

STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE



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TO: County Assessors, County Auditors, and County Treasurers
FROM: Timothy J. Rushenberg, Commissioner *TR 7/9/09*
RE: Permanently Flooded Property Reassessment
DATE: July 9, 2009

Purpose

This memorandum provides guidance on a new section added to the Indiana Code, an amendment to another section of the Indiana Code, and the establishment of a non-Code provision—all of which relate to reassessment of permanently flooded property. Among other provisions, House Enrolled Act (HEA) 1365-2009 added IC 6-1.1-4-11.5. This new section allows a property owner to petition for reassessment of real property that is permanently flooded or to which access over land is permanently prevented by flooding. HEA 1365-2009 also directs county auditors and treasurers to take certain actions to carry out the intent of the law.

Application

HEA 1365-2009 adds IC 6-1.1-4-11.5 to the Indiana Code. This new section applies to one or more parcels that are permanently flooded (or to which access over land is permanently prevented by flooding) and are not used for agricultural purposes. This new section is retroactive to January 1, 2008, and applies only to property taxes first due and payable after 2008.

HEA 1365-2009 also amends IC 6-1.1-17-0.5 to authorize a county auditor to reduce a taxing unit's assessed value based on reassessments of permanently flooded property. This amendment is retroactive to January 1, 2008.

HEA 1365-2009 also adds a non-Code provision for a parcel in which permanent flooding took place after March 1, 2008 and before November 11, 2008, or to which access over land is permanently prevented after March 1, 2008, and before November 11, 2008. This provision is retroactive to January 1, 2007.

Reassessment of Permanently Flooded Real Property

Under IC 6-1.1-4-11.5, the owner of a parcel may petition the county assessor for reassessment of the parcel if it is: (1) permanently flooded (or to which access over land is permanently prevented by flooding), and (2) not used for agricultural purposes. Upon receipt of the petition, the county assessor shall cause a survey of the parcel. If the parcel meets the description above,

the county assessor shall order a reassessment of the parcel. The county assessor shall specify in the order the time within which the reassessment must be completed and the date on which the reassessment takes effect. A reassessment under this provision continues to apply for subsequent assessment dates until the assessor determines that circumstances have changed sufficiently to warrant another reassessment of the property and the parcel is reassessed. However, these parcels still need to be reassessed during any general reassessment, including the next general reassessment beginning July 1, 2010.

The county auditor and treasurer shall publish notice of the availability of a reassessment under this provision in accordance with IC 5-3-1 (“Legal Advertising and Publication of Legal Notices”).

In all of the following instances, the property owner must file a Form 137PF (Petition for Survey and Reassessment Real Property that is Permanently Flooded or Access is Permanently Prevented by Flooding), State Form 53950.

**Flooding that occurs before May 11
and after preceding November 10**

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 order takes effect for both the assessment date in the current year and the assessment date in the calendar year that immediately precedes the current year. In other words, if the flooding occurred **between November 11, 2008 and May 10, 2009**, and the petition is filed on or before December 31, 2009, the reassessment order takes effect for both the 2008 assessment date (March 1, 2008) – 2008 pay 2009 tax bills – and the 2009 assessment date (March 1, 2009) – 2009 pay 2010 tax bills. The reassessment order also treats the parcel for those assessment dates as being permanently flooded or as having overland access permanently prevented by flooding.

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

**Flooding that occurs after May 10
and before the following November 11**

If the flooding occurs after May 10 of a calendar year (the “current year”) and before November 11 of the current year and a petition is filed not later than December 31 of the current year, the reassessment order takes effect for both the assessment date in the current year and the assessment date in the calendar year that immediately precedes the current year. In other words, if the flooding occurs **between May 11, 2009 and November 10, 2009**, and the petition is filed on or before December 31, 2009, the reassessment order takes effect for both the 2008 assessment date (March 1, 2008) – 2008 pay 2009 tax bills – and the 2009 assessment date (March 1, 2009) – 2009 pay 2010 tax bills. The reassessment order also treats the parcel for

those assessment dates as being permanently flooded or having overland access permanently prevented by flooding.

Under this timeframe, only the second installment of property taxes under IC 6-1.1-22-9(a) first due and payable in the current year is determined based on the reassessment.

Similarly, if property taxes are payable by a method other than two annual installments, only one-half of the property tax liability for property taxes first due and payable in the current year is determined based on the reassessment. In other words, the county auditor would need to re-calculate the taxpayer's second installment of the tax bill for 2008 pay 2009 based on the reassessment value.

The property taxes first due and payable in the calendar year that immediately succeeds the current year with respect to the parcel are also determined based on the reassessment. Again, the reassessment value would be used to determine the 2009 pay 2010 tax bill.

Payment of taxes

If the property owner pays property taxes on the permanently flooded property in the current year based on the assessment that applied before the ordered reassessment, **then the property owner is entitled to a refund.** In other words, if the taxpayer pays the 2008 pay 2009 taxes in full prior to the re-calculation, the taxpayer will get a refund for the amount of overpayment. The refund amount is based on the difference in the amount of property taxes paid and the amount of property taxes determined based on the ordered reassessment. **A property owner is not required to apply for a refund due under this section.** The county auditor shall, without an appropriation being required, issue a warrant to the property owner payable from the county general fund for the amount of the refund, if any, due the property owner.

If, on the other hand, the property owner has not paid property taxes on the permanently flooded property in the current year based on the assessment that applied before the ordered reassessment, **then the county treasurer shall issue to the property owner tax statements that reflect property taxes determined based on the reassessment.**

Permanent flooding that occurred after March 1, 2008 and before November 11, 2008

HEA 1365-2009 added a non-Code provision retroactive to January 1, 2007. That provision applies specifically to a parcel of real property that was permanently flooded or to which access over land was permanently prevented after March 1, 2008, and before November 11, 2008.

The deadline to file a petition for permanent flooding that occurred after March 1, 2008, and before November 11, 2008, was July 1, 2009. Upon receipt of this petition, the county assessor is required to cause a survey to be made of the parcel. If the parcel became permanently flooded after March 1, 2008, and before November 11, 2008, and is not being used for agricultural purposes, the county assessor shall order a reassessment of the parcel. The order shall state that the reassessment takes effect for the assessment dates in 2007 (March 1, 2007 – 2007 pay 2008 tax bills) and 2008 (March 1, 2008 – 2008 pay 2009 tax bills) and treats the parcel for those

assessment dates as permanently flooded or having overland access permanently prevented by flooding. The county assessor shall also specify in the order the time within which the reassessment must be completed and the assessment dates for which the reassessment takes effect.

If a reassessment is ordered under this provision, the property owner is entitled to a refund in the amount of one-half the remainder of: the amount paid by the property owner with respect to the parcel for 2007 property taxes first due and payable in 2008 minus the quantity of (the 2007 property taxes first due and payable in 2008 as determined based on the reassessment, plus the 2008 property taxes first due and payable in 2009 as determined based on the reassessment). For example, John Smith paid a total of \$1,000 for his 2007 pay 2008 taxes. After the reassessment due to flooding, as described above, the county auditor re-calculated Mr. Smith's tax liability to be \$300 for 2007 pay 2008. The county auditor calculated Mr. Smith's 2008 pay 2009 taxes to be \$200. Mr. Smith will be due a refund of \$250. (See calculation below.)

$$\begin{aligned} & \frac{1}{2} * (\$1000 - [\$300 + \$200]) \\ & \frac{1}{2} * (\$1000 - \$500) \\ & \frac{1}{2} * (\$500) \\ & \$250 \end{aligned}$$

A property owner is not required to apply for a refund due under this provision. The county auditor shall, without an appropriation being required, issue a warrant to the property owner payable from the county general fund for the amount of the refund, if any, due the property owner. No interest is payable on the refund.

The county auditor and county treasurer shall publish notice of the availability of a reassessment under this provision in accordance with IC 5-3-1 ("Legal Advertising and Publication of Legal Notices").

This non-Code provision expires January 1, 2010.

Contact Information

Questions may be directed to Barry Wood, Director of Assessment at (317) 232-3762 or bwood@dlgf.in.gov, or Brian Bailey, General Counsel at (317) 234-5720 or bbailey@dlgf.in.gov.

Text of HEA 1365-2009

HOUSE ENROLLED ACT No. 1365

AN ACT to amend the Indiana Code concerning taxation.
Be it enacted by the General Assembly of the State of Indiana:

SOURCE: IC 6-1.1-4-11.5; (09)HE1365.1.1. -->

SECTION 1. IC 6-1.1-4-11.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008 (RETROACTIVE)]: **Sec. 11.5. (a)** This section applies to one (1) or more parcels of real property in a county that:

(1) are permanently flooded or to which access over land is permanently prevented by flooding; and

(2) are not being used for agricultural purposes.

(b) The owner of one (1) or more parcels referred to in subsection (a) may petition the county assessor for a reassessment of the parcel or parcels. Upon receipt of the petition, the county assessor shall:

(1) cause a survey to be made of the parcel or parcels; and

(2) if the parcel or parcels meet the description of subsection (a), order a reassessment of the parcel or parcels.

(c) If the flooding referred to in subsection (a) occurs before May 11 of a calendar year (the "current year") and after the immediately preceding November 10 and a petition under subsection (b) is filed not later than December 31 of the current year:

(1) the reassessment ordered under subsection (b):

(A) takes effect for:

(i) the assessment date in the current year; and

(ii) the assessment date in the calendar year that immediately precedes the current year; and

(B) treats the parcel or parcels for those assessment dates as:

(i) being permanently flooded; or

(ii) having overland access permanently prevented by flooding;

(2) 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

(3) 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.

(d) If the flooding referred to in subsection (a) occurs after May 10 of the current year and before November 11 of the current year and the petition under subsection (b) is filed not later than December 31 of the current year:

(1) subsection (c)(1) and (c)(3) apply; and

(2) only:

(A) the second installment of property taxes under IC 6-1.1-22-9(a) first due and payable in the current year with respect to the parcel or parcels; or

(B) if property taxes are payable by a method other than two (2) annual installments, one-half (1/2) of the property tax liability for property taxes first due and

payable in the current year with respect to the parcel or parcels;
is determined based on the reassessment.

(e) This subsection applies only if:

(1) the county assessor orders a reassessment under subsection (b); and

(2) the property owner pays property taxes in the current year with respect to the parcel or parcels based on the assessment that applied before the ordered reassessment.

The property owner is entitled to a refund of property taxes based on the difference in the amount of property taxes paid and the amount of property taxes determined based on the ordered reassessment. A property owner is not required to apply for a refund due under this section. The county auditor shall, without an appropriation being required, issue a warrant to the property owner payable from the county general fund for the amount of the refund, if any, due the property owner.

(f) If:

(1) the county assessor orders a reassessment under subsection (b); and

(2) when the reassessment is completed the property owner has not paid property taxes in the current year with respect to the parcel or parcels based on the assessment that applied before the ordered reassessment;

the county treasurer shall issue to the property owner tax statements that reflect property taxes determined based on the reassessment.

(g) The county assessor shall specify in an order under subsection (b) the time within which the reassessment must be completed and the date on which the reassessment takes effect.

(h) A reassessment under this section for an assessment date continues to apply for subsequent assessment dates until the assessor:

(1) determines that circumstances have changed sufficiently to warrant another reassessment of the property; and

(2) reassesses the property based on the determination under subdivision (1).

(i) The county auditor and county treasurer shall publish notice of the availability of a reassessment under this section in accordance with IC 5-3-1.

SOURCE: IC 6-1.1-17-0.5; (09)HE1365.1.2. --> SECTION 2. IC 6-1.1-17-0.5, AS AMENDED BY P.L.144-2008, SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008 (RETROACTIVE)]: Sec. 0.5. (a) For purposes of this section, "assessed value" has the meaning set forth in IC 6-1.1-1-3(a).

(b) The county auditor may exclude and keep separate on the tax duplicate for taxes payable in a calendar year the assessed value of tangible property that meets the following conditions:

(1) The assessed value of the property is at least nine percent (9%) of the assessed value of all tangible property subject to taxation by a taxing unit.

(2) The property is or has been part of a bankruptcy estate that is subject to protection under the federal bankruptcy code.

(3) The owner of the property has discontinued all business operations on the property.

(4) There is a high probability that the taxpayer will not pay property taxes due on the property in the following year.

(c) This section does not limit, restrict, or reduce in any way the property tax liability on the property.

(d) For each taxing unit located in the county, the county auditor may reduce for a calendar

year the taxing unit's assessed value that is certified to the department of local government finance under section 1 of this chapter and used to set tax rates for the taxing unit for taxes first due and payable in the immediately succeeding calendar year. The county auditor may reduce a taxing unit's assessed value under this subsection only to enable the taxing unit to absorb the effects of reduced property tax collections in the immediately succeeding calendar year that are expected to result from any or a combination of the following:

(1) Successful appeals of the assessed value of property located in the taxing unit.

(2) Deductions under IC 6-1.1-12-37 that ~~result from the granting of applications for the homestead credit for the calendar year under IC 6-1.1-20.9-3 or IC 6-1.1-20.9-3.5~~ **are granted** after the county auditor certifies assessed value as described in this section.

(3) Deductions that result from the granting of applications for deductions for the calendar year under IC 6-1.1-12-44 after the county auditor certifies assessed value as described in this section.

(4) Reassessments of real property under IC 6-1.1-4-11.5.

Not later than December 31 of each year, the county auditor shall send a certified statement, under the seal of the board of county commissioners, to the fiscal officer of each political subdivision of the county and to the department of local government finance. The certified statement must list any adjustments to the amount of the reduction under this subsection and the information submitted under section 1 of this chapter that are necessary. ~~as the result of processing homestead credit applications and deduction applications that are filed after the county auditor certifies assessed value as described in this section.~~ The county auditor shall keep separately on the tax duplicate the amount of any reductions made under this subsection. The maximum amount of the reduction authorized under this subsection is determined under subsection (e).

(e) The amount of the reduction in a taxing unit's assessed value for a calendar year under subsection (d) may not exceed two percent (2%) of the assessed value of tangible property subject to assessment in the taxing unit in that calendar year.

(f) The amount of a reduction under subsection (d) may not be offered in a proceeding before the:

- (1) county property tax assessment board of appeals;
- (2) Indiana board; or
- (3) Indiana tax court;

as evidence that a particular parcel has been improperly assessed.

SOURCE: ; (09)HE1365.1.3. --> SECTION 3. [EFFECTIVE JANUARY 1, 2007 (RETROACTIVE)]

(a) This SECTION applies to one (1) or more parcels of real property in a county that:

(1) after March 1, 2008, and before November 11, 2008, are permanently flooded or to which access over land is permanently prevented after March 1, 2008, and before November 11, 2008, by flooding; and

(2) are not being used for agricultural purposes.

(b) Not later than July 1, 2009, the owner of one (1) or more parcels referred to in subsection (a) may petition the county assessor for a reassessment of the parcel or parcels. Upon receipt of the petition, the county assessor shall:

- (1) cause a survey to be made of the parcel or parcels; and**
- (2) if the parcel or parcels meet the description of subsection (a), order a reassessment**

of the parcel or parcels that:

(A) subject to subsection (d), takes effect for the assessment dates in 2007 and 2008;
and

(B) treats the parcel or parcels for those assessment dates as:

(i) being permanently flooded; or

(ii) having overland access permanently prevented by flooding.

(c) The county assessor shall specify in an order under subsection (b) the time within which the reassessment must be completed and the assessment dates for which the reassessment takes effect.

(d) If the county assessor orders a reassessment under subsection (b):

(1) the property owner is entitled to a refund of property taxes in the amount of one-half (1/2) of the remainder of:

(A) the amount paid by the property owner with respect to the parcel or parcels for 2007 property taxes first due and payable in 2008; minus

(B) the 2007 property taxes first due and payable in 2008 with respect to the parcel or parcels determined based on the reassessment; and

(2) the 2008 property taxes first due and payable in 2009 with respect to the parcel or parcels are determined based on the reassessment.

(e) A property owner is not required to apply for a refund due under this SECTION. The county auditor shall, without an appropriation being required, issue a warrant to the property owner payable from the county general fund for the amount of the refund, if any, due the property owner. No interest is payable on the refund.

(f) The county auditor and county treasurer shall publish notice of the availability of a reassessment under this SECTION in accordance with IC 5-3-1.

(g) This SECTION expires January 1, 2010.

SOURCE: ; (09)HE1365.1.4. --> SECTION 4. [EFFECTIVE JANUARY 1, 2008 (RETROACTIVE)] IC 6-1.1-4-11.5, as added by this act, applies only to property taxes first due and payable after 2008.

SOURCE: ; (09)HE1365.1.5. --> SECTION 5. An emergency is declared for this act.
HEA 1365 _ Concur



**PETITION FOR SURVEY AND REASSESSMENT
REAL PROPERTY THAT IS PERMANENTLY FLOODED
OR ACCESS IS PERMANENTLY PREVENTED BY FLOODING**

State Form 53950 (6-09)
Prescribed by the Department of Local Government Finance

FORM 137PF

Date Petition Filed FOR OFFICE USE ONLY

INSTRUCTIONS (IC 6-1.1-4-11.5):

1. This form can be filed 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.
2. This form cannot be used for real property being used for agricultural purposes.
3. The date when the flooding occurred must be reported on this form.
4. This form must be filed with the County Assessor by December 31st of the year the flooding occurred.
5. Once the assessor has made a determination on this petition and sends notice, the taxpayer must file an appeal within forty-five (45) days if he/she disagrees with it. (IC 6-1.1-15-1)

Pursuant to IC 6-1.1-4-11.5, the undersigned hereby petitions the County Assessor for a survey and reassessment of real property described below.
(Description must match legal description on Tax Bill Duplicate.)

Name of taxpayer (first, middle, last)		Telephone number ()	
Address of taxpayer after flood (number and street, city, state, and ZIP code)			
Date of flood (month, day, year)		Type of damage <input type="checkbox"/> Permanent Flooding <input type="checkbox"/> Access Permanently Prevented by Flooding	
County		Township	Parcel number
Section	Range	Lot number	Block
			Addition
Location of property damaged (number and street or Rural Route, city, state, and ZIP code)			

REAL PROPERTY REASSESSMENT (Do not complete unless a reassessment is ordered.)				
ASSESSED VALUE OF LAND	ASSESSED VALUE OF IMPROVEMENTS	PERCENT OF DAMAGE	DATE (month, day, year)	REASSESSMENT (BY ASSESSOR)
\$	\$			\$

AFFIDAVIT		
I, under oath, hereby declare that the statements contained in this petition are true and correct and constitute the basis for the survey and reassessment.		
Signature of taxpayer	Type or print name of taxpayer	Date signed (month, day, year)
Signature of assessor	Type or print name of assessor	Date signed (month, day, year)

COUNTY ASSESSOR ACTION			
Reviewed by:	Date reviewed (month, day, year)	Ordered reassessed? <input type="checkbox"/> Yes <input type="checkbox"/> No	Date ordered reassessed (month, day, year)
Remarks			

DISTRIBUTION: Original - County Assessor; Copy - Township Assessor, if applicable; Copy - Taxpayer