

## **ARTICLE 2. PROCEDURAL RULES**

### **Rule 1. Purpose and Applicability**

#### **52 IAC 2-1-1 Purpose**

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 1. The purpose of this article is to establish procedures to govern administrative proceedings before the board. The definitive procedures, procedural requirements, and evidentiary controls established by this article are deemed essential to assure that the administrative appeals before the board are conducted in the most uniform and objective manner possible. (*Indiana Board of Tax Review; 52 IAC 2-1-1; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1776*)

#### **52 IAC 2-1-2 Applicability**

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 2. Except as provided in 52 IAC 3 regarding the small claims procedures, the provisions of this article apply to and govern all proceedings before the board. (*Indiana Board of Tax Review; 52 IAC 2-1-2; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1776*)

#### **52 IAC 2-1-3 Jurisdiction of the board**

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15; IC 6-1.5-4-1; IC 6-1.5-5-1

Sec. 3. The board shall conduct an impartial review of an appeal from:

- (1) a determination by an assessing official or a county property tax assessment board of appeals described under IC 6-1.5-4-1;
- (2) a final determination of the department described under IC 6-1.5-5-1; or
- (3) any other determination or finding by the department, a PTABOA, or an assessing official for which review by the board is expressly authorized under Indiana law.

(*Indiana Board of Tax Review; 52 IAC 2-1-3; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1776*)

### **Rule 2. Definitions**

#### **52 IAC 2-2-1 Applicability**

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 1. The definitions in this rule apply throughout this article. (*Indiana Board of Tax Review; 52 IAC 2-2-1; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1776*)

#### **52 IAC 2-2-2 “Administrative law judge” defined**

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15; IC 6-1.5-3-3

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

#### **52 IAC 2-2-3 “Appeal petition” defined**

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15-3; IC 6-1.5-4-1; IC 6-1.5-5-1

Sec. 3. “Appeal petition” means a petition for review filed with the board under IC 6-1.5-4-1 or IC 6-1.5-5-1. (*Indiana Board*

*of Tax Review; 52 IAC 2-2-3; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1776)*

**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 a person, including, but not limited to, a tax representative as defined in 52 IAC 1-1-6, 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)*

**52 IAC 2-2-5 “Board” defined**

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15; IC 6-1.5-1-3

Sec. 5. “Board” means the Indiana board of tax review established under IC 6-1.5-1-3. *(Indiana Board of Tax Review; 52 IAC 2-2-5; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1776)*

**52 IAC 2-2-6 “Board member” or “member of the board” defined**

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15; IC 6-1.5-2-1

Sec. 6. “Board member” or “member of the board” means one (1) of the three (3) members of the board appointed under IC 6-1.5-2-1. *(Indiana Board of Tax Review; 52 IAC 2-2-6; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1776)*

**52 IAC 2-2-7 “Central office” defined**

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 7. “Central office” means the principal office of the board located in Indianapolis, Indiana. *(Indiana Board of Tax Review; 52 IAC 2-2-7; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1776)*

**52 IAC 2-2-8 “Department” defined**

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15; IC 6-1.1-30-1.1

Sec. 8. “Department” means the department of local government finance established under IC 6-1.1-30-1.1. *(Indiana Board of Tax Review; 52 IAC 2-2-8; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1777)*

**52 IAC 2-2-9 “Final order” or “final determination” defined**

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15-4; IC 6-1.1-15-5

Sec. 9. “Final order” or “final determination” means any action of the board that is:

(1) designated as final by the board;

(2) the final step in the administrative process before resort may be made to the judiciary; or

(3) deemed final under IC 6-1.1-15-4 and IC 6-1.1-15-5.

*(Indiana Board of Tax Review; 52 IAC 2-2-9; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1777)*

**52 IAC 2-2-10 “Nonfinal order” defined**

Authority: IC 6-1.5-6-2  
Affected: IC 6-1.1-15

Sec. 10. “Nonfinal order” means any action by the board that is not a final order or final determination subject to direct judicial review. (*Indiana Board of Tax Review; 52 IAC 2-2-10; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1777*)

**52 IAC 2-2-11 “Order or ruling” defined**

Authority: IC 6-1.5-6-2  
Affected: IC 6-1.1-15

Sec. 11. “Order or ruling” means any final or nonfinal order, ruling, or determination by the board. (*Indiana Board of Tax Review; 52 IAC 2-2-11; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1777*)

**52 IAC 2-2-12 “Original determination” defined**

Authority: IC 6-1.5-6-2  
Affected: IC 6-1.1-15

Sec. 12. “Original determination” means a determination of assessed value, qualification for an exemption, credit, or deduction, or other decision that is the subject of the appeal petition. (*Indiana Board of Tax Review; 52 IAC 2-2-12; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1777*)

**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) The department.

(*Indiana Board of Tax Review; 52 IAC 2-2-13; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1777*)

**52 IAC 2-2-14 “Person” defined**

Authority: IC 6-1.5-6-2  
Affected: IC 6-1.1-1-10; IC 6-1.1-15

Sec. 14. “Person” has the meaning set forth in IC 6-1.1-1-10. (*Indiana Board of Tax Review; 52 IAC 2-2-14; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1777*)

**52 IAC 2-2-15 “Petition for rehearing” defined**

Authority: IC 6-1.5-6-2  
Affected: IC 6-1.1-15-5

Sec. 15. “Petition for rehearing” means a written request for rehearing properly filed with the board under IC 6-1.1-15-5. (*Indiana Board of Tax Review; 52 IAC 2-2-15; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1777*)

**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.

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

**52 IAC 2-2-17 “Property tax assessment board of appeals” or “PTABOA” defined**

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15; IC 6-1.1-28-1

Sec. 17. “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 2-2-17; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1777)*

**52 IAC 2-2-18 “Tax representative” defined**

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-2-4; IC 6-1.1-15

Sec. 18. “Tax representative” has the meaning set forth in 52 IAC 1-1-6. *(Indiana Board of Tax Review; 52 IAC 2-2-18; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1778)*

**Rule 3. Computation of Time and Service**

**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 this article or by 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 first class mail, registered mail, or certified mail, will constitute prima facie proof of the date of filing.

(d) 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) If a paper is served through 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)*

**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 tax representative, the tax representative must file a power of attorney with the board.

(b) Other authorized representatives, including attorneys, must file a notice of appearance with the board, stating that the party has authorized the representative to appear on the party's behalf.

(c) The power of attorney or 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*)

**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 ruling, order, determination, or paper issued by the board.

(b) The board will keep a record of all notices, rulings, determinations, or other papers, served by personal delivery, private courier, or 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 a power of attorney or 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) 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*)

**52 IAC 2-3-4 Service to all parties required**

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 4. (a) All documents and other papers that are filed with or submitted to the administrative law judge or board regarding a matter governed by this article must also be served upon all parties or, if the party has a properly authorized representative, upon the authorized representative.

(b) Service of papers other than appeal petitions and petitions for rehearing may be made by electronic mail or facsimile unless, in writing, a party specifically requests otherwise. (*Indiana Board of Tax Review; 52 IAC 2-3-4; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1778*)

**Rule 4. Filing Appeal Petitions and Petitions for Rehearing**

**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) private courier; 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*)

#### **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 6-1.1-15-3; 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 within thirty (30) days after the notice of the determination by the PTABOA. The county assessor shall forward a copy of the petition to the township assessor responsible for the original assessment.

(b) A petition to correct errors under IC 6-1.1-15-12 must be filed with the county auditor within thirty (30) days after notice of the determination of the PTABOA. The county auditor shall forward a copy of the petition to the township assessor responsible for the original assessment.

(c) A petition for review of exemption under IC 6-1.1-11-7 must be filed with the county assessor within thirty (30) days after notice of the determination of the PTABOA.

(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 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. (*Indiana Board of Tax Review; 52 IAC 2-4-2; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1779*)

#### **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 of its 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*)

### **Rule 5. Compliant Appeal Petitions and Scope of Review**

#### **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 on the form prescribed by the board and in conformance with the instructions provided on the petition.

(b) A separate petition must be filed for each parcel.

(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 issue a notice of defect, specifying the nature of the defect and shall 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 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*)

#### **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 later than fifteen (15) days prior to the hearing.

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

(e) Amendments to appeal petitions must be filed at the central office and must be served upon all parties.

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

(g) Only issues raised in the appeal petition or 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*)

#### **52 IAC 2-5-3 Limitation of issues**

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 3. (a) The board may not limit the scope of the issues raised in the appeal petition to those presented to the PTABOA unless all parties agree to the limitation of issues.

(b) If new issues are raised in an amendment to the appeals petition, the amendment is subject to the terms of section 2 of this rule.

(c) If an issue not presented to the PTABOA is raised in the appeal petition or the amended appeal petition, the board may remand the petition to the PTABOA for consideration of the new issue if consented to by the parties and the PTABOA.

(d) If the board remands the petition to the PTABOA under subsection (c) and the PTABOA does not issue a determination on the new issue within sixty (60) days of the remand, the board shall proceed to hear the appeal. (*Indiana Board of Tax Review; 52 IAC 2-5-3; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1780; errata filed Mar 4, 2004, 9:45 a.m.: 27 IR 2284*)

### **Rule 6. Hearing Procedures**

#### **52 IAC 2-6-1 Hearing date**

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15-4; IC 6-1.5-5-6

Sec. 1. The board shall conduct a hearing within the time limits set forth in IC 6-1.1-15-4 and IC 6-1.5-5-6. (*Indiana Board of Tax Review; 52 IAC 2-6-1; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1780*)

#### **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 be held in the county in which the property subject to the appeal is located, in an adjacent county, or at such other location as the parties and the designated administrative law judge agree.

(b) All hearings conducted by a member of the board or by 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*)

**52 IAC 2-6-3 Expedited hearing procedures**

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 3. (a) The board may receive evidence by duly sworn affidavit. However, evidence presented by affidavit may be subject to objection.

(b) The board may issue a determination based upon a record created by stipulation of the parties as to some or all of the issues on appeal.

(c) A hearing or prehearing conference may be conducted by telephone or through video conferencing upon agreement of the parties. (*Indiana Board of Tax Review; 52 IAC 2-6-3; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1780*)

**52 IAC 2-6-4 Issuance of final determination**

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15-4; IC 6-1.1-15-5; IC 6-1.5-5-6

Sec. 4. (a) The board shall make a final determination within the time limits set forth in IC 6-1.1-15-4 and IC 6-1.5-5-6.

(b) The board may, on its own motion and upon written notification, extend the final determination date under subsection (a) by up to one hundred eighty (180) days.

(c) If the board does not issue a final determination within the maximum time allowed by this section, the petitioner may take action as set forth in IC 6-1.1-15-5 and IC 6-1.5-5-6.

(d) Upon issuance of the final determination, or if the maximum time has elapsed as set forth in IC 6-1.1-15-5 or IC 6-1.5-5-6, a party may seek judicial review under IC 6-1.1-15-5.

(e) A final determination requires the approval by a majority of the board. If a majority of the board is not able to arrive at a final determination, the petition shall be deemed denied and the parties will be so notified. (*Indiana Board of Tax Review; 52 IAC 2-6-4; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1780*)

**52 IAC 2-6-5 Hearing formality; transcription services**

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

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

(b) Hearings shall be informal proceedings.

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

(d) Hearings 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) 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*)

**52 IAC 2-6-6 County assessor as an additional party**

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 6. (a) The county assessor in the county where the property is located may:

- (1) appear as an additional party in a proceeding before the board; or
- (2) file an objection to a settlement or stipulation of assessed value or exempt status.

(b) In order to appear as an additional party or to object to settlement or stipulation of value or exempt status, the county assessor must do the following:

- (1) Notify the parties and the board in writing.
- (2) Include a detailed statement of the reason for the appearance or objection.
- (3) File the notice of their appearance as a party within thirty (30) days of the petition filing or within ten (10) days of receipt of notice of the proposed settlement or stipulation.

(c) If a county assessor does not appear as an additional party in a case, but files an objection to a settlement or stipulation of assessed value or exempt status, the parties in the case may submit a written response to the objection within ten (10) days. The board may either accept or reject the objection or may accept the objection in part and reject it in part. (*Indiana Board of Tax Review; 52 IAC 2-6-6; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1781*)

#### **52 IAC 2-6-7 Consolidation order**

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 7. (a) The board may, on its own motion or upon motion by one (1) or more parties, consolidate two (2) or more petitions for the appeal of an assessment of real property if:

- (1) the properties are located in the same township and are of the same classification; and
- (2) the common factual and legal issues in dispute predominate over the individual issues.

(b) The board shall notify the parties of its intent to consolidate the actions and shall permit a petitioner, as a matter of right, to sever itself from the consolidated action.

(c) A motion to sever under subsection (b) must be in writing. (*Indiana Board of Tax Review; 52 IAC 2-6-7; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1781*)

#### **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 summary judgment or partial summary judgment. (*Indiana Board of Tax Review; 52 IAC 2-6-8; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1781*)

### **Rule 7. Evidentiary Procedures**

#### **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.

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

- (1) copies of documentary evidence or summaries of statements of testimonial evidence at least five (5) business days prior to the hearing; and
- (2) a list of witnesses and exhibits to be introduced at the hearing at least fifteen (15) business days prior to 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) days prior to 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 three (3) days prior to the deadline in accordance with the provisions of 52 IAC 2-3-1. If a party uses a courier service 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 submitted at or 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 evidence, exhibits, and briefs submitted to it, other documents made part of the record, and matters of which the board expressly takes official notice under 52 IAC 2-7-4. (*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*)

#### **52 IAC 2-7-2 Admissibility; relevancy; weight**

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

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 conformity with any prehearing order and in an informal manner without recourse to the rules of evidence. 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) 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 is immaterial, irrelevant, or 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*)

#### **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 not objected to, the hearsay evidence may form the basis for a determination. However, if the evidence is properly objected to and 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*)

#### **52 IAC 2-7-4 Official notice**

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 4. (a) The board may take official notice of the following:

(1) Any fact that could be judicially noticed in the courts.

(2) The record of other proceedings before the board.

(3) Codes or standards that have been adopted by an agency of the United States or this state.

(4) Publications, treatises, or other documents commonly considered to be reliable authorities on subjects addressed at the hearing.

(b) Parties must be:

- (1) notified before or during the hearing, or before the issuance of any order that is based in whole or in part on facts or material noticed under subsection (a), of the specific facts or material noticed, including any staff memoranda and data; and
- (2) afforded an opportunity to contest and rebut the facts or material noticed under subsection (a).

*(Indiana Board of Tax Review; 52 IAC 2-7-4; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1782; errata filed Mar 4, 2004, 9:45 a.m.: 27 IR 2284)*

**52 IAC 2-7-5 Confidential information**

Authority: IC 6-1.5-6-2

Affected: IC 5-14-3-1; IC 6-1.1-15; IC 6-1.1-35-9

Sec. 5. (a) A party must, at the time it is submitted, clearly identify all confidential information provided to the board and specify the statutory basis under which the information is claimed to be confidential.

(b) The board shall make a finding on the confidentiality of information upon the motion of the party and submission of such information.

(c) Information deemed confidential by the board shall be so identified by the board and shall be disclosed only in a manner consistent with IC 6-1.1-35-9, IC 5-14-3-1, et seq., and other applicable law.

(d) A redacted version of a document containing both confidential and nonconfidential evidence shall be provided to the board by the party requesting confidential treatment. The redacted version of the document will be available to the public under IC 5-14-3. *(Indiana Board of Tax Review; 52 IAC 2-7-5; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1782)*

**Rule 8. Prehearing and Posthearing Activities**

**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 granted prior to the hearing shall be considered a delay reasonably caused by the party requesting the continuance or extension and shall 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)*

**52 IAC 2-8-2 Prehearing conference**

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 2. (a) The board may, upon reasonable notice to the parties, order a prehearing conference. A prehearing conference order may include a requirement for the parties to confer and submit an appeal management plan addressing matters outlined in subsection (b).

(b) The board may, through the prehearing conference or appeal management plan, require the parties to submit:

- (1) a list of two (2) or more desired dates for the hearing;
- (2) a preliminary statement of all contentions and defenses;
- (3) a discovery and motion schedule;
- (4) a preliminary witness and exhibit list;
- (5) possible stipulations;
- (6) amendments to the appeal petition;
- (7) an outline or summary of the matter under appeal; or

(8) any other information that the board deems beneficial to the orderly review of an appeal petition.

(c) The parties, subject to an order issued under subsection (a), must demonstrate a good faith effort to comply with the order and reach agreement on an appeal management plan and the matters specified in the order. If the parties fail to materially comply with the order, or do not demonstrate a good faith effort, the board or the designated administrative law judge may:

(1) conduct the prehearing conference and, following such conference, enter an order reflecting the matters ordered and agreed to at the prehearing conference; or

(2) issue an order addressing any matter not adequately resolved.

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

### **52 IAC 2-8-3      Discovery**

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 3. (a) A party may 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 supplementing the evidence and witness summaries required by 52 IAC 2-7-1(b)(1) or 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 a discovery motion, motion to compel, motion for protective order, or other 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)*

### **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 hearing commences or the 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 any member of the board.

(d) Any fees for service by the sheriff are the responsibility of the party requesting the subpoena. Subpoenas may be served in any manner specified by the rules governing the trial of civil causes. Subpoenas 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*)

**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 petition number, parcel number, and 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) 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*)

**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*)

**52 IAC 2-8-7 Submission of proposed findings and conclusions**

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 7. (a) Parties may file proposed findings of fact and conclusions of law with the board.

(b) Proposed findings and conclusions must be filed within the time period established and at the address designated by the board or administrative law judge. A copy must be served on each party. (*Indiana Board of Tax Review; 52 IAC 2-8-7; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1784*)

**52 IAC 2-8-8 Posthearing evidence**

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 8. (a) No posthearing evidence will be accepted unless it is requested by the administrative law judge or the board. The administrative law judge will set a deadline for the submission of any requested evidence and specify the address to which the

posthearing evidence must be submitted.

(b) An extension of time to submit posthearing evidence may be requested if submitted in writing to the administrative law judge. An extension may be granted if timely made and good cause is shown. If posthearing evidence is untimely submitted, the board will proceed to determine the appeal petition without considering the untimely submitted posthearing evidence.

(c) Posthearing evidence submitted must be served on all parties. (*Indiana Board of Tax Review; 52 IAC 2-8-8; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1785*)

## **Rule 9. Orders and Determinations**

### **52 IAC 2-9-1 Orders and determinations**

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 1. All parties will be notified of all orders or determinations issued by the board. (*Indiana Board of Tax Review; 52 IAC 2-9-1; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1785*)

### **52 IAC 2-9-2 Final order**

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15-5

Sec. 2. (a) Final orders and final determinations shall:

- (1) contain the name of the petitioner and identify the property that is the subject of the appeal;
- (2) identify the parties and representatives participating in the proceeding;
- (3) include a concise statement of the basic facts of record;
- (4) contain separately stated findings of fact;
- (5) contain a decision disposing of all contested issues; and
- (6) include a notice of appeal rights.

(b) Findings must be based exclusively on the evidence in the record and on matters officially noticed in the proceeding.

(c) A final order is subject to judicial review under IC 6-1.1-15-5. (*Indiana Board of Tax Review; 52 IAC 2-9-2; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1785; errata filed Mar 4, 2004, 9:45 a.m.: 27 IR 2284*)

### **52 IAC 2-9-3 Corrected or amended final order**

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 3. (a) The board may issue a corrected final order to correct an oversight, error, or omission in the original final determination within the earlier of:

- (1) forty-five (45) days of issuing the final order; or
- (2) the date a verified petition for judicial review of the final determination is filed with the Indiana tax court.

(b) A corrected or amended final order shall be treated as the final order or determination on the appeal petition, and the parties shall have forty-five (45) days from the date the amended or corrected final order is issued to seek judicial review. (*Indiana Board of Tax Review; 52 IAC 2-9-3; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1785*)

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

(e) 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*)

## **Rule 10. Sanctions**

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

### **52 IAC 2-10-2 Default or dismissal**

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15-5

Sec. 2. (a) The board may issue an order of default or dismissal as the result of:

- (1) failure of the petitioner to state a claim on which relief can be granted;
- (2) failure of a party to comply with a rule or order of the board or administrative law judge;
- (3) disruptive, vulgar, abusive, or obscene conduct or language by a party or authorized representative; or
- (4) failure of a party to provide or exchange evidence in accordance with this article.

(b) The board may issue an order of default or dismissal on motion of a party or on its own motion.

(c) A dismissal or default under this section is a final determination and may be appealed to tax court in accordance with the provisions of IC 6-1.1-15-5. (*Indiana Board of Tax Review; 52 IAC 2-10-2; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1786*)

### **52 IAC 2-10-3 Ex parte communications prohibited**

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 3. (a) Parties, their authorized representatives, or anyone acting on their behalf are prohibited from engaging in ex parte communications with the administrative law judge or the board regarding any substantive matters relating to the appeal petition while the administrative appeals process is ongoing.

(b) Ex parte communications may be grounds for sanctions, including, but not limited to, dismissal of the appeal.

(c) Communications:

- (1) regarding matters of practice and procedure;
- (2) that do not pertain to the merits of the appeal; or
- (3) to which the opposing party or parties have given consent;

are not considered ex parte communications under this section. (*Indiana Board of Tax Review; 52 IAC 2-10-3; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1786*)

## **Rule 11. Mediation and Dispute Resolution**

### **52 IAC 2-11-1 Mediation and alternative dispute resolution**

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 1. Any appeal to the board may, with the consent of the parties, be resolved by mediation or other alternative dispute resolution procedures. (*Indiana Board of Tax Review; 52 IAC 2-11-1; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1786; errata filed Mar 4, 2004, 9:45 a.m.: 27 IR 2284*)

### **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:

(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 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 be conducted as follows:

(1) The board shall present the parties with a panel of three (3) arbitrators.

(2) The respondent, or co-respondents acting jointly, shall strike one (1) name from the panel.

(3) The petitioner, or co-petitioners 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*)

## **Rule 12. Miscellaneous Provisions**

### **52 IAC 2-12-1 Supersedes conflicting rules**

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 1. The provisions of this article shall supersede 50 IAC 17. (*Indiana Board of Tax Review; 52 IAC 2-12-1; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1787*)

\*