

REPRESENTATIVE FOR PETITIONER: Phil Latchford
Key Markets, Inc.

REPRESENTATIVES FOR RESPONDENT: None

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

KEY MARKETS, INC.)	
)	
Petitioner)	Review of the Claim for Enterprise
)	Zone Personal Property Tax Credit
)	
v.)	Petition Nos. 45-023-00-4-0-00001
)	45-023-00-4-0-00002
)	45-004-00-4-0-00003
)	
LAKE COUNTY AUDITOR)	County: Lake
)	Townships: North and Calumet
)	
Respondent)	Assessment Year: 2000
)	

On Appeal from the Lake County Auditor

FINAL DETERMINATION

The Indiana Board of Tax Review assumed jurisdiction of this matter as the successor entity to the State Board of Tax Commissioners, and the Appeals Division of the State Board of Tax Commissioners. For convenience of reference, each entity is without distinction hereafter referred to as the "Board".

The Board having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

Findings of Fact and Other Matters of Record

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also, if appropriate, any conclusion of law made herein shall also be considered a finding of fact.
2. Pursuant to Ind. Code § 6-1.1-20.8-3(b), Mr. Phil Latchford of Key Markets, Inc. (Key), on behalf of Key, filed a written request for review of the Claim for Enterprise Zone Business Personal Property Tax Credit (Form EZ-1) by the Board. The request is dated August 17, 2001.
3. The request for review is labeled Board Exhibit A. Upon receipt of the request for review, the Board requested additional information from the Petitioner. The Board had various correspondence with the Petitioner between September and December 2001 in order to obtain the requested information.
4. In accordance with the Tax Court decision *Graybar Electric Co. v. State Board of Tax Commissioners*, 723 N.E. 2d 491 (Ind. Tax 2000), the Board by letter dated September 13, 2002 requested the Petitioner address the seven (7) factors outlined in 50 IAC 10-4-2. The Board established October 15, 2002 as the deadline for the Petitioner to address the seven (7) factors. The Board's letter is labeled Board Exhibit B.
5. The Petitioner failed to contact the Board prior to the October 15, 2002 deadline outlined by the Board's September 13, 2002 letter.
6. The Board verified its letter was mailed, with proof of mailing, and also verified that the letter was not returned to the Board as not deliverable.

7. The subject properties are located at 2207 – 165th Street and 1301 Chicago Avenue, Hammond, Indiana 46320, North Township and 5019 East Dune Highway, Miller, Indiana 46403, Calumet Township (Lake County).

Conclusions of Law

1. Indiana courts have long recognized the principle of exhaustion of administrative remedies and have insisted that every designated administrative step of the review process be completed. *State v. Sproles*, 672 N.E. 2d 1353 (Ind. 1996); *County Board of Review of Assessments for Lake County v. Kranz* (1964), 224 Ind. 358, 66 N.E. 2d 896. Regarding the filing of a Form EZ-1, the levels of review are clearly outlined by statute. First, the form EZ-1 is filed with the County and acted upon by the County Auditor. Ind. Code § 6-1.1-20.8. If the taxpayer disagrees with the County Auditor's action on the Form EZ-1, then a written request for review may be filed with the Board. Ind. Code § 6-1.1-20.8-3 (b).
2. The Board is the proper body to hear an appeal of the action of the County Auditor pursuant to Ind. Code § 6-1.1-20.8-3 (c).
3. In reviewing the actions of the County Auditor, the Board is entitled to presume that its actions are correct. "Indeed, if administrative agencies were not entitled to presume that the actions of other administrative agencies were in accordance with Indiana law, there would be a wasteful duplication of effort in the work assigned to agencies." *Bell v. State Board of Tax Commissioners*, 651 N.E. 2d 816, 820 (Ind. Tax 1995). The taxpayer must overcome the presumption of correctness to prevail in the appeal.
4. It is fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, §

128. See *also* Ind. Code § 4-21,5-2-4 (a)(10) (Though the Board is exempted from the Indiana Administrative Orders & Procedures Act, it is cited for the proposition that Indiana follows the customary common law rule regarding burden).

5. The Board has the legal authority to consider a late-filed application for the Enterprise Zone Business Personal Property Tax Credit. *Graybar Electric Co. v. State Board of Tax Commissioners*, 723 N.E. 2d 491 (Ind. Tax 2000). In *Graybar*, the Tax Court references *State Board of Tax Commissioners of Indiana v. New Energy Company of Indiana* (Ind. App. 1992), 585 N.E. 2d 38.
6. In considering a late-filed application, the Board shall consider all of the relevant facts and circumstances, and determine if it is more equitable to grant or to deny the EZ credit application.
7. The Board has adopted seven (7) factors to guide the exercise of its discretion in determining whether to grant late-filed applications. 50 IAC 10-4-2 (b). The Petitioner was informed of the seven (7) factors and had the opportunity to present evidence on these factors.
8. The request for review of the EZ credit application is denied for failure of the Petitioner to respond and address the seven (7) factors outlined in 50 IAC 10-4-2.

The above stated findings of fact and conclusions of law are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this _____ day of _____, 2002.

Chairman, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS-

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.