REPRESENTATIVE FOR PETITIONER:
Paul M. Jones, Jr., Paul Jones Law, LLC

REPRESENTATIVES FOR RESPONDENT:
Mark E. GiaQuinta, Sarah L. Schreiber, Haller & Colvin, P.C.

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Buckeye Hospitality Dupont, LLC[1]	)	Petition Nos.: 02-072-13-3-4-01893-17
	)	02-072-14-3-4-01892-17
Petitioner,	)	02-072-15-3-4-01891-17
	)	02-072-16-3-4-01890-17
v.	)	
	)	Parcel No.: 02-08-06-400-006.002-072
Allen County Assessor,	)	
	)	Assessment Year: 2013-2016
Respondent.	)	

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

March 11, 2019

FINAL DETERMINATION GRANTING SUMMARY JUDGMENT FOR THE ALLEN COUNTY ASSESSOR

I. INTRODUCTION

1. Buckeye Hospitality DuPont, LLC and the Allen County Assessor both moved for summary judgment on Buckeye's Form 133 petitions for correction of error. For the years at issue, Buckeye's hotel was given a credit for non-residential property that effectively capped its tax rate at 3%. Buckeye contends that a portion of the hotel should have been treated as residential property with a 2% cap because some of its guests stay

[1] Although the Petitioner uses the name Sandpiper Fort Wayne, LLC in its briefing, the Form 133 petitions and counsel's appearance in this case both refer to the Petitioner as Buckeye Hospitality Dupont, LLC (Sandpiper). Sandpiper apparently bought the property in August 2016. *See Resp't Ex. A.*

for more than 30 consecutive days. In *Buckeye Hospitality Dupont, LLC v. Allen County Assessor,* Pet. No. 02-072-09-3-4-01319, et seq. (IBTR Nov. 22, 2016) (hereafter "*Buckeye Hospitality I*"), we previously denied Buckeye's appeals on essentially the same issue. We see no reason to reconsider our determination on that dispositive issue. We therefore deny Buckeye's motion and grant summary judgment for the Assessor.

II. PROCEDURAL HISTORY

2. On May 12, 2017, Buckeye filed a Form 133 petition for the 2013 tax year. Two months later, it filed similar petitions for 2014-2016. In each petition, Buckeye claims that portions of its property were entitled to the 2% tax cap for residential property under Ind. Code § 6-1.1-20.6 rather than the 3% cap for non-residential property that the Allen County Auditor actually applied. After the Assessor and the Allen County Auditor denied the petitions, Buckeye appealed to the Allen County Property Tax Assessment Board of Appeals ("PTABOA"). The PTABOA also denied relief, and Buckeye sought review with us. *See Pet'r Ex. C.*

3. After we set the petitions for hearing, the parties requested a continuance and permission to file cross motions for summary judgment. We granted those requests. The parties then filed their summary judgment motions together with supporting briefs and responses to the other side's motion. Neither we, nor any of our administrative law judges, inspected Buckeye's property.

4. The parties designated the following materials as evidence:

Petitioner Exhibit A:	Affidavit of Mark W. Clark, CPA
Petitioner Exhibit B:	2016 and 2018 subject property record cards
Petitioner Exhibit C:	2013-16 Form 133 petitions and attachments
Petitioner Exhibit D:	Spreadsheet of hotel guests staying 30+ days
Petitioner Exhibit E:	2014 Tax Exempt Report
Petitioner Exhibit F:	2015 Tax Exempt Report
Petitioner Exhibit G:	2016 Tax Exempt Report
Petitioner Exhibit H:	Spreadsheet of hotel guests stay 6+ months

Respondent Exhibit 1[2]: Affidavit of Stacey O'Day, Allen County Assessor
Respondent Exhibit A: 2013-2016 subject property record cards
Respondent Exhibit B: Excerpt from 2011 Real Property Assessment Manual
Respondent Exhibit C: Excerpt from Real Property Assessment Guidelines

Petitioner Response Exhibit A: Fiscal Impact Statement for SB 367

III. SUMMARY JUDGMENT MOTIONS

A. Undisputed Facts

5. The subject property contains a hotel building sitting on two acres. The building has 124 units, all of which are equipped with cooking and bathroom facilities. Each unit contains 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. *Pet'r Ex. A at ¶¶ 3-6.*

6. Guests stay anywhere from one day to longer than 30 days and do not sign leases. All guests have equal access to the property's amenities, such as wireless internet, parking, and laundry facilities. Buckeye does not reserve any portion of its public areas for long-stay occupants. It similarly does not set aside any specific units solely for long-stay occupants. *Pet'r Ex. A at* ¶¶ 7-8; *Resp't Ex. 1 at ¶¶ 7-10.*

7. In each tax year, guests who stayed in the same unit for more than 30 consecutive days accounted for the following percentage of total unit rentals:

    - 2013 – 3.0%
    - 2014 – 4.74%
    - 2015 – 15.19%
    - 2016 – 43.42%

    Pet'r Ex. A at ¶¶ 9-12.

[2] The Assessor designated her own affidavit as evidence. That affidavit contained Exhibits A through C.

B. Discussion

1. Summary judgment standard

8. 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 Cnty. Prop. 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 simply to show that 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 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. Buckeye's hotel is not "residential property" within the meaning of the tax-cap statute

9. The parties agree there are no issues of material fact. But they disagree on the law. Specifically, they disagree about what constitutes "residential property" for purposes of the tax-cap statute (Ind. Code § 6-1.1-20.6-7.5). That statute carries out a 2012 amendment to article 10 section 1 of the Indiana Constitution, which requires the legislature to cap a taxpayer's property tax liability between 1% and 3% of its property's gross assessed value, depending on the property type. Ind. Const. art. 10 § 1(e).[3] The tax-cap statute provides tax credits that effectively limit a taxpayer's liability to a specified percentage of its property's gross assessment. I.C. § 6-1.1-20.6-7.5. The property type determines the percentage, with residential property capped at 2% and

[3] Although the constitutional amendment originated in the same legislative session as the tax-cap statute, it had to be approved by consecutive General Assemblies and ratified by voters in the next general election. Ind. Cost. Art. 16.

nonresidential property capped at 3%. *Id.* Buckeye claims part of its property is residential and therefore entitled to the 2% cap, while the Assessor contends the entire property is nonresidential.

10. Ind. Code § 6-1.1-20.6-4 defines residential property for purposes of the tax cap statute. Before its amendment, effective January 1, 2014, that section provided:

> Sec. 4 As used in this chapter, "residential property" refers to real property 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 (2013).[4] The 2014 amendment clarified that definition by adding:

> The term includes a single family dwelling that is under construction on 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.

11. Neither party claims that the property is a single-family dwelling or land leased for manufactured homes. Instead, Buckeye argues that the rooms in its hotel are "dwelling units" when they are occupied by the same guest for longer than 30 days and that we incorrectly interpreted the statute when we held otherwise in *Buckeye Hospitality I*. The

[4] A 2013 amendment, which became effective January 1, 2014, added the following parenthetical language to subdivision 2(B) "(including any land that is a common area, as described in section 1.2(b)(2) [IC 6-1.1-20.6-1.2(b)(2)] of this chapter)." 2013 Ind. Acts 288, § 22. It also deleted "not exceeding the building footprint" from subdivision 2(C).

Assessor, by contrast, argues that we correctly interpreted the statute in *Buckeye Hospitality I* and that Buckeye should be precluded from re-litigating the question. Preclusion aside, we agree that we correctly interpreted Ind. Code § 6-1.1-20.6-4 as excluding a hotel like Buckeye's from the definition of residential property.

a. *Buckeye Hospitality I*

12. In *Buckeye Hospitality I*, Buckeye pointed to two sources with technical definitions of the term "dwelling unit": (1) the 2011 Real Property Assessment Guidelines and (2) Ind. Code § 32-31-5-3, a statute discussing Indiana's landlord-tenant laws. *Buckeye Hospitality I* at 8-9. While we agreed the tax-cap statute did not define "dwelling unit," we found neither of Buckeye's definitions convincing. *Id*. at 9-10. Indeed, even Buckeye now agrees those definitions were inappropriate. *Petitioner's Brief in Support of Motion for Summary Judgment* ("*Pet'r Brief*") at 5 ("The Indiana Board found that the taxpayer in [*Buckeye Hospitality I*] used inappropriate sources for defining the term 'dwelling unit.' [Buckeye] does not disagree.")

13. We instead looked to the definition of "dwelling" from the standard homestead deduction statute, which implements some of the same policy goals as the tax-cap statute. For the purposes of homestead deductions, a dwelling consists of improvements to real property "that an individual *uses as the individual's residence*, including a house or garage." *Buckeye Hospitality I* at 10-11 (*quoting* I.C. § 6-1.1-12-37(a)(1) (emphasis in original)). Although this statute did not define "residence," we looked to Merriam Webster's Collegiate Dictionary and previous Indiana case law. Those sources defined a residence as a person's abode or the place where he actually lives as distinguished from a temporary sojourn. *Id.* at 11 (*citing* MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 996 (10th ed. 1994); *Brookover v. Kase*, 41 Ind. App. 102, 83 N.E. 524, 525 (1908) (citing *Culbertson v. Board, etc.*, 52 Ind. 361 (1876)).

14. We explained that our reading comported with our understanding of the legislature's underlying purpose in drafting the amendment to Article 10 and the tax-cap statute, namely to give taxpayers relief from shelter costs. *Id*. at 11. We found 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. Thus, showing that all the units in the building were physically amenable for use as a residence was not enough; instead, the units had to be intended for use as residences. The undisputed evidence showed otherwise—Buckeye held itself out as a hotel and guests paid on a weekly basis. *Id*.

15. We recognized that some people might have actually used Buckeye's hotel as their residence but found that possibility immaterial. Taxpayers do not apply for tax-cap credits; auditors must decide which credit to apply to a property each year. We did not believe the legislature intended to burden auditors with having to determine which cap rate to apply room-by-room. *Id*. We explained that, at best, such information would be in the taxpayer's hands. More likely, it would require interviewing each occupant. *Id*. at 11-12.

16. Finally, all of the assessment years at issue in *Buckeye Hospitality I* pre-dated the 2014 amendment to Ind. Code § 6-1.1-20.6-4. We therefore interpreted the statute's original language. But we found that the 2014 amendment actually clarified the intent behind the original language. *Id*. at 12-15.

b. We stand by our interpretation of the tax-cap statute in *Buckeye Hospitality I*

17. Buckeye argues that we misinterpreted and misapplied the tax-cap statute in *Buckeye Hospitality I.* First, it claims we improperly focused on the properties intended, rather than its actual, use when we applied our interpretation to its hotel. Second, it argues that our interpretation was wrong in the first place and that we should have looked to Ind. Code § 6-1.1-4-39(a), which according to Buckeye, "defines" residential property as "real property regularly used to rent or otherwise furnish residential accommodations for periods of thirty (30) days or more and that has more than four (4) rental units." *Pet'r Brief at 8*. In actuality, that statute does not purport to define "residential property." It instead specifies how to determine the true tax value for a specific type of property. I.C.

§ 6-1.1-4-39(a). Finally, Buckeye argues that, even as amended, the tax-cap statute does not preclude separating a building between non-residential "commercial hotel" property and residential property.

18. We disagree with Buckeye on all points. Buckeye's first argument—that we focused on the hotel's intended use, rather than on its actual use—misreads our decision. While we noted that Buckeye intended to use the property as a place for temporary sojourns, we also explained that it actually used the property in that manner, pointing out that Buckeye held itself out as a hotel and that guests paid on a weekly basis.

19. Buckeye's claim that we misinterpreted Ind. Code § 6-1.1-20.6-4 fares no better. Unlike its previous arguments, where it looked to technical definitions from other sources to interpret an undefined term within Ind. Code § 6-1.1-20.6-4 (i.e. "dwelling"), Buckeye now essentially seeks to supplant Ind. Code § 6-1.1-20.6-4 entirely. That section defines the term "residential property" for purposes of the tax-cap statute. And it does so using completely different language than Ind. Code § 6-1.1-4-39—the statute Buckeye asks us to substitute in its place.

20. Even if we found Ind. Code § 6-1.1-4-39 relevant, Buckeye does not set aside any specific units or areas of its hotel for long-term occupancy. Buckeye simply offered evidence showing the number of days units were rented by guests who stayed more than 30 consecutive days as a percentage of total days all units were rented for each year. That does not necessarily translate to any given room being regularly used to furnish accommodations for more than 30 days. Many of the stays exceeding 30 days were still relatively short, meaning that short-term guests may have occupied the room for the bulk of the year.

21. In any case, much like the statutes Buckeye previously argued should guide us, Ind. Code § 6-1.1-4-39 presumably addresses different policy concerns than the tax-cap statute. The same is true for the other two statutes Buckeye relies on. The first—Ind. Code § 6-2.5-4-4—subjects transactions furnishing hotel (and other specified lodging)

accommodations for less 30 days to Indiana sales tax. The second—Ind. Code § 6-9-6-4—establishes an "inkeeper's" tax for Allen County on every person "engaged in the business of renting or furnishing, for periods of less than thirty (30) days, any lodgings in any hotel, motel, inn, tourist camp, tourist cabin, or any other place in which lodgings are regularly furnished for a consideration." Those statutes do not attempt to define "dwelling" or any other term used in Ind. Code § 6-1.1-20.6-4. They simply exclude certain transactions from specific taxes.

22. In short, we do not believe the legislature intended to import a highly specific qualification—occupancy for 30 days—into the tax-cap statute's definition of residential property without expressly saying so. In fact, Buckeye's position now is even weaker than it was when we decided *Buckeye Hospitality I*. In that case, we interpreted Ind. Code § 6-1.1-20.6-4's original language, albeit with some support from the 2014 amendment, which we believed was intended to clarify the legislature's intent. Three of the four years in these appeals fall after the effective date of the 2014 amendment. The amended statute expressly excludes "commercial hotel[s]" from the definition of residential property.

23. Finally, Buckeye argues that we misinterpreted the exclusion for commercial hotels as being an all-or-nothing proposition, and that the statute actually contemplates county auditors allocating hotel buildings between residential property with a 2% cap and non-residential property with a 3% cap. Of course, Buckeye predicates its contemplated allocation on the percentage of total unit rentals attributable to stays lasting more than 30 consecutive days in a given year. And that rests on Buckeye's mistaken assumption that hotel rooms where guests stay for more than 30 days qualify as residential property for purposes of the tax-cap statute. For that reason alone, Buckeye's claim fails.

24. In any case, absent clear guidance to the contrary, we doubt the legislature intended to burden county auditors with making room-by-room determinations when applying tax caps. Nothing on the face of the statute suggests that is the case. Quite the opposite, the legislature more likely contemplated generally dealing with buildings as a whole. After

all, the legislature excluded "commercial hotel[s]," rather than individual hotel units or rooms, from the definition of residential property.[5]

25. The fact that the legislature has placed the burden on assessing officials to make allocations in other contexts does not change our conclusion. Instead, it further supports our reasoning that if the legislature had chosen to place such a burden on county auditors in this instance, it would have done so plainly.

26. Based on the undisputed facts, Buckeye's property does not qualify as residential property for purposes of the tax-cap statute as a matter of law.

IV. FINAL DETERMINATION

27. There is no issue of material fact in this case. Because Ind. Code § 6-1.1-20.6-4 does not include hotels like the subject property in the definition of residential property, Buckeye fails to qualify for the 2% tax cap. We deny Buckeye's motion 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 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

[5] We leave for another day the question of how the statute might apply to a multi-unit building where discrete portions of the building are reserved for use as apartments and others for use as a hotel.

- 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 within forty-five (45) days of 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 Rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>.