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# HOUSE BILL No. 1335

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-1.1-20.3; IC 33-26-6.

**Synopsis:** Tax court proceedings. Requires the Indiana tax court to try de novo appeals from final determinations of the Indiana board of tax review and the distressed unit appeal board.

**Effective:** July 1, 2011.

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January 13, 2011, read first time and referred to Committee on Judiciary.

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First Regular Session 117th General Assembly (2011)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2010 Regular Session of the General Assembly.

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# HOUSE BILL No. 1335



A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 6-1.1-20.3-12, AS ADDED BY P.L.146-2008,  
2 SECTION 211, IS AMENDED TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2011]: Sec. 12. **(a) This section applies to**  
4 **petitions to the tax court under section 10 of this chapter for**  
5 **judicial review of final determinations of the board issued before**  
6 **July 1, 2011.**

7 ~~(a)~~ **(b)** The burden of demonstrating the invalidity of an action taken  
8 by the board is on the party to the judicial review proceeding asserting  
9 the invalidity.

10 ~~(b)~~ **(c)** The validity of an action taken by the distressed unit appeal  
11 board shall be determined in accordance with the standards of review  
12 provided in this section as applied to the agency action at the time it  
13 was taken.

14 ~~(c)~~ **(d)** The tax court shall make findings of fact on each material  
15 issue on which the court's decision is based.

16 ~~(d)~~ **(e)** The tax court shall grant relief under IC 33-26-6-7 only if the  
17 tax court determines that a person seeking judicial relief has been



1 prejudiced by an action of the board that is:

- 2 (1) arbitrary, capricious, an abuse of discretion, or otherwise not
- 3 in accordance with law;
- 4 (2) contrary to constitutional right, power, privilege, or immunity;
- 5 (3) in excess of statutory jurisdiction, authority, or limitations, or
- 6 short of statutory jurisdiction, authority, or limitations;
- 7 (4) without observance of procedure required by law; or
- 8 (5) unsupported by substantial or reliable evidence.

9 SECTION 2. IC 6-1.1-20.3-13 IS ADDED TO THE INDIANA  
 10 CODE AS A **NEW SECTION TO READ AS FOLLOWS**  
 11 **[EFFECTIVE JULY 1, 2011]: Sec. 13. For petitions to the tax court**  
 12 **under section 10 of this chapter for judicial review of final**  
 13 **determinations of the board issued after June 30, 2011, the tax**  
 14 **court shall try the case de novo.**

15 SECTION 3. IC 33-26-6-3 IS AMENDED TO READ AS  
 16 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. **(a) This section**  
 17 **applies to original tax appeals for which taxpayers file petitions in**  
 18 **the tax court under section 2 of this chapter before July 1, 2011.**

19 ~~(a)~~ **(b)** Subject to subsection ~~(b)~~; **(c)**, with respect to determinations  
 20 as to whether any issues or evidence may be heard in an original tax  
 21 appeal that was not heard in the administrative hearing or proceeding,  
 22 the tax court is governed by the law that applied before the creation of  
 23 the tax court to appeals to trial courts of final determinations made by  
 24 the department of state revenue and the state board of tax  
 25 commissioners.

26 ~~(b)~~ **(c)** Judicial review of disputed issues of fact must be confined  
 27 to:

- 28 (1) the record of the proceeding before the Indiana board of tax
- 29 review; and
- 30 (2) any additional evidence taken under section 5 of this chapter.

31 The tax court may not try the case de novo or substitute its judgment  
 32 for that of the Indiana board of tax review. Judicial review is limited to  
 33 only those issues raised before the Indiana board of tax review, or  
 34 otherwise described by the Indiana board of tax review, in its final  
 35 determination.

36 ~~(c)~~ **(d)** A person may obtain judicial review of an issue that was not  
 37 raised before the Indiana board of tax review only to the extent that the:

- 38 (1) issue concerns whether a person who was required to be
- 39 notified of the commencement of a proceeding under this chapter
- 40 was notified in substantial compliance with the applicable law; or
- 41 (2) interests of justice would be served by judicial resolution of an
- 42 issue arising from a change in controlling law occurring after the

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Indiana board of tax review's action.  
SECTION 4. IC 33-26-6-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 3.5. (a) For judicial review of final determinations of the Indiana board of tax review in original tax appeals for which taxpayers file petitions in the tax court under section 2 of this chapter after June 30, 2011, the tax court shall try the case de novo.**

**(b) For judicial review of final determinations of the department of state revenue in original tax appeals for which taxpayers file petitions in the tax court under section 2 of this chapter after June 30, 2011, with respect to determinations as to whether any issues or evidence may be heard that was not heard in the administrative hearing or proceeding, the tax court is governed by the law that applied before the creation of the tax court to appeals to trial courts of final determinations made by the department of state revenue.**

SECTION 5. IC 33-26-6-5, AS AMENDED BY P.L.219-2007, SECTION 103, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 5. (a) This section applies with respect to judicial review of final determinations of the Indiana board of tax review in original tax appeals for which taxpayers file petitions in the tax court under section 2 of this chapter before July 1, 2011.**

**(b) The tax court may receive evidence in addition to that contained in the record of the determination of the Indiana board of tax review only if the evidence relates to the validity of the determination at the time it was taken and is needed to decide disputed issues regarding one (1) or both of the following:**

- (1) Improper constitution as a decision making body or grounds for disqualification of those taking the agency action.**
- (2) Unlawfulness of procedure or decision making process.**

**This subsection applies only if the additional evidence could not, by due diligence, have been discovered and raised in the administrative proceeding giving rise to a proceeding for judicial review.**

**(c) The tax court may remand a matter to the Indiana board of tax review before final disposition of a petition for review with directions that the Indiana board of tax review conduct further factfinding or that the Indiana board of tax review prepare an adequate record, if:**

- (1) the Indiana board of tax review failed to prepare or preserve an adequate record;**
- (2) the Indiana board of tax review improperly excluded or**

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1 omitted evidence from the record; or  
2 (3) a relevant law changed after the action of the Indiana board of  
3 tax review and the tax court determines that the new provision of  
4 law may control the outcome.

5 (d) This subsection applies if the record for a judicial review  
6 prepared under IC 6-1.1-15-6 contains an inadequate record of a site  
7 inspection. Rather than remand a matter under subsection (c), the tax  
8 court may take additional evidence not contained in the record relating  
9 only to observations and other evidence collected during a site  
10 inspection conducted by a hearing officer or other employee of the  
11 Indiana board of tax review. The evidence may include the testimony  
12 of a hearing officer only for purposes of verifying or rebutting evidence  
13 regarding the site inspection that is already contained in the record.

14 SECTION 6. IC 33-26-6-6, AS AMENDED BY P.L.219-2007,  
15 SECTION 104, IS AMENDED TO READ AS FOLLOWS  
16 [EFFECTIVE JULY 1, 2011]: Sec. 6. (a) This section applies with  
17 respect to judicial review of final determinations of the Indiana board  
18 of tax review **in original tax appeals for which taxpayers file**  
19 **petitions in the tax court under section 2 of this chapter before July**  
20 **1, 2011.**

21 (b) The burden of demonstrating the invalidity of an action taken by  
22 the Indiana board of tax review is on the party to the judicial review  
23 proceeding asserting the invalidity.

24 (c) The validity of an action taken by the Indiana board of tax  
25 review shall be determined in accordance with the standards of review  
26 provided in this section as applied to the agency action at the time it  
27 was taken.

28 (d) The tax court shall make findings of fact on each material issue  
29 on which the court's decision is based.

30 (e) The tax court shall grant relief under section 7 of this chapter  
31 only if the tax court determines that a person seeking judicial relief has  
32 been prejudiced by an action of the Indiana board of tax review that is:

- 33 (1) arbitrary, capricious, an abuse of discretion, or otherwise not  
34 in accordance with law;
- 35 (2) contrary to constitutional right, power, privilege, or immunity;
- 36 (3) in excess of statutory jurisdiction, authority, or limitations, or  
37 short of statutory jurisdiction, authority, or limitations;
- 38 (4) without observance of procedure required by law; or
- 39 (5) unsupported by substantial or reliable evidence.

40 (f) Subsection (e) may not be construed to change the substantive  
41 precedential law embodied in judicial decisions that are final as of  
42 January 1, 2002.

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