

Indiana Rules of Court

Tax Court Rules

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Rule 1. Scope of the rules

These rules govern the procedure and practice in all actions jurisdictionally cognizable in the Indiana Tax Court. They shall be construed to secure the just, speedy and inexpensive determination of every action. Except to the extent these rules are clearly inconsistent with the Indiana Rules of Trial Procedure (“Trial Rules”), those Trial Rules shall apply to actions in the Tax Court, but nothing herein or in the Trial Rules shall be deemed to extend the jurisdiction of the Tax Court with respect to persons, actions, or claims over which it does not otherwise have authority. In the case of an appeal from a determination of a probate court, the Indiana Rules of Appellate Procedure shall apply.

Rule 2. One form of action

- (A) In the Indiana Tax Court, there shall be one form of action in the nature of a civil action to be known as an “original tax appeal.”
- (B) An original tax appeal is an action that arises under the tax laws of the State of Indiana by which an initial judicial appeal of a final determination of the Department of State Revenue, the Indiana Board of Tax Review, or the Department of Local Government Finance is sought.

Rule 3. Commencement of an action

- (A) Appeals from final determinations of the Department of State Revenue. An original tax appeal from a final determination of the Department of State Revenue is commenced by filing a petition in the Tax Court.
- (B) Appeals from final determinations of the Indiana Board of Tax Review. An original tax appeal from a final determination of the Indiana Board of Tax Review is commenced by filing a petition in the Tax Court and filing a written notice of appeal with the Indiana Board of Tax Review. If the petitioner does not include in the petition a request that the Indiana Board of Tax Review prepare a certified copy of the agency record, the petitioner shall file a separate request for such record under Section (E) of this rule.
- (C) Appeals from final determinations of the Department of Local Government Finance. An original tax appeal from a final determination of the Department of Local Government Finance is commenced by filing a petition in the Tax Court.
- (D) Copies of petitions. Copies of the petition required under Section B of this rule shall be served upon those persons designated by any applicable statute. A petitioner complies with this rule by serving a copy of the

petition in the manner provided by Trial Rule 5(B). Copies of the petition shall be served upon public officers only in their official capacities.

- (E) Filing the record of judicial review. In original tax appeals filed under Section (B) of this rule, the petitioner shall request the Indiana Board of Tax Review to prepare a certified copy of the agency record within thirty (30) days after filing the petition. A request included as part of the petition filed under Section (B)(7) of this rule satisfies this requirement. The petitioner shall transmit a certified copy of the record to the Tax Court within thirty (30) days after having received notification from the Indiana Board of Tax Review that the record has been prepared.
- (F) Enjoining the collection of a tax. If the petitioner wishes to enjoin the collection of a tax pending the original tax appeal, there must be included with the original tax appeal a petition to enjoin the collection of the tax, which petition must include a summary of the issues that the petitioner will raise in the original tax appeal, and the equitable considerations for which the Tax Court should order the collection of the tax to be enjoined.
- (G) Documents and Information Excluded from Public Access and Confidential Pursuant to Administrative Rule 9(G)(1). Documents and information excluded from public access pursuant to Administrative Rule 9(G)(1) shall be filed in accordance with Trial Rule 5(G).

Rule 4. Jurisdiction over respondents and Service of Process

- (A) Appeals from final determinations of the Department of State Revenue and the Department of Local Government Finance.
 - (1) Notwithstanding anything to the contrary herein, the Tax Court acquires jurisdiction over the Department of State Revenue or the Department of Local Government Finance upon the filing of a petition with the clerk of the Tax Court seeking to set aside a final determination of either of such state agencies, as the case may be. The clerk of the Tax Court shall promptly transmit copies of a petition filed in the Tax Court to the Attorney General and to the state agency named as the respondent in such petition and shall state in accompanying transmittal letters: (1) the date on which the petition was filed; (2) the date on which the petition is being mailed to the Attorney General and the respondent state agency; and (3) the time within which these rules require a responsive pleading. Nothing in this rule shall relieve a party from complying with statutory requirements for bringing an original tax appeal.
 - (2) In original tax appeals of final determinations of the Department of State Revenue or the Department of Local Government Finance, it shall not be necessary to serve summons on the Attorney General, the Department of State Revenue, or the Department of Local Government Finance. Service of summons in accordance with the Trial Rules shall be required for the Tax Court to acquire jurisdiction over any other persons; such service shall be made as provided in Trial Rule 4.11.
- (B) Appeals from final determinations of the Indiana Board of Tax Review.
 - (1) In original tax appeals of final determinations of the Indiana Board of Tax Review, the Tax 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) In original tax appeals initiated by taxpayers, the named respondent shall be the person or persons designated by statute as parties to judicial review of final determinations of the Indiana Board of Tax Review.
 - (3) In original tax appeals initiated by a government official or entity, the named respondent shall be the taxpayer who was a party to the proceeding before the Indiana Board of Tax Review.
 - (4) 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. If the Department of Local Government Finance is a named respondent, service of summons shall be made upon the Commissioner of the Department of Local Government Finance. Service of summons shall be made in accordance with the Trial Rules.
- (C) Public Officers in their Official Capacities. Public officers shall only be made parties to original tax appeals in their official capacities.
- (D) Substitution of Parties.
 - (1) When a public officer who is made a party to an original tax appeal in his or her official capacity dies, resigns or otherwise no longer holds the public office, the officer's successor is automatically substituted as a party.
 - (2) A party shall, by notice filed with the Clerk, advise the Court of the succession in office of any party. The failure of any party to file a notice shall not affect the party's substantive rights.

- (3) The death or incompetence of any party on appeal shall not cause the original tax appeal to abate. Successor parties may be substituted for the deceased or incompetent parties.

Rule 5. Time

Time for Response to Petition. In a case in which the clerk of the Tax Court has served a petition in an original tax appeal without service of summons, the period for filing a response to such petition by the State Agency so served shall be thirty (30) days after the mailing of the clerk's transmittal letter. In a case governed by Rule 4(B), the period for filing a response to a petition shall be thirty (30) days after the service of the petition and summons on a named respondent.

Rule 6. Joinder and Intervention

- (A) Joinder of Taxpayer in Tax Court Appeals by Government Organization or Representative. In an original tax appeal in the Tax Court brought by a governmental organization or official representative, any person or persons whose liability for, or right to a refund of, taxes would be directly affected by the outcome of such appeal may intervene in the action pursuant to Trial Rule 24 if not already named as a respondent or joined under Trial Rule 20.
- (B) Right of Intervention. The Department of Local Government Finance shall have the right to intervene in original tax appeals of final determinations of the Indiana Board of Tax Review when the interpretation of its rules is at issue. This right of intervention shall not extend to settlement of the litigation between the original parties to the tax appeal unless the Department of Local Government Finance was a party to the action before the Indiana Board of Tax Review.

Rule 7. Failure to make or cooperate in discovery

- (A) Appropriate Court. An application for an order to a party to compel discovery may be made to the Tax Court, or alternatively, on matters relating to a deposition or an order under Trial Rule 34, to a court in the county where the deposition is being taken or where compliance is to be made. Application for an order to compel discovery directed to a deponent who is not a party shall be made to a court in the county where the deposition is being taken or to the Tax Court.
- (B) Sanctions by the Court in the County Where Deposition Is Taken or by the Tax Court. If a defendant fails to be sworn or to answer a question after being directed to do so by the court in the county in which the deposition is being taken or by the Tax Court, the failure may be considered a contempt of that court.

Rule 8. Evidentiary hearings

- (A) All evidentiary hearings shall be conducted in Allen County, Jefferson County, Lake County, Marion County, St. Joseph County, Vanderburgh County or Vigo County. A taxpayer who appeals to the Tax Court shall, at the time the appeal is filed, file a written election as to the county in which the evidentiary hearings in the appeal shall be conducted. If the taxpayer is an appellee in an appeal to the Tax Court, the taxpayer shall file such written election within thirty (30) days after receiving notice of the appeal. If no such written election is timely filed, evidentiary hearings shall be conducted in Marion County unless otherwise ordered by the Court.
- (B) All original tax appeals shall be tried to the Court without a jury.

Rule 9. Subpoena

- (A) Subpoena for Taking Depositions--Place of Examination. Proof of service of a notice to take a deposition as provided in Trial Rules 30(B) and 31(A) constitutes a sufficient authorization for the issuance by the Tax Court or by the clerk of court for the county in which the deposition is to be taken of subpoenas for the persons named or described therein. The subpoena may command the person to whom it is directed to produce designated books, papers, documents, or tangible things which constitute or contain matters within the scope of the examination permitted by Trial Rule 26(B), but in that event the subpoena will be subject to the provisions of Trial Rules 26(C) and 45(B).
- (B) Subpoena for a Hearing or Trial. At the request of any party, subpoenas for attendance at a hearing or trial shall be issued by the clerk of the Tax Court when requested, or, in the case of a subpoena for the taking of a deposition, by the clerk of the Tax Court or by the clerk of the court in the county in which the deposition is being taken. A subpoena may be served at any place within the state; and when permitted by the laws of the United States, this or another state or foreign country, the Court upon proper application and cause shown may authorize the service of a subpoena outside the state in accordance with and as permitted by such law.
- (C) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed in contempt of the Tax Court or the court from which the subpoena was issued, or of the court of the county where the witness was required thereunder to appear or act. The attendance of all witnesses when duly subpoenaed, and to whom fees have been paid or tendered as required by law may be enforced by attachment.

Rule 10. Findings by the court

- (A) Effect. The Court shall determine the facts and judgment shall be entered thereon pursuant to Trial Rule 58. The Court shall render its decisions in writing. The Court shall make special findings of fact without request
 - (1) in granting or refusing preliminary injunctions, including injunctions against collection of any tax;
 - (2) in making any final decision after trial; and
 - (3) in any other case provided by these rules or by statute.

The Court on appeal shall not set aside the findings or judgment of the Tax Court unless clearly erroneous, and due regard shall be given to the opportunity of the Tax Court to judge the credibility of the witnesses. The findings of a master shall be considered as findings of the Court to the extent that the Court adopts them. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions appear therein. Findings of fact are unnecessary on decisions of motions under Trial Rules 12 or 56 or any other motion except as provided in Trial Rules 41(B) (dismissal) and 59(J) (motion to correct errors).

Rule 11. Court and clerk

- (A) Tax Court Always Open. The Tax Court shall be deemed always open for the purpose of filing any pleadings or other proper paper, of issuing and returning any process contemplated by these rules, and of making and directing all interlocutory motions, orders and rules. Terms of court shall not be recognized.
- (B) Evidentiary Hearings--Orders in Chambers. All evidentiary hearings in connection with an original tax appeal shall be conducted in open court in a regular court or hearing room in the county designated for such hearing by the taxpayer party thereto. In the absence of such designation, such hearings shall be conducted in Marion County. All other acts or proceedings may be done or conducted by the judge in chambers without the attendance of the clerk or other Court officials and at any other place within the State.
- (C) Clerk, Clerk's Office and Orders by Clerk. The clerk of the Court is the clerk of the Supreme Court and the Court of Appeals and the address of the clerk's office is State House, Room 217, Indianapolis, Indiana 46204. Except as may be otherwise provided by law, the clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays and legal holidays. All motions and applications in the clerk's office for issuing process, for entering defaults or judgments by default, and for other proceedings which do not require allowance or order of the Court are grantable of course by the clerk; but the clerk's action may be suspended or altered or rescinded by the Court upon cause shown.
- (D) Notice of Orders or Judgments. The clerk shall give notice of rulings, orders or judgments and with the effect as provided in Trial Rule 72(D).

Rule 12. Hearings and motions

- (A) The judge shall periodically establish times and places, at intervals sufficiently frequent for the prompt dispatch of business at each of the counties designated for the hearing of evidence in original tax appeals, at which motions requiring notice and hearing may be heard and disposed of; but the judge at any time or place and on such notice, if any, as the judge considers reasonable may make order for the advancement, conduct and hearing of actions. To expedite its business, the Court may direct the submission and determination of motions without oral hearing upon brief written statements or reasons in support and opposition, or direct and permit hearings by telephone conference call with all attorneys or other similar means of communications.
- (B) Every motion shall be accompanied by a proposed form of order and except in motions for continuance shall include a memorandum of law or a statement of points and authorities, explaining how relevant authorities support the contentions of the moving party.
- (C) In matters other than motions for summary judgment (governed by Trial Rule 56), an opposing party may file a written memorandum of law or a statement of authority in response to the matters raised in any motion not later than 10 days from the date of service of the motion, or within such shorter or longer time as the Court may allow.
- (D) A reply memorandum, if any, shall be filed within seven days of the service of the responding memorandum, or within such shorter or longer time as the Court may allow.
- (E) Oral hearings shall be conducted on motions in the discretion of the Court if requested by either party, or when ordered by the Court. In the motion or response, a party requesting oral hearing shall specify the amount of time required for hearing, whether appearance by telecommunications is requested, the names and telephone numbers of all parties served with the motion or response, and whether official court reporting services are requested for the hearing.
- (F) When a petition to enjoin the collection of a tax pending the original tax appeal is filed pursuant to IC 33-3-5-11(b), a hearing will be held as promptly as possible upon request of either party.

(G) If exigent circumstances are present, the petitioning party may wish to consult Trial Rule 65(B).

Rule 13. Venue

The Tax Court has exclusive statewide jurisdiction over all original tax appeals, and venue of all original tax appeals shall lie only in the Tax Court.

Rule 14. Books and records kept by the clerk and entries

- (A) Pleadings and Papers--Where Filed and Entered. All pleadings, papers and rulings, including final judgments and appealable orders, shall be filed with the clerk of the Court who shall file and keep them under a consecutive file number assigned by the clerk to each case.
- (B) Docket Book. The clerk of the Court shall keep a docket book of such form that the file number of each case or proceeding shall be noted on the folio of the docket whereon the first entry of the action is made. All papers filed with or transmitted to the clerk, all process issued and returns made thereon, all appearances, orders, verdicts, judgments, enforcement proceedings, execution and returns thereon shall be entered chronologically in the docket on the folio assigned to the action and shall be marked with its file number and the date of filing. Such entries shall be brief but shall show the nature of each paper filed or writ issued and the bare substance of each order or judgment of the Court and of the returns showing execution of process. Each entry shall show the date the filing, return or entry was made, including the date of judgment or order was entered.
- (C) Indexes. The clerk under the direction of the judge shall keep suitable indexes of the docket maintained by him.
- (D) Calendars. There shall be prepared under the direction of the judge calendars of all actions ready for trial.
- (E) Order Book. The clerk shall maintain an order book in such form as the judge may prescribe or may have prescribed by local or other rule. Every ruling, order, or judgment of the judge should be entered or filed in such book verbatim for each day and the judge shall sign the book as to such day's entries. The order book may include such other matters as the judge may direct and shall include such matters as may be required by local or other rule.
- (F) Replacing Lost Papers. If an original pleading or paper filed with the clerk be lost, or be withheld by any person, the Court may authorize a copy thereof to be filed and used instead of the original.
- (G) Method of Keeping Records. Under the direction of the Supreme Court or the judge, the clerk may, notwithstanding the foregoing sections, keep records in any suitable media, including without limitation, electromagnetic, photographic, electric, electronic, electrostatic and paper media or combinations thereof.

Rule 15. Special judge--Selection

If the judge of the Tax Court is disqualified from hearing a case or is incapable of exercising judicial duties with respect to a case, the Chief Justice of the State of Indiana shall appoint a judge pro tempore to sit in place of the disqualified or absent judge.

Rule 16. Small Tax Cases

- (A) General. The Small Tax Case Rules set forth the special provisions which are to be applied in the Indiana Tax Court to small tax cases as required by IC 33-3-5-12. Except as otherwise provided in the Small Tax Case Rules, the Indiana Rules for Small Claims are also applicable to such cases. To the extent not inconsistent therewith, the Indiana Tax Court Rules will apply. The term "small tax case" means a case which involves a claim for refund from the Department of State Revenue that does not exceed \$5,000 for any year.
- (B) Notice of Claim. The notice of claim to be used under Small Claims Rule 2 shall contain:
 - (1) the name of the Tax Court;
 - (2) the name, address and telephone number of claimant;
 - (3) a designation of the type of tax the claim involves;
 - (4) a statement of the taxable period involved;
 - (5) a brief statement of the nature of the claim;
 - (6) a statement of the amount of tax at issue; and
 - (7) any additional information which may facilitate proper service or processing of the claim.
- (C) Manner of Service. 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.

- (D) Appearances for Governmental Defendants. The Attorney General shall be deemed to have entered an appearance for and on behalf of the governmental defendant or defendants.

Rule 17. Judgment

All judgments shall be incorporated in written memorandum decisions by the court. Unless specifically designated "For Publication," such written memorandum decisions shall not be published and shall not be regarded as precedent nor cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case. Judgment shall be subject to review as prescribed by relevant Indiana rules and statutes.

Rule 18. Mediation

- (A) Purpose. The purpose of a mediation of any matter before the Tax Court is set forth in Rule 2.1 of the Indiana Rules for Alternative Dispute Resolution, which is hereby incorporated by reference.
- (B) Mediation Order. At any time, the Tax Court may on its own motion or upon motion of any party refer an original tax appeal to mediation. Any original tax appeal referred to mediation shall be subject to this Rule unless the parties by agreement elect to be subject to the Indiana Rules for Alternative Dispute Resolution without regard to this Rule. At all times during the course of any mediation the appeal remains within the jurisdiction of the Tax Court.
- (C) Case Selection/Objection to Mediation Order. After a case has been referred for mediation, a party may object by filing a written objection with the Tax Court within fifteen (15) days after the order of referral is entered. The party must specify the grounds for objection. The Tax Court shall promptly consider the objection and any response and determine whether the litigation should then be mediated or not. In this decision, the Tax Court shall consider the willingness of the parties to mutually resolve their dispute, the ability of the parties to participate in the mediation process, the need for discovery and the extent to which it has been conducted, and any other factors which affect the potential for fair resolution of the dispute through the mediation process. If a case is ordered for mediation, the case shall remain on the court docket and the trial calendar.
- (D) Selection of Mediator/Costs of Mediation. Within fifteen (15) days of an order referring a case to mediation, the parties may choose a mediator from the pool of senior judges who have been certified by the Indiana Judicial Nominating Commission. In the event a mediator is not selected by agreement, the court will designate three (3) senior judges who have been certified by the Indiana Judicial Nominating Commission who are willing to mediate cases before the Tax Court. Alternately, each side shall strike the name of one mediator. The side initiating the lawsuit will strike first. The mediator remaining after the striking process will be deemed the selected mediator. The senior judge serving as the mediator shall be paid by the Division of State Court Administration pursuant to Supreme Court Administrative Rule 5. The senior judge serving as the mediator need not be a registered mediator as provided in Indiana Rules for Alternative Dispute Resolution, rule 2. Mediation shall occur at no cost to the parties.
- (E) Mediation Procedure, Rules of Evidence, Discovery, Sanctions, Confidentiality. The mediation shall be conducted pursuant to the procedures, rules of evidence, discovery, sanctions, and confidentiality provisions set forth in Rules 2.7, 2.8, 2.9, 2.10, and 2.11 of the Indiana Rules for Alternative Dispute Resolution which are hereby incorporated by reference; provided, however, that the provision of Rule 2.7(B)(2) requiring attorneys or representatives of a party with settlement authority to be present at each mediation shall not apply.
- (F) Termination of Mediation. The mediation shall terminate as provided in Rule 2.7(D) of the Indiana Rules for Alternative Dispute Resolution as incorporated by reference in (E) above provided that the Tax Court may, at any time, upon good cause shown and upon a hearing on the issue, terminate the mediation.

Rule 19. Special rules

The judge of the Tax Court may from time to time make and amend rules governing practice before it not inconsistent with these rules. In all cases not provided for by rule, the Tax Court may regulate its practice in any manner not inconsistent with these rules. Two (2) copies of all special rules shall be furnished to the clerk and to the Office of the Administrator of State Courts.

Rule 20. Effective date

These rules shall be effective as of July 1, 1986, and they shall govern all proceedings in the Tax Court, whether originally commenced in the Tax Court or in another court.

Rule 21. Title

These rules may be known as the Indiana Tax Court Rules.

