REPRESENATIVES FOR PETITIONER
J.F. Beatty, Jessica Findley, Donald Levenhagen, Kathryn Merritt-Thrasher, Landman, Beatty Lawyers

REPRESENATIVES FOR RESPONDENT
F. John Rogers, Rogers Law Office
Mark GiaQuinta, Melanie Farr, Sarah Schreiber, Haller & Colvin, P.C.

BEFORE THE INDIANA BOARD OF TAX REVIEW

BUCKEYE HOSPITALITY DUPONT, LLC	)	Petition Nos.: 02-072-09-3-4-01319
	)	02-072-10-3-4-01350
Petitioner	)	
	)	Parcel No: 02-08-06-400-006.002-072
v.	)	
	)	
ALLEN COUNTY ASSESSOR	)	Assessment Years: 2009 and 2010
	)	
Respondent.	)	

Appeals from Determinations of the
Allen County Property Tax Assessment Board of Appeals

November 22, 2016

FINAL DETERMINATION GRANTING SUMMARY JUDGMENT FOR ALLEN COUNTY ASSESSOR

I. Introduction

1. The Allen County Assessor moved for summary judgment on Buckeye Hospitality DuPont, LLC's Form 133 petitions for correction of error. The petitions claim Buckeye was entitled to a credit under Ind. Code § 6-1.1-20.6-7.5 that would have capped its taxes at 2% of its extended stay hotel's gross assessed value for 2009 and 2010. To get that credit, the hotel had to qualify as "residential property" within the meaning of the tax-cap statute. Because we believe the legislature intended to limit the definition of residential

property to buildings where the units are intended for occupancy as residences rather than as places of sojourn, we grant the Assessor' motion for summary judgment.

II. Procedural History

2. On January 17, 2012, Buckeye filed two Form 133 petitions—one for 2010 and one for 2011. On the portion of the form calling for the taxpayer to specify the error to be corrected, Buckeye checked boxes indicating that "there was a mathematical error in computing the assessment," and that "through error or omission by any state or county officer the taxpayer was not given credit for an exemption or deduction permitted by law."[1] The Assessor and the Allen County Auditor disapproved the petitions, and Buckeye appealed to the Allen County Property Tax Assessment Board of Appeals ("PTABOA"). The PTABOA denied Buckeye relief, and Buckeye sought review by the Board. *See Form 133 petitions*.

3. We set the petitions for hearing. At a prehearing conference, the parties agreed to continue the hearing and our designated administrative law judge, David Pardo ("ALJ") issued an order vacating that hearing. Buckeye then moved to amend the petitions to add an allegation that "the taxes, as a matter of law, were illegal." The Assessor responded with a motion to dismiss in which she argued that we lack subject matter jurisdiction to hear Buckeye's claims because they seek a credit under Ind. Code § 6-1.1-20.6-7.5 for taxes based on assessment years pre-dating January 1, 2011. We did not rule on Buckeye's motions to amend or the Assessor's motion to dismiss.

4. The Assessor later filed a motion for summary judgment, which she acknowledges supersedes her motion to dismiss. *See Schreiber statement at summary judgment hearing.* Buckeye responded to that motion and requested that we deny the Assessor summary judgment and grant summary judgment in Buckeye's favor. *See Petitioner's*

[1] Although the state form Buckeye used refers to "error *or* omission" the correction of error statute, which Form 133 was designed to implement, refers to an "error *of* omission." I.C. § 6-1.1-15-12(a)(8). In addition, the relevant subsection has been significantly amended and now also refers to errors of omission in which a taxpayer was not given "(A) the proper credit under IC 6-1.1-20.6-7.5 for property taxes imposed for an assessment date after January 15, 2011; (B) any other credit permitted by law." *Id.* The current Form 133, as well as other appeal forms, may be accessed through our website: http://www.in.gov/ibtr/.

Memorandum in Response to Respondent's Motion for Summary Judgment, at 20 n.4. The Assessor then sought leave to file a reply and supplemental designation of evidence. Buckeye did not respond, and we granted the Assessor's motion. We scheduled Buckeye's summary judgment motion for a May 5, 2016 hearing before the ALJ. Neither he nor the Board inspected Buckeye's property.

5. The parties designated the following materials in support of, and opposition to, Buckeye's summary judgment motion:

The Assessor

Respondent's Motion for Summary Judgment:

Ex A: Buckeye's Form 133 petition for 2009 assessment year,
Ex. B: Petitioner's Motion to Amend Petition to the Indiana Board of Tax Review.

Supplemental Designation of Evidence:

Exhibit A: Affidavit of Stacy O'Day, including Summary Appraisal Report of Value Place, attached as Exhibit A to Stacy O'Day's affidavit,
Exhibit B: Real Property Assessment Guidelines, Glossary p. 11,
Exhibit C: 2011 Real Property Assessment Manual, pp. 17-18.

Buckeye

1. Allen County's Property Record Card for Parcel 02-08-06-400-006.002-072,
2. Affidavit of Cole G. Ellis,
3. Form 133 petition for 2009 assessment year,
4. Form 133 petition for 2010 assessment year,
5. Petitioner's Motion to amend Petition to the Indiana Board of Tax Review for Correction of Error for the 2009 assessment year,
6. Petitioner's Motion to Amend Petition to the Indiana Board of Tax Review for Correction of Error for the 2010 assessment year,
7. 2011 Real Property Assessment Guidelines, Glossary p. 6, with definition of "Dwelling" highlighted,
8. 2011 Guidelines, Glossary p. 6 with definition of "Dwelling Unit" highlighted,
9. 2011 Guidelines, Glossary p. 1 with definition of "Apartment Hotel" highlighted,
10. June 2, 2008 Department of Local Government Finance ("DLGF") memorandum, *Circuit Breakers* with portion of page 7 highlighted,
11. DLGF Memorandum, *Property Tax Codes and Circuit Breaker Caps, (Revised)* (Oct. 30, 2008).

III. Motion to Amend Petitions

6. Our procedural rules allow a petition to be amended once as a matter of course within 30 days of filing. 52 IAC 2-5-2(b). After that, a party may move to amend its petition, and we may approve the amendment "upon good cause shown." 52 IAC 2-5-2(c). Buckeye sought to amend its petitions more than 30 days after it filed them. In its motion, Buckeye indicated that it was seeking to add a new issue—whether its taxes, as a matter of law, were illegal. Buckeye did not address why it failed to include that allegation its original petition or otherwise argue that there was good cause for allowing the amendment. The Assessor likewise did not address that question. The Assessor's only response was contained in its motion to dismiss, where it argued that we lack subject matter jurisdiction to hear any of Buckeye's claims, including any claims that its taxes, as a matter of law, were illegal. *See Memorandum of Law in Support of Respondent's Motion to Dismiss*.

7. We recognize a strong policy of giving parties a chance to present their claims. In light of that policy, as well as the Assessor's failure to allege any prejudice, we grant Buckeye's motion and accept its amended petitions for filing. In doing so, we do not pass upon whether Buckeye may have waived any claim that its taxes, as a matter of law, were illegal by failing to assert that claim below. Regardless, allowing Buckeye to amend its petition does not affect the outcome, because we find, as a matter of law, that the Auditor correctly applied the tax-cap statute to Buckeye's hotel.

IV. Summary Judgment Motion

A. Undisputed Facts

8. Buckeye operates the property as an extended stay hotel. The hotel building contains 124 units, each equipped with cooking and toilet facilities. The units all have a full-size refrigerator with freezer, a microwave oven, a two-burner stovetop, a dresser and nightstand, color cable television, a dining table, and two chairs. Each unit also has an independent entrance from either the outside or a public hallway. *Cole Aff. at ¶ 4.*

9. Buckeye charges rent on a weekly basis. Guests stay for different lengths of time. Some stay for more than 30 days and some for less. Buckeye does not reserve an area solely for longer term occupants, and all guests have equal access to the hotel's amenities. *See Appraisal Report at 45; O'Day Aff. at ¶¶ 6, 14-15; Cole Aff. ¶¶ 2, 5, 7.*

10. The hotel's total revenue for calendar years 2009 and 2010 was derived 55.8% and 74.4%, respectively, from guests who stayed at the hotel for more than 30 days. The designated materials do not show whether the guests who stayed more than 30 days did so on consecutive days. *Cole Aff. at 5, 7*.

B. Discussion

1. Summary judgment standard

11. Our procedural rules allow summary judgment motions, which are made "pursuant to the Indiana Rules of Trial Procedure." 52 IAC 2-6-8. Summary judgment is appropriate only where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Wittenberg Lutheran Village Endowment Corp. v. Lake County Property Tax Assessment Bd. of Appeals*, 782 N.E.2d 483, 487 (Ind. Tax Ct. 2002). The party moving for summary judgment must make a prima facie showing of both those things. *Coffman v. PSI Energy, Inc*., 815 N.E.2d 522, 526 (Ind. Ct. App. 2004). It is not enough for a movant to simply show an opponent lacks evidence on a necessary element of its claim; instead, the movant must affirmatively negate the opponent's claim. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014). If the movant satisfies its burden, the non-movant cannot rest upon its pleadings but instead must designate sufficient evidence to show that a genuine issue exists for trial. *Id*. In deciding whether a genuine issue exists, we must construe all facts and reasonable inferences in favor of the non-movant. *See Carey v. Ind. Physical Therapy, Inc.*, 926 N.E.2d 1126, 1128 (Ind. Ct. App. 2010).

2. We have subject matter jurisdiction

12. The parties dispute whether we have subject matter jurisdiction to hear Buckeye's petitions. As the Assessor points out, before July 1, 2011, the relevant portion of our enabling statute (Ind. Code § 6-1.1-1.5) did not refer to reviews of appeals concerning credits. Instead, that statute indicated that we must "conduct an impartial review" of all "appeals concerning (1) the assessed valuation of tangible property; (2) property tax deductions; or (3) property tax exemptions" made from a determination of an assessing official or county property tax assessment board of appeals. I.C. § 6-1.5-4-1 (2010 repl. vol.). The enabling statute had previously included a fourth category of "property tax credits," but that reference was removed in 2003. *See* 2003 Ind. Acts 256 § 31. Similarly, during the 2009 and 2010 assessment years, the correction of error statute did not explicitly mention credits. *See* I.C. § 6-1.1-15-12 (2010 repl. vol.).

13. That changed in 2011, when the legislature reinstated "property tax credits" to our enabling statute and similarly amended the correction of error statute to include claims that, "through an error of omission," a taxpayer "was not given the proper credit under IC 6-1.1-20.6-7.5 for property taxes imposed for an assessment date after January 15, 2011" or "any other credit permitted by law." 2011 Ind. Acts 172 §§ 31, 49. According to the Assessor, our enabling statute's lack of any reference to appeals involving credits during 2009 and 2010, combined with the correction of error statute's express limitation on correction errors of omission in applying credits under the tax-cap statute, means we lack subject matter jurisdiction to address claims that taxpayers were denied a homestead credit for taxes based on assessment years pre-dating 2011.

14. Buckeye disagrees, arguing that we have subject matter jurisdiction and that any amendments to the correction of error statute simply refined the procedures for taxpayers to assert they were denied an appropriate credit. In any case, Buckeye points out that it claimed relief under three subdivisions of the correction of error statute, and the "error of omission" subdivision is the only one that purports to exclude claims involving credits for assessment years before 2011.

15. While our previous decisions may not be entirely clear and consistent on the question, we find that we have subject matter jurisdiction to address appeals involving credits, including those involving tax-cap credits under Ind. Code § 6-1.1-20.6-7.5, regardless of the tax year at issue. That does not necessarily mean the correction of error statute authorizes Buckeye's specific claims of error. We need not address that question, however, because we find a different issue dispositive—whether Buckeye was entitled to the 2% cap for residential property. We turn now to that question.

3. Buckeye's hotel was ineligible for the 2% cap because it was not "residential property" within the meaning of the tax-cap statute as originally drafted.

16. According to the Assessor, the undisputed evidence shows that Buckeye's property did not qualify for the 2% cap. Buckeye disagrees and argues that it was entitled to the 2% cap as a matter of law.

17. The tax-cap statute operates to cap a property owner's tax liability to a percentage of the property's gross assessment. The amount of the credit depends on the property type:

> Sec. 7.5. (a) A person is entitled to a credit against the person's property tax liability for property taxes first due and payable after 2009. The amount of the credit is the amount by which the person's property tax liability attributable to the person's:
> (1) homestead exceeds one percent (1%);
> (2) residential property exceeds two percent (2%);
> (3) long term care property exceeds two percent (2%);
> (4) agricultural land exceeds two percent (2%);
> (5) nonresidential real property exceeds three percent (3%); or
> (6) personal property exceeds three percent (3%);
> of the gross assessed value of the property that is the basis for determination of property taxes for that calendar year.

I.C. § 6-1.1-20.6-7.5. Nobody claims that Buckeye's property was a homestead, long term care property, agricultural land, or personal property. The question is whether it was residential property entitled to the 2% cap or nonresidential property, to which the 3% cap applied.

18. During the assessment years at issue in these appeals, section four of the tax-cap statute ("section four") defined residential property as:

> [P]roperty that consists of any of the following:
>
> (1) A single family dwelling that is not part of a homestead and the land, not exceeding one (1) acre, on which the dwelling is located.
>
> (2) Real property that consists of:
>
> (A) a building that includes two (2) or more dwelling units;
>
> (B) any common areas shared by the dwelling units; and
>
> (C) the land not exceeding the area of the building footprint, on which the building is located.
>
> (3) Land rented or leased for the placement of a manufactured home or mobile home, including any common areas shared by the manufactured homes or mobile homes.

I.C. § 6-1.1-20.6-4 (2008 supp.). By contrast, nonresidential property was largely defined as real property that was not agricultural land, a homestead, or residential property. *See* I.C. § 6-1.1-20.6-2.5. (2008 supp.).

19. Buckeye acknowledges that section four does not define the term "dwelling unit." Buckeye therefore draws on two sources to supply the missing definition. First, it points to the 2011 Real Property Assessment Guidelines, which define a "dwelling unit" as "any room or group of rooms designed as the living quarters of one family or household, equipped with cooking and toilet facilities, and having an independent entrance from a public hall or from the outside." 2011 REAL PROPERTY ASSESSMENT GUIDELINES, Glossary at 6 (incorporated by reference at 50 IAC 2.4-1-2). Second, it points to Ind. Code § 32-31-5-3, a chapter within Indiana's landlord-tenant statutes that gives the following definition:

> Sec. 3. (a) As used in this chapter, "dwelling unit" means a structure or part of a structure that is used as a home, residence, or sleeping unit.
>
> (b) The term includes the following:
>
> (1) An apartment unit.
>
> (2) A boarding house unit.
>
> (3) A rooming house unit.
>
> (4) A manufactured home (as defined in IC 22-12-1-16) or mobile structure (as defined in IC 22-12-1-17) and the space occupied by the manufactured home or mobile structure.
>
> (5) A single or two (2) family dwelling.

I.C. § 32-31-5-3. Buckeye argues that all 124 units at its hotel are dwelling units because they (1) contain sleeping units and rooms designed as living quarters of one family or a

household, (2) are equipped with cooking and toilet facilities, and (3) have an independent entrance for a public hall or from the outside.

20. We disagree. When addressing a statute, a court or quasi-judicial body must first ask whether the statute's language is clear and unambiguous. *State v. American Family Voices, Inc.*, 898 N.E.2d 293, 297 (Ind. 2008). Where the language is clear, a court does not apply the rules of construction other than to give the words and phrases appearing in the statute their plain, ordinary, and usual meanings. *Id; see also,* I.C. § 1-1-4-1(1) (providing that, unless the construction is repugnant to the legislature's intent or the statute's context, "[w]ords and phrases shall be taken in their plain, or ordinary and usual sense."). Where a statute is ambiguous, however, the rules of statutory construction may be applied to determine the legislature's intent. *City of Carmel v. Steele*, 865 N.E.2d 612, 616 (Ind. 2007). Among other things, we must read the statute "as a whole." *Id*. We presume the legislature did not intend for language in a statute to be applied illogically or to bring about an unjust or absurd result. *Id*. We must also consider the consequences of the alternate interpretations. *Herff Jones, Inc. v. State Board of Tax Comm'rs*, 512 N.E.2d 485, 490-491 (Ind. Tax Ct. 1987).

21. Despite Buckeye's claims to the contrary, its own argument shows that it thinks the statute must be construed. Buckeye does not cite to a dictionary or other source showing the common meaning of the word "dwelling" or the term "dwelling unit." It instead looks to two technical definitions from outside the statute—the Real Property Assessment Guidelines and Ind. Code § 32-31-5-3.

22. Although we agree the statute as a whole and the term "dwelling unit" both must be construed, we think Buckeye has chosen inappropriate sources for doing so. The definitions from the Guidelines' glossary are designed to aid assessors in applying Indiana's assessment regulations. Those regulations, particularly the Guidelines, are concerned primarily with valuing properties. Thus, to the extent the Guidelines are concerned with classifying buildings and their components, it is to choose the appropriate model for estimating replacement costs. *See* REAL PROPERTY ASSESSMENT GUIDELINES

FOR 2002–VERSION A, ch. 6 at 7 ("The general commercial models are conceptual tools used to assist in estimating the replacement cost new of a given structure. The models assume that there are certain elements of construction for a given use type."); *see also,* 2011 REAL PROPERTY ASSESSMENT GUIDELINES, ch. 6 at 7.

23. By contrast, the tax-cap statute focuses on a property's use rather than on its physical characteristics. That is apparent both from the statute itself and from a 2012 amendment to Article 10 section 1 of our state constitution. That amendment originated in the same legislative session in which the tax-cap statute was enacted,[2] and the tax-cap statute was undoubtedly intended to implement the amendment. *See* 2008 Ind. Acts 147; 2008 Ind. Acts 146, § 221. The amendment requires the legislature to cap a taxpayer's property tax liability between 1% and 3% of gross assessed value, depending on the property type. In distinguishing between property types, however, the constitution speaks solely to how a property is used rather than to its physical characteristics. For example in defining "other residential property" that must have its taxes capped at 2%, the constitution refers to property (other than homesteads) "that is used for residential purposes." Ind. Const. Art. 10 § 1(e)(1). Thus, we believe the legislature intended the meaning of "dwelling" or "dwelling unit" to focus on how a property is used rather than purely on its physical characteristics.

24. Buckeye's second asserted source for interpreting "dwelling unit," Ind. Code § 32-31-5-3, does focus on a building's use. But it is from an unrelated statute with presumably different underlying policy concerns than the tax cap statute.

25. We believe the best source for interpreting the term "dwelling unit" comes from a property tax statute that implements some of the same policy goals that underlie tax-cap statute—the statute providing for a standard homestead deduction. The legislature defined "dwelling" for purposes of the standard homestead deduction as: "(A) Residential real property improvements that an individual *uses as the individual's*

[2] Constitutional amendments must be approved by consecutive General Assemblies and ratified by voters in the next general election. Ind. Const. Art. 16.

residence, including a house or garage." I.C. § 6-1.1-12-37(a)(1) Versions a-c (emphasis added).[3] Although the standard-deduction statute does not define "residence," Merriam-Webster's Collegiate Dictionary offers the following definition: "the place where one actually lives as distinguished from one's domicile or a place of temporary sojourn." MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 996 (10th ed. 1994). That is in keeping with what the Indiana Court of Appeals long ago explained, "[r]esidence, as used in our tax laws, means a permanent abode, as distinguished from a temporary sojourn." *Brookover v. Kase*, 41 Ind. App. 102, 83 N.E. 524, 525 (1908) (citing *Culbertson v. Board, etc.*, 52 Ind. 361 (1876)).

26. That reading comports with our understanding of what the legislature intended when it drafted the amendment to Article 10 and the statutory classifications for applying tax-cap credits. The legislature wanted to give taxpayers relief from shelter costs—hence the 1% cap for homesteads. The intermediate 2% cap for other residential properties serve the same purpose, because landlords will attempt to pass property tax expenses to their tenants in the form of higher rents. The same largely goes for "long term care" properties. There is no evidence the legislature wanted to give the same level of relief to temporary guests at places like hotels and motels, even those who might stay for 30 days or longer.

27. Thus, simply showing that all the units in the building are physically amenable for use as a residence is not enough. The units must be intended for use as residences. The undisputed facts show that Buckeye's units are intended for guests to use for sojourns, even though some of those sojourns may last for 30 days or more. Buckeye holds the property out as a hotel, and guests pay on a weekly basis.

28. The designated evidence does not rule out the possibility that some people might actually use the hotel as their residence. We do not find that factual question material, however. It would only matter if we read the definition of residential property as requiring a unit-

[3] This definition was added in an amendment passed in 2008 with an effective date of January 1, 2009. 2008 Ind. Acts 146 § 115.

by-unit breakdown based on the circumstances surrounding how each unit was occupied on the assessment date and apportionment between the 2% and 3% cap based on that breakdown. We do not read the statute as contemplating that type of undertaking. Taxpayers do not apply for the tax-cap credit; instead, auditors must decide which credit to assign a property for each year. *See* I.C. § 6-1.1-20.6-8. We do not believe the legislature intended to make auditors responsible for performing that type of detailed analysis each year. They would lack the necessary information to do so. At best, that information would be in the taxpayer's hands. More likely, it would require interviewing the occupants themselves.

4. The 2014 amendment to section four clarified the legislature's intent that hotels are not "residential property" for purposes of the tax-cap statute.

29. In 2014, the legislature added the following language to section four:

> The term includes a single family dwelling that is under construction and the land, not exceeding one (1) acre, on which the dwelling will be located. *The term does not include real property that consists of a commercial hotel, motel, inn, tourist camp, or tourist cabin*.

2014 Ind. Acts 166 § 4 (emphasis added).[4] The parties disagree about the effects of that amendment. According to the Assessor, the amendment clarifies that the legislature never intended hotels to be residential property. Buckeye disagrees, arguing that the amendment may not be used to interpret what it characterizes as the original statute's clear language.

30. Under most circumstances, an amendment to an existing statute shows a legislative intent that the statute's meaning has changed. *Woodruff v. Indiana Family and Social Services Administration,* 964 N.E.2d 784, 795 (Ind. 2012). Courts therefore presume the legislature intended to change the law. *Id*. But where it appears the legislature amended the statute to express its intent more clearly, that normal presumption does not apply. *Ind. Dep't of Revenue v. Kitchin Hospitality*, *LLC*, 907 N.E.2d 997, 1002 (Ind. 2009).

[4] In 2013, section four was amended to add "(including any land that is a common area, as described in section 1.2(b)(2) of this chapter)" to subdivision 2(B) and to delete the phrase "not exceeding the area of the building footprint," from subdivision 2(C). 2013 Ind. Acts. 288, § 22.

31. In *Kitchin Hospitality*, the Indiana Supreme Court addressed, among other things, whether a 2007 amendment changed the meaning of Ind. Code § 6-2.5-5-35 or instead simply clarified the legislature's original intent. The statute created an exemption from the state gross retail tax for hotels, motels, inns, tourist camps, or tourist cabins for property "used up, removed, or otherwise consumed during the occupation of rooms, lodgings, or accommodations by a guest." *Id*. at 1000 (quoting I.C. § 6-2.5-5-35). The amendment specified that the exemption did not apply to transactions involving "electricity, water, gas, or steam." *Id*.

32. The Tax Court read the exemption statute as not requiring a guest to directly use-up, consume, or remove property. The Indiana Supreme Court disagreed, finding that two tests needed to be met: (1) the property had to be used up or otherwise consumed while the rooms were occupied, and (2) it had to be used up or consumed by a guest. *Id*. at 1001-02. The Court gave several reasons for its interpretation. It believed statute as a whole supported its interpretation and that the Tax Court's reading would extend the exemption to property far beyond what the legislature intended. *Id*.

33 It also pointed to the 2007 amendment as further support for its holding. In 2003, as part of a multi-state cooperative effort to modernize the administration of the sales and use taxes called the "Streamlined Sales Tax Project (SSTP)," the legislature made multiple amendments to Title 36, Article 2.5 of the Indiana Code. One of those amendments added a definition of "tangible property" that included, among other things, electricity, water, gas, and steam." *Id*. at 1000. Before the SSTP amendments, the Tax Court had twice held that utilities were not tangible property. Under those circumstances, the Supreme Court reasoned the 2007 amendment was simply meant to clarify that the 2003 SSTP amendment was intended to bring Indiana into compliance with the multi-state cooperative effort behind the SSTP rather than to make utilities eligible for exemption. *Id.* at 1002-03.

34. The court reached a similar conclusion in *Woodruff*. There, it addressed whether the State was entitled to set off amounts it paid to operate a receivership of a health care provider's facility against the provider's award on its breach of contract claim. *Woodruff*, 964 N.E.2d at 794-95. Indiana Code 16-28-8-7 provided that the "*costs of placing a receiver in a health care facility*, excluding the cost of the receiver's bond, shall be paid by: (1) the health facility. . . ." *Id.* at 795. The legislature later added a definitional section to the statute, providing "'the cost of receivership' may include the costs of placing a receiver in a health facility *and all reasonable expenditures and attorney's fees incurred by the receiver to operate the health facility while the health facility is in receivership.*" *Id*. (quoting I.C. § 16-28-8-0.5) (emphasis added).

35. The provider argued that the statute as originally drafted limited the state's recovery to the costs of placing the receiver in the facility and therefore excluded the receiver's reasonable expenditures and attorney fees in operating the facility. Thus, it argued that the 2002 amendment could not be retroactively applied. The Court disagreed, explaining that the amendment clarified the statute by defining the scope of recoverable costs, something that previously had been undefined:

> Prior to the 2002 amendment, there was no statutory provision defining the scope of those receivership costs that must be reimbursed to the State by a health care facility. . . . After the 2002 amendment there was. "It certainly seems to us that in this case the Legislature was clarifying existing law."

Id. (quoting *Kitchin Hospitality*, 907 N.E.2d at 1002); *see also, Monarch Steel Co., Inc v. State of Indiana Tax Comm'rs,* 545 N.E.2d 1148, 1152-53 (Ind. Tax Ct. 1989) (holding that an amendment to Ind. Code § 6-1.1-10-29 defining the term "processor" clarified the legislature's intent where the statute previously did not define that term).

36. Buckeye argues that the 2014 amendment to section four changed the statute's plain meaning. We disagree. As we have already explained, the statute as originally drafted was ambiguous. We therefore find that the portion of the amendment at issue was meant to clarify existing law. This is analogous to the amendments at issue in *Woodruff* and *Monarch*. In those cases, the legislature added new sections or subsections to statutes to

define previously undefined terms. Here, it amended section four to clarify an ambiguity in the existing definition of residential property. Similarly, like the Court in *Kitchen*, we reach the same decision by interpreting the statute's original language without reference to the amendment. The amendment simply offers further support for our conclusions.

37. This case is distinguishable from cases where the Tax Court has found that parties failed to rebut the normal presumption that an amendment to a statute changes its meaning. For example, in *Encyclopaedia Britannica, Inc. v. State Bd. of Tax Comm'rs*, the Tax Court addressed a taxpayer's argument on re-hearing that the Court's original decision had impermissibly narrowed the meaning of the terms "manufacturer" and "processor," in the definitional subsection section of Ind. Code § 6-1.1-10-29, a statute exempting certain property held for shipment in interstate commerce from taxation.[5] *Encyclopaedia Britannica, Inc. v. State Bd. of Tax Comm'rs,* 663 N.E.2d 1230, 1231 (Ind. Tax Ct. 1996) (Order on Petition for Reh'g); *see also, Encyclopaedia Britannica, Inc. v. State Bd. of Tax Comm'rs,* 663 N.E.2d 1230, 1232-33 (Ind. Tax Ct. 1996).[6]

38. Pre-amendment, the subsection defined manufacturers and processors as people who performed "an operation or continuous series of operations on raw materials, goods, or other personal property" to alter them into a new or changed state or form and explained that the operation could be "performed by hand, machinery, or a chemical process directed or controlled by an individual." *Id.* at 1232-33 (quoting I.C. § 6-1.1-10-29(a)).

39. In its initial decision, the Tax Court found that the subsection plainly excluded the taxpayer, a publisher and seller of encyclopedias, from the definition of a manufacturer or processor. While the taxpayer performed editorial work, that work was an intellectual operation, and it was not performed on raw materials, goods, or other tangible personal property. Similarly, the court found "by no stretch of the imagination" could the second sentence of the definition be read "to extend the status of 'manufacturer' or 'processor' to

[5] This is the same statute and definitional subsection at issue in *Monarch*.
[6] It is not clear whether the Court's order on petition for rehearing was published. The underlying opinion is reported in the hardbound version of the Northeast Reporter. The order on rehearing is not. Both opinions have the same citation in Lexis.

persons who 'direct or control' the manufacturing work they relegate to others." *Id*. at 1234. Instead, the reference to "directed or controlled" was meant to explain that operations under the statute were "not limited to manual operations but include[d] mechanical operations and chemical operations performed by individuals as well." *Id.*

40. In its rehearing petition, the taxpayer pointed to an amendment to the definition of manufacturer or processor in which the legislature added "[t]he terms include a person that (1) dries or prepares grain for storage or delivery; or (2) publishes books or other printed materials" and argued that the legislature had clarified its intent to exempt publishers like the taxpayer. *Encyclopaedia Britannica (Re-hearing Order)*, 663 N.E.2d at 1231. The Court disagreed, and distinguished the case before it, where the pre-amendment statute defined the terms manufacturer and processor and the taxpayer failed to qualify under those definitions, from *Monarch*, where the legislature had first added the definitions for processor and manufacturer. Thus, the taxpayer had failed to rebut the presumption that the amendment had changed the law. *Id*. *See also*, *Wechter v. Ind. Dep't of State Revenue*, 544 N.E.2d 221, 223 (Ind. Tax Ct. 1989) (holding, in part, that an amendment adding "plus any penalties and interest" to a statute making corporate officers personally liable for unremitted sales taxes was a change in law where the original statute did not appear ambiguous on its face).

41. Unlike *Encyclopaedia Britannica* and *Wechter*, where the later amendment ran counter to original definitional statute's plain language, section four's pre-amendment definition of residential property was ambiguous. And we interpret that original language as excluding hotels like Buckeye's from qualifying. Under those circumstances, the presumption that the legislature intended to change the law with its 2014 amendment has been rebutted.

V. Final Determination

42. Because Ind. Code § 6-1.1-20.6-4 was never intended to include hotels like Buckeye's in the definition of residential property, there is no genuine question of material fact as to whether Buckeye's property qualified for the 2% tax-cap credit, and the Assessor is

entitled to judgment as a matter of law. We deny Buckeye's request for summary judgment, grant the Assessor's motion for summary judgment, and enter our final determination denying Buckeye's Form 133 petitions.

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

_____
Chairman, Indiana Board of Tax Review

_____
Commissioner, Indiana Board of Tax Review

_____
Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>.

Distribution:

Joshua Malancuk
JM Tax Advocates, LLC
9744 Olympia Drive
Indianapolis, IN 46037

John Rogers
Rogers Law Office
160 Sedona Street
Sedona, AZ 86351

J.F. Beatty
Jessica Findley
Donald D. Levenhagen
Kathryn Merritt-Thrasher
Landman Beatty, Lawyers
9100 Keystone Crossing, Suite 870
P.O. Box 40960
Fishers, IN 46240

Mark GiQuinta
Melanie Farr
Sarah Schreiber
Haller & Colvin, P.C.
444 East Main Street
Fort Wayne, IN 46802