

STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE



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TO: Township and County Assessors, County Auditors, and Property Tax Boards of Appeal

FROM: Courtney L. Schaafsma, Commissioner

RE: Legislation Affecting Appeals

DATE: September 1, 2017

This memorandum addresses 2017 legislative changes affecting appeals as well as property tax assessment boards of appeal accomplished by Senate Enrolled Act 386-2017 (“SEA 386”) and House Enrolled Act 1450-2017 (“HEA 1450”). Governor Holcomb signed both these bills into law on April 28, 2017.

Part I of this memorandum will outline SEA 386’s overhaul of the property tax appeal process. Part II will discuss changes to the law concerning tax representatives under SEA 386 and HEA 1450. Part III will discuss various procedural changes regarding the administering of refunds. Part IV will then address changes to the correction of error process. Finally, Parts V and VI of this memorandum will briefly discuss miscellaneous changes to the property tax appeal laws and the releasing of tax bills, respectively.

Please note that this memorandum is intended to be an informative bulletin; it is not a substitute for reading the law.

I. Overhaul of the property tax appeal process

SEA 386 changes the property tax appeal process as follows, effective July 1, 2017:

A. *Proceeding with an appeal at the county level*

Sections 9 through 11 of SEA 386 repeals the current process for conducting an appeal and replaces it with a new process, to be found at IC 6-1.1-15-1.1. This new section essentially consolidates the so-called “subjective appeal” (currently governed by IC 6-1.1-15-1) and “objective appeal” (currently governed by IC 6-1.1-15-12) into a single proceeding.

1. Filing a petition

A taxpayer may appeal an assessment by filing a form, designated by the Department, with the assessing official. The appeal may raise any claim of an error related to the following:

- (1) The assessed value of the property.
- (2) The assessment was against the wrong person.
- (3) The approval, denial, or omission of a deduction, credit, exemption, abatement, or tax cap.
- (4) A clerical, mathematical, or typographical mistake.
- (5) The description of real property.
- (6) The legality or constitutionality of a property tax or assessment.

The taxpayer must file a separate petition for each parcel. The petition may be filed any time after the assessing official's action, but not later than the following:

- (1) For assessments before January 1, 2019,
 - a. 45 days after the date on which the notice of assessment (Form 11) is mailed by the county, or
 - b. 45 days after the date on which the tax bill is mailed by the county treasurer regardless of whether the assessment was changed, whichever is earlier.
- (2) For assessments after December 31, 2018,
 - a. June 15 of the assessment year, if the notice of assessment is mailed by the county before May 1 of the assessment year, or
 - b. June 15 of the year in which the tax bill is mailed by the county treasurer, if the notice of assessment is mailed by the county on or after May 1 of the assessment year, whichever is earlier.

For all appeals except an appeal on the assessed value of the property, the taxpayer may appeal not later than 3 years after the taxes were first due. This is consistent with current law, which limits a correction of error appeal in a similar manner.

Where the assessing official took action regarding a prior tax year that is reflected for the first time in the tax bill, a taxpayer who has timely filed a petition may be required to file a petition for each tax year. Each petition filed later must be considered timely.

A taxpayer may not use this petition to appeal any claim of error related to the following:

- (1) The denial of a deduction, exemption, abatement, or credit if the PTABOA, county auditor, or assessing official does not have authority to approve or deny any of them.
- (2) The calculation of interest and penalties, except if it regards the omission or application of a deduction approved by an authority other than the PTABOA, county auditor, or assessing official.
- (3) A matter that is governed under another statutory process.

The filing of a petition constitutes the taxpayer's request for a preliminary informal meeting with the assessing official. An assessing official shall forward the notice to the PTABOA upon receipt of the petition.

2. Preliminary informal meeting

New section IC 6-1.1-15-1.2 governs the preliminary informal meeting (“meeting”) for resolving the appeal.

Upon receipt of the petition, the assessing official shall schedule the meeting during business hours that is convenient to the taxpayer. The taxpayer and the assessing official shall exchange at the time of the meeting the information that each party is relying on to support the party’s respective position on each disputed issue concerning the assessment or deduction. This exchange is intended to facilitate understanding and the resolution of disputed issues.

IC 6-1.1-15-1.2 goes on to state that additional information obtained by a party after the meeting and before the PTABOA hearing shall be given to the other party. If additional information is provided for the first time at the PTABOA hearing, the PTABOA shall continue the hearing until a future date so that the receiving party can review the information. The receiving party can waive continuing the hearing.

After the meeting, the assessing official shall report to the PTABOA on the results of the meeting on a form prescribed by the Department. The Department intends the Form 134 to be continued to be used for this purpose. The results shall be reported as follows:

- If the taxpayer and assessing official agree on the resolution of all issues in the appeal, the report shall state the agreed to resolution and both parties shall sign the report.
- If the taxpayer and assessing official do not agree on a resolution, or a meeting is not held, the report shall indicate those facts.

Please note that unlike current law, IC 6-1.1-15-1.2 does not require the assessing official to deliver the Form 134 to the PTABOA within 10 days of the meeting.

If the PTABOA receives a report that the parties reached an agreed to resolution, the PTABOA shall vote to approve or deny the resolution. If the PTABOA approves the resolution, it shall then issue a notification of final assessment determination adopting the resolution and vacating any scheduled hearing related to the appeal.

3. PTABOA hearings

IC 6-1.1-15-1.2 also amends the process for the PTABOA hearing.

Upon receipt of the petition, the PTABOA shall hold a hearing not later than 180 days after the petition filing date. The PTABOA shall mail notice of the date, time, and place fixed for the hearing at least 30 days before the hearing. This notice is given to the taxpayer, the tax representative (if any), the assessing official, and the county auditor.

The PTABOA shall grant a written request for continuance showing good cause. The request must be filed at least 10 days before the hearing. When the request is granted, the PTABOA shall then reschedule the hearing.

The taxpayer may withdraw in writing an appeal at least 10 days before the hearing. Upon filing of the withdrawal, the PTABOA shall issue a final assessment determination indicating the

withdrawal and no change in assessment. This withdrawal also waives the taxpayer's right to appeal to the IBTR.

The PTABOA shall determine an appeal without a hearing if the taxpayer submits a written request at least 20 days before the hearing.

For an appeal pertaining to the assessed value of the property, the taxpayer is not required to have an appraisal of the property to initiate or prosecute the appeal.

In terms of conducting the hearing:

- The taxpayer has the opportunity to present testimony and evidence.
- If matters on appeal are in the discretion of the county auditor, the auditor or the auditor's representative shall attend the hearing.
- The assessing official or the auditor (as applicable) also has the opportunity to present testimony and evidence.
- The PTABOA may then adjourn and continue the hearing to make a physical inspection or consider the evidence presented.

The PTABOA shall determine the assessment by motion and majority vote. Based on the evidence before it, the PTABOA may increase an assessment. The PTABOA shall then issue a written decision, given to the assessing official, county auditor, and taxpayer.

If the PTABOA has not issued a determination before 180 days have passed since the filing of the petition, the taxpayer may initiate an appeal with the IBTR.

If a taxpayer or tax representative fails to appear at the hearing and a request for continue is denied or not filed, or any other written request from the taxpayer allowed by statute is not filed, the county assessor may impose a \$50 penalty. The taxpayer may appeal the imposition of the penalty to the IBTR or directly to the Tax Court. The penalty will not be added as an amount owed on the tax bill.

B. Proceeding with an appeal at the state level

Section 13 of SEA 386 made the following changes to the property tax appeal process with the IBTR or the Tax Court.

The Tax Court shall remand the appeal to the IBTR if the Court does not affirm the IBTR's decision. Currently, the Tax Court must only remand if it vacates, sets aside, or adjudges the matter as null and void.

Upon remand, the IBTR may conduct further proceedings or refer the matter to the Department (with respect to an appeal of a determination made by the Department) or PTABOA. Presently, the IBTR may only refer the matter to the Department or the PTABOA. Section 14 of SEA 386 provides that if an assessment or exemption is corrected by the IBTR after further proceedings, a party may appeal the IBTR's correction.

II. Tax representatives and powers of attorney

Both SEA 386 and HEA 1450 make the following changes to the law concerning tax representatives.

A. Power of Attorney

Section 23 of SEA 386 amends IC 6-1.1-15-17.3 to extend the scope of who may represent a taxpayer in a property tax appeal. The owner of a property subject to appeal may appoint a relative (defined in IC 2-2.2-1-17) for specific assessment years to represent the owner before the PTABOA or Department. The relative may not represent the owner before the IBTR. The relative is not required to be certified as a tax representative in order to represent the owner.

Under IC 2-2.2-1-17, a relative includes the following:

- (1) The individual's spouse.
- (2) A parent of the individual or a parent of the individual's spouse.
- (3) A child of the individual or a child of the individual's spouse.
- (4) A sibling of the individual or a sibling of the individual's spouse.
- (5) An aunt or an uncle of the individual or an aunt or an uncle of the individual's spouse.
- (6) A niece or nephew of the individual or a niece or nephew of the individual's spouse.
- (7) A grandparent of the individual or a grandparent of the individual's spouse.
- (8) A grandchild of the individual or a grandchild of the individual's spouse.
- (9) A great-grandparent of the individual or a great-grandparent of the individual's spouse.
- (10) A great-grandchild of the individual or a great-grandchild of the individual's spouse.

The term also includes adopted relatives, half-bloods, and relatives by marriage or remarriage.

The Department is required by this section to prepare a power of attorney form that allows appointment of a relative. Hence, the Department will soon revise its power of attorney form to this effect.

B. Tax Representatives

Section 37 of SEA 386 amends IC 6-1.1-35.7-2 to include in its definition of 'tax representative' a relative of the owner appointed to represent the owner in a property tax appeal.

Section 20 of HEA 1450 prohibits the Department of adopting a rule that restricts the ability of a CPA to represent a client in a matter that relates only to personal property or state distributable property. This provision is effective July 1, 2017. The current Department rule, found at 50 IAC 15-5-1, states in part that a CPA is not considered a tax representative, and thus does not require certification by the Department, when the CPA is representing a taxpayer in a matter that relates to personal property only.

III. Refunds

The following changes to the law pertain to the county administration of property tax refunds.

A. Provisions in IC 6-1.1-15 regarding refunds removed

Section 16 of SEA 386 repeals the property tax refund procedures in IC 6-1.1-15-11.

B. Overhaul of IC 6-1.1-26

Sections 26 through 35 reform the process for claiming a property tax refund.

1. Claim of Refunds - IC 6-1.1-26-1.1

Under new section IC 6-1.1-26-1.1, a person (including heirs, personal representatives, or successors) may still file a claim for refund or all or part of property taxes paid. With regard to a property tax appeal, however, notice of appeal shall be treated as a claim for refund by the taxpayer and filed as of the date of the final disposition of an appeal. A claim for refund must be filed within the later of 3 years after the tax is paid or 3 years from the date of the final disposition of an appeal for a particular tax year.

A claim for refund must state the claim that a payment was made in excess of the taxes due as established by

- a determination by the PTABOA, IBTR, Department, or court, for the tax year and parcel on which the taxes were paid, and after such time as all rights of appeal have lapsed;
- proof of an error in the computation of interest, penalties, or delinquent taxes carried forward; or
- proof of an overpayment by the claimant.

A taxpayer may not use this claim for refund to raise a claim that must be raised under IC 6-1.1-15. Moreover, a taxpayer is not entitled to a refund if the payment has been applied as a credit to later tax liabilities for the property on which the tax was assessed.

2. County Auditor Actions and Payment - IC 6-1.1-26-2.1

Under new section IC 6-1.1-26-2.1, the county auditor shall approve or deny a claim for refund.

If the county auditor approves the claim for refund, the auditor shall forward the claim to the county treasurer and county assessor for approval or denial. Each shall certify their approval or denial and return the claim to the auditor within 75 days after the claim was originally filed by the taxpayer.

If the auditor, treasurer, and assessor approve the claim, the auditor shall issue a warrant to the claimant payable on the general fund for the amount due within 45 days of the approval. This includes interest computed from the date on which the taxes were paid or due, whichever is later, to the date on which the county auditor and county treasurer approve the refund, and at the rate set by the commissioner of the Department of Revenue under IC 6-8.1-10-1 for the year covered by the refund. If the taxpayer no longer owns the property on which the tax was assessed and paid, the auditor shall pay the refunds to the taxpayer or other lawful claimant.

If the auditor, assessor, or treasurer deny the refund, the auditor shall notify the claimant. The claimant may, within 45 days, file an action in a court of competent jurisdiction in the county where the property is located.

If the auditor does not issue a refund or credit within 120 days from the date the claimant filed the claim, the claimant may file an action in a court of competent jurisdiction in the county where the property is located. This action must be filed within 4 years after the tax is paid or 4 years after the final disposition of an appeal for a particular tax year, whichever is later.

The county auditor shall correct the tax duplicate for refunds. The amount deducted can come from either the June or the December settlement and apportionment of taxes, or both, immediately following a refund. The deduction must be applied against the gross tax collections of the taxing units for which the refunded taxes were originally paid, to be paid out of the general fund. The auditor shall make deductions and payments not later than the December settlement and apportionment. The auditor must also notify the county executive of the payment of the amount due.

3. Overpayments - IC 6-1.1-26-3.1

In the case of an overpayment by the taxpayer during the year to which the assessment appeal relates, the taxpayer is entitled to a credit in the amount of the overpayment of tax on the next successive tax installment, if any, due in that tax year. After the credit is given, the auditor must determine if a further amount is due. If a further amount is due, the auditor must pay the amount due the taxpayer without a claim or an appropriation being required. The auditor shall charge the amount refund to the taxpayer as provided in IC 6-1.1-26-2.1.

If the taxpayer no longer owns the property on which the tax was assessed and paid, the auditor will shall pay the refunds to the taxpayer or other lawful claimant.

If the auditor fails to apply a credit or pay a refund within ninety days of the final resolution of an appeal, the taxpayer or lawful claimant may seek a refund under IC 6-1.1-26-1.1.

4. Application of Refunds Over \$100,000 - IC 6-1.1-26-4.1

The auditor may elect to apply certain refunds in as credits to future property tax installments. The following conditions must be met:

- The appeal must be for real property for an assessment date before January 1, 2020.
- A refund for a property under appeal must not have been paid before May 1, 2015.
- The total amount owed as a result of the appeal must be \$100,000 or more.
- The claimant must still be the taxpayer for the property on which the appeal was filed.

The auditor, upon electing to apply the refund as a credit, must apply the credit in equal installments for a period not more than 5 years following the conclusion of the assessment appeal. The auditor may accelerate credits or provide a full or partial refund within the 5 year period. If the claimant is no longer the taxpayer, the overpayment may be refunded over a period of not more than 5 years.

5. Court Action on a Refund Claim - IC 6-1.1-26-7

If a court determines that the taxpayer overpaid property taxes, or is entitled to relief from taxes, penalties, or delinquent taxes, the court shall include in its order specific instructions to the county auditor and treasurer on providing relief.

6. Repealed Provisions Regarding Refunds

The following sections are repealed, effective July 1, 2017:

- IC 6-1.1-26-1 (claim for refund, replaced by IC 6-1.1-26-1.1).
- IC 6-1.1-26-2 (county auditor actions, replaced by IC 6-1.1-26-2.1).
- IC 6-1.1-26-3 (approval by county officials, replaced by IC 6-1.1-26-2.1).
- IC 6-1.1-26-4 (approval by county executive, replaced by IC 6-1.1-26-2.1).
- IC 6-1.1-26-5 (payment from unit funds, application of interest, replaced by IC 6-1.1-26-2.1).
- IC 6-1.1-37-11 (payment of refund & interest for waiver of delinquent taxes under IC 6-1.1-37-10.7).
- IC 6-1.1-37-14 (application of refunds over \$100,000, replaced by IC 6-1.1-26-4.1).

IV. Correction of Error Appeals

Sections 17 through 19 of SEA 386 eliminates the current correction of error process. Under new code section IC 6-1.1-15-12.1 corrections of error are to be handled as follows.

The county auditor shall correct errors in conformity with a determination of an appeal by the PTABOA, the IBTR, the Department, or the Tax Court, or in conformity with a settlement or stipulation.

The county auditor is authorized to correct the following errors upon their discovery:

- Errors in a description of the property or in the identity of the taxpayer.
- Errors regarding a tax cap, credit, exemption, or deduction.
- Errors regarding the computation of taxes, penalties, delinquent taxes carried forward, or an overpayment, if approved by the county treasurer.
- Errors regarding a tax cap, credit, exemption, or deduction based on the Department's determination, if the Department approves the correction.

For corrections except a correction based on the Department's determination, the county auditor must notify the taxpayer of the correction. If the correction results in a refund, the county auditor shall apply the refund under IC 6-1.1-26.

A taxpayer may challenge a county auditor's correction of error in a description of the property or in the identity of the taxpayer, or regarding a tax cap, credit, exemption, or deduction, under the new appeal process described in A.1, above. A taxpayer may also challenge a county auditor's action regarding computation of taxes, penalties, delinquent taxes carried forward, or an overpayment, by using the process under IC 6-1.1-26.

A correction of error may only be applied to the immediate three prior tax years. This does not include corrections of error in conformity with a determination by the PTABOA, the IBTR, the Department, or a court, or in conformity with a settlement or stipulation.

Finally, section 19 of SEA 386 deletes provisions in code wherein a refund due to a correction of error by the township assessor that resulted in an overpayment of tax is applied as credits on the taxpayer's subsequent tax installments.

V. Miscellaneous Appeal Matters

SEA 386 also repeals or amends the following statutes:

- Repeals IC 6-1.1-15-13, which requires the tax bill to count as notice of an assessment if the county does not mail a Form 11 to the taxpayer, or as notice of a PTABOA determination if the PTABOA does not issue a determination. This provision is covered in IC 6-1.1-15-1.1(b), included in Part I.A.1 of this memo, providing the deadline to file an appeal based on the mailing of the Form 11 or the tax bill.
- Repeals IC 6-1.1-15-14, which states that the assessing official is to use and consider the Department rules and the conditions and circumstances of the property on the original assessment date of the property under review.
- Amends IC 6-1.1-15-15 so that a class action suit may not be maintained against the county assessor or the Department. Under prior statute, a class action suit may not be maintained against the IBTR or the Department.
- Repeals IC 6-1.1-37-10.7, which allowed the waiver of interest or penalties on delinquent tax payments in the event the taxpayer or immediate family member of the taxpayer is deceased.

VI. Tax Bills

Section 25 of SEA 386 amends IC 6-1.1-22-8.1(c) to require the county treasurer to mail the tax bill on or before April 15. It also amends IC 6-1.1-22-8.1(j) to require that an electronic tax bill be transmitted on or before March 15.

Contact Information

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