

Proposed Rule
LSA Document #11-669

DIGEST

Amends [52 IAC 1-1-3.5](#), [52 IAC 1-1-4](#), [52 IAC 1-1-6](#), [52 IAC 1-2-1](#), [52 IAC 1-2-3](#) through [52 IAC 1-2-5](#), [52 IAC 2-2-2](#), [52 IAC 2-2-4](#), [52 IAC 2-2-16](#), [52 IAC 2-3-2](#), [52 IAC 2-5-2](#), [52 IAC 2-6-2](#), [52 IAC 2-6-8](#), [52 IAC 2-7-1](#), [52 IAC 2-8-1](#), [52 IAC 2-8-4](#), [52 IAC 2-8-5](#), [52 IAC 2-8-6](#), [52 IAC 2-9-4](#), [52 IAC 2-10-1](#), [52 IAC 3-1-2](#), and [52 IAC 3-1-5](#) and adds [52 IAC 2-11-1.5](#), pertaining to the Indiana Board of Tax Review's procedural rules, to clarify that a certified public accountant cannot practice before the board for matters involving personal property tax exemptions, to make the definition of "practice before the board" consistent in [52 IAC 1](#) and [52 IAC 2](#), to clarify that the prohibitions restricting the practice before the board for certified tax representatives also applies to certified public accountants, local government representatives, and representatives of minor and incapacitated parties, to allow a hearing to be held in any county in which an administrative law judge has an office, to clarify that filing a motion for summary judgment is a delay reasonably caused by a party, to incorporate the notice requirements of Trial Rule 34(c) relating to subpoenas to nonparties, to clarify that a party that does not object to the election of the board's small claims procedures for a property that does not qualify for participation in such procedures may be deemed to consent to the small claims procedures for that matter, to establish a time limit for requesting documentary evidence under the board's small claims procedures, to comply with the Indiana Supreme Court's pro hac vice rule promulgated on September 20, 2011, and to add rules for the board's voluntary resolution program authorized by [IC 6-1.5-3-4](#), effective July 1, 2010. Repeals [52 IAC 2-12-1](#). Effective 30 days after filing with the Publisher.

[IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses](#)

[52 IAC 1-1-3.5](#); [52 IAC 1-1-4](#); [52 IAC 1-1-6](#); [52 IAC 1-2-1](#); [52 IAC 1-2-3](#); [52 IAC 1-2-4](#); [52 IAC 1-2-5](#); [52 IAC 2-2-2](#); [52 IAC 2-2-4](#); [52 IAC 2-2-16](#); [52 IAC 2-3-2](#); [52 IAC 2-5-2](#); [52 IAC 2-6-2](#); [52 IAC 2-6-8](#); [52 IAC 2-7-1](#); [52 IAC 2-8-1](#); [52 IAC 2-8-4](#); [52 IAC 2-8-5](#); [52 IAC 2-8-6](#); [52 IAC 2-9-4](#); [52 IAC 2-10-1](#); [52 IAC 2-11-1.5](#); [52 IAC 2-12-1](#); [52 IAC 3-1-2](#); [52 IAC 3-1-5](#)

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

[52 IAC 1-1-3.5](#) "Local government representative" defined

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

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

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~~ valuation. **A certified public accountant may not represent a client on a personal property exemption matter.**
- (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 1-1-4](#) IS AMENDED TO READ AS FOLLOWS:

[52 IAC 1-1-4](#) "Practice before the board" defined

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

Affected: [IC 6-1.1-15](#); [IC 6-1.5](#)

Sec. 4. "Practice before the board" means participation in any matters connected with a ~~presentation to~~ **proceeding before** the board or any of its members, or ~~employees relating to a client's rights, privileges, or liabilities under Indiana's property tax laws or rules.~~ Such presentations include, but are not limited to, the following: **any contractor or employee designated to act in the capacity of an administrative law judge.**

- ~~(1) Preparing and filing necessary documents, except personal property returns.~~
- ~~(2) Corresponding and communicating with the board.~~
- ~~(3) Representing a client at hearings, on-site inspections, and meetings.~~

The term does not include the activities of any local unit of government participating before the board.

(Indiana Board of Tax Review; [52 IAC 1-1-4](#); filed Feb 13, 2003, 9:41 a.m.: 26 IR 2316)

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](#)

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) 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](#).
- (6) A certified public accountant when the certified public accountant is representing a client in a matter that relates only to personal property ~~taxation.~~ **valuation. A certified public accountant may not represent a client on a personal property exemption matter.**
- (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.~~

(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](#)

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) Tax representatives will not be 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 under [IC 6-1.1-15-12\(a\)\(6\)](#);
 - (B) a Form 17-T under [IC 6-1.1-26-1\(4\)](#);
 - (C) a Form 130 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 1-2-3](#) IS AMENDED TO READ AS FOLLOWS:

[52 IAC 1-2-3](#) Prohibitions; obligations

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

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

Sec. 3. A certified tax representative, **a certified public accountant, a representative of a minor or incapacitated party, or a local government representative** shall:

- (1) not knowingly misrepresent any information or act in a fraudulent manner;
- (2) not prepare documents or provide evidence in a property assessment appeal unless the representative is authorized by the property owner (or person liable for the taxes under [IC 6-1.1-2-4](#)) **a party** to do so and any required authorization form has been filed;
- (3) not knowingly submit false or erroneous information in a property assessment appeal;
- (4) use the appraisal standards and methods required by rules adopted by the department or the board when the representative submits appraisal information in a property assessment appeal; and
- (5) notify the ~~property owner (or person liable for the taxes under [IC 6-1.1-2-4](#))~~ **party** of all matters relating to the review of the assessment of taxpayers' property before the board. ~~including, but not limited to, the following:~~
 - (A) ~~The tax representative's filing of all necessary documents, correspondence, and communications with the board.~~
 - (B) ~~The dates and substance of all hearings, on-site inspections, and meetings.~~

(Indiana Board of Tax Review; [52 IAC 1-2-3](#); filed Feb 13, 2003, 9:41 a.m.: 26 IR 2317)

SECTION 6. [52 IAC 1-2-4](#) IS AMENDED TO READ AS FOLLOWS:

[52 IAC 1-2-4](#) Contingent fees

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

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

Sec. 4. (a) In the event a tax representative charges a contingent fee for any matter relating to practice before the board, the tax representative may not testify at a hearing without first disclosing the existence of the contingent fee arrangement.

(b) As used in this section, "contingent fee" includes a fee, whether accruing to the tax representative or to the entity with which the tax representative is affiliated, that is based on a percentage of the:

- (1) refund obtained;
- (2) taxes saved; or

(3) reduction in assessed value.

(c) Failure to disclose the ~~existence of a contingent fee arrangement~~ **tax representative's method of compensation** may result in the presumption that a contingent fee arrangement exists between the taxpayer and the tax representative.

(Indiana Board of Tax Review; [52 IAC 1-2-4](#); filed Feb 13, 2003, 9:41 a.m.: 26 IR 2318)

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. The board may recommend to the department the denial, suspension, or revocation of the certification of a **certified tax representative or local government representative** for any of the following:

- (1) Violation of any rule of practice 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.
- (5) Failing to appear at a hearing after proper notice has been given.**

(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 2-2-2](#) IS AMENDED TO READ AS FOLLOWS:

[52 IAC 2-2-2](#) "Administrative law judge" defined

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

Affected: [IC 6-1.5-3-3](#); [IC 6-1.5-3-4](#)

Sec. 2. "Administrative law judge" refers to an individual appointed under [IC 6-1.5-3-3](#) to conduct a hearing that the board is required by law to hold **or to participate in a voluntary resolution program under [52 IAC 2-11-1](#) as authorized by [IC 6-1.5-3-4](#).**

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

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 **any of the following authorized to represent a party in a matter governed by this article:**

- (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 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 valuation~~. **A certified public accountant may not represent a client on a personal property exemption matter.**

- (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;~~ **temporary admission by the Indiana supreme court under the Indiana Rules for Admission to the Bar and the Discipline of Attorneys, Rule 3, Section 2.**

~~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 2-2-16](#) IS AMENDED TO READ AS FOLLOWS:

[52 IAC 2-2-16](#) "Practice before the board" defined

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

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

~~Sec. 16. "Practice before the board" means participation in any matters connected with a proceeding before the board, any of its members, or any contractor or employee designated to act in the capacity of an administrative law judge relating to a client's rights, privileges, or liabilities under Indiana's property tax laws or rules. Such presentations include, but are not limited to, the following:~~

- ~~(1) Preparing and filing necessary documents except personal property returns.
(2) Corresponding and communicating with the board on a substantive issue in a pending proceeding.
(3) Representing a client at a hearing, on-site inspection, or meeting.~~

~~has the meaning set forth in [52 IAC 1-1-4](#).~~

(Indiana Board of Tax Review; [52 IAC 2-2-16](#); filed Jan 26, 2004, 11:30 a.m.: 27 IR 1777)

SECTION 11. [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) Representatives 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 attorney to appear on the party's behalf.

~~(d) 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. **petition the Indiana supreme court for temporary admission under the Indiana Rules for Admission to the Bar and the Discipline of Attorneys, Rule 3, Section 2.**

~~(d)~~ (e) 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 12. [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~~ **A motion to amend a petition may be** filed later than thirty (30) days following the filing of the ~~date~~ **a 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 not later than fifteen (15) business days before the hearing. is filed and such motion may be approved by the board upon good cause shown.**

(d) Notwithstanding subsection ~~(b)~~; **(c)**, the board will not approve an amendment filed fewer than fifteen (15) business days 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
- (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 13. [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 will be held in:

- (1) the central office;
- (2) the county in which the property subject to the appeal is located; or
- (3) **an adjacent any county in which an administrative law judge has an office;**

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
- (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 14. [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) 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.

(b) A motion for summary judgment or partial summary judgment may:

- (1) be considered a delay reasonably caused by the party filing the motion; and**
- (2) extend the time during which the hearing must be held.**

(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](#))

SECTION 15. [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 PTABOA.

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

- (1) Copies of documentary evidence ~~and summaries of statements of testimonial evidence~~ at least five (5) business days before the hearing.
- (2) A list of witnesses and exhibits to be introduced at the hearing at least fifteen (15) business days 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 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 with a private carrier three (3) days before the deadline in accordance with the provisions of [52 IAC 2-3-1](#). If a party uses a 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; 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.
- (3) Matters of which the board expressly takes official notice under 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 16. [52 IAC 2-8-1](#) IS AMENDED TO READ AS FOLLOWS:

[52 IAC 2-8-1](#) Continuance of proceedings

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

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

Sec. 1. (a) Continuances and extensions of time may be granted only if:

- (1) the request is made prior to the hearing or other deadline;
- (2) good cause is shown; and
- (3) the request is served on all parties.

(b) A continuance or extension requested less than two (2) business days prior to the hearing may be granted only upon a showing of extraordinary circumstances.

~~(b)~~ **(c)** A continuance or extension granted prior to the hearing shall:

- (1)** be considered a delay reasonably caused by the party requesting the continuance or extension; and shall
- (2)** automatically extend the time during which the hearing must be held.

(Indiana Board of Tax Review; [52 IAC 2-8-1](#); filed Jan 26, 2004, 11:30 a.m.: 27 IR 1783)

SECTION 17. [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
- (2) deposition is scheduled;

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

(c) A party may not request that the board issue a subpoena duces tecum to be served upon a nonparty until at least fifteen (15) days after the date on which the party intending to serve such request or subpoena serves a copy of the proposed request and subpoena on all other parties.

~~(e)~~ **(d)** 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)~~ **(e)** Any fees for service by the sheriff are the responsibility of the party requesting the subpoena.

(f) Subpoenas:

- (1) may be served in any manner specified by the Indiana Rules of Trial 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 18. [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 thirty (30) days after the date of service unless otherwise specified by the board or the administrative law judge.

(d) A motion filed by a party may:

- (1) be considered a delay reasonably caused by the party filing the motion; and**
- (2) extend the time during which the hearing must be held.**

(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 19. [52 IAC 2-8-6](#) IS AMENDED TO READ AS FOLLOWS:

[52 IAC 2-8-6](#) Briefs

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

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

Sec. 6. (a) Parties may file, or the board may request, briefs in support of a party's position on any issue relevant to the appeal.

(b) Briefs shall be filed within the time limits set by the administrative law judge or board. An extension of time may be requested. If a party fails to timely file a brief, the board may exclude the brief from consideration.

(c) ~~An original and two (2) copies of~~ A brief submitted under this section must be filed with the board at the central office. A copy of the brief shall also be served on each party.

(d) A brief submitted under this section must not exceed thirty (30) pages (excluding exhibits) without prior written permission of the board or administrative law judge.

(e) Notwithstanding a submission deadline, a party may supplement a previously filed brief with subsequently decided cases, but without further argument.

(f) Briefs amicus curiae may be filed with leave of the board and must be filed in accordance with the briefing schedule established for the parties or by order of the board or the designated administrative law judge.

(Indiana Board of Tax Review; [52 IAC 2-8-6](#); filed Jan 26, 2004, 11:30 a.m.: 27 IR 1784)

SECTION 20. [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 board does not approve a stipulation, the appeal shall proceed according to [IC 6-1.1-15-4](#) and this article.

(a) If the parties resolve a matter after an appeal has been filed with the board, the parties shall notify the board that an agreement has been reached.

(b) This section is not intended to prevent a petitioner from withdrawing its appeal once an agreement is reached between the parties.

(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 21. [52 IAC 2-10-1](#) IS AMENDED TO READ AS FOLLOWS:

[52 IAC 2-10-1](#) Failure to appear

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

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

Sec. 1. (a) The failure of a party or a party's representative to appear at a hearing, after proper notice has been given, may constitute the basis for a default or dismissal of the appeal petition.

(b) Within ten (10) days after the order of default or dismissal is issued, the party against whom the order is entered may file a written objection requesting that the order be vacated and set aside. This objection must contain supportive facts stating why the party did not appear.

(c) The board may vacate and set aside an entry of a dismissal or default order.

(d) If an order of default or dismissal is vacated and set aside, the board will schedule another hearing on the appeal petition. At least thirty (30) days notice will be given for the hearing unless waived by agreement of all parties. The time period within which the board must issue a final determination on the appeal petition will be calculated from the date of the hearing on the merits.

(e) A tax representative that fails to appear at a hearing after proper notice may be reported to the department for revocation of certification under [50 IAC 15-5-8\(a\)](#).

(Indiana Board of Tax Review; [52 IAC 2-10-1](#); filed Jan 26, 2004, 11:30 a.m.: 27 IR 1785)

SECTION 22. [52 IAC 2-11-1.5](#) IS ADDED TO READ AS FOLLOWS:

[52 IAC 2-11-1.5](#) Voluntary resolution

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

Affected: [IC 6-1.1-15-1](#); [IC 6-1.5-3-4](#)

Sec. 1.5. (a) "Voluntary resolution" or "facilitation" means an informal process in which an administrative law judge acts to encourage and assist in the resolution of a property tax appeal.

(b) The voluntary resolution program requires an agreement to participate by both the county and the taxpayer.

(c) A facilitation session may only occur after a taxpayer has filed a written notice for review with the county under [IC 6-1.1-15-1\(c\)](#). Moreover, the parties are encouraged to undertake the informal conference procedures under [IC 6-1.1-15-1\(h\)\(2\)](#) prior to requesting a facilitation session with an administrative law judge.

(d) The parties may request a facilitation session after the county board's hearing on the matter under [IC 6-1.1-15-1\(k\)](#). However, the facilitation must be conducted prior to the county board's issuance of a decision under [IC 6-1.1-15-1\(n\)](#).

(e) All parties, or their attorneys or representatives with settlement authority, shall be present at the facilitation.

(f) Voluntary resolution proceedings shall be considered settlement negotiations as governed by Ind. Evidence Rule 408.

(g) Facilitation sessions are not open to the public unless all parties agree.

(h) A taxpayer's participation in a facilitation program does not preclude or delay the taxpayer's right to appeal to the board under [IC 6-1.1-15-1\(o\)](#) in the event that the county board does not timely act to hold a hearing under [IC 6-1.1-15-1\(k\)](#) or issue its order under [IC 6-1.1-15-1\(n\)](#).

(i) Any administrative law judge that participates in a facilitation session between a county and a taxpayer may not thereafter preside over an appeal to the board of the same matter.

(j) Nothing in this rule shall be construed as requiring participation in a voluntary resolution program in order for the parties to settle a property tax matter between them.

(k) A voluntary resolution session is not a proceeding before the board under [52 IAC 1-1-4](#) or [52 IAC 2-2-16](#) and does not require any record keeping by the board, including the records required under [52 IAC 2-3-3\(b\)](#).

(Indiana Board of Tax Review; [52 IAC 2-11-1.5](#))

SECTION 23. [52 IAC 3-1-2](#) IS AMENDED TO READ AS FOLLOWS:

[52 IAC 3-1-2](#) Property subject to the small claims procedure

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

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

Sec. 2. (a) Unless a party elects to transfer out under [52 IAC 2-5-1\(c\)\(6\)](#) or section 3 of this rule, an appeal petition shall be subject to the small claims procedure if the property under appeal is:

- (1) an unimproved parcel of land with an assessed value not in excess of one million dollars (\$1,000,000);
- (2) a parcel of land, as improved, with an assessed value for land and improvements not in excess of one million dollars (\$1,000,000); or
- (3) personal property not in excess of one million dollars (\$1,000,000).

(b) By accepting the small claims procedure, the parties agree that:

- (1) the issues contained in the appeal petition are substantially the same as those presented to the PTABOA; and agree that
- (2) no new issues will be raised before the board.

(c) The small claims appeal petition may not be amended except to conform the issues raised in the appeal petition to those issues raised at the PTABOA hearing from which the appeal arises.

(d) A party to any appeal concerning a property that does not meet the criteria described in subsection (a) may elect to have the petition heard under the small claims procedure by:

(1) requesting so upon filing the appeal petition or by notifying the board, in writing, within thirty (30) days of filing his or her petition; and

(2) obtaining ~~the written~~ consent to such election from the other parties to the proceeding. **A party's failure to object to the election of the board's small claims procedures for property that does not meet the criteria of subsection (a) may be deemed by the board to be the party's consent to such an election.**

(Indiana Board of Tax Review; [52 IAC 3-1-2](#); filed Jan 26, 2004, 11:30 a.m.: 27 IR 1787; errata filed Mar 4, 2004, 9:45 a.m.: 27 IR 2284)

SECTION 24. [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) Small claims procedures:

(1) shall be structured with the sole objective of hearing the petition in an expeditious and just manner according to the rules of substantive law; 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 admitted. If the hearsay evidence is not objected to, 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 (d), there shall be no prehearing discovery in small claims.

(d) If requested **not later than ten (10) business days prior to hearing** by any party, the parties shall 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 small claims hearing.

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

(f) Failure to comply with subsection (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 25. [52 IAC 2-12-1](#) IS REPEALED.

[Notice of Public Hearing](#)

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