

ARTICLE 17. PROCEDURAL RULES

Rule 1. Purpose and Applicability

50 IAC 17-1-1 Purpose

Authority: IC 4-22-5-1

Affected: IC 6-1.1-15

Sec. 1. The purpose of this article is to establish procedures to govern administrative proceedings before the state board of tax commissioners' division of appeals and the state board of tax commissioners. The definitive procedures, procedural requirements, and evidentiary controls established by this article are deemed essential to assure that the administrative appeals before the state board of tax commissioners' division of appeals and the state board of tax commissioners are conducted in the most uniform and objective manner possible. (*Department of Local Government Finance; 50 IAC 17-1-1; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1608*)

50 IAC 17-1-2 Applicability

Authority: IC 4-22-5-1

Affected: IC 6-1.1-15-3; IC 6-1.1-15-12

Sec. 2. (a) Subject to subsection (c), the provisions of this article apply to and govern petitions to the state board of tax commissioners' division of appeals and the state board of tax commissioners seeking:

(1) the review of an assessment under IC 6-1.1-15-3 (Form 131);

(2) a correction of error under IC 6-1.1-15-12 (Form 133); or

(3) the review of the denial of an exemption application (Form 132).

(b) Any or all provisions of this article may, at the discretion of the state board, be applied to other hearings conducted by the state board.

(c) The provisions of this article do not apply to petitions identified in subsection (a) if:

(1) the taxpayer has not designated an authorized representative to represent the taxpayer in the appeal petition process; and

(2) the petition would qualify as a small claim under the Indiana Tax Court small claim rules.

(*Department of Local Government Finance; 50 IAC 17-1-2; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1608*)

Rule 2. Definitions

50 IAC 17-2-1 Applicability

Authority: IC 4-22-5-1

Affected: IC 6-1.1-15

Sec. 1. The definitions in this rule apply throughout this article. (*Department of Local Government Finance; 50 IAC 17-2-1; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1609*)

50 IAC 17-2-2 "Appeal petition" defined

Authority: IC 4-22-5-1

Affected: IC 6-1.1-11-7; IC 6-1.1-15-3; IC 6-1.1-15-12

Sec. 2. "Appeal petition" means a petition for review filed with the appeals division under IC 6-1.1-15-3, IC 6-1.1-15-12, or IC 6-1.1-11-7. (*Department of Local Government Finance; 50 IAC 17-2-2; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1609*)

50 IAC 17-2-3 "Appeals division" defined

Authority: IC 4-22-5-1

Affected: IC 6-1.1-15

Sec. 3. "Appeals division" means the board of tax commissioners' division of appeals established under IC 6-1.1-30-11. (*Department of Local Government Finance; 50 IAC 17-2-3; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1609*)

50 IAC 17-2-4 “Authorized representative” defined

Authority: IC 4-22-5-1
Affected: IC 6-1.1-15

Sec. 4. “Authorized representative” means a person designated under this article to represent a party in a matter governed by this article. (*Department of Local Government Finance; 50 IAC 17-2-4; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1609*)

50 IAC 17-2-5 “Board of tax commissioners” defined

Authority: IC 4-22-5-1
Affected: IC 6-1.1-15

Sec. 5. “Board of tax commissioners” means the state board of tax commissioners. (*Department of Local Government Finance; 50 IAC 17-2-5; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1609*)

50 IAC 17-2-6 “Central office” defined

Authority: IC 4-22-5-1
Affected: IC 6-1.1-15

Sec. 6. “Central office” means the principal office of the board of tax commissioners located in Indianapolis, Indiana. (*Department of Local Government Finance; 50 IAC 17-2-6; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1609*)

50 IAC 17-2-7 “Final order or final determination” defined

Authority: IC 4-22-5-1
Affected: IC 6-1.1-15-4; IC 6-1.1-15-5

Sec. 7. “Final order or final determination” means any action of the board of tax commissioners or the appeals division that is:

- (1) designated as such by the board of tax commissioners or appeals division;
- (2) the final step in the administrative process before resort may be made to the judiciary; or
- (3) deemed final under IC 6-1.1-15-4 and IC 6-1.1-15-5.

(*Department of Local Government Finance; 50 IAC 17-2-7; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1609*)

50 IAC 17-2-8 “Hearing officer” defined

Authority: IC 4-22-5-1
Affected: IC 6-1.1-15

Sec. 8. “Hearing officer” refers to an individual appointed to conduct a hearing that the appeals division or board of tax commissioners is required by law to hold. (*Department of Local Government Finance; 50 IAC 17-2-8; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1609*)

50 IAC 17-2-9 “Order or ruling” defined

Authority: IC 4-22-5-1
Affected: IC 6-1.1-15

Sec. 9. “Order or ruling” means any action by the board of tax commissioners or the appeals division that is not a final order or final determination. (*Department of Local Government Finance; 50 IAC 17-2-9; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1609*)

50 IAC 17-2-10 “Party” defined

Authority: IC 4-22-5-1
Affected: IC 6-1.1-15

PROCEDURAL RULES

Sec. 10. "Party" means all authorized participants in a matter governed by this article, which may include the following:

- (1) Owner of the subject property.
- (2) Taxpayer.
- (3) Person that files an appeal petition.
- (4) Township assessor.
- (5) County assessor, as the county assessor, or secretary of the PTABOA.
- (6) Division of the board of tax commissioners that makes an assessment determination that is the subject of review.

(Department of Local Government Finance; 50 IAC 17-2-10; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1609)

50 IAC 17-2-11 "Person" defined

Authority: IC 4-22-5-1

Affected: IC 6-1.1-10; IC 6-1.1-15

Sec. 11. "Person" means:

- (1) an individual;
- (2) an agency;
- (3) a political subdivision;
- (4) a partnership;
- (5) a corporation;
- (6) a limited liability corporation;
- (7) an association; or
- (8) other entity designated as a person under IC 6-1.1-10.

(Department of Local Government Finance; 50 IAC 17-2-11; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1609)

50 IAC 17-2-12 "Petition for rehearing" defined

Authority: IC 4-22-5-1

Affected: IC 6-1.1-15-5

Sec. 12. "Petition for rehearing" means a written request for rehearing properly filed with the board of tax commissioners under IC 6-1.1-15-5. *(Department of Local Government Finance; 50 IAC 17-2-12; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1610)*

50 IAC 17-2-13 "Practice before the appeals division or the board of tax commissioners" defined

Authority: IC 4-22-5-1

Affected: IC 6-1.1-15

Sec. 13. "Practice before the appeals division or the board of tax commissioners" means participation in any matters connected with a presentation to the appeals division or the board of tax commissioners, or any of their officers, or employees relating to a taxpayer's rights, privileges, or liabilities under Indiana's property tax laws or rules. Presentations to the appeals division or the board of tax commissioners include, but are not limited to, the following:

- (1) Preparation or filing of documents.
- (2) Corresponding or other communications.
- (3) Representation at a hearing, on-site inspection, or meeting.

This section does not apply to a local unit of government or the preparation or filing of business personal property tax returns. *(Department of Local Government Finance; 50 IAC 17-2-13; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1610)*

50 IAC 17-2-14 "PTABOA" defined

Authority: IC 4-22-5-1

Affected: IC 6-1.1-15; IC 6-1.1-28-1

Sec. 14. "PTABOA" refers to a county property tax assessment board of appeals established under IC 6-1.1-28-1. *(Department of Local Government Finance; 50 IAC 17-2-14; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1610)*

Rule 3. Computation of Time and Service

50 IAC 17-3-1 Determination of designated periods of time

Authority: IC 4-22-5-1

Affected: IC 6-1.1-15

Sec. 1. (a) This section applies to the computation of any period of time prescribed or allowed by this article, or by order of the appeals division or the board of tax commissioners.

(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.

(Department of Local Government Finance; 50 IAC 17-3-1; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1610)

50 IAC 17-3-2 Service by the appeals division or the board of tax commissioners

Authority: IC 4-22-5-1

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

Sec. 2. (a) This section applies to the service of:

- (1) notices required by the appeals division or the board of tax commissioners under IC 6-1.1-15-4 and IC 6-1.1-15-5; and
- (2) any other ruling, order, or other paper issued by the appeals division or board of tax commissioners.

(b) The appeals division or board of tax commissioners will keep a record of all papers served by personal delivery or United States mail, indicating the date and circumstances of the service. The record will constitute prima facie proof of the date and circumstances of service.

(c) Except as otherwise provided by law, the appeals division or board of tax commissioners may serve papers by facsimile.

(d) Service shall be given to each party unless they have properly designated an authorized representative, in which case service shall be given to the authorized representative and the party. Service to a person that is not an individual must be made in accordance with the power of attorney attached to the appeal petition filed with the appeals division unless a different power of attorney has been properly filed, in which case service shall be made in accordance with the most recent properly filed power of attorney.

(e) The taxpayer, or the taxpayer's authorized representative, must provide written notification to the appeals division or board of tax commissioners (whichever entity is reviewing the matter at the time of the notification) of any change of address or facsimile number. Unless this written notification is provided, service will be deemed accomplished when mailed or faxed according to the last known address or facsimile number properly provided to the appeals division or board of tax commissioners. *(Department of Local Government Finance; 50 IAC 17-3-2; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1610)*

50 IAC 17-3-3 Service by a party

Authority: IC 4-22-5-1

Affected: IC 6-1.1-15

Sec. 3. (a) Unless otherwise specified by a hearing officer, the appeals division, or the board of tax commissioners, all documents and other papers that are filed with or submitted to the hearing officer, appeals division, or board of tax commissioners regarding a matter governed by this article must also be served upon all parties. This section includes, but is not limited to, service of briefs and documentary evidence.

(b) Service of papers other than appeal petitions and petitions for rehearing may be made by electronic facsimile transmission if authorized by the hearing officer, appeals division, or board of tax commissioners. *(Department of Local Government Finance; 50 IAC 17-3-3; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1611)*

Rule 4. Filing Appeal Petitions and Petitions for Rehearing

50 IAC 17-4-1 Filing of appeal petitions; petitions for rehearing

Authority: IC 4-22-5-1
Affected: IC 6-1.1-15

Sec. 1. The filing of appeal petitions and petitions for rehearing must be made by:

- (1) personal delivery;
- (2) deposit in the United States mail; or
- (3) registered or certified mail, return receipt requested.

Appeal petitions and petitions for rehearing may not be filed by facsimile. (*Department of Local Government Finance; 50 IAC 17-4-1; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1611*)

50 IAC 17-4-2 Filing date

Authority: IC 4-22-5-1
Affected: IC 6-1.1-15

Sec. 2. (a) The postmark date on an appeal petition or petition for rehearing filed by United States mail, registered mail, or certified mail will constitute prima facie proof of the date of filing.

(b) The date-received stamp affixed by the proper county official to an appeal petition filed by personal delivery will constitute prima facie proof of the date of filing.

(c) The date-received stamp affixed by the board of tax commissioners to a petition for rehearing filed by personal delivery will constitute prima facie proof of the date of filing. (*Department of Local Government Finance; 50 IAC 17-4-2; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1611*)

50 IAC 17-4-3 Time and place for filing appeal petitions

Authority: IC 4-22-5-1
Affected: IC 6-1.1-11-7; IC 6-1.1-15-3; IC 6-1.1-15-12

Sec. 3. (a) Persons permitted to file a petition for review of assessment, Form 131, under IC 6-1.1-15-3 must file petition with the county assessor within thirty (30) days after notice of the determination by the PTABOA.

(b) Persons permitted to file a petition to correct errors, Form 133, under IC 6-1.1-15-12, must file the petition with the county auditor within thirty (30) days after notice of the determination of the PTABOA.

(c) Persons permitted to file a petition for review of exemption, Form 132, under IC 6-1.1-11-7 must file the appeal petition with the county assessor within thirty (30) days after notice of the determination of the PTABOA. (*Department of Local Government Finance; 50 IAC 17-4-3; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1611*)

50 IAC 17-4-4 Time and place for filing petitions for rehearing

Authority: IC 4-22-5-1
Affected: IC 6-1.1-15-4; IC 6-1.1-15-5

Sec. 4. Persons permitted to file a petition for rehearing under IC 6-1.1-15-5 must file the petition with the board of tax commissioners within fifteen (15) days after the appeals division gives notice of its final determination under IC 6-1.1-15-4, or within fifteen (15) days after the maximum allowable time for the issuance of a determination by the appeals division under IC 6-1.1-15-4 has lapsed. (*Department of Local Government Finance; 50 IAC 17-4-4; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1611*)

Rule 5. Compliant Appeal Petitions and Scope of Review

50 IAC 17-5-1 Compliant appeal petition

Authority: IC 4-22-5-1
Affected: IC 6-1.1-15

Sec. 1. Appeal petitions must be completed in conformance with the instructions provided with the petition form and all other

written instructions and promulgated rules of the appeals division or the board of tax commissioners. If the appeal petition is not properly completed, the appeals division will give the petitioner a notice of defect and return the appeal petition. (For example, but not by way of limitation, the appeal petition forms require the petitioner set forth the specific reasons why the petitioner believes the tax assessment is inaccurate. Failure to specify the reasons will be cause for the petition to be returned to the petitioner with a notice of defect.) Petitioner must correct or cure the appeal petition within thirty (30) days from the date the notice of defect. Failure to adequately correct the specified defect will result in denial of the petition without hearing or further opportunity to correct the petition. (*Department of Local Government Finance; 50 IAC 17-5-1; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1611*)

50 IAC 17-5-2 Amendments to appeal petitions; additional written specification

Authority: IC 4-22-5-1
Affected: IC 6-1.1-15

Sec. 2. (a) Timely filed amendments to appeal petitions are permitted.

(b) Amendments to appeal petitions must be filed within fifteen (15) days of the filing of the original appeal petition. Amendments sought later than fifteen (15) days following the filing of the petition must be filed with the approval of the appeals division not less than five (5) days prior to the hearing.

(c) Amendments may not include issues that were not specifically expressed during the hearing before the PTABOA or addressed in the final determination of the PTABOA.

(d) Amendments to appeal petitions must be filed at the central office and must served upon all parties.

(e) The rules regarding the filing of appeal petitions, and the date they are deemed filed, also apply to amended appeal petitions.

(f) The appeals division or the board of tax commissioners may, on its own motion, or at the request of a party, require a party to provide a more specific or complete written statement of any claim, defense, or issue raised in regard to an appeal petition, amendment, or other pleading. A request under this subsection may be granted, denied, or modified at the discretion of the appeals division or the board of tax commissioners. (*Department of Local Government Finance; 50 IAC 17-5-2; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1612*)

50 IAC 17-5-3 Limitations of issues

Authority: IC 4-22-5-1
Affected: IC 6-1.1-15

Sec. 3. (a) The person filing an appeal petition is limited to the issues:

(1) the person specifically expressed during the hearing before the PTABOA; or

(2) that are a direct result of the findings and determinations of the PTABOA.

(b) It will be a rebuttable presumption that the issues identified in a PTABOA's findings are the issues expressed during the PTABOA hearing of the matter. The person attempting to rebut the presumption will have the burden of proving the presumption false.

(c) If no issues are identified in a PTABOA's findings, it will be a rebuttable presumption that the issues identified on the petition for review of assessment (Form 130) are the issues expressed during the PTABOA hearing of the matter. The person attempting to rebut the presumption will have the burden of proving the presumption false.

(d) The appeals division or the board of tax commissioners may, at its discretion, address any issue once an appeal petition has been filed. (*Department of Local Government Finance; 50 IAC 17-5-3; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1612*)

Rule 6. Hearing Procedures

50 IAC 17-6-1 Hearing date

Authority: IC 4-22-5-1
Affected: IC 6-1.1-15-4

Sec. 1. Unless delayed by reasonable cause of the person filing the appeal petition, a hearing under IC 6-1.1-15-4 will be conducted by the appeals division within six (6) months from the later of the date the:

(1) appeal petition; or

(2) any corrected appeal petition; is stamped received by appeals division. (*Department of Local Government Finance; 50 IAC 17-6-1; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1612*)

50 IAC 17-6-2 Hearing formality; transcription services

Authority: IC 4-22-5-1

Affected: IC 6-1.1-15

Sec. 2. (a) Hearings will be conducted as a formal proceeding under the auspices of a hearing officer or panel of hearing officers.

(b) Witnesses must be sworn in under oath.

(c) Hearings will be tape recorded by the hearing officer. The recording of the hearing officer will serve as the basis of the official record of the proceeding unless the hearing is transcribed by a court reporter. A party may hire a court reporting service to transcribe the hearing so long as the reporting service is directed to submit an official copy of the transcript, to the appeals division or the board of tax commissioners, at no expense, to the appeals division or the board of tax commissioners. (*Department of Local Government Finance; 50 IAC 17-6-2; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1612*)

50 IAC 17-6-3 Evidentiary burden

Authority: IC 4-22-5-1

Affected: IC 6-1.1-15

Sec. 3. The burden of persuasion and the burden of going forward with the proof is on the petitioner. There is a rebuttable presumption that the determination of the PTABOA or other officer from which the appeal is taken is correct. The petitioner may rebut the presumption by presenting a prima facie case, supported by substantial and reliable evidence, that the determination is in error. (*Department of Local Government Finance; 50 IAC 17-6-3; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1612*)

Rule 7. Evidentiary Procedures

50 IAC 17-7-1 Evidence not previously presented

Authority: IC 4-22-5-1

Affected: IC 6-1.1-15

Sec. 1. (a) Documentary evidence that was not presented at the PTABOA hearing may not be presented by a party at a proceeding before the appeals division unless the evidence directly relates to an issue specifically expressed at the PTABOA hearing of the matter, or in the PTABOA's final determination. Any evidence that was not presented at the PTABOA hearing, which a party intends to introduce at a hearing before the appeals division, must be filed with the appeals division within thirty (30) days following the filing of the original appeal petition. However, in the event a hearing is scheduled within the thirty (30) day period following the filing of the petition, any evidence not presented at the PTABOA hearing must be filed with the approval of the appeals division not less than five (5) days prior to the hearing. Evidence filed under this section must be filed at the central office and a copy of each document served upon all parties.

(b) Testimony not offered at the PTABOA hearing may not be offered at a proceeding before the appeals division unless the testimony directly relates to an issue specifically expressed at the PTABOA hearing of the matter, or in the PTABOA's final determination. Any testimony that was not offered at the PTABOA hearing that a party intends to introduce at a hearing before the appeals division must be identified by submission of the name of the witness and a brief statement of the witness' testimony to the appeals division within thirty (30) days following the filing of the original appeal petition. However, in the event a hearing is scheduled within the thirty (30) day period following the filing of the petition, any testimony not offered at the PTABOA hearing must be submitted with the approval of the appeals division not less than five (5) days prior to the hearing. A submission identifying testimony under this section must be filed at the central office and a copy of the submission served upon all parties.

(c) Failure to comply with the requirements of this section may serve as grounds to exclude the evidence or to dismiss the appeal petition. (*Department of Local Government Finance; 50 IAC 17-7-1; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1613*)

50 IAC 17-7-2 Admissibility; relevancy; weight

Authority: IC 4-22-5-1
Affected: IC 6-1.1-15

Sec. 2. (a) A party may object to the admissibility of evidence during the appeals division hearing. However, determinations regarding the admissibility of evidence do not have to be made during the hearing. Subject to section 3 of this rule, all proffered evidence will be entered for the record and its admissibility will be considered by the appeals division and board of tax commissioners after the hearing and addressed in the findings.

(b) The proponent of evidence must establish that the evidence is relevant evidence within the meaning set out in Rule 401 of the Indiana Rules of Evidence.

(c) The appeals division and board of tax commissioners will consider the requirements for relevancy set forth by various rules of evidence, as interpreted and applied by federal and state courts, in determining what, if any, weight to accord evidence, but as the administrative body authorized to adjudicate the appeal petitions shall also:

- (1) exercise reasonable discretion in the consideration of evidence;
- (2) evaluate the pertinence of evidence on a case-by-case basis; and
- (3) not be bound to any precise rule of evidence.

(Department of Local Government Finance; 50 IAC 17-7-2; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1613)

50 IAC 17-7-3 Market value information; cost data

Authority: IC 4-22-5-1
Affected: IC 6-1.1-15

Sec. 3. (a) This section incorporates the holding of the Indiana supreme court in the case of *Town of St. John v. State Board of Tax Commissioners*, 702 N.E.2d 1034 (Ind. 1998). The provisions of this section shall be interpreted and applied in accordance with the case of *Town of St. John v. State Board of Tax Commissioners*, 702 N.E.2d 1034 (Ind. 1998).

(b) Evidence submitted to demonstrate that an individual assessment is not consistent with the market value of the particular assessed property will be deemed immaterial. Market value evidence may be deemed material, but such evidence will not be used to provide an absolute, precise, and exact individual assessment.

(c) Market value ratio studies may be deemed immaterial.

(d) Evidence of actual construction costs or replacement costs may be submitted to demonstrate that the tax system was not properly applied to the individual assessment under appeal. *(Department of Local Government Finance; 50 IAC 17-7-3; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1613)*

50 IAC 17-7-4 Hearsay evidence

Authority: IC 4-22-5-1
Affected: IC 6-1.1-15

Sec. 4. Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801) may be admitted. If not objected to, the hearsay evidence may form the basis for a determination. However, if the evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, the resulting determination may not be based solely upon the hearsay evidence. *(Department of Local Government Finance; 50 IAC 17-7-4; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1613)*

50 IAC 17-7-5 Technical support and expert testimony for the appeals division

Authority: IC 4-22-5-1
Affected: IC 6-1.1-15

Sec. 5. (a) If requested by the appeals division, employees of the board of tax commissioners may provide technical support or expert testimony for the appeals division in its administrative review of appeal petitions.

(b) The appeals division will give reasonable prior notice to the parties if it intends to request the use or testimony of employees of the board of tax commissioners under subsection (a). *(Department of Local Government Finance; 50 IAC 17-7-5; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1614)*

50 IAC 17-7-6 Confidential information

Authority: IC 4-22-5-1
Affected: IC 6-1.1-15

Sec. 6. A party must, at the time it is submitted, clearly identify all confidential information provided to the appeals division or board of tax commissioners and specify the statutory basis under which the information is claimed to be confidential. (*Department of Local Government Finance; 50 IAC 17-7-6; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1614*)

Rule 8. Prehearing and Posthearing Activities

50 IAC 17-8-1 Continuance of proceedings

Authority: IC 4-22-5-1
Affected: IC 6-1.1-15

Sec. 1. (a) Continuances and extensions of time may be granted only if:

- (1) timely made;
- (2) good cause is shown; and
- (3) the request was served on all parties.

(b) A continuance or extension granted under this section does not extend any applicable time for appeal to the board of tax commissioners or time for providing notice of appeal to any party. (*Department of Local Government Finance; 50 IAC 17-8-1; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1614*)

50 IAC 17-8-2 Prehearing conference

Authority: IC 4-22-5-1
Affected: IC 6-1.1-15

Sec. 2. (a) The appeals division or the board of tax commissioners may, with ten (10) days' prior notice to the parties, order a prehearing conference. A prehearing conference order may include a requirement for parties to confer and submit an agreed upon appeals management plan addressing matters outlined in subsection (b).

(b) The appeals division may, through the prehearing conference or appeals management plan, require the parties to submit:

- (1) a desired hearing date;
- (2) a statement of all contentions and defenses;
- (3) anticipated discovery requests;
- (4) desired discovery deadlines;
- (5) witnesses and exhibits lists;
- (6) anticipated motions;
- (7) all possible stipulations;
- (8) all possible amendments to the appeal petition; or
- (9) any other information that the appeals division deems beneficial to the orderly review of an appeal petition.

(c) The parties, subject to an order issued under subsection (a), must demonstrate a good faith effort to comply with the order and reach agreement on an appeals management plan and the matters specified in the order. If the parties fail to materially comply with the order, or do not demonstrate a good faith effort, the appeals division may:

- (1) conduct the prehearing conference and, following such conference, enter an order reflecting the matters ordered and agreed to at the prehearing conference; or
- (2) issue an order, addressing any matter not adequately resolved.

(d) A prehearing conference under this section may be conducted by telephone. (*Department of Local Government Finance; 50 IAC 17-8-2; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1614*)

50 IAC 17-8-3 Discovery

Authority: IC 4-22-5-1
Affected: IC 6-1.1-15

PROCEDURAL RULES

Sec. 3. (a) A party is entitled to use the applicable discovery provisions of the Indiana Rules of Trial Procedure.

(b) At the request of a party, the appeals division or board of tax commissioners may issue a discovery order in accordance with the Indiana Rules of Trial Procedure. If necessary, the enforcement of such order or right of discovery shall be in accordance with the Indiana Rules of Trial Procedure.

(c) A party seeking a discovery order under this section shall notify all parties in accordance with the Indiana Rules of Trial Procedure. (*Department of Local Government Finance; 50 IAC 17-8-3; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1614*)

50 IAC 17-8-4 Motions

Authority: IC 4-22-5-1

Affected: IC 6-1.1-15

Sec. 4. (a) A party may file motions with the appeals division, board of tax commissioners, or hearing officer. Except motions made during the hearing, all motions 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 petition number, parcel number, taxpayer name, address, and telephone number;
- (5) signed by the party or authorized representative; and
- (6) include verification or proof of service to all parties.

The failure to serve all parties may result in a denial of the motion.

(b) Any response to a motion must be filed within ten (10) days after the date of service unless otherwise specified by the appeals division, board of tax commissioners, or hearing officer. (*Department of Local Government Finance; 50 IAC 17-8-4; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1614*)

50 IAC 17-8-5 Briefs

Authority: IC 4-22-5-1

Affected: IC 6-1.1-15

Sec. 5. (a) The appeals division, board of tax commissioners, or hearing officer may request that the parties file a brief. However, a party may file a brief without it being requested.

(b) Briefs shall be filed within the time limits set by the hearing officer, appeals division, or board of tax commissioners. An extension of time may be requested. If a party fails to timely file a brief, the appeals division may exclude the brief from consideration.

(c) An original and two (2) copies of a brief submitted under this section must be filed with the appeals division at the central office. A copy of the brief shall also be served on each party.

(d) A brief submitted under this section must:

- (1) attach any unreported decision cited; and
- (2) not exceed twenty (20) pages (excluding exhibits) without prior written permission of the appeals division, board of tax commissioners, or hearing officer.

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

(f) Briefs amicus curiae may be filed with leave of the board of tax commissioners or the appeals division. Briefs amicus curiae must be filed according to the briefing established deadlines. (*Department of Local Government Finance; 50 IAC 17-8-5; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1615*)

50 IAC 17-8-6 Submission of proposed findings and conclusions

Authority: IC 4-22-5-1

Affected: IC 6-1.1-15

Sec. 6. Parties may file proposed findings of fact and conclusions of law, at the discretion of the appeals division, board of tax commissioners, or hearing officer. Proposed findings and conclusions must be filed within the time period established, and at

the address designated, by the appeals division, board of tax commissioners, or hearing officer, and copy served on each party. (*Department of Local Government Finance; 50 IAC 17-8-6; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1615*)

50 IAC 17-8-7 Posthearing evidence

Authority: IC 4-22-5-1

Affected: IC 6-1.1-15

Sec. 7. (a) No posthearing evidence will be accepted unless it is requested by the hearing officer. The hearing officer will set a deadline date for the submission of any requested evidence and specify the address to which the posthearing evidence must be submitted.

(b) An extension of time to submit posthearing evidence may be requested if submitted in writing to the hearing officer. An extension may be granted if timely made and good cause is shown. If posthearing evidence is untimely submitted, the appeals division will proceed to determine the appeal petition without considering the untimely submitted posthearing evidence.

(c) Posthearing evidence submitted must also be served on all parties. (*Department of Local Government Finance; 50 IAC 17-8-7; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1615*)

Rule 9. Orders and Determinations

50 IAC 17-9-1 Orders and determinations

Authority: IC 4-22-5-1

Affected: IC 6-1.1-15

Sec. 1. All parties will be notified of all orders issued by the appeals division or board of tax commissioners. Final orders and final determinations will:

- (1) contain the name of petitioner and identify the property that is the subject of the appeal;
- (2) identify the parties and representatives participating in the proceeding;
- (3) contain appropriately numbered conclusions of law;
- (4) contain a decision disposing of all contested issues; and
- (5) include a notice of appeal rights.

(*Department of Local Government Finance; 50 IAC 17-9-1; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1615*)

Rule 10. Sanctions

50 IAC 17-10-1 Failure to appear

Authority: IC 4-22-5-1

Affected: IC 6-1.1-15

Sec. 1. (a) The failure to appear at the hearing, after proper notice has been given, shall constitute the basis for a default or dismissal of the appeal petition.

(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 appeals division or the board of tax commissioners may vacate and set aside an entry of a dismissal or default order.

(d) If an order of default or dismissal is vacated and set aside, the appeals division or state board will schedule another hearing on the appeal petition. At least ten (10) days' notice will be given for the hearing unless waived by agreement by all parties. The time period within which the appeals division or state board must issue a final determination on the appeal petition will be calculated from the date of the hearing on the merits. (*Department of Local Government Finance; 50 IAC 17-10-1; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1616*)

50 IAC 17-10-2 Default

Authority: IC 4-22-5-1
Affected: IC 6-1.1-15

Sec. 2. The appeals division or board of tax commissioners may issue an order of default or dismissal as the result of:

- (1) failure of a party to comply with a rule or specific request of the appeals division, board of tax commissioners, or hearing officer;
- (2) disruptive, vulgar, abusive, or obscene conduct or language by a party or authorized representative;
- (3) failure of a party to provide or exchange evidence in accordance with this article; or
- (4) failure of the person who filed the appeal petition to pursue the appeal petition in a reasonable and timely manner.

(Department of Local Government Finance; 50 IAC 17-10-2; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1616)

50 IAC 17-10-3 Dismissal of appeal petition

Authority: IC 4-22-5-1
Affected: IC 6-1.1-15

Sec. 3. An appeal petition may be dismissed by the appeal division or board of tax commissioners:

- (1) if stipulated to by all parties;
- (2) on the motion of the person who filed the appeals petition, if the motion is made prior to the presentation of the case; or
- (3) on the motion of a party alleging that the person who filed the appeals petition has failed to present a case or has failed to follow an order of the appeals division or the board of tax commissioners.

Unless the motion is made at the hearing and all parties are present, a motion will not be granted under subdivision (3) of this section until the opponent to the motion has had more than ten (10) days to respond. *(Department of Local Government Finance; 50 IAC 17-10-3; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1616)*

50 IAC 17-10-4 Ex parte communications prohibited

Authority: IC 4-22-5-1
Affected: IC 6-1.1-15

Sec. 4. (a) Parties, their authorized representatives, or anyone acting on their behalf are prohibited from engaging in ex parte communications with the hearing officer, the appeals division, or the board of tax commissioners regarding any substantive matters relating to the appeal petition while the administrative appeals process is ongoing.

(b) Ex parte communications may be grounds for dismissal of the appeal.

(c) Communications regarding matters of practice and procedure, such as the status of appeals, filing requirements, form letters, scheduling of hearings, and the like, are not considered ex parte communications under this section. *(Department of Local Government Finance; 50 IAC 17-10-4; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1616)*

Rule 11. Miscellaneous Provisions

50 IAC 17-11-1 Supersedes conflicting rules

Authority: IC 4-22-5-1
Affected: IC 6-1.1-15

Sec. 1. The provisions of this article shall supersede any rule or instructional bulletin promulgated or issued prior to the effective date of this article, to the extent that the rule or instructional bulletin is in conflict with the provisions of this article. *(Department of Local Government Finance; 50 IAC 17-11-1; filed Mar 1, 2000, 7:53 a.m.: 23 IR 1616)*

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