

Short-Term Tax Options for Indiana Flood Victims (Disaster Relief)

TO: IMA MEMBERS

RE: Adjusting Property Tax Values To Reflect Flood Damage

Indiana has a process whereby a property owner can reduce (both retroactively as well as prospectively) the tax value of their property to reflect a reduction in value as the result of a natural disaster. This process applies to all property, i.e. both business and residential, real and personal. The memo (reprinted below) from the Indiana Department of Local Government Finance outlines the scope of the tax relief available, as well as the process you will need to follow to obtain that relief.

Note that the process to reduce your taxes is initiated by the property owner. In contacting your county assessor you may want to supply them with a copy of the memo (below). County assessors may or may not be aware of it.

If you have questions or if IMA can supply any assistance, please contact Mark Cahoon of the IMA staff at mcahoon@imaweb.com.

MEMORANDUM

To: County Auditors, County Assessors, and County Treasurers

From: Department of Local Government Finance

Subject: Reassessment Following a Disaster and Form 137R Petitions

Date: February 1, 2008

Effective January 1, 2008, Indiana Code section 6-1.1-4-11 transferred the authority to determine if a reassessment should be ordered as a result of a disaster from the Department of Local Government Finance ("Department") to the County Assessor. The purpose of this memorandum is to offer guidelines for the County Assessor, County Auditor and County Treasurer to consider when making this determination.

Statutory Law:

Ind. Code § 6-1.1-4-11 Destroyed property; order of reassessment by county assessor:

- (a) If a substantial amount of real and personal property in a township has been partially or totally destroyed as a result of a disaster, the County Assessor shall:

- (1) cause a survey to be made of the area or areas in which the property has been destroyed; and
- (2) order a reassessment of the destroyed property; if a person petitions the County Assessor to take that action. The County Assessor shall specify in the assessor's order the time within which the reassessment must be completed and the date on which the reassessment will become effective. However, the reassessed value and the corresponding adjustment of tax due, past due, or already paid is effective as of the date the disaster occurred, without penalty.

(b) The petition for reassessment of destroyed property, the reassessment order, and the tax adjustment order may not be made after December 31st of the year in which the taxes which would first be affected by the reassessment are payable.

I.C. 6-1.1-4-11 requires a substantial amount of real and personal property in a township to be partially or totally destroyed by a disaster to qualify for a reassessment. Therefore, the County Assessor will be required to: (1) determine if the event was a disaster; and 2) if the event was a disaster, determine if it was substantial enough to issue a reassessment order.

Case Law:

The determination of a "substantial amount" of property destroyed **cannot** be made in relation to the total assessed value of property in the township. This determination is based solely on the facts of each petition. The Indiana Tax Court has provided some guidance in two cases in this area: *Beta Steel Corp. v. DLGF*, 780 N.E.2d 439 (Ind. Tax 2002), and *Scheid v. State Board of Tax Commissioners*, 560 N.E.2d 1283 (Ind. Tax 1990). In each case, the court held that Form 137R was acceptable for purposes of petitioning for reassessment.

In *Beta Steel*, a pressure vessel exploded, blowing a hole in the roof of one building and the debris damaged about 30 nearby businesses. Fifteen (15) percent of Beta Steel's real property and 20 percent of its personal property were destroyed. Here, the court held that in looking at the "substantial amount" of damage to property in a township, "substantial amount" equals "substantial quantity" and not assessed value in comparison to the entire assessed value of all property in the township. The question becomes, was the destruction of part of the mill a substantial amount? The court answered this "yes" and ordered reassessment.

In *Scheid*, a fire destroyed a building and real estate assessed at \$187,950. The board denied Scheid's petition, saying the fire was not a disaster. However, the court reversed the order of the board denying Scheid's motion for summary judgment and granted the motion for summary judgment, remanding the case to the board for further determinations. A fire is a disaster under the applicable statute and the destruction of a single-family dwelling required reassessment.

No declaration of a disaster by the governor or president is required before reassessment can be undertaken. Further, a "disaster" for purposes of the statute does not need to be wide spread. The destruction of a single structure can be considered a disaster for purposes of the statute and reassessment.

Reassessment:

Another part of the reassessment process is to determine the damage to the property. A physical inspection of the property is **required**. Taxpayers should also be given the opportunity to provide evidence for your consideration. This evidence could include: photos, video, repair bills, insurance claims, news articles, appraisals, reports and other documentation from local, state and federal agencies.

The final step would be to determine the assessed value of the property after the reassessment and give the required notice of the change in assessment that is to be attached to the completed Form 137R. If the taxpayer disagrees with this change in assessment, an appeal could be initiated pursuant to I.C. 6-1.1-15.

If the county assessor contracts with a vendor to perform reassessments, the contract must be submitted to the department for review, as with any contract for assessment functions.

Frequently Asked Questions:

Could the decision to reassess or not be based solely on whether the president declared the area as a disaster area and the homeowners qualified for federal disaster aid?

The decision to reassess should never be made solely on the basis of the declaration of a disaster by the governor or president. Each petition must be reviewed independently. The assessor should consider all of the facts surrounding the event before making the determination on whether a disaster with substantial damage to property has occurred.

So if a house burns down because of faulty electrical wiring or if lightning hits a tree which falls onto a house, no reassessment would be ordered?

It is likely that those examples would qualify to be reassessed. The *Scheid* case addresses this point specifically.

If a disaster occurs in July of 2008, do I reassess property as of 1/15/08 payable in 2008 for annually assessed mobile homes and March 1, 2008 payable in 2009 for real and personal property; or is it for the assessment date of 1/15/09 payable in 2009 for annually assessed mobile homes and March 1, 2009 payable in 2010 for real and personal property?

You would reassess property for the assessment date prior to the disaster. The statute says the reassessed value is effective as of the date the disaster occurred. For example, the assessment dates affected for property damaged or destroyed from the January 7, 2008 floods in White, Tippecanoe, and other counties, would be '07 pay '07 for annually assessed mobile homes and '07 pay '08 for real property and personal property.

So is it possible that an assessment on a home could be reduced to zero if the home was completely destroyed?

Yes. If you assessed that home for March 1, 2008, and a disaster destroyed it after the assessment date, you would remove the true tax value of the improvements from that assessment. The true tax value of the land would remain.

Would this reduction in assessed value be permanent or for one year only?

This question would have to be answered on a case-by-case basis for each assessment date since each assessment date stands alone. For example, if a tornado went through a mobile home park, the mobile homes in the direct line of the tornado would be completely destroyed and later replaced; therefore for the assessment date involving the disaster, the assessment for the destroyed mobile home would be removed and the replacement mobile home would be assessed on the following assessment date. For the mobile homes on the outer edge of the tornado damage, varying degrees of damage may have occurred from flying debris and high winds. If the damage was too severe and authorities declared the mobile home totaled, that assessment would also be removed. If the damage was less severe such as dented aluminum siding and broken windows, the owner may have completely repaired the damage so in this case, the reassessment (and the reduction in assessed value) would only be for one year. If the owner decides to replace the broken windows but not the dented aluminum siding, the damaged siding would have an impact on the assessed value of that mobile home year after year until repaired.

While we are discussing the degree of damage for tornadoes, can we also discuss the degree of damage for floods?

The theory is the same for both tornadoes and floods. Each assessment date stands alone, so you will reassess the property immediately after the disaster to adjust the assessed value for the decline in market value due to the damage done. Concerning the determination of the degree of damage for flooding, this too will vary. Some homes may have less than one inch (1") in their unfinished basement while other homes could have three feet (3') of water in the first floor level of their home. The actual damage to the structure that receives an inch or less of water in an unfinished basement may not be substantial enough to reassess while the home that had three feet in water in the main living area will have damage to carpet, cabinets, drywall, insulation, electrical, furnaces, water heaters, etc. Mold can also become a contributing factor if the homeowner does not deal with the repairs immediately.

So are you saying that not everyone who files a Form 137R (disaster petition) will receive a reduction to their assessed value?

Many taxpayers who file a Form 137R will be entitled to a reassessment. Each petition will have to be reviewed and adjustments will be based on the facts of each petition. Some taxpayers may have experienced minor damage which will not be significant enough to warrant a reassessment. It is also possible that some taxpayers, who live in the general vicinity of the disaster but were unaffected by it, will file a petition in an attempt to lower their assessment and reduce their tax burden.

So assessors will need to physically inspect the damage done to improvements on every petition filed?

Physical inspections are **mandatory** and the only way to garner the true amount of destruction.

What role does the taxpayer play in this process?

Taxpayers should be given the opportunity to provide evidence for your consideration. The evidence could include, but not be limited to: photographs, video, repair bills, insurance claims, news articles, appraisals, reports and other documentation from local, state and

federal agencies.

What if the taxpayer files a petition but files no supporting evidence for the assessor's consideration?

The County Assessor, the assessing official, must physically inspect the property and make a determination with the best information available. Even though other homes in the neighborhood are generally affected with similar damage, it is not possible to establish uniform assessment practices for a neighborhood as a whole. Each petition must be assessed on its own.

Should an assessor refuse to accept a Form 137R from homeowners that the assessor believes do not qualify for reassessment?

No. Any taxpayer who desires to file this petition should be allowed to do so. The assessing officials then review the petition and reassess the property if necessary. Since the County Assessor is required to give notice of his/her action to the taxpayer, IC 6-1.1-15-5 would allow the taxpayer to file an appeal on the action, if so desired.

Can a homeowner's assessment be reduced because of damage to furniture and appliances?

No, household items are not taxable; and no reduction in assessed value can be given.

Does this process only apply to real property?

No, personal property assessments based on the Form 101 (Individual), Form 102 (Farmer), Form 103 (Business), and utility assessments can all be reassessed after a disaster to adjust for the percent of damage.

Can the assessor file a petition on behalf of the homeowner?

No, the taxpayer is required to file the Form 137R and sign, under oath, that the information is true and correct.

Are there any other helpful hints that could be offered?

When a homeowner comes into your office and files this petition, review the form and make certain there is current contact information included. If a person is forced to relocate because of the disaster and the form lists a mailing address and phone number for the destroyed or damaged home, it will be difficult to contact the taxpayer for more information. If you have further questions, please contact your field representative.