

## ARTICLE 3. SMALL CLAIMS PROCEDURES

### Rule 1. Small Claims Procedures

#### 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;
- (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*)

#### 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 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
- (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 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; filed Aug 1, 2012, 11:08 a.m.: 20120829-IR-052110669FRA*)

#### 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 not later than fifteen (15) business days 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*)

#### **52 IAC 3-1-4 Representation**

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 4. 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*)

#### **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; filed Aug 1, 2012, 11:08 a.m.: 20120829-IR-052110669FRA*)

#### **52 IAC 3-1-6 Waiver of hearing**

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 6. The parties in small claims may elect to waive a hearing and have the board issue a final determination based solely on the written and documentary evidence submitted by the parties. (*Indiana Board of Tax Review; 52 IAC 3-1-6; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1788*)

**52 IAC 3-1-7 Continuance of the hearing**

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 7. A small claims proceeding shall be continued only upon a showing of extraordinary circumstances. (*Indiana Board of Tax Review; 52 IAC 3-1-7; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1788*)

**52 IAC 3-1-8 Hearing presentation time restrictions**

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 8. (a) Each party will be restricted in the amount of time they will be allowed to present their case in a small claims proceeding to no more than twenty (20) minutes.

(b) Parties that elect the small claims procedure, but have a substantial amount of written and documentary evidence or numerous witnesses, must be prepared to present their case within the time restrictions. It is the responsibility of the parties to organize their presentation such that the oral presentation references the supporting written and documentary evidence sufficient for the administrative law judge and board to make the desired connections between the oral testimony and any more detailed supporting evidence. Exhibit lists, evidentiary outlines, affidavits, summaries, and other such tools should be utilized if necessary for the party to present their case within the time restrictions.

(c) If a party cannot adequately present its case within the time restrictions, it is the duty of that party to request in writing that the matter be removed from the small claims docket and scheduled to be heard under 52 IAC 2. Petitions cannot be withdrawn from small claims once the hearing has commenced except under extraordinary circumstances. (*Indiana Board of Tax Review; 52 IAC 3-1-8; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1788; errata filed Mar 4, 2004, 9:45 a.m.: 27 IR 2284*)

**52 IAC 3-1-9 Record of proceedings**

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 9. Small claims hearings shall be recorded with a recording device. (*Indiana Board of Tax Review; 52 IAC 3-1-9; filed Jan 26, 2004, 11:30 a.m.: 27 IR 1788*)

**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. 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*)

\*