsection (c), the fair market value of a royalty interest or an overriding royalty interest shall be the sum of the total royalty payments received for the three (3) full years prior to the appraisal date.

(b) Except as otherwise provided in subsection (c), the fair market value of a working interest shall be the sum of the net income plus depreciation and depletion allowances for the three (3) full years prior to the appraisal date.

(c) The valuations determined under subsections (a) and (b) may be adjusted if substantial fluctuations in the market price occurred during the three (3) full years prior to the appraisal date.

(d) The fair market value of a mineral interest in real estate shall be determined by a formal appraisal prepared by an expert in the area such as a geologist. (*Department of State Revenue; 45 IAC 4.1-5-6; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2033*)

45 IAC 4.1-5-7 Buy and sell agreements

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-5

Sec. 7. (a) An inter vivos buy and sell agreement fixing the price of a property interest is not conclusive for inheritance tax purposes regardless of its effect upon the decedent or the decedent's estate.

(b) If a buy and sell agreement is not a bona fide transaction to sell the property interest for adequate and full consideration, the property shall be valued at its fair market value and no effect will be given to the agreement for purposes of valuation. (*Department of State Revenue; 45 IAC 4.1-5-7; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2033*)

45 IAC 4.1-5-8 Obligations owed a decedent

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-5

Sec. 8. (a) Except as otherwise provided in subsection (b), the fair market value of a note, an account receivable, an installment obligation, or any other obligation owed a decedent shall be the balance due on the appraisal date.

(b) The value established under subsection (a) may be reduced if valid and convincing evidence is submitted to support any of the following allegations:

(1) The debtor's lack of ability to pay.

(2) The possible uncollectibility of the debt.

(3) Any other factor that would cause a decrease in value.

(*Department of State Revenue; 45 IAC 4.1-5-8; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2033*)

Indiana Dept. of Revenue v. Estate of Cohen, 436 N.E.2d 832 (Ind. Ct. App. 1982).

45 IAC 4.1-5-9 Commissions, copyrights, patents, or royalties

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-5

Sec. 9. The fair market value of commissions, copyrights, patents, royalties, and similar intangible assets shall be determined by calculating the present value of potential future earnings. (*Department of State Revenue; 45 IAC 4.1-5-9; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2033*)

45 IAC 4.1-5-10 Annuities, life estates, or remainders

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-5; IC 6-4.1-6

Sec. 10. (a) The fair market value of an annuity and a future, contingent, defeasible, or life interest in a property shall be determined by using the rules, methods, standards of mortality, and actuarial tables used by the Internal Revenue Service on October 1, 1988, for federal estate tax purposes.

(b) The fair market value of a property interest shall not be affected because it may be divested by an act or omission of the transferee. Under appropriate circumstances, the death of a transferee shall be considered an act causing divestiture. An example would be a vested remainder interest subject to being divested such as where the principal of a trust is payable to a beneficiary upon reaching a certain age unless the beneficiary dies prior to attaining such age, in which case the principal is payable to a different beneficiary. (*Department of State Revenue; 45 IAC 4.1-5-10; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2033*)

Indiana Dept. of State Revenue, Inheritance Tax Division v. Puett's Estate, 435 N.E.2d 298 (Ind. Ct. App. 1982).

Matter of Bannon's Estate, 171 Ind.App. 610, 358 N.E.2d 215 (1976).

Indiana Dept. of State Revenue, Inheritance Tax Div. v. Estate of Parker, 924 N.E.2d 230 (Ind. Tax Ct. 2010).

Matter of Newell's Estate, 408 N.E.2d 552 (Ind. Ct. App. 1980).

Indiana Dept. of State Revenue, Inheritance Tax Div. v. Estate of Boehle, 932 N.E.2d 260 (Ind. Tax Ct. 2010).

Matter of Waltz' Estate, 408 N.E.2d 558 (Ind. Ct. App. 1980).

45 IAC 4.1-5-11 Appraisal of a resident decedent's property

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-5; IC 6-4.1-12-2

Sec. 11. (a) The county assessor of each county shall serve as the county inheritance tax appraiser.

(b) In place of the county assessor, the appropriate probate court shall appoint a competent and qualified resident of the county to act as the county inheritance tax appraiser if the county assessor is:

- (1) beneficially interested as an heir of the decedent's estate;
- (2) the personal representative of the decedent's estate; or

(3) related to the decedent or a beneficiary of the decedent's estate within the third degree of consanguinity or affinity.

(c) A person who is appointed to act as the county inheritance tax appraiser under subsection (b) shall be paid a fee set by the court and approved by the department. (*Department of State Revenue; 45 IAC 4.1-5-11; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2034*)

45 IAC 4.1-5-12 Appraisal of a nonresident decedent's property

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-9-12

Sec. 12. (a) The department may petition the Marion Superior Court, Probate Division for appointment of a resident or special administrator to appraise a nonresident decedent's property.

(b) If the department files a petition under subsection (a), it must show:

(1) that the property interest transferred by the decedent is a taxable transfer;

(2) that the property interest has not been appraised in the manner required by this rule or IC 6-4.1; and

(3) that the property involved has an actual situs in Indiana.

(c) A resident or special administrator appointed by the court under this section has the same powers and duties as a general administrator. (*Department of State Revenue; 45 IAC 4.1-5-12; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2034*)

Rule 6. Review of Inheritance Tax Determination

45 IAC 4.1-6-1 Time limitations

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-7

[Ed. Note: As noted in the annotation, the underlying statute, IC 6-4.1-7-5, was invalidated by the 1988 opinion in Blood v. Poindexter. All appeals of non-resident inheritance tax determinations by the Department of Revenue are appealed directly to the Indiana Tax Court.]

Sec. 1. (a) A redetermination of inheritance tax with respect to a resident decedent's estate may be obtained under the following circumstances:

(1) By filing a petition for rehearing within one hundred twenty (120) days after the probate court enters its original order.

(2) By filing a petition for reappraisal of a property interest within one (1) year after the probate court enters its original order.

(3) By filing a petition for reappraisal of a property interest within two (2) years after the probate court enters its original order if the original appraisal of a property interest was fraudulently or erroneously made.

(4) By filing a petition for redetermination of tax within sixty (60) days after a copy of the final determination of federal estate tax is filed with the department.

(b) A redetermination of inheritance tax with respect to a nonresident decedent's estate may be obtained under the following circumstances:

(1) By filing a complaint against the department, within ninety (90) days after the department mails its notice of the inheritance tax due, with:

(A) the probate court of the Indiana county in which administration of the decedent's estate is pending; or

(B) the probate court of any county in which any of the decedent's property was located at the time of death, if no

administration of the decedent's estate is pending in Indiana.

(2) By filing a petition for redetermination of tax, with the probate court indicated in subdivision (1), within sixty (60) days after a copy of the final determination of federal estate tax is filed with the department.

(Department of State Revenue; 45 IAC 4.1-6-1; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2034)

In re Estate of Pearl Wilson v. Indiana Dept. of State Revenue, 822 N.E.2d 292 (Ind. Tax Ct. 2005).

Matter of Waltz' Estate, 408 N.E.2d 558 (Ind. Ct. App. 1980).

Indiana Dept. of State Revenue, Inheritance Tax Division v. Bandelier, 122 Ind.App. 200, 104 N.E.2d 133 (1952).

Indiana Dept. of State Revenue, Inheritance Tax Div. v. Estate of Broyles, 457 N.E.2d 250 (Ind. Tax Ct. 1983).

In re Estate of Dunnick, 855 N.E.2d 1087 (Ind. Tax Ct. 2006).

Sibbitt v. Indiana Dept. of Revenue, 563 N.E.2d 146 (Ind. Ct. App. 1990), rehearing denied January 17, 1991, transfer denied August 16, 1991.

Indiana Dept. of Revenue, Inheritance Tax Division v. Binhack's Estate, 426 N.E.2d 714 (Ind. Ct. App. 1981).

Matter of Compton's Estate, 406 N.E.2d 365 (Ind. Ct. App. 1980).

In re Hogg's Estate, 150 Ind.App. 650, 276 N.E.2d 898 (1971).

Indiana Department of State Revenue, Inheritance Tax Division v. Estate of Daugherty, 938 N.E.2d 315 (Ind. Tax Ct. 2010).

In re Coffman's Estate, 181 Ind.App. 348, 391 N.E.2d 861 (1979).

Indiana Dept. of Revenue Inheritance Tax Division v. Callaway's Estate, 232 Ind. 1, 110 N.E.2d 903 (1953).

Estate of Neterer v. Ind. Dept. of Revenue, 956 N.E.2d 1214 (Ind. Tax Ct. 2011).

45 IAC 4.1-6-2 Appeal to probate court

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-7

[Ed. Note: As noted in the annotation, the underlying statute, IC 6-4.1-7-5, was invalidated by the 1988 opinion in Blood v. Poindexter. All appeals of non-resident inheritance tax determinations by the Department of Revenue are appealed directly to the Indiana Tax Court.]

Sec. 2. An appeal to a probate court to redetermine the inheritance tax due may be made for the following matters:

(1) All issues on a petition for rehearing filed under IC 6-4.1-7-1 or on a complaint filed under IC 6-4.1-7-5.

(2) A reappraisal of a property interest on a petition for reappraisal filed under IC 6-4.1-7-2.

(3) Modifications based on:

(A) a change in the fair market value of the assets of the decedent's estate; or

(B) a change in deductions from the assets of the decedent's estate; on a petition for redetermination filed under IC 6-4.1-7-6.

(Department of State Revenue; 45 IAC 4.1-6-2; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2799; errata, 18 IR 103)

Estate of Neterer v. Ind. Dept. of Revenue, 956 N.E.2d 1214 (Ind. Tax Ct. 2011).

Rule 7. Inheritance Tax Lien

45 IAC 4.1-7-1 Attachment of lien

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-6-6; IC 6-4.1-8-1; IC 29-1-15

Sec. 1. (a) The inheritance tax imposed as a result of a decedent's death is a lien on all property being transferred. The lien is automatic, and the department does not have to take any action to perfect the lien.

(b) Except as provided otherwise in IC 6-4.1-6-6(b), the inheritance tax accrues and the lien attaches at the time of the decedent's death.

(c) If property is sold, mortgaged, leased, or exchanged during the administration of the estate, under IC 29-1-15, the lien attaches to:

- (1) the proceeds from the sale;
- (2) the proceeds from the mortgage;
- (3) the proceeds from the lease; or
- (4) the property received in exchange.

(Department of State Revenue; 45 IAC 4.1-7-1; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2034)

Indiana Dept. of State Revenue, Inheritance Tax Division v. Mertz, 119 Ind.App. 601, 88 N.E.2d 917 (1949).

45 IAC 4.1-7-2 Termination of lien

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-8-1; IC 29-1-15

Sec. 2. (a) The inheritance tax lien shall terminate upon the happening of any of the following events:

- (1) The inheritance tax is paid.
- (2) Five (5) years pass after the date of the decedent's death.

[Ed. Note: "Five years" was changed to "ten years" in the underlying statute, IC 6-4.1-8-1, by PL 182-2009, SEC. 231.]

(3) Property is sold, mortgaged, leased, or exchanged under IC 29-1-15 and the lien against the property is released under IC 29-1-15-20.

(b) Although the inheritance tax lien terminates under subsection (a)(3) as to the property sold, mortgaged, leased, or

exchanged, it does not terminate in total but attaches to:

- (1) the proceeds from the sale;
- (2) the proceeds from the mortgage;

- (3) the proceeds from the lease; or
- (4) the property received in exchange.

However, the lien against the substitute property will terminate in total upon the happening of the events stated in subsection (a)(1) and (a)(2). (*Department of State Revenue; 45 IAC 4.1-7-2; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2035; errata filed Jun 17, 1994, 4:30 p.m.: 17 IR 2656*)

Estate of McNicholas v. State, 580 N.E.2d 978 (Ind. Ct. App. 1991), transfer denied April 16, 1992.

State, Indiana Dept. of State Revenue, Inheritance Tax Division v. Lees, 418 N.E.2d 226 (1980).

In re Batt's Estate, 220 Ind. 193, 41 N.E.2d 365 (1942).

In re Estate of Dukes, 453 N.E.2d 1179 (Ind. Ct. App. 1983).

Matter of Estate of Saylors, App.1996, 671 N.E.2d 905 (Ind. Ct. App. 1996).

Nation v. Green, 188 Ind. 697, 123 N.E. 163 (1919).

Indiana Dept. of State Revenue, Inheritance Tax Division v. Puett's Estate, 435 N.E.2d 298 (Ind. Ct. App. 1982).

45 IAC 4.1-7-3 Liability for inheritance tax

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-8-1

Sec. 3. (a) The following persons are personally liable for the inheritance tax imposed as a result of a decedent's death:

(1) A transferee of the decedent's property.

(2) A personal representative of the decedent's estate.

(3) A trustee who has possession of or control over any of the decedent's property.

(b) The termination of the inheritance tax lien under section 2 of this rule does not have any effect on the personal liability established by subsection (a). In other words, the discharge of the lien is not an impediment to either the determination of the tax due or the collection of the tax due. (*Department of State Revenue; 45 IAC 4.1-7-3; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2035*)

Nation v. Green, 188 Ind. 697, 123 N.E. 163 (1919).

State, Indiana Dept. of State Revenue, Inheritance Tax Division v. Lees, 418 N.E.2d 226 (1980).

Matter of Estate of Saylors, 671 N.E.2d 905 (Ind. Ct. App. 1996).

Indiana Dept. of State Revenue, Inheritance Tax Div. v. Cohen's Estate, 436 N.E.2d 832 (Ind. Ct. App. 1982).

Rule 8. Limitations on the Transfer of a Decedent's Property

45 IAC 4.1-8-1 Transfers to a surviving spouse

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-8-4; IC 6-4.1-8-4.6

Sec. 1. (a) A consent to transfer is not required on property transferred to a surviving spouse.

(b) Notice of the transfer is not required when a checking account is transferred to a surviving spouse. (*Department of State Revenue; 45 IAC 4.1-8-1; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2035*)

Indiana Dept. of State Revenue, Inheritance Tax Div. v. Estate of Parker, 485 N.E.2d 1387 (Ind. Ct. App. 1985).

45 IAC 4.1-8-2 Transfer of a checking account

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-8-4; IC 6-4.1-8-4.6; IC 26-1-4-405

Sec. 2. (a) As used in this rule, "checking account" means an account that has as its primary purpose the writing of drafts drawn on a financial institution and payable on demand.

(b) A consent to transfer is not required on the transfer of a checking account.

(c) Except as otherwise provided in section 1 of this rule, notice of the transfer of a checking account in which a resident decedent had a legal interest shall be given to the department or to the county assessor simultaneously with the transfer of the account.

(d) The requirements of subsection (c) will be met if such notice is mailed to the correct address on the date of the transfer.

(e) A transferor is not in violation of this section if it pays or certifies a check under IC 26-1-4-405 prior to giving the notice required by subsection (c). (*Department of State Revenue; 45 IAC 4.1-8-2; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2035*)

45 IAC 4.1-8-3 Transfer to a surviving joint tenant

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-8-4

Sec. 3. (a) Except as otherwise provided in sections 1 and 2 of this rule, a consent to transfer from the department or the county assessor shall be obtained before property held jointly by a resident decedent and another may be transferred to a surviving joint tenant.

(b) To ensure that a transfer will not jeopardize the collection of the inheritance tax, a consent shall not exceed eighty percent (80%) of the property involved until the inheritance tax imposed with respect to the transfer has been paid. (*Department of State Revenue; 45 IAC 4.1-8-3; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2035*)

45 IAC 4.1-8-4 Transfer of insurance proceeds

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-8-4; IC 6-4.1-8-5

Sec. 4. (a) A consent to transfer is not required on a transfer of life insurance proceeds.

(b) Except as otherwise provided in subsection (c), notice is not required to be given on a payment of life insurance proceeds.

(c) Notice of a transfer of life insurance proceeds which are paid to a resident decedent's estate shall be given to the department.

(d) The notice required by subsection (c) shall be given within ten (10) days after the proceeds are paid to the estate.

(*Department of State Revenue; 45 IAC 4.1-8-4; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2036*)

45 IAC 4.1-8-5 Transfers to a personal representative

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-8-4

Sec. 5. (a) Except as otherwise provided in sections 2 and 4 of this rule, a consent to transfer shall be obtained from the department or county assessor before a resident decedent's personal property is transferred to a personal representative of the decedent's estate.

(b) Because a transfer of property to a personal representative should not jeopardize the collection of the inheritance tax, the consent may be given for the transfer of one hundred percent (100%) of the property involved. (*Department of State Revenue; 45 IAC 4.1-8-5; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2036*)

45 IAC 4.1-8-6 Transfers from a personal representative or trustee

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-8-2; IC 6-4.1-8-4

Sec. 6. (a) A personal representative of a decedent's estate or a trustee of a decedent's property may not transfer or deliver the decedent's property to a transferee until the inheritance tax imposed with respect to the transfer has been paid.

(b) If money is the property transferred and it is transferred to a transferee for a limited period of time, the personal

representative or trustee shall retain the total tax imposed on all interests in the money.

(c) If property other than money is transferred to a transferee for a limited period of time, each transferee of an interest in the property shall pay to the personal representative or the trustee the inheritance tax imposed on the transferee's interest.

(d) Except as otherwise provided in this rule, if a decedent is the trustee of property held in trust which will be transferred due to the death of the decedent, a consent to transfer shall be obtained before the trust property is transferred to a successor trustee or to a transferee. (*Department of State Revenue; 45 IAC 4.1-8-6; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2036*)

45 IAC 4.1-8-7 Small estate affidavit

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-8; IC 29-1-8-1

Sec. 7. (a) Under appropriate circumstances, it is not necessary to administer a decedent's probate estate. In these situations, a decedent's probate property may be transferred by affidavit under IC 29-1-8-1.

(b) A transfer of property as provided in subsection (a) does not exempt a transferor from the provisions of this rule or IC 6-4.1-8. In other words, a consent to transfer shall be obtained or notice given under the appropriate circumstances. (*Department of State Revenue; 45 IAC 4.1-8-7; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2036*)

45 IAC 4.1-8-8 Nonresident decedent's property

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-8

Sec. 8. (a) A transfer of personal property belonging to a nonresident decedent is not subject to any restrictions.

(b) A safe deposit box of a nonresident decedent is not required to be inventoried. (*Department of State Revenue; 45 IAC 4.1-8-8; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2036*)

45 IAC 4.1-8-9 Safe deposit boxes (Statute repealed)

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-8-5

Sec. 9. (a) Except as provided in subsection (e), a resident decedent's safe deposit box shall be examined and its contents listed by the department or county assessor before it is released by the person who has possession or control over it. The inventory shall include the contents of all sealed containers within the safe deposit box.

(b) A box in the name of a trust in which the decedent has a legal or equitable interest shall be inventoried. However, the following safe deposit boxes shall be inventoried only if it is known that the decedent has deposited personal property therein:

(1) A corporate box if the decedent is an officer.

(2) A partnership box if the decedent is a partner.

(3) A box on which the decedent is designated as a deputy.

(c) If a safe deposit box is required to be inventoried, reasonable notice of the time and place of the box opening must be given to the department or the county assessor. As used in this subsection, "reasonable notice" means ten (10) working days. However, the department or county assessor may agree to a shorter period of time if its schedule permits.

(d) An inventory of a safe deposit box prepared by the department or the county assessor is confidential and shall not be disclosed except for the purpose of determining and collecting the inheritance tax.

(e) Except as provided in subsection (f), subsection (a) does not apply to a safe deposit box held as joint tenants by spouses on the date of death of the first joint tenant. However, subsection (a) shall apply should the spouses die simultaneously or should the second joint tenant die before the first joint tenant's name is removed from the box.

(f) A safe deposit box held as joint tenants by spouses and a third party on the date of death of any of the joint tenants shall be inventoried. (*Department of State Revenue; 45 IAC 4.1-8-9; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2036*)

Rule 9. Payment and Collection of Inheritance Taxes

45 IAC 4.1-9-1 Due dates (See Current Statute)

Sec. 1. (*Repealed by Department of State Revenue; filed Dec 5, 2012, 10:01 a.m.: 20130102-IR-045120429FRA*)

Nell v. Tracy, 459 N.E.2d 432 (Ind. Ct. App. 1984).

45 IAC 4.1-9-2 Discount for early payments

Sec. 1. (*Repealed by Department of State Revenue; filed Dec 5, 2012, 10:01 a.m.: 20130102-IR-045120429FRA*)

Nell v. Tracy, 459 N.E.2d 432 (Ind. Ct. App. 1984).

45 IAC 4.1-9-3 Interest on late payments (See Current Statutes)

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-7-6; IC 6-4.1-9-1; IC 6-4.1-9-1.5

Sec. 3. (a) Except as otherwise provided in this section, if the inheritance tax is not paid on or before the due date established by section 1(a) of this rule, interest shall accrue on the delinquent

portion of the tax at the rate of ten percent (10%) per year from the date of the decedent's death to the date of payment.

(b) If an unavoidable delay, such as necessary litigation, prevents the determination of the inheritance tax due, the interest rate imposed by subsection (a) may be reduced to six percent (6%) per year from the date of the decedent's death to the date of the order imposing the tax and reducing the rate of interest. The rate of interest shall be ten percent (10%) from the day after the date of the order imposing the tax and reducing the rate of interest to the date of payment.

(c) If additional inheritance tax is imposed because a petition for redetermination is filed under IC 6-4.1-7-6, and the tax is not paid on or before the due date established by section 1(b) of this rule, interest shall accrue on the delinquent portion of the tax at the rate of six percent (6%) per year from the due date to the date of payment.

(d) If a tax payment is mailed by the day before the due date established by section 1 of this rule, it is considered paid on the due date, regardless of when received, unless the payment is otherwise invalid. (*Department of State Revenue; 45 IAC 4.1-9-3; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2037*)

Indiana Dept. of State Revenue, Inheritance Tax Div. v. Estate of Rogers, 459 N.E.2d 69 (Ind. Ct. App. 1984).

Indiana Dept. of State Revenue, Inheritance Tax Div. v. Estate of Broyles, 457 N.E.2d 250 (Ind. Ct. App. 1983).

45 IAC 4.1-9-4 Payment of taxes

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-9

Sec. 4. (a) The inheritance tax imposed as a result of a resident decedent's death shall be paid to the county treasurer.

(b) The inheritance tax imposed as a result of a nonresident decedent's death shall be paid to the department.

(c) Additional taxes and any interest due thereon may be paid at any time without first obtaining a redetermination of the tax.

(d) If a partial payment is made when tax, interest, and penalty are due, the payment shall be applied to the penalty first, the interest second, and then to the principal amount of tax due.

(e) The county treasurer or the department, as the case may be, shall issue a receipt to the person paying the tax. A copy of the receipt issued by the county treasurer shall be sent to the department, and the department shall countersign the receipt and send it to the payor as proof of payment of the amount shown on the receipt. (*Department of State Revenue; 45 IAC 4.1-9-4; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2037*)

Nell v. Tracy, 459 N.E.2d 432 (Ind. Ct. App. 1984).

Indiana Dept. of State Revenue, Inheritance Tax Div. v. Estate of Rogers, 459 N.E.2d 69 (Ind. Ct. App. 1984).

45 IAC 4.1-9-5 Collection of taxes (Statute repealed)

Sec. 1. (*Repealed by Department of State Revenue; filed Dec 5, 2012, 10:01 a.m.: 20130102-IR-045120429FRA*)

In re Estate of Dukes, 453 N.E.2d 1179 (Ind. Ct. App. 1983).

45 IAC 4.1-9-6 Compromise of tax or interest due

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-9; IC 6-4.1-12-5

Sec. 6. (a) The department, with the advice and approval of the attorney general, may enter into a compromise agreement concerning the amount of inheritance tax, or interest charges on delinquent tax, to be collected.

(b) The compromise agreement may be entered into if the department and the attorney general believe that a substantial doubt exists in any of the following:

(1) The right to impose the tax under applicable Indiana law.

(2) The constitutionality, under either the Indiana or United States Constitution, of the imposition of the tax.

(3) The correct value of property transferred under a taxable transfer.

(4) The correct amount of tax due.

(5) The collectability of the tax.

(6) Whether the decedent was a resident or a nonresident of Indiana.

(c) The department may enter into a compromise agreement with the personal representative of a decedent's estate or with a transferee.

(d) A compromise agreement is final and irrevocable as to the issue of the amount of inheritance tax to be collected unless:

(1) the amount of the tax agreed to by the parties is not paid; or

(2) the agreement was entered into fraudulently.

(Department of State Revenue; 45 IAC 4.1-9-6; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2038)

Rule 10. Refunds

45 IAC 4.1-10-1 Time limit for filing

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-10-1

Sec. 1. A claim for refund of inheritance tax or Indiana estate tax is not valid unless it is filed with the department within the later of:

(1) three (3) years after the date the tax is paid; or

(2) one (1) year after the date the tax is finally determined.

[Ed. Note: See current IC 6-4.1-10-1 – amended by P.L. 205-2013, SEC.111.]

(Department of State Revenue; 45 IAC 4.1-10-1; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2038)

Sibbitt v. Indiana Dept. of Revenue, 563 N.E.2d 146 (Ind. Ct. App. 1990), rehearing denied January 17, 1991, transfer denied August 16, 1991.

Indiana Dept. of Revenue, Inheritance Tax Division v. Binhack's Estate, 426 N.E.2d 714 (Ind. Ct. App. 1981).

Matter of Compton's Estate, 406 N.E.2d 365 (Ind. Ct. App. 1980).

Ind. Dept. of Revenue, Inheritance Tax Div. v. Estate of Schoenenberger, 976 N.E.2d 148 (Ind. Tax Ct. 2012).

45 IAC 4.1-10-2 Interest on refunds (See Current Statute)

Sec. 1. (Repealed by Department of State Revenue; filed Dec 5, 2012, 10:01 a.m.: 20130102-IR-045120429FRA)

45 IAC 4.1-10-3 Orders for refund

Sec. 1. (Repealed by Department of State Revenue; filed Dec 5, 2012, 10:01 a.m.: 20130102-IR-045120429FRA)

45 IAC 4.1-10-4 Appeal of refund order

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-10-4; IC 6-4.1-10-5

Sec. 4. (a) An appeal of a refund order must be initiated within ninety (90) days after the date the department enters the order.

(b) To commence an appeal, a complaint in which the department is named as the defendant must be filed in one (1) of the following courts:

(1) The probate court of the county in which administration of the estate is pending, if the appeal involves either a resident or a nonresident decedent's estate and administration of the estate is pending in Indiana.

(2) The probate court of the county in which the decedent was domiciled at the time of the decedent's death, if the appeal involves a resident decedent's estate and no administration of the estate is pending in Indiana.

(3) The probate court of any county in which any of the decedent's property was located at the time of the decedent's death, if the appeal involves a nonresident decedent's estate and no administration of the estate is pending in Indiana.

(c) When an appeal is initiated under subsection (b), the probate court determines if a refund is due and the amount.

(Department of State Revenue; 45 IAC 4.1-10-4; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2799)

State v. Davies, 177 Ind.App. 288, 379 N.E.2d 501 (1977).

Sibbitt v. Indiana Dept. of Revenue, 563 N.E.2d 146 (Ind. Ct. App. 1990), rehearing denied January 17, 1991, transfer denied August 16, 1991.

Indiana Dept. of Revenue, Inheritance Tax Division v. Binhack's Estate, 426 N.E.2d 714 (Ind. Ct. App. 1981).

Matter of Compton's Estate, 406 N.E.2d 365 (Ind. Ct. App. 1980).

Estate of Neterer v. Ind. Dept. of Revenue, 956 N.E.2d 1214 (Ind. Tax Ct. 2011).

Rule 11. Indiana Estate Tax (Nullified by Economic Growth and Tax Relief Act (EGGTRA) of 2001)

45 IAC 4.1-11-1 Imposition of estate tax

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-11-1; IC 6-4.1-11-2

Sec. 1. (a) A tax to be known as the Indiana estate tax shall be imposed upon a decedent's estate.

(b) The amount of tax due is Indiana's proportionate share of the federal death tax credit (as defined in 45 IAC 4.1-1-9) less the Indiana inheritance tax actually paid as a result of the

decedent's death. If the Indiana inheritance tax is the larger of the two (2) amounts, the Indiana estate tax is zero (0).

(c) For purposes of subsection (b), Indiana's proportionate share is determined by multiplying the federal death tax credit by the value of the decedent's Indiana gross estate over the value of the decedent's federal gross estate.

(d) For purposes of subsection (c), the decedent's Indiana gross estate equals the total fair market value on the appraisal date of all tangible property which had an actual situs in Indiana at the time of the decedent's death, plus, in the estate of a resident decedent, all intangible personal property wherever located. The property must also be included in the decedent's gross estate for federal estate tax purposes.

(e) For purposes of subsection (d), "Indiana gross estate" does not include property transferred under a deed of trust under the following circumstances:

(1) The property is realty located outside of Indiana.

(2) The property is realty located within Indiana that was transferred to an irrevocable trust during the decedent's lifetime but not transferred:

(A) in contemplation of death; or

(B) with a retained interest in the trust held by the decedent.

As used in this subsection, "irrevocable trust" and "retained interest" have the same meaning as found in 45 IAC 4.1-2-10.

(f) For purposes of subsection (c), the decedent's federal gross estate equals the total fair market value on the appraisal date of all property included in the decedent's gross estate for federal estate tax purposes.

(g) For purposes of subsections (d) and (e), the appraisal date is the date on which the property interest is valued for federal estate tax purposes. (*Department of State Revenue; 45 IAC 4.1-11-1; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2039*)

Indiana Dept. of State Revenue, Inheritance Tax Div. v. Estate of Pearson, 498 N.E.2d 990 (Ind. Ct. App. 1986), rehearing denied, affirmed 521 N.E.2d 350 (Ind. 1988).

State v. Purdue Nat. Bank of Lafayette, 171 Ind.App. 76, 355 N.E.2d 414 (1976).

45 IAC 4.1-11-2 Due dates

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-11-3

Sec. 2. (a) Except as otherwise provided in subsection (b), the Indiana estate tax is due eighteen (18) months after the date of the decedent's death.

(b) Indiana estate tax resulting from a final determination of federal estate tax is due one (1) month after notice of such determination is given to the person liable for the tax, if such date is later than the date established under subsection (a). (*Department of State Revenue; 45 IAC 4.1-11-2; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2039*)

45 IAC 4.1-11-3 Payment of estate tax

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-11-4; IC 6-4.1-11-6

Sec. 3. (a) The Indiana estate tax and any interest due thereon shall be paid to the department.

(b) If the Indiana estate tax is not paid on or before the due date, interest shall accrue on the delinquent portion of the tax at the rate of six percent (6%) per year from the due date to the date

of payment. (*Department of State Revenue; 45 IAC 4.1-11-3; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2039*)

45 IAC 4.1-11-4 Credit against inheritance tax

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-11-5

Sec. 4. (a) The Indiana estate tax may be taken as a credit against the Indiana inheritance tax if:

- (1) the inheritance tax is imposed after the estate tax is paid; and
- (2) both taxes are imposed as a result of the same decedent's death.

(b) The credit provided by subsection (a) applies only to the inheritance tax due and not to any interest imposed under 45 IAC 4.1-9-3 due to the late payment of the inheritance tax.

(*Department of State Revenue; 45 IAC 4.1-11-4; filed Apr 28, 1994, 9:30 a.m.:17 IR 2039*)

45 IAC 4.1-11-5 Appeal of estate tax determination

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-11-7

Sec. 5. (a) To commence an appeal of the department's determination of the amount of Indiana estate tax due, a complaint in which the department is named as the defendant must be filed in one (1) of the following courts:

(1) The probate court of the county in which administration of the estate is pending, if the appeal involves either a resident or a nonresident decedent's estate and administration of the estate is pending in Indiana.

(2) The probate court of the county in which the decedent was domiciled at the time of the decedent's death, if the appeal involves a resident decedent's estate and no administration of the estate is pending in Indiana.

(3) The probate court of any county in which any of the decedent's property was located at the time of the decedent's death, if the appeal involves a nonresident decedent's estate and no administration of the estate is pending in Indiana.

(b) When an appeal is initiated under subsection (a), the probate court determines the amount of Indiana estate tax due. (*Department of State Revenue; 45 IAC 4.1-11-5; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2799*)

Rule 12. Indiana Generation-Skipping Transfer Tax (Nullified by Economic Growth and Tax Relief Act (EGGTRA) of 2001)

45 IAC 4.1-12-1 Imposition of generation-skipping transfer tax

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-11.5

Sec. 1. (a) The Indiana generation-skipping transfer tax is imposed upon every generation-skipping transfer (other than a direct skip) that occurs at the same time as, and as a result of, the death of an individual, if:

- (1) the original transferor is a resident of Indiana on the date of the original transfer; or
- (2) the original transferor is not a resident of Indiana but the transferred property is tangible property with a legal situs in Indiana.

(b) As used in this section, "direct skip" shall mean a direct skip as defined in Section 2612 of the Internal Revenue Code.

(c) As used in this rule, "generation-skipping transfer" means a generation-skipping transfer subject to tax under Section 2601 of the Internal Revenue Code.

(d) As used in this rule, "original transferor" means a donor, grantor, testator, or trustor who by gift, grant, will, or trust makes a transfer of property that results in a generation-skipping transfer. (*Department of State Revenue; 45 IAC 4.1-12-1; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2040*)

45 IAC 4.1-12-2 Computation of tax

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-11.5-8

Sec. 2. (a) The amount of Indiana generation-skipping transfer tax due is the greater of the following amounts:

(1) The federal generation-skipping transfer tax credit multiplied by the value of the transferred property with a legal situs in Indiana over the total value of the transferred property.

(2) The federal generation-skipping transfer tax credit minus all generation-skipping transfer taxes paid to states other than Indiana.

(b) As used in this rule, "federal generation-skipping transfer tax credit" means the maximum credit allowable under Section 2604(b) of the Internal Revenue Code.

(c) For purposes of this section, the value of the transferred property equals the final value as determined for federal generationskipping transfer tax purposes. (*Department of State Revenue; 45 IAC 4.1-12-2; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2040*)

45 IAC 4.1-12-3 Due date

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-11.5-9

Sec. 3. The Indiana generation-skipping transfer tax is due eighteen (18) months after the death of the original transferor. (*Department of State Revenue; 45 IAC 4.1-12-3; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2040*)

45 IAC 4.1-12-4 Payment of tax

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-11.5-10; IC 6-4.1-11.5-12

Sec. 4. (a) The Indiana generation-skipping transfer tax and any interest due thereon shall be paid to the department.

(b) If the tax is not paid on or before the due date, interest shall accrue on the delinquent portion of the tax at the rate of six percent (6%) per year from the due date to the date of payment.

(*Department of State Revenue; 45 IAC 4.1-12-4; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2040*)

45 IAC 4.1-12-5 Tax return

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-11.5-11

Sec. 5. (a) A copy of the federal return, all its attachments, and any amendments thereto reporting a generation-skipping transfer that should reflect a federal generation-skipping transfer tax credit shall be filed with the department on or before the date specified in section 3 of this rule.

(b) Attached to the return required to be filed by subsection (a) shall be a schedule indicating:
(1) the value of the transferred property with a legal situs in Indiana; and
(2) the amount of the Indiana generation-skipping transfer tax determined to be due.
(*Department of State Revenue; 45 IAC 4.1-12-5; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2040*)

Rule 13. Penalties

45 IAC 4.1-13-1 Failure to file inheritance tax return

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-4-6

Sec. 1. (a) Except as otherwise provided in subsection (b), a person who fails to file an inheritance tax return on or before the due date shall be charged a penalty which equals the lesser of:

- (1) fifty cents (\$.50) per day for each day the return is delinquent; or
- (2) fifty dollars (\$50).

(b) The appropriate probate court shall include the penalty in the inheritance tax order which it issues with respect to the decedent's estate. However, the court may waive the penalty if the court finds that the person had a justifiable excuse for not filing the return on time. (*Department of State Revenue; 45 IAC 4.1-13-1; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2040*)

45 IAC 4.1-13-2 Improper transfers of decedent's property

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1

Sec. 2. (a) A person who violates a provision of 45 IAC 4.1-8 is subject to a penalty. The penalty consists of:

- (1) the taxes imposed under IC 6-4.1 as a result of the decedent's death; and
- (2) a fine not to exceed one thousand dollars (\$1,000).

As used in this subsection, "person" includes a person who knowingly withholds information to obtain an improper transfer of a decedent's property.

(b) The department shall initiate the action required to collect the penalty which is due under this section. (*Department of State Revenue; 45 IAC 4.1-13-2; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2041*)

45 IAC 4.1-13-3 Safe deposit box information

Sec. 1. (*Repealed by Department of State Revenue; filed Dec 5, 2012, 10:01 a.m.: 20130102-IR-045120429FRA*)

45 IAC 4.1-13-4 Nonpayment by county to department

Sec. 1. (*Repealed by Department of State Revenue; filed Dec 5, 2012, 10:01 a.m.: 20130102-IR-045120429FRA*)

45 IAC 4.1-13-5 Disclosure of inheritance tax information

Authority: IC 6-4.1-12-6

Affected: IC 6-4.1-12-12; IC 35-50-3-4

Sec. 5. (a) The department's inheritance tax files are confidential, and any person who gains access to such files shall not divulge any information disclosed by such files except as authorized by IC 6-4.1-12-12.

(b) A person who knowingly violates subsection (a):

(1) commits a Class C misdemeanor; and

(2) shall be immediately dismissed from the person's office or employment if the person is an officer or employee of the state of Indiana.

(Department of State Revenue; 45 IAC 4.1-13-5; filed Apr 28, 1994, 9:30 a.m.: 17 IR 2041)