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TITLE 52 INDIANA BOARD OF TAX REVIEW

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## Final Rule

LSA Document #06-571(F)

## DIGEST

Amends [52 IAC 1-1-5](#), [52 IAC 1-1-6](#), [52 IAC 1-2-1](#), [52 IAC 1-2-2](#), [52 IAC 1-2-5](#), [52 IAC 2-2-4](#), [52 IAC 2-2-13](#), [52 IAC 2-3-1](#), [52 IAC 2-3-2](#), [52 IAC 2-3-3](#), [52 IAC 2-4-1](#), [52 IAC 2-4-2](#), [52 IAC 2-4-3](#), [52 IAC 2-5-1](#), [52 IAC 2-5-2](#), [52 IAC 2-6-2](#), [52 IAC 2-6-5](#), [52 IAC 2-6-8](#), [52 IAC 2-7-1](#), [52 IAC 2-7-2](#), [52 IAC 2-7-3](#), [52 IAC 2-8-3](#), [52 IAC 2-8-4](#), [52 IAC 2-8-5](#), [52 IAC 2-9-4](#), [52 IAC 2-11-2](#), [52 IAC 3-1-1](#), [52 IAC 3-1-3](#), [52 IAC 3-1-4](#), [52 IAC 3-1-5](#), and [52 IAC 3-1-10](#) and adds [52 IAC 1-1-3.5](#), [52 IAC 1-2-1.1](#), [52 IAC 2-1-2.1](#), and [52 IAC 2-2-9.5](#), pertaining to the Indiana Board of Tax Review's procedural rules, to incorporate the trial rules, to allow representation by a guardian or a local government representative, to allow service by express carrier, to clarify filing dates and location, to allow multiple parcels to be filed on a single petition, to clarify that hearings will be structured and orderly and may be held at the board's central offices, to clarify that parties must pay the cost of arbitration if alternative dispute resolution is chosen, to allow prehearing conferences and posthearing evidence in small claims, to require exchange of evidence in small claims only where the evidence is requested by another party, and to make the rules regarding hearsay consistent in small claims and in the board's regular proceedings. Repeals [52 IAC 2-6-6](#). Effective 30 days after filing with the Publisher.

[52 IAC 1-1-3.5](#); [52 IAC 1-1-5](#); [52 IAC 1-1-6](#); [52 IAC 1-2-1](#); [52 IAC 1-2-1.1](#); [52 IAC 1-2-2](#); [52 IAC 1-2-5](#); [52 IAC 2-1-2.1](#); [52 IAC 2-2-4](#); [52 IAC 2-2-9.5](#); [52 IAC 2-2-13](#); [52 IAC 2-3-1](#); [52 IAC 2-3-2](#); [52 IAC 2-3-3](#); [52 IAC 2-4-1](#); [52 IAC 2-4-2](#); [52 IAC 2-4-3](#); [52 IAC 2-5-1](#); [52 IAC 2-5-2](#); [52 IAC 2-6-2](#); [52 IAC 2-6-5](#); [52 IAC 2-6-6](#); [52 IAC 2-6-8](#); [52 IAC 2-7-1](#); [52 IAC 2-7-2](#); [52 IAC 2-7-3](#); [52 IAC 2-8-3](#); [52 IAC 2-8-4](#); [52 IAC 2-8-5](#); [52 IAC 2-9-4](#); [52 IAC 2-11-2](#); [52 IAC 3-1-1](#); [52 IAC 3-1-3](#); [52 IAC 3-1-4](#); [52 IAC 3-1-5](#); [52 IAC 3-1-10](#)

SECTION 1. [52 IAC 1-1-3.5](#) IS ADDED TO READ AS FOLLOWS:

**[52 IAC 1-1-3.5](#) "Local government representative" defined**Authority: [IC 6-1.5-6-1](#)Affected: [IC 6-1.1-2-4](#); [IC 6-1.1-15](#); [IC 6-1.1-26-2](#)

Sec. 3.5. (a) "Local government representative" means a person who meets the requirements in [50 IAC 15-4-1](#) and who represents a local assessing official at a proceeding before the board under [IC 6-1.1-15](#).

The term does not include any of the following:

- (1) An assessing official who is a party to the proceeding or a permanent full-time employee of any such assessing official.
- (2) A certified public accountant when the certified public accountant is representing a local assessing official in a matter that relates only to personal property taxation.
- (3) An attorney who is a member in good standing of the Indiana bar or any person who:
  - (A) is a member in good standing of any other state bar; and
  - (B) has been granted leave by the board to appear before the board.

(b) A local government representative must file a written verification that the representative is a professional appraiser approved by the department. A separate verification must be filed in each proceeding where such representation is provided.

(c) A local government representative is subject to the same practice limitations that apply to certified tax representatives as stated in [52 IAC 1-2-1\(b\)](#).

(Indiana Board of Tax Review; [52 IAC 1-1-3.5](#); filed Nov 14, 2007, 11:11 a.m.: [20071212-IR-052060571FRA](#))

SECTION 2. [52 IAC 1-1-5](#) IS AMENDED TO READ AS FOLLOWS:

**[52 IAC 1-1-5](#) "Property tax assessment board of appeals" or "PTABOA" defined**Authority: [IC 6-1.5-6-1](#)

**Affected:** [IC 6-1.1-28-1](#)

Sec. 5. "Property tax assessment board of appeals" or "PTABOA" means the county property tax assessment board of appeals established under [IC 6-1.1-28-1](#).

(Indiana Board of Tax Review; [52 IAC 1-1-5](#); filed Feb 13, 2003, 9:41 a.m.: 26 IR 2316; filed Nov 14, 2007, 11:11 a.m.: [20071212-IR-052060571FRA](#))

SECTION 3. [52 IAC 1-1-6](#) IS AMENDED TO READ AS FOLLOWS:

**[52 IAC 1-1-6](#) "Tax representative" defined**

**Authority:** [IC 6-1.5-6-1](#)

**Affected:** [IC 6-1.1-2-4](#); [IC 6-1.1-15](#); [IC 6-1.1-26-2](#)

Sec. 6. "Tax representative" means a person who represents another person at a proceeding before the board under [IC 6-1.1-15](#). The term does not include **any of the following**:

- (1) The owner of the property (or person liable for the taxes under [IC 6-1.1-2-4](#)) that is the subject of the appeal.
- (2) A permanent full-time employee of the owner of the property (or person liable for the taxes under [IC 6-1.1-2-4](#)) who is the subject of the appeal.
- (3) ~~representatives~~ **Assessing officials and permanent full-time employees** of local units of government appearing on behalf of the unit or as the authorized representative of another unit.
- (4) Local government representatives as defined in section 3.5 of this rule appearing on behalf of the local governmental unit.**
- (5) A representative of a minor or incapacitated party as defined in [52 IAC 1-2-1.1](#).**
- ~~(4) (6)~~ A certified public accountant when the certified public accountant is representing a client in a matter that relates only to personal property taxation. ~~or~~
- ~~(5) (7)~~ An attorney who is a member in good standing of the Indiana bar or any person who:
  - (A) is a member in good standing of any other state bar; and ~~who~~**
  - (B) has been granted leave by to appear before the board. ~~to appear pro hac vice.~~**

(Indiana Board of Tax Review; [52 IAC 1-1-6](#); filed Feb 13, 2003, 9:41 a.m.: 26 IR 2316; filed Nov 14, 2007, 11:11 a.m.: [20071212-IR-052060571FRA](#))

SECTION 4. [52 IAC 1-2-1](#) IS AMENDED TO READ AS FOLLOWS:

**[52 IAC 1-2-1](#) Practice requirements for tax representatives**

**Authority:** [IC 6-1.5-6-1](#)

**Affected:** [IC 6-1.1-15-1](#); [IC 6-1.1-15-12](#); [IC 6-1.1-26-1](#)

Sec. 1. (a) In order to practice before the board, a tax representative **under [52 IAC 1-1-6](#)** must:

- (1) be properly certified by the department; and
- (2) have a copy of a properly executed power of attorney from the taxpayer on the form prescribed by the board on file with the board before a hearing will be scheduled.

(b) ~~Property Tax representatives may~~ **will not be certified allowed** to practice before the board for:

- (1) matters relating to real and personal property exemptions claimed on a Form 132 or 136;
- (2) claims that assessments or taxes are "illegal as a matter of law", whether brought on:
  - (A) a Form 133 ~~pursuant to~~ **under [IC 6-1.1-15-12](#)**(a)(6);
  - (B) a Form 17-T ~~pursuant to~~ **under [IC 6-1.1-26-1](#)**(4);
  - (C) a Form 130 ~~pursuant to~~ **under [IC 6-1.1-15-1](#)**; or
  - (D) any other form;
- (3) claims regarding the constitutionality of an assessment; or
- (4) any other representation that involves the practice of law.

(c) Notwithstanding subsection (a)(1), the board may grant leave to practice before the board to a tax representative who is properly licensed or certified in another state.

(Indiana Board of Tax Review; [52 IAC 1-2-1](#); filed Feb 13, 2003, 9:41 a.m.: 26 IR 2317; filed Nov 14, 2007, 11:11 a.m.: [20071212-IR-052060571FRA](#))

SECTION 5. [52 IAC 1-2-1.1](#) IS ADDED TO READ AS FOLLOWS:

**[52 IAC 1-2-1.1](#) Representation of minority and incapacitated parties**

Authority: [IC 6-1.5-6-1](#)

Affected: [IC 6-1.1-15-1](#); [IC 6-1.1-15-12](#); [IC 6-1.1-26-1](#)

Sec. 1.1. (a) In the event that a party:

- (1) has not attained eighteen (18) years of age;
- (2) is not mentally competent; or
- (3) is physically unable to file and pursue or defend an appeal;

the board may allow any legally appointed guardian or other appropriate representative to file and pursue or defend an appeal within the limitations imposed by section 1(b) of this rule.

(b) A request to allow such representation must:

- (1) be in writing;
- (2) be signed by the:
  - (A) party to be represented (unless that person lacks the capacity to agree); and
  - (B) person who would be the representative;
- (3) specify the circumstances supporting the request;
- (4) include independent documentation, such as:
  - (A) medical records; or
  - (B) a doctor's statement; and
- (5) be filed with the board at least five (5) business days before any hearing on the matter.

Any order authorizing this form of representation may be modified, limited, or withdrawn at the discretion of the board.

(Indiana Board of Tax Review; [52 IAC 1-2-1.1](#); filed Nov 14, 2007, 11:11 a.m.: [20071212-IR-052060571FRA](#))

SECTION 6. [52 IAC 1-2-2](#) IS AMENDED TO READ AS FOLLOWS:

**[52 IAC 1-2-2](#) Communication with client or prospective client**

Authority: [IC 6-1.5-6-1](#)

Affected: [IC 6-1.1-2-4](#); [IC 6-1.1-15](#)

Sec. 2. (a) No ~~certified property~~ tax representative shall, with respect to any matter relating to practice before the board, in any way use or participate in the use of any form of public communication containing a:

- (1) false, fraudulent, unduly influencing, coercive, or unfair statement or claim; or
- (2) misleading or deceptive statement or claim.

(b) A ~~property~~ tax representative shall advise the client or prospective client in writing, using a typeface of not less than 12-point, either:

- (1) on the power of attorney; or
- (2) in some other form that may be reasonably interpreted by the taxpayer (the property owner or person liable for the taxes under [IC 6-1.1-2-4](#)) to set forth the rights of the taxpayer with regard to his or her appeal;

the statement, "I understand that by authorizing \_\_\_\_\_ to serve as my certified property tax representative, I am aware of and accept the possibility that the property value may increase as a result of filing an administrative appeal with the board. I further understand that the certified property tax representative is not an attorney and may not present arguments of a legal nature on my behalf. I understand that legal issues relating to my assessment that may now exist or may be discovered at some time in the future will not and cannot be addressed

by the certified property tax representative, and that if not raised before the board may not be raised at a later stage of my assessment appeal."

(c) The disclosure shall be signed by the taxpayer. The ~~certified property~~ tax representative shall provide the taxpayer with a copy of the disclosure and shall be required to provide a copy of the disclosure to the board upon request. Failure to provide a signed copy of disclosure upon request may be grounds for **either of the following**:

- (1) Denying the tax representative the right to represent the taxpayer with respect to the property subject to the pending administrative appeal. ~~or~~
- (2) A recommendation of disciplinary action to the department under [50 IAC 15-5-8](#).

(d) A disclosure properly filed or presented to the department by the tax representative in connection with the representation of the taxpayer in an appeal from a proceeding before the department or the ~~property tax assessment board of appeals~~ **PTABOA** may be presented ~~in lieu~~ **instead** of the disclosure described in subsection (b).

(Indiana Board of Tax Review; [52 IAC 1-2-2](#); filed Feb 13, 2003, 9:41 a.m.: 26 IR 2317; filed Nov 14, 2007, 11:11 a.m.: [20071212-IR-052060571FRA](#))

SECTION 7. [52 IAC 1-2-5](#) IS AMENDED TO READ AS FOLLOWS:

#### [52 IAC 1-2-5](#) Certification; revocation

Authority: [IC 6-1.5-6-1](#)

Affected: [IC 6-1.1-15](#); [IC 6-1.1-35.5-8](#)

Sec. 5. ~~(a) Upon recommendation of The board~~ **may recommend** to the department the ~~following may be grounds for the department to deny, suspend,~~ **denial, suspension,** or ~~revoke~~ **revocation of** the certification of a tax representative **for any of the following**:

- (1) Violation of any rule of practice ~~before the~~ established under this article.
- (2) Gross incompetence in the tax representative's practice before the board.
- (3) Dishonesty or fraud committed while practicing before the board.
- (4) Violation of the standards of ethics or rules of solicitation adopted by the department or the board.

~~(b) If, after a hearing under the rules of the department, it is found that the tax representative has committed one (1) of the acts described in subsection (a), the certification of the tax representative may be subject denial, suspension, or revocation on the same terms and conditions as if the violation were one committed in connection with practice before the property tax assessment board of appeals or the department.~~

(Indiana Board of Tax Review; [52 IAC 1-2-5](#); filed Feb 13, 2003, 9:41 a.m.: 26 IR 2318; filed Nov 14, 2007, 11:11 a.m.: [20071212-IR-052060571FRA](#))

SECTION 8. [52 IAC 2-1-2.1](#) IS ADDED TO READ AS FOLLOWS:

#### [52 IAC 2-1-2.1](#) Trial rules

Authority: [IC 6-1.5-6-2](#)

Affected: [IC 6-1.1-15](#)

**Sec. 2.1. The Indiana Rules of Trial Procedure may be applied to the extent that the trial rules do not conflict with the statutes governing property tax appeals or this title.**

(Indiana Board of Tax Review; [52 IAC 2-1-2.1](#); filed Nov 14, 2007, 11:11 a.m.: [20071212-IR-052060571FRA](#))

SECTION 9. [52 IAC 2-2-4](#) IS AMENDED TO READ AS FOLLOWS:

#### [52 IAC 2-2-4](#) "Authorized representative" defined

Authority: [IC 6-1.5-6-2](#)

Affected: [IC 6-1.1-15](#)

Sec. 4. "Authorized representative" means:

- (1) a permanent full-time employee of the owner of a property;
- (2) assessing officials and permanent, full-time employees of local units of government appearing on behalf of the unit or as the authorized representative of another unit;
- (3) a person, including, but not limited to, a tax representative as defined in [52 IAC 1-1-6](#);
- (4) a representative of a minor or incapacitated party as defined in [52 IAC 1-2-1.1](#);
- (5) a local government representative as defined in [52 IAC 1-1-3.5](#);
- (6) a certified public accountant when the certified public accountant is representing a client in a matter that relates only to personal property taxation; or
- (7) an attorney who is a member in good standing of the Indiana bar or any person who:
  - (A) is a member in good standing of any other state bar; and
  - (B) has been granted leave to appear before the board;

authorized to represent a party in a matter governed by this article.

(Indiana Board of Tax Review; [52 IAC 2-2-4](#); filed Jan 26, 2004, 11:30 a.m.: 27 IR 1776; filed Nov 14, 2007, 11:11 a.m.: [20071212-IR-052060571FRA](#))

SECTION 10. [52 IAC 2-2-9.5](#) IS ADDED TO READ AS FOLLOWS:

**[52 IAC 2-2-9.5](#) "Local government representative" defined**

Authority: [IC 6-1.5-6-2](#)

Affected: [IC 6-1.1-2-4](#); [IC 6-1.1-15](#)

**Sec. 9.5. "Local government representative" has the meaning set forth in [52 IAC 1-1-3.5](#).**

(Indiana Board of Tax Review; [52 IAC 2-2-9.5](#); filed Nov 14, 2007, 11:11 a.m.: [20071212-IR-052060571FRA](#))

SECTION 11. [52 IAC 2-2-13](#) IS AMENDED TO READ AS FOLLOWS:

**[52 IAC 2-2-13](#) "Party" defined**

Authority: [IC 6-1.5-6-2](#)

Affected: [IC 6-1.1-15](#)

Sec. 13. "Party" means a participant in a matter governed by this article, which may include the following:

- (1) The owner of the subject property.
- (2) The taxpayer responsible for the property taxes payable on the subject property.
- (3) The person filing an appeal petition.
- (4) The township assessor, county assessor, or PTABOA that made the original determination under appeal.
- (5) A PTABOA that made a determination on an exemption application under appeal.
- (6) A county auditor or other local official or body who made the original determination concerning a property tax deduction, credit, or refund.
- ~~(7) (3) The department.~~
- (4) The county assessor.**
- (5) Any other party with a statutory right or duty to appeal from or to defend a determination.**

(Indiana Board of Tax Review; [52 IAC 2-2-13](#); filed Jan 26, 2004, 11:30 a.m.: 27 IR 1777; filed Nov 14, 2007, 11:11 a.m.: [20071212-IR-052060571FRA](#))

SECTION 12. [52 IAC 2-3-1](#) IS AMENDED TO READ AS FOLLOWS:

**[52 IAC 2-3-1](#) Determination of designated periods of time and filing dates**

Authority: [IC 6-1.5-6-2](#)

Affected: [IC 6-1.1-15](#)

Sec. 1. (a) This section applies to the computation of any period of time prescribed or allowed by:

- (1) this article; or ~~by~~
- (2) order of the board.

(b) The day of the act, event, or default from which the designated period of time begins is not counted. The last day of the designated period is counted but may not be a:

- (1) Saturday;
- (2) Sunday;
- (3) legal holiday as defined by state statute; or
- (4) day the office in which the act is to be done is closed during regular business hours.

(c) The postmark date on an appeal petition or petition for rehearing, correctly addressed and sent by United States:

- (1) first class mail;
- (2) registered mail; or
- (3) certified mail;

will constitute prima facie proof of the date of filing.

**(d) The date on which the document is deposited with a private carrier, as shown by a receipt issued by the carrier, will constitute prima facie proof of the date of filing if the document is sent to the board by the carrier.**

~~(d)~~ **(e)** The date-received stamp affixed by ~~the proper county official or~~ the board to an appeal petition or a petition for rehearing filed by personal delivery ~~or private courier~~ will constitute prima facie proof of the date of filing.

~~(e)~~ **(f)** If a ~~paper~~ **document** is served through:

- (1) **a private carrier; or**
- (2) the United States mail;

three (3) days must be added to a period that commences upon service of that paper.

(Indiana Board of Tax Review; [52 IAC 2-3-1](#); filed Jan 26, 2004, 11:30 a.m.: 27 IR 1778; filed Nov 14, 2007, 11:11 a.m.: [20071212-IR-052060571FRA](#))

SECTION 13. [52 IAC 2-3-2](#) IS AMENDED TO READ AS FOLLOWS:

**[52 IAC 2-3-2](#) Notice of appearance; power of attorney**

**Authority:** [IC 6-1.5-6-2](#)

**Affected:** [IC 6-1.1-15](#)

Sec. 2. (a) If the party is represented by a:

- (1) tax representative **under [52 IAC 1-2-1](#)**;
- (2) **local government representative under [52 IAC 1-1-3.5](#)**; or
- (3) **certified public accountant under [52 IAC 1-1-6\(6\)](#)**;

the tax representative, **local government representative, or certified public accountant** must file a power of attorney with the board.

(b) ~~Other authorized Representatives including~~ **of minor or incapacitated parties as defined by [52 IAC 1-2-1.1](#) must file the documentation required under that rule.**

(c) Attorneys must file a notice of appearance with the board, stating that the party has authorized the ~~representative~~ **attorney** to appear on the party's behalf. **Attorneys not admitted to practice in Indiana seeking to appear before the board must also file a verified petition with the board setting forth the following:**

- (1) **The name, address, and phone number of the attorney's law firm or employer.**

(2) The states or territories in which the attorney is licensed to practice law, and that the attorney is currently a member in good standing in all jurisdictions.

(3) That the attorney has never been suspended or disbarred or resigned as a result of a disciplinary charge, investigation, or proceeding from the practice of law in any jurisdiction, or, if the attorney has been suspended or disbarred or resigned from the practice of law, the petition shall specify the following:

(A) The jurisdiction.

(B) The charges.

(C) The address of the court and disciplinary authority that imposed the sanction.

(D) The reasons why the board should grant temporary admission notwithstanding prior acts of misconduct.

(4) That no disciplinary proceeding is presently pending against the attorney in any jurisdiction, or, if any proceeding is pending, the petition shall specify the jurisdiction, the charges, and the address of the disciplinary authority investigating the charges. An attorney admitted under this rule shall have a continuing obligation during the period of such admission promptly to advise the board of:

(A) a disposition made of pending charges; or

(B) the institution of new disciplinary proceedings.

(5) A statement that the attorney has read and will be bound by the rules of professional conduct adopted by the supreme court and that the attorney consents to the jurisdiction of the:

(A) state of Indiana;

(B) Indiana supreme court; and

(C) Indiana supreme court disciplinary commission;

to resolve any disciplinary matter that might arise as a result of the representation.

(e) (d) The:

(1) power of attorney;

(2) documentation of incapacity or minority under [52 IAC 1-2-1.1](#); or

(3) notice of appearance;

must contain the authorized representative's name, address, and telephone number.

(Indiana Board of Tax Review; [52 IAC 2-3-2](#); filed Jan 26, 2004, 11:30 a.m.: 27 IR 1778; filed Nov 14, 2007, 11:11 a.m.: [20071212-IR-052060571FRA](#))

SECTION 14. [52 IAC 2-3-3](#) IS AMENDED TO READ AS FOLLOWS:

**[52 IAC 2-3-3](#) Service by the board**

**Authority:** [IC 6-1.5-6-2](#)

**Affected:** [IC 6-1.1-15-4](#); [IC 6-1.1-15-5](#)

Sec. 3. (a) This section applies to the service of:

(1) notices required by the board under [IC 6-1.1-15-4](#) and [IC 6-1.1-15-5](#); and

(2) any other:

(A) ruling;

(B) order;

(C) determination; or

(D) paper;

issued by the board.

(b) The board will keep a record of all notices, rulings, determinations, or other papers, served by:

(1) personal delivery;

(2) private courier carrier; or

(3) United States mail;

indicating the date and circumstances of the service. The record will constitute prima facie proof of the date and circumstances of service.

(c) The board may serve papers by facsimile unless, in writing, a party specifically requests otherwise.

(d) Service shall be given to each party unless the party has properly designated an authorized representative and that representative has filed:

- (1) a power of attorney;
  - (2) **documentation of minority or incapacity under [52 IAC 1-2-1.1](#)**; or
  - (3) a notice of appearance as required under section 2 of this rule;
- in which case service shall be given to the party's authorized representative.

~~(e) Service to a person that is not an individual must be made to the party's authorized representative in accordance with:~~

- ~~(1) the power of attorney attached to the appeal petition;~~
- ~~(2) any superseding power of attorney filed with the board; or~~
- ~~(3) any notice of appearance filed by an attorney or other authorized representative.~~

~~(f)~~ **(e)** The taxpayer, or the taxpayer's authorized representative, must provide written notification to the board of any change of address or facsimile number. Unless this written notification is provided, service will be deemed accomplished when mailed or faxed according to the last known address or facsimile number properly provided to the board.

*(Indiana Board of Tax Review; [52 IAC 2-3-3](#); filed Jan 26, 2004, 11:30 a.m.: 27 IR 1778; errata filed Mar 4, 2004, 9:45 a.m.: 27 IR 2284; filed Nov 14, 2007, 11:11 a.m.: [20071212-IR-052060571FRA](#))*

SECTION 15. [52 IAC 2-4-1](#) IS AMENDED TO READ AS FOLLOWS:

**[52 IAC 2-4-1](#) Filing of appeal petitions; petitions for rehearing**

**Authority:** [IC 6-1.5-6-2](#)

**Affected:** [IC 6-1.1-15](#)

Sec. 1. (a) The filing of appeal petitions and petitions for rehearing must be made by:

- (1) personal delivery;
- (2) deposit in the United States mail;
- (3) **deposit with a private courier; carrier;** or
- (4) registered or certified mail, return receipt requested.

(b) Appeal petitions and petitions for rehearing may not be filed by facsimile or electronic mail.

*(Indiana Board of Tax Review; [52 IAC 2-4-1](#); filed Jan 26, 2004, 11:30 a.m.: 27 IR 1779; filed Nov 14, 2007, 11:11 a.m.: [20071212-IR-052060571FRA](#))*

SECTION 16. [52 IAC 2-4-2](#) IS AMENDED TO READ AS FOLLOWS:

**[52 IAC 2-4-2](#) Time and place for filing appeal petitions**

**Authority:** [IC 6-1.5-6-2](#)

**Affected:** [IC 6-1.1-11-7](#); [IC 6-1.1-15-1](#); [IC 6-1.1-15-3](#); [IC 6-1.1-15-12](#); [IC 6-1.5-5-1](#)

Sec. 2. (a) A petition for review of assessment under [IC 6-1.1-15-3](#) must be filed with the ~~county assessor~~ **board at the central office** within ~~thirty (30)~~ **forty-five (45)** days after the **date of the** notice of the determination by the PTABOA. The ~~county assessor~~ **petitioner** shall ~~forward~~ **serve** a copy of the petition ~~to the township assessor responsible for the original assessment.~~ **on all parties.**

(b) A petition to correct errors under [IC 6-1.1-15-12](#) must be filed with the ~~county auditor~~ **board at the central office** within ~~thirty (30)~~ **forty-five (45)** days after the **date of the** notice of the determination of the PTABOA. The ~~county auditor~~ **petitioner** shall ~~forward~~ **serve** a copy of the petition ~~to the township assessor responsible for the original assessment.~~ **on all parties.**

(c) A petition for review of exemption under [IC 6-1.1-11-7](#) must be filed with the county assessor board at the central office within ~~thirty (30)~~ **forty-five (45)** days after the date of the notice of the determination of the PTABOA. **The petitioner shall serve a copy of the petition on all parties.**

(d) A petition for review of an action by the department under [IC 6-1.5-5-1](#) must be filed with the board within forty-five (45) days after the date of the notice of the determination of the department unless otherwise specified by statute.

(e) There is a rebuttable presumption that the notice of determination is mailed on the date of the notice.

**(f) If a PTABOA fails to timely hold a hearing on review or issue a determination after hearing, upon expiration of the deadlines in [IC 6-1.1-15-1](#), a taxpayer may initiate a proceeding for review before the board under [IC 6-1.1-15-3](#).**

*(Indiana Board of Tax Review; [52 IAC 2-4-2](#); filed Jan 26, 2004, 11:30 a.m.: 27 IR 1779; filed Nov 14, 2007, 11:11 a.m.: [20071212-IR-052060571FRA](#))*

SECTION 17. [52 IAC 2-4-3](#) IS AMENDED TO READ AS FOLLOWS:

**[52 IAC 2-4-3](#) Time and place for filing petitions for rehearing**

**Authority:** [IC 6-1.5-6-2](#)

**Affected:** [IC 6-1.1-15-4](#); [IC 6-1.1-15-5](#)

Sec. 3. Persons filing a petition for rehearing under [IC 6-1.1-15-5](#) must file the petition with the board within fifteen (15) days after the board gives notice date of its the final determination under [IC 6-1.1-15-4](#).

*(Indiana Board of Tax Review; [52 IAC 2-4-3](#); filed Jan 26, 2004, 11:30 a.m.: 27 IR 1779; filed Nov 14, 2007, 11:11 a.m.: [20071212-IR-052060571FRA](#))*

SECTION 18. [52 IAC 2-5-1](#) IS AMENDED TO READ AS FOLLOWS:

**[52 IAC 2-5-1](#) Compliant appeal petition**

**Authority:** [IC 6-1.5-6-2](#)

**Affected:** [IC 6-1.1-15-1](#); [IC 6-1.1-15-3](#); [IC 6-1.1-15-4](#)

Sec. 1. (a) Appeal petitions must be submitted:

- (1) on the form prescribed by the board; and
- (2) in conformance with the instructions provided on the petition.

(b) A separate petition must be filed for each parcel, **except that a party may seek leave of the board to file a single petition for multiple parcels where the:**

- (1) parcels are contiguous; and
- (2) issues to be appealed on each parcel are substantially similar.

(c) The petition shall include the following:

- ~~(1) Information required by [IC 6-1.1-15-1](#)(e).~~
- ~~(2) Legal and factual basis of the appeal.~~
- ~~(3) Assessment of the subject property that the petitioner alleges is correct.~~
- ~~(4) Assessed value placed on the subject property in the original determination or, if different, the assessed value placed on the property by the PTABOA.~~
- ~~(5) all information requested on the petition form.~~
- ~~(6) An election to either have the appeal petition heard under the small claims procedures ([52 IAC 3](#)) or to have the appeal petition heard under this article.~~

(d) If the appeal petition is not properly completed, the board will:

- (1) issue a notice of defect, specifying the nature of the defect; and ~~shall~~
- (2) return the appeal petition to the petitioner.

The petitioner must correct or cure the appeal petition within thirty (30) days from the date the notice of defect is served.

(e) Failure to bring the appeal petition into substantial compliance with the instructions in the defect notice ~~will~~ **may** result in denial of the petition without hearing.

(Indiana Board of Tax Review; [52 IAC 2-5-1](#); filed Jan 26, 2004, 11:30 a.m.: 27 IR 1779; errata filed Mar 4, 2004, 9:45 a.m.: 27 IR 2284; filed Nov 14, 2007, 11:11 a.m.: [20071212-IR-052060571FRA](#))

SECTION 19. [52 IAC 2-5-2](#) IS AMENDED TO READ AS FOLLOWS:

**[52 IAC 2-5-2](#) Amendments to appeal petitions; additional written specification**

**Authority:** [IC 6-1.5-6-2](#)

**Affected:** [IC 6-1.1-15](#)

Sec. 2. (a) Timely filed amendments to appeal petitions are permitted.

(b) The petition may be amended once as a matter of course within thirty (30) days of the filing of the original appeal petition.

(c) Amendments filed later than thirty (30) days following the filing of the petition must be approved by the board for good cause shown. Amendments filed solely for the purpose of adding new issues will be approved if filed ~~no~~ **not** later than fifteen (15) **business** days ~~prior to~~ **before** the hearing.

(d) Notwithstanding subsection (b), the board will not approve an amendment filed ~~within~~ **fewer than** fifteen (15) **business** days ~~prior to~~ **before** the hearing without the consent of the other parties to the hearing.

(e) Amendments to appeal petitions must be:

- (1) filed at the central office; and ~~must be~~
- (2) served upon all parties.

(f) Amendments to appeal petitions must be filed under [52 IAC 2-4](#).

(g) Only issues raised in:

- (1) the appeal petition; or
- (2) any approved amendments to the petition;

may be raised at the hearing.

(Indiana Board of Tax Review; [52 IAC 2-5-2](#); filed Jan 26, 2004, 11:30 a.m.: 27 IR 1779; errata filed Mar 4, 2004, 9:45 a.m.: 27 IR 2284; filed Nov 14, 2007, 11:11 a.m.: [20071212-IR-052060571FRA](#))

SECTION 20. [52 IAC 2-6-2](#) IS AMENDED TO READ AS FOLLOWS:

**[52 IAC 2-6-2](#) Place of hearing**

**Authority:** [IC 6-1.5-6-2](#)

**Affected:** [IC 6-1.1-15](#)

Sec. 2. (a) Hearings held before an administrative law judge ~~shall~~ **will** be held in:

- (1) **the central office;**
- (2) the county in which the property subject to the appeal is located; ~~in~~ **or**

~~(3) an adjacent county; or at such other location as~~  
**unless the parties and the designated administrative law judge agree to a different location.**

(b) All hearings conducted by:  
(1) a member of the board; or by  
(2) the board sitting in its entirety;  
will be held in the central office unless otherwise agreed to by the board.

(Indiana Board of Tax Review; [52 IAC 2-6-2](#); filed Jan 26, 2004, 11:30 a.m.: 27 IR 1780; filed Nov 14, 2007, 11:11 a.m.: [20071212-IR-052060571FRA](#))

SECTION 21. [52 IAC 2-6-5](#) IS AMENDED TO READ AS FOLLOWS:

**[52 IAC 2-6-5](#) Conduct of hearing; transcription services**

**Authority:** [IC 6-1.5-6-2](#)

**Affected:** [IC 6-1.1-15](#)

Sec. 5. (a) Hearings will be conducted by:  
(1) an administrative law judge;  
(2) any member of the board acting as an administrative law judge; or  
(3) the board sitting in its entirety.

~~(b) Hearings shall be informal proceedings.~~

~~(c) (b)~~ All testimony shall be under oath or affirmation.

~~(d) Hearings~~ **(c) A party may hire a court reporting service to transcribe the hearing. If a court reporting service is retained to transcribe the hearing, the party that hired the court reporting service must submit an official copy of the transcript to the board at no cost to the board. If a court reporter is not retained by either party, the hearing will be tape recorded by the administrative law judge. The recording of the administrative law judge will serve as the basis of the official record of the proceeding unless the hearing is transcribed by a court reporter. A party may hire a court reporting service to transcribe the hearing so long as the reporting service is directed to submit an official copy of the transcript to the board at no cost to the board.**

~~(e) (d)~~ The administrative law judge may rule on any nonfinal order without the approval of a majority of the board.

(Indiana Board of Tax Review; [52 IAC 2-6-5](#); filed Jan 26, 2004, 11:30 a.m.: 27 IR 1781; filed Nov 14, 2007, 11:11 a.m.: [20071212-IR-052060571FRA](#))

SECTION 22. [52 IAC 2-6-8](#) IS AMENDED TO READ AS FOLLOWS:

**[52 IAC 2-6-8](#) Summary judgment; partial summary judgment**

**Authority:** [IC 6-1.5-6-2](#)

**Affected:** [IC 6-1.1-15](#)

Sec. 8. A party may, prior to the hearing, move for:  
(1) summary judgment; or  
(2) partial summary judgment;  
**pursuant to the Indiana Rules of Trial Procedure.**

(Indiana Board of Tax Review; [52 IAC 2-6-8](#); filed Jan 26, 2004, 11:30 a.m.: 27 IR 1781; filed Nov 14, 2007, 11:11 a.m.: [20071212-IR-052060571FRA](#))

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SECTION 23. [52 IAC 2-7-1](#) IS AMENDED TO READ AS FOLLOWS:

**[52 IAC 2-7-1](#) Evidence**

**Authority:** [IC 6-1.5-6-2](#)

**Affected:** [IC 6-1.1-15](#)

Sec. 1. (a) Except as provided in subsection (b), a party participating in the hearing may introduce evidence that is otherwise proper and admissible without regard to whether that evidence has previously been introduced at a hearing before the county ~~property tax assessment board of appeals.~~ **PTABOA.**

(b) A party to the appeal must provide **the following** to ~~the all~~ other parties:

(1) Copies of documentary evidence ~~or~~ **and** summaries of statements of testimonial evidence at least five (5) business days ~~prior to~~ **before** the hearing. ~~and~~

(2) A list of witnesses and exhibits to be introduced at the hearing at least fifteen (15) business days ~~prior to~~ **before** the hearing. If a new issue has been added by another party under [52 IAC 2-5-2\(c\)](#), a party may supplement its list of witnesses and exhibits ten (10) **business** days ~~prior to~~ **before** the hearing in order to address the new issue.

(c) For purposes of determining compliance with the deadlines under subsection (b), the parties must either provide personal or hand delivery or deposit the materials in the United States mail or ~~other courier service with a private carrier~~ **private carrier** three (3) days ~~prior to~~ **before** the deadline in accordance with the provisions of [52 IAC 2-3-1](#). If a party uses a ~~courier service~~ **private carrier** that guarantees next day delivery, the materials must be sent one (1) day before the specified deadline.

(d) The board or the presiding administrative law judge may waive the deadlines under subsection (b) for any materials that had been:

(1) submitted; ~~at~~ or

(2) made part of the record;

at a PTABOA hearing, a department hearing, or other proceeding from which the appeal arises.

(e) Copies of all materials provided to other parties under subsection (b) will become part of the administrative record only if admitted into evidence by the board or administrative law judge.

(f) Failure to comply with subsection (b) may serve as grounds to exclude the evidence or testimony at issue.

(g) Materials submitted to or made a part of the record at a PTABOA hearing, department hearing, or other proceeding from which the appeal arises will not be made part of the record of the board proceeding unless submitted to the board. Evidentiary materials proffered but not admitted into evidence will be so identified in the record.

(h) The board and its administrative law judges may specify the manner in which exhibits are to be labeled and organized.

(i) The board shall consider only the **following**:

(1) Evidence, exhibits, and briefs submitted to it.

(2) Other documents made part of the record. ~~and~~

(3) Matters of which the board expressly takes official notice under [52 IAC 2-7-4](#). **section 4 of this rule.**

(Indiana Board of Tax Review; [52 IAC 2-7-1](#); filed Jan 26, 2004, 11:30 a.m.: 27 IR 1781; errata filed Mar 4, 2004, 9:45 a.m.: 27 IR 2284; filed Nov 14, 2007, 11:11 a.m.: [20071212-IR-052060571FRA](#))

SECTION 24. [52 IAC 2-7-2](#) IS AMENDED TO READ AS FOLLOWS:

**[52 IAC 2-7-2](#) Admissibility; relevancy; weight**

**Authority:** [IC 6-1.5-6-2](#)

~~Sec. 2. (a) A party may object to the admissibility of evidence during the hearing.~~ The administrative law judge shall regulate the course of the proceedings in:

- ~~(1) conformity with any prehearing order; and in an informal~~
- ~~(2) a manner without recourse to the rules of evidence.~~

**(b) A party may object to the admissibility of evidence during the hearing.** The administrative law judge may defer a ruling on the admissibility of the evidence for the board's decision. If the administrative law judge defers a ruling, all proffered evidence will be entered for the record and its admissibility will be considered by the board and addressed in the findings.

~~(b) (c)~~ **(c)** The board will determine the relevance and weight to be assigned to the evidence. Although evidence may be admitted over the objection of a party, if it:

- (1)** is immaterial;
- (2)** is irrelevant; or
- (3)** should be excluded or disregarded on other grounds;

it will not be assigned any weight in the board's final determination.

(Indiana Board of Tax Review; [52 IAC 2-7-2](#); filed Jan 26, 2004, 11:30 a.m.: 27 IR 1782; filed Nov 14, 2007, 11:11 a.m.: [20071212-IR-052060571FRA](#))

SECTION 25. [52 IAC 2-7-3](#) IS AMENDED TO READ AS FOLLOWS:

#### **[52 IAC 2-7-3](#) Hearsay evidence**

Authority: [IC 6-1.5-6-2](#)

Affected: [IC 6-1.1-15](#)

Sec. 3. Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. If **the hearsay evidence is** not objected to, the ~~hearsay~~ evidence may form the basis for a determination. However, if the evidence:

- (1)** is properly objected to; and
- (2)** does not fall within a recognized exception to the hearsay rule;

the resulting determination may not be based solely upon the hearsay evidence.

(Indiana Board of Tax Review; [52 IAC 2-7-3](#); filed Jan 26, 2004, 11:30 a.m.: 27 IR 1782; filed Nov 14, 2007, 11:11 a.m.: [20071212-IR-052060571FRA](#))

SECTION 26. [52 IAC 2-8-3](#) IS AMENDED TO READ AS FOLLOWS:

#### **[52 IAC 2-8-3](#) Discovery**

Authority: [IC 6-1.5-6-2](#)

Affected: [IC 6-1.1-15](#)

Sec. 3. (a) ~~A party~~ **Parties** may:

- (1) obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action; and**
- (2) use the applicable discovery methods contained in the Indiana Rules of Trial Procedure.**

(b) The parties shall make all reasonable efforts to resolve discovery disputes before seeking a discovery order from the board.

(c) Upon showing of good cause, including a description of independent efforts made to resolve the discovery dispute, the board may issue a discovery order consistent with subsection (a). If necessary, the enforcement of

such order or right of discovery shall be in accordance with the Indiana Rules of Trial Procedure.

(d) A party seeking a discovery order under this section shall notify all parties.

~~(e) A party may seek discovery of witnesses, exhibits, or other evidence that the other party intends to present at the hearing. However, a party may not be precluded from:~~

~~(1) supplementing the evidence and witness summaries required by [52 IAC 2-7-1\(b\)\(1\)](#); or~~

~~(2) adding to the witness and exhibit lists required by [52 IAC 2-7-1\(b\)\(2\)](#); because such items were not identified in discovery.~~

(f) No party shall serve on any other party more than twenty-five (25) interrogatories or more than twenty-five (25) requests for admission, including subparagraphs and subparts, without leave of the board.

(g) Upon motion of a party and for good cause shown, the board may issue a protective order restricting discovery of a trade secret or other confidential information or other matter consistent with the Indiana Rules of Trial Procedure and this article.

(h) Depositions may be taken in accordance with the Indiana Rules of Trial Procedure.

(i) Any member of the board or the administrative law judge assigned to hear the petition may issue a nonfinal order with respect to:

**(1)** a discovery motion;

**(2)** a motion to compel;

**(3)** a motion for protective order; or ~~other~~

**(4)** ~~another~~ motion related to discovery or procedure.

*(Indiana Board of Tax Review; [52 IAC 2-8-3](#); filed Jan 26, 2004, 11:30 a.m.: 27 IR 1783; filed Nov 14, 2007, 11:11 a.m.: [20071212-IR-052060571FRA](#))*

SECTION 27. [52 IAC 2-8-4](#) IS AMENDED TO READ AS FOLLOWS:

#### **[52 IAC 2-8-4](#) Subpoena**

**Authority:** [IC 6-1.5-6-2](#)

**Affected:** [IC 6-1.1-15](#)

Sec. 4. (a) Any party may request that the board issue a subpoena or subpoena duces tecum by filing a request with the board at least ten (10) business days before the date on which the hearing commences or the deposition is scheduled. The request shall state the following information:

(1) The name of the witness.

(2) The address, including street address, city, and county, where the witness can be served.

(3) The date, time, and location the witness is expected to appear.

(4) The matter in which the witness is expected to testify.

(5) If a subpoena duces tecum, the material, listed in detail, to be brought by the witness to the hearing or deposition.

(b) A request for a subpoena or subpoena duces tecum shall not be granted by the board if filed fewer than ten (10) business days before the date on which the:

**(1)** hearing commences; or ~~the~~

**(2)** deposition is scheduled;

except by approval of the board upon a showing of good cause.

(c) Except as provided in subsection (b), upon receipt of a properly filed request, the appropriate subpoena shall be issued by:

**(1)** any member of the board; or

**(2)** **an employee authorized by the board to issue such subpoena.**

- (d) Any fees for service by the sheriff are the responsibility of the party requesting the subpoena. Subpoenas: **(1)** may be served in any manner specified by the **Indiana Rules governing the of Trial of civil causes. Subpoenas Procedure; and** **(2)** shall be enforced in a court of competent jurisdiction as provided for by law.

(Indiana Board of Tax Review; [52 IAC 2-8-4](#); filed Jan 26, 2004, 11:30 a.m.: 27 IR 1784; filed Nov 14, 2007, 11:11 a.m.: [20071212-IR-052060571FRA](#))

SECTION 28. [52 IAC 2-8-5](#) IS AMENDED TO READ AS FOLLOWS:

#### **[52 IAC 2-8-5](#) Motions**

**Authority:** [IC 6-1.5-6-2](#)

**Affected:** [IC 6-1.1-15](#)

Sec. 5. (a) A party may file motions with the board or the designated administrative law judge. Except motions made during the hearing, all motions must:

- (1) be in writing;
- (2) state the basis for the motion;
- (3) set forth the relief or order sought;
- (4) be properly captioned with the:
  - (A) petition number;
  - (B) parcel number; and
  - (C) taxpayer's name, address, and telephone number;
- (5) be signed by the party or authorized representative; and
- (6) include verification or proof of service to all parties.

(b) The failure to serve all parties may result in a denial of the motion.

(c) Any response to a motion must be filed within ~~ten (10)~~ **thirty (30)** days after the date of service unless otherwise specified by the board or the administrative law judge.

(Indiana Board of Tax Review; [52 IAC 2-8-5](#); filed Jan 26, 2004, 11:30 a.m.: 27 IR 1784; filed Nov 14, 2007, 11:11 a.m.: [20071212-IR-052060571FRA](#))

SECTION 29. [52 IAC 2-9-4](#) IS AMENDED TO READ AS FOLLOWS:

#### **[52 IAC 2-9-4](#) Settlement; stipulation of value**

**Authority:** [IC 6-1.5-6-2](#)

**Affected:** [IC 6-1.1-15-4](#)

Sec. 4. (a) All stipulations submitted by the parties concerning the value or status of the property must be approved by the board.

~~(b) If the stipulation concerns property originally assessed by or under the authority of a township assessor, the petitioner must notify the county assessor, in the county in which the property is located, of the proposed stipulation at the time the stipulation is filed with the board.~~

~~(c) If the county assessor wishes the board to consider the county assessor's objections to the stipulation, the county assessor must file a written objection to the stipulation within ten (10) days of the date the stipulation is filed with the board.~~

~~(d)~~ **(b)** If the board does not approve a stipulation, the appeal shall proceed according to [IC 6-1.1-15-4](#) and this article.

(e) (c) This section shall not apply to the stipulation or settlement of matters remanded to the board from the Indiana tax court.

(Indiana Board of Tax Review; [52 IAC 2-9-4](#); filed Jan 26, 2004, 11:30 a.m.: 27 IR 1785; filed Nov 14, 2007, 11:11 a.m.: [20071212-IR-052060571FRA](#))

SECTION 30. [52 IAC 2-11-2](#) IS AMENDED TO READ AS FOLLOWS:

#### **[52 IAC 2-11-2](#) Arbitration**

**Authority:** [IC 6-1.5-6-2](#)

**Affected:** [IC 6-1.1-15](#)

Sec. 2. (a) An appeal may, with the consent of the parties, be resolved by arbitration. Requests for diversion of an appeal to arbitration may be made by any party, or the board may recommend that the matter be arbitrated.

(b) The arbitration may be conducted by a licensed real estate appraiser or other qualified person who shall do the following:

- (1) Inspect the subject property.
- (2) Prepare a report that includes the arbitrator's recommendation on the value of the property.
- (3) Submit the report to the parties and the board.

(c) The board shall accept the arbitrator's recommendation if **the:**

- (1) ~~the~~ parties have agreed, in writing, to be bound by the arbitrator's recommendation; and
- (2) ~~the~~ recommendation is not:
  - (A) arbitrary;
  - (B) capricious;
  - (C) an abuse of discretion; or
  - (D) contrary to law.

(d) The costs of arbitration ~~may~~ **must** be paid by the board ~~if the arbitrator is selected by the parties. from a panel of arbitrators approved by the board in accord with the process described in subsection (e).~~

(e) ~~The selection process shall~~ **arbitrator may be conducted selected by the parties from a panel of arbitrators approved by the board** as follows:

- (1) The board shall present the parties with a panel of three (3) arbitrators.
- (2) The respondent, or correspondents acting jointly, shall strike one (1) name from the panel.
- (3) The petitioner, or copetitioners acting jointly, shall strike one (1) name from the panel.
- (4) The remaining arbitrator shall conduct the arbitration.

(Indiana Board of Tax Review; [52 IAC 2-11-2](#); filed Jan 26, 2004, 11:30 a.m.: 27 IR 1786; filed Nov 14, 2007, 11:11 a.m.: [20071212-IR-052060571FRA](#))

SECTION 31. [52 IAC 3-1-1](#) IS AMENDED TO READ AS FOLLOWS:

#### **[52 IAC 3-1-1](#) Applicability**

**Authority:** [IC 6-1.5-6-2](#)

**Affected:** [IC 6-1.1-15](#)

Sec. 1. (a) This article governs the practice and procedure in all small claims. The provisions of [52 IAC 2](#) apply to the small claims procedures unless inconsistent with this article.

(b) The purpose of this article is to make the administration of small claims more:

- (1) efficient; ~~informal~~;

- (2) simple; and
- (3) expeditious;

than those administered under [52 IAC 2](#).

(Indiana Board of Tax Review; [52 IAC 3-1-1](#); filed Jan 26, 2004, 11:30 a.m.: 27 IR 1787; errata filed Mar 4, 2004, 9:45 a.m.: 27 IR 2284; filed Nov 14, 2007, 11:11 a.m.: [20071212-IR-052060571FRA](#))

SECTION 32. [52 IAC 3-1-3](#) IS AMENDED TO READ AS FOLLOWS:

#### [52 IAC 3-1-3](#) Transfer

Authority: [IC 6-1.5-6-2](#)

Affected: [IC 6-1.1-15](#)

Sec. 3. (a) A party who does not wish his or her matter to be heard under the small claims procedure may request a transfer for the proceeding from the small claims procedure to the standard hearing procedure governed by [52 IAC 2](#).

(b) The request for transfer shall be made by:

- (1) opting out of the small claims procedure on the appeal petition; or
- (2) written notice to the board ~~no~~ **not** later than fifteen (15) **business** days ~~prior to~~ **before** the date of the small claims hearing.

(c) The time for hearing the matter pursuant to the standard board procedure described under [52 IAC 2](#) shall begin to run from the date the request for transfer is received by the board.

(Indiana Board of Tax Review; [52 IAC 3-1-3](#); filed Jan 26, 2004, 11:30 a.m.: 27 IR 1787; errata filed Mar 4, 2004, 9:45 a.m.: 27 IR 2284; filed Nov 14, 2007, 11:11 a.m.: [20071212-IR-052060571FRA](#))

SECTION 33. [52 IAC 3-1-4](#) IS AMENDED TO READ AS FOLLOWS:

#### [52 IAC 3-1-4](#) Representation

Authority: [IC 6-1.5-6-2](#)

Affected: [IC 6-1.1-15](#)

Sec. 4. (a) ~~A party may appear on his or her own behalf, by any representative expressly authorized by the party, in writing, to appear on the party's behalf, or by an attorney who has complied with the notice of appearance requirements of [52 IAC 2-3-2](#).~~

~~(b)~~ The rules concerning:

- (1) tax representatives;
- (2) **representatives of minor or incapacitated parties; and**
- (3) **local government representatives;**

under [52 IAC 1](#) apply to the small claims procedure.

(Indiana Board of Tax Review; [52 IAC 3-1-4](#); filed Jan 26, 2004, 11:30 a.m.: 27 IR 1787; filed Nov 14, 2007, 11:11 a.m.: [20071212-IR-052060571FRA](#))

SECTION 34. [52 IAC 3-1-5](#) IS AMENDED TO READ AS FOLLOWS:

#### [52 IAC 3-1-5](#) Procedures

Authority: [IC 6-1.5-6-2](#)

Affected: [IC 6-1.1-15](#)

Sec. 5. (a) The Small claims procedures:

**(1)** shall be ~~informal~~ **structured** with the sole objective of hearing the petition in an expeditious and just manner according to the rules of substantive law; ~~Small claims procedures and~~

**(2)** are not bound by the rules of trial practice, procedure, or evidence except provisions relating to privileged communications and offers of settlement.

This relaxation of evidentiary rules is not a relaxation of the burden of proof.

(b) Hearsay evidence, **as defined by the Indiana Rules of Evidence (Rule 801)**, may be considered **admitted**. If ~~the hearsay evidence is~~ not objected to, ~~but the evidence may form the basis for a~~ **determination. However, if the evidence:**

**(1)** is properly objected to; and

**(2)** does not fall within a recognized exception to the hearsay rule;

the **resulting** determination may not be based solely upon the hearsay evidence.

(c) Except as provided in subsection ~~(f)~~, **(d)**, there shall be no prehearing discovery in small claims.

~~(d) No prehearing conferences will be held in small claims.~~

~~(e) No posthearing submissions will be allowed or accepted in small claims.~~

~~(f)~~ **(d)** If requested by any party, the parties shall ~~make available~~ **provide** to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) **business** days before the ~~day of a~~ small claims hearing.

~~(g)~~ **(e)** At the commencement of the small claims hearing, the parties shall ~~make available~~ **provide** to the presiding administrative law judge a copy of all documentary evidence provided to the other parties.

~~(h)~~ **(f)** Failure to comply with subsection ~~(f)~~ **(d)** may serve as grounds to exclude evidence or testimony that has not been timely provided.

(Indiana Board of Tax Review; [52 IAC 3-1-5](#); filed Jan 26, 2004, 11:30 a.m.: 27 IR 1788; filed Nov 14, 2007, 11:11 a.m.: [20071212-IR-052060571FRA](#))

SECTION 35. [52 IAC 3-1-10](#) IS AMENDED TO READ AS FOLLOWS:

**[52 IAC 3-1-10](#) Final determination and judicial review**

**Authority:** [IC 6-1.5-6-2](#)

**Affected:** [IC 6-1.1-15-5](#)

Sec. 10. (a) ~~The administrative law judge shall prepare a recommendation after the conclusion of the hearing.~~

~~(b) The board shall review the recommendation of the administrative law judge.~~

~~(c) The board shall accept, reject, or modify the recommendation and issue a final determination.~~

~~(d)~~ The final determination:

**(1)** shall be in writing; and

**(2)** is subject to judicial review under [IC 6-1.1-15-5](#).

(Indiana Board of Tax Review; [52 IAC 3-1-10](#); filed Jan 26, 2004, 11:30 a.m.: 27 IR 1788; filed Nov 14, 2007, 11:11 a.m.: [20071212-IR-052060571FRA](#))

SECTION 36. [52 IAC 2-6-6](#) IS REPEALED.

LSA Document #06-571(F)

Notice of Intent: [20061213-IR-052060571NIA](#)

Proposed Rule: [20070905-IR-052060571PRA](#)

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