

## **TITLE 52 INDIANA BOARD OF TAX REVIEW**

### **Proposed Rule** LSA Document #03-259

#### **DIGEST**

Adds 52 IAC 4 to establish procedures to govern proceedings before the Indiana board of tax review with respect to appeals for the 2002 assessment year in Lake County. Effective 30 days after filing with the secretary of state.

#### **52 IAC 4**

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

#### **ARTICLE 4. ASSESSMENT APPEALS IN LAKE COUNTY**

##### **Rule 1. Purpose and Applicability**

##### **52 IAC 4-1-1 Purpose**

**Authority:** IC 6-1.1-4-34; IC 6-1.5-6-2

**Affected:** IC 6-1.1-4-33; IC 6-1.1-15

**Sec. 1.** The purpose of this article is to establish procedures to govern administrative proceedings before the board arising from appeals of assessments of real property in Lake County for the March 1, 2002, assessment date. The definitive procedures, procedural requirements, and evidentiary controls established by this article are deemed essential to assure that the administrative appeals before the board are conducted in the most uniform and objective manner possible. (*Indiana Board of Tax Review; 52 IAC 4-1-1*)

##### **52 IAC 4-1-2 Applicability**

**Authority:** IC 6-1.1-4-34; IC 6-1.5-6-2

**Affected:** IC 6-1.1-4-32; IC 6-1.1-4-33; IC 6-1.1-15

**Sec. 2. (a)** The provisions of this article apply to and govern all proceedings before the board that arise from appeals of assessments:

- (1) of real property located in Lake County;
- (2) completed for the March 1, 2002, assessment date; and
- (3) performed by the department of local government finance or the department's authorized contractor pursuant to IC 6-1.1-4-32.

**(b)** To the extent that they are not inconsistent with this article, the definitions and rules found in 52 IAC 2 also apply to the appeals described in subsection (a). If the rules conflict, the definitions and rules of this article will control. (*Indiana Board of Tax Review; 52 IAC 4-1-2*)

##### **52 IAC 4-1-3 Jurisdiction of the board**

**Authority:** IC 6-1.1-4-34; IC 6-1.5-6-2

**Affected:** IC 6-1.1-4-33; IC 6-1.1-15

**Sec. 3.** The board shall conduct an impartial review of an appeal from a final assessment decision under IC 6-1.1-4-33(g) issued by the department. (*Indiana Board of Tax Review; 52 IAC 4-1-3*)

## **Rule 2. Definitions**

### **52 IAC 4-2-1 Applicability**

**Authority:** IC 6-1.1-4-34; IC 6-1.5-6-2

**Affected:** IC 6-1.1-4-33; IC 6-1.1-15

**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 6-1.1-4-34; IC 6-1.5-6-2

**Affected:** IC 6-1.1-4-33; IC 6-1.1-15

**Sec. 2.** “Appeal petition”, as used in this article, means a petition for review of the final assessment decision issued by the department and filed with the board under IC 6-1.1-4-34 on form 139L or such other form as prescribed by the board. (*Indiana Board of Tax Review; 52 IAC 4-2-2*)

### **52 IAC 4-2-3 “Contractor” defined**

**Authority:** IC 6-1.1-4-34; IC 6-1.5-6-2

**Affected:** IC 6-1.1-4-32; IC 6-1.1-4-33; IC 6-1.1-15

**Sec. 3.** “Contractor” means the firm that entered into a contract with the department to assess property in the county and to conduct informal hearings concerning assessments of real property in the county under IC 6-1.1-4-32 and IC 6-1.1-4-33, or Cole-Layer-Trumble Company. (*Indiana Board of Tax Review; 52 IAC 4-2-3*)

### **52 IAC 4-2-4 “County” defined**

**Authority:** IC 6-1.1-4-34; IC 6-1.5-6-2

**Affected:** IC 6-1.1-4-33; IC 6-1.1-15

**Sec. 4.** “County” means Lake County, Indiana. (*Indiana Board of Tax Review; 52 IAC 4-2-4*)

### **52 IAC 4-2-5 “Final assessment decision” defined**

**Authority:** IC 6-1.1-4-34; IC 6-1.5-6-2

**Affected:** IC 6-1.1-4-33; IC 6-1.1-15

**Sec. 5.** “Final assessment decision” means the final decision issued by the department that serves as notice of the result of the informal hearing under IC 6-1.1-4-33(g). (*Indiana Board of Tax Review; 52 IAC 4-2-5*)

### **52 IAC 4-2-6 “Final order” or “final determination” defined**

**Authority:** IC 6-1.1-4-34; IC 6-1.5-6-2

**Affected:** IC 6-1.1-4-33; IC 6-1.1-15

**Sec. 6.** “Final order” or “final determination”, as used in this article, means any action of the board that 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) subject to appeal to tax court under IC 6-1.1-4-34(m).

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

### **52 IAC 4-2-7 “Informal hearing” defined**

**Authority:** IC 6-1.1-4-34; IC 6-1.5-6-2

**Affected:** IC 6-1.1-4-33; IC 6-1.1-15

**Sec. 7.** “Informal hearing” means the process described in IC 6-1.1-4-33(b) under which the contractor is required to:

- (1) discuss the specifics of the taxpayer’s reassessment;

- (2) review the taxpayer's property record card;
- (3) explain to the taxpayer how the reassessment was determined;
- (4) provide to the taxpayer information about the statutes, rules, and guidelines that govern the determination of the reassessment;
- (5) note and consider objections of the taxpayer;
- (6) consider all errors alleged by the taxpayer; and
- (7) otherwise educate the taxpayer about the taxpayer's assessment, the reassessment process, and the reassessment appeal process.

*(Indiana Board of Tax Review; 52 IAC 4-2-7)*

**52 IAC 4-2-8 "Notice of reassessment" defined**

**Authority:** IC 6-1.1-4-34; IC 6-1.5-6-2

**Affected:** IC 6-1.1-4-32; IC 6-1.1-4-33; IC 6-1.1-15

**Sec. 8. "Notice of reassessment" means a written notice of the assessed value of real property delivered to the taxpayer by the department pursuant to IC 6-1.1-4-32(f). *(Indiana Board of Tax Review; 52 IAC 4-2-8)***

**52 IAC 4-2-9 "Special master" defined**

**Authority:** IC 6-1.1-4-34; IC 6-1.5-6-2

**Affected:** IC 6-1.1-4-33; IC 6-1.1-15

**Sec. 9. "Special master" means a qualified individual, including, but not limited to, an administrative law judge, designated by the board under IC 6-1.1-4-34(e) to conduct evidentiary hearings and prepare reports in accordance with IC 6-1.1-4-34(g). *(Indiana Board of Tax Review; 52 IAC 4-2-9)***

**Rule 3. Filing Appeal Petitions**

**52 IAC 4-3-1 Time and place for filing appeal petition**

**Authority:** IC 6-1.1-4-34; IC 6-1.5-6-2

**Affected:** IC 6-1.1-4-33; IC 6-1.1-15

**Sec. 1. (a) An appeal petition must be filed with the county assessor within thirty (30) days after receipt of the final assessment decision from the department.**

**(b) There is a rebuttable presumption that the final assessment decision is mailed on the date of the final assessment decision. *(Indiana Board of Tax Review; 52 IAC 4-3-1)***

**52 IAC 4-3-2 Prerequisites for filing the appeal petition**

**Authority:** IC 6-1.1-4-34; IC 6-1.5-6-2

**Affected:** IC 6-1.1-4-32; IC 6-1.1-4-33; IC 6-1.1-15

**Sec. 2. In order to appeal to the board, the taxpayer must:**

- (1) request and participate in an informal hearing with the contractor under IC 6-1.1-4-33 not later than forty-five (45) days after the date the notice of reassessment is sent to the taxpayer under IC 6-1.1-4-32(f);
- (2) receive a final assessment decision from the department under IC 6-1.1-4-33(g); and
- (3) file an appeal petition for review with the county assessor not later than thirty (30) days after receipt of the final assessment decision.

*(Indiana Board of Tax Review; 52 IAC 4-3-2)*

**52 IAC 4-3-3 Failure to receive final assessment decision**

**Authority:** IC 6-1.1-4-34; IC 6-1.5-6-2

**Affected:** IC 6-1.1-4-33; IC 6-1.1-15

**Sec. 3. If the petitioner has not received a final assessment decision within two hundred seventy (270) days of**

receipt of the notice of reassessment, the petitioner may appeal the assessment directly to the board if the petitioner has:

- (1) requested an informal hearing not later than forty-five (45) days after the date of the notice of reassessment is sent to the taxpayer;
- (2) participated in an informal hearing; and
- (3) filed an appeal petition for review with the county assessor:
  - (A) no earlier than two hundred seventy (270) days after receipt of the notice of reassessment; and
  - (B) no later than three hundred (300) days after the receipt of the notice of reassessment.

*(Indiana Board of Tax Review; 52 IAC 4-3-3)*

#### **Rule 4. Hearing Procedures**

##### **52 IAC 4-4-1 Hearing date**

**Authority:** IC 6-1.1-4-34; IC 6-1.5-6-2

**Affected:** IC 6-1.1-4-33; IC 6-1.1-15

**Sec. 1.** The hearing shall be scheduled no earlier than thirty (30) days after receipt of the appeal petition unless otherwise agreed by the parties. *(Indiana Board of Tax Review; 52 IAC 4-4-1)*

##### **52 IAC 4-4-2 Conduct of hearing**

**Authority:** IC 6-1.1-4-34; IC 6-1.5-6-2

**Affected:** IC 6-1.1-4-33; IC 6-1.1-15

**Sec. 2. (a)** Hearings will be conducted by a special master, any member of the board, or by the board sitting in its entirety.

**(b)** All testimony shall be under oath or affirmation.

**(c)** Hearings will be tape recorded. The recording 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 board at no cost to the board.

**(d)** The special master may rule on any nonfinal order without the approval of a majority of the board.

**(e)** In order for a tax representative to participate in the hearing, the tax representative must be certified by the department and follow the rules of 52 IAC 1. *(Indiana Board of Tax Review; 52 IAC 4-4-2)*

##### **52 IAC 4-4-3 Place of hearing**

**Authority:** IC 6-1.1-4-34; IC 6-1.5-6-2

**Affected:** IC 6-1.1-4-33; IC 6-1.1-15

**Sec. 3. (a)** Hearings held before a special master or by a member of the board acting as a special master shall be held in the county or at such other location as the parties and the designated special master agree.

**(b)** All hearings by the board sitting in its entirety will be held in the central office unless otherwise agreed to by the board. *(Indiana Board of Tax Review; 52 IAC 4-4-3)*

##### **52 IAC 4-4-4 Informality of proceeding**

**Authority:** IC 6-1.1-4-34; IC 6-1.5-6-2

**Affected:** IC 6-1.1-4-33; IC 6-1.1-15

**Sec. 4. (a)** The Indiana trial rules and the rules of evidence do not apply to the procedures established by this article. The special master may admit and give probative effect to evidence of a type commonly relied upon by

reasonably prudent persons in the conduct of their affairs.

(b) Hearsay evidence may be considered if not objected to, but a final determination may not be based solely upon hearsay evidence.

(c) No pretrial discovery shall be required or compelled, except as provided in subsection (e).

(d) No posthearing submissions will be allowed or accepted unless requested by the board.

(e) The parties shall make available 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) days before the hearing. At the commencement of the hearing, the parties shall make available to the presiding special master a copy of all documentary evidence provided to the other parties.

(f) Failure to comply with subsection (e) may serve as grounds to exclude evidence. (*Indiana Board of Tax Review; 52 IAC 4-4-4*)

#### **52 IAC 4-4-5 Election of formal administrative proceeding**

**Authority:** IC 6-1.1-4-34; IC 6-1.5-6-2

**Affected:** IC 6-1.1-4-33; IC 6-1.1-15

**Sec. 5. (a)** A petitioner may elect to conduct the hearing in accordance with 52 IAC 2 and may use the applicable discovery methods contained in the Indiana Rules of Trial Procedure, to the extent such rules are consistent with applicable law and the efficient operation of the administrative proceeding, if the property that is subject to the appeal is:

- (1) an unimproved parcel of land with an assessed value in excess of three million dollars (\$3,000,000); or
- (2) a parcel of land, as improved, with an assessed value in excess of three million dollars (\$3,000,000).

(b) A petitioner who elects to conduct the hearing under subsection (a) must:

- (1) file an appeal petition in accordance with IC 6-1.1-4-33 and this article; and
- (2) notify the board in writing of the petitioner's election under this section within ten (10) days of filing the appeal petition.

(*Indiana Board of Tax Review; 52 IAC 4-4-5*)

#### **52 IAC 4-4-6 Continuance of the hearing**

**Authority:** IC 6-1.1-4-34; IC 6-1.5-6-2

**Affected:** IC 6-1.1-4-33; IC 6-1.1-15

**Sec. 6.** A hearing may be continued only upon a showing of extraordinary circumstances. (*Indiana Board of Tax Review; 52 IAC 4-4-6*)

#### **Notice of Public Hearing**

*Under IC 4-22-2-24, notice is hereby given that on December 3, 2003 at 1:00 p.m., at the Indiana Government Center-North, 100 North Senate Avenue, Room N1058, Indianapolis, Indiana; AND on December 4, 2003, at 1:00 p.m., at the Lake County Government Center, Commissioners Courtroom, 3rd Floor, 2293 North Main Street, Crown Point, Indiana the Indiana Board of Tax Review will hold a public hearing on proposed rules to govern the processing of petitions and the practice and procedures for Lake County appeal proceedings conducted before the Indiana Board of Tax Review pursuant to IC 6-1.1-4-34. Parties interested in participating in either public hearing are encouraged to attend and submit written statements expressing their specific or general concerns, any suggested additions or revisions, and any documentation which may serve to support, clarify, or supplement their concerns, suggestions, or proposed revisions. The Indiana Board of Tax Review also encourages any interested party who has concerns, suggestions, or proposed revisions to contact Michael Dart, Senior Administrative Law Judge, Indiana Board of Tax Review, at (317) 233-6767. Copies of these rules are now on file at the Indiana Government Center-North, 100 North*

*Senate Avenue, Room N1058 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

Annette Biesecker  
Chairman  
Indiana Board of Tax Review