

IC 33-26

ARTICLE 26. TAX COURT

IC 33-26-1

Chapter 1. Establishment of the Indiana Tax Court

IC 33-26-1-1

Indiana tax court; establishment

Sec. 1. The Indiana tax court is established.

As added by P.L.98-2004, SEC.5.

IC 33-26-1-2

Indiana tax court; court of record

Sec. 2. The tax court is a court of record.

As added by P.L.98-2004, SEC.5.

IC 33-26-2

Chapter 2. Tax Court Judge

IC 33-26-2-1

Judge

Sec. 1. The tax court consists of one (1) judge.

As added by P.L.98-2004, SEC.5.

IC 33-26-2-2

Qualifications of judge

Sec. 2. The judge of the tax court must:

- (1) be a citizen of Indiana; and
- (2) have been admitted to the practice of law in Indiana for a period of at least five (5) years.

As added by P.L.98-2004, SEC.5.

IC 33-26-2-3

Term of office; approval or rejection

Sec. 3. (a) The initial term of office of a person appointed to serve as the judge of the tax court begins on the effective date of that appointment and ends on the date of the next general election that follows the expiration of two (2) years from the effective date of that appointment.

(b) The tax court judge may be approved or rejected for an additional term or terms in the same manner as are the justices of the supreme court under IC 33-24-2.

As added by P.L.98-2004, SEC.5.

IC 33-26-2-4

Vacancy

Sec. 4. (a) Except as otherwise provided in this section, a vacancy on the tax court shall be filled as provided in IC 33-27.

(b) Before the expiration of the sixty (60) day period prescribed by IC 33-27-3-4, the governor shall:

- (1) appoint to the tax court one (1) of the three (3) persons initially nominated by the judicial nominating commission; or
- (2) reject all the persons initially nominated by the commission.

If the governor does reject all the nominees, the governor shall notify the chairman of the judicial nominating commission of that action. The commission shall then submit the nominations of three (3) new candidates to the governor not later than forty (40) days after receipt of the notice. The governor shall fill the vacancy on the tax court by appointing one (1) of the new candidates within sixty (60) days from the date the names of the new candidates are submitted by the commission.

As added by P.L.98-2004, SEC.5.

IC 33-26-2-5

Salary; expenses; full-time position

Sec. 5. (a) The judge of the tax court is entitled to an annual salary

equal to the annual salary provided in IC 33-38-5-8 to a judge of the court of appeals. In addition, the judge of the tax court is entitled to the following:

(1) Reimbursement for traveling expenses and other expenses actually incurred in connection with the judge's duties, as provided in the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency.

(2) A subsistence allowance equal to the amount provided under IC 33-38-5-8 to a judge of the court of appeals who is not the chief judge of the court of appeals.

(b) The judge of the tax court:

(1) shall devote full-time to judicial duties; and

(2) may not engage in the practice of law.

(c) The state shall pay the annual salary prescribed in subsection (a) from the state general fund.

(d) The state shall furnish an automobile to the judge of the state tax court.

As added by P.L.98-2004, SEC.5.

IC 33-26-2-6

Disqualification; judge pro tempore

Sec. 6. If the judge of the tax court is disqualified from hearing a case or is incapable of exercising judicial duties with respect to the case, the chief justice of the supreme court shall appoint a judge pro tempore to sit in place of the disqualified or absent judge.

As added by P.L.98-2004, SEC.5.

IC 33-26-3

Chapter 3. Jurisdiction and Venue

IC 33-26-3-1

Limited jurisdiction; exclusive jurisdiction

Sec. 1. The tax court is a court of limited jurisdiction. The tax court has exclusive jurisdiction over any case 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 IC 6-8.1-1-1); or
- (2) the Indiana board of tax review.

As added by P.L.98-2004, SEC.5.

IC 33-26-3-2

Other jurisdiction

Sec. 2. In addition to the jurisdiction described in section 1 of this chapter, the tax court has:

- (1) any other jurisdiction conferred by statute; and
- (2) exclusive jurisdiction over any case that was an initial appeal of a final determination made by the state board of tax commissioners before January 1, 2002.

As added by P.L.98-2004, SEC.5.

IC 33-26-3-3

Original tax appeals

Sec. 3. The cases over which the tax court has exclusive original jurisdiction are referred to as original tax appeals in this article. The tax court does not have jurisdiction over a case unless:

- (1) the case is an original tax appeal; or
- (2) the tax court has otherwise been specifically assigned jurisdiction by statute.

As added by P.L.98-2004, SEC.5.

IC 33-26-3-4

Location of evidentiary hearings

Sec. 4. A taxpayer that appeals to the tax court shall, at the time the appeal is filed, elect to have all evidentiary hearings in the appeal conducted in one (1) of the following counties:

- (1) Allen County.
- (2) Jefferson County.
- (3) Lake County.
- (4) Marion County.
- (5) St. Joseph County.
- (6) Vanderburgh County.
- (7) Vigo County.

As added by P.L.98-2004, SEC.5.

IC 33-26-3-5

Election by appellee of location of evidentiary hearings

Sec. 5. A taxpayer that is an appellee in an appeal to the tax court shall, within thirty (30) days after it receives notice of the appeal, elect to have all evidentiary hearings in the appeal conducted in a county listed in section 4 of this chapter.

As added by P.L.98-2004, SEC.5.

IC 33-26-3-6

Jurisdiction; gaming card excise tax

Sec. 6. (a) The tax court does not have jurisdiction over a case that is an appeal from a final determination made by the Indiana gaming commission under IC 4-32.2.

(b) The tax court has jurisdiction over a case that is an appeal from a final determination made by the department of state revenue concerning the gaming card excise tax established under IC 4-32.2-10.

As added by P.L.98-2004, SEC.5. Amended by P.L.91-2006, SEC.11.

IC 33-26-4

Chapter 4. Offices and Personnel

IC 33-26-4-1

Principal office

Sec. 1. (a) The tax court shall maintain its principal office in Indianapolis.

(b) The Indiana department of administration shall provide suitable facilities for the court in Indianapolis.

(c) If the court hears a case at a location outside Marion County, the executive of the county in which the court sits shall provide the court with suitable facilities.

As added by P.L.98-2004, SEC.5.

IC 33-26-4-2

Employees; clerk

Sec. 2. (a) The tax court may employ:

(1) a bailiff;

(2) a clerk;

(3) a reporter;

(4) a clerical assistant; or

(5) any other personnel that the court needs to perform its duties.

(b) The clerk of the supreme court shall serve as the clerk of the tax court.

As added by P.L.98-2004, SEC.5.

IC 33-26-5

Chapter 5. Small Claims Docket

IC 33-26-5-1

Small claims docket

Sec. 1. The tax court shall establish a small claims docket for processing:

- (1) claims for refunds from the department of state revenue that do not exceed five thousand dollars (\$5,000) for any year; and
- (2) appeals of final determinations of assessed value made by the Indiana board of tax review that do not exceed forty-five thousand dollars (\$45,000).

As added by P.L.98-2004, SEC.5.

IC 33-26-5-2

Rules and procedures

Sec. 2. The tax court shall adopt rules and procedures under which cases on the small claims docket are heard and decided.

As added by P.L.98-2004, SEC.5.

IC 33-26-6

Chapter 6. Appellate Review; Rules and Procedures

IC 33-26-6-0.2

Jurisdiction of tax court under prior law

Sec. 0.2. (a) Notwithstanding IC 33-3-5-2, as amended by P.L.198-2001 (before its repeal, now codified in this chapter), the tax court has exclusive jurisdiction over any case that arises under the tax laws of this state and that is an initial appeal initiated after December 31, 2001, of a final determination made by the department of local government finance if the following apply:

- (1) The tax court would have had jurisdiction over the case if the appeal had been initiated before January 1, 2002.
- (2) P.L.198-2001 does not provide that the final determination is subject to appeal to the Indiana board of tax review.

(b) IC 33-3-5-14 (as amended by P.L.198-2001 before its repeal, now codified at section 3 of this chapter), and IC 33-3-5-14.2 (as added by P.L.198-2001 before its repeal, now codified at IC 33-26-7-1, IC 33-26-7-2, IC 33-26-7-3, and IC 33-26-7-4), IC 33-3-5-14.5 (as added by P.L.198-2001, before its repeal, now codified at section 5 of this chapter), and IC 33-3-5-14.8 (as added by P.L.198-2001, before its repeal, now codified at section 6 of this chapter) apply to appeals initiated under IC 6-1.1-15-5, as amended by P.L.198-2001, of final determinations of the Indiana board of tax review issued after December 31, 2001.

As added by P.L.220-2011, SEC.531.

IC 33-26-6-1

Trial without jury; adoption of rules and procedures

Sec. 1. (a) The tax court shall try each original tax appeal without the intervention of a jury.

(b) The tax court shall adopt rules and procedures under which original tax appeals are heard and decided.

As added by P.L.98-2004, SEC.5.

IC 33-26-6-2

Tax appeal or injunction; injunction pending appeal

Sec. 2. (a) A taxpayer who wishes to initiate an original tax appeal must file a petition in the tax court to set aside the final determination of the department of state revenue or the Indiana board of tax review. 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.

(b) A taxpayer who wishes to enjoin the collection of a tax pending the original tax appeal must file a petition with the tax court to enjoin the collection of the tax. The petition must set forth a summary of:

- (1) the issues that the petitioner will raise in the original tax appeal; and
- (2) the equitable considerations for which the tax court should

order the collection of the tax to be enjoined.

(c) After a hearing on the petition filed under subsection (b), the tax court may enjoin the collection of the tax pending the original tax appeal, if the tax court finds that:

- (1) the issues raised by the original tax appeal are substantial;
- (2) the petitioner has a reasonable opportunity to prevail in the original tax appeal; and
- (3) the equitable considerations favoring the enjoining of the collection of the tax outweigh the state's interests in collecting the tax pending the original tax appeal.

(d) This section does not apply to a final determination of the Indiana gaming commission under IC 4-32.2.

(e) This section applies to a final determination made by the department of state revenue concerning the gaming card excise tax established under IC 4-32.2-10.

As added by P.L.98-2004, SEC.5. Amended by P.L.91-2006, SEC.12.

IC 33-26-6-3

Scope of proceeding; law governing

Sec. 3. (a) Subject to subsection (b), with respect to determinations as to whether any issues or evidence may be heard in an original tax appeal that was not heard in the administrative hearing or proceeding, the tax court is governed by the law that applied before the creation of the tax court to appeals to trial courts of final determinations made by the department of state revenue and the state board of tax commissioners.

(b) Judicial review of disputed issues of fact must be confined to:

- (1) the record of the proceeding before the Indiana board of tax review; and
- (2) any additional evidence taken under section 5 of this chapter.

The tax court may not try the case de novo or substitute its judgment for that of the Indiana board of tax review. Judicial review is limited to only those issues raised before the Indiana board of tax review, or otherwise described by the Indiana board of tax review, in its final determination.

(c) A person may obtain judicial review of an issue that was not raised before the Indiana board of tax review only to the extent that the:

- (1) 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
- (2) interests of justice would be served by judicial resolution of an issue arising from a change in controlling law occurring after the Indiana board of tax review's action.

As added by P.L.98-2004, SEC.5.

IC 33-26-6-4

Burden of demonstrating invalidity of action; standard of review;

findings; standards for granting relief

Sec. 4. (a) The burden of demonstrating the invalidity of an action taken by the state board of tax commissioners is on the party to the judicial review proceeding asserting the invalidity.

(b) The validity of an action taken by the state board of tax commissioners shall be determined in accordance with the standards of review provided in this section as applied to the agency action at the time it was taken.

(c) The tax court shall make findings of fact on each material issue on which the court's decision is based.

(d) The tax court shall grant relief under section 7 of this chapter only if the tax court determines that a person seeking judicial relief has been prejudiced by an action of the state board of tax commissioners that is:

- (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- (2) contrary to constitutional right, power, privilege, or immunity;
- (3) in excess of or short of statutory jurisdiction, authority, or limitations;
- (4) without observance of procedure required by law; or
- (5) unsupported by substantial or reliable evidence.

(e) Subsection (d) may not be construed to change the substantive precedential law embodied in judicial decisions that are final as of January 1, 2002.

As added by P.L.98-2004, SEC.5.

IC 33-26-6-5

Additional evidence; remand

Sec. 5. (a) This section applies with respect to judicial review of final determinations of the Indiana board of tax review.

(b) The tax court may receive evidence in addition to that contained in the record of the determination of the Indiana board of tax review 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 one (1) or both of the following:

- (1) Improper constitution as a decision making body or grounds for disqualification of those taking the agency action.
- (2) Unlawfulness of procedure or decision making process.

This subsection 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.

(c) The tax court may remand a matter to the Indiana board of tax review before final disposition of a petition for review with directions that the Indiana board of tax review conduct further factfinding or that the Indiana board of tax review prepare an adequate record, if:

- (1) the Indiana board of tax review failed to prepare or preserve an adequate record;
- (2) the Indiana board of tax review improperly excluded or omitted evidence from the record; or

(3) a relevant law changed after the action of the Indiana board of tax review and the tax court determines that the new provision of law may control the outcome.

(d) This subsection applies if the record for a judicial review prepared under IC 6-1.1-15-6 contains an inadequate record of a site inspection. Rather than remand a matter under subsection (c), the tax court may take additional evidence not contained in the record relating only to observations and other evidence collected during a site inspection conducted by a hearing officer or other employee of the Indiana board of tax review. The evidence may include the testimony of a hearing officer only for purposes of verifying or rebutting evidence regarding the site inspection that is already contained in the record.

As added by P.L.98-2004, SEC.5. Amended by P.L.219-2007, SEC.103.

IC 33-26-6-6

Final determinations of board of tax review; burden of demonstrating invalidity; findings of fact; relief

Sec. 6. (a) This section applies with respect to judicial review of final determinations of the Indiana board of tax review.

(b) The burden of demonstrating the invalidity of an action taken by the Indiana board of tax review is on the party to the judicial review proceeding asserting the invalidity.

(c) The validity of an action taken by the Indiana board of tax review shall be determined in accordance with the standards of review provided in this section as applied to the agency action at the time it was taken.

(d) The tax court shall make findings of fact on each material issue on which the court's decision is based.

(e) The tax court shall grant relief under section 7 of this chapter only if the tax court determines that a person seeking judicial relief has been prejudiced by an action of the Indiana board of tax review that is:

- (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- (2) contrary to constitutional right, power, privilege, or immunity;
- (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory jurisdiction, authority, or limitations;
- (4) without observance of procedure required by law; or
- (5) unsupported by substantial or reliable evidence.

(f) Subsection (e) may not be construed to change the substantive precedential law embodied in judicial decisions that are final as of January 1, 2002.

As added by P.L.98-2004, SEC.5. Amended by P.L.219-2007, SEC.104.

IC 33-26-6-7

Written decisions; publication and distribution; direct appeal to

supreme court

Sec. 7. (a) The tax court shall render its decisions in writing.

(b) Written decisions of the tax court may be published and distributed in the manner prescribed by the supreme court.

(c) A decision of the tax court remanding the matter of assessment of property under IC 6-1.1-15-8 to the Indiana board of tax review shall specify the issues on remand on which the Indiana board of tax review is to act.

(d) The decisions of the tax court may be appealed directly to the supreme court.

As added by P.L.98-2004, SEC.5.

IC 33-26-7

Chapter 7. Representation by Attorney General

IC 33-26-7-1

Representation of local officials by private attorney; attorney general approval

Sec. 1. Subject to IC 4-6-2-11, IC 4-6-5-3, and the written approval of the attorney general, a township assessor, a county assessor, a county auditor, a member of a county property tax assessment board of appeals, or a county property tax assessment board of appeals that:

(1) made an original determination that is the subject of a judicial proceeding in the tax court; and

(2) is a defendant in a judicial proceeding in the tax court;

may elect to be represented in the judicial proceeding by an attorney selected and paid by the defendant, the township, or the county.

As added by P.L.98-2004, SEC.5. Amended by P.L.154-2006, SEC.70.

IC 33-26-7-2

Discovery

Sec. 2. Notwithstanding representation by the office of the attorney general, the duty of discovery is on the parties to the judicial proceeding.

As added by P.L.98-2004, SEC.5.

IC 33-26-7-3

Discovery; production of documents from administrative law judge

Sec. 3. Discovery conducted under section 2 of this chapter is limited to production of documents from the administrative law judge presiding over the review under IC 6-1.1-15-3. The administrative law judge may not be summoned to testify before the tax court unless verified proof is offered to the tax court that the impartiality of the administrative law judge was compromised concerning the review.

As added by P.L.98-2004, SEC.5.

IC 33-26-7-4

Relief

Sec. 4. A township assessor, a county assessor, a county auditor, a member of a county property tax assessment board of appeals, or a county property tax assessment board of appeals:

(1) may seek relief from the tax court to establish that the Indiana board of tax review rendered a decision that was:

(A) an abuse of discretion;

(B) arbitrary and capricious;

(C) contrary to substantial or reliable evidence; or

(D) contrary to law; and

(2) may not be represented by the office of the attorney general in an action initiated under subdivision (1).

As added by P.L.98-2004, SEC.5.

IC 33-26-8

Chapter 8. Order to Produce Information

IC 33-26-8-1

"Contractor"

Sec. 1. As used in this chapter, "contractor" means a reassessment, reassessment review, or special reassessment contractor of the department of local government finance under IC 6-1.1-4-32 (repealed).

As added by P.L.98-2004, SEC.5. Amended by P.L.1-2007, SEC.213; P.L.112-2012, SEC.50.

IC 33-26-8-2

"Qualifying county"

Sec. 2. As used in this chapter, "qualifying county" means a county having a population of more than four hundred thousand (400,000) and less than seven hundred thousand (700,000).

As added by P.L.98-2004, SEC.5.

IC 33-26-8-3

"Qualifying official"

Sec. 3. As used in this chapter, "qualifying official" refers to any of the following:

- (1) A county assessor of a qualifying county.
- (2) A township assessor of a qualifying county.
- (3) The county auditor of a qualifying county.
- (4) The treasurer of a qualifying county.
- (5) The county surveyor of a qualifying county.
- (6) A member of the land valuation committee in a qualifying county.
- (7) Any other township or county official in a qualifying county who has possession or control of information necessary or useful for a reassessment, reassessment review, or special reassessment of property to which IC 6-1.1-4-32 (repealed) applies, including information in the possession or control of an employee or a contractor of the official.
- (8) Any county official in a qualifying county who has control, review, or other responsibilities related to paying claims of a contractor submitted for payment under IC 6-1.1-4-32 (repealed).

As added by P.L.98-2004, SEC.5. Amended by P.L.1-2007, SEC.214; P.L.112-2012, SEC.51.

IC 33-26-8-4

Order to produce information

Sec. 4. Upon petition from the department of local government finance or a contractor, the tax court may order a qualifying official to produce information requested in writing from the qualifying official by the department of local government finance or the contractor.

As added by P.L.98-2004, SEC.5.

IC 33-26-8-5

Production of information; deadline

Sec. 5. If the tax court orders a qualifying official to provide requested information as described in section 4 of this chapter, the tax court shall order production of the information not later than fourteen (14) days after the date of the tax court's order.

As added by P.L.98-2004, SEC.5.

IC 33-26-8-6

Contempt of tax court

Sec. 6. The tax court may find that any willful violation of this chapter by a qualifying official constitutes a direct contempt of the tax court.

As added by P.L.98-2004, SEC.5.

IC 33-26-9

Chapter 9. Fees

IC 33-26-9-1

Filing fees

Sec. 1. When a complaint is filed, a taxpayer who initiates an original tax appeal shall pay to the clerk of the tax court the same fee as provided in IC 33-37-4-7 for actions in probate court.

As added by P.L.98-2004, SEC.5.

IC 33-26-9-2

Witness fees and mileage

Sec. 2. A witness who testifies before the tax court is entitled to receive the same fee and mileage allowance provided to witnesses who testify in a circuit court. The person who calls the witness to testify shall pay the witness fee and mileage allowance.

As added by P.L.98-2004, SEC.5.

IC 33-26-9-3

Transcript fees

Sec. 3. The tax court may fix and charge a fee for preparing, comparing, or certifying a transcript. However, the tax court's fee may not exceed the fee charged by circuit courts for the same service.

As added by P.L.98-2004, SEC.5.

IC 33-26-9-4

Fees; collection; disposition

Sec. 4. The clerk of the tax court shall collect the fees imposed under sections 1 and 3 of this chapter. The clerk shall transmit the fees to the treasurer of state. The treasurer shall deposit the fees in the state general fund.

As added by P.L.98-2004, SEC.5.

IC 33-26-9-5

Filing fee refund

Sec. 5. If a taxpayer prevails in a complaint that is placed on the small claims docket under IC 33-26-5, the tax court shall order the refund of the taxpayer's filing fee under section 1 of this chapter from the state general fund. The auditor of state shall pay a warrant that is ordered under this section.

As added by P.L.98-2004, SEC.5.