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# STATE OF INDIANA

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DEPARTMENT OF LOCAL GOVERNMENT FINANCE



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**TO:** Township and County Assessors, County Auditors, and Property Tax Boards of Appeal

**FROM:** Courtney L. Schaafsma, Commissioner

**RE:** Legislation Affecting Appeals and Authorizing the Creation of Multiple County Property Tax Assessment Boards of Appeal

**DATE:** March 30, 2016

This memorandum addresses 2016 legislative changes affecting appeals as well as property tax assessment boards of appeal. Please note that this memorandum is intended to be an informative bulletin; it is not a substitute for reading the law.

## I. Legislative Changes Affecting Appeals

On March 24, 2016, Governor Pence signed into law House Enrolled Act 1068-2016 (“HEA 1068”), House Enrolled Act 1273-2016 (“HEA 1273”), House Enrolled Act 1290-2016 (“HEA 1290”), and Senate Enrolled Act 308-2016 (“SEA 308”), which introduce legislative changes effective July 1, 2016 concerning appeals.

### A. Review of Exemption Applications

HEA 1068 amends IC 6-1.1-11-7 so that if a taxpayer’s exemption application is disapproved by the county property tax assessment board of appeals (“PTABOA”) and the taxpayer desires a review of that decision, the taxpayer must, within 45 days (rather than 30 days) after the notice is mailed, petition the Indiana Board of Tax Review (“IBTR”).

Moreover, under IC 6-1.1-11-7(d), if the PTABOA fails to approve or disapprove an exemption application within 180 days after the owner files an application for the exemption, the owner may, before the PTABOA approves or disapproves the exemption application, petition the IBTR to approve or disapprove the exemption application as authorized under IC 6-1.1-15-3(g). Such a petition must be conducted in the same manner as appeals under IC 6-1.1-15-4 through IC 6-1.1-15-8.

HEA 1068 makes a corresponding amendment to IC 6-1.1-15-3 so that if an owner petitions the IBTR under IC 6-1.1-11-7(d) (see above), IBTR is authorized to approve or disapprove an exemption application previously submitted to a PTABOA under IC 6-1.1-11-6 and that is not approved or disapproved by the PTABOA within 180 days after the owner filed the application for the exemption. The county assessor is a party to a petition to the IBTR under IC 6-1.1-11-7(d).

## **B. Correction of Error Appeals**

HEA 1068 amends IC 6-1.1-15-12 so that if the PTABOA fails to issue a determination within 180 days after a taxpayer's petition to correct errors (Form 133) is filed with the county auditor, the taxpayer may, before a determination is issued by the PTABOA, petition the IBTR to correct errors in a final administrative determination.

## **C. Property Tax Assessment Appeals Fund**

HEA 1273 amends IC 6-1.1-15-10.5, which introduced a property tax assessment appeals fund in 2015 legislation.

To reiterate, IC 6-1.1-15-10.5 allows the fiscal officer of a taxing unit to establish a property tax assessment appeals fund. The source of money for the fund will be property tax receipts attributable to an increase in the taxing unit's tax rate caused by appeals that reduce the certified net assessed value in the taxing unit. Now, however, a taxing unit may transfer property tax receipts from a fund that is not a debt service fund to the unit's property tax assessment appeals fund. In other words, this fund will not have a tax rate associated with it; money deposited into the fund must be transferred from the unit's other funds. Again, a taxing unit may not transfer property tax receipts from a debt service fund to its property tax assessment appeals fund.

Money in the fund can only be used to pay for expenses the county assessor incurs in defending an appeal of property located in the taxing unit and for refunds resulting from a property tax appeal (but not a correction of error). The balance in the fund may not exceed 5% of the amount budgeted by the taxing unit in a particular year.

Money transferred into this fund is not considered miscellaneous revenue. As such, the taxing unit and the Department must disregard any balance in the fund in determining taxing unit's tax levy, tax rate, and budget (except appropriations for funding appeals and refunds) for a particular calendar year.

The Department emphasizes that under statute, property tax receipts that qualify as levy excess under IC 6-1.1-18.5-17 and IC 20-44-3 must be treated as levy excess and are not eligible for transfer to a taxing unit's property tax assessment appeals fund.

## **D. Assessor Reimbursement for Appeals**

SEA 308 introduces IC 6-1.1-15-10.7. This new provision allows a county fiscal body (normally the county council) to adopt an ordinance to provide that the county assessor be reimbursed for certain costs incurred by the county assessor in defending an appeal under IC 6-1.1-15 that is "uncommon and infrequent in the normal course of defending appeals" under IC 6-1.1-15. Costs include appraisal and expert witness fees incurred in defending an appeal.

The ordinance must specify:

- (1) the appeal or appeals and why they are uncommon and infrequent;
- (2) a detailed list of expenses incurred by fund and by parcel number; and
- (3) that the county auditor will deduct the expenses listed in the ordinance from property tax receipts collected in the taxing district in which the parcel is located before apportioning receipts to taxing units for the next semiannual settlement under IC 6-1.1-27.

Property tax receipts that are collected under this statute must be deposited in the county fund that incurred the initial expense.

Expenses for an appeal that are deducted from a civil taxing unit's property tax revenue under this statute are not considered to be part of a payment of a refund resulting from an appeal for purposes of a maximum permissible property tax levy appeal under IC 6-1.1-18.5-16. In other words, a unit for which tax receipts are intercepted by the auditor under this statute may NOT point to that revenue loss as the basis for a shortfall appeal under IC 6-1.1-18.5-16.

### **E. Appeals by Holders of Tax Sale Certificates**

HEA 1290 adds IC 6-1.1-15-0.7, which provides that a holder of a tax sale certificate under IC 6-1.1-24 does not have an interest in tangible property for purposes of obtaining a review or bringing an appeal of an assessment of property under IC 6-1.1-15.

## **II. Legislation Authorizing Multiple County PTABOAs**

On March 24, 2016, Governor Pence signed into law Senate Enrolled Act 87-2016 ("SEA 87"), which authorizes the creation of multiple county PTABOAs starting January 1, 2017.

### **A. Establishment**

Specifically, SEA 87 creates IC 6-1.1-28-0.1, which provides that the legislative bodies (normally the county commissioners) of two or more counties may adopt substantially similar ordinances to establish a multiple county PTABOA. The multiple county PTABOA must consist of the entire geographic area of all participating counties.

### **B. Membership**

Under IC 6-1.1-28-0.2, each multiple county PTABOA must consist of either of the following number of members:

- (1) Three members, not more than two of whom may be from the same political party.
- (2) Five members, not more than three of whom may be from the same political party.

The ordinance must specify the number of members of the multiple county PTABOA.

Each member of a multiple county PTABOA must be at least 18 and knowledgeable in the valuation of property. A majority of the members of a multiple county PTABOA must have attained the certification of a level two or a level three assessor-appraiser under IC 6-1.1-35.5.

The following individuals may not be members of a multiple county PTABOA:

- (1) An elected county official.
- (2) An employee of a county or township that is in the geographic area within the jurisdiction of the multiple county PTABOA.
- (3) An appraiser (as defined in IC 6-1.1-31.7-1) in a county that is in the geographic area within the jurisdiction of the multiple county PTABOA.

Under IC 6-1.1-28-0.4, the fiscal bodies of the counties that establish a multiple county PTABOA must adopt substantially similar ordinances to appoint the members of the multiple county PTABOA subject to the qualifications and requirements set forth above. The term of a member of a multiple county PTABOA is one year and begins January 1.

A member is eligible for reappointment. If the term of a member expires, the member is not reappointed, and a successor is not appointed, the term of the member continues until a successor is appointed.

Under IC 6-1.1-28-0.3, the members of a multiple county PTABOA are to receive compensation as determined jointly by the fiscal bodies of each participating county. In the case of a multiple county PTABOA, the costs and payment of the expenses and per diem compensation must be apportioned among the participating counties in the manner specified in the establishing ordinances (IC 6-1.1-28-8). Moreover, the participating counties must jointly determine the number and compensation of field representatives and hearing examiners to be employed by each county to promptly and efficiently perform the duties and functions of the multiple county PTABOA (IC 6-1.1-28-10).

The auditor for the county required to provide administrative support (see below) must administer and file the oath for each member (IC 6-1.1-28-2).

### **C. Role of Assessors**

Under IC 6-1.1-28-0.5, the county assessor for the county that has the greatest population of the counties participating in a multiple county PTABOA must provide administrative support to the multiple county PTABOA. The ordinances establishing the multiple county PTABOA must specify the manner and amount of reimbursement that a county assessor is entitled to receive from each participating county for providing administrative support. A county assessor's office that provides administrative support shall: (1) coordinate with the county assessors of all counties within the jurisdiction of the multiple county PTABOA to perform necessary functions concerning appeals and correction of errors initiated by a taxpayer under IC 6-1.1-15; (2) keep full and accurate minutes of the proceedings of the multiple county PTABOA; and (3) perform other necessary duties.

### **D. Duties of Multiple County PTABOAs**

Under IC 6-1.1-28-0.6, a multiple county PTABOA must assume the authorities and duties as the PTABOA for property located in the geographic area of the counties participating in the multiple county PTABOA. The multiple county PTABOA must assume these authorities and duties on the date specified in the establishing ordinances.

A county PTABOA for a county that participates in a multiple county PTABOA must transfer records relating to proceedings of that PTABOA to the multiple county PTABOA and must stay the proceedings on any:

- (1) notices of review;
- (2) exemption applications;
- (3) claims for a deduction;
- (4) motions;
- (5) requests; and
- (6) similar administrative pleadings;

filed or pending with that PTABOA pending further action upon transfer to the multiple county PTABOA. A multiple county PTABOA must docket matters stayed as soon as practicable after the multiple county PTABOA is established. Any time limitation that applies to a proceeding

before a county PTABOA that is stayed is tolled beginning after the multiple county PTABOA is established and until the proceeding is docketed with the multiple county PTABOA.

Indiana Code 6-1.1-28-0.8 provides that a multiple county PTABOA has all the rights and powers necessary or convenient to carry out IC 6-1.1-28.

A multiple county PTABOA may meet in a location as specified in the establishing ordinances (IC 6-1.1-28-4).

#### **E. Notice of Annual Session**

Under IC 6-1.1-28-0.7, the county assessor of the county responsible for administration of a multiple county PTABOA must give notice of the time, date, place, and purpose of each annual session of the multiple county PTABOA. The county assessor must give the notice two weeks before the first meeting by:

- (1) publication of the notice within the geographic area over which the multiple county PTABOA has jurisdiction in the same manner as political subdivisions subject to IC 5-3-1-4(e) are required to publish notice; and
- (2) posting of the notice on the county assessor's Internet website.

#### **F. Miscellaneous**

SEA 87 makes a variety of corresponding amendments to other statutes.

#### **Contact Information**

Questions may be directed to General Counsel Mike Duffy at (317) 233-9219 or [mduffy@dlgf.in.gov](mailto:mduffy@dlgf.in.gov).