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**IN THE  
INDIANA TAX COURT**

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WAYNE TOWNSHIP, )  
MARION COUNTY, INDIANA, )  
 )  
Petitioner, )  
 )  
v. )  
 )  
INDIANA DEPARTMENT OF LOCAL )  
GOVERNMENT FINANCE, and )  
BILLIE J. BREAUX, in her official )  
capacity as the Marion County Auditor, )  
 )  
Respondents. )

Cause No. 49T10-0711-TA-66

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ORDER ON PETITIONER'S MOTION TO RECONSIDER

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**NOT FOR PUBLICATION**  
**August 25, 2008**

FISHER, J.

Comes now the Petitioner, Wayne Township, Marion County, Indiana (Wayne Township) and files a motion to reconsider (motion). Wayne Township presents two issues in its motion, which it claims require reversal of this Court's April 14, 2008 order

in the above-captioned matter. See *Wayne Twp. v. Indiana Dep't of Local Gov't Fin. (Wayne Township III)*, No. 49T10-0711-TA-66, slip op. (Ind. Tax Ct. April 14, 2008).

The Court restates those issues as:

- I. Whether the administrative remedies identified in *Wayne Township III* were either futile or inadequate when applied to the facts of Wayne Township's case; and
- II. Whether this Court's decision in *Wayne Township III* was irreconcilable with either the Indiana Court of Appeals' decisions in *Wayne Township v. Indiana Department of Local Government Finance (Wayne Township I)*, 865 N.E.2d 625 (Ind. Ct. App. 2007) and *Wayne Township v. Indiana Department of Local Government Finance (Wayne Township II)*, 869 N.E.2d 531 (Ind. Ct. App. 2007) or Article 1 section 12 of the Indiana Constitution (the Open Courts Clause).

The Court has reviewed Wayne Township's motion and held a hearing thereon. The Court stands by its original decision as to issue one, and therefore denies Wayne Township's motion as to that issue. The Court, however, grants Wayne Township's motion as to issue two for the sole purpose of clarifying its April 14, 2008 order.

### **FACTS AND PROCEDURAL HISTORY**

On September 15, 2005, Wayne Township initiated an appeal with this Court challenging the DLGF's certification of, and the Marion County Auditor's (Auditor) distribution of, its distributive share of Marion County's county option income tax (COIT). Shortly thereafter, however, the parties filed a joint stipulation requesting that the case be transferred to a Marion County court of general jurisdiction. After the case was transferred, the parties, again by joint stipulation, requested that the case be transferred to a Hamilton County court of general jurisdiction. Consequently, the case was transferred to Hamilton County's Superior Court No. 3 ("trial court").

The parties then filed cross-motions for summary judgment with the trial court.

On October 24, 2006, the trial court ruled in favor of the DLGF and the Auditor. Wayne Township therefore appealed the trial court's ruling to the Indiana Court of Appeals. Upon review, however, the Court of Appeals ordered the trial court to dismiss the case because it concluded that "the trial court's entry of summary judgment in th[e] case [was] void for lack of subject matter jurisdiction." See *Wayne Twp. v. Indiana Dep't of Local Gov't Fin. (Wayne Township II)*, 869 N.E.2d 531, 534 (Ind. Ct. App. 2007) (citation omitted), *trans. denied*.

Consequently, on November 17, 2007, Wayne Township initiated another appeal in this Court challenging the DLGF's certification of, and the Auditor's distribution of, its distributive share of COIT for the 2005-2007 tax years (period at issue). On December 21, 2007, the DLGF filed a motion to dismiss claiming, *inter alia*, that this Court lacked subject matter jurisdiction over the case because the DLGF had not issued a final determination subject to this Court's review. The Court granted the DLGF's motion to dismiss on April 14, 2008, as it concluded that Wayne Township had "not challenged a final determination of the DLGF subject to th[e] Court's review." See *Wayne Twp. III*, No. 49T10-0711-TA-66, slip op. at 7 (footnote omitted).<sup>1</sup>

On May 14, 2008, Wayne Township filed its motion. The Court heard the parties' oral arguments on July 22, 2008. Additional facts will be supplied as necessary.

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<sup>1</sup> The Court notes that the DLGF also claimed that Wayne Township's appeal was subject to dismissal because Wayne Township was not the real party in interest. (See Resp't Mem. of Law on its Mot. to Dismiss at 5-6.) The Court, however, did not reach that issue, as it had concluded that it lacked subject matter jurisdiction over the case. See *Watson v. Auto Advisors, Inc.* 822 N.E.2d 1017, 1026 (Ind. Ct. App. 2005) (stating that the "lack of subject matter jurisdiction renders void any action undertaken by the court because the defect is not susceptible to waiver or cure") (citation omitted), *trans. denied*.

## ANALYSIS & ORDER

In its motion, Wayne Township claims that this Court's decision in *Wayne Township III* is inconsistent with not only the Court of Appeals decisions in *Wayne Township I* and *Wayne Township II*, but also with the Open Courts Clause of Indiana's Constitution.<sup>2</sup> More specifically, Wayne Township maintains that if this Court correctly determined that the DLGF is performing a ministerial task when it certifies a township's distributive share of COIT, then the Court of Appeals incorrectly determined that the trial court lacked subject matter jurisdiction over its case. (See Pet'r Mot. to Reconsider at 7; Oral Argument Tr. at 13-14.) In addition, Wayne Township appears to claim that the Open Courts Clause was violated because neither this Court nor the Court of Appeals reached the merits of its case. (See Pet'r Mot. to Reconsider at 7-8.) The Court, however, disagrees.

As the Court of Appeals astutely explained in *Wayne Township II*:

whether or not there is a "final determination" here by the DLGF, this case does not belong in a court of general jurisdiction. *It might not belong in the Tax Court, either, if there is not a "final determination."* We fully adhere to our original holding that the Tax Court, as a general proposition, has subject matter jurisdiction over "final determinations" of the DLGF to the exclusion of courts of general jurisdiction. Additionally, we clarify that general jurisdiction courts have no jurisdiction over determinations of the DLGF, either final or non-final determinations.

*Wayne Twp. II*, 869 N.E.2d at 533 (emphasis added) (citation and footnote omitted).

Thus, *Wayne Township III* does not conflict with either of the Court of Appeals

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<sup>2</sup> The Open Courts Clause provides that "[a]ll courts shall be open; and every person, for injury done to him in his person, property, or reputation, shall have remedy by due course of law. Justice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay." IND. CONST. art. 1, § 12.

decisions. Indeed, once this Court determined that Wayne Township had not exhausted its administrative remedies - i.e., it was not challenging a final determination of the DLGF - it lacked the authority to reach the merits of its case. See, e.g., *Goldstein v. Indiana Dep't of Local Gov't Fin.*, 876 N.E.2d 391, 393-94 (Ind. Tax Ct. 2007) (providing that the "failure to exhaust administrative remedies is a defect in subject matter jurisdiction and, accordingly, a court will be completely ousted from hearing the case at all") (internal quotation marks and brackets omitted) (citation omitted). As this Court has previously explained, the "final determination" requirement is synonymous to the basic principle of all administrative law: a party seeking judicial relief from an agency action is required to first exhaust all available administrative remedies. *Id.* at 393 (citation omitted). Finally, as the Open Courts Clause does not "prevent the legislature from imposing conditions on the pursuit of a claim in court[,]" this Court could not violate the Clause in adhering to the exhaustion requirement. See *Smith v. Indiana Dep't of Corr.*, 883 N.E.2d 802, 808 (Ind. 2008).

### **CONCLUSION**

For the foregoing reasons, the Court affirms its original order in all other respects.

SO ORDERED this 25th day of August, 2008.

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Thomas G. Fisher, Judge  
Indiana Tax Court

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