

**AD HOC ADVISORY TASK FORCE TO STUDY  
RESOURCES AND CASELOAD OF INDIANA TAX COURT**

**SUMMARY OF MATERIALS SUBMITTED TO SUPREME COURT,  
INDIANA LEGISLATIVE COUNCIL AND INDIANA JUDICIAL CENTER**

- A. Ad Hoc Advisory Task Force Final Report with Findings and Recommendations
- B. NCSC Final Report to the Ad Hoc Tax Court Advisory Task Force/ December 2015
- C. Roster and Biographies of Task Force Members and Staff
- D. Supreme Court Order Creating Ad Hoc Advisory Task Force to Study Resources and Caseload of Indiana Tax Court/ April 20, 2015
- E. Supreme Court Order Amending Ad Hoc Advisory Task Force to Study Resources and Caseload of Indiana Tax Court/ May 13, 2015

*April 14, 2016*

**A**

## **Findings and Recommendations of the Ad Hoc Advisory Task Force to Study Resources and Caseload of the Indiana Tax Court**

“Two hundred years ago, a handful of frontiersmen-turned-statesmen crafted the first Indiana Constitution. This governing document was powerful in its simplicity, and clear in its mandate: that justice be accomplished ‘speedily, and without delay.’

Our forefathers understood that justice delayed meant justice denied. And they held the belief so dear, they made ‘prompt access to the courts’ a basic right for all Hoosiers. *Timely justice* is not just a good idea or a noble aspiration, it’s a constitutional promise.”

Chief Justice Loretta H. Rush  
State of the Judiciary  
January 13, 2016

### **Task Force Review and Analysis**

On behalf of the members of the Ad Hoc Advisory Task Force, as its Chair, I am pleased to report to the Supreme Court that we have concluded our review and analysis of the Tax Court as directed by the Court’s May 13, 2015 order. Created in 1986, the Tax Court is vested with jurisdiction over cases arising under Indiana tax law. Depending on the tax type and the administrative proceedings below, the Court functions in some cases as a trial court (*e.g.* income and sales tax cases) and others as an appellate court (*e.g.* property tax cases). The Task Force’s review and analysis focused on the court’s methods and procedures for case disposition in all types of cases, including the efficiencies of those procedures. The resulting findings and observations are detailed below.

The Task Force included representation from the Department of Revenue, the Attorney General’s office, judges experienced in appellate and trial courts, and attorneys experienced in advocating for both taxpayers and taxing authorities before the Tax Court. The group met on eight occasions and, in addition to its own discussion, heard presentations and comments from former Chief Justice Randall Shepard, Tax Court Judge Martha Wentworth, former and first Tax Court Judge, Senior Judge Thomas Fisher, and John Doerner and Nora Sydow from the National Center for State Courts (NCSC).

The Task Force recommended, and the Supreme Court approved, entering into a contract with NCSC to conduct a study of the operations and procedures of the Tax Court and to survey lawyers and others who appear before, or who have a vested interest in, Tax Court operations. The Task Force worked closely with the NCSC, which in addition to the survey interviewed several Tax Court stakeholders and the Tax Court Judge and staff and observed the Court's office operation. The Task Force reviewed and studied NCSC's findings and survey results before concluding on its own findings and recommendations. The NCSC study is submitted with this report.

Some issues arose in the course of Task Force deliberations on which no specific findings or recommendations are made. For example, the group—particularly members representing the Department of Revenue and the Indiana Attorney General—observed that when the Tax Court sits as a trial court, hearing matters *de novo* arising out of Department of Revenue actions, there is no appeal as of right from its decisions. These members would recommend that the Supreme Court, General Assembly, and other stakeholders consider, as appropriate, options for modifying the current structure that provides for *de novo* review of Department of Revenue cases and limited ability for appeal, which has the effect of one judge being the sole and final arbiter of the overwhelming majority of the legal and factual issues in these cases. A majority of the group, including the Chair, believed this issue to be outside the purview of the Task Force's directive. Therefore, the Task Force did not fully examine the matter or others lacking direct relationship with the Tax Court's methods and procedures for case disposition.

Based on the NCSC study and actions described above, we submit the following Findings and Recommendations.

## **Task Force Findings**

- 1) The fundamental purposes of the Tax Court remain valid: (1) decisions by a single court with expertise; (2) body of consistent, uniform, binding tax law; (3) and elimination of forum shopping and inconsistency of judgments.
- 2) The Tax Court gives appropriate consideration to cases and renders thoughtful, fair opinions. However, survey responses from certain attorneys representing or affiliated with governmental entities practicing before the Tax Court indicate that a number of them disagree that the Court issues opinions that are thoughtful and fair.
- 3) The Tax Court responds well to inquiries from litigants and their counsel, and survey results, other than from certain attorneys representing or affiliated with governmental entities, indicate agreement that the Court is fair and impartial, avoiding impropriety or the appearance thereof.
- 4) Tax Court statistics show that the median number of days from the filing of a case to oral argument/trial was 278 for the period 2006-2010 and 295 for the period from 2011-2014. The median number of days from oral argument/trial to decision was 90 for the period 2006-2010 and 652 for the period from 2011-2014. And the median number of days from the filing of a case before the Tax Court to the filing of an opinion was 368 for the period 2006-2010 and 947 for the period 2011-2014. At the end of calendar year 2010, 91 cases were pending before the Tax Court, and at the end of 2014, there were 191 pending cases.
- 5) The Tax Court made progress in reducing the backlog of pending cases in 2015, but significant work remains to be done. The Tax Court issued 44 final written decisions in 2015, had another 24 voluntarily dismissed, and ended the year with 124 pending cases, 16 of them under advisement of the court.

- 6) Historically, and continuing through today, the Tax Court has not established standards for measuring court performance, has not established ways to gather meaningful data on case management and does not have a method for maintaining accountability of performance.
- 7) The Tax Court devotes a significant amount of time to matters other than deciding cases, which contributes to case delays. Some of these non-case resolving matters include court office administration, case management conferences, hearings, and the Court's practices of issuing written decisions on all procedural matters and conducting oral arguments in every case.
- 8) The Tax Court does not efficiently utilize resources, including staff. Law clerks are not assigned to a case at the outset and many times not until two years after argument or hearing.
- 9) Parties to Tax Court proceedings for various reasons have experienced a reduction in the number of settled cases in recent years. From 2007-2010, parties with cases before the Tax Court settled or voluntarily dismissed 236 cases; in 2011-2014, parties settled or voluntarily dismissed 170 cases.
- 10) The Tax Court has a liberal approach to granting continuances, which has contributed to case resolution delays.

### **Task Force Recommendations**

- 1) The Tax Court Judge "works alone" without peers to ask questions, share ideas, discuss legal issues or set benchmarks. From time to time, Senior Judge Thomas Fisher is available to assist in the workload and provide feedback to the Court. We recommend that an advisory committee be formed to advise the Tax Court from time to time on a variety of matters, including court administration, case management, performance standards, and data collection and review to assist the Court in moving cases to resolution in a more efficient and timely fashion.

The advisory committee could assist the Tax Court in realizing the full utility of the Odyssey case management system for data collection, as well as in the implementation of other tools to help the Tax Court with performance measurement. This advisory committee might consist of trial court and appellate court judges, who can help the Tax Court in adopting relevant trial and appellate court measurement standards. We recommend that the advisory committee meet with the Court quarterly at the outset to implement needed changes and thereafter as determined by the Court and the advisory committee. The Division of State Court Administration or the Indiana Judicial Center could be asked to provide staff to work with the Tax Court and the advisory committee.

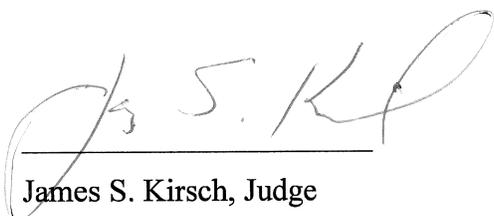
- 2) The Tax Court Judge should assign cases to law clerks at the onset of new case filings, instead of waiting until long after oral arguments or hearings. The present practice of assigning clerks to cases late in the process and long after oral argument hinders the efficiency and speed with which the Tax Court resolves cases. If law clerks review filings, administrative records, and briefs, research the law, and prepare bench memos soon after cases are filed, they can then proceed to draft decisions immediately after oral arguments and hearings.
- 3) With the help of an advisory committee, the Tax Court Judge should adopt guidelines for case review, target deliverable dates, and adopt standards relevant to its trial and appellate court functions.
- 4) The Tax Court may benefit from and should explore sharing certain administrative functions, such as payroll, accounting, messenger services, and the like, with the Court of Appeals.
- 5) The Tax Court should explore several reforms in its case management practice in order to achieve greater efficiencies including:
  - a) establishing appropriate time limits for all oral arguments;
  - b) ruling on evidentiary, discovery, and procedural matters without oral argument;
  - c) deciding routine property tax appeals and fully stipulated revenue cases based on the briefs and without a hearing;

- d) setting trial dates earlier in the process (*i.e.* within case management orders);
  - e) limiting discovery and setting firm discovery deadlines based on reasonable standards for the type of case, bearing in mind that in some cases one party may possess a preponderance of the relevant material; in conjunction with limits on discovery, and where practicable, the Court may require the Department of Revenue to compile and certify the complete administrative file and avoid the necessity to reconstruct the audit file previously considered at the administrative level;
  - g) eliminating case management conferences in property tax cases and setting the briefing schedule after the answer is filed;
  - h) developing a stricter policy on the grant of continuances and closely monitoring the continuances that are granted;
  - i) referring tax appeals to mediation when appropriate; and,
  - j) maintaining a case ledger tool, which will be reviewable by the advisory committee, to impose deadlines, set reminders, record specific dates, and record each case action, including continuances.
- 6) The aforementioned reforms should be immediately put into place, and the results of those reforms should be evaluated before pursuing other solutions.

In the longer term, and only after evaluation upon reforms recommended herein, other solutions could be considered

It is the Task Force's firm belief that, with the assistance of an advisory committee, a combination of reforms in the Tax Court's management of cases, similar to those described above, along with adoption of new practices in utilization of the Tax Court staff and new performance tracking and measurement tools, the Tax Court will significantly improve its efficiency and shorten the period of time in which it resolves cases filed with the Court.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "J.S. Kirsch", written in dark ink. The signature is positioned above a horizontal line that serves as a separator between the signature and the printed name below.

James S. Kirsch, Judge  
Indiana Court of Appeals  
Chair/ Ad Hoc Advisory Task Force to Study Resources  
and Caseload of Indiana Tax Court

**B**



**State of Indiana – Tax Court**

**FINAL REPORT**  
to the Ad Hoc Tax Court Advisory Task Force

**December 2015**

**John Doerner, Project Director**  
**Nora Sydow, Senior Court Management Consultant**

**Daniel J. Hall, Vice President**  
**Court Consulting Services**  
**707 Seventeenth Street, Suite 2900**  
**Denver, CO 80202-3429**  
**(303) 293-3063**

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## **I. Introduction**

The State of Indiana Tax Court (Tax Court) was established by the General Assembly under the authority granted by the Indiana Constitution, Article 7, Section 1 with the enactment of Indiana Code Section 33, Title 33, Article 26 in 1985. The Tax Court has exclusive jurisdiction over any case that arises under the Indiana tax laws or that is an initial appeal of a final determination made by the Indiana Department of State Revenue or the Indiana Board of Tax Review. In addition, the Tax Court has jurisdiction over certain appeals from the Department of Local Government Finance and hears appeals of inheritance tax determinations from the courts of probate jurisdiction.

Prior to creation of the Tax Court, these types of cases were heard in the Circuit or Superior Courts of the county in which the subject property was located with respect to property tax cases, or in the county of residence or place of business of the taxpayer with respect to all others.

Caseload information reported by the Tax Court indicates that there have been significant variations over time with respect to the volume of cases filed in and disposed of by the court. Because of these significant variations, and perceptions that the length of time from filing to decision in Tax Court cases is increasing, the Indiana Legislature, through Senate Enrolled Act No. 423, provided that the Indiana Judicial Center must review the workload and backlog of cases in the Indiana Tax Court and include recommendations for improvement. This led to the creation of the Ad Hoc Tax Court Advisory Task Force (Task Force) by the Indiana Supreme Court. The Supreme Court charged the Task Force with reviewing the resources, caseload, performance and operations of the Indiana Tax Court. The Task Force subsequently contracted with the National Center for State Courts (NCSC) to assist it with this charge.

Although the Court does not produce reports of the time to disposition, the NCSC consultants worked with staff of the Indiana Supreme Court to obtain case management data on a sample of closed cases. The analysis of this sample data is included in Section C of this report.

## II. Background Information

### Caseload

Table 1 below provides basic caseload information reported by the Tax Court for the period from 1995 through June 30, 2015.

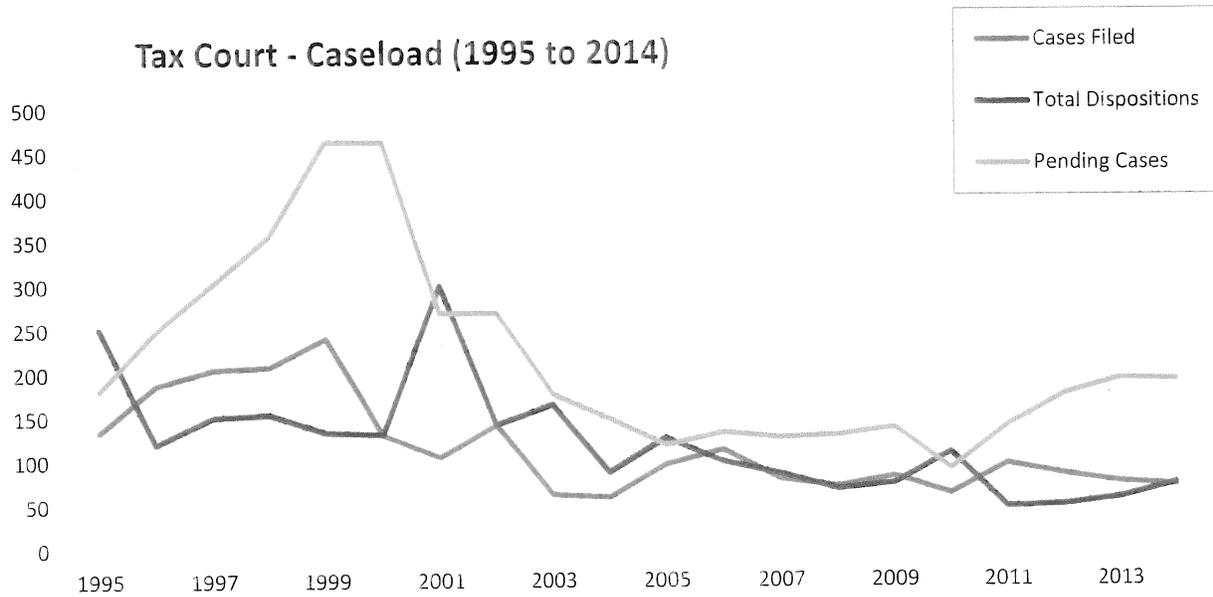
**Table 1: Basic Caseload Information**

Year	Beginning Cases Pending	Cases Filed/ Remanded	Written Decisions	Settled/ Voluntary Dismissals	Total Dispositions	Ending Cases Pending
1995	299	135	27	225	252	182
1996	182	188	25	96	121	249
1997	249	206	32	120	152	303
1998	303	209	41	114	155	357
1999	357	241	41	93	134	464
2000	464	131	35	97	132	463
2001	463	106	44	256	300	269
2002	269	142	54	83	142	269
2003	279	63	62	105	165	177
2004	177	60	58	32	88	149
2005	149	97	56	71	127	119
2006	119	114	30	70	100	133
2007	133	80	42	48	86	127
2008	127	72	17	52	69	130
2009	130	83	25	50	75	138
2010	138	63	24	86	110	91
2011	91	97	11	37	48	140
2012	140	85	11	43	50	175
2013	175	76	21	41	58	193
2014	193	72	28	49	74	191
2015 (Jan to June)	191	24	25	10	35	180

The data in Table 1, graphically displayed in Chart 1 below, indicate a long-term trend of declines in both new case filings and, correspondingly, total cases disposed. The related declining trend in the number of pending cases reversed from 2011 through 2014, despite the continued decline in new case filings. The decline in total dispositions is seen both in settled/voluntary dismissals and in the number of written decisions. Data for 2014 and the first

six months of 2015 may indicate a rising trend in the number of dispositions by written opinion but it is unclear as to whether that will be sustained.

**Chart 1: Tax Court Caseload (1995 to 2014)**



**Staffing**

Since its inception, the Tax Court has consisted of one judge with a small support staff of administrative and legal professionals. Judge Thomas Fisher served the Tax Court from 1986 until his retirement in January 2011. He continues to serve the Tax Court as a senior judge. Current staffing includes a court administrator, one staff attorney and three law clerk positions of indefinite duration. In 2008, one of the law clerk positions was reclassified in order to create the current staff attorney position. Throughout the years, the law clerk positions have included a mix of short-term appointments and long-term, or indefinite, appointments. Staffing levels, measured as full-time equivalents, for the period from 2005 to 2014 are summarized in Table 2 below.

**Table 2: Tax Court Staffing - FTE**

Year	Judge	Staff Attorney	Law Clerks <sup>1</sup>	Total Legal Support Staff	Court Administrator
2005	1	N/A	3.00	3.00	1.00
2006	1	N/A	3.08	3.08	1.00
2007	1	N/A	3.00	3.00	1.00
2008	1	1.00	2.00	3.00	1.00
2009	1	1.00	1.42	2.42	1.00
2010	1	1.00	1.00	2.00	1.00
2011	1	1.00	1.00	2.00	1.00
2012	1	1.00	2.00	3.00	1.00
2013	1	1.00	2.84	3.84	1.00
2014	1	1.00	2.17	3.17	1.00
2015 (projected) <sup>2</sup>	1	1.00	2.50	3.50	1.00

In addition, during some calendar years the Tax Court has filled a temporary position of 'Summer intern/Clerk' which is made available to law students. That position was not filled during the summer of 2015 and is not included in Table 2 for any of the calendar years listed. The data included in Table 2 shows the lowest point in legal support staffing was from 2009 through 2011, when it was consistently below three full-time positions. The number of legal support positions returned to over three beginning in 2012. Assuming that all current employees remain with the Tax Court through 2015 would result in four full-time equivalent legal support staff.

This quantitative Tax Court staffing data does not however address qualitative aspects of the legal support staff. Debate continues across the country regarding the respective pros and cons of short-term versus long-term or indefinite appointments for law clerks. The Tax Court Judge indicated that the recently approved funding which provided for an additional law clerk position and the quality of the current staff members was expected to allow the Court to begin reducing the pending case backlog. There has in fact been a decrease in the pending case count, as provided by the Tax Court, from December 31, 2014 to June 30, 2015 of 11 cases or about 5.7%.

<sup>1</sup> Staffing data provided by the Tax Court included the starting and ending month for various employees as they began or terminated their positions. As a result, the decimals are indicative of the number of months that positions were filled during each calendar year.

<sup>2</sup> A full level of staffing (which would include 1 staff attorney, 3 law clerks and 1 court administrator) currently exists and is anticipated for the 2016 calendar year.

## Time to Disposition

In addition to the concerns regarding caseload and staffing is the perception that the time to disposition, measured both in the length of time from initial filing to decision and from the date of trial/oral argument to decision has increased while filings have decreased. Such common measures of court performance with respect to time to disposition are not routinely reviewed or reported by the Court Administrator or the Tax Court Judge.

Although explicit time to disposition information is not routinely prepared or reviewed, the Tax Court does report annually the total number of pending cases, along with a subdivision which is somewhat indicative of the stage of the case, although not a true ageing of the cases. For example, some of the pending cases are reported as being in the 'Preliminary or Pleading Stage', 'Briefs Due', 'Under Advisement', etc.

**Table 3: Pending Cases**

YEAR END	Preliminary/ Pleading Stage	Settled - Dismissal	Status Report Due	Briefs Due	Trial Preparation <sup>3</sup>	Set for Trial/Oral Argument	Stayed Pending Decision in Related Case	Under Advisement	Under Advisement as % of Total	Other <sup>4</sup>	Total
2004	24	5	16	9	N/A	23	22	50	33.6%	0	149
2005	28	3	38	4	N/A	17	4	24	20.2%	1	119
2006	41	6	16	15	N/A	35	2	17	12.8%	1	133
2007	41	7	16	7	N/A	31	8	14	11.0%	3	127
2008	26	10	14	3	N/A	27	32	16	12.3%	2	130
2009	32	11	25	12	N/A	14	29	15	10.9%	0	138
2010	27	8	23	9	N/A	8	9	7	7.7%	0	91
2011	45	2	20	1	N/A	31	18	22	15.7%	1	140
2012	27	17	13	6	24	20	28	39	22.3%	1	175
2013	8	21	34	11	27	7	35	50	25.9%	0	193
2014	25	4	19	1	24	3	31	84	44.0%	0	191
2015 (June 30)	29	4	17	12	33	1	20	63	35.0%	1	180 <sup>5</sup>
<b>Average</b>	<b>29</b>	<b>8</b>	<b>21</b>	<b>8</b>	<b>27</b>	<b>18</b>	<b>20</b>	<b>33</b>	<b>20.9%</b>	<b>1</b>	<b>147</b>

<sup>3</sup> This category was not reported prior to 2012; the average is for the time period from 2012 to 2015. This category differs from 'Set for Trial or Oral Argument' in that a date has not yet been set.

<sup>4</sup> Other represents 3 categories that are listed separately on the annual reports; Remanded, Mediation and Interlocutory Appeal. They are combined here because they individually account for only a very few cases.

<sup>5</sup> Prior to finalization of this report the Tax Court provided a pending case list as of Nov. 30, 2015 which included 130 cases. This would indicate a substantial improvement between June 30 and Nov. 30 in this particular measure.

The data in Table 3 was derived from the Tax Court Annual Reports providing a comparative snapshot of the past 12 years. These comparisons draw attention to the growth in total pending cases in recent years, especially in the Under Advisement category. As a percentage of the pending cases at year end, the 'Under Advisement' category has increased from under 8% in 2010 to 35% at June 30, 2015. The average over the past 12 years is 20.9% and the actual percentage has exceeded the average since 2012.

### III. Methodology

The Supreme Court's charge to the Task Force was to "[E]xamine the caseload, resources, staffing, performance and operations of the Indiana Tax Court."<sup>6</sup> The Task Force is also directed to provide a written report to the Supreme Court that includes "... review and analysis of the Tax Court's methods and procedures for case disposition, including findings concerning efficiencies of the methods and procedures in the Tax Court and recommendations, if any, for necessary improvement thereof."<sup>7</sup>

The work of the NCSC consultants was designed to assist the Task Force in meeting its goals as defined by the Supreme Court. The agreed methodology included the following tasks:

Individual Meetings and Focus Groups: This task included a series of individual and group meetings with the Tax Court Judge, all Tax Court staff members, Indiana Department of Revenue staff members, Indiana Attorney General staff members, the Task Force members and a number of private practitioners.

Online Stakeholder Survey: To gather additional information with respect to the efficiency, performance and operations of the Tax Court.

Data Collection: The NCSC project team worked with Supreme Court staff to collect timeliness data for specific data elements, in both closed cases and cases pending as of June 30<sup>th</sup>, 2015.

Report to the Task Force: The project team will deliver a report to the Task Force that includes findings and recommendations.

#### Individual Meetings and Focus Groups

The NCSC project team conducted a site visit during August 17-20, 2015, and during this visit met with all Tax Court judges and staff, members of the Task Force, Indiana Department of Revenue staff members, Indiana Attorney General staff members, the Task Force members and a number of private practitioners identified by the Task Force as having significant experience before the Tax Court.

The NCSC consultants also met with the Task Force on 3 occasions, either in-person or telephonically

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<sup>6</sup> Order Amending Ad Hoc Advisory Task Force to Study Resources and Caseload of Indiana Tax Court; Indiana Supreme Court No. 94S00-1505-MS-271; dated May 13, 2015.

<sup>7</sup> *Ibid.*

### Online Stakeholder Survey

The NCSC project team worked with the Task Force to develop an online survey to solicit perceptions from a broad representation of the Tax Court stakeholder groups on the Tax Court’s resources, caseload, performance and operations. The survey responses were intended to supplement the information gathered through the project team’s on-site stakeholder interviews.

The survey was emailed to 93 respondents and 38 surveys were completed for a response rate of 41 percent. The recipients included public and private attorneys who have practiced before the Tax Court.<sup>8</sup> The online survey was anonymous.

The first section of the survey solicited background information including the respondent’s profession, whether the respondent generally represents the taxpayer or the government, the number of years of practice before the Tax Court, and the respondent’s primary area of tax law practice experience. The remainder of the survey presented a series of statements to which the respondent was asked to agree or disagree on a scale of 1-6. Each of these scaled questions also provided respondents an opportunity to provide written comments related to each question. A summary of the responses is presented below.

**Timeliness of Decisions.** A majority of respondents from all practitioner types and levels of experience believe that the Tax Court does not decide matters promptly and without unnecessary delay. Respondents also believe that the Tax Court does not clearly communicate the process and timeline for disposition of cases nor does it explain any delays.

After taking discovery or procedural motions under advisement, the Tax Court decides them in a timely manner without unnecessary delay								
	Strongly Disagree	Disagree	Neither Agree nor Disagree	Agree	Strongly Agree	N/A or Don't Know	Rating Average	Response Count
All responses	7	7	13	5	1	4	2.58	37
Government Responses	5	5	1	0	0	3	1.64	14
Taxpayer Responses	1	2	11	5	1	1	3.15	21
Both Responses	1	0	1	0	0	0	2.00	2
10 or fewer cases	3	4	4	2	0	4	2.38	17
More than 10 cases	4	3	9	3	1	0	2.70	20

<sup>8</sup> See Appendix for the full survey.

After taking dispositive motions under advisement, the Tax Court decides them in a timely manner without unnecessary delay								
	Strongly Disagree	Disagree	Neither Agree nor Disagree	Agree	Strongly Agree	N/A or Don't Know	Rating Average	Response Count
<b>All Responses</b>	<b>12</b>	<b>10</b>	<b>7</b>	<b>4</b>	<b>1</b>	<b>3</b>	<b>2.18</b>	<b>37</b>
Government Responses	6	6	0	0	0	2	1.50	14
Taxpayer Responses	5	3	7	4	1	1	2.65	21
Both Responses	1	1	0	0	0	0	1.50	2
10 or fewer cases	3	6	3	1	1	3	2.36	17
More than 10 cases	9	4	4	3	0	0	2.05	20

After taking the merits of cases under advisement, the Tax Court decides them in a timely manner without unnecessary delay								
	Strongly Disagree	Disagree	Neither Agree nor Disagree	Agree	Strongly Agree	N/A or Don't Know	Rating Average	Response Count
<b>All Responses</b>	<b>18</b>	<b>10</b>	<b>3</b>	<b>4</b>	<b>0</b>	<b>2</b>	<b>1.80</b>	<b>37</b>
Government Responses	9	3	1	0	0	1	1.38	14
Taxpayer Responses	8	6	2	4	0	1	2.10	21
Both Responses	1	1	0	0	0	0	1.50	2
10 or fewer cases	7	5	2	1	0	2	1.80	17
More than 10 cases	11	5	1	3	0	0	1.80	20

The Tax Court clearly communicates the process and timeline for disposition of cases and explains any delays								
	Strongly Disagree	Disagree	Neither Agree nor Disagree	Agree	Strongly Agree	N/A or Don't Know	Rating Average	Response Count
All Responses	12	9	6	7	1	2	2.31	37
Government Responses	6	4	2	1	0	1	1.85	14
Taxpayer Responses	4	5	4	6	1	1	2.75	21
Both Responses	2	0	0	0	0	0	1.00	2
10 or fewer cases	3	5	2	4	1	2	2.67	17
More than 10 cases	9	4	4	3	0	0	2.05	20

**Limitation on Discovery.** Overall, there appears to be only lukewarm agreement with limitations on discovery in Department of Revenue (“DOR”) cases. It was suggested by some in favor of discovery limitations that because the DOR has already conducted an audit, DOR should not need full discovery by the time the case reaches the Tax Court. However, one respondent noted that audit files are not kept by the DOR.

The Indiana Tax Court Rules should limit discovery in Department of Revenue cases								
	Strongly Disagree	Disagree	Neither Agree nor Disagree	Agree	Strongly Agree	N/A or Don't Know	Rating Average	Response Count
All Responses	5	9	4	9	7	3	3.12	37
Government Responses	3	3	0	4	2	2	2.92	14
Taxpayer Responses	2	5	3	5	5	1	3.30	21
Both Responses	0	1	1	0	0	0	2.50	2
10 or fewer cases	1	6	2	4	2	2	3.00	17
More than 10 cases	4	3	2	5	5	1	3.21	20

**Requiring Hearings and Oral Arguments in All Dispositive Motions and Appeals.** Respondents generally agreed, albeit mildly, that hearings should be held for all dispositive motions. However, respondents agreed that some appeals could be taken under advisement without oral argument.

Oral arguments or hearings should be held for all dispositive motions decided by the Tax Court								
	Strongly Disagree	Disagree	Neither Agree nor Disagree	Agree	Strongly Agree	N/A or Don't Know	Rating Average	Response Count
All Responses	1	7	12	13	3	1	3.28	37
Government Responses	1	4	5	3	0	1	2.77	14
Taxpayer Responses	0	3	7	9	2	0	3.48	21
Both Responses	0	0	0	1	1	0	4.50	2
10 or fewer cases	0	4	4	7	1	1	3.31	17
More than 10 cases	1	3	8	6	2	0	3.25	20

Some types of appeals could be taken under advisement by the Tax Court without oral argument or hearing.								
	Strongly Disagree	Disagree	Neither Agree nor Disagree	Agree	Strongly Agree	N/A or Don't Know	Rating Average	Response Count
	0	6	6	18	4	2	3.59	36
Government Responses	0	2	1	7	2	1	3.75	13
Taxpayer Responses	0	3	4	11	2	1	3.60	21
Both Responses	0	1	1	0	0	0	2.50	2
10 or fewer cases	0	2	1	11	1	2	3.73	17
More than 10 cases	0	4	5	7	3	0	3.47	19

**Fairness and Quality of Tax Court Decisions.** Respondents generally agreed, except for those who represent the government, that the Tax Court gives appropriate consideration to each case and that its written opinions are thoughtful and fair.

The Tax Court gives the appropriate amount of consideration to each case based upon the facts and applicable law								
	Strongly Disagree	Disagree	Neither Agree nor Disagree	Agree	Strongly Agree	N/A or Don't Know	Rating Average	Response Count
All Responses	6	5	9	4	11	1	3.26	36
Government Responses	5	3	3	0	1	1	2.08	13
Taxpayer Responses	1	2	4	4	10	0	3.95	21
Both Responses	0	0	2	0	0	0	3.00	2
10 or fewer cases	2	2	6	3	3	1	3.19	17
More than 10 cases	4	3	3	1	8	0	3.32	19

The Tax Court's written opinions reflect thoughtful and fair evaluation of the parties' arguments								
	Strongly Disagree	Disagree	Neither Agree nor Disagree	Agree	Strongly Agree	N/A or Don't Know	Rating Average	Response Count
	8	4	4	9	10	0	3.26	35
Government Responses	7	3	2	0	0	0	1.58	12
Taxpayer Responses	1	0	2	8	10	0	4.24	21
Both Responses	0	1	0	1	0	0	3.00	2
10 or fewer cases	3	2	2	6	3	0	3.25	16
More than 10 cases	5	2	2	3	7	0	3.26	19

The Tax Court's written opinions clearly state the applicable legal principles that govern the decision								
	Strongly Disagree	Disagree	Neither Agree nor Disagree	Agree	Strongly Agree	N/A or Don't Know	Rating Average	Response Count
All Responses	4	6	7	9	9	1	3.37	36
Government Responses	3	6	3	0	0	1	2.00	13
Taxpayer Responses	1	0	2	9	9	0	4.19	21
Both Responses	0	0	2	0	0	0	3.00	2
10 or fewer cases	2	3	2	6	3	1	3.31	17
More than 10 cases	2	3	5	3	6	0	3.42	19

**Caseflow Management.** A large number of respondents are on the fence regarding adherence to timelines set in the Case Management Conference, however, more agreed than disagreed that case management timeliness are adhered to and appropriately enforced. Government and taxpayer lawyers responded similarly as do those with lesser and greater levels of Tax Court experience. Most respondents, across all types of professions and experience, agreed that continuances are granted when necessary and appropriate. Respondents are split on whether the time from filing to argument is reasonable. Respondents also generally agreed that the level of case complexity has increased in recent years.

The typical period of time from filing a tax case to trial or oral argument is reasonable								
	Strongly Disagree	Disagree	Neither Agree nor Disagree	Agree	Strongly Agree	N/A or Don't Know	Rating Average	Response Count
All Responses	3	12	3	15	1	3	2.97	37
Government Responses	2	3	1	5	1	2	3.00	14
Taxpayer Responses	1	9	2	8	0	1	2.85	21
Both Responses	0	0	0	2	0	0	4.00	2
10 or fewer cases	1	9	2	2	0	3	2.36	17
More than 10 cases	2	3	1	13	1	0	3.40	20

**Tax Court Staffing and Administration.** Respondents agreed that the Tax Court staff responds well to inquiries. Respondents generally agreed that the Tax Court’s staffing level is inadequate, however, government respondents generally believe that the staffing level is adequate. Some respondents noted that a question about staffing levels is a difficult question for those outside the Tax Court to answer. Respondents strongly agree that the Tax Court website provides useful information.

**Tax Court Demeanor.** There is general agreement that the Tax Court displays fairness and impartiality to all parties and avoids impropriety and the appearance of impropriety. However, there is a wide split between respondents representing the government and those representing taxpayers, with government respondents strongly disagreeing with these propositions.

The Tax Court displays fairness and impartiality towards all participants before it								
	Strongly Disagree	Disagree	Neither Agree nor Disagree	Agree	Strongly Agree	N/A or Don't Know	Rating Average	Response Count
All Responses	6	2	3	10	13	2	3.65	36
Government Responses	5	2	3	2	0	1	2.17	13
Taxpayer Responses	0	0	0	7	13	1	4.65	21
Both Responses	1	0	0	1	0	0	2.50	2
10 or fewer cases	1	2	2	7	4	1	3.69	17
More than 10 cases	5	0	1	3	9	1	3.61	19
The Tax Court avoids impropriety and the appearance of impropriety at all times								
Answer Options	Strongly Disagree	Disagree	Neither Agree nor Disagree	Agree	Strongly Agree	N/A or Don't Know	Rating Average	Response Count
All Responses	5	2	1	11	13	4	3.78	36
Government Responses	4	2	1	5	0	1	2.58	13
Taxpayer Responses	0	0	0	6	12	3	4.67	21
Both Responses	1	0	0	0	1	0	3.00	2
10 or fewer cases	1	1	1	9	3	2	3.80	17
More than 10 cases	4	1	0	2	10	2	3.76	19

## Secondary Survey

Task Force Chair, Chief Judge James Kirsch, issued a letter to approximately 25 additional stakeholders in the business community (who did not receive the online survey) asking for their feedback on the operations of the Tax Court. The Task Force received three responses, and the comments generally were in line with the average online survey responses.

## Case Management Data Analysis

Prior to the NCSC Project Team's August site visit, caseload processing statistics were gathered from Tax Court Annual reports and are summarized in the Background above. However, in order to better assess the Tax Court's caseload trends and begin to diagnose where the delay is occurring, the NCSC project team worked with Indiana Supreme Court staff to gather additional data elements from both closed and pending Tax Court cases.

### Closed Cases: 2006-2014 and Pending Cases as of June 30, 2015

A sample of 240 closed cases from 2006-2014 were selected, as well as all pending cases as of June 30<sup>th</sup>, 2015, and from these cases the following data elements were extracted from the database<sup>9</sup>:

1. Case Number;
2. Case Name;
3. Case Type;
4. Small claims case (Y/N);
5. Judge presiding;
6. Date filed;
7. Case Management Conference Date;
8. Number of continuances requested;
9. Number of status reports ordered;
10. Oral argument or trial date;
11. Other significant court event<sup>10</sup>;
12. Other significant court event date;
13. Final opinion date; and
14. Final opinion author.

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<sup>9</sup> One-hundred and twenty cases were sampled from 2006-2010 and 120 from 2011-2014.

<sup>10</sup> E.g., dismissed, consolidated with another case, remanded to Probate Court, etc.

From these data elements, the following statistics were produced:

1. Average number of days from date filed to case management conference;
2. Average number of days from date filed to oral argument/trial date;
3. Average number of days from date filed to dismissal; and
4. Average number of days from oral argument/trial date to opinion date.

Because the public perceptions that the Tax Court’s timeliness issues have become much more prominent in the past 4 years, the data was analyzed in two time groupings: 2006 through 2010 and 2011 through 2014.

Sample of Closed Cases from 2006-2014 (n=240)								
	Average # of days from filing to case mgmt. conference	Median # of days from filing to case mgmt. conference	Average # of Days from filing to oral argument / trial	Median # of Days from filing to oral argument / trial	Average # of days from filing to dismissal	Median # of days from filing to dismissal	Average # of days from oral argument /trial to opinion date	Median # of days from oral argument /trial to opinion date
<b>2006-2010</b>	88.9	82	279.9	278	271.2	218	185.0	90
<b>2011-2014</b>	136.6	67.5	389.5	295	522.2	440.5	651.9 <sup>11</sup>	652
<b>% Change</b>	+ 53.6%	-17.7%	+ 39.2%	+ 6%	+ 92.6%	+ 57.3%	+ 252.4%	+624.4%

As can be seen from the data above, there is a substantial difference in timeliness of decision-making between these two time periods. The length of time between each of these case milestones increased significantly during the 2011-2014 time period, with the exception of the median days from filing to the case management conference. However, that reduced median has not resulted in lesser time from filing to oral argument/trial or dismissal. The greatest increases in length of time occurred in the making of decisions by the Court.

<sup>11</sup> Note that this statistic was calculated from 13 cases.

## IV. Observations and Recommendations

### 3.1 Caseflow Management

#### A. Findings and Observations

- Throughout the time period analyzed (2006 – 2015), the Tax Court has not processed cases very expeditiously when considered in light of typical appellate court time standards and goals. However, the level of delay at every stage of the case process has increased in the period from 2011-2014.
- The Tax Court does not now have, and has never had, a policy making attorneys and litigants aware of the expectations with respect to continuances.
- Reason(s) for delay at the ‘oral argument/trial to opinion’ stage are not communicated to the litigants, leaving them and their counsel unclear about why the process has become extraordinarily long.
- Throughout the years, the culture of the Tax Court has been to allow the attorneys to control the pace of litigation from filing to trial or oral argument. Settlement negotiations may consume most of this time, however, it does not appear that the Court uses its authority to ensure that these negotiations proceed effectively.
- The extent of pretrial discovery in state revenue cases was reported to have increased significantly in recent years. Some attributed this development, apparently common in state revenue cases, to the case being heard as a *de novo* review and because the Department of Revenue does not necessarily retain audit evidence. This was considered by some persons to be a contributing factor in the length of time from filing to trial and it was suggested that discovery limitations, similar to those established in the Marion County Superior Court, be considered. However, in the stakeholder survey there was no clear preference given to this proposal.<sup>12</sup>
- The Tax Court does not actively practice case management in an effective or sophisticated manner and has no case management plan. Some interviewees reported that the case management conferences were unproductive in ensuring cases progress at an appropriate pace.
- Requests from the Tax Court to attorneys to waive the time limitations for ruling on motions under Indiana Rules of Trial Procedures 53.1 and for holding matters under advisement under Rule 53.2 is reported to be common practice.
- The Tax Court schedules a hearing and prepares an explanatory written order for all motions regardless of the perceived need for such proceedings. In addition, oral arguments are conducted for all appeals decided on the merits regardless of the issues raised. A majority of attorneys interviewed by the project team indicated that many motions could be decided without a hearing, and instead a short, one-sentence order, and that some appeals could be decided on the briefs

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<sup>12</sup> See supra page 11.

and record without oral argument. In addition, there are no time limitations on appellate oral arguments.

### **B. Recommendations**

- 3.1-1: The culture of limited management of the progress of Tax Court cases must be changed through the establishment of appropriate rule changes (if any are needed), administrative orders and the proactive judicial management of cases.
- 3.1-2: Explore possible Tax Court Rule changes or an administrative order to establish a continuance policy including a 'good cause' requirement. Good cause typically would include previously unforeseen circumstances raised in a timely manner. Stipulation of the parties, failure to complete discovery, ongoing settlement negotiations, press of business, lack of preparation, etc. are typically not considered to be sufficient reasons to grant a motion for continuance. Trial dates should be set at the initial case management conference and should be considered firm.

### **Common Elements of Effective Continuance Policies**

#### **Motions for Continuance**

- **Made to appropriate court official.** A continuance policy should specify to what court official(s) the motion for continuance should be made and also the deadline for filing in relationship to the calendared hearing time.
- **Form of motion.** A continuance policy should identify the proper form the motion should take, i.e., is there a specified form, can the motion be a simple written request to the judge, etc.
- **Notification made to opposing counsel.** Continuance policies should identify how and when opposing counsel or unrepresented parties must be notified of the motion for continuance.
- **Objections to Motions for Continuance.** Continuance policies should specify the procedure that opposing counsel or unrepresented parties must follow to communicate any objections to the motion for continuance.
- **Evaluations of Motions for Continuance.** A continuance policy should clearly state that motions for continuances are presumptively disfavored, except when a continuance is clearly in the interest of justice. Continuance policies should identify the good cause factors that the Tax Court judge will use when deciding whether to grant or deny the motion for continuances. These reasons could include, among others:

- Age of the case;
  - Number of previous continuances;
  - Extent to which counsel had input into the scheduling of the trial date;
  - Due diligence of counsel in promptly filing a motion for continuance as soon as practicable;
  - Whether the reason for continuance is a short lived event which could resolve prior to the scheduled trial date;
  - Length of the continuance requested, if applicable;
  - Position of opposing counsel and parties;
  - Whether the parties themselves consent to the continuance;
  - Present or future inconvenience or unavailability of witnesses/parties; and
  - Any other matter that is in the interest of the fair administration of justice.
- Many effective continuance policies also include reasons that, by themselves, would not be considered valid bases for granting a continuance motion, and these reasons often include:
    - Stipulation of the parties;
    - Potential conflicting schedule of other matters in other courts;
    - Failure to complete discovery;
    - Ongoing settlement negotiations; and
    - The press of business.

3.1-3: Consider the desirability of establishing limitations on discovery; this might include limiting the number of interrogatories and depositions. If such limitations were established, it may behoove the Department of Revenue to retain audit evidence until such time as an issue is finally decided. This review did not consider the feasibility of such a proposal.

3.1-4: The Tax Court should develop a process under which certain motions could be decided without a hearing and with only a brief order.

3.1-5: The Tax Court should develop a process under which certain appeals could be decided on the merits, based on the briefs and record and without oral argument. In addition, there may be certain cases that would not require published opinions to be resolved. Use of unpublished, memorandum type orders to resolve such cases may result in time savings for the legal staff and the Tax Court Judge.

### 3.2 Data Collection, Performance Measurement, Time Standards and Reporting

#### A. Findings and Observations

- The Tax Court has not established any case processing time standards to measure its timeliness in resolving the cases before it.
- The Court uses an Excel spreadsheet with manual data entry to provide Judges and staff with only a very high-level listing of pending cases. The implementation of the Odyssey Case Management System provides the opportunity to build an effective system that can be used to monitor case progress, prepare regular reports on case status and measure the Court's performance relative to appropriate time standards.

#### B. Recommendations

- 3.2-1: Determine appropriate time standards for the various types of cases handled by the Tax Court. For example, standards can be established for state revenue cases and property tax appeals or other sub-categories of case types. Because the Tax Court needs to consider aspects of both trial court and appellate court case management, its time standards could be modeled on the widely known 'Model Trial Court Time Standards'<sup>13</sup> and the Model Time Standards for State Appellate Courts'<sup>14</sup> produced by the NCSC and endorsed by the Conference of Chief Justices and the Conference of State Court Administrators. These documents provide extensive discussion of principles, methodologies and format for developing court established time standards. Once established, the Tax Court should regularly measure its performance relative to the standards and periodically, ideally quarterly, submit performance reports to the Indiana Supreme Court.
- 3.2-2: In conjunction with full implementation of the Odyssey Case Management System, the Tax Court should work with the Supreme Court's Information Technology staff to configure appropriate data elements, reporting capabilities and case monitoring functionality. The Tax Court could evaluate some of the configurations implemented by the Court of Appeals as that court transitioned to Odyssey, and they could be used to determine what data elements and management reports will be necessary. Tax Court staff should then be required to ensure that all required data elements are entered to Odyssey in a timely and accurate manner and the use of separately maintained spreadsheets eliminated.

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<sup>13</sup> Model Trial Court Time Standards, National Center for State Courts, Williamsburg, VA;  
<http://ncsc.contentdm.oclc.org/cdm/ref/collection/ctadmin/id/1836>

<sup>14</sup> Model Time Standards for State Appellate Courts, National Center for State Courts, Williamsburg, VA;  
<http://ncsc.contentdm.oclc.org/cdm/ref/collection/appellate/id/1032>

Some examples of routine management reports that should be prepared and reviewed would be:

- Activity Reports
  - Cases Filed/Remanded
  - Trials/Oral Arguments Held
  - Decisions/Opinions Issued
  - Cases Disposed
- Management Reports
  - Age of Pending Cases (by case type)
  - Status of Pending Cases
  - Age of Cases Disposed
  - Time from Case Filing to Trial/Oral Argument
  - Time from Trial/Oral Argument to Decision/Opinion

### 3.3 Tax Court Staffing & Decision-Making Procedures

#### A. Findings and Observations

- The Tax Court Judges, staff attorney and law clerks report that they have spent a significant amount of time training new clerks. This may be attributable in part to a high rate of turnover in recent years, changing practices and authorization of a new law clerk position.
- The Tax Court Staff attorney performs a significant amount of administrative tasks and serves as primary back-up for the court administrator (payroll, etc.). It is not known how much time this consumes on a regular basis but is a source of interruption, taking her time away from case reviews.
- The Tax Court law clerks are not specialized by case type (DOR, property tax, etc.). Property tax appeals are generally less complex and present factual issues which require less extensive analysis whereas state revenue cases usually present complex issues involving interpretation of the law and legislative intent. It may be an effective approach to assign property tax appeals to newer law clerks and state revenue cases to the more experience law clerks and staff attorney.
- After the trial/oral argument, the Judge prepares detailed notes of the proceedings which are kept with the briefs and other case documents. The legal staff retrieve these cases on a 'first in – first out' basis. The assigned law clerk or staff attorney does not attend the trial/oral argument although they are recorded and available for future viewing. The length of time from the date of trial/oral argument until a law clerk or staff attorney begins to review the case has, in recent years, taken from 12 to 18 months.
- The 'unwritten standard' for the court's legal staff is to prepare, on average, a draft opinion within four weeks of beginning review on a case. This length of time is rather long, relative to appellate court law clerks working on complex civil

cases, and does not appear to account for the differing complexity and time requirements between property and state revenue cases. The comparison to appellate law clerks is imperfect due to the nature of the cases but can serve as a general guideline. Once the draft is prepared it is circulated among the other staff who provide suggested edits and revisions before going to the judge. This staff circulation is typically short, about 1 to 3 days, unless many suggested edits and revisions are returned but also creates an interruption for the other staff. The current judge then rewrites the opinion, sometimes extensively, before it is ready for issuance.

- As the only judicial officer, the Tax Court Judge must review and conduct all case management conferences, considering all related matters such as discovery, status reports, scheduling and any subsequent pretrial motions. Because most Tax Court cases are resolved by settlement rather than through trial/oral argument and opinion, the volume of case management and pretrial matters can consume a large portion of available judicial time.

## **B. Recommendations**

- 3.3-1: Consider contacting the Clerk of the Supreme Court, the Court of Appeals court administrator or the state court administration office to discuss developing a cooperative arrangement for supporting one another as assistance is needed in administrative tasks such as accounts payable, payroll management, etc. Given the small size of the Tax Court staff, it may be feasible for the other entities to absorb the day to day administrative tasks associated with these types of functions. This would alleviate the intermittent burden on the staff attorney to provide this administrative support. It would also allow more time for the Tax Court administrator to spend on Caseflow management responsibilities.
- 3.3-2: Explore the concept of specializing the assignment of cases based on the expertise of the individual law clerks. The objective should be that all law clerks, particularly if they hold an indefinite appointment, would be able to efficiently review any types of case within an established time period, perhaps 2 to 3 years.
- 3.3-3: The Tax Court should establish and formalize performance standards for the legal staff based on the relative complexity of assigned cases. Such standards would replace the 'unwritten' 4-week objective with clear expectations. For example, a proficient law clerk might be able to review a case and produce a draft opinion for a relatively uncomplicated case in two weeks; a case of moderate complexity may take 3 weeks and a more complicated case would require the full four weeks.<sup>15</sup> Once the appropriate performance standards are determined, law clerks and the staff attorney performance should be measured in accordance with them.

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<sup>15</sup> Note that the simple, moderate and more complex time periods listed are examples only and not recommended standards. The Court should develop these standards with input from the legal staff members and other appropriate persons as necessary.

3.3-4: The addition of a magistrate type judicial officer position handling case management conferences and early pre-trial management motions could significantly aid the Court in reducing the current backlog of pending cases and reducing the length of time to disposition for future Tax Court cases. The scope of this review did not allow for determining whether this would require a full or part-time position. The Tax Court should consider the addition of a magistrate position, the duties that could be assigned to a magistrate and whether a full or part-time position would be required.

### 3.1 Other Issues

#### A. Findings and Observations

- It was reported by several practitioners, primarily government attorneys, that there is a lack of adequate checks and balances on the quality of the Tax Court decision-making, other than a discretionary appeal to the Indiana Supreme Court. They observe that matters of tax law are decided by a single judge with no right of mandatory appeal.
- Tax law cases of a small dollar amount are perceived by some respondents to be functionally excluded from consideration by the Tax Court. This is attributed to the cost and long amount of time that is required to reach a decision. While there are provisions in the Indiana Tax Court Rules for a 'small claim' process, the dollar limit is perceived to be much too low to provide an effective solution. Some suggested that the dollar limit be raised to as high as \$50,000.

The above issues are outside the scope of this review but they appear to be a great import to those individuals who raised them. We include them here only to advise the Tax Court Task Force and other interested parties of their existence.

### Appendix: Stakeholder Survey

#### Indiana Supreme Court Ad Hoc Advisory Task Force Tax Court Survey

Thank you for participating in this survey of Indiana tax attorneys regarding the operations of the Indiana Tax Court. The Task Force was created by the Indiana Supreme Court and is charged with conducting a comprehensive review of the performance, caseload and resources available to the Tax Court. This survey is being administered by the National Center for State Courts (NCSC) and includes 36 questions which should take about 20 minutes to complete. The NCSC will receive and compile all responses and report the aggregate results to the Task Force. Individual responses will remain confidential to the NCSC and will not be disclosed to either the Tax Court or the Task Force. In addition, no comments or responses will be attributed to any individual respondent.

As an attorney who has recently practiced before the Tax Court, or has a substantial interest in Indiana tax law, you have been selected to participate in this survey. We value your feedback and ask that you provide your thoughtful consideration to each of these questions. Thank you for your participation.

We recommend that you finish the survey in one sitting as the software will not save your previous answers if you exit. If you encounter any difficulties with the survey, please contact Alisa Kim at akim@ncsc.org or 303-308-4340. Thank you!

1. I am an:
  - Attorney with a tax law practice
  - Other (please specify)
  
2. With respect to your involvement with the Tax Court, do you primarily represent or affiliate with:
  - Government
  - Taxpayer
  - Both about equally
  
3. Please indicate the approximate number of cases in which you have appeared before the Tax Court during your career.
  - None
  - 1-10
  - 11 Or more
  
4. Please indicate whether you have primarily appeared before the Tax Court, or primarily been involved with, the area of property tax, revenue (income/sales and use) tax, or both.
  - Property tax
  - Revenue tax
  - Both Property and Revenue tax

**5. QUALITY OF SERVICES**

Please indicate your level of agreement or disagreement with the following statements. Each statement includes an opportunity to provide comments or explanation – these will help greatly in obtaining a clear understanding of all respondent ratings.

	Strongly Disagree	Disagree	Neither Agree nor Disagree	Agree	Strongly Agree	N/A or Don't Know
The Indiana Tax Court Rules and procedures are appropriate for its jurisdiction						
Comments:						
The Indiana Tax Court Rules should limit discovery in Department of Revenue cases						
Comments:						
The Tax Court is reasonably accessible to all parties having a tax-related dispute within its jurisdiction						
Comments:						
After taking discovery or procedural motions under advisement, the Tax Court decides them in a timely manner without unnecessary delay						
Comments:						
After taking dispositive motions under advisement, the Tax Court decides them in a timely manner without unnecessary delay						
Comments:						
After taking the merits of cases under advisement, the Tax Court decides them in a timely manner without unnecessary delay						
Comments:						
Oral arguments or hearings should be held for all discovery or procedural motions decided by the Tax Court						
Comments:						
Oral arguments or hearings should be held for all dispositive motions decided by the Tax Court						
Comments:						
Some types of appeals could be taken under advisement by the Tax Court without oral argument or hearing.						

Comments:						
The Tax Court gives the appropriate amount of consideration to each case based upon the facts and applicable law						
Comments:						
The Tax Court's written opinions reflect thoughtful and fair evaluation of the parties' arguments						
Comments:						
The Tax Court's written opinions clearly state the applicable legal principles that govern the decision						
Comments:						
The Tax Court's staff responds well to inquiries						
Comments:						
The judicial capacity and staffing level of the Tax Court is adequate given its caseload volume						
Comments:						
The Tax Court's Web site provides useful information						
Comments:						
The Tax Court resolves and communicates its decisions in a timely manner						
Comments:						
Timelines established in the case management conference are generally adhered to by counsel and are appropriately enforced by the Tax Court						
Comments:						
Continuances are granted only when necessary and for an appropriate period						
Comments:						
The typical period of time from filing a tax case to trial or oral argument is reasonable						
Comments:						
The typical period of time from trial or oral argument to disposition of a tax case is reasonable						
Comments:						

The Tax Court makes good use of information technology to provide easy access to case information						
Comments:						
The Tax Court provides sufficient information for me to understand the process and methodology of its operations						
Comments:						
The Tax Court clearly communicates the process and timeline for disposition of cases and explains any delays						
Comments:						
Generally, the complexity of tax cases has increased in recent years						
Comments:						
The Tax Court displays fairness and impartiality towards all participants before it						
Comments:						
The Tax Court avoids impropriety and the appearance of impropriety at all times						
Comments:						
The Tax Court manages its workload effectively						
Comments:						
The Tax Court demonstrates appropriate preparation, attentiveness, and control over judicial proceedings						
Comments:						
Oral arguments and hearings in the Tax Court are conducted efficiently, generally lasting the appropriate length of time						
Comments:						
The Tax Court demonstrates courtesy towards attorneys, litigants, court staff, and others in the courtroom						
Comments:						
The Tax Court maintains appropriate decorum in the courtroom						
Comments:						

6. Please enter any additional thoughts or suggestions pertaining to the efficiency and effectiveness of the Tax Court operations.

**C**

## **Tax Court Task Force Members and Staff**

**Hon. James S. Kirsch, Chairman**

**Court of Appeals of Indiana**

200 W. Washington St., Room 415

Indianapolis, IN 46204

317-232-6909

[james.kirsch@courts.in.gov](mailto:james.kirsch@courts.in.gov)

**Jim Kirsch** was appointed to the Court in March 1994 and served as Chief Judge from March 2004 through February 2007. Judge Kirsch is a graduate of Butler University (B.A., with honors, 1968) and the Indiana University School of Law – Indianapolis (J.D., cum laude, 1974). He served as Judge of the Marion Superior Court from 1988 to 1994 and as presiding Judge of the Court in 1992. From 1974 to 1988, he practiced law with the firm of Kroger, Gardis & Regas in Indianapolis and served as managing partner of the firm. Since 1990, he has held an appointment as Visiting Professor of Law and Management at the Krannert Graduate School of Management at Purdue. Judge Kirsch is a past President of the Indianapolis Bar Association. He has been named a Sagamore of the Wabash by four different governors.

**Hon. Robert R. Altice**

**Court of Appeals of Indiana**

115 West Washington Street

Suite 1080 South Tower

Indianapolis, IN 46204

(317) 232-6889

[bob.altice@courts.in.gov](mailto:bob.altice@courts.in.gov)

**Bob Altice** was appointed to the Court by Governor Pence and began serving on Sept. 2, 2015. He earned his B.A. from Miami University, OH; an M.S. in criminal justice administration from the University of Central Missouri; and his law degree from the University of Missouri-Kansas City School of Law. Judge Altice was a deputy prosecutor in Jackson County, MO, then focused on medical malpractice defense with a Kansas City firm. He later joined an Indianapolis firm, concentrating on insurance defense. From 1994-2000, Judge Altice prosecuted major felonies for the Marion County Prosecutor's Office, including three years as Chief of the Felony Division. After his 2000 election to the Marion County bench, he presided at more than 250 major felony jury trials and 15 civil jury trials. He was Presiding Judge of the Marion Superior Court from 2009-2011. Judge Altice is a member of the Indiana Judges Association, has served on the Board of Directors of the Judicial Conference of Indiana, and was a member of the Indiana Judicial Conference Community Relations Committee and Civil Bench Book Committee.

**Matthew Light**  
**Chief Deputy**  
**Office of the Attorney General**  
302 W. Washington St., Fifth Floor  
Indianapolis, IN 46204-2770  
317-232-4866  
[mlight@atg.in.gov](mailto:mlight@atg.in.gov)

**Matt Light** was promoted to Chief Deputy in July 2014, and his duties include acting as liaison to the Governor's office, legislature, and state agencies as well as managing the office's various legal divisions and projects. He oversees almost exclusively matters concerning tax revenue and property taxes.

From 2011-2014, Light served as chief counsel of the AG's Advisory and Alternative Dispute Resolution Services where he oversaw the office's work in relation to opinions, contracts, administrative rules, public records, and advisory counsel for agencies, boards and commissions. He also coordinates the office's legislative policy efforts and works with the Attorney General and legislative team to promote proposals each session that will enhance the ability of the office to perform its functions and serve government clients and constituents.

Prior to the being Chief Counsel for the OAG's Advisory Division, Light was an Associate Attorney at Park Legal LLC, a data privacy law firm; was a solo practitioner; and Program Development Manager and instructor for TGA of Hamilton and Boone (a junior golf instruction company).

Matt serves on the Indiana State Bar Association's Board of Governors and as chair of ISBA's Young Lawyers Section. He is also Treasurer of the ISBA Professional Legal Education, Admission, and Development Section (PLEADS) and is a 2013 graduate of the ISBA Leadership Development Academy. Light received his law degree from the Indiana University School of Law, Bloomington in 2005 and has a B.A. in journalism and political science from Indiana University, Bloomington.

**Asheesh Agarwal**  
**General Counsel**  
**Indiana Department of Revenue**  
100 N. Senate Ave.  
Indianapolis, IN 46204  
317-232-0610  
[aagarwal@dor.in.gov](mailto:aagarwal@dor.in.gov)

**Asheesh Agarwal** was named as general counsel for the Indiana Department of Revenue in June, 2013. As general counsel, Agarwal leads the department's Legal Division, which includes Protests and Hearings, Inheritance Tax, Administrative Law Judge matters, Motor Carrier Services Legal, Tax Policy, and general legal matters. He also serves as the department's liaison with the Indiana Attorney General's Office.

Agarwal has strong legal and policy experience having been engaged in private sector practice and counsel with federal agencies in Washington, D.C., and involved in policy formulation at the state level.

Agarwal earned his B.A. from Northwestern University and his J.D. from the University of Chicago Law School.

"Agarwal grew up in Kokomo, and we are pleased to have him back in Indiana serving Hoosiers," said Commissioner Mike Alley. "I know he will bring strong leadership to our Legal Division and contribute significantly to the overall success of the department."

**David A. Suess,**  
**Faegre Baker Daniels LLP**  
300 N. Meridian Street, Suite 2700  
Indianapolis, Indiana 46204  
317-237-1074  
[David.suess@faegrebd.com](mailto:David.suess@faegrebd.com)

**David Suess** focuses his legal practice on resolving disputes involving state and local taxes, including property tax, wagering tax and complex valuation appeals of commercial, industrial and gaming properties for tax purposes. He has represented taxpayers before Indiana and Illinois tax agencies on a variety of tax matters. David has also represented taxpayers on state and local tax matters in federal bankruptcy proceedings and appeals. David always works to resolve clients' tax problems without the need for litigation, but when that is not possible, he represents clients in all phases of litigation through administrative, court and appellate proceedings.

Before joining Faegre Baker Daniels, David was a partner at Bose McKinney & Evans LLP in Indianapolis. After earning his law degree, he practiced for a year at Jenner & Block in Illinois before accepting a clerkship with the Honorable Ronald T. Y. Moon, Chief Justice of the Hawaii Supreme Court. Prior to law school, David worked as a translator-interpreter for a manufacturer in Lafayette, Indiana.

He is a member of the Indianapolis Bar Association, Indiana State Bar Association — Taxation Section, Council Chair-Elect, and the Illinois State Bar Association.

His civic activities include: The Health Foundation of Greater Indianapolis — Board Chairperson; Youth Education Town — Advisory Board Member; Midtown Community Mental Health Center — Past Advisory Board, Chairman; Indiana AIDS Fund — Past Board of Directors, Chairman; ACLU of Indiana — Past Lawyer's Council, Steering Committee; Athenaeum Foundation — Past Board of Directors; Indianapolis Chamber of Commerce — Past IPS Facilities Strategy Task Force (Legislative Subcommittee, Chairman); and, Indianapolis Public Schools (IPS) — Past Yellow Ribbon Task Force and Historic Preservation Task Force.

He has held a faculty position since 2007 as an Adjunct Professor at the Indiana University Robert H. McKinney School of Law, Indianapolis. He has made numerous presentations and published scholarly papers on tax related topics.

**Katie Lodato**  
**Senior Director - Global Tax**  
Eli Lilly and Company  
Phone: 317-655-9222  
[lodatoka@lilly.com](mailto:lodatoka@lilly.com)

**Katie Lodato** is the **Senior Director and Tax Counsel** at **Eli Lilly and Company, Indianapolis**. She previously served as the **Tax Strategy Director and Counsel** at Eli Lilly. Before joining Lilly, Katie practiced in tax law for more than 6 years, including about 3 years each at Skadden Arps in Chicago and Bose, McKinney & Evans in Indianapolis. Her practice included frequent appearances before the Indiana Tax Court. She received her undergraduate degree at Indiana University - Kelley School of Business and her law degree from Northwestern University School of Law.

**Randal J. Kaltenmark**  
**Barnes & Thornburg LLP**  
11 South Meridian Street  
Indianapolis, IN 46204-3535  
317-231-7741  
[randal.kaltenmark@btlaw.com](mailto:randal.kaltenmark@btlaw.com)

**Randy Kaltenmark** is a partner in the Tax Department at Barnes & Thornburg LLP. Mr. Kaltenmark provides tax planning, and represents clients in audit and administrative proceedings before the Internal Revenue Service and state/local tax authorities, and in appeals before federal and state courts, including the United States and Indiana Tax Courts. Mr. Kaltenmark is the former chair and active member of the Taxation Sections of the Indiana State Bar Association and the Indianapolis Bar Association. Mr. Kaltenmark received his J.D. cum laude from Indiana University School of Law - Bloomington in 1996. He earned his B.A. with Honors in history, summa cum laude from Valparaiso University in 1993.

**Dustin D. Huddleston**  
**Huddleston & Huddleston**  
Clarke House  
98 West Jefferson Street  
Post Office Box 9  
Franklin, Indiana 46131  
317.736.5121  
[dustin@huddlestonlaw.com](mailto:dustin@huddlestonlaw.com)

**Dustin Huddleston** practices in the areas of General Civil Law; Trial law; Appellate Practice; Banking Law; Corporate Law; Zoning Law; Family Law; Real Estate Law; Probate Law; and Real Property Assessment Law. He is admitted to practice in the State of Indiana and the State of Florida. He currently serves as the town attorney for the Town of Edinburgh and legal counsel for the Johnson County Property Tax Board of Appeals; Johnson County Assessor; and the Whiteland Fire Protection District.

Dustin also serves as a court appointed counsel for indigent individuals regarding Child In Need of Services cases for the Johnson County Circuit Court.

Dustin is admitted to practice in all state courts in Indiana and Florida; the United States District Court for the Northern District of Indiana; United States District Court for the Southern District of Indiana; United States Court of Appeals for the 7th Circuit; United States District Court for the Northern District of Florida; United States District Court for the Middle District of Florida; United States District Court for the Southern District of Florida; United States Court of Appeals for the 11th Circuit; and the United States Supreme Court.

Dustin graduated from the Indiana University Robert H. McKinney School of Law and served as a Board Member of the Dean's Student Advisory Board and was the recipient of the Francis J. Feeney Jr. Tax Award.

Dustin holds an AV® Preeminent™ rating by Martindale-Hubbell and is a member of the Indiana Supreme Court Character and Fitness Committee.

Dustin resides in Franklin, Indiana with his wife and sons.

**Mark E. GiaQuinta**  
**Haller & Colvin P.C.**  
444 E. Main Street  
Ft. Wayne, IN 46802  
260-426-0444  
[mgiaquinta@hallercolvin.com](mailto:mgiaquinta@hallercolvin.com)

**Mark GiaQuinta** has practiced law since 1979 and his key practice areas are Construction Litigation, Property Tax Litigation, Contract Litigation, and University Promotion and Tenure. He is licensed to practice law in the State of Indiana, U.S. District Court, Northern District of Indiana, U.S. District Court, Southern District of Indiana. He is also admitted Pro Hac Vice in Ohio, New York, Arkansas and Florida.

GiaQuinta received his B.A. in Economics and Political Science in 1976 from Indiana University, Bloomington; and his J.D. in 1979 from Indiana University Maurer School of Law. He is a member of the American Bar Association, Indiana State Bar Association, Allen County Bar Association, and the Indiana Trial Lawyers Association.

His past and present community involvement includes: Fort Wayne Community Schools Board of Trustees – President At-Large; Fort Wayne City Council – Former Member for 16 years; Fort Wayne Plan Commission – Former Member; St. Joseph Hospital – Former Board Member; and Fort Wayne Family and Children’s Services – Former Board Member.

**Task Force Staff:**

**Fenton D. Strickland**  
**Counselor to the Chief Justice**  
317-234-8809  
[fenton.strickland@courts.in.gov](mailto:fenton.strickland@courts.in.gov)

**Fenton Strickland** serves the Indiana Supreme Court as Counselor to the Chief Justice. Prior to his current service to the Court, Fenton had a state and local tax practice at Faegre Baker Daniels in Indianapolis for 7 years. He advised clients on an assortment of tax and corporate matters, including economic development, multistate tax planning, and business transactions. The substantial portion of his practice involved tax controversies, where he represented scores of clients before the Indiana Department of Revenue, Indiana Department of Workforce Development, Indiana Department of Local Government Finance, Indiana Board of Tax Review, and various local property tax assessment boards of appeal. Fenton made frequent appearances in the Indiana Tax Court and represented clients in appeals before the Indiana Court of Appeals and Supreme Court. He served on the Executive Board of the Indianapolis Bar Association Tax Section.

Before his practice at Faegre Baker Daniels, Fenton was a judicial clerk to Justice Brent Dickson. Prior to that, Fenton achieved an 11-year accounting career, working in various management capacities, including as the controller at CIC Enterprises LLC. While working at CIC Enterprises, Fenton attended law school, graduating *summa cum laude* from Indiana University Robert H. McKinney School of Law in 2005. He earned his Bachelors of Science degree in Accounting from Indiana University Kelley School of Business in 1994.

**James F. Maguire**

**Staff Attorney**

State Court Administration  
30 S. Meridian St, Suite 900  
Indianapolis, IN 46204  
317-232-1311  
[james.maguire@courts.in.gov](mailto:james.maguire@courts.in.gov)

**Jim Maguire** is a staff attorney for the Indiana Supreme Court, Division of State Court Administration. For the Division, he serves as Editor of the Indiana Court Times, gatekeeper for all of the local court rules, lead attorney for attorney disciplinary investigations when the Disciplinary Commission has a conflict, and various task forces and working groups, including investigating audio/visual court reporting systems and assisting court reporters meet the new 45-day deadline for completing appellate transcripts.

He graduated from Purdue University with a degree in Economics and the Indiana University Robert H. McKinney School of Law, cum laude. He practiced law for twenty years before accepting an appointment by Governor Frank O'Bannon as the Director of the Hoosier Lottery and later as the Governor's Chief of Staff. He also served as Senate Parliamentarian for two sessions of the Indiana General Assembly.

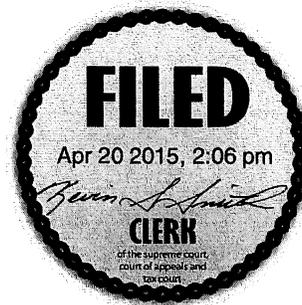
His present and past community involvement includes: Purdue University, President's Council; Eiteljorg Museum, Past President of the Adobe Society and Ex-Officio Board Member; Former Pro Bono attorney for the Neighborhood Christian Legal Clinic; Former Board Member, Indiana Legal Services Corporation; Former Board Member, Indianapolis Press Club; Former Board Member, Meridian-Kessler Development Corporation; and Volunteer, St. Vincent DePaul Society.

He was named a Sagamore of the Wabash by Governor Otis Bowen and by Governor Frank O'Bannon.

**D**

In the  
**Indiana Supreme Court**

IN THE MATTER OF THE CREATION OF ) Supreme Court No.  
AD HOC ADVISORY TAX COURT ) 94S00-1504-MS-209  
TASK FORCE )



ORDER CREATING AD HOC ADVISORY TASK FORCE TO  
STUDY RESOURCES AND CASELOAD OF INDIANA TAX COURT

The Indiana General Assembly created the Indiana Tax Court, effective July 1, 1986, and vested it with jurisdiction over cases arising under the tax laws of Indiana. The Tax Court has one judge and is authorized to use senior judges.

At the time of the Tax Court's creation, this Court adopted a set of rules to govern the procedure and practice in the Tax Court. With the collaboration of the Tax Law Section of the Indiana State Bar Association, the Tax Court conducted an extensive review of the initial Tax Court Rules. After review and input by the Supreme Court Committee on Rules of Practice and Procedure, the Tax Court recommended a set of Tax Court Rule amendments, which this Court adopted by order dated October 30, 2014, becoming effective January 1, 2015.

In addition, it has been nearly thirty years since the Tax Court's creation. Reviewing caseload information filed by the Tax Court with the Division of State Court Administration and published in the annual Judicial Service Reports indicates significant differences over time in the number of cases filed in and disposed of by that court. We find a comprehensive review of the caseload and resources available to the Tax Court is warranted and that a special task force should collaborate with the Indiana Tax Court to review the court's resources, caseload, performance and operations.

IT IS THEREFORE ORDERED that an *Ad Hoc Tax Court Advisory Task Force* (“Task Force”) is hereby created and directed to examine the caseload, resources, staffing, performance and operations of the Indiana Tax Court, including to review and analyze its methods and procedures for case disposition. We suggest the Task Force consider models including, but not limited to, those established by the Conference of Chief Justices, Conference of State Court Administrators, and National Center for State Courts as part of the Trial Court Performance Measures System, CourTools, and the Appellate Court Performance Measures.

The following persons are appointed to the Task Force:

1. Judge James S. Kirsch, Indiana Court of Appeals
2. Judge Robert R. Altice, Marion Superior Court
3. Mr. David A. Suess, Faegre Baker Daniels LLP
4. Mr. Gary Secrest, Office of the Indiana Attorney General
5. Mr. Matt Light, Office of the Indiana Attorney General
6. Mr. Asheesh Agarwal, Indiana Department of Revenue
7. Ms. Kathryn A. Lodato, Eli Lilly and Company

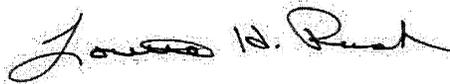
Judge Kirsch shall serve as the Chair of the Task Force.

In addition to the foregoing members, Judge Martha B. Wentworth and Sr. Judge Thomas G. Fisher of the Indiana Tax Court will serve as *ex officio* liaisons from the Tax Court to the Committee and attend meetings by invitation of the Chair.

The Chief Justice of Indiana will appoint staff to assist the Task Force in its work, and the Executive Directors of the Supreme Court Division of State Court Administration and the Indiana Judicial Center are directed to appoint staff to provide further support.

The Task Force is directed to provide a written report to this Court not later than March 1, 2016. The report shall include the Task Force's findings and any recommendations.

DONE at Indianapolis, Indiana, this 20<sup>th</sup> day of April, 2015.



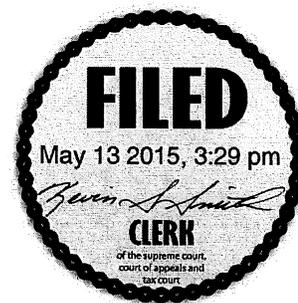
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Loretta H. Rush  
Chief Justice of Indiana

All Justices concur.

**E**

In the  
Indiana Supreme Court



IN THE MATTER OF THE CREATION OF ) Supreme Court No.  
AD HOC ADVISORY TAX COURT ) 94S00-1505-MS-271  
TASK FORCE )

ORDER AMENDING AD HOC ADVISORY TASK FORCE TO  
STUDY RESOURCES AND CASELOAD OF INDIANA TAX COURT

On April 20, 2015, this Court ordered creation of the Ad Hoc Tax Court Advisory Task Force (the "Task Force") and that the Task Force submit a written report to the Court by March 1, 2016 (the "April 20 Order"). Subsequently, on May 6, 2015, the Governor signed Senate Enrolled Act 423 (SEA 423), calling for the Indiana Judicial Center to review the workload and backlog of cases in the Indiana Tax Court and submit a report to the Indiana Legislative Council by December 1, 2016. To integrate SEA 423 with this Court's charge, we find that the April 20 Order should be AMENDED and that the creation of the Task Force shall be as follows:

It has been nearly thirty years since the Tax Court's creation. Reviewing caseload information filed by the Tax Court with the Division of State Court Administration and published in the annual Judicial Service Reports indicates significant differences over time in the number of cases filed in and disposed of by that court. We find a comprehensive review of the caseload and resources available to the Tax Court is warranted and that a special task force should collaborate with the Indiana Tax Court to review the court's resources, caseload, performance and operations.

IT IS THEREFORE ORDERED that an *Ad Hoc Tax Court Advisory Task Force* is hereby created and directed to examine the caseload, resources, staffing, performance and

operations of the Indiana Tax Court. The Task Force shall provide a written report to this Court not later than May 1, 2016, and provide copies of its report to the Indiana Judicial Center and Indiana Legislative Council.

The Task Force's report shall include a review and analysis of the Tax Court's methods and procedures for case disposition, including findings concerning efficiencies of the methods and procedures in the Tax Court and recommendations, if any, for necessary improvement thereof. The report shall also include consideration of any reports and recommendations concerning the Tax Court prepared and published by the Division of State Court Administration.

We suggest the Task Force also consider models including, but not limited to, those established by the Conference of Chief Justices, Conference of State Court Administrators, and National Center for State Courts as part of the Trial Court Performance Measures System, CourTools, and the Appellate Court Performance Measures.

The following persons are appointed to the Task Force:

1. Judge James S. Kirsch, Indiana Court of Appeals
2. Judge Robert R. Altice, Marion Superior Court
3. Mr. Asheesh Agarwal, Indiana Department of Revenue
4. Mr. Mark E. GiaQuinta, Haller & Colvin P.C.
5. Mr. Dustin D. Huddleston, Huddleston & Huddleston
6. Mr. Randal J. Kaltenmark, Barnes & Thornburg LLP
7. Mr. Matt Light, Office of the Indiana Attorney General
8. Ms. Kathryn A. Lodato, Eli Lilly and Company
9. Mr. David A. Suess, Faegre Baker Daniels LLP

Judge Kirsch shall serve as the Chair of the Task Force.

In addition to the foregoing members, Judge Martha B. Wentworth of the Indiana Tax Court will serve as *ex officio* liaison from the Tax Court to the Committee and attend meetings by invitation of the Chair.

The Chief Justice of Indiana will appoint staff to assist the Task Force in its work, and the Executive Directors of the Supreme Court Division of State Court Administration and the Indiana Judicial Center are directed to appoint staff to provide further support.

DONE at Indianapolis, Indiana, on 5/13/2015.



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Loretta H. Rush  
Chief Justice of Indiana

All Justices concur.