

TITLE 52 INDIANA BOARD OF TAX REVIEW

Proposed Rule

LSA Document #19-626

DIGEST

Adds 52 IAC 4 regarding Indiana board of tax review (board) appeals procedures. Repeals 52 IAC 1, 52 IAC 2, and 52 IAC 3. Effective 30 days after filing with the Publisher.

52 IAC 1; 52 IAC 2; 52 IAC 3; 52 IAC 4

SECTION 1. 52 IAC 4 IS ADDED TO READ AS FOLLOWS:

Article 4. PROCEDURES FOR APPEALS BEFORE THE INDIANA BOARD OF TAX REVIEW

Rule 1. Purpose and Applicability

52 IAC 4-1-1 Purpose

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. 1. The purpose of this article is to establish procedures to govern administrative proceedings before the Indiana board of tax review (board). "Board" refers to the Indiana board of tax review throughout 52 IAC 4. The procedures established by this article are deemed essential to ensure the expedient, uniform, and objective resolution of appeals before the board. (*Indiana Board of Tax Review; 52 IAC 4-1-1*)

52 IAC 4-1-2 Applicability

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. 2. The provisions of this article apply to and govern all appeals before the board. (*Indiana Board of Tax Review; 52 IAC 4-1-2*)

52 IAC 4-1-3 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 of local government finance described under IC 6-1.5-5-1; or
- (3) any other determination or finding by the department, a property tax assessment board of appeals (PTABOA) or an assessing official for which review by the board is expressly authorized under Indiana law. (*Indiana Board of Tax Review; 52 IAC 4-1-3*)

Rule 2. Definitions

52 IAC 4-2-1 Applicability

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. 1. The definitions in this rule apply throughout this article. (*Indiana Board of Tax Review; 52 IAC 4-2-1*)

52 IAC 4-2-2 "Appeal petition" defined

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. 2. "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 4-2-2)

52 IAC 4-2-3 "Authorized representative" defined

Authority: IC 6-1.5-6-1; IC 6-1.5-6-2

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

Sec. 3. "Authorized representative" means a person authorized to appear and represent a party in an appeal before the board, including the following:

(1) An assessing official or a permanent, full-time employee of a local unit of government appearing on behalf of the unit or, in regard to an amicus filing under IC 6-1.1-15-4, another unit.

(2) A taxpayer representative qualifying under IC 6-1.1.

(3) A local government representative qualifying under 52 IAC 4-3-1.

(4) A certified public accountant qualifying under 52 IAC 4-3-2.

(5) A representative of a minor or incapacitated party qualifying under 52 IAC 4-3-3.

(6) A representative of a business or nonprofit qualifying under 52 IAC 4-3-4.

(7) An attorney qualifying under 52 IAC 4-3-5. (Indiana Board of Tax Review; 52 IAC 4-2-3)

52 IAC 4-2-4 "Central office" defined

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 4. "Central office" means the principal office of the board located in Indianapolis, Indiana. (Indiana Board of Tax Review; 52 IAC 4-2-4)

52 IAC 4-2-5 "Confidential information" defined

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 5. "Confidential information" means information that should be excluded from public access and deemed confidential under any applicable rule or statute. (Indiana Board of Tax Review; 52 IAC 4-2-5)

52 IAC 4-2-6 "Consolidated appeal petition" defined

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 6. "Consolidated appeal petition" means a single appeal petition that encompasses two (2) or more separate petitions from the property tax assessment board of appeals or the department.

(Indiana Board of Tax Review; 52 IAC 4-2-6)

52 IAC 4-2-7 "Consolidated hearing" defined

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 7. "Consolidated hearing" means a hearing where the board has set multiple appeal petitions for hearing at the same time. (Indiana Board of Tax Review; 52 IAC 4-2-7)

52 IAC 4-2-8 "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 4-2-8)

52 IAC 4-2-9 "Order" or "determination" defined

Authority: IC 6-1.5-6-2

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

Sec. 9. (a) "Order" or "determination" means any action by the board or an administrative law judge.

(b) Any order or ruling by an administrative law judge is subject to review by the board.

(c) An order is final if the action of the board 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 a final determination under IC 6-1.1-15-4 and IC 6-1.1-15-5. (*Indiana Board of Tax Review; 52 IAC 4-2-9*)

52 IAC 4-2-10 "Original determination" defined

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 10. "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 4-2-10*)

52 IAC 4-2-11 "Party" defined

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 11. "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 department.

(4) The county assessor.

(5) Any other party with a statutory or contractual right or duty to appeal or defend a determination, which may include a county auditor.

(6) A party authorized to file an amicus brief under IC 6-1.1-15-4. (*Indiana Board of Tax Review; 52 IAC 4-2-11*)

52 IAC 4-2-12 "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. 12. "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 4-2-12*)

52 IAC 4-2-13 "Small claim" defined

Authority: IC 6-1.5-6-2

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

Sec. 13. "Small claim" means an appeal of assessed valuation of tangible property where the parties have agreed to operate under the small claims rules. (*Indiana Board of Tax Review; 52 IAC 4-2-13*)

52 IAC 4-2-14 "Trial rules" defined

Authority: IC 6-1.5-6-2

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

Sec. 14. "Trial rules" refers to the Indiana Rules of Trial Procedure, as amended. (*Indiana Board of Tax Review; 52 IAC 4-2-14*)

Rule 3. Authorized Representatives

52 IAC 4-3-1 Representation by local government representative

Authority: IC 6-1.5-6-1

Affected: IC 6-1.1-15

Sec. 1. (a) A local government representative who meets the requirements in 50 IAC 15-4-1 may represent a party before the board.

(b) A local government representative must file with the board a written verification that the representative is a professional appraiser approved by the department. A separate verification must be filed in each proceeding where such representation is provided.

(c) A local government representative may not represent a party regarding issues that would comprise the unauthorized practice of law, including:

- (1) matters relating to real and personal property exemptions;
- (2) claims that assessments or taxes are "illegal as a matter of law"; or
- (3) claims regarding the constitutionality of an assessment. (*Indiana Board of Tax Review; 52 IAC 4-3-1*)

52 IAC 4-3-2 Representation by certified public accountant

Authority: IC 6-1.5-6-1

Affected: IC 6-1.1-15

Sec. 2. (a) A certified public accountant may represent a party before the board in regard to a personal property appeal.

(b) A certified public accountant must file with the board an executed power of attorney from the party on the form prescribed by the board.

(c) A certified public accountant may not represent a party regarding issues that would comprise the unauthorized practice of law, including:

- (1) matters relating to personal property exemptions;
- (2) claims that assessments or taxes are "illegal as a matter of law"; or
- (3) claims regarding the constitutionality of an assessment. (*Indiana Board of Tax Review; 52 IAC 4-3-2*)

52 IAC 4-3-3 Representation on behalf of minority or incapacitated party

Authority: IC 6-1.5-6-1

Affected: IC 6-1.1-15

Sec. 3. (a) For good cause shown, the board may, in its discretion, permit a person to represent a party who:

- (1) has not attained eighteen (18) years of age;
- (2) is not mentally competent; or
- (3) is physically unable to file and pursue or defend an appeal.

(b) A request to allow such representation must:

- (1) be in writing;
- (2) be signed by the:
 - (A) party to be represented (or a person holding the party's power of attorney); and
 - (B) person who would be the representative;
- (3) specify the circumstances supporting the request;
- (4) include independent documentation, such as:
 - (A) medical records; or
 - (B) a doctor's statement; and
- (5) be filed with the board at least five (5) business days before any hearing on the matter.

(c) Any order authorizing this form of representation may be modified, limited, or withdrawn in the discretion of the board. (*Indiana Board of Tax Review; 52 IAC 4-3-3*)

52 IAC 4-3-4 Representation on behalf of business or nonprofit organization

Authority: IC 6-1.5-6-1

Affected: IC 6-1.1-15

Sec. 4. (a) A party that is a business or nonprofit organization may be represented by a person who is:

- (1) a full-time employee of the business;
- (2) an officer of a nonprofit organization; or
- (3) a principal of a closely held business entity.

(b) The board may demand proof of a person's status under this section, and representation may be modified, limited, or withdrawn in the discretion of the board. (*Indiana Board of Tax Review; 52 IAC 4-3-4*)

52 IAC 4-3-5 Representation by attorney-at-law

Authority: IC 6-1.5-6-1

Affected: IC 6-1.1-15

Sec. 5. (a) A member of the Indiana bar in good standing may represent a party before the board.

(b) Attorneys not admitted to practice in Indiana who seek to appear before the board must be granted temporary admission to the Indiana bar in order to represent a party before the board. (*Indiana Board of Tax Review; 52 IAC 4-3-5*)

52 IAC 4-3-6 Notice of appearance; change of address

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 6. (a) An authorized representative must file a notice of appearance.

(b) A notice of appearance must include the authorized representative's name, address, electronic mail address, and telephone number.

(c) An authorized representative who has included the information required in a notice of appearance in the petition need not file an additional notice of appearance.

(d) A party or a party's authorized representative must provide written notification to the board and all other parties of any change of address. (*Indiana Board of Tax Review; 52 IAC 4-3-6*)

Rule 4. General Procedures

52 IAC 4-4-1 Trial rules

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 1. (a) To the extent that they do not conflict with the statutes governing property tax appeals or this title, the board may consult the trial rules, and the body of case law developed around them, to assist with handling tax appeals.

(b) The provisions of the trial rules pertaining to notice pleading and affirmative defenses do not apply to appeals before the board. (*Indiana Board of Tax Review; 52 IAC 4-4-1*)

52 IAC 4-4-2 Petition-specific procedural rules; case management orders

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 2. (a) In the board's discretion, the board may issue orders that supersede the rules under this title as applied to a specific petition.

(b) An express provision in a case management order supersedes a rule under this title, including in regard to discovery rules. (*Indiana Board of Tax Review; 52 IAC 4-4-2*)

52 IAC 4-4-3 Determination of designated periods of time and filing dates

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 3. (a) This section applies to the computation of any period of time prescribed or allowed by:

- (1) this article; or**
- (2) 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:

- (1) first class mail;**
- (2) registered mail; or**
- (3) certified mail;**

will constitute prima facie proof of the date of filing.

(d) The date on which the document is deposited with a private carrier, as shown by a receipt issued by the carrier, will constitute prima facie proof of the date of filing if the document is sent to the board by the carrier.

(e) The date-received stamp affixed by the board to an appeal petition or a petition for rehearing filed by personal delivery will constitute prima facie proof of the date of filing.

(f) If a document is served through:

(1) a private carrier; or
(2) 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 4-4-3*)

52 IAC 4-4-4 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. 4. (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:

(A) ruling;

(B) order;

(C) determination; or

(D) notice;

issued by the board.

(b) The board will keep a record of all rulings, orders, determinations, or notices served by:

(1) personal delivery;

(2) private carrier;

(3) United States mail; or

(4) electronic mail;

indicating the date and circumstances of the service. The record will constitute prima facie proof of the date and circumstances of service.

(c) Service shall be given to each party unless the party has properly designated an authorized representative, in which case service shall be given to the party's authorized representative. (*Indiana Board of Tax Review; 52 IAC 4-4-4*)

52 IAC 4-4-5 Ex parte communications

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 5. (a) Parties, their authorized representatives, and anyone acting on their behalf are prohibited from engaging in ex parte communications with a commissioner or employee of the board regarding substantive matters relating to an appeal before the board.

(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.

(d) In the event of an ex parte communication, the board shall notify all parties of the communication and take whatever actions are necessary to ensure a fair and impartial proceeding. (*Indiana Board of Tax Review; 52 IAC 4-4-5*)

52 IAC 4-4-6 Service to all parties required

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 6. (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 unless, in writing, a party specifically requests otherwise.

(c) The board will not consider any request that does not contain a certificate of service on all parties.

(*Indiana Board of Tax Review; 52 IAC 4-4-6*)

52 IAC 4-4-7 Delegation of hearing powers to administrative law judges

Authority: IC 6-1.5-6-2

Affected: IC 6-1.5-3-2; IC 6-1.5-3-3

Sec. 7. (a) The board shall appoint administrative law judges by written order.

(b) The board may delegate to an administrative law judge the power to hear a particular appeal. Delegations need not be in writing.

(c) The delegation of an administrative law judge to a particular appeal may be reassigned in the discretion of the board and without notice. (*Indiana Board of Tax Review; 52 IAC 4-4-7*)

Rule 5. Filing Appeal Petitions

52 IAC 4-5-1 Filing of appeal petitions

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 1. (a) A separate petition must be filed for each parcel and each tax year unless leave is granted for consolidation.

(b) An appeal petition must be filed with the board at the central office by:

(1) personal delivery;

(2) deposit in the United States mail;

(3) deposit with a private carrier; or

(4) registered or certified mail, return receipt requested.

(d) Appeal petitions may not be filed by facsimile or electronic mail.

(e) The petitioner shall serve a copy of the petition on all parties. (*Indiana Board of Tax Review; 52 IAC 4-5-1*)

52 IAC 4-5-2 Consolidated appeal petitions

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 2. (a) A party may request leave from the board to file a single consolidated appeal petition for two (2) or more parcels.

(b) A consolidated appeal may only include petitions for the same tax year.

(c) The board may sua sponte consolidate petitions within the board's discretion. (*Indiana Board of Tax Review; 52 IAC 4-5-2*)

52 IAC 4-5-3 Appeal petition defect

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15-3; IC 6-1.1-15-4

Sec. 3. (a) An appeal petition shall include all information requested on the petition form.

(b) If the board sends a notice of defect, and the petitioner fails to correct or cure the appeal petition, the board may dismiss the appeal under 52 IAC 4-9-5. (*Indiana Board of Tax Review; 52 IAC 4-5-3*)

52 IAC 4-5-4 Amendments to appeal petitions

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 4. (a) A party may amend a petition in response to a notice of defect.

(b) A party may request leave to amend a petition for good cause shown.

(c) A petition under the small claims docket cannot be amended unless transferred out of the small claims docket. (*Indiana Board of Tax Review; 52 IAC 4-5-4*)

52 IAC 4-5-5 Election to small claims docket

Authority: IC 6-1.5-6-2

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

Sec. 5. (a) The small claims docket is an expedited process for resolving appeals. It allows the board to schedule several hearings on the same day, and petitions are scheduled for hearing more promptly. Parties may agree to be governed by the small claims procedures for any appeal.

(b) The small claims rules include the following:

- (1) Optional evidence exchange rules under 52 IAC 4-8-2.**
- (2) A prohibition of discovery under 52 IAC 4-8-4.**
- (3) Twenty (20) minute time limits for presentation of evidence under 52 IAC 4-6-4.**
- (4) A prohibition of summary judgment motions under 52 IAC 4-7-4.**

(c) A petitioner may elect into the small claims docket by:

- (1) electing the small claims docket on the petition;**
- (2) a motion in writing to elect the small claims docket within thirty (30) days of the filing of the petition; or**
- (3) a stipulation by the parties.**

(d) If small claims status has been elected, any party, including the petitioner, may elect out of small claims status by filing a written motion to elect out of small claims no later than thirty (30) days prior to the hearing date. (*Indiana Board of Tax Review; 52 IAC 4-5-5*)

Rule 6. Hearings

52 IAC 4-6-1 Place of hearing

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

Sec. 1. (a) In the discretion of the board hearings will be held in:

- (1) Indianapolis; or**
- (2) the county in which the property subject to the appeal is located.**

(b) A hearing may be held in a location mutually agreeable to the board and the parties. (*Indiana Board of Tax Review; 52 IAC 4-6-1*)

52 IAC 4-6-2 Consolidated hearings

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

Sec. 2. The board may set multiple appeals involving the same petitioner and respondent for hearing at the same time. For good cause shown, a party may request that two (2) or more petitions set for the same date be heard separately or on different dates. (*Indiana Board of Tax Review; 52 IAC 4-6-2*)

52 IAC 4-6-3 Conduct of hearing

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

Sec. 3. (a) In the discretion of the board, hearings will be conducted by:

- (1) an administrative law judge;**
- (2) any member of the board acting as an administrative law judge; or**
- (3) the board sitting in its entirety.**

(b) The administrative law judge may make a preliminary ruling on any nonfinal issue without the approval of a majority of the board.

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

(d) While administrative hearings are informal by nature, the administrative law judge shall conduct the hearing in accordance with accepted courtroom conventions, including direct examination, cross-examination, and objections, as are necessary for a civil and orderly proceeding. (*Indiana Board of Tax Review; 52 IAC 4-6-3*)

52 IAC 4-6-4 Small claims docket hearing presentation time restrictions

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

Sec. 4. (a) Each party will be restricted in the amount of time it will be allowed to present its case in a small claims proceeding to no more than twenty (20) minutes.

(b) Parties that elect the small claims procedure 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 its case within the time restrictions.

(c) An administrative law judge has discretion to fairly and impartially adjust hearing time restrictions at a small claims docket hearing as necessary for the administration of justice. (*Indiana Board of Tax Review; 52 IAC 4-6-4*)

52 IAC 4-6-5 Record of hearing

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 5. (a) All final hearings will be recorded. Unless a court reporter service is retained by a party, the hearing will be recorded by the administrative law judge.

(b) Preliminary hearings may be recorded in the discretion of the board.

(c) A party may hire a court reporting service to record and transcribe the hearing.

(d) The board and its administrative law judges may specify the manner in which exhibits are to be labeled and organized.

(e) The board shall maintain a record of the following:

(1) Evidence, exhibits, and briefs submitted to it.

(2) Other documents made part of the record.

(3) Exhibits that were offered to prove in response to a sustained objection.

(4) Matters of which the board expressly takes official notice. (*Indiana Board of Tax Review; 52 IAC 4-6-5*)

52 IAC 4-6-6 Court reporter services

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 6. (a) If a court reporting service is retained for the hearing, the court reporter shall record the hearing and transcribe the recording.

(b) The court reporter shall provide to the board, at no cost to the board, a paper copy and an electronic copy of the transcript.

(c) The court reporter shall be instructed to make the transcript available to both parties and the board at the same time.

(d) Within ten (10) days of receipt of the transcript, the parties shall, with specificity, identify any errors in the transcript by filing with the board a notice of errata. Failure to file a notice of errata shall waive any objections regarding the transcript.

(e) In the event of an appeal to the tax court, the transcript prepared by the court reporter will be certified by the board as the transcript for the agency record. (*Indiana Board of Tax Review; 52 IAC 4-6-6*)

52 IAC 4-6-7 Hearing in excess of one day

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 7. (a) Parties who request a hearing in excess of one (1) day must submit to the board proposed case management orders that include the length of hearing requested.

(b) Absent exceptional circumstances, all hearings in excess of one (1) day will be conducted in Indianapolis.

(c) When a hearing in excess of one (1) day is granted:

(1) the parties shall retain a court reporter to record the hearing and transcribe the recording in accordance with this article;

(2) the fees of the court reporter shall be shared equally by the parties; and

(3) the parties shall present an electronic copy of all exhibits to the board.

(*Indiana Board of Tax Review; 52 IAC 4-6-7*)

52 IAC 4-6-8 Stipulated record or facts

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 8. (a) In lieu of a hearing, and by agreement of the parties, the board may issue a determination based upon a stipulated record.

(b) In lieu of a hearing, and by agreement of the parties, the board may issue a determination based upon a record of stipulated facts. (Indiana Board of Tax Review; 52 IAC 4-6-8)

52 IAC 4-6-9 Admissibility of evidence

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 9. (a) The administrative law judge shall regulate the course of the proceedings without recourse to the rules of evidence.

(b) A party may object to the admissibility of evidence during the hearing. 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.

(c) 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:

(1) is immaterial;

(2) is irrelevant; or

(3) should be excluded or disregarded on other grounds;

it will not be assigned any weight in the board's final determination.

(d) 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. (Indiana Board of Tax Review; 52 IAC 4-6-9)

52 IAC 4-6-10 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. 10. (a) In all submissions to the board, a party shall redact all confidential information not necessary to the disposition of the appeal by blacking out the unnecessary confidential information.

(b) In all submissions to the board that contain confidential information necessary to the disposition of the appeal, the pages containing confidential information shall be printed on green paper.

(c) In any hearing on the record, a party shall indicate when testimony elicits confidential information, including when such testimony begins and ends. If the hearing is recorded by a court reporter, a party shall, within thirty (30) days of receipt of the transcript, submit on green paper the pages of the transcript that contain confidential information, whether indicated during the hearing or not.

(d) The parties shall keep the green pages in their natural sequence in the submitted document at the time of submission, and the board will segregate those pages from public access. The board may request a party to submit an index of pages containing confidential information.

(e) A party may waive the right to exclude confidential information. A party who fails to ensure confidential information is properly excluded at the time of submission must seek exclusion by motion, notice to the other parties, and show good cause in support of the motion.

(f) The board may exercise its authority, sua sponte or by motion of a party, to determine whether information should be confidential or available for public access. The board may provide notice and an opportunity to object to a ruling regarding confidentiality.

(g) Confidential information shall be disclosed only in a manner consistent with IC 6-1.1-35-9, IC 5-14-3-1, and other applicable law. (Indiana Board of Tax Review; 52 IAC 4-6-10)

52 IAC 4-6-11 Official notice

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 11. (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, including any relevant edition of *The Appraisal of Real Estate*, the *Uniform Standards of Professional Appraisal Practice*, and *The Dictionary of Real Estate*.
- (b) If a determination is based in whole or in part on facts or material noticed under subsection (a), the board will expressly indicate the board's taking of official notice.
- (c) A party who objects to the board's taking of official notice must request a rehearing as to that issue. Failure to object and request rehearing waives any claim regarding the board's taking of official notice. (*Indiana Board of Tax Review; 52 IAC 4-6-11*)

52 IAC 4-6-12 Record or evidence from the PTABOA or department

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 12. 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 properly offered and admitted into evidence. (*Indiana Board of Tax Review; 52 IAC 4-6-12*)

52 IAC 4-6-13 Briefs

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 13. (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) A brief submitted under this section must not exceed thirty (30) pages (excluding exhibits) without leave of the board or administrative law judge.

(d) Notwithstanding a submission deadline, a party may supplement a previously filed brief with subsequently decided cases, but without further argument.

(e) Briefs of 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 4-6-13*)

52 IAC 4-6-14 Submission of proposed findings and conclusions

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 14. (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.

(c) A copy of proposed findings or conclusions of law must be served on each party. (*Indiana Board of Tax Review; 52 IAC 4-6-14*)

52 IAC 4-6-15 Post-hearing evidence

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 15. No post-hearing evidence will be accepted unless it is requested by the administrative law judge or the board. The board will set a deadline for the submission of any requested post-hearing evidence. (*Indiana Board of Tax Review; 52 IAC 4-6-15*)

Rule 7. Motions

52 IAC 4-7-1 Motions generally

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 1. (a) A party may file motions in matters before the board. All motions, except those made during a hearing, 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:
 - (A) petition number; and
 - (B) parcel number;
 - (5) be signed by the party or authorized representative; and
 - (6) include certification 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 thirty (30) days after the date of service unless otherwise specified by the board or the administrative law judge. (*Indiana Board of Tax Review; 52 IAC 4-7-1*)

52 IAC 4-7-2 Motion to continue hearing or extend deadline

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 2. (a) Motions for 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 requested less than two (2) business days prior to the hearing may be granted only upon a showing of extraordinary circumstances.
- (c) A party requesting a continuance shall:
- (1) state whether the continuance is opposed; and
 - (2) if possible, propose mutually acceptable alternative hearing dates. (*Indiana Board of Tax Review; 52 IAC 4-7-2*)

52 IAC 4-7-3 Motion for summary judgment

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 3. (a) A party may, prior to the hearing, move for:

- (1) summary judgment; or
 - (2) partial summary judgment;
- pursuant to the Indiana Rules of Trial Procedure.
- (b) A motion for summary judgment filed less than thirty (30) days before a hearing may be denied as untimely.
- (c) A party may not move for summary judgment or other dispositive motion while the petition is on the small claims docket. (*Indiana Board of Tax Review; 52 IAC 4-7-3*)

52 IAC 4-7-4 Motion for prehearing conference

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 4. (a) A party by motion may request, or the board sua sponte may order, a prehearing conference.

- (b) The board may 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 shall make good faith efforts to come to agreement in regard to the terms of a case management order prior to the hearing. (*Indiana Board of Tax Review; 52 IAC 4-7-4*)

52 IAC 4-7-5 Motion to set a petition for hearing

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 5. (a) A party may request that a petition be scheduled for hearing on the merits.

(b) A party may request a hearing on a motion or preliminary issue.

(c) A request for hearing under IC 6-1.1-15-4(i) in order to seek judicial review must be made by an independent written motion entitled Request for Hearing Pursuant to IC 6-1.1-15-4(i). (*Indiana Board of Tax Review; 52 IAC 4-7-5*)

Rule 8. Discovery

52 IAC 4-8-1 Evidence exchange rule

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 1. (a) To promote settlement and prevent unfair surprise, the parties shall exchange evidence as provided in this section.

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

(1) Copies of documentary evidence at least five (5) business days before the hearing.

(2) A list of witnesses and exhibits to be introduced at the hearing at least fifteen (15) business days before the hearing.

(c) For purposes of determining compliance with the deadlines under subsection (b), the parties must either provide personal, hand delivery or deposit the materials in the United States mail or with a private carrier three (3) days before the deadline in accordance with the provisions under this article. If a party uses a private carrier that guarantees next day delivery, the materials must be sent one (1) day before the specified deadline.

(d) The board may waive the deadlines under subsection (b) for any materials that had been:

(1) previously tendered to the party; or

(2) made part of the record at a PTABOA hearing, a department hearing, or other proceeding from which the appeal arises.

(e) Copies of exchanged materials 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) This section does not apply to petitions on the small claims docket.

(*Indiana Board of Tax Review; 52 IAC 4-8-1*)

52 IAC 4-8-2 Small claims docket evidence exchange rule

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 2. (a) This section only applies to petitions under election to the small claims docket.

(b) 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.

(c) Failure to comply with subsection (b) may serve as grounds to exclude evidence or testimony that has not been timely provided.

- (d) At the commencement of the small claims hearing, the parties shall provide to the administrative law judge a copy of all documentary evidence.
- (e) Copies of exchanged materials will become part of the administrative record only if admitted into evidence by the board or administrative law judge. (*Indiana Board of Tax Review; 52 IAC 4-8-2*)

52 IAC 4-8-3 Discovery

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 3. (a) In addition to the evidence exchange rules under section 1 of this rule, a party may:

- (1) obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action; and
 - (2) use the applicable discovery methods contained in the Indiana Rules of Trial Procedure.
- (b) 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.
- (c) A party shall not serve any discovery, including a notice of deposition, upon a nonparty until at least fifteen (15) days after the date on which the party intending to propound such discovery serves a copy of the proposed request and subpoena on all other parties.
- (d) The parties shall make all reasonable efforts to resolve discovery disputes before seeking a discovery order from the board.
- (e) 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). A party who fails to comply with a discovery order may be subject to sanctions.
- (f) 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.
- (g) This section does not apply to a petition under the small claims docket. (*Indiana Board of Tax Review; 52 IAC 4-8-3*)

52 IAC 4-8-4 Discovery for small claims docket petitions

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 4. (a) As long as a petition remains on the small claims docket, a party may not:

- (1) issue discovery requests; or
 - (2) request a subpoena.
- (b) A party with a petition on the small claims docket may request an evidence exchange under section 2 of this rule. (*Indiana Board of Tax Review; 52 IAC 4-8-4*)

52 IAC 4-8-5 Depositions

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 5. (a) The parties shall make reasonable efforts to arrange depositions, including identifying organization representatives.

- (b) A party shall not seek a subpoena from the board to compel the attendance of a party or party witness at a deposition unless the witness has refused to reasonably cooperate in arranging the deposition. (*Indiana Board of Tax Review; 52 IAC 4-8-5*)

52 IAC 4-8-6 Subpoena

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15; IC 6-1.5-4-2

Sec. 6. (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:
 - (1) hearing commences; or
 - (2) deposition is scheduled;
 except by approval of the board upon good cause shown.
- (c) A party may not request the board to issue a subpoena duces tecum on a nonparty until at least fifteen (15) days after the date on which the party intending to serve such request or subpoena serves a copy of the proposed request and subpoena on all other parties.
- (d) A subpoena may be issued by any member of the board.
- (e) Any fees for service by the sheriff are the responsibility of the party requesting the subpoena.
- (f) A subpoena shall not be requested from the board to compel attendance of a party or party witness at a hearing or deposition unless informal efforts have proven unsuccessful.
- (g) Subpoenas:
 - (1) may be served in any manner specified by the trial rules; and
 - (2) shall be enforced in a court of competent jurisdiction as provided for by law. (*Indiana Board of Tax Review; 52 IAC 4-8-6*)

52 IAC 4-8-7 Discovery sanctions

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 7. (a) If the board finds that a party has failed to comply with a discovery order, the board may order sanctions.

(b) For failing to comply with a discovery order, the board may take the following actions:

- (1) Issue an order of default or dismissal pursuant to the procedures in 52 IAC 4-9-6 as to all or some of the issues before the board.
- (2) Limit the scope of evidence admissible at hearing.
- (3) Take such actions as fairness and equity demand.

(c) The board may issue sanctions if a party or party witness fails to attend a scheduled hearing or a mutually arranged deposition, even in the absence of a subpoena. (*Indiana Board of Tax Review; 52 IAC 4-8-7*)

Rule 9. Determinations; Rehearings; Withdrawals; Defaults; Dismissals

52 IAC 4-9-1 Amended final order

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 1. (a) The board may sua sponte issue an amended final order to correct an oversight, error, or omission in a final order 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 order is filed with the tax court.

(b) An amended final order shall be treated as the final order or determination of 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 4-9-1*)

52 IAC 4-9-2 Rehearing

Authority: IC 6-1.5-6-2

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

Sec. 2. (a) A party may seek rehearing of any final determination or other final order by filing a motion for rehearing.

(b) A party seeking rehearing must file a written motion with the board within fifteen (15) days after the date of the final order.

(c) If the board grants a motion for rehearing, the board's subsequent determination on rehearing is a final order, 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 4-9-2*)

52 IAC 4-9-3 Settlement; withdrawal

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15-4

Sec. 3. (a) If the parties resolve a matter after an appeal has been filed with the board, the parties shall notify the board in writing that an agreement has been reached.

(b) Parties who have reached a resolution may dismiss a petition by filing a settlement or moving to withdraw.

(c) A petitioner may, at any time, move to withdraw a petition with notice to the board and the parties.

(d) A party who objects to a motion to withdraw must file a notice of objection to withdrawal within fifteen (15) days of the filing of the motion to withdraw, and the board may set the matter for hearing on the issue of withdrawal. If the board grants a motion to withdraw prior to receiving a timely notice of objection to withdrawal, the board shall strike the order granting withdrawal and may set the matter for hearing. (*Indiana Board of Tax Review; 52 IAC 4-9-3*)

52 IAC 4-9-4 Default or dismissal for failure to appear

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 4. (a) If a party or authorized representative fails to appear at a hearing, the board shall issue an order of default or dismissal.

(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 order of default or dismissal for failure to appear for good cause shown. (*Indiana Board of Tax Review; 52 IAC 4-9-4*)

52 IAC 4-9-5 Dismissal for defect in petition; failure to state a claim

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 5. (a) The board may issue an order of dismissal if a defective petition:

- (1)** omits required information or attachments;
- (2)** appears to be untimely; or
- (3)** fails to state a claim upon which relief can be granted.

(b) If the board determines, sua sponte, that a petition is defective, the board may:

- (1)** issue a notice of defect, specifying the nature of the defect; and
- (2)** return a copy of the appeal petition to the petitioner.

(c) The petitioner must correct or cure the appeal petition within thirty (30) days from the date the notice of defect is served.

(d) If a petitioner fails to correct or cure the appeal petition, the board may dismiss the petition. (*Indiana Board of Tax Review; 52 IAC 4-9-5*)

52 IAC 4-9-6 Default or dismissal as sanctions

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

Sec. 6. (a) The board may issue an order of default or dismissal as the result of:

- (1)** a failure to comply with a rule or order of the board or administrative law judge, including the case management order;
- (2)** disruptive, vulgar, abusive, obscene, or contemptuous conduct or language by a party or authorized representative;
- (3)** a failure to exchange evidence or respond to discovery in accordance with this article; or
- (4)** engaging in ex parte communications, fraudulent representations, or other conduct prejudicial to fair and orderly administration of property tax appeals.

- (b) The board may issue an order for rule to show cause why a petition should not be defaulted or dismissed upon motion of a party or by the board sua sponte.
- (c) If a party does not respond in writing to an order for rule to show cause within ten (10) days, the board may order a default or dismissal. If the party subject to the rule to show cause responds, the board may rule with or without a hearing, in its discretion.
- (d) A dismissal or default under this section that resolves all of the issues pending before the board is a final determination and may be appealed to the tax court in accordance with the provisions of IC 6-1.1-15-5.
- (e) As part of a final determination on the merits, the board may issue an order of default or dismissal as to one (1) or more of the issues raised before the board without an order for rule to show cause. (*Indiana Board of Tax Review; 52 IAC 4-9-6*)

Rule 10. Judicial Review

52 IAC 4-10-1 Assembly of record; costs

Authority: IC 6-1.5-6-2

Affected: IC 6-1.5-2-6

- Sec. 1.** (a) The board shall charge a party seeking judicial review the reasonable and statutory costs of preparing any necessary copies and transcripts for assembling the record.
- (b) The board may require a deposit of fifty percent (50%) of the estimated costs of preparing the record prior to assembling the record.
 - (c) The board shall notify the tax court when the record is assembled.
 - (d) The board shall not tender the record to a party seeking judicial review until receipt of full payment of the costs of assembling the record. (*Indiana Board of Tax Review; 52 IAC 4-10-1*)

52 IAC 4-10-2 Filing the record for judicial review

Authority: IC 6-1.5-6-2

Affected: IC 6-1.5-2-6

- Sec. 2.** The party seeking judicial review shall physically retrieve the certified copy of the record from the board and conventionally file it with the tax court. (*Indiana Board of Tax Review; 52 IAC 4-10-2*)

52 IAC 4-10-3 Remand

Authority: IC 6-1.5-6-2

Affected: IC 6-1.1-15

- Sec. 3.** (a) If a petition is remanded to the board after judicial review, the board will issue an order taking such action as directed in the tax court's opinion.
- (b) Proceedings on remand will be conducted as all other matters under this title. (*Indiana Board of Tax Review; 52 IAC 4-10-3*)

Section 2. THE FOLLOWING ARE REPEALED: 52 IAC 1; 52 IAC 2-1; 52 IAC 2-2; 52 IAC 2-3; 52 IAC 2-4; 52 IAC 2-5; 52 IAC 2-6-1; 52 IAC 2-6-2; 52 IAC 2-6-3; 52 IAC 2-6-4; 52 IAC 2-6-5; 52 IAC 2-6-7; 52 IAC 2-6-8; 52 IAC 2-7; 52 IAC 2-8; 52 IAC 2-9; 52 IAC 2-10; 52 IAC 2-11; 52 IAC 3.