

REPRESENTATIVE FOR PETITIONER:

Randal J. Kaltenmark, BARNES & THORNBURG, LLP

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

LAKE COUNTY TRUST #5071,	)	Petition No.:	45-030-98-3-4-00161
	)		
Petitioner,	)	Parcel No.:	081504800002
	)		
v.	)	County:	Lake
	)		
LAKE COUNTY PROPERTY,	)	Township:	Ross
TAX ASSESSMENT BOARD	)		
OF APPEALS, LAKE COUNTY	)		
AUDITOR, LAKE COUNTY	)		
ASSESSOR, ROSS TOWNSHIP	)		
ASSESSOR,	)		
Respondents.	)		

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Appeal from the Final Determination of  
Lake County Property Tax Assessment Board of Appeals

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**February 7, 2008**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (“Board”) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **ISSUE AND SHORT ANSWER**

1. At some point in 2004, the Lake County Auditor added unexplained delinquency charges and penalties to Lake County Trust #5071's tax liability for the subject property. The Board must decide whether those delinquency charges and penalties represent taxes that are illegal as a matter of law.
2. They do. The Trust proved that the delinquency charges and penalties were an attempt to recover a refund that the Respondents had improperly paid to the property's former owner. Even if the Trust failed to prove that the charges related to an improper refund, it showed that they did not relate to any assessments or legitimately incurred penalties from the 1997-pay-1998 tax-year forward.

### **PROCEDURAL HISTORY AND OTHER MATTERS OF RECORD**

3. On September 15, 2005, the Trust filed a Form 133 Petition for Correction of Error. It sought, among other things, to have the Lake County Auditor withdraw an illegally imposed adjustment to its tax bill and to correct the tax duplicate accordingly. On April 25, 2007, the Lake County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination denying the Trust's claim. On May 21, 2007, the Trust submitted its Form 133 petition the Board.
4. In its Form 133 petition, the Trust alleged that the adjustment it seeks to have corrected and withdrawn (1) is illegal as a matter of law, (2) represents a mathematical error in computing taxes, (3) results from an error in carrying delinquent taxes forward, and (4) is an assessment against the wrong person. Indiana Code § 6-1.1-15-12 recognizes each of those claims as a ground for correction. And, as to the claim that the adjustment represents taxes that are illegal as a matter of law, that statute expressly provides for an

appeal first to the PTABAOA, and then to the Board if the taxpayer disagrees with the PTABOA's decision. The Board therefore has jurisdiction to address the Trust's appeal.

5. There is some question as to who the proper responding parties are in this case. In papers that it filed with the Board, the Trust captioned the following officials as parties: the Lake County Assessor, the PTABOA, and the Lake County Auditor. Indiana Code § 6-1.1-15-12 does not specifically identify the appropriate governmental parties in hearings before the Board. It, however, does name the county auditor as the official to correct the first five listed categories of correctable errors. Ind. Code § 6-1.1-15-12(a) and (b). And for the final three categories, including claims that taxes are illegal as a matter of law, two of the following three officials must approve any requested correction: the county auditor, the county assessor, and the township assessor. Ind. Code § 6-1.1-15-12(d). If two of those three officials do not agree, the PTABOA considers the taxpayer's claim. *Id.* Finally, the Trust alleges that the county auditor is the official that placed the improper charges on the tax duplicate.
6. In light of those statutory provisions and the factual allegations in this appeal, the Board treats the Lake County Auditor, the Lake County Assessor, the Ross Township Assessor, and the PTABOA as proper responding parties.
7. On October 10, 2007, Beth Hammer and David Pardo, the Board's duly authorized administrative law judges, held an administrative hearing in this matter.
8. Joe Krnich, CPA, was sworn and presented testimony for the Trust. Mr. Krnich is one of the Trust's beneficiaries, and the Trust has granted him the power of attorney to act for it in property tax matters. Mr. Krnich is also the President of Broadmoor Office Center, Ltd., which manages the subject property and pays the Trust's property taxes.

9. None of the Respondents appeared at the hearing, despite the Board having notified them in advance of the hearing's date and location.<sup>1</sup> *See Board Exs. B-D.* And the Board served each of the Respondents with its order permitting the parties to submit proposed findings of fact and conclusions of law, although that order did not separately caption each Respondent. *See Board Ex. F.*

10. The Trust offered the following exhibits:

- Petitioner Ex. 1 – Power of Attorney from Lake County Trust Company
- Petitioner Ex. 2 – Indiana Business Entity Report of Broadmoor Office Center, Ltd. for 2004/2005, 2006/2007
- Petitioner Ex. 3 – HUD-1, Chicago Title Insurance Company Settlement Statement
- Petitioner Ex. 4 – Chicago Title Insurance Company check, dated 01/25/99 for \$25,879.98 payable to Treasurer of Lake County
- Petitioner Ex. 5 – Payment History of Lake County Treasurer for Parcel No. 08-15-0480-0002 from 1997 pay 1998 to 2006 pay 2007 (22 pages)
- Petitioner Ex. 6 – 1998 Pay 1999 Tax Bills for Parcel No. 08-15-0480-0002
- Petitioner Ex. 7 – Bank Statements of Broadmoor Office Center Ltd for May and November of 1999
- Petitioner Ex. 8 – 1999 Pay 2000 Tax Bills for Parcel No. 08-15-0480-0002
- Petitioner Ex. 9 – Bank Statements of Broadmoor Office Center Ltd for May and November of 2000
- Petitioner Ex. 10 – 2000 Pay 2001 Tax Bills for Parcel No. 08-15-0480-0002
- Petitioner Ex. 11 – Bank Statements of Broadmoor Office Center Ltd for May and November of 2001
- Petitioner Ex. 12 – 2001 Pay 2002 Tax Bills for Parcel No. 08-15-0480-0002
- Petitioner Ex. 13 – Bank Statements of Broadmoor Office Center Ltd for May and November of 2002
- Petitioner Ex. 14 – 2002 Pay 2003 Provisional Tax Bills and Reconciliation Tax Bill
- Petitioner Ex. 15 – Bank Statement of Broadmoor Office Center Ltd for October of 2004
- Petitioner Ex. 16 – 2003 Pay 2004 Tax Bills for Parcel No. 08-15-0480-0002
- Petitioner Ex. 17 – Bank Statements of Broadmoor Office Center Ltd for April and June of 2005
- Petitioner Ex. 18 – 2004 Pay 2005 Tax Bills for Parcel No. 08-15-0480-0002
- Petitioner Ex. 19 – Copies of Checks of Broadmoor Office Center Ltd and Christian Home Health Service, Inc. for Payment of Real

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<sup>1</sup> Although the Board did not separately notify the PTABOA, it notified its secretary, the Lake County Assessor. *See Ind. Code § 6-1.1-28-1(a)* (making the county assessor the secretary of the county's PTABOA).

- Property Taxes payable in 2005
- Petitioner Ex. 20 – 2005 Pay 2006 Tax Bills for Parcel No. 08-15-0480-0002
- Petitioner Ex. 21 – Copies of Checks of Broadmoor Office Center Ltd for Payment of Real Property Taxes payable in 2006
- Petitioner Ex. 22 – 2006 Pay 2007 Real Property Tax Bill for May Installment of \$5,785.15 paid 10/01/07
- Petitioner Ex. 23 – Real Property Maintenance Report for Parcel No. 08-15-0480-0002, as of 07/09/04
- Petitioner Ex. 24 – Letter from Uzelac & Associates, Inc. to Lake County Assessor's Office, dated 05/22/03
- Petitioner Ex. 25 – Affidavit of Steven C. Smith, dated 07/09/03
- Petitioner Ex. 26 – Check from Treasurer of Lake County, dated 08/08/00, in the amount of \$23,710.04 payable to Joe Krnich
- Petitioner Ex. 27 – Front side of Form 17T of Commonwealth Business College
- Petitioner Ex. 28 – Back side of Form 17T of Commonwealth Business College
- Petitioner Ex. 29 – Letter from John Dull to Lake County Auditor, dated 09/27/06
- Petitioner Ex. 30 – Letter from John Dull to various parties concerning whereabouts of Commonwealth Business College, dated 11/01/05
- Petitioner Ex. 31 – Web Page History of Brown Mackie College as successor of Commonwealth Business College
- Petitioner Ex. 32 – Petitioner's Form 133, dated 9/28/05
- Petitioner Ex. 33 – Notice of Hearing from Lake County PTABOA, dated 4/9/07
- Petitioner Ex. 34 – Final Determination of Lake County PTABOA, dated 4/25/07
- Petitioner Ex. 35 – Bill of Barnes & Thornburg LLP for Petitioner's attorney fees

11. The following additional items are officially recognized as part of the record of proceedings and labeled as Board Exhibits:

- Board Ex. A – Form 131 petition
- Board Ex. B – Notice of Hearing
- Board Ex. C – Petitioner's Request to Hold Hearing in Indianapolis dated August 28, 2007
- Board Ex. D – Letter granting Petitioner's request dated September 20, 2007
- Board Ex. E – Hearing Sign-in sheet
- Board Ex. F – Order Regarding Proposed Findings and Conclusions

12. The subject property, commonly known as the Broadmoor Minimall, is a retail property located at 4200 West Lincoln Highway, Merrillville, Indiana.

## FINDINGS OF FACT

13. This case has a convoluted history involving, among other things, (1) two refunds to different entities based on the same assessment reduction, (2) unexplained charges for delinquencies and penalties, and (3) a series of untimely property tax payments. To sort it out, the Board starts from the beginning, when the Trust bought the subject property and first became liable for taxes assessed to it.
14. The Trust bought the subject property from Commonwealth Business College (“CBC”) on January 25, 1999. *Pet’r Ex. 3*. At that time, CBC was liable for delinquent real estate taxes and penalties. CBC paid those delinquent taxes and penalties at closing. *Pet’r Exs. 3-4, 5 at 2*. The Trust assumed the real estate and conservancy taxes that were based on the March 1, 1998 assessment date and that were due in 1999, together with all taxes first due after that date. *Pet’r Exs. 6-22*.
15. The Trust paid the May and November installments for the subject property’s 1998-pay-1999 taxes. *Krnich testimony; Pet’r Ex. 5*.
16. On May 7, 1999, the Trust filed a Form 130 petition contesting the subject property’s assessment. *Pet’r Ex. 32*. It is unclear what assessment year the Trust appealed. The line for “Year of Assessment” on the Form 130 petition is blank. And the Trust did not submit a Form 115 notice of final assessment determination from the Lake County PTABOA. The Trust, however, did submit a hearing notice from the Lake County PTABOA. That hearing notice lists the assessment year as March 1, 1999. *Pet’r Ex. 32*.
17. The Ross Township Assessor agreed to reduce the subject property’s assessment from \$354,330 to \$183,520. *Id.* On August 8, 2000, the Trust received a refund totaling \$23,710.40. The refund was broken into separate components of \$22,006.72 for real estate taxes and \$1,703.32 for conservancy taxes. *Pet’r Ex. 26*.

18. The Trust continued to timely pay the property's real estate and conservancy taxes through and including the May installment for 2001-pay-2002. *Pet'r Exs. 5 – 13.*
19. The Trust did not timely pay the November installment for 2001-pay-2002. *Pet'r Exs. 12, 13.*
20. Because of delays in completing the 2002 general reassessment, Lake County mailed provisional tax bills for 2002-pay-2003. *Krnich testimony.* The Trust's 2002-pay-2003 tax bill shows 2001-pay-2002 delinquencies of \$8,299.42 and \$736.52 for real estate and conservancy taxes, respectively. *Pet'r Ex. 14 at 1.* The Trust did not timely pay either installment of its provisional 2002-pay-2003 tax bill. *Pet'r Exs. 14, 15.*
21. Somewhere between the date that the Treasurer mailed the provisional 2002-pay-2003 tax bills and June or July of 2004, when the Trust received a "Reconciliation Tax Bill," the Auditor significantly adjusted the Trust's tax liability. *Pet'r Ex. 14 at 3.*
22. Thus, the Lake County Treasurer's Real Property Maintenance Report for 2002-pay-2003, shows a sizeable delinquency in addition to the 2001-pay-2002 delinquency. That report shows "Prior Year" taxes totaling \$23,710.04. Of that total, \$22,006.72 was for real estate taxes and \$1,703.32 was for conservancy taxes. *Pet'r Ex. 5 at 10.* It also has entries for "Former Year" first- and second-installment penalties totaling \$6,384.90. *Id.* The 2002-pay-2003 maintenance report marks the first time the prior year taxes or former year installment penalties appear on the Treasurer's maintenance reports. *See Pet'r Ex. 5, passim.*
23. The 2002-pay-2003 report is undated. A computer-screen printout however, shows that the Auditor adjusted the Trust's tax liability on January 29, 2004. *Pet'r Ex. 23.* But that printout neither reveals the amount of the adjustment nor explains what the adjustment was for. And parts of it are illegible. *Id.*

24. Also, at or near January 29, 2004, the Auditor, County Assessor, and Treasurer all signed a Form 17T approving a \$30,111.72 refund to George Uzelac & Associates as representative for CBC. *Pet'r Exs. 27-28.* While it appears that the refund was processed at or near January 29, 2004, the Form 17T actually contains several dates. The "date of claim" line on the form's jurat is blank, but there is a separate handwritten notation of "1/28/04" just above the jurat. *Pet'r Ex. 27.* The reverse side contains a stamp indicating that it was received February 5, 2004, as well as a separate stamp bearing the date February 25, 2004. *Pet'r Ex. 28.* It also contains a typewritten notation reading "REGINA 01-29-04." *Id.*
25. The Auditor and Treasurer issued that refund despite CBC's inability to show that it paid the taxes being refunded. In fact, CBC's president signed an affidavit swearing: (1) that the 1998 pay 1999 taxes "were paid . . . , but that receipts have been mislaid or lost[,]" and (2) that "no refunds showing on the [subject property] were received by [CBC]." *Pet'r Ex. 25.*
26. The CBC refund consisted of \$23,710.04 in taxes and \$6,401.68 in interest. *Pet'r Exs. 27, 28.* As with the Trust's earlier refund, the \$23,710.04 was allocated as follows: \$22,006.72 for real estate taxes and \$1,703.32 for conservancy taxes. Under "basis for claim," the form lists "PTABOA Value from 354,330 to 183,520." *Pet'r Ex. 27.* Thus, the refund flowed from same value reduction underlying the Trust's August 8, 2000, refund. And the two refunds were for the same principal amount of \$23,710.04.
27. In June or July of 2004, the Trust received a "Reconciliation Tax Bill" for 2002-pay-2003. *Krnich testimony.* The reconciliation bill shows delinquent real estate and conservancy taxes of \$34,015.79 and \$2,573.76, respectively. *Pet'r Ex. 14 at 3.*
28. The size of the reconciliation bill's delinquency surprised Mr. Krnich. The only outstanding delinquency he knew of was \$9,035.94 in taxes and penalties for the November installment of the Trust's 2001-pay-2002 taxes. *Krnich testimony; Pet'r Exs. 5 at 7, 14.*



29. Mr. Krnich met with several people from the Lake County Auditor's office in an attempt to discover where the large delinquency came from. *Krnich testimony*. Someone from that office eventually said that the Adjustment had something to do with a refund to CBC. *Id.*
30. On October 12, 2004, the Trust paid the Treasurer \$22,300.44, which was sufficient to cover the November installment of 2001-pay-2002 and both installments of 2002-pay-2003, together with all but \$15.83 of the penalties for those delinquent installments. *See Pet'r Exs. 5, 15.*
31. Nonetheless, the Treasurer did not apply that payment solely to the 2001-pay-2002 and 2002-pay-2003 delinquencies. The Treasurer applied part of that payment to the prior year conservancy taxes and former year conservancy penalties. *Pet'r Ex. 5 at 13-14.* And it does not appear that the Treasurer applied any of that payment to the delinquent taxes from the Trust's November installment for 2001-pay-2002. Instead, beginning with the 2003-pay-2004 real-property maintenance report, the Trust's prior year real estate taxes and former year real- estate penalties increased by \$7,544.93—the exact amounts of the delinquent 2001-pay-2002 installment. *Pet'r Ex. 5 at 13.*
32. The Trust continued to dispute the large unexplained delinquencies that kept appearing on the Treasurer's real-property maintenance reports and the Trust's tax bills. *Krnich testimony*. It ultimately filed a Form 133 petition on September 15, 2005, seeking to have the delinquency removed.
33. The PTABOA, however, failed to hear that petition until April 2007. In the interim, Lake County twice attempted to recover the delinquency by listing the Trust's property for tax sale. *Krnich testimony*. The Trust was able to remove the property from tax sale each time, but only after expending its own time and money. *Id.* In response to one of those efforts, John Dull, the Lake County Commissioners' attorney, faxed a letter to the Auditor asking her, one of her deputies, and her attorney to call the Trust's attorney.

*Pet'r Ex. 29.* He wrote, in part, “This has to do with the situation where the County gave two refunds on the same property. When this was discovered, they put the taxes back on the property. I don’t know the details, but I know that this has been pending for a long, long, long, long, long, long, time.” *Id.*

34. The Trust timely paid the subject property’s taxes for 2003-pay-2004 forward, except the May installment of 2004-pay-2005, which it paid on October 1, 2007. *Krnich testimony; Pet'r Exs. 16-22.*

### CONCLUSIONS OF LAW AND ANALYSIS

#### A. The Trust’s burden

35. The Trust contends that it was billed for taxes that “as a matter of law were illegal.” *Ind. Code § 6-1.1-15-12(6).* Thus, the Trust had to present facts supporting only one conclusion—that the Auditor lacked authority to charge it for the disputed delinquency.

#### B. The amount of the delinquency at issue

36. As an initial matter, there is some dispute about the amount of the delinquency at issue. The Trust simply refers to an improper “Adjustment.” But the amount of that “Adjustment” varies, depending upon whether the Trust is pointing to the Lake County Treasurer’s real-property maintenance reports, to the reconciliation bill, or to later tax bills. For example, the reconciliation bill includes charges for delinquent taxes totaling \$36,589.55. *Pet'r Ex. 14.* Mr. Krnich, however, acknowledged that the Trust actually owed \$8,299.92 in delinquent real estate taxes and penalties for the November installment of 2001-pay-2002. And with the delinquent conservancy taxes and penalties, the overall 2001-pay-2002 delinquency totaled \$9,035.94. *See Krnich testimony; see also Pet'r Ex. 5 at 10.* Thus, according to Krnich, the reconciliation bill imposed an additional charge of somewhere between \$27,000 and \$29,000. *Krnich testimony.*

Indeed, when one subtracts the November 2001-pay-2002 installment and penalties, the unexplained delinquent amount is \$27,553.61.

37. The treasurer's real-property maintenance report for 2002-pay-2003 shows a different amount of unexplained charges. Those charges are reflected under the headings of "prior year" real estate and conservancy taxes and "former year" penalties, and they total \$30,094.94. *Pet'r Ex. 5 at 10.*
38. In its proposed findings of fact and conclusions of law, the Trust attempts to reconcile those differing numbers. First, the Trust disregards Krnich's testimony and contends that the reconciliation bill did not contain any charge for the then-delinquent November installment of the Trust's 2001-pay-2002 taxes. *Proposed Findings of Fact and Conclusions of Law of Lake County Trust #5071, p. 11-12.* That is because the 2002-pay-2003 maintenance report lists charges for that delinquent installment and associated penalties separately from the prior year taxes and former year penalties. *Id. (citing Pet'r Ex. 5 at 10).*
39. Second, the Trust points to the Treasurer's 2003-pay-2004 real-property maintenance report, where the Treasurer added newly accrued penalties to the \$30,094.94 from the 2002-pay-2003 report. *Id. at 12-13 (citing Pet'r Ex. 5 at 13).* And the resulting number—\$36,479.84—closely approximates the \$36,589.55 charge for delinquent taxes on the reconciliation bill. *Id.*<sup>2</sup>
40. The Trust's attempt to reconcile the delinquent taxes in the reconciliation bill with the prior year taxes and former year penalties in the treasurer's 2003-pay-2004 report is not persuasive. Mere approximation between the two totals is not particularly compelling evidence that they represent charges for the same thing.

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<sup>2</sup> The Trust arrived at that number after subtracting the 2001-pay-2002 penalties that the Treasurer had included in the prior year taxes and former year penalties. *Proposed Findings at 11-12.*

41. But the Trust's case does not ultimately turn on matching the numbers between the reconciliation bill and the Treasurer's maintenance reports. The record clearly shows that, beginning with the 2002-pay-2003 treasurer's real-property maintenance report, the Trust was charged for "delinquent" taxes and penalties totaling \$30,094.94. And the Auditor and Treasurer continued to charge the Trust for penalties on the \$22,006.72 portion of that delinquency representing prior year real estate taxes. Thus, the delinquency at issue includes the \$30,094.94 from the 2002-pay-2003 report, plus all existing penalties on the \$22,006.72 in prior-year real estate taxes.

C. The delinquency charges are illegal as a matter of law

42. The Board now turns to whether the Trust has shown that the delinquency in question represents taxes that are illegal as a matter of law. According to the Trust, the delinquency stems from the Auditor's attempt to recover a refund that it improperly paid to CBC. And the Trust further claims that the Auditor lacked authority to recover that refund from the Trust rather than from CBC.

43. Several facts support the Trust's position. The \$22,006.72 delinquency is identical to the amount of real estate taxes, excluding interest, refunded to CBC. And the timing of both the reconciliation bill and the delinquency's appearance on the Treasurer's real-property maintenance report for 2002-pay-2003 are at least loosely related to CBC being issued its refund.

44. Too, both Mr. Dull and an unidentified person from the Auditor's office acknowledged that the delinquency was connected to CBC's refund. *Pet'r Ex. 29; Krnich testimony*. Granted, both statements are hearsay. There is no indication that Mr. Dull had any personal knowledge of the matter, or that he was acting as the Auditor's attorney. And the other statement is not even attributed to an identifiable person. Nonetheless, the statements were not rebutted and they lend at least tangential support to the Trust's claim.

45. The above-described facts necessarily lead the Board find that the Auditor and Treasurer charged the Trust with the \$30,094.94 delinquency because it had paid-out the same refund twice. And the Board finds no statutory or inherent authority empowering those officials to do so. That is particularly true, given that the Trust, not CBC, actually paid the taxes for 1998-pay-1999 that CBC sought in its refund. *Krnich testimony; Pet'r Ex. 7.*
46. Even if the Trust did not show beyond dispute that the delinquency represented an attempt to collect an erroneously paid refund, the Trust still showed that the delinquency was illegal as a matter of law. All property taxes and penalties must be traced to a specific assessment. In Indiana, property taxes are imposed based on a property's assessment as of March 1<sup>st</sup> of each year. *See* Ind. Code §§ 6-1.1-1-2, 6-1.1-2-2. Those taxes, however, are payable in two separate installments the following year. Ind. Code § 6-1.1-22-9. In some instances, local officials may change assessments for prior years if they believe a property has been omitted or undervalued. *See* Ind. Code § 6-1.1-9-4; 6-1.1-13-1. But they must give the taxpayer notice and the right to appeal. *Id.* In any event, the individual that owned the property on the assessment date is generally liable for those taxes. Ind. Code § 6-1.1-2-4(a). If a taxpayer fails to timely pay its taxes, it is liable for penalties. Ind. Code § 6-1.1-37-10.
47. The Trust has accounted for all assessments, taxes, and penalties imposed on the subject property from 1998 through 2002-pay-2003, when the delinquency first appeared in the Treasurer's records. And the Trust paid all of those taxes and penalties. The charges in question therefore do not relate to unpaid taxes for any assessment or to any legitimately incurred penalty.

D. Relief

1. *Delinquency and penalties*

48. The Board hereby orders the Auditor to remove from the tax duplicate and other official tax records any charges for prior year taxes and former year penalties totaling \$30,094.94 together with all subsequent penalties associated with those charges.

2. *Costs and attorney fees*

49. The Trust also seeks an award of its costs and reasonable attorney fees. It bases its claim on the Auditor illegally charging the Trust for the impermissible delinquency and penalties and then refusing to correct those charges when confronted with their illegality.

*Kaltenmark argument.* Even more galling to the Trust, the Respondents as a group refused to act on the Trust's Form 133 petition for over two years, during which time Lake County twice attempted to sell the Trust's property at tax sale. *Krnich testimony.*

50. The Trust concedes that no statutes exist granting the Board the authority to award costs or attorney fees. It also recognizes the "American" rule, which generally requires litigants to pay its own costs and attorney fees. Nonetheless, it argues that the Board should award reasonable costs and attorney fees under the bad-faith and obdurate-behavior exceptions to the American rule.

51. The Board must deny the Trust's request. As the Trust correctly notes, no statutes authorize the Board to award a party its reasonable costs and attorney fees. And the Board is a creation of the legislature, having only those powers conferred by statute. *Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999). Indeed, any doubts regarding the power of a governmental agency, such as the Board, are resolved against that agency. *State ex rel. ANR Pipeline Co. v. Indiana Dep't of State Revenue*, 672 N.E.2d 91, 94 (Ind. Tax Ct. 1996).

52. Even if the Board was generally authorized to award attorney fees, public policy does not favor assessing penalties and attorney fees against governmental entities. *Cox v. Town of Rome*, 764 N.E.2d 242, 249 n.4 (Ind. Ct. App. 2002). That is particularly true where the basis for the award is that a governmental entity acted obdurately or in bad faith. *See State v. Hicks*, 465 N.E.2d 1146, 1149-50 (Ind. Ct. App. 1984). Governmental entities do not have “minds” that can be deterred. *Id.* And the people sought to be protected by such awards—citizen taxpayers—are the ones that ultimately bear the awards’ burdens. *See id.*

### SUMMARY OF FINAL DETERMINATION

53. The Trust established that a \$30,094.94 delinquency and accompanying penalties represent taxes that are illegal as a matter of law. The Board finds for the Trust. And it orders the Lake County Auditor to: (1) remove from its official records and the tax duplicate the \$30,094.94 delinquency and all penalties associated with that delinquency, and (2) reapply any payments that were previously applied to the illegal delinquency and penalties.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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Commissioner, Indiana Board of Tax Review

## IMPORTANT NOTICE

### - Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>