STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE

INDIANA GOVERNMENT CENTER NORTH
100 NORTH SENATE AVENUE N1058
INDIANAPOLIS, IN 46204
PHONE (317) 232-3761
FAX (317) 232-8779

MEMORANDUM

To: **County Auditors, County Assessors, and County Treasurers**

From: **Barry Wood, Assessment Division Director** BW

Subject: **Reassessment Following a Disaster (Form 137R) and Permanently Flooded Property Reassessments (Form 137PF)**

Date: **April 29, 2011**

Effective January 1, 2008, Indiana Code 6-1.1-4-11 transferred the authority to determine if a reassessment should be ordered as a result of a disaster from the Department of Local Government Finance ("Department") to the county assessor.

The purpose of this memorandum is to reiterate guidelines to consider when making this determination, as well as reiterate guidelines for permanently flooded property reassessments (I.C. 6-1.1-4-11.5).

I.C. 6-1.1-4-11 stipulates that if a substantial amount of real and personal property in a township has been partially or totally destroyed as a result of a disaster, the county assessor shall: cause a survey to be made of the area or areas in which the property has been destroyed; and order a reassessment of the destroyed property (if a person petitions the county assessor to take that action). The county assessor shall specify in the assessor's order the time within which the reassessment must be completed and the date on which the reassessment will become effective. However, the reassessed value and the corresponding adjustment of tax due, past due or already paid is effective as of the date the disaster occurred, without penalty.

The petition for reassessment of destroyed property, the reassessment order, and the tax adjustment order may not be made after December 31st of the year in which the taxes which would first be affected by the reassessment are payable.

I.C. 6-1.1-4-11 requires a substantial amount of real and personal property in a township to be partially or totally destroyed by a disaster to qualify for a reassessment. Therefore, the county assessor will be required to determine if the event was a disaster, and, if the event was a disaster, determine if it was substantial enough to issue a reassessment order.

The determination of a "substantial amount" of property destroyed cannot be made in relation to the total assessed value of property in the township. This determination is based solely on the facts of each petition. The Indiana Tax Court has provided some guidance in two cases in this

area: *Beta Steel Corp. v. Ind. Dept. of Local Gov't. Fin.*, 780 N.E.2d 439 (Ind. Tax Ct. 2002), and *Scheid v. State Bd. of Tax Comm'rs* 560 N.E.2d 1283 (Ind. Tax Ct. 1990).

In *Beta Steel*, the Court held that in looking at the "substantial amount" of damage to property in a township, "substantial amount" equals "substantial quantity" and not assessed value in comparison to the entire assessed value of all property in the township. In *Scheid*, the taxpayer appealed the Indiana State Board of Tax Commissioners' (State Board) final determination denying a petition for reassessment for property destroyed by a fire. The court held that the term "disaster" includes the destruction of property by fire that is not necessarily "widespread." In addition, the court held that the State Board's determination that only a widespread fire constituted a disaster under IC 6-1.1-4-11 was an abuse of discretion and not in accordance with law. The court, therefore, granted summary judgment for the taxpayer, but also noted that not every fire which partially or totally destroys a substantial amount of property in the township is a disaster entitling a taxpayer to reassessment.

No declaration of a disaster by the governor or president is required before reassessment can be undertaken. Further, a "disaster" for purposes of the statute does not need to be wide spread. The destruction of a single structure can be considered a disaster for purposes of the statute and reassessment.

A physical inspection of the property is required. Taxpayers should also be given the opportunity to provide evidence for consideration. This evidence could include: photos, video, repair bills, insurance claims, news articles, appraisals, reports and other documentation from local, state and federal agencies.

The final step would be to determine the assessed value of the property after the reassessment, and give the required notice of the change in assessment (attached to the completed Form 137R). If the taxpayer disagrees with this change in assessment, an appeal could be initiated pursuant to I.C. 6-1.1-15.

In 2009, I.C. 6-1.1-4-11.5 was added, addressing the reassessment of parcels affected by flooding. This statute applies to one (1) or more parcels of real property in a county that: are permanently flooded or to which access over land is permanently prevented by flooding; and are not being used for agricultural purposes. The owner of one or more parcels may petition the county assessor for a reassessment of the parcel or parcels. The county assessor shall: cause a survey to be made of the parcel or parcels; and if the parcel or parcels meet the above description, order a reassessment of the parcel or parcels.

If the flooding occurs before May 11 of a calendar year (the "current year") and after the immediately preceding November 10 and a petition is filed not later than December 31 of the current year, the reassessment ordered takes effect for the assessment date in the current year; and the assessment date in the calendar year that immediately precedes the current year. The parcel or parcels for those assessment dates are treated as being permanently flooded or having overland access permanently prevented by flooding. The property taxes first due and payable in the current year with respect to the parcel or parcels are determined based on the reassessment;

and the property taxes first due and payable in the calendar year that immediately succeeds the current year with respect to the parcel or parcels are determined based on the reassessment.

The above mentioned guidelines were originally distributed in February 2008 http://www.in.gov/dlgf/files/Memo_RegardingDisasterPetitionsForm137R.pdf, and July 2009, http://www.in.gov/dlgf/files/090709_-_Rushenberg_Memo_-_Permanently_Flooded_Property_Reassessment.pdf).

Frequently Asked Questions

There has been a severe amount of flooding in our area. Should a taxpayer file Form 137R or Form 137PF?

The decision depends on the individual circumstances. Form 137PF (Petition For Survey And Reassessment Real Property That Is Permanently Flooded Or Access Is Permanently Prevented By Flooding) should be used if one or more parcels of real property within a county are permanently flooded or to which access over land is permanently prevented because of flooding. Note: Form 137PF cannot be used for real property being used for agricultural purposes.

Does every taxpayer who files a Form 137R automatically receive a reduction in their assessed value?

Many taxpayers who file a Form 137R will be entitled to a reassessment. The assessor should review each petition and make adjustments based on the facts of each petition. Some taxpayers may have experienced minor damage that will not be significant enough to warrant a reassessment. Some taxpayers, who live in the general vicinity of a disaster but were unaffected by it, could file a petition in an attempt to lower their assessment and reduce their tax burden.

How is the taxpayer notified that their petition has been approved or denied?

At the bottom of both Form 137R and Form 137PF, the county assessor checks whether a reassessment was ordered. A copy should be sent to the taxpayer (the assessor keeps the original). If a reassessment is ordered, a Notice of Assessment indicating the revised assessed value should be sent to the taxpayer. Under I.C. 6-1.1-15, the taxpayer would have the right to appeal the change in assessed value.

Can a taxpayer file multiple parcels on one petition?

Although a separate petition for each parcel is preferred, a taxpayer could file one petition for all of the parcels (a comprehensive list of each parcel number, property address, and legal description should be included). However, a physical inspection is mandatory for each parcel, and it is possible that some parcels may be reassessed and some are not reassessed.

Is the petition good for one year only, or does the taxpayer need to file a petition each year?

Since a disaster presumably does not occur repeatedly, the petition would be for the current event. There could be a situation where due to the extent of the damage, repairs could take more than one year, in which case a petition should be filed each year. Assessors may make this determination on a case-by-case basis.

What if the taxpayer files a petition but does not file supporting evidence for the assessor's consideration?

The assessing official must physically inspect the property and make a determination with the best information available. Taxpayers should be given the opportunity to provide evidence for consideration. The evidence could include, but not be limited to: photographs, video, repair bills, insurance claims, news articles, appraisals, reports and other documentation from local, state and federal agencies.

Should an assessor refuse to accept a Form 137R from homeowners that the assessor believes do not qualify for reassessment?

No. Any taxpayer who desires to file this petition should be allowed to do so. The assessing official then reviews the petition and reassesses the property if necessary. Since the county assessor is required to give notice of his/her action to the taxpayer, I.C. 6-1.1-15-5 would allow the taxpayer to file an appeal on the action, if so desired.

Can a homeowner's assessment be reduced because of damage to furniture and appliances?

No, household items are not taxable, and no reduction in assessed value can be given.

Does this process only apply to real property?

No, personal property assessments based on Form 102 (Farmer), Form 103 (Business), and utility assessments can all be reassessed after a disaster to adjust for the percent of damage.

Can the assessor file a petition on behalf of the homeowner?

No, the taxpayer is required to file the Form 137R and sign, under oath, that the information is true and correct.

Are there any other helpful hints that could be offered?

When a homeowner comes into your office and files this petition, review the form and make certain there is current contact information included. If a person is forced to relocate because of the disaster and the form lists a mailing address and phone number for the destroyed or damaged home, it will be difficult to contact the taxpayer for more information.

If you have further questions, please contact Assessment Director Barry Wood at 317.232.3762 or Bwood@dlgf.in.gov.