

STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE



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MEMORANDUM

TO: Assessing Officials and County Auditors

FROM: Timothy J. Rushenberg, Commissioner *TJR 7/22/09*

DATE: July 22, 2009

SUBJECT: Changes to Assessment Appeals Process and the Composition of the Property Tax Assessment Board of Appeals

The purpose of this memorandum is to inform assessing officials of the changes made during the 2009 regular and special sessions of the Indiana legislature to the assessment appeals process and the composition of the county Property Tax Assessment Board of Appeals (PTABOA).

Assessment Appeals Process

Appeal Deadline When Notice of Assessment is Not Given

To obtain PTABOA review for an assessment date for which notice of assessment is not given, the notice of appeal must be filed not later than the later of May 10 of the tax bill year or forty-five (45) days after the date of the tax bill, regardless of whether there is a change in the assessment. In other words, if no Form 11 is issued by the county assessor for the March 1, 2009 assessment date (for taxes first due and payable in 2010), the 2010 tax bill serves as the notice of assessment, and the deadline to file an appeal must be filed not later than the later of May 10, 2010 or forty-five (45) days after the date of the 2010 tax bill.

Burden of Proof

The county or township assessor now has the burden of proof in an appeal where the property assessment increased more than five percent (5%) over the preceding assessment date. Previously, the burden of proof was on the property owner.

Notice of Refund

The county auditor is no longer required to publish a refund allowance. Moreover, the county auditor's notice to the county executive of a refund amount due shall be treated as a claim by the taxpayer for the amount due.

PTABOA Composition

A board of county commissioners may determine whether to have a three or five member PTABOA. The county assessor is a non-voting member of the PTABOA regardless of the number of members. Reference to the county assessor being recused from any PTABOA action with respect to an assessment determination by the county assessor has been deleted from IC 6-1.1-15-1(k). This was necessitated by IC 6-1.1-28-1(d) as amended by Section 166 of HEA 1001(ss) which made the county assessor a non-voting member of the PTABOA. In other words, the county assessor is now a non-voting member of the PTABOA, so recusal is no longer necessary.

Five (5) Member PTABOA

In a county that elects to keep a five (5) member PTABOA, the board of commissioners now appoints three (3) freehold members (rather than two (2) as previously required), and the county fiscal body appoints two (2) members. The board of commissioners may waive the requirement that one (1) of the freehold members they appoint be a level two or level three assessor-appraiser.

Three (3) Member PTABOA

In a county that elects to have a three (3) member PTABOA, in addition to the county assessor, only one (1) other individual who is an officer or employee of the county or township may serve on the PTABOA in the county in which the individual is an officer or employee. The fiscal body appoints one (1) individual who must be a certified level two or level three assessor-appraiser. The board of commissioners appoints two (2) freehold members so that not more than two (2) of the members of the entire board may be of the same political party. Additionally, they must ensure that at least two (2) of the members of the entire board are residents of the county. At least one (1) of the board's appointees must be a certified level two or level three assessor-appraiser. The board, however, may waive that requirement.

If you have any questions, please contact Staff Attorney, Cathy Wolter at cwolter@dlgf.in.gov or 317.233.4361 or Assessment Director, Barry Wood at bwood@dlgf.in.gov or 317.232.3762.

Text of Legislation

(The words in **bold** in the statutes indicate new language added to the Code and the effective dates of the particular sections. The strike-through indicates deletions from the Indiana Code.)

HEA 1094-2009 Section 111 [effective July 1, 2009] amended IC 6-1.1-15-1(d) as follows:

(d) A taxpayer may obtain a review by the county board of the assessment of the taxpayer's tangible property effective for an assessment date for which a notice of assessment is not given as described in subsection (b). To obtain the review, the taxpayer must file a notice in writing with the township assessor, or the county assessor if the township is not served by a township assessor. The right of a taxpayer to obtain a review under this subsection for an assessment date for which a notice of assessment is not given does not relieve an assessing official of the duty to

provide the taxpayer with the notice of assessment as otherwise required by this article. ~~For an assessment date in a year before 2009, the notice must be filed on or before May 10 of the year. For an assessment date in a year after 2008, The notice to obtain a review must be filed not later than the later of:~~

(1) May 10 of the year; or

(2) forty-five (45) days after the date of the tax statement mailed by the county auditor ~~under IC 6-1.1-17-3(b).~~ **treasurer, regardless of whether the assessing official changes the taxpayer's assessment.**

HEA 1230-2009 Section 6 [Effective July 1, 2009] and HEA 1198 Section 42 [Effective upon passage] amended IC 6-1.1-15-11 as follows:

(a) If a review or appeal authorized under this chapter results in a reduction of the amount of an assessment or if the department of local government finance on its own motion reduces an assessment, the taxpayer is entitled to a credit in the amount of any overpayment of tax on the next successive tax installment, if any, due in that year. After the credit is given, the county auditor shall:

(1) determine if a further amount is due the taxpayer; and

(2) if a further amount is due the taxpayer, notwithstanding IC 5-11-10-1 and IC 36-2-6-2, without a claim or an appropriation being required, pay the amount due the taxpayer.

The county auditor shall charge the amount refunded to the taxpayer against the accounts of the various taxing units to which the overpayment has been paid. The county auditor shall notify the county executive of the payment of the amount due and ~~publish the allowance in the manner provided in IC 36-2-6-3.~~ (Note: the foregoing strike-through appears HEA 1230 only.)

(b) The notice **provided** under ~~subsection (a)(2)~~ is **subsection (a)** shall be treated as a claim by the taxpayer for the amount due referred to in ~~that subsection.~~ **subsection (a)(2).**

HEA 1001-2009(ss) Section 111 [Effective July 1, 2009] amended IC 6-1.1-15-1(k) as follows:

(k) If:

(1) subsection (i)(2) applies; or

(2) the county board does not receive a form referred to in subsection (i) not later than one hundred twenty (120) days after the date of the notice for review filed by the taxpayer under subsection (c) or (d);

the county board shall hold a hearing on a review under this subsection not later than one hundred eighty (180) days after the date of that notice. The county board shall, by mail, give notice of the date, time, and place fixed for the hearing to the taxpayer and the county or township official with whom the taxpayer filed the notice for review. The taxpayer and the county or township official with whom the taxpayer filed the notice for review are parties to the proceeding before the county board. ~~The county assessor is recused from any action the county board takes with respect to an assessment determination by the county assessor.~~

HEA 1001-2009(ss) Section 111 [Effective July 1, 2009] added IC 6-1.1-15-1(p) as follows:

(p) This subsection applies if the assessment for which a notice of review is filed increased the assessed value of the assessed property by more than five percent (5%) over the

assessed value finally determined for the immediately preceding assessment date. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct.

HEA 1001-2009(ss) Section 166 [Effective July 1, 2009] amended IC 6-1.1-28-1 as follows:

Sec. 1. (a) Each county shall have a county property tax assessment board of appeals composed of individuals who are at least eighteen (18) years of age and knowledgeable in the valuation of property. **At the election of the board of commissioners of the county, a county property tax assessment board of appeals may consist of three (3) or five (5) members appointed in accordance with this section.**

(b) This subsection applies to a county in which the board of commissioners elects to have a five (5) member county property tax assessment board of appeals. In addition to the county assessor, only one (1) other individual who is an officer or employee of a county or township may serve on the board of appeals in the county in which the individual is an officer or employee. Subject to subsections ~~(d)~~ **(g)** and ~~(e)~~, **(h)**, the fiscal body of the county shall appoint two (2) individuals to the board. At least one (1) of the members appointed by the county fiscal body must be a certified level two or level three assessor-appraiser. Subject to subsections ~~(d)~~ **(g)** and ~~(e)~~, **(h)**, the board of commissioners of the county shall appoint ~~two (2)~~ **three (3)** freehold members so that not more than three (3) of the five (5) members may be of the same political party and so that at least three (3) of the five (5) members are residents of the county. At least one (1) of the members appointed by the board of county commissioners must be a certified level two or level three assessor-appraiser. ~~If the county assessor is a certified level two or level three assessor-appraiser,~~ The board of county commissioners may waive the requirement in this subsection that one (1) of the freehold members appointed by the board of county commissioners must be a certified level two or level three assessor-appraiser.

(c) This subsection applies to a county in which the board of commissioners elects to have a three (3) member county property tax assessment board of appeals. In addition to the county assessor, only one (1) other individual who is an officer or employee of a county or township may serve on the board of appeals in the county in which the individual is an officer or employee. Subject to subsections (g) and (h), the fiscal body of the county shall appoint one (1) individual to the board. The member appointed by the county fiscal body must be a certified level two or level three assessor-appraiser. Subject to subsections (d) and (e), the board of commissioners of the county shall appoint two (2) freehold members so that not more than two (2) of the three (3) members may be of the same political party and so that at least two (2) of the three (3) members are residents of the county. At least one (1) of the members appointed by the board of county commissioners must be a certified level two or level three assessor-appraiser. The board of county commissioners may waive the requirement in this subsection that one (1) of the freehold members appointed by the board of county commissioners must be a certified level two or level three assessor-appraiser.

(d) A person appointed to a property tax assessment board of appeals may serve on the property tax assessment board of appeals of another county at the same time. The members of the board shall elect a president. The employees of the county assessor shall provide administrative support to the property tax assessment board of appeals. The county assessor is a ~~voting~~ **nonvoting** member of the property tax assessment board of appeals. The county assessor

shall serve as secretary of the board. The secretary shall keep full and accurate minutes of the proceedings of the board. A majority of the board that includes at least one (1) certified level two or level three assessor-appraiser constitutes a quorum for the transaction of business. Any question properly before the board may be decided by the agreement of a majority of the whole board.

~~(b)~~ **(e)** The county assessor, county fiscal body, and board of county commissioners may agree to waive the requirement in subsection ~~(a)~~ **(b) or (c)** that not more than three (3) of the five (5) **or two (2) of the three (3)** members of the county property tax assessment board of appeals may be of the same political party if it is necessary to waive the requirement due to the absence of certified level two or level three Indiana assessor-appraisers:

(1) who are willing to serve on the board; and

(2) whose political party membership status would satisfy the requirement in subsection ~~(e)(1)~~: **(b) or (c)**.

~~(e)~~ **(f)** If the board of county commissioners is not able to identify at least two (2) prospective freehold members of the county property tax assessment board of appeals who are:

(1) residents of the county;

(2) certified level two or level three Indiana assessor-appraisers; and

(3) willing to serve on the county property tax assessment board of appeals;

it is not necessary that at least three (3) of the five (5) **or two (2) of the three (3)** members of the county property tax assessment board of appeals be residents of the county.

~~(d)~~ **(g)** Except as provided in subsection ~~(e)~~; **(f)**, the term of a member of the county property tax assessment board of appeals appointed under ~~subsection (a)~~: **this section**:

(1) is one (1) year; and

(2) begins January 1.

~~(e)~~ **(h)** If:

(1) the term of a member of the county property tax assessment board of appeals appointed under ~~subsection (a)~~ **this section** expires;

(2) the member is not reappointed; and

(3) a successor is not appointed;

the term of the member continues until a successor is appointed.