REPRESENTATIVE FOR PETITIONER: Chris Hiatt,
President, Key Enterprises, Inc.

REPRESENTATIVE FOR RESPONDENT: Joseph Rhetts,
Brooke Stevens, P.C.

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Key Enterprises, Inc.,	)	Petition nos.:	18-019-15-3-5-00925-17
	)		18-019-14-3-5-00926-17
Petitioner,	)		18-019-13-3-5-00927-17
	)		18-019-12-3-5-00928-17[1]
v.	)		
	)	Parcel no.:	18-04-35-477-002.000-019
Delaware County Assessor,	)		
	)	County:	Delaware
Respondent.	)		
	)	Assessment Years:	2012-2015

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

March 20, 2018

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:

INTRODUCTION

1. After Key Enterprises, Inc. appealed the assessment for a duplex that it had previously sold on contract, Key and the Delaware County Assessor stipulated to lower assessments

[1] There was a scrivener's error in the hearing notice for this petition. It listed the petition number 18-001-12-3-5-00928-17.

for 2012-2015. Key then filed Form 133 petitions for correction of error, claiming that it was still being taxed on the original assessments rather than the stipulated values and was therefore wrongly being charged for delinquent taxes and penalties. We lack authority to consider Key's claims about penalties. Key's other claims of error require information about how the delinquencies were calculated and details about whether the contract buyers used the entire duplex as their principal place of residence. Because Key failed to offer that information, it is not entitled to any relief.

PROCEDURAL HISTORY

2. On November 29, 2016, Key filed Form 133 petitions for the 2012-2015 tax years with the Delaware County Auditor. After more than 180 days without action by the Delaware County Property Tax Assessment Board of Appeals ("PTABOA"), Key filed the petitions with the Board.

3. On December 21, 2017, our designated administrative law judge, Kyle C. Fletcher ("ALJ"), held a hearing on the petitions. Neither he nor the Board inspected the property.

4. Chris Hiatt, Key's president, appeared for Key and was sworn as a witness. Joe Rhetts appeared as counsel for the Assessor.

5. Key submitted the following exhibits:

Petitioner's Ex. A:	December 8, 2017 letter from Mr. Hiatt to Delaware County Assessor, Auditor, and Treasurer
Petitioner's Ex. B:	2012 Form 130 petition
Petitioner's Ex. C:	2013 Form 130 petition
Petitioner's Ex. D:	2014 Form 130-Short
Petitioner's Ex. E:	2012 Form 114 Notice of Hearing
Petitioner's Ex. F:	2012 Form 115 determination
Petitioner's Ex. G:	August 5, 2014 Notice of Tax Sale
Petitioner's Ex. H:	July 28, 2015 Notice of Tax Sale
Petitioner's Ex. I:	August 12, 2016 Notice of Tax Sale
Petitioner's Ex. J:	2012 Form 131 petition
Petitioner's Ex. K:	2014 Form 131 petition

Petitioner's Ex. L:	2012 Notice of Hearing, Final Determination, and Stipulation Agreement
Petitioner's Ex. M:	2012-14 Final Determination for parcel number 18-04-35-477-003.000-019
Petitioner's Ex. N1:	Form 134 report for 2012 assessment
Petitioner's Ex. N2:	Form 134 report for 2013 assessment
Petitioner's Ex. N3:	Form 134 report for 2014 assessment
Petitioner's Ex. N4:	Form 134 report for 2015 assessment
Petitioner's Ex. O:	2012 Treasurer Form TS-1A and line items from check stubs
Petitioner's Ex. P:	2013 Form TS-1A and line items from check stubs
Petitioner's Ex. Q:	2014 Form TS-1A and line items from check stubs
Petitioner's Ex. R:	April 15, 2015 tax bill and line items from check stubs
Petitioner's Ex. S:	April 6, 2016 tax bill and line items from check stubs
Petitioner's Ex. T:	May 9, 2017 tax bill and line items from check stubs
Petitioner's Ex. U1:	2012 Form 133 petition
Petitioner's Ex. U2:	2013 Form 133 petition
Petitioner's Ex. U3:	2014 Form 133 petition
Petitioner's Ex. U4:	2015 Form 133 petition
Petitioner's Ex. V:	June 21, 2017 letter from Mr. Hiatt to the Board

6. The Assessor submitted the following exhibits:

Respondent's Ex. 1:	*Irwin Mortgage Corp. v. Ind. Bd. of Tax Review*, 775 N.E.2d 720 (Ind. Tax Ct. 2002)
Respondent's Ex. 2:	2010-2016 property record cards

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

Board Ex. 1: Hearing notices
Board Ex. 2: Hearing sign-in sheet

The record also includes (1) all motions filed by the parties, (2) all notices and orders issued by the Board or our ALJ, and (3) a digital recording of the hearing.

KEY'S CONTENTIONS

8. Key owns the subject property, which is a duplex located at 1014 N. Delaware St. in Albany. In 2009, it sold the property on contract. Key did not offer a copy of the

contract and Mr. Hiatt did not identify the buyers by name. According to Mr. Hiatt, the buyers are responsible for property taxes. *Hiatt testimony; Pet'r Exs. S-T.*

9. Key challenged the property's assessment for the 2012-2014 tax years. The PTABOA upheld those assessments, and Key filed Form 131 petitions with us. After we held a hearing on these petitions, but before we issued a final determination, the parties stipulated to an assessment of $44,300 for each year. On August 1, 2016, we accepted the stipulation and dismissed the appeals. The Assessor created Form 134 reports showing an agreed value of $44,300 for the 2012-2015 tax years.[2] Although these reports are neither signed nor dated, Mr. Hiatt testified that the Assessor created them after the 2016 stipulation. *Hiatt testimony, Pet'r Exs. B-F, J-L, N1-N4.*

10. Mr. Hiatt testified that Key timely paid taxes each year throughout the appeal process. Key paid based on its 2011 tax liability, which was the most recent year not under appeal. In 2011, the property was assessed for $45,500. It received a mortgage deduction, a standard homestead deduction, and a supplemental homestead deduction. One of the buyers was blind, so there was also a deduction for his disability. Those combined deductions reduced the net assessment to zero, so there was no tax liability aside from storm water and ditch assessments. From 2011 through 2016, Key paid taxes on only those two assessments.[3] *Hiatt testimony; Pet'r Exs. O-S.*

11. Key claimed that the Auditor failed to apply the stipulated assessment of $44,300 to the 2012-2015 tax years. Had he done so, Key would not owe any taxes for those years. Because the Auditor continued to apply the original assessments, however, Key was improperly charged for delinquent taxes and penalties. *Hiatt testimony; Pet'r Exs. O-T.*

[2] Hiatt did not say, nor do the exhibits explain, why 2015 was included.
[3] Due to a clerical error, Key paid more than $21.40 for several of the years under appeal. Mr. Hiatt described these overpayments as "nominal."

12. The Assessor claimed that he had changed the property's classification, which also changed the buyers' entitlement to homestead deductions and the 1% tax-cap for homesteads.[4] According to Mr. Hiatt, our hearing was the first time Key was notified of those changes. In any case, Mr. Hiatt claimed that the changes were erroneous. Although Key previously rented out each unit to separate families, that changed with the 2009 contract sale when a "single family purchased the unit for . . . their entire use" and continued to use it throughout the period covered by these appeals. *Hiatt testimony*.

ASSESSOR'S CONTENTIONS

13. Key offered nothing to show that the taxes or penalties following the stipulation were erroneous. Indeed, most of the TS-1A forms and tax bills that Key offered were generated before that stipulation. The one exception was a May 9, 2017 tax bill, which listed delinquent taxes of $2,147.84 and a delinquent penalty of $894.44. *Rhetts argument; Pet'r Exs. O-T.*

14. Contrary to Key's belief, the stipulations did not eliminate all tax liability. Mr. Hiatt was correct that various deductions reduced the net assessment to zero for 2011. But beginning in 2012, the Assessor changed the property's classification from a one-family dwelling to a two-family dwelling. That in turn affected: (1) how much of the property was eligible for the standard and supplemental homestead deductions, and (2) how the tax-caps were allocated. *Rhetts argument; Resp't Ex. 2; Pet'rs Exs. O-Q.*

15. Key's own exhibits show those changes. Key offered several tax statements and bills. The Treasury Form TS-1A that Key received on May 1, 2013, shows when the Auditor first made those changes. The document contains the following information for the 2012 and 2011 assessments:

[4] Indiana Code § 6-1.1-20.6-7.5 provides a credit based on the property type. For homesteads, the credit is equal to the amount by which the taxes exceed 1% of the property's gross assessed value. For other residential property, the credit is equal to the amount by which taxes exceed 2% of the property's gross assessed value.

Year	2011(pay 2012)	2012 (pay 2013)
Gross Assessed Value of Homestead	$45,500	$36,150
Gross Assessed Value of Residential or Farm	$0	$36,150
Total Gross Assessed Value	$45,500	$72,300
Minus Deductions	($45,500)	($42,231)
Subtotal of Net Assessed Value	$0	$30,069
Tax Cap Information		
Property Tax Cap	$455	$1,084
Deductions		
Mortgage	$3,000	$3,000
Blind	$8,830	$12,480
Homestead	$27,300	$21,690
Homestead Supplemental 1	$6,370	$5,061
Total Deductions	$45,500	$42,231

The standard and supplemental homestead deductions are calculated as percentages of gross assessed value.[5] While the property's overall assessment almost doubled, those deductions actually decreased slightly because the Auditor applied them to only half of the assessment. *Rhetts Argument; Pet'r Exs. N1-N4, O-Q.*

16. Key received notice of the changes through that TS-1A form and the forms for subsequent years. The property record cards ("PRCs"), which are public records, also reflected the changes. If Key believed the changes were erroneous, it should have timely sought to correct them. It did not. Instead, it filed Form 133 petitions that focused on penalties and did not allege that the Auditor misclassified the property for purposes of the homestead deductions and property tax caps. In any case, Key did not show that the property was misclassified. As Mr. Hiatt testified, the home has not been physically converted from a duplex with two separate units to a single-family home. *Hiatt testimony; Rhetts argument; Pet'r Exs. N1-N4, O-Q; Resp't Ex. 2.*

[5] The standard deduction equals the lesser of (1) 60% of gross assessed value, or (2) $45,000. I.C. § 6-1.1-12-37(c). The supplemental deduction equals the sum of 35% of the first $600,000 of gross assessed value after applying the standard deduction but before applying any other deduction, exemption, or credit and 25% of the next $600,000. I.C. § 6-1.1-12-37.5(a)-(b).

OBJECTIONS

17. Key objected to Respondent's Exhibit 1—a printout of *Irwin Mortgage Corp. v. Ind. Bd. of Tax Review*, 775 N.E.2d 720 (Ind. Tax Ct. 2002)—as irrelevant. We overrule the objection. The exhibit is not evidentiary. Parties need not prove the content of reported decisions by our state courts. The Assessor premised his motion to dismiss, in part, on *Irwin Mortgage*. Although he labeled the printout as an exhibit, he simply provided it as a convenience.

18. Key objected to the Respondent's Exhibit 2—PRCs for the subject property—for "lack of foundation," because nobody was there to testify or submit to cross-examination about when the cards were generated, manipulated, or changed. *Hiatt objection*.

19. We overrule the objection. Key did not appear to challenge the authenticity of the PRCs. Instead, it appears that the Assessor needed to lay some foundation to show that the PRCs were relevant. While the lack of information about when data regarding the home's classification and tax cap allocations was entered and when the PRCs were generated may detract from their evidentiary weight, the PRCs are sufficiently relevant to be admissible.

20. By referring to the lack of a witness to cross-examine, Key may also have been arguing that the exhibit was hearsay and that the Assessor failed to lay a foundation for its admission under a recognized exception to the hearsay rule. More specifically, Key appeared to be concerned with references in the PRCs to the property's classification as two-family dwelling and the allocation of the assessment between the 1% and 2% tax caps.

21. But the Assessor did not offer the PRCs to prove the truth of those assertions—that the home was a two-family dwelling or that the tax-cap allocation was correct. *See* Ind. Evidence Rule 801(a)-(c) (defining hearsay as a statement made by a declarant while not

testifying at a trial or hearing offered to prove the truth of the matter asserted). Instead, he offered them to show how local officials classified the property. Right or wrong, they assigned the home a class code for two-family dwellings and assigned roughly one-half of the assessment to the 1% tax cap and the rest to the 2% cap. Regardless, we may admit hearsay with one caveat: if the opposing party properly objects to the hearsay and it does not fall within a recognized exception to the hearsay rule, we cannot base our determination solely on that evidence. *See* 52 IAC 2-7-3. We do not base our decision on the PRCs. Indeed, other documents that Key itself offered show how the property was classified for purposes of homestead deductions and tax caps.

THE ASSESSOR'S MOTION FOR CONTINUANCE

22. On December 18, 2017, three days before our scheduled hearing, the Assessor requested a continuance to allow it to file a motion to dismiss and a supporting memorandum. That same day, Key filed an objection to the Assessor's motion.

23. Under 52 IAC 2-8-1(a)(2), we may grant a continuance only upon a showing of good cause. Key filed its Form 133 petitions with us on June 26, 2017, and we issued hearing notices on November 14, 2017. The Assessor had ample time to file a motion to dismiss well in advance of the hearing date. Under those circumstances, he failed to show good cause for continuing the hearing. In any case, the Assessor orally moved to dismiss the petitions at the hearing, and he had the opportunity to argue support of that motion. We will deal with the substance of those arguments below.

CONCLUSIONS OF LAW AND ANALYSIS

A. Key's petitions and the correction of error process

24. Key filed Form 133 petitions, which the Department of Local Government Finance prescribed for use in the correction of error process under Ind. Code § 6-1.1-15-12.

Although the legislature repealed Ind. Code § 6-1.1-15-12 in 2017,[6] that statute governed the correction of error process at the time Key filed its Form 133 petitions with the Auditor. It provided, in relevant part, for the correction of eight types of errors, the following three of which could be reviewed by the county PTABOA and the Board:

> (6) The taxes, as a matter of law, were illegal.
> (7) There was a mathematical error in computing an assessment.
> (8) Through an error of omission by any state or county officer, the 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;
> (C) an exemption permitted by law; or
> (D) a deduction permitted by law.

I.C. § 6-1.1-15-12(a), (d)-(e).

25. In its Form 133 petitions, Key listed the original and stipulated assessments for each year and wrote, "[t]herefore, all taxes[,] penalties[,] and delinquencies were illegal as a matter of law as petitioners paid based on final determination." *Bd. Ex. 1; Pet'r Exs. U1-U4*.

B. We lack authority to address Key's claim that it was improperly assessed penalties

26. The Assessor orally moved to dismiss Key's Form 133 petitions for lack of subject matter jurisdiction, claiming that Ind. Code § 6-1.5-4-1 does not give us authority to address claims regarding penalties.

27. The Board is a creation of the legislature, and we have only those powers conferred by statute. *Whetzel v. Dep't of Local Gov't Fin.*, 761 N.E.2d 904 (Ind. Tax Ct. 2002) (citing *Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999)). Indiana Code § 6-1.5-4-1 identifies the subject matter we are authorized to address. It does not include penalties:

[6] 2017 Ind. Acts 232, § 17. It was replaced by Ind. Code § 6-1.1-15-12.1. *See* 2017 Ind. Acts 232, § 18.

> (a) The Indiana board shall conduct an impartial review of all appeals concerning:
>
> (1) the assessed valuation of tangible property;
> (2) property tax deductions;
> (3) property tax exemptions;
> (4) property tax credits;
>
> that are made from a determination by an assessing official or county property tax assessment board of appeals to the Indiana board under any law.
>
> (b) Appeals described in this section shall be conducted under IC 6-1.1-15.

I.C. § 6-1.5-4-1.

28. In *Irwin Mortgage Corp. v. Ind. Bd. of Tax Review*, the Indiana Tax Court held that Ind. Code § 6-1.5-4-1 did not give the Board authority to review penalties imposed for late payment of property taxes. *Irwin Mortgage Corp. v. Ind. Bd. of Tax Review* 775 N.E.2d 720, 723-24 (Ind. Tax Ct. 2002); *see also Whetzel*, 761 N.E.2d at 904 (reaching the same conclusion regarding the authority of the Board's predecessor agency, the State Board of Tax Commissioners). It therefore upheld the Board's determination dismissing an appeal in which the taxpayer challenged the assessment of penalties against it. *Irwin Mortgage*, 755 N.E.2d at 724.

29. Thus, to the extent Key claims that local officials improperly assessed penalties for late or unpaid taxes, we lack authority to address that claim. But Key also claimed it was charged for tax delinquencies that were illegally premised on the original assessments from 2012-2015 rather than on the stipulated assessments. We turn now to that claim.

C. Key failed to show that it was charged for delinquent taxes that were based on the pre-stipulation assessments.

30. Key did not attempt to break down how the delinquent taxes were calculated. Indeed, the only evidence that Key was even being charged for delinquent taxes after the stipulation was a May 9, 2017 tax bill, which simply listed a delinquency of $2,147.84. Key premised its claim on the fact that it had zero dollar net assessment in 2011. Because the

stipulated gross assessment for 2012-2015 was less than 2011's gross assessment, Key apparently reasoned that its net assessment should have remained at zero and that any delinquency necessarily meant its taxes were calculated based on the pre-stipulation assessments.

31. Key's reasoning assumes that the Auditor applied deductions in the same amount and manner for 2012-2015 as he did for 2011. But its own exhibits belie that assumption. Beginning in 2012—well before the parties stipulated to reduced assessments—the Auditor changed how he applied the standard and supplemental homestead deductions. The same is true for the tax-cap credit under Ind. Code § 6-1.1-20.6-7.5. Rather than treating the entire property as a homestead, the Auditor treated only half the duplex as a homestead. Instead of receiving a standard deduction equal to 60% of the property's gross assessment, it only received that 60% deduction against half of the assessment. The supplemental deduction similarly decreased. And only half of the gross assessment was allocated to the 1% tax cap for homesteads, while the rest was allocated to the 2% cap for other residential property.

32. Thus, it does not necessarily follow that Key would owe nothing if its taxes were calculated based on the stipulated assessment. Without some evidence to show how the delinquency on the May 2017 tax bill was calculated, we have no way of knowing whether it was based on the pre-stipulation assessment values. The Auditor presumably could have provided those calculations. Although Key blamed the Assessor for not bringing the Auditor to the hearing, Key could have requested a subpoena ordering him to appear. *See* 52 IAC 2-8-4 (laying out procedure for parties to request the Board to issue a subpoena). As it is, Key failed to show that its taxes were illegally based on the pre-stipulation assessment values. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Ass'r*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (holding that a taxpayer must walk us through its analysis and explain every element of its case).

D. Key failed to show that the Auditor erred in applying the standard and supplemental homestead deductions or in allocating tax caps

33. Even if it could not establish how the delinquency was calculated, Key argued that the Auditor committed an error of omission when it changed the standard and supplemental homestead deductions and tax-cap allocations. The Assessor responded that Key did not file petitions raising those claims despite being notified of the changes through the TS-1A forms. Even if we assume those claims are properly before us, Key failed to prove it was entitled to relief.

34. For purposes of the statutes governing the standard and supplemental homestead deductions, a homestead means, in relevant part: the real property improvements and surrounding land that (1) a person owns, or is buying on contract (with certain provisions, none of which appear to be in dispute), and (2) the person uses as his "principal place of residence." *See* I.C. § 6-1.1-12-37(a); *see also,* I.C § 6-1.1-12-37.5(a) (providing that person who is entitled to a standard deduction is also entitled to receive a supplemental deduction). Similarly, to qualify for the 1% tax-cap credit in 2012, a property needed to be eligible for the standard homestead deduction. I.C. § 6-1.1-20.6-2 (2010 repl. vol.). For 2013 forward, the property needed to have been granted the standard deduction. I.C. § 6-1.1-20.6-2 (2013 supp.).

35. The subject home is a duplex that was designed as two separate units. Hiatt's testimony that a "single family purchased the unit for . . . their entire use" is too vague and conclusory to show that the buyers used the entire dwelling as their principal place of residence. Thus, Key failed to show that the Auditor erroneously omitted the standard and supplemental homestead deductions for half the property or that he improperly allocated part of the assessment to the 2% tax-cap.

CONCLUSION

36. We lack authority to review Key's claim that it was improperly assessed penalties. And Key failed to prove the other errors it alleged. We therefore deny Key relief on its Form 133 petitions.

The Indiana Board of Tax Review issues the Final Determination of the above captioned matter 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>.