

Document: Proposed Rule, **Register Page Number:** 26 IR 89
Source: October 1, 2002, Indiana Register, Volume 26, Number 1
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TITLE 52 INDIANA BOARD OF TAX REVIEW

Proposed Rule LSA Document #02-206

DIGEST

Adds 52 IAC to establish standards to govern the practice of representatives before the Indiana board of tax review. Effective 30 days after filing with the secretary of state.

52 IAC 1

SECTION 1. 52 IAC 1 IS ADDED TO READ AS FOLLOWS:

ARTICLE 1. TAX REPRESENTATIVES

Rule 1. Definitions

52 IAC 1-1-1 Applicability

Authority: IC 6-1.5-6-1
Affected: IC 6-1.5

Sec. 1. The definitions in this rule apply throughout this article. (*Indiana Board of Tax Review; 52 IAC 1-1-1*)

52 IAC 1-1-2 “Board” defined

Authority: IC 6-1.5-6-1
Affected: IC 6-1.5-1-3

Sec. 2. “Board” refers to the Indiana board of tax review established under IC 6-1.5-1-3. References to the board in this rule shall, where necessary, include its predecessor agency, the state board of tax commissioners. (*Indiana Board of Tax Review; 52 IAC 1-1-2*)

52 IAC 1-1-3 “Department” defined

Authority: IC 6-1.5-6-1
Affected: IC 6-1.1-30-1.1

Sec. 3. “Department” means the department of local government finance established under IC 6-1.1-30-1.1. (*Indiana Board of Tax Review; 52 IAC 1-1-3*)

52 IAC 1-1-4 “Practice before the board “ defined

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

Sec. 4. “Practice before the board” means participation in any matters connected with a presentation to 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:

- (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)

52 IAC 1-1-5 “Property tax assessment board of appeals” defined

Authority: IC 6-1.5-6-1

Affected: IC 6-1.1-28-1

Sec. 5. “Property tax assessment board of appeals” means the county property tax assessment board of appeals established under IC 6-1.1-28-1. *(Indiana Board of Tax Review; 52 IAC 1-1-5)*

52 IAC 1-1-6 “Tax representative” defined

Authority: IC 6-1.5-6-1

Affected: IC 6-1.1-2-4; IC 6-1.1-15; IC 6-1.1-26-2

Sec. 6. “Tax representative” means a person who represents another person at a proceeding before the board, under IC 6-1.1-15. The term does not include:

- (1) the owner of the property (or person liable for the taxes under IC 6-1.1-2-4) that is the subject of the appeal;**
- (2) a permanent full-time employee of the owner of the property (or person liable for the taxes under IC 6-1.1-2-4) who is the subject of the appeal;**
- (3) representatives of local units of government appearing on behalf of the unit or as the authorized representative of another unit;**
- (4) a certified public accountant, when the certified public accountant is representing a client in a matter that relates only to personal property taxation; or**
- (5) an attorney who is a member in good standing of the Indiana bar or any person who is a member in good standing of any other state bar and who has been granted leave by the board to appear pro hac vice.**

(Indiana Board of Tax Review; 52 IAC 1-1-6)

Rule 2. Tax Representatives

52 IAC 1-2-1 Practice requirements

Authority: IC 6-1.5-6-1

Affected: IC 6-1.1-15; IC 6-1.1-26

Sec. 1. (a) In order to practice before the board, a tax representative must:

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

(b) Property tax representatives may not be certified to practice before the board for:

- (1) matters relating to real and personal property exemptions claimed on a Form 132 or 136;**
- (2) claims that assessments or taxes are “illegal as a matter of law”, whether brought on:**
 - (A) a Form 133 pursuant to IC 6-1.1-15-12(a)(6);**
 - (B) a Form 17-T pursuant to IC 6-1.1-26-1(4);**
 - (C) a Form 130 pursuant to 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)*

52 IAC 1-2-2 Communication with client or prospective client

Authority: IC 6-1.5-6-1

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

Sec. 2. (a) No certified property tax representative shall, with respect to any matter relating to practice before

the board, in any way use or participate in the use of any form of public communication containing a:

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

(b) A property tax representative shall advise the client or prospective client in writing, using a typeface of not less than 12-point, either on the power of attorney or in some other form that may be reasonably interpreted by the taxpayer (the property owner or person liable for the taxes under IC 6-1.1-2-4) to set forth the rights of the taxpayer with regard to his or her appeal, the statement, "I understand that by authorizing _____ to serve as my certified property tax representative, I am aware of and accept the possibility that the property value may increase as a result of filing an administrative appeal with the board. I further understand that the certified property tax representative is not an attorney and may not present arguments of a legal nature on my behalf. I understand that legal issues relating to my assessment that may now exist or may be discovered at some time in the future will not and cannot be addressed by the certified property tax representative, and that if not raised before the board may not be raised at a later stage of my assessment appeal."

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

- (1) denying the tax representative the right to represent the taxpayer with respect to the property subject to the pending administrative appeal; or
- (2) a recommendation of disciplinary action to the department under 50 IAC 15-5-8.

(d) A disclosure properly filed or presented to the department by the tax representative in connection with the representation of the taxpayer in an appeal from a proceeding before the department or the property tax assessment board of appeals may be presented in lieu of the disclosure described in subsection (b). (*Indiana Board of Tax Review; 52 IAC 1-2-2*)

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 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) 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) 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*)

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 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*)

52 IAC 1-2-5 Certification; revocation

Authority: IC 6-1.5-6-1

Affected: IC 6-1.1-15; IC 6-1.1-35.5-8

Sec. 5. (a) Upon recommendation of the board to the department, the following may be grounds for the department to deny, suspend, or revoke the certification of a tax representative:

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

(b) If, after a hearing under the rules of the department, it is found that the tax representative has committed one of the acts described in subsection (a), the certification of the tax representative may be subject denial, suspension, or revocation on the same terms and conditions as if the violation were one committed in connection with practice before the property tax assessment board of appeals or the department. (*Indiana Board of Tax Review; 52 IAC 1-2-5*)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on October 30, 2002 at 2:00 p.m., at the Indiana Government Center-North, 100 North Senate Avenue, Room 1045, Indianapolis, Indiana the Indiana Board of Tax Review will hold a public hearing on proposed new rules to govern the practice of representatives before the Indiana board of tax review. Copies of these rules are now on file at the Indiana Government Center-North, 100 North Senate Avenue, Room 1058 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Annette Biesecker
Chairman
Indiana Board of Tax Review