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TITLE 52 INDIANA BOARD OF TAX REVIEW

LSA Document #03-328(E)

DIGEST

Temporarily adds provisions establishing small claims appeal procedures for the Indiana board of tax review and parties appearing before the board to follow until such time as permanent procedural rules are approved and filed with the secretary of state. Authority: HEA 1714, P.L.245-2003, SECTION 25; IC 6-1.5-6-1; IC 4-22-2-37.1. Effective December 15, 2003.

SECTION 1. (a) This document governs the practice and procedure in all small claims. The provisions of LSA Document #03-327(E) apply to the small claims procedures unless inconsistent with this document.

(b) The purpose of this document to make the administration of small claims more efficient, informal, simple, and expeditious than those administered under LSA Document #03-327(E).

SECTION 2. (a) Unless a party elects to transfer out of small claims on the petition or under SECTION 3 of this document, an appeal petition shall be subject to the small claims procedure if the property under appeal is:

- (1) an unimproved parcel of land with an assessed value not in excess of one million dollars (\$1,000,000);**
- (2) a parcel of land, as improved, with an assessed value for land and improvements not in excess of one millions [*sic.*, million] dollars (\$1,000,000); or**
- (3) personal property not in excess of one million dollars (\$1,000,000).**

(b) By accepting the small claims procedure, the parties agree that the issues contained in the appeal petition are substantially the same as those presented to the PTABOA and agree that no new issues will be raised before the board.

(c) The small claims appeal petition may not be amended except to conform the issues raised in the appeal petition to those issues raised at the PTABOA hearing from which the appeal arises.

(d) A party to any appeal concerning a property that does not meet the criteria described in subsection (a) may elect to have the petition heard pursuant to the small claims procedure by:

- (1) requesting so upon filing the appeal petition or by notifying the board, in writing, within thirty (30) days of filing his or her petition; and**
- (2) obtaining the written consent to such election from the other parties to the proceeding.**

SECTION 3. (a) A party who does not wish his or her matter to be heard pursuant to the small claims procedure may request a transfer for the proceeding from the small claims procedure to the standard hearing procedure governed by LSA Document #03-327(E).

(b) The request for transfer shall be made by:

- (1) opting out of the small claims procedure on the appeal petition; or**
- (2) written notice to the board no later than fifteen (15) days prior to the date of the small claims hearing.**

(c) The time for hearing the matter pursuant to the standard board procedure described under LSA Document #03-327(E) shall begin to run from the date the request for transfer is received by the board.

SECTION 4. (a) A party may appear on his or her own behalf, by any representative expressly authorized by the party, in writing, to appear on the party's behalf, or by an attorney who has complied with the notice of appearance requirements of SECTION 6 of LSA Document #03-327(E).

(b) The rules concerning tax representatives under 52 IAC 1 apply to the small claims procedure.

SECTION 5. (a) The small claims procedures shall be informal with the sole objective of hearing the petition in an expeditious and just manner according to the rules of substantive law. Small claims procedures are not bound by the rules of trial practice, procedure, or evidence except provisions relating to privileged communications and offers of settlement. This relaxation of evidentiary rules is not a relaxation of the burden of proof.

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

(c) Except as provided in subsection (f), there shall be no prehearing discovery in small claims.

(d) No prehearing conferences will be held in small claims.

(e) No posthearing submissions will be allowed or accepted in small claims.

(f) 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 day of a small claims hearing.

(g) At the commencement of the small claims hearing, the parties shall make available to the presiding administrative law judge a copy of all documentary evidence provided to the other parties.

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

SECTION 6. The parties in small claims may elect to waive a hearing and have the board issue a final determination based solely on the written and documentary evidence submitted by the parties.

SECTION 7. A small claims proceeding shall be continued only upon a showing of extraordinary circumstances.

SECTION 8. (a) Each party will be restricted in the amount of time they will be allowed to present their case in a small claims proceeding to no more than twenty (20) minutes.

(b) Parties that elect the small claims procedure, but have a substantial amount of written and documentary evidence or numerous witnesses, 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 their case within the time restrictions.

(c) If a party cannot adequately present its case within the time restrictions, it is the duty of that party to request in writing that the matter be removed from the small claims docket and scheduled to be heard pursuant under *[sic.]* LSA Document #03-327(E). Petitions cannot be withdrawn from small claims once the hearing has commenced except under extraordinary circumstances.

SECTION 9. Small claims hearings shall be recorded with a recording device.

SECTION 10. (a) The administrative law judge shall prepare a recommendation after the conclusion of the hearing.

(b) The board shall review the recommendation of the administrative law judge.

(c) The board shall accept, reject, or modify the recommendation and issue a final determination.

(d) The final determination shall be in writing and is subject to judicial review under IC 6-1.1-15-5.

SECTION 11. SECTIONS 1 through 10 of this document expire on the earliest of the following:

(1) the expiration date of this document under IC 4-22-2-37.1; or

(2) the date the board's permanent procedural rules, adopted as LSA Document #03-179(F), are fully approved and become effective.

LSA Document #03-328(E)

Filed with Secretary of State: December 15, 2003, 3:15 p.m.