



# **INDIANA PROPERTY TAX APPEALS: AN OUTLINE FOR APPEALS FROM THE COUNTY TO THE SUPREME COURT**

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- I. TRIGGERS FOR A PROPERTY TAX APPEAL.
- A. Assessing officials must issue a notice regarding the assessment or reassessment of real property.<sup>1</sup>
  - B. The Department of Local Government Finance ("DLGF") requires assessing officials to "[p]rovide notice to taxpayers of an assessment change that results from the application of annual [trending] adjustments." 50 IAC 27-1-3(4).<sup>2</sup>
  - C. Notice of Assessment. A taxpayer can appeal from a notice of assessment. *See* Ind. Code § 6-1.1-15-1(c).
    - 1. A notice of assessment is typically issued using a Form 11 Notice of Assessment of Land and Structures.
    - 2. A notice of assessment may also be issued using a Form 113 Notice of Assessment by Assessing Officer.

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<sup>1</sup> *See* Ind. Code § 6-1.1-4-22 (stating that an assessing official or county property tax assessment board of appeals "shall give notice to the taxpayer and the county assessor, by mail, of the amount of the assessment or reassessment" and that the notice "must include notice to the person of the opportunity to appeal the assessed valuation under IC 6-1.1-15-1"); Ind. Code § 6-1.1-9-1 (requiring assessing official or county board to give written notice of the assessment or increase in assessment of omitted or undervalued property; "The notice shall contain a general description of the property and a statement describing the taxpayer's right to a review with the county property tax assessment board of appeals under IC 6-1.1-15-1").

<sup>2</sup> *See also* 50 IAC 27-7-1(b) ("If any annual adjustment factor is applied, a notice of assessment, for example, Form 11, shall be sent to each affected taxpayer pursuant to IC 6-1.1-4-22".).

- D. If an assessing official or county board fails to give proper notice as required by statute, the taxpayer's receipt of the tax bill serves as notice of the taxpayer's right to appeal. *See* Ind. Code § 6-1.1-15-13.
- E. To appeal the assessment for an assessment date for which a notice of assessment is not given (e.g. where there is no change of assessment, so no notice of assessment is required), a taxpayer may file a notice of review with the assessor:
  - 1. For real property taxes, on or before May 10 of the year for which the change of assessment is sought; or
  - 2. Within 45 days after the date of the tax bill. *See* Ind. Code § 6-1.1-15-1(d).
    - a. A taxpayer may appeal from the tax bill "regardless of whether the assessing official changes the taxpayer's assessment." *See* Ind. Code § 6-1.1-15-1(d)(2).
    - b. If an assessment notice has been issued, *appeal from the notice* and don't wait to appeal from the tax bill.

II. INITIATING THE LOCAL APPEAL – REVIEW BY THE COUNTY OR TOWNSHIP ASSESSOR AND HEARING BEFORE THE PROPERTY TAX ASSESSMENT BOARD OF APPEALS ("PTABOA").<sup>3</sup>

A. Initiating the Appeal. A taxpayer initiates an appeal by filing a notice for review with the assessing official who issued the assessment notice (the county assessor for most jurisdictions, though a few township assessors remain). The notice for review must include the following information:

- 1. The name of the taxpayer.
- 2. The address and parcel or key number of the property.
- 3. The address and telephone number of the taxpayer.

*See Exhibit 1 (Sample Notice for Review).*

B. The Notice for Review. A few things to note:

- 1. No official form is required. You may use the form Form 130 (standard or short form). To accommodate assessing officials, consider including a Form 130 with your notice for review. The taxpayer does not have to provide additional information requested on the Form 130 (e.g. sales information, data regarding comparable properties). *See Exhibit 2*

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<sup>3</sup> This outline uses the term "PTABOA" to refer to the county board. *See* Ind. Code § 6-1.1-15-0.5 (noting that in Ind. Code § 6-1.1-15, "county board" means the "property tax assessment board of appeals").

(*standard petition*). Some jurisdictions (e.g. Marion County) have their own forms. Taxpayers are not required to use these. All that is needed to initiate the appeal is a written communication with the information listed in Section II(A) above.

2. Effective July 1, 2008, assessing duties in most jurisdictions were transferred to the county assessors. In those jurisdictions, notices of assessment will be issued by county assessors and notices for review must be filed with the county assessors.
3. In jurisdictions with township assessors, the taxpayer must file the notice for review with the township assessor. Consider filing a copy of the notice for review with the county assessor.
4. Request a meeting with the assessor.
5. File a separate notice for review for each parcel.
6. Identify the correct assessment date at issue in the notice for review.
7. Attach the executed and notarized power of attorney.
8. Filing the Notice for Review.
  - a. Preferably, file the notice for review *by hand* with the township and county assessors. *Always obtain a file-stamped copy of the notice for your records.*
  - b. If you must file by mail, submit the notice for review by certified mail, return receipt requested. Include a self-addressed stamped envelope and send a cover letter requesting that the assessor return a file-stamped copy to you. *See* Ind. Code § 6-1.1-36-1.5 (providing rules regarding the filing of documents under Ind. Code §§ 6-1.1 and 6-1.5, including by United States mail and by express carrier).

- C. Indiana Board of Tax Review ("IBTR") resolution facilitation. Effective July 1, 2010, the Indiana General Assembly has added Ind. Code § 6-1.5-3-4, which permits employees of the IBTR to assist local assessing officials and taxpayers to facilitate resolution of disputes.
1. Request by County Assessor for Facilitation. Upon request by a county assessor, an employee of the IBTR may assist taxpayers and local officials in their attempts to voluntarily resolve disputes in which:
    - a. A taxpayer has filed a notice for review; and
    - b. The PTABOA has not given written notice of its decision on the issues under review. *See* Ind. Code § 6-1.5-3-4(b).
  2. No Involvement by IBTR employee on Appeal to the IBTR. If an IBTR employee attempts to facilitate resolution of a dispute, the employee may not act as an administrative law judge or participate in a decision relating to a petition to the IBTR to review the PTABOA's action regarding the dispute. *See* Ind. Code § 6-1.5-3-4(c).
  3. Confidentiality. A facilitation conference attended by an IBTR employee is not required to be open to the public. Such a conference may be open to the public only if both the taxpayer and the township or county official from whose action the taxpayer sought review agree to open the conference to the public. *See* Ind. Code § 6-1.5-3-4(d).
  4. Not an IBTR proceeding. A facilitation conference attended by an IBTR employee is not a proceeding of the IBTR, and the IBTR is not required to keep a record of the conference. *See* Ind. Code § 6-1.5-3-4(e).
  5. Regulation. The IBTR has promulgated 52 IAC 2-11-1.5, governing the Voluntary Resolution process. The rule provides in part:
    - a. The program requires an agreement to participate by both the county and the taxpayer. 52 IAC 2-11-1.5(b).
    - b. The parties may request a facilitation session after the PTABOA's hearing, but the facilitation must be conducted before the PTABOA issues a decision. 52 IAC 2-11-1.5(d).
    - c. Proceedings shall be considered settlement negotiations as governed by Ind. Evidence Rule 408. 52 IAC 2-11-1.5(f).
    - d. The rule shall not be construed as requiring participation in a voluntary resolution program in order to settle a property tax matter. 52 IAC 2-11-1.5(j).

- D. Meeting with the Assessor. The preliminary informal meeting with the assessor provides an opportunity to work out disputed assessment issues. Ind. Code § 6-1.1-15-1(g) provides that a notice for review "initiates a review" and "constitutes a request by the taxpayer for a preliminary informal meeting with the [assessing] official."
1. Pursuant to Ind. Code § 6-1.1-15-1(h), the assessing official is required to immediately forward the notice for review to the PTABOA and to attempt to hold a preliminary informal meeting with the taxpayer to resolve as many issues as possible by:
    - a. Discussing the specifics of the taxpayer's assessment or deduction;
    - b. Reviewing the taxpayer's property record card;
    - c. Explaining to the taxpayer how the assessment or deduction was determined;
    - d. Providing to the taxpayer information about the statutes, rules, and guidelines that govern the determination of the assessment or deduction;
    - e. Noting and considering objections of the taxpayer;
    - f. Considering all errors alleged by the taxpayer; and
    - g. Otherwise educating the taxpayer about:
      - i. The taxpayer's assessment or deduction;
      - ii. The assessment or deduction process; and
      - iii. The assessment or deduction appeal process.
  2. The assessor may not require the taxpayer to provide documentary evidence at the informal preliminary meeting. *See* Ind. Code § 6-1.1-15-1(m).
  3. Not later than ten days after the informal preliminary meeting, the assessing official shall forward to the county auditor and the PTABOA the results of the conference on a Form 134, which must be completed and signed by the taxpayer and the official. The Form 134 indicates:
    - a. If the taxpayer and the official agree on the resolution of all assessment or deduction issues in the review, a statement of:
      - i. Those issues; and

- ii. The assessed value of the tangible property or the amount of the deduction that results from the resolution of those issues in the manner agreed to by the taxpayer and the official. *See* Ind. Code § 6-1.1-15-1(i)(1).
- b. If the taxpayer and the official do not agree on the resolution of all assessment or deduction issues in the review:
  - i. A statement of those issues; and
  - ii. The identification of:
    - (A) The issues on which the taxpayer and the official agree; and
    - (B) The issues on which the taxpayer and the official disagree. *See* Ind. Code § 6-1.1-15-1(i)(2).
- c. Note that the statute does not require the parties to explain on the Form 134 *why* they may disagree on an issue. They need only identify *what* the issues are.

E. The PTABOA hearing.

- 1. If the PTABOA receives a Form 134 before its scheduled hearing stating that all assessment or deduction issues have been resolved:
  - a. The PTABOA shall cancel the hearing;
  - b. Notice of the agreed to value shall be given to the taxpayer, PTABOA, county assessor and county auditor; and
  - c. If the matter at issue is the assessment of tangible property, the PTABOA may reserve the right to change the assessment under Ind. Code § 6-1.1-13. *See* Ind. Code § 6-1.1-15-1(j).<sup>4</sup>
- 2. If the taxpayer and the official do not resolve all outstanding issues or the PTABOA does not receive the Form 134 explaining the results of the preliminary informal meeting within 120 days after the notice for review is filed, the PTABOA shall conduct a hearing within 180 days of the filing of the notice for review. *See* Ind. Code § 6-1.1-15-1(k).

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<sup>4</sup> Once the taxpayer and assessor execute the Form 134 and forward it to the PTABOA, the appeal is concluded. The PTABOA cannot then alter the assessment as part of the *taxpayer's* assessment appeal. *See Summers v. Porter County Assessor*, Pet. No. 64-003-07-1-5-00005 (Ind. Bd. Tax Rw., March 11, 2011) (March 1, 2007 assessment date) [Small Claims Docket Case] (where there was no evidence that PTABOA acted in its capacity as an “assessor,” concluding that Form 134 executed by the assessor and taxpayer ended the appeal at the local level). A PTABOA may issue a Form 115 notice of its final determination accepting the agreement, but that is unnecessary and cannot modify the parties agreement.

3. Parties to appeal. The taxpayer and the county or township assessor who made the disputed assessment (and with whom the notice for review was filed) are the parties to the proceeding before the PTABOA. *See* Ind. Code § 6-1.1-15-1(k).
4. Burden of Proof.
  - a. Where the assessment under appeal represents an increase of the property's assessed value by more than five percent (5%) over the value determined by the assessor for the immediately preceding assessment date, the assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal to the PTABOA, the Indiana Board of Tax Review or to the Indiana Tax Court. *See* Ind. Code § 6-1.1-15-17.<sup>5</sup>
  - b. If the assessor changes the underlying parcel characteristics, including age, grade, or condition, of a property from the previous year's assessment date, the assessor is required to document each change and the reason that each change was made. Ind. Code § 6-1.1-4-4.4. In any appeal of the assessment, the assessor has the burden of proving that each change was valid. *See id.*
  - c. *Starting with the March 1, 2014 assessment date*, where the PTABOA has reduced a property's gross assessed value in an appeal conducted under Ind. Code § 6-1.1-15 and the assessor increases the property's value for the next year, the assessor has the burden of proving that the next year's assessment is correct. However, the burden does not shift where the property was valued using the income capitalization approach in the appeal. *See* Ind. Code § 6-1.1-4-4.3 (effective July 1, 2013).
5. Notice of the PTABOA hearing.
  - a. The PTABOA shall, by mail, give notice of the date, time and place fixed for the hearing to the taxpayer and the county or township official with whom the taxpayer filed the notice for review. *See* Ind. Code § 6-1.1-15-1(k).
  - b. The PTABOA shall give at least thirty days notice. *See id.*

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<sup>5</sup> The IBTR has issued several rulings on the application of the 5% burden-shifting rule. Please refer to my blog [www.taxhatchet.com](http://www.taxhatchet.com) for additional information.

6. Pre-hearing disclosures.
  - a. The PTABOA *may not* require a taxpayer to file documentary evidence or summaries of statements of testimonial evidence before the hearing. *See* Ind. Code § 6-1.1-15-1(m).
  - b. Taxpayers are not required to have an appraisal of the property in order to initiate or prosecute an appeal. *See* Ind. Code § 6-1.1-15-1(m). *See also* Ind. Code § 6-1.1-37-11 ("An appraisal may not be required by the [PTABOA] or the assessor in a proceeding before the [PTABOA] or in a preliminary informal meeting under IC 6-1.1-15-1(h)(2).")
7. Continuance. A taxpayer may request a continuance of the hearing by filing, at least twenty days before the hearing date, a request for continuance with the PTABOA and the county or township assessor. *See* Ind. Code § 6-1.1-15-1(k).
  - a. The request must be supported with evidence showing a just cause for the continuance.
  - b. The PTABOA shall, not later than ten days after the date the request for a continuance is filed, either:
    - i. Find that the taxpayer has demonstrated a just cause for a continuance and grant the taxpayer the continuance; or
    - ii. Deny the continuance.
8. PTABOA action without Taxpayer's presence. At least eight days before the hearing, a taxpayer may file a request with the PTABOA and county or township assessor that the PTABOA:
  - a. Take action without the taxpayer being present; and
  - b. Make a decision based on the evidence already submitted by filing. *See* Ind. Code § 6-1.1-15-1(k).
9. Withdrawal of appeal. At least eight days before the hearing date, a taxpayer may withdraw a petition by filing a notice of withdrawal with the PTABOA and the county or township assessor. *See* Ind. Code § 6-1.1-15-1(k).
10. Penalty for failing to appear at hearing. A \$50 penalty shall be assessed against the taxpayer for failing to appear at the PTABOA hearing and:
  - a. Taxpayer's request for continuance is denied; or



- b. Taxpayer's request for continuance, request for PTABOA to take action without the taxpayer being present, or a withdrawal is not timely filed.

A taxpayer may appeal the assessment of the penalty to the IBTR or directly to the Tax Court. *See* Ind. Code § 6-1.1-15-1(l).

11. Presentation at the hearing. During the PTABOA hearing:

- a. The taxpayer may present the taxpayer's reasons for disagreement with the assessment; and

- b. The county or township official with whom the taxpayer filed the notice for review must present:

- i. The basis for the assessment decision; and
- ii. The reasons that the taxpayer's contentions should be denied. *See* Ind. Code § 6-1.1-15-1(l).

- c. Use of assessment records as evidence of comparable properties.

A party may introduce evidence of assessment records in an appeal. *See* Ind. Code § 6-1.1-15-18(c).

- i. In an appeal of residential property, the party may introduce evidence of the assessments of comparable properties located in the same taxing district or within two (2) miles of a boundary of the taxing district, *see* Ind. Code § 6-1.1-15-18(c)(1); and
- ii. In an appeal of non-residential property, a party may introduce evidence of the assessments of any relevant, comparable property. But a preference "shall be given to comparable properties that are located in the same taxing district or within two (2) miles of a boundary of the taxing district." Ind. Code § 6-1.1-15-18(c)(2).
- iii. "The determination of whether properties are comparable shall be made using generally accepted appraisal and assessment practices." Ind. Code § 6-1.1-15-18(c).<sup>6</sup>

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<sup>6</sup> The IBTR has issued several rulings on the application of Ind. Code § 6-1.1-15-18(c). Please refer to my blog [www.taxhatchet.com](http://www.taxhatchet.com) for additional information.

- F. Notice of determination. The PTABOA shall issue a written determination. The PTABOA will issue its decision using a Form 115.
1. The PTABOA shall prepare a written decision resolving all of the issues under review. *See* Ind. Code § 6-1.1-15-1(n).
  2. Notice of the PTABOA's decision must be issued no later than 120 days after the hearing to the taxpayer, the assessing official responsible for the disputed assessment, the county assessor and the county auditor. *See* Ind. Code § 6-1.1-15-1(n).
  3. The PTABOA is required to notify the taxpayer in writing of:
    - a. The taxpayer's opportunity for review to the IBTR; and
    - b. The procedures that the taxpayer must follow in order to obtain review by the IBTR. *See* Ind. Code § 6-1.1-15-3(b).
- G. Change in assessment.
1. From a *timely* filed appeal, a change in assessment carries over from year to year until the next assessment date for which the assessment is changed. *See* Ind. Code § 6-1.1-15-1(e).
  2. An assessment change will be effective for the *next* assessment date when the taxpayer's appeal pursuant to Ind. Code § 6-1.1-15-1(d) (i.e. the May 10<sup>th</sup> appeal and the appeal from the tax bill) is *untimely* filed. *See* Ind. Code § 6-1.1-15-1(e).
- H. Refusal to hold hearing. If the maximum time elapses for the PTABOA to hold a hearing or to issue notice of the PTABOA's determination, the taxpayer may initiate a proceeding for review before the Indiana Board of Tax Review under Ind. Code § 6-1.1-15-3 "at any time after the maximum time elapses." Ind. Code § 6-1.1-15-1(o). *See Weber v. St. Joseph County Assessor*, Pet. No. 71-001-06-1-5-02183, ¶ 2 n.1 (Ind. Bd. Tax Rw., Jan. 28, 2010) (explaining that once taxpayer filed his Form 131 appeal to the IBTR, the PTABOA lost jurisdiction to unilaterally change assessment for tax year under appeal), *Smith v. Allen County Assessor*, Pet. No. 02-075-11-1-5-00027, ¶ 9 n.3 (Ind. Bd. Tax Rw., Aug. 30, 2012) ("Assessor lacks the authority to unilaterally change a determination of the PTABOA.").

III. THE STATE ADMINISTRATIVE APPEAL – REVIEW BY THE INDIANA BOARD OF TAX REVIEW.

A. Party initiating the Appeal.

1. Appeal by Taxpayer. A taxpayer may appeal the PTABOA's assessment of the taxpayer's property if the PTABOA's action requires the giving of notice to the taxpayer. *See* Ind. Code § 6-1.1-15-3(a).
2. Appeal by County Assessor. A county assessor "who dissents from the determination of an assessment . . . by the county board may obtain a review of the assessment" by the IBTR. Ind. Code § 6-1.1-15-3(c).
3. The taxpayer and the county assessor will be the parties to an appeal. The county assessor is the party to the IBTR appeal to defend the PTABOA's determination. *See* Ind. Code § 6-1.1-15-3(b).

B. Time and place for filing an appeal to the IBTR. The Indiana Board of Tax Review has promulgated rules governing the filing and prosecution of appeals. *See* 52 IAC 1, 2 and 3.

1. A petition for review to the IBTR is filed using a Form 131 Petition.<sup>7</sup> The party's petition for review must be filed:
  - a. With the IBTR, *see* Ind. Code § 6-1.1-15-3(d)(1);
  - b. Not later than forty-five days "after the date of the notice given to the party or parties of the determination of the county board," *see* Ind. Code § 6-1.1-15-3(d). *See also* 52 IAC 2-4-2(e) ("There is a rebuttable presumption that the notice of determination is mailed on the date of the notice.").
  - c. The party must "mail a copy of the petition to the other party," *see* Ind. Code § 6-1.1-15-3(d)(2).
2. Failure to timely file a petition for review with the IBTR will result in a dismissal of the appeal.<sup>8</sup> *See 115 Land Trust v. St. Joseph County Assessor*

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<sup>7</sup> Appeals from final determinations of the Department of Local Government Finance are made using the Form 139 petition. The petition is filed at the IBTR's central office in Indianapolis. One copy of the petition is filed with the county assessor, one copy with the township assessor, and one copy with the DLGF. The DLGF will be a party to these appeals.

<sup>8</sup> 52 IAC 2-3-1 provides in part:

- (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.

¶¶ 18, 35 (Ind. Bd. Tax. Rw., March 15, 2011) (The IBTR dismissed 20 Form 131 petitions filed at least three days passed the statutory deadline, noting "If a taxpayer chooses to exercise his appeal rights, he must follow those procedures by filing an appropriate petition in a timely manner.").

- C. Filing Fee. There is no fee for filing a petition to the IBTR.
- D. The Form 131 Petition. **Note: This form was changed in August, 2012.**
  - 1. Review the form carefully. The form's cover page (page 1) states:
    - a. The petition must be filed with the IBTR at its central office, 100 North Senate Avenue, Room N-1026, Indianapolis, Indiana 46204.
    - b. The form states in bold lettering: "**A copy of this petition must be served on the county assessor of the county where the property is located. If this petition is filed by the county assessor, a copy must be served on the taxpayer.**"
    - c. Petitioners must file a separate petition for each appeal year.
    - d. Petitioners wishing to appeal more than one parcel must file a separate petition form for each parcel, unless the IBTR determines otherwise, and should attach a list of related parcels under appeal.<sup>9</sup>
    - e. Petitioners should attach:
      - i. A copy of the notice for review;
      - ii. A copy of the PTABOA's determination (Form 115); and
      - iii. A notarized power of attorney (this is not required if the taxpayer's representative is an attorney licensed to practice law in Indiana or is a duly authorized employee or corporate officer of the taxpayer; nevertheless, consider attaching the power of attorney). *See* 52 IAC 2-3-2.

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(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.

The filing of appeal petitions and petitions for rehearing must be made by: (a) personal delivery; (b) deposit in U.S. mail; (c) private courier; or (d) registered or certified mail, return receipt requested. *See* 52 IAC 2-4-1(a)(1)-(4). Appeal petitions and petitions for rehearing may not be filed by facsimile or electronic mail. *See* 52 IAC 2-4-1(b). *See also King v. Lake County Assessor*, Pet. No. 007-16-27-0454-0003, ¶ 2 n.1 (Ind. Bd. Tax Rw., Jan. 7, 2010) (where Form 115 notice was dated May 7 but envelope from assessor was dated June 4, concluding that taxpayers received notice of PTABOA's final determination on June 4).

<sup>9</sup> The IBTR, on its own motion or upon motion of a party, may consolidate two or more petitions if: (a) the subject properties are located in the same township and are of the same classification; and (b) the common factual and legal issues in dispute predominate over the individual issues. *See* 52 IAC 2-6-7.

- f. Regarding the new 5% burden-shifting rule, the amended petition provides on the first page:

***BURDEN:** If the assessed value that is the subject of this appeal increased by more than 5% over the assessed value determined by the assessor (county or township) for the immediately preceding assessment date for the same property, then the assessor has the burden of proving that the assessment is correct in any appeal before the Indiana Board of Tax Review. See Ind. Code § 6-1.1-15-17.2. Do you believe the assessed value increased by more than 5% over the assessed value determined by the assessor for the immediately preceding year?*

- g. In bold lettering, the IBTR notes: "**As a result of filing this petition, the assessment may increase, may decrease, or may remain the same.**"

- h. Check the type of property under appeal (real or personal).

- i. Identify whether the subject property is currently under appeal for another tax year (if yes, indicate the years and types of appeals for the subject property).

2. On Section II, page 2, check whether the taxpayer accepts or opts out of the small claims procedures.

- a. The small claims procedures will apply if elected by the taxpayer and the subject property is assessed at less than one million dollars (\$1,000,000).

- b. The small claims rules are found at 52 IAC 3.

3. On Section III, page 2, the form requests the party to identify the current and proposed values for the subject property.

- a. If you are not sure what value you will request (e.g. you need to have an appraisal made), do not include a value and note that you do not have sufficient data yet to determine the requested value.

- b. Note on the petition that the value listed is not necessarily the final value claimed by the taxpayer.

4. Also in Section III, page 2, state the general grounds for your appeal. If more space is required, attach a separate page. The form specifically states in bold lettering, "**You are not required to submit any evidence with your petition. However, specific evidence, fully supporting the assessment that you believe to be correct, must be presented at the hearing.**"
  5. On Section IV, page 3, sign the petition. The person signing on behalf of the taxpayer states that the statements in sections I and III of the Form 131 Petition are "accurate to the best of my knowledge and belief."
  6. On Section V, page 3, affirm that a service copy has been provided (also consider attaching a separate certificate of service).
  7. Page 3 includes a check list to assist in filling out the petition.
  8. *See also:* <http://www.in.gov/ibtr/2410.htm> (last visited June 19, 2013) (IBTR web site, "Taxpayer's Guide to Filing a Petition to the IBTR").
- E. Compliant Appeal Petitions. The IBTR's rules provide, "Appeal petitions must be submitted on the form prescribed by the board and in conformance with the instructions provided on the petition." 52 IAC 2-5-1(a).
1. If the appeal petition is not properly completed, the IBTR will issue a notice of defect, specifying the nature of the defect and will return the appeal petition to the petitioner. The petitioner must correct or cure the appeal petition within thirty days from the date the notice of defect is served. *See* 52 IAC 2-5-1(d).
  2. Failure to bring the appeal petition into substantial compliance with the instructions in the defect notice may result in denial of the petition without hearing. *See* 52 IAC 2-5-1(e).

F. Notice of Appearance. File a notice of appearance at the time the Form 131 Petition is filed. 52 IAC 2-3-2 (providing that attorneys must file a notice of appearance "stating the party has authorized the [attorney] to appear on the party's behalf.").

1. Failure to file a notice of appearance could result in the IBTR's denial of the taxpayer's evidence and arguments at the administrative hearing. *See Watson v. Van Buren Twp. (Brown County)*, Pet. Nos. 07-003-02-1-5-00098 *et al.*, ¶ 6 n.3 (Ind. Bd. Tax Rev. Aug. 9, 2007) (where petitioners failed to appear at hearing or submit a notarized power of attorney authorizing "property manager" to represent them, concluding that that any arguments presented by "property manager" were "in essence, nullities" and noting that petitioners' failure to appear at the hearing subjected their appeals to dismissal).
2. Tax representatives, local government representatives and certified public accountants must file a power of attorney with the IBTR. *See* 52 IAC 2-3-2(a).
3. Counsel do not need powers of attorney but must "file a notice of appearance with the board, stating that the party has authorized the attorney to appear on the party's behalf." *See* 52 IAC 2-3-2(c).

G. De novo proceeding. The hearing before the IBTR is a *de novo* proceeding. *See Interactive Academy, Inc. v. Boone County Assessor*, Pet. Nos. 06-019-08-2-8-00001 to -4, ¶ 4 n.1 (Ind. Bd. Tax Rvw., Oct. 5, 2009) ("Once a taxpayer has properly invoked the Board's jurisdiction, . . . its proceedings are *de novo*." ) (citing Ind. Code § 6-1.1-15-4(m)).

H. Issues raised.

1. Limitation of issues. The IBTR may not limit the scope of the issues raised to those presented to the PTABOA unless all parties agree to the limitation of the issues. *See* 52 IAC 2-5-3. *See also* Ind. Code § 6-1.1-15-4(k), *Childcraft Indus. v. Jackson Twp. Assessor*, Pet. Nos. 31-011-05-1-4-00001-4, ¶ 25 (Ind. Bd. Tax Rvw., Oct. 17, 2006) ("The Petitioner is not limited to evidence or issues raised before the PTABOA.").
2. Amendment of appeal issues.
  - a. The petition may be amended once as a matter of course within thirty days of the filing of the original appeal petition. *See* 52 IAC 2-5-2(b).
  - b. "A motion to amend a petition may be filed later than thirty (30) days following the date a petition is filed and such motion may be approved by the board upon good cause shown." *See* 52 IAC 2-5-2(c).

- c. The IBTR will not approve an amendment filed within fifteen business days before the hearing without the consent of the other parties to the hearing. *See* 52 IAC 2-5-2(d).
  
- I. Site Inspection. The IBTR may conduct a site inspection (but rarely does). The IBTR is required to give the parties notice of the date and time for the site inspection. *See* Ind. Code § 6-1.1-15-4(b).
  
- J. Trial Rules. "The Indiana Rules of Trial Procedure may be applied to the extent that the trial rules do not conflict with the statutes governing property tax appeals or [52 IAC]." *See* 52 IAC 2-1-2.1.
  
- K. Discovery. The IBTR's rules permit the use of discovery. *See* 52 IAC 2-8-3(a)(2) (providing that parties may "use the applicable discovery methods contained in the Indiana Rules of Trial Procedure.")
  - 1. The parties are required to make "all reasonable efforts" to resolve discovery disputes before seeking a discovery order from the IBTR. *See* 52 IAC 2-8-3(b).
  - 2. A party may not be precluded from supplementing the evidence and witness summaries required by 52 IAC 2-7-1(b)(1) or adding to the witness and exhibit lists required by 52 IAC 2-7-1(b)(2) because such items were not identified in discovery. *See* 52 IAC 2-8-3(e).
  - 3. The IBTR's rules provide that no party shall serve on any other party more than twenty-five interrogatories or more than twenty-five requests for admission, including subparagraphs and subparts, without leave of the IBTR. *See* 52 IAC 2-8-3(f).
  - 4. Upon motion of a party and for good cause shown, the IBTR may issue a protective order restricting discovery of a trade secret or other confidential information. *See* 52 IAC 2-8-3(g).
  
- L. Pre-hearing Disclosures. The IBTR's rule 52 IAC 2-7-1(b) (as authorized by Ind. Code § 6-1.1-15-4) requires that a party to an appeal must provide to the other parties:
  - 1. Copies of documentary evidence at least five *business days* before the hearing; and
  - 2. A list of witnesses and exhibits to be introduced at the hearing at least fifteen *business days* before the hearing.
  - 3. If a new issue has been added by another party under 52 IAC 2-5-2(c), a party may supplement its list of witnesses and exhibits ten *business days* before the hearing in order to address the new issue. *See* 52 IAC 2-7-1(b)(2).



4. To determine compliance with these filing deadlines, the IBTR under 52 IAC 2-7-1(c) requires parties to:
    - a. Provide personal or hand delivery of the submissions;
    - b. Deposit the materials in the United States mail or with a private carrier *three days prior to the deadline* in accordance with the provisions of 52 IAC 2-3-1;
    - c. If a party uses a private carrier that guarantees next day delivery, the materials must be sent *one day before* the specified deadline.
    - d. 52 IAC 2-7-1(f) provides that failure to comply with the filing deadlines "may serve as grounds to exclude the evidence or testimony at issue." *See Meijer Stores LTD v. Wayne Twp. Assessor (Wayne County)*, Pet. No. 89-030-02-1-4-00417 , ¶ 18(A) *et seq.* (Ind. Bd. Tax Rw., Aug. 16, 2006) (excluding exhibits that were deposited in the U.S. mail one day after filing deadline). *But see Tate v. Delaware County Assessor*, Pet. No. 18-017-08-1-5-00002 (Ind. Bd. Tax Rw., Feb. 10, 2012) (allowing documents that had not been timely exchanged into evidence that had been submitted at PTABOA or that were public records, where no prejudice to assessor shown), *Local Union No. 871 UAW Building Corp. v. LaGrange County Assessor*, Pet. Nos. 44-002-10-2-8-00001 and -00002 (Ind. Bd. Tax Rw., April 12, 2013) (noting that IBTR *could have* excluded exhibits due to Union's failure to timely exchange but allowing them where Union attempted to comply with exchange requirement and assessor had seven total days to review documents before hearing).
  5. Copies of all pre-hearing disclosure materials provided to other parties will become part of the administrative record only if admitted into evidence by the IBTR or administrative law judge ("ALJ"). *See* 52 IAC 2-7-1(e).
- M. Notice of Hearing. The IBTR shall give notice of the date fixed for the hearing, by mail, to the taxpayer and to the county assessor. The notice shall be given at least thirty days before the date fixed for the hearing, unless the parties agree to a shorter period. *See* Ind. Code § 6-1.1-15-4(b).
- N. Subpoenas. A party may request that the IBTR issue a subpoena or subpoena duces tecum by filing a request with the IBTR at least ten business days before the date on which the hearing commences or the deposition is scheduled. *See* 52 IAC 2-8-4(a). But a "party may not request that the board issue a subpoena duces tecum to be served upon 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 or subpoena on all other parties." 52 IAC 2-8-4(c).

- O. Summary Judgment. A party may, before the hearing, move for summary judgment or partial summary judgment pursuant to the Indiana Rules of Trial Procedure. *See* 52 IAC 2-6-8.
- P. Motions. A party may file motions with the IBTR or the designated ALJ. *See* 52 IAC 2-8-5.
1. Except for motions made during a hearing, all motions must be in writing, state the basis for the motion, set forth the relief or order sought, be properly captioned, be signed by the party or authorized representative, and include verification or proof of service to all parties. *See* 52 IAC 2-8-5(a)(1)-(6).
  2. Failure to serve all parties may result in a denial of the motion. *See* 52 IAC 2-8-5(b).
  3. Any response to a motion must be filed within thirty days after the date of service unless otherwise specified by the IBTR or ALJ. *See* 52 IAC 2-8-5(c).
- Q. Pre-hearing Conference: The IBTR may order a pre-hearing conference. *See* 52 IAC 2-8-2.
1. A pre-hearing conference order may include a requirement for the parties to confer and submit an appeal management plan. *See* 52 IAC 2-8-2(a).
  2. The IBTR may, through the pre-hearing conference or appeal management plan, *see* 52 IAC 2-8-2(b), require the parties to submit:
    - a. A list of two or more desired dates for the hearing;
    - b. A preliminary statement of all contentions and defenses;
    - c. A discovery and motion schedule;
    - d. A preliminary witness and exhibit list;
    - e. Possible stipulations;
    - f. Amendments to the appeal petition;
    - g. An outline or summary of the matter under appeal; or
    - h. Any other information that the board deems beneficial to the orderly review of an appeal petition.

R. The Hearing.

1. All hearings will be conducted by an ALJ, any member of the IBTR acting as an ALJ, or the IBTR sitting in its entirety. *See* 52 IAC 2-6-5(a).
2. Hearings before an ALJ shall be conducted in the IBTR's central office, the county in which the property subject to appeal is located, or in an adjacent county, unless the parties and designated ALJ agree to a different location. *See* 52 IAC 2-6-2(a).
3. All hearings conducted by a member of the IBTR or by the IBTR sitting in its entirety will be held in the IBTR's central office, unless otherwise agreed to by the IBTR. *See* 52 IAC 2-6-2(b).
4. All testimony at the hearing shall be under oath or affirmation. *See* 52 IAC 2-6-5(b).
5. Hearings will be recorded by the ALJ. *See* 52 IAC 2-6-5(c). The recording will serve as the basis of the official record of the proceeding unless the hearing is transcribed by a court reporter. *Id.* A party may hire a court reporter to transcribe the hearing but must provide an official copy of the transcript to the IBTR at no cost to the IBTR. *Id.*

S. Timing of the Hearing.

1. With respect to an appeal of a real property assessment that takes effect on the assessment date on which a general assessment of real property takes effect, the IBTR shall conduct a hearing not later than one year after a petition in proper form is filed with the IBTR (excluding any time due to a delay reasonably caused by the appealing party). *See* Ind. Code § 6-1.1-15-4(f).
2. For all other appeals, the IBTR shall conduct a hearing not later than nine months after a petition in proper form is filed with the IBTR (excluding any time due to a delay reasonably caused by the appealing party). *See* Ind. Code § 6-1.1-15-4(e).
3. Motions (including motions for summary judgment or partial summary judgment) may be considered a delay reasonably caused by the party filing the motion and extend the time during which the hearing must be held. *See* 52 IAC 2-6-8 and 2-8-5.

T. Continuance. Continuances under 52 IAC 2-8-1(a) may be granted only if:

1. The request is made before the hearing or other deadline;
2. Good cause is shown; and

3. The request is served on all parties.
4. "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." 52 IAC 2-8-1(b). A continuance granted before a hearing automatically extends the time in which the hearing must be held. 52 IAC 2-8-1(c).

U. Failure to Appear. The Board will likely deny an appeal petition where an appealing party or the party's representative fails to appear at the administrative hearing. See 52 IAC 2-10-1(a) (providing that failure to appear at a hearing, after proper notice has been given, may constitute the basis for a default or dismissal of the appeal petition). See also 52 IAC 2-10-1(b) (providing that, within ten 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), *Westerman, Trustee of Revocable Trust v. Steuben County Assessor*, Pet. No. 76-002-06-1-5-00035 & -36, ¶ 1 (Ind. Bd. Tax Rw., Aug. 28, 2009) (where trustee did not appear and person not authorized to practice before the Board appeared instead, the Board excluded all evidence offered on behalf of the trustee).

V. Evidence.

1. Taxpayers are not required to have an appraisal of the property in order to initiate or prosecute an appeal. See Ind. Code § 6-1.1-15-3(f). *But see Kooshtard Prop. VI, L.L.C. v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005) (stating belief of Tax Court that "the most effective method to rebut the presumption that an assessment is correct is through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP)").
2. A party may introduce evidence that is otherwise proper and admissible without regard to whether that evidence has previously been introduced at a hearing before the PTABOA. See 52 IAC 2-7-1(a). See also Ind. Code § 6-1.1-15-4(k).
3. 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 IBTR proceeding unless submitted to the IBTR. See 52 IAC 2-7-1(g). Evidentiary materials proffered but not admitted into evidence will be so identified in the record. See *id.*
4. See <http://www.in.gov/ibtr/2406.htm> (last visited June 19, 2013) (IBTR web site, "Identification of Exhibits": "The parties are directed to have all exhibits labeled for identification prior to the hearing so that the proceedings will not be delayed or interrupted.")

5. The IBTR shall consider only the evidence, exhibits, and briefs submitted to it, other documents made part of the record, and matters of which the IBTR expressly takes official notice under 52 IAC 2-7-4. *See* 52 IAC 2-7-1(i).
6. Admissibility of Evidence.
  - a. The ALJ shall regulate the course of the proceedings in conformity with any pre-hearing order and without recourse to the rules of evidence. *See* 52 IAC 2-7-2(a).
  - b. A party may object to the admissibility of evidence during the hearing. *See* 52 IAC 2-7-2(b). The ALJ may defer a ruling on the admissibility of the evidence for the IBTR's decision. *See id.* If the ALJ defers a ruling, all proffered evidence will be entered for the record and its admissibility will be considered by the IBTR and addressed in the findings. *See id.*
  - c. The IBTR will determine the relevance and weight to be assigned to the evidence. *See* 52 IAC 2-7-2(c).
  - d. Evidence may be admitted over the objection of a party. *See* 52 IAC 2-7-2(c). If the evidence is *immaterial, irrelevant, or should be excluded or disregarded on other grounds*, it will not be assigned any weight in the IBTR's final determination. *See id.*
7. Hearsay Evidence.
  - a. Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. *See* 52 IAC 2-7-3.
  - b. If not objected to, the hearsay evidence may form the basis for a determination. *See id.*
  - c. 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. *See id.* *See also* *Leffler v. Brown Twp. Assessor (Hendricks County)*, Pet. No. 32-001-04-1-5-00009, ¶ 24 (Ind. Bd. Tax Rw., Sept. 1, 2006) (assigning no weight to taxpayer's e-mail response regarding construction cost, because the response was "rank hearsay," "completely lacks any indicia of reliability," and was not corroborated by any independent evidence in the record), *Thiry v. Dearborn County Assessor*, Pet. No. 15-020-10-1-5-0001, ¶ 16, 20(c) (Ind. Bd. Tax Rw., May 17, 2012) (concluding that an appraisal was hearsay and standing alone could not support a reduction of property's value).

8. Official Notice. Pursuant to 52 IAC 2-7-5(a)(1)-(4), the IBTR may take official notice of:
  - a. Any fact that could be judicially noticed in the courts.
  - b. The record of other proceedings before the IBTR.
  - c. Codes or standards that have been adopted by an agency of the United States or the State of Indiana.
  - d. Publications, treatises, or other documents commonly considered to be reliable authorities on subjects addressed at the hearing.

However, parties must be notified that an order is based in whole or in part on material noticed by the IBTR, of the specific facts or material noticed, and afforded an opportunity to contest and rebut the facts or material noticed. *See* 52 IAC 2-7-5(b).

9. Confidential Information. A party must, at the time it is submitted, clearly identify all confidential information provided to the IBTR. *See* 52 IAC 2-7-5(a).
  - a. The party must specify the statutory basis under which the information is claimed to be confidential. *See id.*
  - b. A redacted version (that will be available to the public) of a document containing both confidential and non-confidential evidence shall be provided to the IBTR by the party requesting confidential treatment. *See* 52 IAC 2-7-5(d). The redacted version of the document will be available to the public. *See id.*

W. Briefs. Parties may file, or the IBTR may request, briefs in support of a party's position on any issue relevant to the appeal. *See* 52 IAC 2-8-6.

1. Briefs shall be filed within the time limits set by the ALJ or IBTR. If a brief is not timely filed, the IBTR may exclude it from consideration. *See* 52 IAC 2-8-6(b).
2. A party must file the brief at the IBTR's central office. A copy of the brief shall be served on each party. *See* 52 IAC 2-8-6(c).
3. A brief shall not exceed thirty pages (excluding exhibits) without prior written permission of the ALJ or IBTR. *See* 52 IAC 2-8-6(d).
4. Briefs *amicus curiae* may be filed with leave of the IBTR, but must be filed in accordance with the briefing schedule established for the parties by the IBTR. *See* 52 IAC 2-8-6(f). The PTABOA that made the determination under review may file an *amicus curiae* brief. *See* Ind.

Code § 6-1.1-15-4(b). Also, the executive of a taxing unit may file an *amicus curiae* brief if the property whose assessment is under appeal is subject to assessment by that taxing unit. *See id.*

- X. Proposed Findings and Conclusions. A party may file proposed findings of fact and conclusions of law within the time period established by the ALJ or IBTR. *See* 52 IAC 2-8-7. A copy must be served on each party. *See id.*
- Y. Post-hearing Evidence. The IBTR will not accept post-hearing evidence unless it is requested by the ALJ or the IBTR. *See* 52 IAC 2-8-8.
  - 1. If the post-hearing evidence is not filed timely, the IBTR will make its final determination without considering the untimely submitted post-hearing evidence. *See* 52 IAC 2-8-8(b).
  - 2. Post-hearing evidence must be served on all parties. *See* 52 IAC 2-8-8(c). If a party fails to serve the post-hearing evidence on all parties, the ALJ or IBTR will not consider the post-hearing evidence. *See Jenner v. Hanover Twp. Assessor (Jefferson County)*, Pet. No. 39-009-02-1-5-00093, ¶ 6 n.1 (Ind. Bd. Tax Rvw., Feb. 10, 2005) (rejecting Respondent's post-hearing evidence that was not served on the Petitioner).
- Z. Default or Dismissal. Under its rule, *see* 52 IAC 2-10-2, the IBTR may issue an order of default or dismissal as the result of:
  - 1. Failure of the petitioner to state a claim on which relief can be granted;
  - 2. Failure of a party to comply with a rule or order of the IBTR or ALJ;
  - 3. Disruptive, vulgar, abusive, or obscene conduct or language by a party or authorized representative; or
  - 4. Failure of a party to provide or exchange evidence in accordance with 52 IAC 2.
- AA. Final Determination.<sup>10</sup>
  - 1. The IBTR is not required to assess the subject property. *See* Ind. Code § 6-1.1-15-4(b). However, the IBTR may "correct any errors" that may

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<sup>10</sup> A "final order" or "final determination" under 52 IAC 2-2-9 is any action of the IBTR that is:

- (1) designated as final by the IBTR;
- (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.

have been made and adjust the assessment or exemption in accordance with the correction. *See* Ind. Code § 6-1.1-15-4(a).

2. Timing.

- a. With respect to an appeal of a real property assessment that takes effect on the assessment date on which a general reassessment of real property takes effect, the IBTR shall make a determination not later than the later of one hundred 180 days after the hearing or the date set in an extension order issued by the IBTR. *See* Ind. Code § 6-1.1-15-4(h).
- b. With respect to all other appeals, the IBTR shall make a determination not later than the later of ninety days after the hearing or the date set in an extension order issued by the IBTR. *See* Ind. Code § 6-1.1-15-4(g).
- c. The IBTR may not extend the final determination date by more than one hundred 180 days. *See* Ind. Code § 6-1.1-15-4(i).
- d. If the IBTR fails to make a final determination within the time allowed following the hearing, the entity that initiated the petition may:
  - i. Take no action and wait for the IBTR to make a final determination; or
  - ii. Petition for judicial review to the Indiana Tax Court pursuant to Ind. Code § 6-1.1-15-5. *See* Ind. Code § 6-1.1-15-4(i) (review before the Tax Court would be *de novo*, *see* Ind. Code § 6-1.1-15-5(g)).

3. Notice. After the hearing, *see* Ind. Code § 6-1.1-15-4(d), the IBTR shall give notice, by mail, of its final determination, as well as (for parties entitled to appeal the final determination) notice of the procedures that must be followed to appeal to the Tax Court, to:

- i. The taxpayer;
- ii. The county assessor; and
- iii. Any entity that filed an *amicus curiae* brief.



4. Regarding the IBTR's final determination, pursuant to Ind. Code § 6-1.5-5-4(j):<sup>11</sup>
  - a. The final determination must include separately stated findings of fact for all aspects of the determination.
  - b. Findings of ultimate fact must be accompanied by a concise statement of the underlying basic facts of record to support the findings.
  - c. Findings must:
    - i. Be exclusively based on the evidence on the record in the proceeding and matters officially noticed in the proceeding;
    - ii. Based on a preponderance of the evidence. *See also* Ind. Code § 6-1.5-5-4(c).

BB. Settlements/Stipulations of Value. Under 52 IAC 2-9-4, the IBTR states:

1. "If the parties resolve a matter after an appeal has been filed with the board, the parties shall notify the board that an agreement has been reached." 52 IAC 2-9-4(a).
2. "This section is not intended to prevent a petitioner from withdrawing its appeal once an agreement is reached between the parties." 52 IAC 2-9-4(b).
3. This rule "shall not apply to the stipulation or settlement of matters remanded" from the Indiana Tax Court. 52 IAC 2-9-4(c).<sup>12</sup>

CC. Mediation and Alternative Dispute Resolution. Any appeal to the IBTR may, with the consent of the parties, be resolved by mediation or other alternative dispute resolution procedures. *See* 52 IAC 2-11-1.

DD. Arbitration. An appeal may, with the consent of the parties, be resolved by arbitration. *See* 52 IAC 2-11-2(a).

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<sup>11</sup> The IBTR's final determinations can be viewed at: <http://www.in.gov/ibtr/2332.htm> (last visited June 19, 2013). Also, the IBTR has a site called "Guide to Appeals" at: <http://www.in.gov/ibtr/2330.htm> (last visited June 19, 2013).

<sup>12</sup> Statements made in settlement discussions will likely be omitted from evidence. *See Schafer v. Porter County Assessor*, Petition Nos. 64-002-07-1-3-00001 and 64-002-07-1-4-00004 (Ind. Bd. Tax Rw., August 8, 2012) (where owner of two adjacent lots in an industrial park testified that the assessor considered lowering the value of the improvements on one lot during an informal meeting, IBTR sustained assessor's objection, holding "Statements made in settlement negotiations should not be in evidence") (citing Ind. Evidence Rule 408, which states "Evidence of conduct or statements made in compromise negotiations is . . . not admissible.").

EE. Small Claims Appeals.

1. The small claims procedures apply to real and personal property with assessed values not in excess of one million dollars. *See* 52 IAC 3-1-2(a).
  - a. Unless a party elects to transfer out, the small claims procedures will apply to these properties. *See* 52 IAC 3-1-2(a).
  - b. A party not meeting the one million limit may elect to use the small claims procedures, *see* 52 IAC 3-1-2(d), by:
    - i. Requesting the IBTR to apply the small claims procedures within thirty days of filing the party's petition; and
    - ii. Obtaining consent to the election from the other parties.
    - iii. A "party's failure to object to the election of the board's small claims procedures for property that does not meet the criteria of subsection (a) may be deemed by the board to be the party's consent to such an election." 52 IAC 3-1-2(d)(2).
2. 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 that no new issues will be raised before the IBTR. *See* 52 IAC 3-1-2(b). *See Richard G. Robinson Irrevocable Family Trust v. Carroll County Assessor*, Pet. No. 08-011-10-1-5-00007, ¶ 14(g) (Ind. Bd. Tax Rvw., August 6, 2012) (finding in a small claims case that, when raised neither at the PTABOA hearing nor in the Form 131 petition, "the issue of whether the home is incorrectly assessed as having a basement is not before the Board").
3. Small claims procedures shall be structured with the "sole objective of hearing the petition in an expeditious and just manner according to the rules of substantive law." 52 IAC 3-1-5(a)(1).
4. 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. 52 IAC 3-1-5(a)(2).
5. The relaxation of evidentiary rules is not a relaxation of the burden of proof. *See* 52 IAC 3-1-5.

6. Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. *See* 52 IAC 3-1-5(b).
  - a. If not objected to, the hearsay evidence may form the basis for a determination. *See id.*
  - b. 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. *See id.*
7. There is no pre-hearing discovery under the small claims procedures. 52 IAC 3-1-5(c).
  - a. However, if requested 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 *business days* before the day of a small claims hearing. 52 IAC 3-1-5(d). The request for documents and witness names and addresses must be made not later than ten *business days* before the hearing. *See id.*
  - b. Failure to make the pre-hearing disclosures may serve as grounds to exclude evidence or testimony that was not timely provided. *See* 52 IAC 3-1-5(f).
8. Small Claims Hearing.
  - a. 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. *See* 52 IAC 3-1-6.
  - b. A small claims proceeding shall be continued only upon a showing of extraordinary circumstances. *See* 52 IAC 3-1-7.

- c. Each party will be restricted in the amount of time the party will be allowed to present its case in a small claims proceeding to no more than twenty minutes. *See* 52 IAC 3-1-8(a).
  - i. If a party cannot adequately present its case within the time restrictions, it is the party's duty to request in writing that the matter be removed from the small claims docket and scheduled to be heard under 52 IAC 2. *See* 52 IAC 3-1-8(c).
  - ii. Petitions cannot be withdrawn from small claims once the hearing has commenced except under extraordinary circumstances. *See id.*
- d. Small claims hearings shall be recorded. *See* 52 IAC 3-1-9.
- e. *See* <http://www.in.gov/ibtr/2408.htm> (The IBTR's "Small Claims Hearing Instructions," last visited June 19, 2013)

FF. Request for Rehearing. Not later than fifteen days after the IBTR gives notice of its final determination or the maximum allowable time for the issuance of a final determination by the IBTR expires, a party may request a rehearing before the IBTR. *See* Ind. Code § 6-1.1-15-5(a).

- 1. The IBTR may conduct a rehearing and affirm or modify its final determination, giving the same notices after the rehearing as are required by Ind. Code § 6-1.1-15-4.
- 2. The IBTR has fifteen days after receiving a petition for a rehearing to determine whether to grant a rehearing.
- 3. Failure to grant a rehearing not later than fifteen days after receiving the petition shall be treated as a final determination to deny the petition.
- 4. A petition for a rehearing does not toll the time in which to file a petition for judicial review unless the petition for rehearing is granted.
- 5. If the IBTR determines to rehear a final determination, the IBTR:
  - a. May conduct the additional hearings that the IBTR determines necessary or review the written record without additional hearings; and
  - b. Shall issue a final determination not later than ninety days after notifying the parties that the IBTR will rehear the final determination.

GG. Appeal to Tax Court without IBTR Final Determination. Pursuant to Ind. Code § 6-1.1-15-5(a), if the IBTR fails to make a final determination within the time allowed, the entity that initiated the petition for rehearing may:

1. Take no action and wait for the IBTR to make a final determination; or
2. Petition for judicial review under Ind. Code § 6-1.1-15-5(g).

#### IV. JUDICIAL REVIEW BY THE INDIANA TAX COURT.

A. Exclusive Jurisdiction. The Indiana Tax Court, *see* Ind. Code § 33-26-3-1, has exclusive jurisdiction over any case<sup>13</sup> that arises under the tax laws of Indiana and that is an initial appeal of a final determination made by:

1. The Department of State Revenue with respect to a listed tax (as defined in Ind. Code § 6-8.1-1-1); or
2. The IBTR.

*See State v. Sproles*, 672 N.E.2d 1353, 1356 (Ind. 1996) (explaining that the Tax Court was created to "channel tax disputes to a specialized tribunal"). *Accord Marion County Auditor v. Revival Temple Apostolic Church*, 898 N.E.2d 437, 445 (Ind. Ct. App. 2008) (same); *Wayne Twp. v. Ind. Dept. of Local Gov't Fin.*, 865 N.E.2d 625, 628 (Ind. Ct. App. 2007) (same).

B. AOPA does not apply. Appeals to the Indiana Tax Court are not governed by the Administrative Orders and Procedures Act ("AOPA") under Ind. Code §§ 4-21.5-5 *et seq.*

C. Filing an Original Tax Appeal Petition. To petition for judicial review by the Tax Court of the final determination of the IBTR, a party must, *see* Ind. Code § 6-1.1-15-5(b):<sup>14</sup>

1. File a petition with the Indiana Tax Court;

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<sup>13</sup> The cases over which the Tax Court has exclusive original jurisdiction are referred to as "original tax appeals." *See* Ind. Code § 33-26-3-3. *See also* Tax Court Rule 2.

<sup>14</sup> If a taxpayer fails to comply with any statutory requirement for the initiation of an original tax appeal, the Tax Court does not have jurisdiction to hear the appeal. Ind. Code § 33-26-6-2(a). *See also Goldstein v. Ind. Dep't of Local Gov't Fin.*, 876 N.E.2d 391, 393 n.4 (Ind. Tax Ct. 2007) (same).

2. Serve a copy of the petition on:
  - a. The county assessor;
  - b. The attorney general; and
  - c. Any entity that filed an *amicus curiae* brief with the IBTR; and
3. File a written notice of appeal with the IBTR informing the IBTR of the party's intent to obtain judicial review.<sup>15</sup>

D. The Petition. The Tax Court rules govern what should be in the petition. An original tax appeal from a final determination of the IBTR is commenced by filing a petition in the Tax Court and filing a written notice of appeal with the IBTR. *See* Tax Court Rule 3(B). *See also Holsapple v. Monroe County Assessor*, 918 N.E.2d 783 (Ind. Tax Ct. 2010) (holding that Court lacked jurisdiction over the appeal where taxpayers failed to serve copies of their petition on the assessor and Attorney General and did not file a notice of intent to appeal with the IBTR until after filing period had elapsed). A sample verified petition is included with the Appendix of the Tax Court Rules.

E. Parties to the Appeal.

1. By statute, the county assessor is a party to the appeal before the Indiana Tax Court. *See* Ind. Code § 6-1.1-15-5(b).<sup>16</sup> Tax Court Rule 4(B)(1) provides that the Court "acquires jurisdiction over a party or person who under these rules commences or joins in the original tax appeal, is served with summons or enters an appearance, or who is subjected to the power of the Tax Court under any other law."
2. The "named respondent" in an original tax appeal "shall be the person or persons designated by statute as parties to the judicial review of final determinations of the Indiana Board of Tax Review." *See* Tax Court Rule 4(B)(2).

F. Service of Summons. For appeals from the IBTR, Tax Court Rule 4(B)(4) provides, "Service of summons shall be required only with respect to the named respondent and any other person whom the petitioner seeks to join as a party."

G. Request for and Transmission of the Record. Pursuant to Tax Rule 3(E), "In original tax appeals [from a final determination of the IBTR], the petitioner shall

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<sup>15</sup> Compare Ind. App. Rule 9(F) and Form. App. 9-1.

<sup>16</sup> The county assessor may petition for review to the Tax Court in the same manner as the taxpayer. *See* Ind. Code § 6-1.1-15-5(e). However, if the county assessor initiates the appeal, the Attorney General may not represent the county assessor. *See* Ind. Code § 6-1.1-15-5(f).

request the [IBTR] to prepare a certified copy of the agency record within thirty (30) days after filing the petition."

1. The request can be included as part of the original tax appeal petition or can be a separate document.
2. Because petitioners must now file a notice of appeal with the IBTR, the request can be made as part of the notice of appeal.
3. Tax Court Rule 3(E) requires that the petitioner "shall transmit a certified copy of the record to the Tax Court within thirty (30) days after having received notification from the [IBTR] that the record has been prepared."<sup>17</sup>
  - a. File a notice of filing the certified record of administrative proceeding. This is not required, but is recommended.
  - b. A copy of the certified record does not need to be served on the Attorney General (who represents the county assessor).
4. The IBTR has issued a non-rule policy document (#2007-01) regarding preparation of the agency record.
  - a. The IBTR shall charge the petitioner the reasonable cost of preparing the agency record.
  - b. An instrument (check, money order, etc.), made payable to the IBTR, in the amount of \$50 will accompany any request for an agency record filed with the IBTR. This \$50 is a non-refundable administrative fee and will be deducted from the final payment made when the agency record is delivered to the petitioner.
  - c. Upon completion of the agency record, the Petitioner will be notified as to when the agency record may be picked up and the total balance due for its preparation. The balance due must be paid to the IBTR before the agency record is released to the petitioner.

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<sup>17</sup> In *Bosamia v. Marion County Assessor*, 969 N.E.2d 635, 638-39 (Ind. Tax Ct., 2012), the Indiana Tax Court dismissed the taxpayers' petition due to their failure to timely file a copy of the administrative record with the Court. The IBTR's notice stating that the agency record had been prepared was sufficient to trigger the thirty-day filing period. *Id.* at 637. Where the failure to file was due to the taxpayers' "own inaction," the Court refused to employ its discretion to extend the filing deadline. *Id.* at 638.

- H. Timing. A party must petition for judicial review (and serve the appropriate copies and file the written notice of appeal) not later than:
1. Forty-five days after the IBTR gives the person notice of its final determination, unless a rehearing is conducted; or
  2. Forty-five days after the IBTR gives the person notice of its final determination, if a rehearing is conducted under Ind. Code § 6-1.1-15-5(a) or the maximum time elapses for the IBTR to make a determination after rehearing is granted.
- See* Ind. Code § 6-1.1-15-5(c). The taxpayer may appeal to the Tax Court once the maximum time elapses for the IBTR to make a determination under Ind. Code §§ 6-1.1-15-4 or -5. *See* Ind. Code § 6-1.1-15-5(g).
- I. Failure to hold Timely Hearing is not Notice. The failure of the IBTR to conduct a hearing within the period prescribed in Ind. Code § 6-1.1-15-4 does not constitute notice to the party of an IBTR final determination. *See* Ind. Code § 6-1.1-15-5(d).
- J. Notice of Appearance. A party should file a notice of appearance at the time it files an original tax appeal. A sample Notice of Appearance is included in the Appendix of the Tax Court Rules.
- K. Filing Fee. There is a \$120 filing fee for initiating an appeal to the Tax Court. *See* Ind. Code § 33-26-9-1.
- L. Written Election of County for Evidentiary Hearings.
1. At the time a taxpayer initiates an original tax appeal, the taxpayer must elect to have all evidentiary hearings held in one of the following counties, *see* Ind. Code § 33-26-3-4, Tax Court Rule 8(A):
    - a. Allen County.
    - b. Jefferson County.
    - c. Lake County.
    - d. Marion County.
    - e. St. Joseph County.
    - f. Vanderburgh County.
    - g. Vigo County.
  2. A taxpayer that is an appellee in an appeal to the Tax Court shall, within thirty days after it receives notice of the appeal, elect to have all



evidentiary hearings in the appeal conducted in one of the above listed counties. *See* Ind. Code § 33-26-3-5 and Tax Court Rule 8(A).

- M. Consolidation of Petitions. Petitions for judicial review may be consolidated at the request of the appellants if it can be done in the interest of justice. *See* Ind. Code § 6-1.1-15-5(b).
- N. DLGF Intervention. The DLGF may intervene in an original tax appeal action if the interpretation of a rule of the DLGF is at issue in the action. *See* Ind. Code § 6-1.1-15-5(b).
- O. No Jury. The Tax Court shall try each original tax appeal without the intervention of a jury. *See* Ind. Code § 33-26-6-1 and Tax Court Rule 8(B).
- P. Decision based on the administrative record. Regarding appeals from the IBTR, *see* Ind. Code § 33-26-6-3(b), judicial review of disputed issues of fact must be confined to:
1. The record of the proceeding before the IBTR; and
  2. Any additional evidence taken under Ind. Code § 33-26-6-5(b), which provides that the Tax Court may receive evidence in addition to that contained in the IBTR record only if the evidence relates to the validity of the determination at the time it was taken and is needed to decide disputed issues regarding:
    - a. Improper constitution as a decision making body;
    - b. Grounds for disqualification of those taking the agency action; or
    - c. Unlawfulness of procedure or decision making process.
- Ind. Code § 33-26-6-5(b) applies only if the additional evidence could not, by due diligence, have been discovered and raised in the administrative proceeding giving rise to a proceeding for judicial review.
- Q. No de novo review. The Tax Court may not try the case *de novo* or substitute its judgment for that of the IBTR. *See* Ind. Code § 33-26-6-3(b). However, the Tax Court will conduct a *de novo* review if the IBTR has failed to issue a timely final determination and the party elects to initiate a judicial proceeding. *See* Ind. Code §§ 6-1.1-15-4(i) and 15-5(g).

R. Limitation of Issues.

1. Judicial review is limited to only those issues raised before the IBTR, or otherwise described by the IBTR, in its final determination. *See* Ind. Code § 33-26-6-3(b).
2. A person may obtain judicial review of an issue that was not raised before the IBTR, *see* Ind. Code § 33-26-6-3(c), only to the extent that the:
  - a. Issue concerns whether a person who was required to be notified of the commencement of a proceeding under this chapter was notified in substantial compliance with the applicable law; or
  - b. Interests of justice would be served by judicial resolution of an issue arising from a change in controlling law occurring after the IBTR's action.

S. Injunction of Taxes. A taxpayer is permitted to request that the Court enjoin the collection of a tax pending an original tax appeal. *See* Tax Court Rule 3(F), Ind. Code § 33-26-6-2. For property tax appeals, this is not typically necessary because under Ind. Code § 6-1.1-15-10(a):

1. "If a petition for review to any board or a proceeding for judicial review in the tax court regarding an assessment or increase in assessment is pending, the taxes resulting from the assessment or increase in assessment are . . . not due until after the petition for review, or the proceeding for judicial review, is finally adjudicated and the assessment or increase in assessment is finally determined."
2. However, the taxpayer shall pay taxes on the property when the property tax installments come due (unless there is an injunction) in an amount based on the immediately preceding year's assessment of real property.<sup>18</sup>

T. Burden before the Tax Court. The burden of demonstrating the invalidity of an action taken by the IBTR is on the party to the judicial review proceeding asserting the invalidity. *See* Ind. Code § 36-26-6-6(b).

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<sup>18</sup> Under Ind. Code 6-1.1-15-10(b) (emphasis added):

If the petition for review or the proceeding for judicial review is not finally determined by the last installment date for the taxes, the taxpayer, upon showing of cause by a taxing official or at the tax court's discretion, *may be required to post a bond or provide other security* in an amount not to exceed the taxes resulting from the contested assessment or increase in assessment.

- U. Relief. The Tax Court shall grant relief under Ind. Code § 36-26-6-7 if the Tax Court determines that a person seeking judicial relief has been prejudiced by an action of the IBTR, *see* Ind. Code § 36-26-6-6(e), that is:
- a. Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
  - b. Contrary to constitutional right, power, privilege, or immunity;
  - c. In excess of statutory jurisdiction, authority, or limitations, or short of statutory jurisdiction, authority, or limitations;
  - d. Without observance of procedure required by law; or
  - e. Unsupported by substantial or reliable evidence.
- V. Small Claims. The Tax Court has a small claims docket for processing appeals of final determinations of assessed value made by the IBTR that do not exceed \$45,000. *See* Ind. Code § 33-26-5-1. Tax Court Rule 16 provides:
1. Except as otherwise provided in the Small Tax Case Rules, the Indiana Rules for Small Claims are also applicable to small tax claims. To the extent not inconsistent therewith, the Indiana Tax Court Rules will apply. *See* Tax Court Rule 16(A).
  2. Pursuant to Tax Court Rule 16(B), the notice of claim to be used under Small Claims Rule 2 shall contain:
    - a. The name of the Tax Court;
    - b. The name, address and telephone number of claimant;
    - c. A designation of the type of tax the claim involves;
    - d. A statement of the taxable period involved;
    - e. A brief statement of the nature of the claim;
    - f. A statement of the amount of tax at issue; and
    - g. Any additional information which may facilitate proper service or processing of the claim.
  3. For the purpose of service, the notice of claim shall also be considered to be the summons. A copy of the notice of claim shall be served upon the Attorney General by registered or certified mail, return receipt requested. Tax Court Rule 16(C).

4. The Attorney General shall be deemed to have entered an appearance for and on behalf of the governmental defendant or defendants. *See* Tax Court Rule 16(D).
5. If a taxpayer prevails in a small claims action, the taxpayer is entitled to a refund of the filing fee. *See* Ind. Code § 33-26-9-5.

W. Remand of Issues to IBTR. The Tax Court is required to render its decisions in writing. *See* Ind. Code § 33-26-6-7(a). *See also* Ind. Code § 33-26-6-6(d) ("The tax court shall make findings of fact on each material issue on which the court's decision is based.") If a final determination by the IBTR regarding the assessment of property is vacated, set aside, or adjudged null and void under the decision of the Tax Court, the matter of the assessment or exemption of the property shall be remanded to the IBTR with instructions to the IBTR to refer the matter to the:

1. DLGF with respect to an appeal of a determination made by the DLGF; or
2. PTABOA with respect to an appeal of a determination made by the county board

to make another assessment determination. *See* Ind. Code § 6-1.1-15-8(a). The Tax Court's order shall specify the issues on remand on which the IBTR is to act. *See* Ind. Code § 33-26-6-7(c). Upon remand, the IBTR may take action only on those issues specified in the decision of the tax court. *See* Ind. Code § 6-1.1-15-8(a).

X. The Tax Court's procedures.

1. Once a response to the petition for review is filed, the Tax Court generally will schedule a case management conference with the parties.
2. At the case management conference, the parties provide the Court with an overview of the disputed issues and discuss a briefing schedule.
3. Because appeals of IBTR issues almost always are considered based on the evidence presented and the record established before the IBTR, it is not necessary to set discovery completion deadlines or a trial date. (If a *de novo* appeal is filed after the time for the IBTR to issue a final determination as elapsed, then such dates will be discussed.) The Court will set a briefing schedule allowing a petitioner's brief, a response brief and a reply brief.
4. There are no page limits regarding briefs filed in Tax Court. However, as the Court has stated (after receiving briefs of 40, 42 and 74 pages), "litigants are reminded to be as concise and succinct as possible." *Caterpillar Fin. Servs. Corp. v. Ind. Dep't of State Rev.*, 849 N.E.2d 1235, 1239 n.8 (Ind. Tax Ct. 2005).

Y. Rehearing.

1. Any party adversely affected by a final judgment may file a petition for rehearing with the Tax Court (not a motion to correct error). *See* App. Rule 63(B). A Rehearing is governed by App. Rule 54. *See id.*
2. A petition for rehearing need not be filed in order to seek review of a final judgment of the Tax Court. *See id.*
3. When rehearing is requested, a ruling or order by the Tax Court granting or denying the petition shall be deemed a final decision from which review by the Supreme Court can be sought. *See id.*

V. DISCRETIONARY REVIEW BY THE INDIANA SUPREME COURT.

- A. Any party adversely affected by a final judgment (as defined by App. Rule 2(H)<sup>19</sup>) of the Tax Court shall have the right to petition the Supreme Court for review of the final judgment.
- B. A two-step process. Review by the Supreme Court is discretionary. Seeking review involves (1) filing a notice of intent to petition for review (before the preparation of the Tax Court record) and (2) the actual petition for review.

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<sup>19</sup> Appellate Rule 2(H) provides:

A judgment is a final judgment if:

- (1) it disposes of all claims as to all parties;
- (2) the trial court in writing expressly determines under Trial Rule 54(B) or Trial Rule 56(C) that there is no just reason for delay and in writing expressly directs the entry of judgment (i) under Trial Rule 54(B) as to fewer than all the claims or parties, or (ii) under Trial Rule 56(C) as to fewer than all the issues, claims or parties;
- (3) it is deemed final under Trial Rule 60(C);
- (4) it is a ruling on either a mandatory or permissive Motion to Correct Error which was timely filed under Trial Rule 59 or Criminal Rule 16;  
or
- (5) it is otherwise deemed final by law.

- C. Notice of Intent to Petition for Review. Pursuant to App. Rule 63(C), a party initiates a petition for review by filing a notice of intent to petition for review with the Clerk of the Supreme Court, Court of Appeals and Tax Court in accordance with the requirements of App. Rule 9 (except with respect to the filing fee) no later than:
1. Thirty days after the final judgment if a petition for rehearing was not sought, *see below*; or
  2. Thirty days after final disposition of the petition for rehearing if rehearing was sought and such petition was timely filed by any party.
  3. App. Rule 25(C), which provides a three-day extension for service by mail or third-party commercial carrier, *does not extend the due date* for filing a notice of intent to petition for review. No extension of time shall be granted to file the notice of intent.
- D. Clerk's Record. The Clerk shall give notice of filing of the notice of intent to petition for review to the court reporter and shall assemble the Clerk's record in accordance with App. Rule 10. *See* App. Rule 63(D). The court reporter shall prepare and file the transcript in accordance with Ind. App. Rule 11. *See id.* Reference to the "trial court clerk" in App. Rules 10, 11, and 12 shall mean the Clerk of the Supreme Court, Court of Appeals and Tax Court. *See id.*
- E. Petition for Review. The petitioning party shall file its petition for review no later than thirty days after:
1. The date the Clerk issues its notice of completion of the Clerk's record if the notice reports that the transcript is complete or that no transcript has been requested; or
  2. In all other cases, the date the Clerk issues its notice of completion of the transcript. *See* App. Rule 63(E):
- F. Response brief. A response brief may be filed no later than thirty days after the petition for review is served. *See* App. Rule 63(F).
- G. Reply brief. The petitioning party may file a reply brief no later than fifteen days after a brief in response is served. *See* App. Rule 63(G).
- H. Format. App. Rules 43, 44 and 46 govern the format and contents of petitions and briefs before the Supreme Court. *See* App. Rule 63(I).
- I. Interlocutory appeal. Any party adversely affected by an interlocutory order of the Tax Court may petition the Supreme Court for review of the order pursuant to App. Rule 14(B). *See* App. Rule 63(H). No appellant's case summary or notice of intent to petition for review shall be filed after the Supreme Court accepts a petition for interlocutory appeal. *See id.*

- J. Effect of Court's denial of review. The denial of a petition for review shall have no legal effect other than to terminate the litigation between the parties in the Supreme Court. *See* App. Rule 63(N). No petition for rehearing may be filed from an order denying a petition for review. *See id.*
- K. Filing fee. Upon the filing of a petition for review, the petitioner shall pay a fee of \$125.00. *See* App. Rule 63(P).

VI. THE FORM 133 PETITION.

- A. *For objective errors,*<sup>20</sup> a taxpayer may file with the county auditor a Form 133 Petition for Correction of an Error to correct the following types of errors:
  - 1. The taxes, as a matter of law, were illegal.<sup>21</sup>
  - 2. There was a mathematical error in computing an assessment.
  - 3. Through an error of omission by any state or county officer, the taxpayer was not given:
    - a. The proper credit under Ind. Code § 6-1.1-20.6-7.5 for property taxes imposed for an assessment date after January 15, 2011;
    - b. Any other credit permitted by law;
    - c. An exemption permitted by law; or
    - d. A deduction permitted by law.

*See* Ind. Code § 6-1.1-15-12.<sup>22</sup>

- B. No notice of assessment or tax bill is required to trigger a taxpayer's right to file a Form 133 Petition.
- C. The DLGF's Petition for Correction of an Error Fact Sheet states, "Claims may be made for up to three years of assessments with the submission of the Form 133.

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<sup>20</sup> *See Walker Mfg. Co. v. DLGF*, 772 N.E.2d 1, 5 (Ind. Tax Ct. 2002) ("A taxpayer may file a 133 Petition when it discovers an error that can be corrected without resort to subjective judgment and according to objective standards.") (internal quotations and punctuation omitted).

<sup>21</sup> *See Throgmartin Henke Development, LLP v. Hamilton County Assessor*, Pet. Nos. 29-015-08-3-5-00010 and -11, Page 15, ¶ 42 (Jan. 24, 2012) ("To determine something 'as a matter of law' simply means to apply the law to undisputed, material facts.").

<sup>22</sup> A Form 133 cannot be used to correct an error made by a taxpayer on the taxpayer's personal property tax return. *See* Ind. Code § 6-1.1-15-12(g).

Taxpayers requesting refunds must also file a Claim for Refund form (Form 17T)."<sup>23</sup>

- D. A correction of error requires signatures of approval from two of the following three officials:
  - 1. County assessor.
  - 2. County auditor.
  - 3. Township assessor, if any.<sup>24</sup>
- E. If two officials do not approve, the county auditor shall refer the matter to the PTABOA. *See* Ind. Code § 6-1.1-15-12(d).
- F. The PTABOA is not required to permit the taxpayer to present its case at an administrative hearing. *See id.* (providing that PTABOA shall provide a copy of its determination to the taxpayer). *See* Form 133, Sec. V (explanation of determination).
- G. A taxpayer may appeal a determination of the PTABOA to the IBTR. *See* Ind. Code § 6-1.1-15-12(e).
  - 1. The appeal shall be conducted "in the same manner as appeals under" Ind. Code §§ 6-1.1-15-4 through -8. *See id.*
  - 2. The appeal, according to Section VI of the Form 133, must be filed with the county auditor within forty-five days of the mailing of the notice denying the petition.
  - 3. Consider filing a copy directly with the IBTR as well.

## VII. MANDATORY CORRECTIONS BY TOWNSHIP ASSESSOR.

- A. Ind. Code § 6-1.1-15-12.5(a) provides that if a township assessor determines that the assessor has made an error concerning (1) the assessed valuation of property, (2) the name of the taxpayer, or (3) the description of property, the assessor "shall on the township assessor's own initiative correct the error."

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<sup>23</sup> *See* <http://www.in.gov/dlgf/files/Petition-for-Correction-of-an-ErrorFactSheet.pdf> (last visited June 19, 2013). *See also* Ind. Code § 6-1.1-26-1 (providing that a refund claim must be filed within three years after the taxes were first due).

<sup>24</sup> In jurisdictions where the county assessor assumes the assessment duties of township assessors, taxpayers must obtain signatures from the county assessor and county auditor.



- B. The township assessor "may not increase an assessment" under Ind. Code § 6-1.1-15-12.5(a).
- C. The township assessor shall correct the error "without requiring the taxpayer to file a notice with the [PTABOA] requesting a review of the township assessor's original assessment."
- D. If the township corrects an error under Ind. Code § 6-1.1-15-12.5, the assessor shall give notice of the correction to the taxpayer, the county auditor and the PTABOA. Ind. Code § 6-1.1-15-12.5(b).
- E. If the assessment results in a reduction of the assessment, the taxpayer is entitled to a credit on the taxpayer's next installment equal to the amount of any overpayment of tax that resulted from the incorrect assessment. Ind. Code § 6-1.1-15-12.5(c).
- F. If the overpayment exceeds the taxpayer's next installment, the taxpayer is entitled to (1) a credit in the full amount of the next installment and (2) credits on succeeding tax installments until the taxpayer has received total credits equal to the amount of the overpayment. Ind. Code § 6-1.1-15-12.5(d).

VIII. PROPERTY TAX EXEMPTIONS – APPLICATIONS AND APPEALS.

- A. Form 136. Taxpayers request property tax exemptions using the Form 136 application.
- B. Filing Deadline. Form 136 must be filed on or by May 15 of year for which exemption is sought.<sup>25</sup>
- C. Frequency of Filing.
  - 1. Exemptions must be filed annually. *See* Ind. Code § 6-1.1-11-3(a).
  - 2. Not-for-profit corporations file in even numbered years, unless:
    - a. The corporation did not file for an exemption in a prior year.
    - b. There has been a material change in the physical status or use of the property as of March 1 of the odd numbered year;
    - c. An application for a prior year is pending or remains under appeal as of May 15 of the odd numbered year. *See* Ind. Code § 6-1.1-11-3.5(a), (c).

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<sup>25</sup> Note that the application says the Form 136 must be filed "before May 15." However, the governing statute provides that the application is to be filed "on or before May 15." *See* Ind. Code § 6-1.1-11-3(a).

d. If you have acquired personal property since March 1<sup>st</sup> of the prior year, consider filing a new application, even if it's an odd numbered year. Counties treat exemptions for personal property inconsistently.

3. Applications are not required per Ind. Code § 6-1.1-11-4(d) if:

a. The exempt property is:

i. Tangible property used for religious purposes described in Ind. Code § 6-1.1-10-21 (property used for religious worship, parsonage);

ii. Tangible property owned by a church or religious society used for educational purposes described in Ind. Code § 6-1.1-10-16;

iii. Other tangible property owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes described in Ind. Code § 6-1.1-10-16; or

iv. Other tangible property owned by a fraternity or sorority, as defined in Ind. Code § 6-1.1-10-24.

b. The exemption application was filed properly at least once for a religious use under Ind. Code § 6-1.1-10-21, for an educational, literary, scientific, religious, or charitable use under Ind. Code § 6-1.1-10-16, or for use by a fraternity or sorority under Ind. Code § 6-1.1-10-24; and

c. The property continues to meet the requirements for an exemption under Ind. Code § 6-1.1-10-16, Ind. Code § 6-1.1-10-21, or Ind. Code § 6-1.1-10-24.

D. Change of Ownership. Change in ownership of an exempt property does not terminate an exemption under Ind. Code § 6-1.1-11-4, if after the change the property continues to meet the requirements for an exemption under:

1. Ind. Code § 6-1.1-10-16 (property used for charitable, educational, religious, scientific, and literary purposes);

2. Ind. Code § 6-1.1-10-21 (property used for religious worship, parsonage); or

3. Ind. Code § 6-1.1-10-24 (property used by fraternities or sororities).

The buyer or owner of exempt property must file a Form 136-CO/U (Notice of Change of Ownership or Use of Exempt Property).

E. PTABOA Determination.

1. The PTABOA shall approve or disapprove the exemption application. *See* Ind. Code § 6-1.1-11-7.
2. The PTABOA notifies a taxpayer of its action with a Form 120 Notice. (Some counties do not issue a notice when a 100% exemption is approved.)

F. Appeal to IBTR. Taxpayer may appeal the PTABOA's determination to the IBTR using Form 132. There appears to be an ambiguity as to the filing deadline – thirty (30) days v. forty-five (45) days.

1. Thirty-day filing deadline. Ind. Code § 6-1.1-11-7(c) provides that an appeal should be filed within thirty days of the PTABOA's notice.
2. Forty-five day filing deadline.
  - a. Ind. Code § 6-1.1-11-7(c) also provides that a taxpayer may petition the IBTR in the manner provided by Ind. Code § 6-1.1-15-3, which provides that an appeal must be filed within forty-five days of the PTABOA's notice.
  - b. The IBTR's Form 132 (last revised in 2009), citing Ind. Code § 6-1.1-15-3(d), states that the petition "must be filed not later than 45 days after" the PTABOA's notice.
3. To be safe, file with the IBTR *within thirty days* of the PTABOA's notice.
4. IBTR exemption appeals are conducted in the same manner as assessment appeals.

G. Appeals to Tax Court and Indiana Supreme Court. Appeals to the Tax Court or Indiana Supreme Court are the same as for valuation appeals.

IX. WHERE TO FIND THE FORMS, STATUTES, AND RULES.

A. DLGF forms. The DLGF's website at <http://www.in.gov/dlgf/8516.htm> (last visited June 19, 2013) includes the following:

1. Form 11 (assessment notice).
2. Form 113 (assessment notice).

3. Form 115 (notice of PTABOA final determination).
  4. Form 120 (notice of PTABOA action on property tax exemption application).
  5. Form 130 (standard and short, initiates local appeal).
  6. Form 133 (petition for correction of an error).
  7. Form 134 (joint assessor/taxpayer report to PTABOA).
  8. Form 136 (property tax exemption application).
  9. Form 136-CO/U (Notice of Change of Ownership or Use of Exempt Property)
  10. Power of Attorney.
- B. IBTR forms. The IBTR's website at <http://www.in.gov/ibtr/2331.htm> (last visited June 19, 2013) includes the following:
1. Form 131 (initiates IBTR assessment appeal).
  2. Form 132 (initiates IBTR exemption appeal).
  3. Form 139 (initials IBTR appeal of DLGF final determination).
  4. Sample Exhibit Coversheet.
  5. Sample Notice of Appearance for Attorneys.
- C. Statutes. Property tax assessment and appeal statutes (Ind. Code § 6-1.1) may be viewed at: <http://www.in.gov/legislative/ic/code/title6/ar1.1/> (last visited June 19, 2013).
- D. Regulations. The IBTR's regulations may be view at: [http://www.in.gov/legislative/iac/iac\\_title?iact=52](http://www.in.gov/legislative/iac/iac_title?iact=52) (last visited June 19, 2013).
- E. Court Rules. The Indiana Tax Court Rules and Rules of Appellate Practice may be viewed at: <http://www.in.gov/judiciary/2695.htm> (last visited June 19, 2013).



## *A Guide to Property Tax Appeals in Indiana*

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### I. TRIGGERS FOR A PROPERTY TAX APPEAL.

- A. Form 11 Notice (must file appeal within 45 days).
- B. Form 113 Notice (must file appeal within 45 days).
- C. Tax bill (may file appeal within 45 days of date of tax bill, regardless of whether the assessment is changed). If an assessment notice is issued, *appeal from the notice*. Don't wait to appeal from the tax bill.
- D. May 10<sup>th</sup> filing (notice not required).



### II. INITIATING THE PROPERTY TAX APPEAL.

- A. Initiating the Appeal.
  1. File a notice for review with the assessor.
  2. The notice *must contain*:
    - a. Taxpayer's name.
    - b. Address and parcel/key number of the property.
    - c. Taxpayer's address and telephone number.
- B. Filing the notice for review:
  1. Consider attaching a Form 130 (standard or short). Taxpayer does not have to provide the additional information requested on the Form 130 (e.g. sales information, comparable properties data).
  2. Some counties (e.g. Marion) have their own forms. You may use these, but the only required information is that listed in Section A(2) above (taxpayer's name, parcel number, and address / telephone number).
  3. In most jurisdictions, file the original with the county assessor. Where the township assessor has been retained, file the original with the township assessor and a copy with the county assessor.
  4. Request a meeting with the assessor.
  5. File a separate notice for each parcel.
  6. Attach a power of attorney.
  7. Identify the correct assessment date.
  8. File the notice:
    - a. Preferably, by hand. Get a file-stamped copy.
    - b. If by mail, use certified mail, return receipt requested. Include a self-addressed stamped envelope and send a cover letter requesting that the assessor return a file-stamped copy to you. See Ind. Code § 6-1.1-36-1.5.



### III. THE LOCAL APPEAL – REVIEW BY THE COUNTY OR TOWNSHIP ASSESSOR AND PTABOA HEARING.

- A. The assessing official must attempt to hold a preliminary informal meeting with the taxpayer. The official must forward the results of the meeting to the PTABOA using the Form 134.
- B. IBTR resolution facilitation, *see* Ind. Code § 6-1.5-3-4.
  1. A county assessor can request that an employee of the IBTR facilitate resolution of a dispute where:
    - a. A taxpayer has filed a notice for review; and
    - b. The PTABOA has not given written notice of its decision on the issues under review.
  2. The IBTR employee may not participate in appeals of the PTABOA's decision regarding the dispute.
  3. The facilitation conference is confidential and is open to the public only with the parties' consent.
  4. The conference is not an IBTR proceeding, and the IBTR is not required to keep a record of the conference.
- C. Evidence.
  1. Taxpayer is not required to have an appraisal of the subject property to initiate or prosecute an appeal.
  2. The assessing official may not require the taxpayer to provide documentary evidence at the preliminary informal meeting.
  3. The PTABOA may not require the taxpayer to file documentary evidence or summaries of testimony before the hearing.
- D. The PTABOA hearing.
  1. If the taxpayer and assessing official agree to all disputed issues, no hearing is conducted. The PTABOA reserves the right to change the assessment under Ind. Code § 6-1.1-13.
  2. PTABOA shall, by mail, give at least 30 days notice of the date, time, and place fixed for the hearing.
    - a. Continuance. Taxpayer may request a continuance by filing, at least 20 days before the hearing date, a request with the PTABOA and the county or township assessor with evidence supporting a "just cause for the continuance." The PTABOA has 10 days to grant or deny the request.
    - b. Decision without Taxpayer's presence. Taxpayer may request that the PTABOA take action without taxpayer's presence at the hearing and based on the evidence already submitted. Taxpayer must file the request with the PTABOA and county or township assessor at least 8 days before the hearing.
    - c. Withdrawal. Taxpayer may withdraw a petition by filing, at least 8 days before the hearing date, a notice of withdrawal with the PTABOA and the county or township assessor.

- d. \$50 penalty. A \$50 penalty is assessed against the taxpayer if the Taxpayer or its representative fails to appear at the hearing and the Taxpayer's request for continuance is denied or the Taxpayer's request for continuance, request for the board to take action without the Taxpayer being present, or withdrawal is not timely filed. (A Taxpayer may appeal the assessment of the penalty to the IBTR or directly to the Tax Court.)
- 3. If issues remain unresolved or the PTABOA is not given the results of the preliminary informal meeting within 120 days of filing of the notice for review, the PTABOA shall conduct a hearing within 180 days of filing of the notice for review.
- 4. During the PTABOA hearing:
  - a. Taxpayer may present the taxpayer's reasons for disagreement; and
  - b. Assessor must present:
    - i. The basis for the assessment decision; and
    - ii. The reasons that the Taxpayer's contentions should be denied.
- E. Burden.
  - 1. Where the assessment under appeal represents an increase of the property's assessed value by more than five percent (5%) over the value determined by the assessor for the immediately preceding assessment date, the assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal to the PTABOA, the Indiana Board of Tax Review or to the Indiana Tax Court. *See* Ind. Code § 6-1.1-15-17.2.
  - 2. If the assessor changes a property's underlying parcel characteristics (e.g. property's age, grade, or condition), the assessor has the burden of proving that each change is valid. *See* Ind. Code § 6-1.1-4-4.4.
  - 3. *Starting with the March 1, 2014 assessment date*, where the PTABOA has reduced a property's gross assessed value in an appeal conducted under Ind. Code § 6-1.1-15 and the assessor increases the property's value for the next year, the assessor has the burden of proving that the next year's assessment is correct. Burden does not shift where property was valued using the income capitalization approach in the appeal. *See* Ind. Code § 6-1.1-4-4.3 (effective July 1, 2013).
- F. Determination.
  - 1. PTABOA must issue a decision within 120 days of the hearing.
  - 2. PTABOA shall issue a written determination and notify Taxpayer of its appeal rights and procedures.
- G. If the PTABOA refuses to hold a timely hearing or to issue a timely determination, Taxpayer may initiate an appeal with the IBTR.



#### IV. THE STATE APPEAL – REVIEW BY THE INDIANA BOARD OF TAX REVIEW.

- A. The county assessor is the party to an appeal.
- B. Filing the Form 131 Petition.
  - 1. File with IBTR within 45 days of PTABOA's notice.
  - 2. Taxpayer must mail a copy of the petition to the county assessor.
  - 3. File a notice of appearance.
- C. File pre-hearing disclosures (lists of witnesses / exhibits, copies of exhibits). *See* 52 IAC 2-7-1(b).
- D. Taxpayers are not required to have an appraisal of the property in order to initiate or prosecute an appeal.
- E. Hearing notice. The IBTR shall give notice of its hearing date, by mail, at least 30 days before the hearing, unless the parties agree to a shorter period.
- F. Timing of hearing.
  - 1. Appeals regarding a general reassessment date, within 1 year after the petition is filed, with a decision issued 180 days after hearing (IBTR may extend up to 180 additional days).
  - 2. For all other appeals, within 9 months after a petition is filed, with a decision issued 90 days after hearing (IBTR may extend up to 180 additional days).
  - 3. If the IBTR fails to make a final determination within the time allowed, taxpayer may:
    - a. Take no action and wait for the IBTR to make a final determination; or
    - b. Petition for judicial review to the Indiana Tax Court.
- G. Party may request a rehearing within 15 days of final determination.
  - 1. Petition for rehearing does not toll the time to file in Tax Court, unless rehearing is granted.
  - 2. Final determination to be issued not later than 90 days after granting rehearing.



#### V. JUDICIAL REVIEW BY THE INDIANA TAX COURT.

- A. Taxpayer must:
  - 1. File a petition with the Indiana Tax Court within 45 days of IBTR final determination or at any time after the maximum time elapses for the IBTR to make a final determination.
  - 2. Serve a copy of the petition on:
    - a. The county assessor;
    - b. The attorney general; and
    - c. Any entity that filed an *amicus curiae* brief with the IBTR.
  - 3. File a written notice of appeal with the IBTR.
- B. Service of summons required for "named respondent" and "any other person whom the petitioner seeks to join as a party." *See* Tax Court Rule 4(B)(4).
- C. Taxpayer must request a copy of the administrative record within 30 days of filing petition. File copy of the record with the Tax Court within 30 days after having received notice that the record has been prepared.
- D. File a notice of appearance.
- E. File a written election regarding the county where hearings will be held. *See* Tax Court rule 8(A).
- F. Pay \$120 Filing Fee.
- G. All original tax appeals are tried to the Court without a jury.



#### VI. DISCRETIONARY REVIEW BY THE INDIANA SUPREME COURT.

- A. Review by the Supreme Court is discretionary. A party requests review by (1) filing a notice of intent to petition for review within 30 days of the Tax Court's final judgment or final disposition of a petition for rehearing and (2) filing a petition for review within 30 days of notice of completion of the Clerk's record or transcript. *See* Ind. App. Rule 63.
- B. Pay \$125 filing fee.
- C. Any party adversely affected by an interlocutory order may petition the Supreme Court for review of the order.