No. 20-

IN THE

Supreme Court of the United States

MARIA PAPPAS, TREASURER AND *EX-OFFICIO* COLLECTOR OF COOK COUNTY, ILLINOIS AND THE COUNTY OF COOK,

Petitioners,

v.

A.F. MOORE & ASSOCIATES, INC., J. EMIL ANDERSON & SON, INC., PRIME GROUP REALTY TRUST, AMERICAN ACADEMY OF ORTHOPAEDIC SURGEONS, ERLING EIDE, FOX VALLEY/RIVER OAKS PARTNERSHIP, SIMON PROPERTY GROUP, INC. AND FRITZ KAEGI, ASSESSOR OF COOK COUNTY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Equal Protection Clause mandates that a real estate taxpayer seeking a refund based on an over assessment of real property be able to challenge the methodology that the assessing official used and to conduct discovery on such assessment methodology, where that methodology is not probative to the refund claim that State law provides and where State law provides a complete and adequate remedy in which all objections to taxes may be raised.

2. Whether the decision below improperly held that the Tax Injunction Act and the comity doctrine did not bar federal jurisdiction over Respondents' equal protection and due process challenges to Illinois' system for seeking real estate tax refunds based upon error in the assessment of real estate, where: (1) Illinois law provides an action based upon equal protection principles to recover overpaid real estate taxes and interest and (2) under Illinois law, the assessment of real property at or above its true fair market value warrants a refund based upon the Uniformity Clause in the Illinois Constitution, where assessing officials have systematically under-assessed other, similar properties in its class.

LIST OF PARTIES

The parties to the proceeding below were petitioners Maria Pappas, Treasurer and *ex-officio* Collector of Cook County, Illinois and the County of Cook ("Petitioners") and respondents, A.F. Moore & Associates, Inc., J. Emil Anderson & Son, Inc., Prime Group Realty Trust, American Academy of Orthopedic Surgeons, Erling Eide, Fox Valley/River Oaks Partnership and Simon Property Group, Inc. ("Respondents"), as well as respondent Fritz Kaegi, the Assessor of Cook County (the "Assessor").[1]

1. The Assessor intends to separately file a petition for a writ of certiorari in this action.

STATEMENT OF RELATED PROCEEDINGS

Woodfield Realty Holding Company, LLC v. Pappas,
No. 05 COTO 3938,
Circuit Court of Cook County, Illinois, County Department, County Division
Case is pending; no judgment has been entered.

In re Level of Assessment Litigation,
05 COTO 3938, *et al.*,
Circuit Court of Cook County, Illinois, County Department, County Division
Case is pending; no judgment has been entered.

A.F. Moore & Associates v. Pappas,
10 COTO 4715,
Circuit Court of Cook County, Illinois, County Department, County Division
Case is pending; no judgment has been entered.

J. Emil Anderson & Son, Inc. v. Pappas,
10 COTO 4665,
Circuit Court of Cook County, Illinois, County Department, County Division
Case is pending; no judgment has been entered.

Prime Group Realty Trust Management Agent v. Pappas,
05 COTO 4016,
Circuit Court of Cook County, Illinois, County Department, County Division
Case is pending; no judgment has been entered.

American Academy of Orthopedic Surgeons v. Pappas,
09 CO 6182,
Circuit Court of Cook County, Illinois, County Department, County Division
Case is pending; no judgment has been entered.

Eide v. Pappas,
05 COTO 3967,
Circuit Court of Cook County, Illinois, County Department, County Division
Case is pending; no judgment has been entered.

Property Tax Management, LLC, v. Pappas,
08 COTO 3814,
Circuit Court of Cook County, Illinois, County Department, County Division
Case is pending; no judgment has been entered.

A.F. Moore & Associates v. Pappas,
18 C 4888,
United States District Court for the Northern District of Illinois
Judgment entered on April 19, 2019.

A.F. Moore & Associates v. Pappas,
19-1971 consolidated with 19-1979,
United States Court of Appeals for the Seventh Circuit
Judgment entered on January 29, 2020, petition for rehearing denied on April 9, 2020.

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STATUTES, RULES AND CONSTITUTIONAL PROVISIONS

Cited Authorities

Maria Pappas, Treasurer and ex-officio Collector of Cook County, Illinois (the "Collector"), and the County of Cook respectfully petition for a writ of *certiorari* to review the judgment of the United States Court of Appeals for the Seventh Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit (Pet. App., *infra*, 1a-15a) is reported at 948 F.3d 889 (7th Cir. 2020). The opinion of the United States District Court for the Northern District of Illinois granting petitioner's motion to dismiss (Pet. App, *infra*, 16a-30a) is reported at 385 F. Supp. 3d 591 (N.D. Ill. 2019).

STATEMENT OF JURISDICTION

The opinion of the United States Court of Appeals for the Seventh Circuit from which petitioners seek review was issued on January 29, 2020. (Pet. App., *infra*, 1a-15a.) On February 12, 2020, Petitioners filed a petition for rehearing or rehearing *en banc* pursuant to Federal Rule of Appellate Procedure 40. On April 9, 2020, the United States Court of Appeals for the Seventh Circuit denied this petition for rehearing. (Pet. App., *infra*, 31a-32a).

This petition was timely filed within 150 days[1] of the issuance of the April 9, 2020 order denying the petition for rehearing or rehearing *en banc*.

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1. On March 19, 2020, this Court issued an order stating "that the deadline to file any petition for a writ of certiorari due on or after the date of this order is extended to 150 days from the date of the lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing."

The jurisdiction of this Court to review the decision of the Court of Appeals is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The text of the Fourteenth Amendment, §1 to the United States Constitution, as well as 28 U.S.C. § 1341, 35 ILCS 200/16-95 (2020), 35 ILCS 200/16-115 (2020), 35 ILCS 200/16-120 (2020), 35 ILCS 200/16-125 (2020), 35 ILCS 200/23-5 (2020) and 35 ILCS 200/23-15 (2020), are reproduced in the appendix. (Pet. App., *infra*, 33a-40a).

STATEMENT

In Illinois, the right to a property tax refund is purely statutory, a right that the Illinois Property Tax Code (the "Property Tax Code") and the Illinois Constitution govern. *See* 35 ILCS 200/23-5, *et seq.* and Ill. Const. Art. IX, §4 (1970). By statute, each year on January 1, real estate taxes become a first lien on property and relief from real estate taxes may be obtained only through the Property Tax Code. *See* 35 ILCS 200/21-75 and 35 ILCS 200/23-15.

Taxpayers who timely and properly file a tax objection according to the Property Tax Code may contest their property taxes, assessment or levy of taxes on any basis. 35 ILCS 200/23-15(b). The Property Tax Code provides a complete remedy for any claims against real estate taxes. *Id.*

While Illinois law requires taxpayers seeking refunds to establish that their property was incorrectly or illegally assessed, Illinois law does not allow taxpayers to prove such claims through a challenge to the methodology that the assessing official used. *Id.* Respondents contend

that the Equal Protection Clause mandates that they be allowed to conduct discovery on assessment methodology and to prove their claim through a challenge to such methodology.

Respondents filed objections to their tax assessments in an Illinois court for the exact same properties and tax years for which they seek relief for in this matter. The State Court found that Illinois law did not provide for discovery on assessment methodology and because Illinois law provides taxpayers with a complete and adequate remedy for tax refunds on over assessed property, the Equal Protection Clause did not warrant such discovery. Pet. App., *infra*, at 145a-147a.

After more than ten years of litigation in Illinois, Respondents filed a substantially similar complaint in federal court. In both Illinois and federal court, Respondents alleged violations of Illinois law and the United States Constitution.

This litigation presents numerous issues of federal law - - application of the comity doctrine, the Tax Injunction Act (the "TIA") and the relief available under 42 U.S.C. § 1983 ("Section 1983") - - that turn on the proper application of Illinois law. The decision below misapplied Illinois law.

I. Applicable Illinois Law.

Illinois maintains a system of *ad valorem* property taxation that the Illinois Constitution governs. The Illinois Constitution provides that real property can be broken down into categorical classifications for taxation purposes.

(R. 96.)[2]

Article IX, §4(a) of the Illinois Constitution states that "[e]xcept as otherwise provided in this Section, taxes upon real property shall be levied uniformly by valuation ascertained as the General Assembly shall provide by law." Ill. Const. 1970, Art. IX, §4(a). The uniformity clause in Article IX, §4(b) of the Illinois Constitution (the "Uniformity Clause") states that:

> Subject to such limitations as the General Assembly may hereafter prescribe by law, counties with a population of more than 200,000 may classify or continue to classify real property for purposes of taxation. Any such classification shall be reasonable and assessments shall be uniform within each class. The level of assessment or rate of tax of the highest class in a county shall not exceed two and one-half times the level of assessment or rate of tax of the lowest class in that county. Real property used in farming in a county shall not be assessed at a higher level of assessment than single family residential real property in that county.

Ill. Const. 1970, Art. IX, §4(b). Consequently, classifications of real property for taxation purposes must be reasonable, and assessments need to be uniform within each class and the assessment level of the highest class in a county

2. Citations to the record in the district court in the Northern District of Illinois in *A.F. Moore & Associates v. Pappas*, 18 C 4888 will be to "R.__."

may not exceed two and a half times the assessment level of the lowest class in that county. (R. 96.) Illinois' Property Tax Code provides two separate remedies for taxpayers seeking refunds based upon an overassessment of their real property: an action in the circuit court under Section 23-15 of the Property Tax Code, 35 ILCS 200/23-15 ("Section 23-15"), or an administrative action in the Property Tax Appeals Board ("PTAB") under Sections 16-95, 16-115 and 16-120 of Property Tax Code. 35 ILCS 200/16-95; 35 ILCS 200/16-115 and 35 ILCS 200/16-120.

Through its broad but plain language, section 23-15 authorizes taxpayers to object to an assessment as incorrect or illegal on any grounds, including objections based on constitutional claims. *See Reno v. Newport Township*, 2018 IL App (2d) 170967, ¶ 26 (holding that section 23-15 provides a complete and adequate remedy for a taxpayer seeking tax refunds on the grounds that he was denied his constitutional right to vote on a tax levy); *Givot v. Orr*, 321 Ill. App. 3d 78, 89 (1st Dist. 2001) ("section 23-15 is a codification of the long-standing principle that the tax objection proceeding provides the taxpayer with an adequate remedy at law and that equitable remedies should not be implied."). By its terms, section 23-15 places no limitation as to the type of objection that can be made to an assessment. It begins with a wide-open invitation, stating that a tax-objection complaint "shall specify *any* objections that the plaintiff may have to the taxes in question." Illinois' tax-objection procedure, therefore, supplies taxpayers like Respondents a vehicle for raising an equal protection or any other constitutional objection to an assessment, tax or levy.

Not only does section 23-15's language capture "all"

objections to an assessment, including equal protection challenges, so too does its legislative history. Section 23-15 was added to the Illinois Property Tax Code through a series of amendments in 1995. Before 1995, Illinois' existing tax-objection procedure was widely understood to accommodate constitutional objections to an assessment. See *LaSalle Nat'l Bank v. County of Cook*, 57 Ill. 2d 318, 323-325 (1974). Indeed, in *Rosewell v. La Salle Nat'l Bank*, 450 U.S. 503 (1981), this Court reviewed Illinois' pre-1995 objection procedure and found that it provided taxpayers a full hearing and judicial determination on their federal constitutional right to equal protection and due process. *Id.* at 514–15. In replacing the prior procedure with Section 23-15, the legislature intended to retain the remedy for constitutional objections to an assessment:

> [T]he reformed tax objection procedure will preserve the broad scope of the remedy under existing law. Thus, not only incorrect assessments, but also . . . constitutional violations . . . and any other legal or factual claims not exclusively provided for in other parts of the Property Tax Code, will fall within the ambit of a tax objection complaint.

See Task Force Report,[3] Pet. App., *infra*, at 155a. This legislative history goes on to discuss *Rosewell* and state that section 23-15, like its predecessor provisions, will

3. The Civic Federation Task Force on Reform of the Cook County Property Tax Appeals Process (the "Task Force") proposed the 1995 amendments to Illinois' tax objections procedures. The Illinois Supreme Court adopted the Task Force's report (the "Task Force Report") as the "legislative history" of the current tax-objection provisions in Illinois. *People* ex rel. *Devine v. Murphy*, 181 Ill. 2d 522, 535 (1998).

continue to provide an adequate state remedy for all constitutional objections to a tax:

> [Section 23-15(b)(1)] emphasizes that tax objections are intended to provide a complete remedy. The broad scope of the tax objection remedy is an essential feature of the reform scheme. In its review of the Cook County objection process some fifteen years ago, the U.S. Supreme Court held that the taxpayer must be afforded "a full hearing and judicial determination at which she may raise any and all constitutional objections to the tax" in order for the process to pass muster under federal law. *Rosewell*, 450 U.S. at 514, 516, n.19 (1980).

Id. at 16, Pet. App., *infra*, at 174a.

Against this legal backdrop, the decision below misperceived and misapplied relevant Illinois law regarding statutory claims for refunds based upon the overassessment of real property in three key respects.

First, the decision below described Plaintiffs' complaint as the "rare case in which taxpayers lack an adequate state court remedy." *A.F. Moore*, 948 F.3d at 891. That statement assumes that Respondents' objections are unlike other cases seeking a tax refund. They are not. Each objection is a specific objection case (or "SPO") in which Plaintiffs challenge allegedly improper assessments and seek refunds for overpaid real estate taxes. In other words, they are typical SPOs, among the thousands of SPOs filed in Cook County every year. The proper remedy in this case is the remedy in all SPOs: a refund of real

estate taxes paid due to an overassessment plus interest in an action against the Collector in State court.

Second, the decision below misperceived Illinois law, particularly the decision of the Illinois Supreme Court in *Walsh v. Property Tax Appeal Bd.*, 181 Ill. 2d 228 (1998). In *Walsh*, the taxpayer Walsh alleged that he was entitled to a refund under Illinois law even though his real property was assessed at the proper value because similarly situated properties were assessed at a lower value, and the owners of those other properties paid less tax. The Illinois Supreme Court agreed with Walsh and held that he pled a violation of the Uniformity Clause that can be pursued under the Property Tax Code. *Walsh*, 181 Ill. 2d at 237 (stating that to reject Walsh's claim "would sanction assessed valuations on different proportions of like properties in direct contravention of the uniformity clause").[4]

Despite this plain holding in *Walsh*, the decision below wholly misperceived this important point of Illinois law, stating:

> [Respondents'] particular constitutional objection is that the Assessor violated the Equal Protection Clause by valuing their properties correctly under the Cook County ordinance but cutting everyone else a break with a lower de facto rate. [Citation omitted.] If Section

4. While a traditional equal protection violation requires proof of intentional conduct, *McDonald v. Village of Winnetka*, 371 F.3d 992, 1005, n. 7 (7th Cir. 2004), a lack of uniformity claim under Section 23-15 merely requires proof of the disparity itself. *See* 35 ILCS 200/23-15.

> 23-15 limits taxpayers to challenging only the correctness of the valuation under Illinois law, then they have no state forum for that cognizable constitutional claim. What's more, a taxpayer attempting to prove an *Allegheny Pittsburgh Coal* claim under the Equal Protection Clause must demonstrate that there is no rational basis for the disparate tax treatment—a burden that generally requires engaging with the legitimacy of the policy's stated purpose.

A.F. Moore, 948 F.3d at 895. As an initial matter, the decision below did not account for the holding in *Walsh* and thus overlooked that taxpayers may pursue a refund where their assessment is correct when viewed in isolation but is still subject to challenge under section 23-15 because it is unlawful when compared to similar properties that were assessed at lower rates. The decision below missed the mark on *Walsh*. Indeed, *Walsh* provided the very remedy that Respondents sought and that the decision below declared unavailable under Illinois: a refund based upon the lower rates at which the other similarly situated properties were assessed.

While the claim in *Walsh* was an administrative one under Article 16 of the Property Tax Code ("Article 16") and not a SPO under Section 23-15, the Illinois Supreme Court grounded its holding in *Walsh* on the Uniformity Clause, which applies to Article 16 administrative claims as well as SPOs brought under Section 23-15. And the decision below overlooked another point of Illinois law: when plaintiffs establish Uniformity Clause violations, they automatically establish Equal Protection violations as well. *Marks v. Vanderventer,* 2015 IL 116226, ¶29.

It is axiomatic in Illinois that a SPO based on the Uniformity Clause is, by extension, also based on the Equal Protection Clause. *Walsh*, 181 Ill. 2d at 236-237. And a property owner whose real property was assessed at the proper value is entitled to a refund where similarly situated properties are assessed at a lower value. *Id.* And the amount of that refund is the difference between what the property owner paid and what it should have paid given the lower values assigned to other similar properties. *Id.*

Prior to 1995, Illinois taxpayers who filed a SPO had to prove that an assessing official engaged in fraud when assessing the taxpayer's property. *County Collector v. Ford Motor Co.*, 131 Ill. 2d 541 (1989). The 1995 amendments to Illinois' Property Tax Code changed that. As the Task Force Report stated:

> The proposed new language in (Section 23-15) also expressly eliminates the doctrine of "constructive fraud" from the court's consideration. (Of course, this is not intended to affect the general law of fraud, actual or constructive, outside of the context of real property tax matters.) Further, the new language negatives the judicial requirement, enunciated in the *Ford* case, that in order to prevail the taxpayer must prove that the assessing officials or their staff made some specific and demonstrable error in arriving at the assessment.

See Task Force Report, Pet. App., *infra*, at 176a.

When it enacted the 1995 amendments, which removed the Assessor as a defendant in SPOs and eliminated the requirement that the taxpayer prove constructive fraud against the Assessor, Illinois made a policy choice: it decided that a taxpayer did not have to assume the burden of proving that an assessing official engaged in fraud when assessing the taxpayer's property. The 1995 amendments to Section 23-15 focused not on the methodology of the assessment but *the results*. If taxpayers simply show that their property was assessed too high, in isolation or when compared to similar properties, they can obtain a refund. Taxpayers merely had to show that the assessment - - the end result of the assessing process - - was not uniform with respect to similarly situated properties.[5]

Third, Section 23-15 provides for a full and complete remedy of a refund plus interest for taxes paid due to an incorrect or illegal assessment. In administrative actions, Article 16 provides the same remedy. *See* 35 ILCS 200/16-120. Consequently, under this Court's decision in *Nat'l Private Truck Council, Inc. v. Oklahoma Tax Comm'n,* 515 U.S. 582 (1995), Section 1983 provides no remedy to taxpayers challenging the taxes they paid based upon the value of the assessment of real property in Illinois.[6]

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5. As discussed below, the Third Circuit has held that an equal protection claim alleging lack of uniformity in assessment practices can be vindicated for purposes of the TIA through a state's constitutional requirement for uniform assessments. *Garrett v. Bamford*, 582 F.2d 810, 815–16 (3d Cir. 1978) The decision below cannot be squared with *Garrett*.

6. The decision below repeatedly stated that the County Defendants conceded that no constitutional claim was available under Illinois law. (Pet. App., infra, at 2a, 12a and 13a.) This is incorrect. The County Defendants made no such concession

When the decision below ignored these three fundamental points of Illinois law, it not only misapplied both the TIA and the comity doctrine, but it also created substantial splits with the Second and Third Circuits.

II. The Federal Litigation And Related State Litigation.

To satisfy the requirements that the Uniformity Clause of the Illinois Constitution imposed, see Ill. Const. 1970, Art. IX, § 4(b), the County enacted the Cook County Real Property Assessment Classification Ordinance ("Classification Ordinance"), Code of Ordinances of Cook County § 74-60 *et seq.* The Classification Ordinance separates properties into single-family residential, not-for-profit, commercial, and industrial classes, as is relevant here. Code of Ord. § 74-63. The Classification Ordinance mandated that the Assessor assess single-family residential properties at sixteen percent of their market value; not-for-profit properties at thirty percent; commercial properties at thirty-eight percent; and industrial properties at thirty-six percent. Code of Ord. § 74-64.

In both their federal and State court complaints, Respondents alleged that from 2000 to 2008, the Assessor allegedly undervalued most, but not all, single family residential, commercial, and industrial property in the

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and, instead, argued that under *Nat'l Private Truck Council*, Respondents could not rely upon Section 1983 as a vehicle for their proposed equal protection claims. Illinois provides a full and complete remedy and thus Section 1983 offered no remedy. Saying that a Section 1983 action does not lie is not the same as "conceding" that no constitutional claim was available.

County. (R. 96.) According to Respondents, this practice brought the assessment levels to approximately nine percent for single-family residential properties, twenty-five percent for commercial properties, and twenty percent for industrial properties - - rates far below the level required by law. (*Id.*) Based on these assessment levels, the Collector issued tax bills and collected taxes from property owners. Respondents allege that the assessment rates actually utilized were concealed from the public. (*Id.*)

Respondents allege that they are taxpayers whose properties were assessed at or above the level required by law, as opposed to the widely utilized underassessment rate. (*Id.*) This valuation discrepancy, they contend, caused them to pay taxes at a higher rate than most other taxpayers in the same class and above the maximum level permitted by Illinois' laws and constitution. (*Id.*) Respondents claim to have overpaid property taxes by the following amounts: A.F. Moore by $805,019; Anderson by $755,611; Prime Group by $8,648,343; AAOS by $458,263; Eide by $1,199,006; and Fox Valley and Simon Property by $16,434,354. (*Id.*)

Initially, Respondents filed their complaints in an Illinois court. Those State court cases, as well as other related lawsuits seeking refunds for alleged overassessments, have been pending for over a decade. *A.F. Moore & Assocs. v. Pappas*, 385 F. Supp. 3d 591, 599 (N.D. Ill. 2019). As the district court observed, "[d]ecade-long litigation is not a feature of the tax-objection procedures, but rather an unfortunate product of the tactics employed in this case." *Id.* Those "tactics" include Respondents' efforts to conduct discovery on the Assessor and his assessment methods. This proposed discovery

was not probative of the statutory refund action in which Section 23-15(b)(3) expressly excludes methodology as relevant to a refund claim. See 35 ILCS 200/23-15(b)(3) (stating that "[i]f an objection is made claiming incorrect valuation, the court shall consider the objection without regard to the correctness of any practice, procedure, or method of valuation followed by the assessor, board of appeals, or board of review in making or reviewing the assessment"). Under Section 23-15, discovery must focus on the end result - - *i.e.*, the assessment itself - - and not on methodology employed in arriving at the assessment.

Nonetheless, Respondents sought discovery on methodology based upon equal protection claims that they filed in State court, insisting that inquiry into these topics was necessary for establishing their constitutional claims. The state court dismissed Plaintiffs' equal protection claims brought under Section 1983 on the grounds that Illinois's Property Tax Code provides Respondents an adequate remedy for adjudicating their federal equal protection rights, even though the Property Tax Code prohibits discovery into the Assessor's methods and intent. Specifically, the State court found that:

> Illinois' Property Tax Code provides an adequate remedy at law for adjudicating a claim under the United States Constitution's Equal Protection Clause because, if and when a taxpayer demonstrates that, over time, other similarly situated property was underassessed in light of objective, market-based measures of fair market value, as it must, the taxpayer has already efficiently proven that it was singled out for disparate treatment relative to other class members, *i.e.*, illegal discrimination. In this

> unique area of the law, the taxpayer can prevail by simply showing such a disparate impact as a proxy for the unlawful (general) intent to discriminate otherwise required.

State court order of June 2, 2011 in *Woodfield Realty Holding Co. v. Pappas*, No. 05 COTO 3938, Pet. App., *infra*, at 145a-146a.[7] *See also* State court order of July 19, 2011 in *Woodfield Realty Holding Co. v. Pappas*, No. 05 COTO 3938, Pet. App., *infra*, at 68a (noting that the Court previously ruled that the general-intent-to discriminate element of the federal constitutional claim could simply be inferred from any evidence showing that the taxpayer's assessment level created a disparate impact on its property compared to the remainder of the same class. *See also Long Island Lighting Co. v. Brookhaven*, 889 F.2d 428, 432 (2d Cir. 1989)).

The State court then followed the Second Circuit's decision in *Long Island Lighting Co.* and found that Illinois's tax objection procedures are adequate for adjudicating equal protection claims even if they forbid inquiry into the assessing official's methods and subjective intent:

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7. The State court proceedings involve more than 100 cases filed on behalf of various property owners, including Respondents. To simplify the proceedings, the State court designated one case - - *Woodfield Realty Holding Co. v. Pappas*, No. 05 COTO 3938 - - as the "test" case, and so decisions made on the "test" case would apply to all other cases, including those that Respondents filed in state court. In addition, the State court consolidated all of the lawsuits challenging the level of assessments, including Respondents' complaints, for purposes of discovery. State court order of January 22, 2013 under the caption *In re Level of Assessment Litigation*, No. 05 COTO 3938, Pet. App., *infra*, at 41a-58a.

> And further, because this required showing is also sufficient without an inquiry regarding methodology used to create the previous assessments for the class at issue, the Illinois remedy is adequate even if the taxpayer is not permitted to discover all of the evidence it would have otherwise desired, due to countervailing interests. As this Court has previously indicated, in resolving the potential dilemma created by Section 23-15, it follows (the Second Circuit's approach in *Long Island Lighting*).

Id., Pet. App., *infra*, at 146a. In this regard, the State court quoted the following language from *Long Island Lighting*:

> Intentional discrimination also follows from evidence that the assessing authority repeatedly applied greatly disparate assessment ratios to similarly situated properties in violation of state law. (citation omitted) Thus, because proof that the assessment method results in disparate treatment of similarly situated taxpayers is all that is required for LILCO to succeed in a declaratory judgment action on its equal protection claim, *see Allegheny Pittsburgh Coal Co. v. County Commission*, 488 U.S. 336, 345-346 (1989) and (citation omitted), and because such proof not only may be presented, but is essential to success in such an action, the issue of subjective intent as a separate inquiry simply evaporates.

Pet. App., *infra*, at 146a-147a, *citing Long Island Lighting Co.*, 889 F.2d at 432.

The Second Circuit held that "[n]otwithstanding New York's rule against questioning assessors about their subjective attitudes, therefore, New York's declaratory judgment remedy is adequate for purposes of comity and the Tax Injunction Act." *Id.* Because a SPO action in Illinois can be premised on the Uniformity Clause and, by extension, the Equal Protection Clause, *Walsh*, 181 Ill. 2d at 236-237, the State court concluded that Section 23-15 was adequate for purposes of comity and the TIA, even if section 23-15(b)(3) prohibits inquiry into the Assessor's methods and intent for purposes proving a constitutional claim.

Years later, Respondents filed their federal suit, which the district court dismissed on the grounds that the comity doctrine and the TIA barred the exercise of federal jurisdiction. *A.F. Moore & Assocs.*, 385 F. Supp. 3d at 599-600. The decision below reversed this decision and held that Respondents may pursue an Equal Protection Claim under Section 1983 and conduct discovery on the methodology that the assessing official used to assess their real property. *See A.F. Moore*, 948 F.3d at 895 (holding that "[i]f Section 23-15 prevents taxpayers from probing into the Assessor's methodology or intent, they will not be able to prove that his tax assessment violated the Equal Protection Clause"). This holding squarely conflicts with the Second Circuit's decision in *Long Island Lighting.*

As discussed below, the decision below also conflicts with this Court's opinions in *Allegheny* and *Nat'l Private Truck Council*, the Illinois Supreme Court's opinion in *Walsh*, the Third Circuit's decision in *Garrett*, and various other circuit decisions interpreting the TIA and

the comity doctrine. Consequently, and in accordance with the criteria set forth in Supreme Court Rules 10(a) and 10(c), this Court should grant this petition.

REASONS FOR GRANTING THE WRIT

"The principal purpose of this Court's exercise of its certiorari jurisdiction is to clarify the law." *Caperton v. A. T. Massey Coal Co.*, 556 U.S. 868, 902 (2009) (Scalia, J., dissenting). Indeed, "[o]ne of this Court's primary functions is to resolve 'important matter[s]' on which the courts of appeals are 'in conflict.'" *Gee v. Planned Parenthood of Gulf Coast, Inc.*, 139 S. Ct. 408 (2018) (Thomas, J., dissenting from the denial of certiorari), *citing* Sup. Ct. Rule 10(a) and *Thompson v. Keohane*, 516 U.S. 99, 106 (1995).

As the decision of the Illinois court dismissing Respondents' Section 1983 claims shows, the decision of the Seventh Circuit below conflicts with *Long Island Lighting* and multiple decisions from this Court and several circuits.

With regard to real estate tax litigation throughout the nation, the decision below has created uncertainty on two vital questions: (1) if a State elects to base real estate tax refund claims on the assessment itself and not assessment methodology, does the Equal Protection Clause mandate discovery on methodology? and (2) can an equal protection claim alleging lack of uniformity in assessment practices be vindicated for purposes of the TIA through a state's constitutional requirement for uniform assessments?

To leave these issues unresolved will perpetuate confusion and uncertainty in this important area of the law. The petition should be allowed.

I. THE PETITION FOR WRIT OF CERTIORARI SHOULD BE ALLOWED BECAUSE THE DECISION BELOW CONFLICTS WITH THE DECISIONS OF OTHER UNITED STATES COURTS OF APPEALS AND THIS COURT.

While the decision below conflicts with a series of cases from this Court and the circuit courts regarding the general application of the TIA[8] and the comity doctrine,[9]

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8. With respect to the TIA, the decision below conflicts with the decisions of this Court in *Rosewell v. La Salle Nat'l Bank*, 450 U.S. 503 (1981), *California v. Grace Brethren Church*, 457 U.S. 393 (1982) and *Arkansas v. Farm Credit Services*, 520 U.S. 821 (1997) and the decisions of the First Circuit in *Bank of New England Old Colony, N.A. v. Clark*, 986 F.2d 600 (1st Cir 1993); the Second Circuit in *Kraebel v. New York City Dep't of Housing Preservation & Dev.*, 959 F.2d 395 (2d Cir. 1992); the Third Circuit in *Balazik v. County of Dauphin*, 44 F.3d 209 (3d Cir. 1995) and *Gass v. County of Allegheny*, 371 F.3d 134 (3d Cir. 2004); the Sixth Circuit in *Aluminum Co. of America v. Department of Treasury*, 522 F.2d 1120 (6th Cir. 1975); the Eighth Circuit in *Burris v. Little Rock*, 941 F.2d 717 (8th Cir. 1991); the Ninth Circuit in *Jerron West, Inc. v. California State Bd. of Equalization*, 129 F.3d 1334 (9th Cir. 1997) and *Marvin F. Poer & Co. v. Counties of Alameda*, 725 F.2d 1234 (9th Cir. 1984); the Tenth Circuit in *Brooks v. Nance*, 801 F.2d 1237 (10th Cir. 1986) and the Eleventh Circuit in *Ayers v. Polk County*, 697 F.2d 1375 (11th Cir. 1983).

9. In applying the comity doctrine, the decision conflicts with the decisions of this Court in *Levin v. Commerce Energy Inc.,* 560 U.S 413 (2010), *Fair Assessment in Real Estate Ass'n v. McNary*, 454 U.S. 100 (1981) and *Nat'l Private Truck Council,* and

this petition will focus on the circuit splits that the decision below creates with respect to: (1) whether the Equal Protection Clause mandates discovery on assessment methodology and (2) whether Section 1983 provides a remedy for an equal protection claim where a State has objection procedures that apply uniformity principles and, based on these principles, taxpayers can obtain a refund where their property assessment conformed with local law but similarly situated real property was under-assessed.

A. The Decision Below Conflicts With The Second Circuit's Decision In *Long Island Lighting Co.*

In *Long Island Lighting*, the Second Circuit considered whether a state law prohibiting discovery into an assessing official's intent rendered the state law inadequate for purposes of bringing a Section 1983 equal protection claim in federal court. *Id.* at 431. The court affirmed the dismissal of the Section 1983 claim under the TIA, finding that while "proof of intent to discriminate has been required [by the Supreme Court] in other types of situations * * * in the context of real property tax assessments, evidence of the assessor's mental processes need not be proved." *Id.* at 432 (internal citations omitted). This is so, the court reasoned, because "[t]he requisite unlawful intent follows

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the First Circuit's decision in *Coors Brewing Co. v. Méndez-Torres*, 678 F.3d 15 (1st Cir. 2012) with regard to: (a) the application of the comity doctrine to federal claims that encroach on the ability of local governments to levy and collect real estate taxes and (b) the availability of declaratory and injunctive relief under Section 1983 in federal challenges to real estate tax collection where Illinois law provides not only an adequate remedy of tax refunds but also a refund claim that incorporates principles of the Uniformity and Equal Protection Clauses.

from proof of a systematic overassessment over time of certain properties as compared to other similarly situated properties within the same taxing district[.]" *Id.* It further added that "[i]ntentional discrimination also follows from evidence that the assessing authority repeatedly applied greatly disparate assessment ratios to similarly situated properties in violation of state law." *Id.*

Under *Long Island Lighting*, the TIA and the comity doctrine barred an equal protection claim challenging a state law that prohibits discovery on an assessing official's intent, where the taxpayer may prove a uniformity or equal protection claim through evidence of systematic undervaluation of similarly situated properties. *Id.* The decision below, therefore, conflicts with *Long Island Lighting* on the essential question whether a state law that prohibits discovery into an assessing official's intent prevents a taxpayer from fully adjudicating an equal protection claim. *Long Island Lighting* holds the assessing official's intent can be inferred from the systematic over- or under-valuation of a property compared to other similarly situated property over time. The decision below holds exactly the opposite: it found that Section 23-15's prohibition on inquiries into the Assessor's intent prevents Plaintiffs from proving their equal protection claims alleging systematic under-valuation of similarly properties. *A.F. Moore*, 948 F.3d at 895-896.

This circuit split on a substantial question of law presents a compelling ground for the grant of certiorari. See *United States v. Davila*, 569 U.S. 597, 603 (2013) (certiorari granted to resolve a circuit split); *Henderson v. United States*, 135 S. Ct. 1780, 1784 (2015) (same).

The split between *A.F. Moore* and *Long Island Lighting* is not the end of the circuit splits that the decision below created. It is only the beginning.

B. The Decision Below Conflicts With The Decisions Of This Court, The Illinois Supreme Court, The Third Circuit And Various Other Circuit Courts.

This Court has recognized that the TIA is first and foremost a vehicle "to limit drastically federal district court jurisdiction to interfere with so important a local concern as the collection of taxes." *Arkansas v. Farm Credit Services*, 520 U.S. 821, 826 (1997).

In holding that a taxpayer could invoke federal jurisdiction to challenge Illinois' statutory regime for collecting real estate taxes, the decision below conflicts with *Garrett*. The Third Circuit in *Garrett* -- like the Second Circuit in *Long Island Lighting* - - held that taxpayers' equal protection claims alleging lack of uniformity in assessment practices can be vindicated for purposes of the TIA through a state's constitutional requirement for uniform assessments. *See Garrett*, 582 F.2d at 815–16 (stating that "we fail to perceive any relief which appellants can request through a federal claim bottomed on the Fourteenth Amendment that is not guaranteed them by" the uniformity provision of Pennsylvania's constitution for purposes of TIA). *See also Long Island Lighting*, 889 F.2d at 432 ("because proof that the assessment method results in disparate treatment of similarly situated taxpayers is all that is required for [the plaintiff] to succeed in a declaratory judgment action on its equal protection claim . . . New York's declaratory

judgment remedy is adequate for purposes of comity and the Tax Injunction Act."). By failing to recognize that Illinois, like Pennsylvania, incorporates uniformity and equal protection principles into its statutory refund claims based upon the overassessment of real property, the decision below failed to recognize that the instant case is very different from *Allegheny*.

In *Allegheny*, this Court found that a property assessment that complies with local law, when viewed in isolation, may still violate the Equal Protection Clause if similarly situated property is assessed at a lower rate. *Allegheny*, 488 U.S. at 345-346. *Allegheny* held that the West Virginia statutory regime for real estate tax refunds did not provide a remedy for the plaintiffs' equal protection claim. *Id.* at 349-350. But *Allegheny* differs from the instant case in three key respects:

- The plaintiffs in *Allegheny* pursued their equal protection claims through the West Virginia courts and ultimately sought relief in this Court; Respondents here filed an equal protection claim in State court and when it was dismissed, simply refiled its constitutional claims in federal court. Unlike the West Virginia courts in *Allegheny*, neither the Illinois Appellate Court nor the Illinois Supreme Court have had an opportunity to review the sufficiency of Respondents' equal protection claims.

- In contrast to the West Virginia statutory regime in *Allegheny*, the Property Tax Code in Illinois provides not only an adequate remedy of tax refunds but also a refund claim that incorporates

principles of the Uniformity and Equal Protection Clauses; and

- Unlike the West Virginia Supreme Court, the Illinois Supreme Court in *Walsh* held that a taxpayer was entitled to refund where his property was assessed at the proper value but similarly situated properties were assessed at a lower value and the owners of those other properties paid less tax.

See Walsh, 181 Ill. 2d at 236-237 (stating that to reject the plaintiff Walsh's claim "would sanction assessed valuations on different proportions of like properties in direct contravention of the uniformity clause"). The decision below stated:

> Procedures that allow them to challenge only the correctness of their assessment without regard to the Assessor's methods or intent are of no use to these taxpayers. [Respondents'] argument, after all, is not that their taxes were valued incorrectly under the letter of Cook County law. Rather, they contend that they suffered an equal protection violation because the letter of the law was not applied to everyone else. To prove that claim, they need to conduct discovery about the Assessor's methods and his intent.

A.F. Moore, 948 F.3d at 892-893. In other words, the decision below found that Section 23-15 did not provide a remedy for an equal protection violation where real property was assessed properly and similarly situated

other real property was assessed at a lower value and the owners of the other property paid less tax. The problem with this holding is that it cannot be squared with *Walsh* which held that Illinois's tax objection procedures provide refund relief to taxpayers who suffer the same disproportionate taxation that is alleged in the present case by way of Illinois' Uniformity Clause - - and, by extension, the Equal Protection Clause. *Walsh*, 181 Ill. 2d at 236-237. And because the decision below is contrary to *Walsh*, it failed to recognize that Respondents' claim is distinguishable from the claims in *Allegheny*. The failure of the decision below to account for *Walsh* also led the Seventh Circuit to misapply this Court's interpretation of Section 1983 in *Nat'l Private Truck Council*.

Under *Walsh*, Respondents have a remedy under Illinois law for their disparate treatment claims and, as a result, this case differs from *Allegheny* where West Virginia law did not provide such a remedy. And because Illinois law provides for a full and complete remedy for a tax refund claim based on disparate assessments, Section 1983 - - as construed in *Nat'l Private Truck Council* - - provides no remedy to Respondents. The decision below got this wrong.

The root of the problem in the decision below is its misapplication of Illinois law regarding the application of uniformity and equal protection principles in refund claims alleging non-uniform assessment. This led to misapplication of the TIA and comity and multiple circuit splits. In its discussion of Illinois law, the panel below did not cite or discuss *Walsh* but rather relied upon an unpublished and non-precedential decision from the Appellate Court of Illinois, *Friedman v. Pappas*, No. 1-2-

2685. *See A.F. Moore*, 948 F.3d at 893. While *Friedman* is not law at all, *Walsh* is the law of Illinois.[10] The decision below conflicts with *Walsh*.

In contrast to the decision below, this Court concluded that Illinois' state tax-objection procedure supplies a "plain, speedy and efficient" remedy for purposes of the TIA when it "provides the taxpayer with a full hearing and judicial determination at which she may raise any and all constitutional objections to the tax." *Rosewell*, 450 U.S. at 514. On that standard, this Court closely examined Illinois's former tax-objection procedure, which required the taxpayer to pay an allegedly unconstitutional tax and seek a refund through state administrative and judicial procedures—a process that often took as long as two years to resolve. *Id.* at 516–22. After scrutinizing Illinois law, the Court held that the state remedy was nonetheless "plain, speedy and efficient" under the TIA, while emphasizing that taxpayer was "free to raise her equal protection and due process federal constitutional objections" within the state procedure. *Id.* at 515.

Contrary to *Rosewell*, the decision below failed to examine essential provisions of Illinois's tax-objection procedure in determining whether it provides a "plain, speedy and efficient remedy" under the TIA and comity doctrine. As a result, the decision below fails to recognize

10. At oral argument before the Seventh Circuit, Respondents' counsel urged the panel to certify the question of whether Illinois' statutory regime protects the equal protection rights of taxpayers seeking refunds pursuant to Illinois Supreme Court Rule 20. Petitioner's counsel not only did not object to this proposed certification but supported doing so. The panel declined to certify this question.

that Respondents are free to raise equal protection challenges to their property assessments under Illinois law.

Indeed, Respondents are free to challenge their property assessments as non-uniform, and they may use evidence other than the Assessor's intent or methodologies to prove their constitutional objections. A taxpayer may use various forms of extrinsic evidence to prove disparate assessments over time, such as a sales ratio study or expert appraisals. *See, e.g.*, *Rosewell v. United States Steel Corp.*, 106 Ill. 2d 311, 323 (1985) (Illinois Supreme Court recognized that in SPOs, "assessment/sales ratio studies have been used before as evidence of undervaluation of other properties"). In this case, Respondents, in their complaint, repeatedly refer to their own sales-ratio study and expert appraisals and insist that such evidence shows that the Assessor has intentionally and systematically assessed their properties at the ratio prescribed by local law while undervaluing other similar situated properties in the same class. In order to use a sales ratio study as evidence in their SPOs, Respondents did not need to ask the federal courts to exercise subject matter jurisdiction and upend the policy decisions that Illinois made that limited to subject matter of SPOs to final assessments and not assessment methodology.

In improperly applying the TIA and comity, the decision below created circuit splits and paved the way for upending Illinois' policy on real estate tax collection. That upending is not without consequence.

C. The Decision Below Would Federalize Illinois SPO's And Would Countermand Illinois Policy For Collecting Real Estate Tax Revenue And For Providing A Full And Complete Remedy For Refund Actions Based Upon Alleged Overassessment Of Real Property.

Justice Brennan once observed:

> in practical terms, "the special reasons justifying the policy of federal noninterference with state tax collection": "The procedures for mass assessment and collection of state taxes and for administration and adjudication of taxpayers' disputes with tax officials are generally complex and necessarily designed to operate according to established rules. State tax agencies are organized to discharge their responsibilities in accordance with the state procedures. If federal declaratory relief were available to test state tax assessments, state tax administration might be thrown into disarray, and taxpayers might escape the ordinary procedural requirements imposed by state law. During the pendency of the federal suit the collection of revenue under the challenged law might be obstructed, with consequent damage to the State's budget, and perhaps a shift to the State of the risk of taxpayer insolvency. Moreover, federal constitutional issues are likely to turn on questions of state tax law, which, like issues of state regulatory law, are more properly heard in the state courts."

Levin, 560 U.S at 422, n. 2, *citing Perez v. Ledesma*, 401 U.S. 82, 128, n. 17 (1971) (Brennan, J., concurring in part and dissenting in part).

The decision below touches on some of the practical federalism concerns that Justice Brennan listed in his partial concurrence and dissent in *Perez* and that this Court cited with approval in *Levin v. Commerce Energy, Inc.*, 560 U.S. 413 (2010). As an initial matter, questions of this specialized area of state law "are more properly heard in the state courts." *Perez*, 401 U.S. at 128, n. 17 (Brennan, J., concurring in part and dissenting in part). Federalizing SPOs in Illinois would mandate the federal courts to decide cases grounded in this specialized area of Illinois law.

The decision below authorizes taxpayers to file Section 1983 claims against the Assessor in place of Article 16 or Article 23 claims for refunds under Illinois' Property Tax Code. That not only federalizes SPOs but leads to all kinds of procedural differences that upend Illinois' statutory regime for property tax collection.

For example, Section 23-15 prohibits the filing of SPOs as class actions but Federal Rule of Civil Procedure 23 certainly allows them. Illinois' Property Tax Code does not provide for attorney's fees in SPOs but 42 U.S.C. Section 1988 does so for Section 1983 actions.

Perhaps most importantly, Illinois courts do not allow refund claims to be filed as actions for declaratory and injunctive relief. *Jorgensen v. Berrios*, 2020 IL App (1st) 191133. Indeed, under Section 23-5 of the Property Tax Code, when taxpayers pay their real estate taxes,

those payments are deemed to be paid under protest and taxpayers may avail themselves of all remedies available under the Property Tax Code. However, a federal Section 1983 action would not require the payment of taxes as a predicate to seeking relief under the Property Tax Code.

The Illinois Supreme Court has long recognized that "[t]ax revenues are literally the lifeblood of government." *Rosewell v. Chicago Title & Trust Co.*, 99 Ill. 2d 407, 416 (1984). Taxpayers who wish to contest an overassessment can simply file an action for declaratory and injunctive relief and sidestep the requirement in the Property Tax Code that taxes must be paid prior to pursuing a statutory refund action. The federalizing of SPOs, therefore, threatens to diminish state revenues, a policy concern that animates the comity doctrine. *See Levin*, 560 U.S. at 428.

The decision below created splits among the circuits. These splits come with a cost, one that heightens the need for this Court to grant this petition and bring uniformity to this important area of law.

CONCLUSION

For the foregoing reasons, the petition for a writ of *certiorari* should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, DATED JANUARY 29, 2020

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Nos. 19-1971 & 19-1979

A.F. MOORE & ASSOCIATES, INC., *et al.*,

Plaintiffs-Appellants,

v.

MARIA PAPPAS, COOK COUNTY TREASURER, *et al.*,

Defendants-Appellees.

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 1:18-cv-4888 — Charles P. Kocoras, Judge.

December 11, 2019, Argued
January 29, 2020, Decided

Before FLAUM, HAMILTON, and BARRETT, *Circuit Judges.*

BARRETT, *Circuit Judge.* The Equal Protection Clause entitles owners of similarly situated property to roughly equal tax treatment. *Allegheny Pittsburgh Coal Co. v.*

Cty. Comm'n, 488 U.S. 336, 345-46, 109 S. Ct. 633, 102 L. Ed. 2d 688 (1989). A group of taxpayers asserts that the tax assessor for Cook County violated that guarantee by assessing their properties at the rates mandated by local ordinance while cutting a break to other owners of similarly situated property. The taxpayers pursued a refund in Illinois court, where they remain tied up in litigation after more than a decade. Frustrated, they turned to federal court for relief, arguing that Illinois's procedural rules for challenging property taxes prevent them from proving their federal constitutional claims in state court. The district court disagreed and held that the Tax Injunction Act, 28 U.S.C. § 1341, barred their federal suit. The Act strips federal district courts of jurisdiction over challenges to state and local taxes as long as the taxpayer has an adequate forum in state court to raise all constitutional claims. This appeal concerns whether Illinois courts offer a sufficient forum. The issue is made simpler by the County's concession that Illinois's tax-objection procedures do not allow the taxpayers to raise their constitutional claims in state court. We are left to conclude that this is the rare case in which taxpayers lack an adequate state-court remedy. The Tax Injunction Act therefore does not bar the taxpayers' federal suit, so we reverse the district court's dismissal.

I.

In our review of the district court's dismissal for lack of subject-matter jurisdiction, we take as true the allegations in the taxpayers' complaint. *Scott Air Force Base Props., LLC v. County of St. Clair*, 548 F.3d 516, 519 (7th Cir. 2008).

Appendix A

Cook County prescribes tax assessment rates for different categories of real estate. Before 2008, a County ordinance required the County Assessor to assess single-family residential property at 16% of the market value, commercial property at 38% of the market value, and industrial property at 36% of the market value. But between 2000 and 2008, the Assessor in fact assessed most of the property in those three categories at rates significantly lower than the rates prescribed by law. Cook County officials were candid about the discrepancy between the de jure rates and the de facto rates. In April 2008, the Assessor proposed an ordinance that would "recalibrate" the classification system to "more closely reflect the current relationship between assessment and market value." And one of the ordinance's primary sponsors on the Cook County Board of Commissioners advocated for the recalibration in clear terms: "We have known for years, forever, and pretended that it is not true [and] that somehow the assessments were at the statutory levels; they are not. This reflects the actual reality as best we know it."

Although most property was assessed at the lower de facto rates, a minority was assessed at the de jure rates or even higher. A.F. Moore & Associates and the other plaintiffs in this case count their properties in that minority. Their assessment rates may have been lawful under the letter of the ordinance, but they were significantly higher than the de facto rates that most other property owners enjoyed. These taxpayers calculate that they paid millions of dollars more in property taxes during the period from 2000 to 2008 than they would have if they were assessed at the de facto rates.

Believing that discrepancy to be unlawful, the taxpayers sought a refund in Illinois state court. The taxpayers followed Illinois's procedural rules by first exhausting their remedies with the Cook County Board of Review and then bringing a suit in the Circuit Court of Cook County. There they challenged the assessment under the Fourteenth Amendment's Equal Protection Clause, relying on the rule articulated in *Allegheny Pittsburgh Coal Co. v. County Commission*: a property owner whose tax assessment comports with state law may nevertheless suffer a violation of the Equal Protection Clause if similarly situated property is assessed at a lower rate than his. 488 U.S. 336, 345-46, 109 S. Ct. 633, 102 L. Ed. 2d 688 (1989). The taxpayers also alleged that the assessment violated Illinois statutory law and the Illinois Constitution.

But the taxpayers have struggled to present the evidence that they need to make their case; over a decade later, their state suit remains in discovery. They attribute the delay to a provision of Illinois law, 35 ILCS 200/23-15, which they say constrains them in several ways: it limits whom they can name as a defendant, what evidence they can present, and what arguments they can raise when challenging property taxes. According to the taxpayers, section 23-15 has the effect of preventing them from making their equal protection case in state court altogether.

Seeking a forum for their federal constitutional claims, the taxpayers then sued Cook County, the County Assessor, and the County Treasurer (who serves ex officio

as the County's tax collector) in federal district court, once again alleging a violation of the Equal Protection Clause. They also challenged the Illinois tax-objection procedures under the guarantees to due process in the United States Constitution and the Illinois Constitution. Finally, they alleged additional violations of the substantive guarantees of equal taxation in the Illinois Constitution and the Illinois Property Tax Code. The taxpayers sought declaratory relief and an injunction that the tax collector refund their overpaid taxes.

The district court held that the Tax Injunction Act barred the taxpayers' federal suit. The Act provides that federal district courts may not "enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State." 28 U.S.C. § 1341; *see also Hager v. City of West Peoria*, 84 F.3d 865, 868 n.1 (7th Cir. 1996) (explaining that the Act also applies to local and municipal taxes). Rejecting the taxpayers' argument that section 23-15 denied them an adequate state forum, the district court held that Illinois courts provide a "plain, speedy and efficient remedy." The court dismissed the suit for lack of subject-matter jurisdiction under the Act and, in the alternative, declined to exercise jurisdiction under the principle of comity. The taxpayers now appeal, arguing that Illinois does not offer an adequate remedy for their constitutional claims.

II.

A.

The taxpayers maintain that several features of section 23-15 make Illinois courts inhospitable to their claims, but they focus on one in particular. Paragraph (b)(3) of the statute provides that relief is available for assessments that are "incorrect or illegal." It goes on to say: "If an objection is made claiming incorrect valuation, the court shall consider the objection without regard to the correctness of any practice, procedure, or method of valuation followed by the assessor ...." 35 ILCS 200/23-15(b)(3). The taxpayers characterize this as the "Methodology Prohibition."

The taxpayers argue that the Methodology Prohibition is incompatible with their constitutional claim. Procedures that allow them to challenge only the correctness of their assessment without regard to the Assessor's methods or intent are of no use to these taxpayers. Their argument, after all, is not that their taxes were valued incorrectly under the letter of Cook County law. Rather, they contend that they suffered an equal protection violation because the letter of the law was not applied to everyone else. To prove that claim, they need to conduct discovery about the Assessor's methods and his intent. Not only that, but the taxpayers want to name the Assessor as a defendant, since his actions are the focus of their claims. But the statute only contemplates the collector as a defendant, *see id.* 200/23-15(a), so they could not sue the Assessor in state court or file interrogatories for him to answer, and

he has been free to destroy evidence of unconstitutional action with impunity. In support of their argument, they cite a non-precedential decision from the Illinois Appellate Court that held that constitutional objections "cannot be raised" in tax objection proceedings because of these restrictions. *See Friedman v. Pappas*, No. 1-2-2685, at *13-14 (Ill. App. Ct. 2004) (Separate App. Pls.-Appellants 194-95). According to the taxpayers, section 23-15 deprives them of any "remedy" at all in state court—let alone one that is "plain, speedy and efficient" under the Tax Injunction Act.

B.

In most cases, a "plain, speedy and efficient" state-court remedy is easy to identify. For the Act's jurisdictional bar to apply, a state need only "provid[e] the taxpayer with a 'full hearing and judicial determination' at which she may raise any and all constitutional objections to the tax.... The Act contemplates nothing more." *Rosewell v. LaSalle Nat'l Bank*, 450 U.S. 503, 515-16 n.19, 101 S. Ct. 1221, 67 L. Ed. 2d 464 (1981) (citation omitted). We construe the Tax Injunction Act's limitations restrictively because the Act is meant to dramatically curtail federal-court review of state and local taxation. *See California v. Grace Brethren Church*, 457 U.S. 393, 413, 102 S. Ct. 2498, 73 L. Ed. 2d 93 (1982).

Several cases have applied *Rosewell*'s standard to Illinois's procedures. In *Rosewell* itself, the Supreme Court held that certain Illinois procedures for challenging property taxes satisfied the Act's "minimal procedural

criteria." 450 U.S. at 512 (emphasis omitted). At the time, an aggrieved taxpayer in Illinois first had to pay the challenged property tax and then seek a refund, which could take as long as two years to secure. The Court held that the Illinois remedy nevertheless qualified as "plain, speedy and efficient." *Id.* at 528. The Court emphasized that the taxpayer was free to raise her federal equal protection and due process claims before the Cook County circuit court under Illinois's procedures. The Illinois courts' remedy therefore was sufficient for the Act's jurisdictional bar to apply.

Fourteen years after *Rosewell*, the Illinois legislature enacted the 1995 Amendments to the Illinois Property Tax Code, which revised the procedures for tax objections. The Supreme Court has not revisited Illinois's procedures since the Amendments, but our court has had several occasions to do so. None of those cases, however, dealt with an underlying constitutional challenge like this one or an argument about section 23-15—as a brief overview of our precedents makes clear.

Our first major treatment of Illinois's procedures for challenging taxes after the 1995 Amendments was *Levy v. Pappas*, 510 F.3d 755 (7th Cir. 2007). (An earlier post-Amendments case, *Wright v. Pappas*, 256 F.3d 635 (7th Cir. 2001), held only that the Tax Injunction Act applies to the tax collection practice known as a lien sale.) In *Levy*, we drew a distinction between a plaintiff who alleges that she was singled out for unfair tax treatment and one who alleges that others were singled out for unfair benefits. 510 F.3d at 762. That distinction is no longer viable, since

the Supreme Court abrogated Levy in *Levin v. Commerce Energy, Inc.*, 560 U.S. 413, 420-21, 432, 130 S. Ct. 2323, 176 L. Ed. 2d 1131 (2010). *Levy* did not address section 23-15.

In *Scott Air Force Base Properties, LLC v. County of St. Clair*, we considered for the first time after the 1995 Amendments whether the Tax Injunction Act bars an Illinois taxpayer's federal challenge to its tax assessment. 548 F.3d 516, 519 (7th Cir. 2008). The taxpayer in that case believed that it was exempt from certain property taxes. It had argued that Illinois courts could not provide an "efficient" remedy for purposes of the Act because Illinois law required the taxpayer to pursue its exemption challenge at the same time as it challenged its tax valuation. *Id.* at 521. We held that the bifurcated procedure was not so inefficient as to lift the Tax Injunction Act's bar. *Id.* at 522. The taxpayers in *Scott Air Force Base* had not attempted to use the procedures outlined in section 23-15, so we did not address whether those procedures operated to prevent taxpayers from raising particular constitutional claims.

We later addressed a different procedure for challenging Illinois property taxes in *Capra v. Cook County Board of Review*, 733 F.3d 705 (7th Cir. 2013).[1]

1. We decided *Capra* and the other post-*Scott Air Force Base* cases under the principle of comity rather than the Tax Injunction Act. As we explain in greater depth below, the standards for analyzing the adequacy of a state forum for purposes of comity and the Tax Injunction Act are identical. *Capra*, 733 F.3d at 713. For that reason, our comity precedents are as relevant as *Scott Air Force Base*.

Under 35 ILCS 200/16-160, taxpayers can appeal a decision from the county Board of Review to the Property Tax Appeal Board, instead of directly to the circuit court as the taxpayers did here. In *Capra*, the taxpayers argued that they would not be able to present their claims to the Appeal Board or the Cook County circuit courts under those procedures because the adjudicators in those bodies were too corrupt to be able to neutrally review charged issues. *Id.* at 715. We rejected the allegations of corruption and affirmed the district court's dismissal of the suit. The plaintiffs in *Capra* mentioned in their briefs the burden of proof set forth in section 23-15, but they did not mention the Methodology Prohibition or argue that it blocked their constitutional claims.

We have rejected various challenges to other aspects of Illinois's procedures as well. In *Heyde v. Pittenger*, 633 F.3d 512, 521 (7th Cir. 2011), we rejected the argument that two-year delays in a taxpayer's Appeal Board proceedings made them insufficiently "speedy." In *Cosgriff v. County of Winnebago*, 876 F.3d 912, 916 (7th Cir. 2017), we dismissed an attempt to re-frame a request for a tax refund as a request for a constitutional forum. And in *Perry v. Coles County*, 906 F.3d 583, 589-90 (7th Cir. 2018), we rejected an argument based on the unavailability of injunctive relief to remedy procedural errors in the taxing process. Only in *Perry* did the taxpayers argue that an aspect of section 23-15—there, the provision's bar on class actions—operated to prevent them from raising constitutional claims in state court. *Id.* at 590 n.6. But we rejected that contention without consideration because the taxpayers had raised the argument for the first time in their reply

brief. *Id.* No other taxpayer has argued that section 23-15 operates to restrict federal constitutional claims.

In some of these cases, we used general language to uphold the adequacy of the challenged Illinois procedures. For example, in *Scott Air Force Base*, we painted with a broad brush when we said that "Illinois taxpayers are able to litigate their constitutional ... challenges to state tax matters in the Illinois administrative and judicial system." 548 F.3d at 523. And in *Capra*, we wrote that "any statutory or constitutional claims" could be raised through either the Appeal Board or the Illinois county circuit courts. 733 F.3d at 715. But we had no occasion in those cases to address whether section 23-15 restricts taxpayers' constitutional claims. Our precedents therefore do not resolve the issue in this case. We consider now for the first time whether section 23-15 prevents taxpayers from raising federal constitutional challenges to their property taxes in Illinois courts.

C.

To avoid the Tax Injunction Act's jurisdictional bar, the taxpayers must demonstrate that section 23-15 denies them a complete hearing on any and all constitutional objections. *Rosewell*, 450 U.S. at 514. Their particular constitutional objection is that the Assessor violated the Equal Protection Clause by valuing their properties correctly under the Cook County ordinance but cutting everyone else a break with a lower de facto rate. *See Allegheny Pittsburgh Coal Co.*, 488 U.S. at 345-46. If section 23-15 limits taxpayers to challenging only the

correctness of the valuation under Illinois law, then they have no state forum for that cognizable constitutional claim. What's more, a taxpayer attempting to prove an *Allegheny Pittsburgh Coal* claim under the Equal Protection Clause must demonstrate that there is no rational basis for the disparate tax treatment—a burden that generally requires engaging with the legitimacy of the policy's stated purpose. *See Nordlinger v. Hahn*, 505 U.S. 1, 15-16, 112 S. Ct. 2326, 120 L. Ed. 2d 1 (1992). If section 23-15 prevents taxpayers from probing into the Assessor's methodology or intent, they will not be able to prove that his tax assessment violated the Equal Protection Clause.

Surprisingly, the defendants do not dispute the taxpayers' account of section 23-15 and its operation. Instead, they argue that those procedures nevertheless satisfy the Tax Injunction Act. The defendants contend that when Illinois dispensed with requiring proof of the Assessor's methodology or intent, it made the objection process only more "plain, speedy and efficient." That may be true for many claimants. But the defendants ignore the most crucial procedural criterion under *Rosewell*: the availability of a state-court forum to hear "any and all constitutional objections to the tax." 450 U.S. at 514. Efficiency is no good to the taxpayers if it means that they cannot bring their equal protection claim in state court.

And the defendants agree with the taxpayers that they cannot. In their brief, the defendants assert that the taxpayers err in presuming that they can raise their constitutional claims, sharply admonishing that "[t]hey

are not free to do so." Instead, the defendants argue, "the only matter at issue in a Section 23-15 action is whether the assessment of the real estate property was correct." By the defendants' own admission, then, the section 23-15 procedures provide no forum for the taxpayers to raise their constitutional claims. Nor have the defendants been able to point to any alternative channels in which these taxpayers can raise their federal constitutional claims in Illinois courts.[2] These concessions make a potentially complex issue a great deal simpler. Since the defendants agree that the taxpayers cannot make their equal protection case in state court, the taxpayers have no "remedy" at all for their claims—never mind a "plain, speedy and efficient" one—and the Tax Injunction Act does not bar their federal suit.

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2. An Illinois taxpayer appealing a decision from the county Board of Review can either do so directly in circuit court under the procedures outlined in section 23-15, or first through the Property Tax Appeal Board under the procedures outlined in 35 ILCS 200/16-160. *See Capra*, 733 F.3d at 714-15. At oral argument, counsel for the defendants was asked whether the taxpayers would have had a forum for their constitutional claims if they had chosen to pursue relief first at the Property Tax Appeal Board under section 16-160 instead of in court under section 23-15. The defendants' counsel conceded that the Appeal Board has taken the position that it cannot consider the type of evidence that would prove that the Assessor did not apply uniform rates. *See* Letter to Appellant, No. 06-31627 (Ill. Property Tax App. Board Aug. 29, 2012) (Separate App. 200). Counsel speculated that Illinois courts might take a different view but admitted, "We don't know ... whether a constitutional claim can be made" at the Appeal Board (Oral Argument at 23:31-23:40). Such an unclear path to relief is not a sufficiently "plain" remedy under the Tax Injunction Act.

III.

The district court also abstained from exercising jurisdiction over the case under the principle of comity. Comity is a doctrine of abstention, rather than a jurisdictional bar, but in the state-taxation context it operates similarly to the Tax Injunction Act. *See Capra*, 733 F.3d at 713-14. The Act restricts federal jurisdiction over state-taxation suits for equitable or declaratory relief. 28 U.S.C. § 1341; *see also Grace Brethren Church*, 457 U.S. at 407-11 (holding that the Act applies to declaratory relief in addition to injunctions). In *Fair Assessment in Real Estate Ass'n v. McNary*, the Supreme Court held that federal courts are barred from reviewing state-taxation suits for damages as well, albeit by the principle of comity rather than the Act. 454 U.S. 100, 116, 102 S. Ct. 177, 70 L. Ed. 2d 271 (1981). Comity requires taxpayers seeking damages to pursue relief in the state courts, assuming that state-court remedies are "plain, adequate, and complete." *Id.*

The taxpayers have pursued only injunctive and declaratory relief in this case. But even assuming that *Fair Assessment* bears on this case, comity does not bar federal jurisdiction here. The Court has explained that the "plain, adequate, and complete" requirement in the comity analysis is identical to the "plain, speedy and efficient" requirement under the Tax Injunction Act. *Id.* at 116 n.8. Since the Act does not bar the federal district court from exercising jurisdiction over this challenge, neither does the principle of comity.

Appendix A

* * *

The district court's dismissal for lack of subject matter jurisdiction is REVERSED and the case is REMANDED.

APPENDIX B — MEMORANDUM OPINION OF UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION, FILED APRIL 30, 2019

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

18 C 04888

A.F. MOORE & ASSOCIATES, INC., J. EMIL ANDERSON & SON, INC., PRIME GROUP REALTY TRUST, AMERICAN ACADEMY OF ORTHOPAEDIC SURGEONS, ERLING EIDE, FOX VALLEY/RIVER OAKS PARTNERSHIP, AND SIMON PROPERTY GROUP, INC.,

Plaintiffs,

v.

MARIA PAPPAS, COOK COUNTY TREASURER AND EX OFFICIO COUNTY COLLECTOR, JOSEPH BERRIOS, COOK COUNTY ASSESSOR, AND THE COUNTY OF COOK,

Defendants.

April 30, 2019, Decided;
April 30, 2019, Filed

Appendix B

MEMORANDUM OPINION

CHARLES P. KOCORAS, District Judge:

Before the Court is Defendants Maria Pappas ("Collector"), Joseph Berrios ("Assessor"), and the County of Cook's ("County") (collectively, "Defendants") motion to dismiss Plaintiffs A.F. Moore & Associates, Inc. ("A.F. Moore"), J. Emil Anderson & Son, Inc. ("Anderson"), Prime Group Realty Trust ("Prime Group"), American Academy of Orthopaedic Surgeons ("AAOS"), Erling Eide ("Eide"), Fox Valley/River Oaks Partnership ("Fox Valley"), and Simon Property Group, Inc.'s ("Simon Property") (collectively, "Plaintiffs") Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Also before the Court is Assessor's separate motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). For the following reasons, the Court grants in part and denies in part Defendants' motion. The Court also denies Assessor's motion.

BACKGROUND

At the motion to dismiss stage, the Court assumes that the following facts from the complaint are true and draws all reasonable inferences in Plaintiffs' favor. *Murphy v. Walker*, 51 F.3d 714, 717 (7th Cir. 1995); *Tamayo v. Blagojevich*, 526 F.3d 1074, 1081 (7th Cir. 2008).

A.F. Moore is an Illinois corporation that held an interest in a Bridgeview, Illinois property that was improved with an industrial building. Anderson is an

Illinois corporation with an interest in a Niles, Illinois property that was also improved with an industrial building. Prime Group is a real estate investment trust that held an interest in property in Rolling Meadows, Illinois that was improved with a multi-tenant office building. AAOS is an Illinois not-for-profit corporation with an interest in property in Rosemont, Illinois improved with a surgical training facility and office building. Eide held an interest in property in Northbrook, Illinois that was improved with a retail store. Fox Valley, an Illinois general partnership, and Simon Property, a Delaware corporation, held interests in a shopping center in Calumet City, Illinois.

Collector is the duly elected and acting Treasurer and Ex Officio County Collector of Cook County. She is charged with issuing tax bills, collecting taxes, and paying refunds for taxes that have been overpaid or collected upon incorrect, illegal, or unconstitutional assessments. She is sued in her official capacity.

Assessor is the duly elected and acting Assessor of Cook County. He is charged with assessing all taxable properties in Cook County for purposes of taxation based on their market values and at uniform assessment levels within each property class. He is sued in his official capacity.

The County is a government entity and is the Illinois county responsible for funding the Collector and Assessor's offices. The County is liable for any monetary judgment entered against Collector or Assessor in their

official capacities and is only named for this purpose.

To understand the dispute underlying this case, a brief overview of Illinois property tax law is necessary. Illinois maintains a system of *ad valorem* property taxation governed by the state constitution. The constitution provides that real property can be broken down into categorical classifications for taxation purposes. However, such classifications need to be reasonable, and assessments need to be uniform within each class. Ill. Const. 1970, Art. IX, § 4(b). Furthermore, the assessment level of the highest class in a county may not exceed two and a half times the assessment level of the lowest class in that county. *Id.*

To satisfy these requirements, the County enacted the Cook County Real Property Assessment Classification Ordinance ("Classification Ordinance"), Code of Ordinances of Cook County § 74-60 *et seq.* The Classification Ordinance separated properties into single-family residential, not-for-profit, commercial, and industrial classes, as is relevant here. The Classification Ordinance mandated that Assessor assess single-family residential properties at sixteen percent of their market value; not-for-profit properties at thirty percent; commercial properties at thirty eight percent; and industrial properties at thirty six percent. Code of Ord. § 74-64.

From 2000 to 2008, Assessor allegedly undervalued most, but not all, single-family residential, commercial, and industrial property in the County. This practice brought the assessment levels to approximately nine

percent for single-family residential properties, twenty five percent for commercial properties, and twenty percent for industrial properties—rates far below the level required by law. Based on these assessment levels, Collector issued tax bills and collected taxes from property owners. Plaintiffs allege that the assessment rates actually utilized were concealed from the public.

In 2008, then-Assessor James Houlihan announced a proposal to recalibrate the classification system to decrease the statutory assessment levels to ten and twenty five percent of the market value, depending on the type of property involved. He noted that this proposal would marry the assessment levels with the current market values and codify the County's existing practices.

Plaintiffs are taxpayers whose properties were assessed at or above the level required by law, as opposed to the widely utilized underassessment rate. Plaintiffs allege that this valuation discrepancy caused them to pay taxes at a higher rate than most other taxpayers in the same class and above the maximum level permitted by Illinois' laws and constitution. Plaintiffs claim to have overpaid property taxes by the following amounts: A.F. Moore by $805,019; Anderson by $755,611; Prime Group by $8,648,343; AAOS by $458,263; Eide by $1,199,006; and Fox Valley and Simon Property by $16,434,354.

Plaintiffs objected to their overpayment and requested refunds in the Cook County Circuit Court pursuant to the procedures set forth in the Illinois Property Tax Code, which was amended in 1995. 35 ILCS 200/23-15. Plaintiffs

claim that the 1995 amendments have left them with an inadequate remedy at the state court level, asserting that the procedures are riddled with uncertainty and delay. Specifically, Plaintiffs complain of the statutory presumption that the assessment valuations are correct, the "clear and convincing evidence" burden to overcome that presumption, the inability to name Assessor as a defendant to the action, the inability to introduce evidence of Assessor misconduct, the prohibition on class actions, and that Collector is not required to answer their complaint. Moreover, Plaintiffs emphasize that their case has been litigated at the Cook County Court for over a decade, yet it remains in the discovery stage.

Based on the underlying tax assessments and the remedial procedures experienced thereafter, Plaintiffs filed the instant complaint, alleging equal protection and due process violations pursuant to 42 U.S.C. § 1983 and the Illinois Constitution, along with state law claims regarding the property tax code. On October 17, 2018, Defendants moved to dismiss the complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Assessor filed a separate motion to dismiss under 12(b)(6), setting forth statute of limitations defenses.

LEGAL STANDARD

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(1) challenges the jurisdictional sufficiency of the complaint, but it is otherwise "analyzed as any other motion to dismiss." *United Phosphorous Ltd. v. Angus Chem. Co.*, 322 F.3d 942, 946 (7th Cir. 2003). The burden of

proof lies with the proponent of jurisdiction. *Id.* The Court may consider matters outside of the complaint in ruling on a motion to dismiss for lack of subject matter jurisdiction. *Ezekiel v. Michel*, 66 F.3d 894, 897 (7th Cir. 1995).

A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) "tests the sufficiency of the complaint, not the merits of the case." *McReynolds v. Merrill Lynch & Co.*, 694 F.3d 873, 878 (7th Cir. 2012). The allegations in the complaint must set forth a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Plaintiffs need not provide detailed factual allegations, but must provide enough factual support to raise their right to relief above a speculative level. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). A claim must be facially plausible, meaning that the pleadings must "allow...the court to the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009). The claim must be described "in sufficient detail to give the defendant 'fair notice of what the...claim is and the grounds upon which it rests.'" *E.E.O.C. v. Concentra Health Servs., Inc.*, 496 F.3d 773, 776 (7th Cir. 2007) (quoting *Twombly*, 550 U.S. at 555). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements," are insufficient to withstand a 12(b)(6) motion to dismiss. *Iqbal*, 556 U.S. at 678.

Appendix B

DISCUSSION

Defendants urge the Court to dismiss the complaint for two reasons: (1) the Court lacks subject matter jurisdiction because Plaintiff's claim is barred by the Tax Injunction Act ("TIA"), 28 U.S.C. § 1341, and the principle of comity, and (2) the equitable remedy Plaintiffs seek is unavailable under 42 U.S.C. § 1983 because an adequate remedy at law exists. Assessor seeks dismissal on the additional ground that Plaintiffs claims are barred by the applicable statute of limitations. The Court addresses each argument in turn.

I. Subject Matter Jurisdiction

As the Seventh Circuit has emphasized, "the requirement that jurisdiction be established as a threshold matter springs from the nature and limits of the judicial power of the United States' and is inflexible and without exception." *Scott Air Force Base Prop., LLC v. Cty. of St. Clair, III*, 548 F.3d 516, 520 (7th Cir. 2008) (internal quotation marks omitted). Moreover, "it is axiomatic that a federal court must assure itself that it possesses jurisdiction over the subject matter of an action before it can proceed to take any action respecting the merits of the action." *Id.* Therefore, the Court must determine at the outset whether the TIA or the principle of comity serve as a bar to subject matter jurisdiction.

A. Tax Injunction Act

"Federal courts are courts of limited jurisdiction." *Int'l Union of Operating Engineers, Local 150, AFL-*

CIO v. Ward, 563 F.3d 276 (7th Cir. 2009). One such limit on the Court's jurisdiction is the TIA. 28 U.S.C. § 1341. That statute provides, "the district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State." *Id.* "Given the strong background presumption against interference with state taxation, the [TIA] may be best understood as but a partial codification of the federal reluctance to interfere with state taxation." *Nat'l Priv. Truck Council, Inc. v. Okla. Tax Comm'n*, 515 U.S. 582, 590, 115 S. Ct. 2351, 132 L. Ed. 2d 509 (1995).

This prescription applies with equal force to suits based on constitutional violations or those seeking declaratory or injunctive relief. *Scott Air Force Base*, 548 F.3d at 520 ("The TIA strips the district courts of the power to hear suits seeking not only injunctive but also declaratory relief from state taxes....[T]he TIA's ambit is not confined by the law under which a state tax is challenged, for even federal constitutional claims do not render the Act inapplicable."); *Hadnott v. Berrios*, 2018 U.S. Dist. LEXIS 163919, 2018 WL 4590193, at *7 (N.D. Ill. 2018) ("State taxation challenges claiming constitutional violations do not fall outside the TIA's purview."). Therefore, Plaintiff's constitutional claims are subject to the TIA's jurisdictional limitations.

To determine whether the TIA will strip this Court of subject matter jurisdiction, we must first evaluate whether the remedy available in the Illinois state court is "plain, speedy and efficient." 28 U.S.C. § 1341. This requirement

is "construed narrowly," *Scott Air Force Base*, 548 F.3d at 521, and only necessitates that the "state-court remedy... meets certain minimal *procedural* criteria." *Rosewell v. LaSalle Nat'l Bank*, 450 U.S. 503, 512, 101 S. Ct. 1221, 67 L. Ed. 2d 464 (1981). Consequently, a "plain" remedy details a procedure that is not "uncertain or otherwise unclear." *Rosewell*, 450 U.S. at 517. A "speedy" remedy is "a relative concept" that is measured by comparing the typical time to process a remedy "against the usual time for similar litigation." *Id.* at 518. An "efficient" remedy "imposes no unusual hardship on [a party] requiring ineffectual activity or an unnecessary expenditure of time and energy." *Id.* at 518.

For over two decades, the Seventh Circuit has upheld the Illinois tax objection procedures as a "plain, speedy and efficient" remedy under the TIA. *Heyde v. Pittenger*, 633 F.3d 512, 521 (7th Cir. 2011) (collecting cases). The Illinois procedures are plain because they lay out a clear process for dissatisfied taxpayers to object to their taxation by appealing to the Property Tax Appeal Board or by filing a tax objection complaint with the county circuit court. *Cosgriff*, 876 F.3d at 916, *citing Capra v. Cook Cty. Bd. of Review*, 733 F.3d 705, 714-15 (7th Cir. 2013). Plaintiffs argue that these procedures are deficient because they create uncertainty as to whether the state court will hear their constitutional objections to the taxation process. However, both federal and state court precedent serve to quell those concerns. *See Capra*, 733 F.3d at 715 ("Thus, through either the PTAB or the circuit courts, any statutory or constitutional claims can be heard by a state court of general jurisdiction and can

be appealed through the Illinois court system to the Illinois Supreme Court and the Supreme Court of the United States."); *Scott Air Force Base*, 548 F.3d at 523 ("Indeed, Illinois case law clearly indicates that Illinois taxpayers are able to litigate their constitutional and other federal-law challenges to state tax matters in the Illinois administrative and judicial system."); *Reno v. Newport Twp.*, 2018 IL App. (2d) 170967, ¶ 26, 427 Ill. Dec. 330, 118 N.E.3d 531 ("[I]t is well established that property owners may use the statutory tax-objection procedures to raise constitutional questions arising from alleged improper assessments.") (internal quotation marks omitted); *See also Offerman v. Will Cty. Supervisor of Assessments Novak*, 2017 IL App (3d) 150272-U, ¶ 1 (considering taxpayers' claim that acting township assessor violated the provision of the Illinois Constitution that requires taxes to be levied uniformly).

Plaintiffs next contend that the Illinois procedures are not speedy or efficient because their case has proceeded in the state court for over a decade. However, this inquiry does not turn on the length of the specific proceedings at issue, but rather the typical length of resolution. *Rosewell*, 450 U.S. at 518. Decade-long litigation is not a feature of the tax-objection procedures, but rather an unfortunate product of the tactics employed in this case. Indeed, as the Defendants note, "per local court rule and statute, the lifespan of a tax objection in state court is approximately two to three years"—a timeframe the Supreme Court and Seventh Circuit have already acknowledged as meeting the "speedy" criterion. *Rosewell*, 450 U.S. at 520-21; *Heyde*, 633 F.3d at 521. Also, "significant delay does not

doom the adequacy of state remedies." *Capra*, 733 F.3d at 716. Moreover, Plaintiffs have not alleged that the Illinois procedures require them to engage in "ineffectual activity" during the course of the litigation. *Scott Air Force Base*, 548 F.3d at 522. Therefore, the Court will not deviate from established law finding that the Illinois procedures offer a "plain, speedy and efficient" remedy.

Although Plaintiffs acknowledge the weight of the precedent against them, they insist that the adequacy of the Illinois procedures remains an open question because none of the prior rulings considered the 1995 amendments. While no case has directly and comprehensively addressed the 1995 amendments, the Seventh Circuit has considered individual features of the amendments and reached the conclusion that the Illinois procedures afford an adequate remedy. *See Heyde*, 633 F.3d at 521 (stating that the amendments to the Illinois procedures did not "significantly alter" the process so as to call into question their adequacy); *See also Capra*, 733 F.3d at 716-17 (finding that the clear and convincing evidence burden did not render Illinois procedures "inadequate or incomplete"); *See also Perry v. Coles Cty., Ill.*, 906 F.3d 583, 587, 590 (7th Cir. 2018) (considering prohibition on class actions and adequacy of remedy where county "refused to follow the law" with respect to assessments).

Taking a cue from the Seventh Circuit's evaluations, the Court finds that the 1995 amendments do not evince the need to deviate from the decades of Supreme Court and Circuit Court precedent establishing that the Illinois procedures afford Plaintiffs an adequate tax-objection

remedy. Given that Plaintiffs have a "plain, speedy and efficient" remedy in state court, the TIA strips the Court of jurisdiction over Plaintiff's claims.

B. Comity

Unlike the TIA's jurisdictional divestment, comity is a "doctrine of abstention." *Perry*, 906 F.3d at 587. "Comity reflects, in part, a 'belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in separate ways.'" *Hadnott*, 2018 U.S. Dist. LEXIS 163919, 2018 WL 4590193, at *4, *citing Levin v. Com. Energy, Inc.*, 560 U.S. 413, 421, 130 S. Ct. 2323, 176 L. Ed. 2d 1131 (2010). This belief is especially apt regarding state taxation. As the Supreme Court has underscored, "we have long recognized that principles of federalism and comity generally counsel that courts should adopt a hands-off approach with respect to state tax administration." *Nat'l Priv. Truck Council*, 515 U.S. at 586.

The Seventh Circuit has echoed this sentiment, cautioning courts not to interfere with state taxation. *Cosgriff*, 876 F.3d at 915 ("Together, Congress and the Court embedded the fundamental principle of comity between federal courts and state governments that is essential to Our Federalism, particularly in the area of state taxation.") (internal quotation marks omitted); *Capra*, 733 F.3d at 713 ("Like the [TIA], this comity doctrine serves to minimize frictions inherent in a federal system of government and embodies longstanding federal reluctance to interfere with state taxation.") (internal

quotation marks omitted). Accordingly, "district courts should abstain from hearing § 1983 suits that deal with state taxation when there is an 'adequate, plain, and complete' remedy available to plaintiffs in state courts." *Hadnott*, 2018 U.S. Dist. LEXIS 163919, 2018 WL 4590193, at *4, *citing Fair Assessment in Real Estate Ass'n, Inc. v. McNary*, 454 U.S. 100, 116, 102 S. Ct. 177, 70 L. Ed. 2d 271 (1981); *See also Perry*, 906 F.3d at 588 ("Taxpayers seeking such relief must instead seek protection of their federal rights by state remedies, provided of course that those remedies are plain, adequate, and complete.") (internal quotation marks omitted).

In assessing whether state remedies are "plain, adequate, and complete," the Supreme Court and the Seventh Circuit have instructed district courts to use the analysis dictated by the TIA. *Fair Assessment*, 454 U.S. at 116 n.8 ("We discern no significant difference, for purposes of the principles recognized in this case, between remedies which are 'plain, adequate, and complete,' as that phrase has been used in articulating the doctrine of equitable restraint, and those which are 'plain, speedy and efficient,' within the meaning of § 1341."); *Capra*, 733 F.3d at 714 ("In determining whether available state remedies are 'adequate, plain, and complete' for purposes of *Fair Assessment*, we have used the comparable standard from the [TIA], which bars federal courts from enjoining state taxes where a 'plain, speedy and efficient' state remedy is available."). Given that the Court determined the state remedy was adequate under the TIA analysis, that same remedy would be adequate under the comity framework. Therefore, the Court finds it appropriate to decline jurisdiction over this matter on comity grounds.

II. Sufficiency of Pleadings

Because the Court lacks subject matter jurisdiction over this case, the Court cannot weigh in on the merits of Defendants' or Assessor's motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). Accordingly, those motions are denied as moot.

CONCLUSION

For the aforementioned reasons, the Court grants in part and denies in part Defendants' motion and denies Assessor's motion as moot. It is so ordered.

Dated: 4/30/2019

/s/ Charles P. Kocoras
Charles P. Kocoras
United States District Judge

APPENDIX C — DENIAL OF REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, FILED APRIL 9, 2020

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604

Nos. 19-1971 & 19-1979

A.F. MOORE & ASSOCIATES, INC., *et al.*,

Plaintiffs-Appellants,

v.

MARIA PAPPAS, COOK COUNTY TREASURER, *et al.*,

Defendants-Appellees.

April 9, 2020

Before

JOEL M. FLAUM, *Circuit Judge*
DAVID F. HAMILTON, *Circuit Judge*
AMY C. BARRETT, *Circuit Judge*

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division
No. 1:18-cv-4888 – Charles P. Kocoras, *Judge.*

Appendix C

ORDER

Defendants-Appellees filed two petitions for rehearing and rehearing en banc on February 12, 2020. No judge in regular active service has requested a vote on the petitions for rehearing en banc, and all of the judges on the panels have voted to deny rehearing.

Accordingly, **IT IS ORDERED** that the petitions for rehearing and rehearing en banc are **DENIED**.

APPENDIX D — RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

Fourteenth Amendment, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 USCS § 1341
Taxes by States

The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

35 ILCS 200/16-95
Powers and Duties of Board of Appeals or Review; Complaints

In counties with 3,000,000 or more inhabitants, until the first Monday in December 1998, the board of appeals in any year shall, on complaint that any property is overassessed or underassessed, or is exempt, review and order the assessment corrected.

Beginning the first Monday in December 1998 and thereafter, in counties with 3,000,000 or more inhabitants, the board of review:

(1) shall, on written complaint of any taxpayer or any taxing district that has an interest in the assessment that any property is overassessed, underassessed, or exempt, review the assessment and confirm, revise, correct, alter, or modify the assessment, as appears to be just; and

(2) may, upon written motion of any one or more members of the board that is made on or before the dates specified in notices given under Section 16-110 [35 ILCS 200/16-110] for each township and upon good cause shown, revise, correct, alter, or modify any assessment (or part of an assessment) of real property regardless of whether the taxpayer or owner of the property has filed a complaint with the board; and

(3) shall, after the effective date of this amendatory Act of the 96th General Assembly [P.A. 96-1553], pursuant to the provisions of Sections 9-260, 9-265, 2-270, 16-135, and 16-140 [35 ILCS 200/9-260, 35 ILCS 200/9-265, 35 ILCS 200/2-270, 35 ILCS 200/16-135 and 35 ILCS 200/16-140] review any omitted assessment proposed by the county assessor and confirm, revise, correct, alter, or modify the proposed assessment, as appears to be just.

No assessment may be changed by the board on its own motion until the taxpayer in whose name the property is assessed and the chief county assessment officer who certified the assessment have been notified and given an opportunity to be heard thereon. All taxing districts shall have an opportunity to be heard on the matter.

Appendix D

35 ILCS 200/16-115
Filing Complaints

In counties with 3,000,000 or more inhabitants, complaints that any property is overassessed or underassessed or is exempt may be made by any taxpayer. Complaints that any property is overassessed or underassessed or is exempt may be made by a taxing district that has an interest in the assessment to a board of review. All complaints shall be in writing, identify and describe the particular property, otherwise comply with the rules in force, be either signed by the complaining party or his or her attorney or, if filed electronically, signed with the electronic signature of the complaining party or his or her attorney, and be filed with the board of appeals (until the first Monday in December 1998 and the board of review beginning the first Monday in December 1998 and thereafter) in at least duplicate. The board shall forward one copy of each complaint to the county assessor.

Complaints by taxpayers and taxing districts and certificates of correction by the county assessor as provided in this Code shall be filed with the board according to townships on or before the dates specified in the notices given in Section 16-110 [35 ILCS 200/16-110].

35 ILCS 200/16-120
Decision on Complaints

In counties with 3,000,000 or more inhabitants, at its meeting for the purpose of revising and correcting the assessments, the board of appeals (until the first Monday in December 1998 and the board of review beginning the first Monday in December 1998 and thereafter),

upon complaint filed by a taxpayer or taxing district as prescribed in this Code, may revise the entire assessment of any taxpayer, or any part thereof, and correct the same as shall appear to the board to be just. The assessment of the property of any taxpayer shall not be increased unless that taxpayer or his agent shall first have been notified in writing and been given an opportunity to be heard.

35 ILCS 200/16-125
Hearings

In counties with 3,000,000 or more inhabitants, complaints filed with the board of appeals (until the first Monday in December 1998 and the board of review beginning the first Monday in December 1998 and thereafter) shall be classified by townships. All complaints shall be docketed numerically, in the order in which they are presented, as nearly as possible, in books or computer records kept for that purpose, which shall be open to public inspection. The complaints shall be considered by townships until they have been heard and passed upon by the board. After completing final action on all matters in a township, the board shall transmit such final actions to the county assessor.

A hearing upon any complaint shall not be held until the taxpayer affected and the county assessor have each been notified and have been given an opportunity to be heard. All hearings shall be open to the public and the board shall sit together and hear the representations of the interested parties or their representatives. An order for a correction of any assessment shall not be made unless both commissioners of the board, or a majority of the

members in the case of a board of review, concur therein, in which case, an order for correction shall be made in open session and entered in the records of the board. When an assessment is ordered corrected, the board shall transmit a computer printout of the results, or make and sign a brief written statement of the reason for the change and the manner in which the method used by the assessor in making the assessment was erroneous, and shall deliver a copy of the statement to the county assessor. Upon request the board shall hear any taxpayer in opposition to a proposed reduction in any assessment.

The board may destroy or otherwise dispose of complaints and records pertaining thereto after the lapse of 5 years from the date of filing.

35 ILCS 200/23-5
Payment Under Protest

Beginning with the 1994 tax year in counties with 3,000,000 or more inhabitants, and beginning with the 1995 tax year in all other counties, if any person desires to object to all or any part of a property tax for any year, for any reason other than that the property is exempt from taxation, he or she shall pay all of the tax due within 60 days from the first penalty date of the final installment of taxes for that year. Whenever taxes are paid in compliance with this Section and a tax objection complaint is filed in compliance with Section 23-10 [35 ILCS 200/23-10], 100% of the taxes shall be deemed paid under protest without the filing of a separate letter of protest with the county collector.

Appendix D

35 ILCS 200/23-15
Tax Objection Procedure and Hearing

(a) A tax objection complaint under Section 23-10 [35 ILCS 200/23-10] shall be filed in the circuit court of the county in which the subject property is located. Joinder of plaintiffs shall be permitted to the same extent permitted by law in any personal action pending in the court and shall be in accordance with Section 2-404 of the Code of Civil Procedure [735 ILCS 5/2-404]; provided, however, that no complaint shall be filed as a class action. The complaint shall name the county collector as defendant and shall specify any objections that the plaintiff may have to the taxes in question. No appearance or answer by the county collector to the tax objection complaint, nor any further pleadings, need be filed. Amendments to the complaint may be made to the same extent which, by law, could be made in any personal action pending in the court.

(b)
(1) The court, sitting without a jury, shall hear and determine all objections specified to the taxes, assessments, or levies in question. This Section shall be construed to provide a complete remedy for any claims with respect to those taxes, assessments, or levies, excepting only matters for which an exclusive remedy is provided elsewhere in this Code.

(2) The taxes, assessments, and levies that are the subject of the objection shall be presumed correct and legal, but the presumption is rebuttable. The plaintiff has the burden of proving any contested matter of fact by clear and convincing evidence.

(3) Objections to assessments shall be heard de novo by the court. The court shall grant relief in the cases in which the objector meets the burden of proof under this Section and shows an assessment to be incorrect or illegal. If an objection is made claiming incorrect valuation, the court shall consider the objection without regard to the correctness of any practice, procedure, or method of valuation followed by the assessor, board of appeals, or board of review in making or reviewing the assessment, and without regard to the intent or motivation of any assessing official. The doctrine known as constructive fraud is hereby abolished for purposes of all challenges to taxes, assessments, or levies.

(c) If the court orders a refund of any part of the taxes paid, it shall also order the payment of interest as provided in Section 23-20 [35 ILCS 200/23-20]. Appeals may be taken from final judgments as in other civil cases.

(d) This amendatory Act of 1995 shall apply to all tax objection matters still pending for any tax year, except as provided in Sections 23-5 and 23-10 [35 ILCS 200/23-5 and 35 ILCS 200/23-10] regarding procedures and time limitations for payment of taxes and filing tax objection complaints.

(e) In counties with less than 3,000,000 inhabitants, if the court renders a decision lowering the assessment of a particular parcel on which a residence occupied by the owner is situated, the reduced assessment, subject to equalization, shall remain in effect for the remainder of the general assessment period as provided in Sections

9-215 through 9-225 [35 ILCS 200/9-215 through 35 ILCS 200/9-225], unless that parcel is subsequently sold in an arm's length transaction establishing a fair cash value for the parcel that is different from the fair cash value on which the court's assessment is based, or unless the decision of the court is reversed or modified upon review.

APPENDIX E — AMENDED ORDER OF CONSOLIDATION FOR CERTAIN DISCOVERY PURPOSES, *IN RE LEVEL OF ASSESSMENT LITIGATION*, 05COTO3938, 07COTO1618, 07COTO0779, 08COTO5700, 09COTO6258, CIRCUIT COURT OF COOK COUNTY, ILLINOIS, COUNTY DEPARTMENT, COUNTY DIVISION, ISSUED JANUARY 22, 2013

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, COUNTY DIVISION

Nos.
05 COTO 3938
07 COTO 1618
07 COTO 0779 (2006)
08 COTO 5700 (2007)
09 COTO 6258 (2008)
(All Cases Listed on Schedule A to this Order Consolidated for Certain Discovery Purposes)

IN RE LEVEL OF

ASSESSMENT LITIGATION

AMENDED ORDER OF CONSOLIDATION FOR CERTAIN DISCOVERY PURPOSES

This cause coming on the Motions of the Parties for Consolidation, the Court, being fully advised in the premises, and all parties being represented by counsel, enters the following stipulations and order:

Appendix E

THE PARTIES STIPULATE AS FOLLOWS:

A. The complaints in the cases listed on the attached Schedule A (hereafter, "cases subject to this order") raise issues concerning the constitutionality and legally required level of assessment, in addition to issues concerning the fair market value forming the basis of the disputed assessed valuation, as well as other issues unrelated to level of assessment in some cases.

B. Various taxing districts have intervened in opposition to Plaintiffs in certain of the cases subject to this order. Districts that have previously intervened, with their respective counsel, are listed on the attached Schedule B. If additional taxing districts intervene in any of the cases subject to this order, those districts may be added to Schedule B by amendment to this order and they shall be permitted to participate in discovery in accordance with the terms of the order and any case management or discovery orders entered hereafter.

C. All parties have an interest in the efficient conduct of discovery with respect to level of assessment issues.

IT IS HEREBY ORDERED:

1. The Court grants the Motion to Consolidate pursuant to 735 ILCS 5/2-1006 for purposes of discovery with respect to constitutional issues challenging level of assessment.

2. The cases subject to this order are consolidated for the limited purposes of discovery related to level of

assessment issues only. The Court will supervise discovery on these issues pursuant to Supreme Court Rule 201(c)(2). All further discovery related to level of assessment issues shall be conducted within this consolidated proceeding in accordance with discovery orders to be entered subsequently in this matter.

3. The list of cases subject to this order on Schedule A is intended to comprise all pending cases for tax years 2000 - 2008, inclusive, filed on behalf of various plaintiffs by the law firm of O'Keefe, Lyons & Hynes, LLC, and challenging assessments on any grounds including but not limited to level of assessment. In the event a case intended to be included in Schedule A is found to have been inadvertently omitted, this order may be amended to add it, but cases subsequent to tax year 2008 shall not be added to Schedule A.

4. All intervenors listed on Schedule B may participate in this consolidated proceeding for the limited purpose of discovery related to level of assessment issues only, in accordance with this order and in accordance with discovery orders to be entered subsequently in this matter.

5. With respect to any and all individual cases subject to this order, this consolidation for the limited purposes of discovery related to level of assessment issues only shall not prevent or interfere with any procedures, including but not limited to discovery, trial, or other disposition on issues other than level of assessment, nor shall it prevent or interfere with settlement on any grounds.

6. Plaintiffs have stipulated in open court that they will file amended complaints that include uniform allegations concerning level of assessment issues for all cases included in Schedule A. The subject properties in the cases subject to this order are each identified on Schedule A as classified within one of four major classes under the Cook County Real Property Assessment Classification Ordinance: Class 4 (not-for-profit); Class 5a (commercial); Class 5b (industrial); and Class 2 (single family [etc.] residential). One amended complaint shall be filed for each of the four classes of property, and each amended complaint shall identify by attached schedule listing case numbers of all cases that are subject to the amended complaint. Such complaints shall be filed within sixty (60) days from the entry of this order. As to properties identified on Schedule A as Class 6b, the plaintiffs stipulate that they are only alleging constitutional claims as to that portion of the properties classified as industrial. Thus, the complaint to be filed as to class 5b shall serve as the complaint for properties classified as 6b.

7. Pretrial procedures shall be stayed pending completion of initial discovery requests and responses and addressed upon appropriate request from the parties.

ENTER: /s/_____
Judge of the
Circuit Court of Cook County

Appendix E

Tax Year	Case #	Class
2001	02 CT 2192	5A
2001	02 CT 2219	5B
2002	03COTO3771	5A
2002	03COTO3793	5B
2003	05COTO1633	5B
2003	05COTO1674	5A
2003	05COTO1675	5A
2003	05COTO1679	5A
2003	05COTO1681	5A
2003	05COTO1685	5A
2003	05COTO1866	5A
2003	05COTO3240	5A
2004	05COTO3854	5A
2004	05COTO3879	5A
2004	05COTO3880	5A
2004	05COTO3886	5A
2004	05COTO3887	5A
2004	05COTO3920	5B
2004	05COTO3938	5A
2004	05COTO3939	5A
2004	05COTO3940	5A
2004	05COTO3942	2
2004	05COTO3967	5A
2004	05COTO3986	5A
2004	05COTO3997	5B

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Tax Year	Case #	Class
2004	05COTO4003	5A
2004	05COTO4009	5A
2004	05COTO4011	5A
2004	05COTO4016	5A
2004	05COTO4021	5A
2004	05COTO4022	5A
2004	05COTO4028	5A
2004	05COTO4029	5A
2004	05COTO4030	5A
2004	05COTO4031	5B
2004	05COTO4037	5A
2005	07COTO001437	5A
2005	07COTO001438	5A
2005	07COTO001439	5A
2005	07COTO001466	5A
2005	07COTO001473	5A
2005	07COTO001477	5A
2005	07COTO001478	5A
2005	07COTO001480	5A
2005	07COTO001501	5A
2005	07COTO001513	5B
2005	07COTO001520	5B
2005	07COTO001530	2
2005	07COTO001602	5B
2005	07COTO001617	5A

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Tax Year	Case #	Class
2005	07COTO001618	5A
2005	07COTO001635	5A
2005	07COTO001641	5A
2005	07COTO001642	5A
2005	07COTO001644	5A
2005	07COTO001645	5A
2005	07COTO001646	5A
2005	07COTO001647	5A
2005	07COTO001649	5B
2005	07COTO002852	5A
2005	07COTO002853	5A
2006	07COTO000779	5A
2006	08COTO003813	5A
2006	08COTO003814	5A
2006	08COTO003815	5A
2006	08COTO003818	5A
2006	08COTO003839	5B
2006	08COTO003844	5A
2006	08COTO003853	5A
2006	08COTO003868	5A
2006	08COTO003870	5B
2006	08COTO003873	5A
2006	08COTO003913	5A
2006	08COTO003914	5B
2006	08COTO003921	5B

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Tax Year	Case #	Class
2006	08COTO003986	5A
2006	08COTO003987	5A
2006	08COTO003992	5B
2006	08COTO003993	5A
2006	08COTO003994	6B
2006	08COTO004014	5A
2006	08COTO004024	5A
2006	08COTO004029	5A
2006	08COTO004030	5A
2006	08COTO004367	5A
2006	08COTO004374	5A
2006	08COTO004377	5A
2006	08COTO004379	5B
2006	08COTO004385	5A
2006	08COTO004386	5A
2006	08COTO004387	5A
2006	08COTO004388	5A
2006	08COTO004389	5B
2006	08COTO005137	5A
2006	08COTO005138	5A
2006	08COTO005144	5A
2006	08COTO005145	5A
2007	08COTO005700	5A
2007	09COTO002800	5A
2007	09COTO003822	5A

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Tax Year	Case #	Class
2007	09COTO003823	5A
2007	09COTO003828	5A
2007	09COTO003843	5B
2007	09COTO003845	5A
2007	09COTO003847	5A
2007	09COTO003859	5A
2007	09COTO003863	5A
2007	09COTO003880	5B
2007	09COTO003887	5A
2007	09COTO003900	5A
2007	09COTO003905	4
2007	09COTO003908	5A
2007	09COTO003909	5A
2007	09COTO003912	2
2007	09COTO003921	2
2007	09COTO003922	5A
2007	09COTO003923	5A
2007	09COTO003926	5A
2007	09COTO003931	5A
2007	09COTO003942	5A
2007	09COTO003945	5A
2007	09COTO003947	5B
2007	09COTO003949	5A
2007	09COTO003950	5A
2007	09COTO003951	5A
2007	09COTO003952	5A

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Tax Year	Case #	Class
2007	09COTO003954	5A
2007	09COTO003955	5B
2007	09COTO004002	5B
2007	09COTO004004	5A
2007	09COTO004013	6B
2007	09COTO004014	5A
2007	09COTO004015	5B
2007	09COTO004016	5A
2007	09COTO004018	5A
2007	09COTO004019	5A
2007	09COTO004023	5A
2007	09COTO004024	5B
2007	09COTO004025	6B
2007	09COTO004042	5B
2007	09COTO004053	5A
2007	09COTO004059	5A
2007	09COTO004061	5A
2007	09COTO005709	5B
2007	09COTO005712	5A
2007	09COTO005715	5A
2007	09COTO005716	2
2007	09COTO005719	5A
2007	09COTO006182	5A
2008	09COTO006258	5A
2008	10COTO004621	5A

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Tax Year	Case #	Class
2008	10COTO004623	5A
2008	10COTO004631	5B
2008	10COTO004632	5B
2008	10COTO004633	5A
2008	10COTO004635	2
2008	10COTO004637	5A
2008	10COTO004639	5A
2008	10COTO004665	5B
2008	10COTO004670	5A
2008	10COTO004671	5A
2008	10COTO004672	5A
2008	10COTO004679	5A
2008	10COTO004680	5A
2008	10COTO004691	5B
2008	10COTO004692	5A
2008	10COTO004693	5A
2008	10COTO004694	5A
2008	10COTO004695	5A
2008	10COTO004705	5A
2008	10COTO004707	5A
2008	10COTO004708	5A
2008	10COTO004715	5B
2008	10COTO004716	5A
2008	10COTO004719	5A
2008	10COTO004720	5A

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Tax Year	Case #	Class
2008	10COTO004721	5A
2008	10COTO004722	5A
2008	10COTO004723	5A
2008	10COTO004728	5A
2008	10COTO004731	5B
2008	10COTO004740	5B
2008	10COTO004745	5B
2008	10COTO004746	5A
2008	10COTO004747	5A
2008	10COTO004752	4
2008	10COTO004755	5A
2008	10COTO004756	5A
2008	10COTO004759	2
2008	10COTO004761	2
2008	10COTO004763	5A
2008	10COTO004769	2
2008	10COTO004772	5A
2008	10COTO004773	5A
2008	10COTO004775	5A
2008	10COTO004787	5A
2008	10COTO004800	5A
2008	10COTO004808	5A
2008	10COTO004811	5A
2008	10COTO004813	5B
2008	10COTO004820	5B

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Tax Year	Case #	Class
2008	10COTO004842	5A
2008	10COTO004845	5A
2008	10COTO004847	5A
2008	10COTO004849	5B
2008	10COTO004850	5A
2008	10COTO004852	5A
2008	10COTO004853	5A
2008	10COTO004854	5A
2008	10COTO004857	5A
2008	10COTO004858	5A
2008	10COTO004859	5A
2008	10COTO004860	5A
2008	10COTO004861	5A
2008	10COTO004862	5A
2008	10COTO004864	5A
2008	10COTO004865	5A
2008	10COTO004866	5A
2008	10COTO004868	5A
2008	10COTO004869	5A
2008	10COTO004870	5A
2008	10COTO004871	5A
2008	10COTO004872	5A
2008	10COTO004873	5A
2008	10COTO004875	5A
2008	10COTO004878	5A

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Tax Year	Case #	Class
2008	10COTO004879	5A
2008	10COTO004880	5A
2008	10COTO004881	5A
2008	10COTO004882	5B
2008	10COTO004884	5A
2008	10COTO004885	5A
2008	10COTO004886	5A
2008	10COTO004887	5A
2008	10COTO004888	5A
2008	10COTO004890	5A
2008	10COTO004891	5A
2008	10COTO004893	5A
2008	10COTO004894	5A
2008	10COTO004895	5A
2008	10COTO004896	5A
2008	10COTO004897	6B
2008	10COTO004898	5A
2008	10COTO004899	5A
2008	10COTO004900	5A
2008	10COTO004901	5B
2008	10COTO004902	5A
2008	10COTO004903	6B
2008	10COTO004904	5A
2008	10COTO004910	5A
2008	10COTO004913	5A

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Tax Year	Case #	Class
2008	10COTO004914	5A
2008	10COTO004915	5A
2008	10COTO004918	5A
2008	10COTO004919	5A
2008	10COTO004920	5A
2008	10COTO004921	5A
2008	10COTO004923	5A
2008	10COTO004925	5A
2008	10COTO004927	5A
2008	10COTO004929	5B
2008	10COTO004930	5A
2008	10COTO004931	5A
2008	10COTO004935	5A
2008	10COTO004936	5A
2008	10COTO005918	5B
2008	10COTO006305	5A
2008	10COTO006306	5B
2008	10COTO006308	5A
2008	10COTO006314	5A
2008	10COTO006315	5A
2008	10COTO006316	5A
2008	10COTO006318	2
2008	10COTO006319	5A
2008	10COTO006722	5A
2008	10COTO006723	5A

Appendix E

SCHEDULE B

Intervening Taxing District	**Counsel for Districts**
City of Chicago	Mr. Richard Danaher Mr. Bernard Murphy City of Chicago Law Department 30 N. La Salle Street, Suite 1020 Chicago, Illinois 60602
Chicago Board of Education	Ms. Cynthia B. Harris Board of Education of the City of Chicago 125 S. Clark Street Suite 700 Chicago, Illinois 60603
Chicago Board of Education Board of Education of Consolidated High School District No. 230 Board of Education of Orland School District No. 135 Board of Education of Township High School District No. 211 Board of Education of Schaumburg Community Consolidated School District No. 54	Mr. Ares G. Dalianis Mr. Michael J. Hernandez Mr. Scott R. Metcalf Ms. Maria E. Mazza Franczek Radelet 300 S. Wacker Drive Suite 3400 Chicago, Illinois 60606

Appendix E

Intervening Taxing District	**Counsel for Districts**
Board of Education of Barrington Community Unit School District No. 220 Board of Education Riverside-Brookfield Township High School District No. 208 Board of Trustees of North Riverside Public Library Board of Education of Community Consolidated School District No. 15 Board of Education of Niles Township High School District No. 219	
West Northfield School District No. 31	Mr. Alan M. Mullins Scariano Himes and Petrarca
Riverside Public School District No. 96 School District No. 215	Two Prudential Plaza, Suite 3100 180 N. Stetson Chicago, Il1inois 60601-6702

Appendix E

Intervening Taxing District	**Counsel for Districts**
Glenbrook High School District No. 225 Niles Township High School District 219 Niles School District 71	Mr. Joel R. DeTella Sraga Hauser, LLC 19730 Governors Highway Suite 10 Flossmoor, Illinois 60422-2083
Village of Orland Park Orland Fire Protection District Orland Park Public Library	Mr. Donald E. Renner III Klein, Thorpe and Jenkins, Ltd. 20 N. Wacker Drive – Suite 1660 Chicago, Illinois 60606-2903
New Trier High School District No. 203 Wilmette School District No. 39 Village of Wilmette Wilmette Park District	Mr. Scott L. Ginsburg Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd. 55 W. Monroe Street, Suite 800 Chicago, lllinois 60603

APPENDIX F — MEMORANDUM OPINION AND ORDER IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, COUNTY DIVISION, DATED JULY 19, 2011

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, COUNTY DIVISION

No. 05 COTO 3938
No. 07 COTO 1618

WOODFIELD REALTY HOLDING COMPANY, LLC,

Plaintiff-Tax Objector,

v.

MARIA PAPPAS, TREASURER & COOK COUNTY COLLECTOR,

Defendant.

MEMORANDUM OPINION AND ORDER

I. Background

At issue in this opinion is Defendant Pappas's "Section 2-615 Motions to Strike and for a More Definite Statment [sic] in Plaintiff's First Amended Tax Objection Complaint and Complaint for Declaratory Judgment and Other Relief" for tax years 2004 and 2005.

Appendix F

The "First Amended Tax Objection Complaint, and Complaint for Declaratory Judgment and Other Relief," filed March 10, 2010, for tax year 2004 (No. 05 COTO 3938), and filed March 16, 2010, for tax year 2005 (No. 07 COTO 1618), seeks a partial refund of *ad valorem* real property taxes for land improved with an eleven-story multi-tenant office building located at 231 N. Martingale Road in Schaumburg, Illinois, and containing 294,329 square feet of rentable area. This complaint makes the following comprehensive allegations:

For the relevant time frame of 2004 and 2005, the Cook County Board of Commissioners passed the Cook County Code of Ordinances designating the following classes and associated percentage levels of assessment to be multiplied (among other factors) by a taxable parcel's full fair market value: Class 2, which includes single-family residential property, is to be assessed at 16%. Class 5a, which includes commercial property and property not included in other classes, is to be assessed at 38%.

Public and private sales ratio studies, which compare assessed valuations to actual sales within the relevant market as the most accurate mass appraisal technique, allegedly reveal that the percentage levels of assessment mandated by the Cook County Code of Ordinances as the *de jure* levels are significantly higher than the *de facto* levels of assessment for Plaintiff Woodfield's own class, class 5a, and for the lowest class at issue in the complaint, class 2. Allegedly, class 2 residential property is consistently assessed at 9% in spite of the legal mandate that it be assessed at 16%. Plaintiff Woodfield's own class,

class 5a commercial property, tends toward assessment at or around 22% for the relevant time period. The statistical analysis forming one evidentiary basis for the facts alleged in the complaint purports to be performed at the 95% probability level.

The complaint alleges that for 2004 and 2005, the assessor assessed Plaintiff Woodfield's property at class 5a assessed valuations of $10,943,999 and $10,934,482, respectively. Based on these two assessed valuations, the official *de jure* assessment level (38%) would imply a fair market value of $29,373,471, while the *de facto* assessment level for class 5a (22.5%) would imply a fair market value of $48,597,698. In actuality the property was appraised at a fair market value of $14,700,000 as of the first day of 2004, and it later sold for $17,300,000 in an arm's-length transaction in 2006.

Plaintiff Woodfield paid taxes based on the specific assessed valuations above in a timely manner, and the Cook County Board of Review, the administrative agency designated for revisiting the assessor's determinations, later confirmed them.

Count I alleges that the relevant property's assessed valuation reflects a fair market value that is excessive and "incorrect" within the meaning of the Illinois Property Tax Code provision for filing tax objection complaints with the circuit courts, 35 ILCS 200/23-15, and the taxpayer is therefore entitled to a refund with interest to the extent that the tax paid was based on the excess portion of the assessment.

Appendix F

Count II, also brought by means of the mechanism provided by the Illinois Property Tax Code, 35 ILCS 200/23-15, alleges that the assessed valuation of the relevant property violates the uniformity clause within article IX, section 4(b) of the 1970 Illinois Constitution in that the percentage level applied thereto was in excess of that applied to the majority of other similarly situated property within the same classification category, class 5a, established by the Cook County Code of Ordinances. Although the Cook County Code of Ordinances sets forth a level of assessment at 38% for class 5a, Cook County allegedly maintains a *de facto* assessment system whereby the assessor intentionally and systematically assesses the majority of class 5a property at or around 22%. Plaintiff Woodfield asserts a constitutional right to this same level of assessment, applied to members of the same class of similarly situated property, under the uniformity clause of the state constitution, Ill. Const. 1970, art. IX, § 4(b), in spite of whatever *de jure* level of assessment the Cook County Code of Ordinances sets forth. The taxpayer is therefore entitled to a refund with interest to the extent that the tax paid was based on an assessed valuation that exceeded the lower percentage level required by the uniformity clause of the state constitution.

Count III, also brought by means of the mechanism provided by the Illinois Property Tax Code, 35 ILCS 200/23-15, alleges that the assessed valuation of the relevant property violates the 2 1/2-to-1 clause within article IX, section 4(b) of the 1970 Illinois Constitution, which prohibits a county from maintaining an assessment-classification system whereby the percentage level of assessment applied to the highest class is more than

2 ½ times that applied to any other lower class. Plaintiff Woodfield asserts that because the Cook County assessor maintains a *de facto* assessment regime in which the majority of class 2 residential property is intentionally and systematically assessed at 9%, no other class or member of a class may be assessed at a rate significantly higher than 22.5%. Because Plaintiff Woodfield has been assessed at higher than 22.5%, its tax bills for 2004 and 2005 violate the 2 ½-to-1 clause within the state constitution, and the taxpayer is therefore entitled to a refund, with interest, to the extent that the tax paid was based on an assessed valuation that exceeded the maximum assessment level of 22.5%.

Count IV, also brought by means of the mechanism provided by the Illinois Property Tax Code, 35 ILCS 200/23-15, states essentially the same claim and theory as Count II, except that the basis for the taxpayer claiming a legal right to have the same lower percentage level of assessment as all other similarly situated property within the same class is derived from the federal constitution - the Fourteenth Amendment's Equal Protection Clause, U.S. Const. amend. XIV, § 1 ("No state shall … deny to any person within its jurisdiction the equal protection of the laws.") - rather than from the state constitution's uniformity clauses.

II. Motion to Strike Specified Allegations Under 735 ILCS 5/2-615

The first portion of Defendant Pappas's motion to strike requests that specified allegations in the tax

objection complaint be stricken, pursuant to 735 ILCS 5/2-615, for the reasons detailed below.

A. Legal Standards for Striking Complaint Allegations Pursuant to 735 ILCS 5/2-615

First, Defendant Pappas contends that complaints can only state ultimate facts to meet the sufficiency standard, not supporting evidence. Defendant Pappas's theory is that because supporting evidence is unnecessary to state a valid cause of action, allegations containing evidence that may later be used at trial are subject to being stricken under 735 ILCS 5/2-615.

We will begin with the usual rules utilized to resolve 735 ILCS 5/2-615 motions and then compare them to the request made in this motion. Typically, case law concerning 5/2-615 states that conclusions, labels, and characterizations will not suffice for the presence of specific, or well-pleaded, facts. *Adkins v. Sarah Bush Lincoln Health Center,* 129 Ill. 2d 497, 519-20 (1989); *Ozuk v. River Grove Bd. of Educ.,* 281 Ill. App. 3d 239, 244-45 (1st Dist. 1996); *Oropeza v. Board of Educ.,* 238 Ill. App. 3d 399, 402 (1st Dist. 1992); *Majewski v. Chicago Park Dist.,* 177 Ill. App. 3d 337, 340-41 (1st Dist. 1988). Some precedent similarly states that conclusions of fact are not a substitute for specific factual allegations. *Winfrey v. Chicago Park Dist.,* 274 Ill. App. 3d 939, 943 (1st Dist. 1995); *Benhart v. Rockford Park Dist.,* 218 Ill. App. 3d 554, 556-57 (2d Dist. 1991); *Friedman v. Krupp Corp.,* 282 Ill. App. 3d 436, 440 (1st Dist. 1996). Thus, a general preference for specificity in the 5/2-615 case law is clear.

However, the authority on which Defendant Pappas relies states that "[i]n Illinois a pleader is not required to set forth his evidence." *Zeitz v. Village of Glenview,* 227 Ill. App. 3d 891, 894 (1st Dist. 1992); *see also Board of Education v. Kankakee Federation of Teachers,* 46 Ill. 2d 439, 446 (1970). To say that a pleader is not required to plead his evidence is, however, quite different from saying that he is prohibited or barred from pleading evidence. The principle from *Zeitz* is often invoked, as it was in that case, when a defendant complains that the plaintiff has not pled enough or stated allegations with sufficient detail, and the reviewing court disagrees with the pleading's sufficiency and then states that the complaining defendant is asking for the pleading of evidence, meaning that the claim should instead proceed. *E.g., Zeitz,* 227 Ill. App. 3d at 894-98. Here, the defendant is not complaining that the plaintiff has not pled enough information or detail; rather, she is complaining that the plaintiff has pled too much. An entirely different set of principles are at play. By contrast to deficient pleading, voluntarily pleading evidence does accomplish the goal of presenting, defining, and narrowing issues for trial and limiting the proof needed therefor (albeit in ways that may be undesirable for a defendant or have troubling implications). It is vague, ambiguous pleadings that tend to defeat the goal of defining issues for trial, which is why the Illinois courts hold that a plaintiff, at a bare minimum, must plead sufficient ultimate facts on every element of every claim stated. But those typical 5/2-615 holdings were setting a floor for keeping a case alive in the courthouse, not a ceiling. The plaintiff in this matter has, generally speaking, satisfied and exceeded the floor requirement, and any debates over what are or

are not "ultimate" facts instead become meaningless and unproductive at this (or really any) stage of litigation. Therefore, the Court will not strike any particular allegations for the reason that they are not "ultimate facts" or because they constitute evidence. As the court stated in *McCarthy v. Allstate Ins. Co.,* 76 Ill. App. 3d 320, 324 (1st Dist. 1979), "Defendant did not allege below nor does defendant argue on appeal that plaintiff failed to allege facts sufficient to state a cause of action. Moreover, it would appear that although the evidentiary facts pleaded by plaintiff were not necessary to the pleading, they did not detract from plaintiff's cause of action."

These conclusions do not mean that certain types of allegations can never be stricken from a complaint, and Defendant Pappas's motion does occasionally allude to a proper ground for striking allegations: materiality, often known as relevance. One way an allegation could be stricken from an otherwise sufficient pleading is when it is completely "immaterial" or irrelevant, and the Court is able to confidently make that determination before discovery has even occurred. For instance, *Browning v. Heritage Ins. Co.,* 33 Ill. App. 3d 943, 948 (2d Dist. 1975), does support the striking of surplus and unnecessary allegations, but it does so on the basis of the matter being "immaterial." *See also* 735 ILCS 5/2-615(a) (motion may request "that designated immaterial matter be stricken out"); *McCarthy v. Allstate Ins. Co.,* 76 Ill. App. 3d 320, 324 (1st Dist. 1979). The materiality standard will therefore be used to evaluate the specific requests to strike various allegations.

B. Application of Materiality Standard to the Motion's Request to Strike Specific Allegations

Defendant Pappas's motion explains how the cause of action represented by an Illinois tax objection complaint concerns one tax year at a time, while the allegations in the complaint refer to tax years before and after the tax year at issue therein. Pappas demands that allegations pertaining to the previous and subsequent tax years be stricken from each complaint as immaterial.

The Property Tax Code creates a mechanism for the "court, sitting without a jury, [to] hear and determine all objections specified to the taxes, assessments, or levies in question." 35 ILCS 200/23-15. The objection in Count IV of the complaint is based on the taxpayer's federal rights under the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and under *Allegheny Pittsburgh Coal Co. v. County Com.,* 488 U.S. 336, 344-46 (1989), which generally require that a taxpayer's real property be assessed at the same percentage or proportion at which other property within the same class was assessed, regardless of whether or not those parcels were sold. In construing the federal right, the U.S. Supreme Court referred to the rate of time required for bringing a taxpayer's level of assessment into uniformity with any remainder of the class subject to a lower level: "As long as general adjustments are accurate enough over a short period of time to equalize the differences in proportion between the assessments of a class of property holders, the Equal Protection Clause is satisfied." *Id.* at 343. "Petitioners' property has been assessed at roughly 8 to

35 times more than comparable neighboring property, and these discrepancies have continued for more than 10 years with little change." *Id.* at 344. "The relative undervaluation of comparable property in Webster County over time therefore denies petitioners the equal protection of the law." *Id.* at 346. It is not clear why the timing and rate of correction at which the disparate-assessment impact is alleviated can be considered in a description of the federal constitutional right but not considered in a taxpayer's tax objection complaint raising the same right.

Additionally, a taxpayer's assertions concerning recent tax years are material because they tend to bolster its allegation of general intent to discriminate with respect to the tax year at issue in the tax objection complaint. The Court previously ruled that the general-intent-to-discriminate element of the federal constitutional claim could simply be inferred from any evidence showing that the taxpayer's assessment level created a disparate impact on its property compared to the remainder of the same class. *See also Long Island Lighting Co. v. Brookhaven,* 889 F.2d 428, 432 (2d Cir. 1989). While this ruling and conclusion continue to stand, it becomes important not to bar other forms of evidence tending to prove a general intent to discriminate for the year at issue, especially in light of the prohibition in 35 ILCS 200/23-15(b)(3) against the use of evidence pertaining directly to the assessor's methodology, intent, and motivation. Whenever a pattern emerges showing that other property in the same class was underassessed for a period of years that includes the year at issue in the complaint, any claim that such underassessment was an anomaly or an inadvertent

result for that year becomes less credible. Furthermore, allegations concerning patterns and trends encompassing other tax years can be material or relevant in considering the existence of intentional conduct for the tax year at issue. Such evidence is also not explicitly barred in the same way that direct evidence of the assessor's methodology, intent, and motivation has been barred.

In contrast, allegations concerning the percentage levels of assessment for classes other than Class 5a stand on a different footing. The constitutional rights to uniform and equal levels of assessment pertain only to the complaining taxpayer's class and not to other classifications of property that can withstand rational-basis review. *See.* Ill. Const. 1970, art. IX, § 4(b); *Allegheny Pittsburgh Coal Co. v. County Com.*, 488 U.S. 336, 344-45 & n.4 (1989). Therefore, other classes are irrelevant to Count II and Count IV.

The Count III claim under the 2½-to-1 clause in article IX, section 4 of the 1970 Illinois Constitution could in theory bring into play the assessments for any other class that enjoys a *de facto* level of assessment that is outside of and below the prescribed range. As a practical matter, the class assigned the lowest percentage level, Class 2 single-family residential property, will present the best target for a taxpayer's claim that its rights under the 2½-to-1 clause have been violated. In actuality, the Count III claim does formulate the allegations with respect to Class 2 property and none other, making the assessments for Class 2 property material.

Appendix F

For the foregoing reasons, all allegations pertaining to classes other than Class 2 and Class 5a- namely, Class 5b industrial property and Class 3 residential rental property - will be deemed immaterial and irrelevant and stricken from the complaint accordingly. To the extent that this information is incorporated in preexisting documents apart from the pleadings, such information can be simply disregarded by the parties and the Court in future litigation, while the complaint can be amended to reflect the changes required after the Court orders that those specific allegations be stricken.

Defendant Pappas requests that a series of paragraphs beginning with paragraph 24 and ending with paragraph 36 be stricken from the amended complaint. In summary, these paragraphs allege substantially as follows:

The complaint contends that the assessor assessed Class 2 residential property at or around 9% of the actual full fair market value; however, a completely different, lower set of full fair market values (or "fictitious 'market values"') were listed in public records to give the appearance that the assessor assessed residential property at or around the ordinance level of 16%, although a multiplication factor of 9% would have produced the same assessed valuations listed for Class 2 properties if the actual full fair market values of Class 2 properties were utilized to calculate respective tax liabilities. The actual tax bills sent to Class 2 taxpayers displayed the false, lower sets of full fair market values to create the appearance that the class had been assessed at the level of 16% mandated by the applicable ordinance, concealing the

fact that the assessed valuation was in reality the product of a more accurate full fair market value multiplied by a factor of 9%.

Similarly, the Illinois Property Tax Appeal Board, relying on the Illinois Department of Revenue's sales ratio studies' three-year adjusted average, applied a 10% level of assessment to reviews of assessments for Class 2 properties.

The maintenance of assessment levels differing from the actual, formal ordinance levels of assessment created a *de facto* regime of assessment levels for Class 2 and Class 5a that were not publicly known or acknowledged prior to 2008. Taxpayers burdened with the imposition of the higher 38% ordinance level of assessment experienced difficulty obtaining constitutionally required correction through administrative proceedings because of the obscurity of the *de facto* levels of assessment.

This situation subsisted from the time of the tax years at issue in the 2004 and 2005 complaints until the Cook County Board of Commissioners amended the classification ordinance in September 2008, effective January 1, 2009, to substantially and in effect merge the aforementioned *de facto* percentage levels with the official ordinance levels of assessment consisting of 10% for Class 2 properties and 25% for Class 5a properties. Statements of both the county assessor and the Cook County Board of Commissioners tended to confirm the merger of the aforementioned *de facto* percentage levels with the new official ordinance levels of assessment. In April 2008,

the county assessor publicly proposed that the county board redesignate percentage levels of assessment, to be applied to full fair market value as described above, though the explicit change in the officially mandated level was not expected to change taxpayers' assessed valuations (and, ultimately, their tax liabilities) due to the fact that the previous *de jure* percentage levels had *not* been applied to full fair market value. Statements by members of the Cook County Board of Commissioners Finance Committee during September 2008 were to a similar effect, emphasizing that the ordinance amendment creating the new percentage levels of 10% and 25% for the two classes would not itself alter the assessed valuation or the tax based thereon.

According to the complaint, the storyline for the entire decade describes a set of circumstances that plausibly affected the included years of 2004 and 2005 now at issue. Although individual sentences might be technically immaterial and tend to stray impliedly into Class 2 issues for which only Class 2 members would have standing to complain, the Court will not parse individual sentences. As a whole, these allegations, if taken as true and construed in favor of the taxpayer-plaintiff, tend to support an inference that during tax years 2004 and 2005, the *de facto* level of assessment for Class 2 property was 9% to 10% rather than 16%, while the *de facto* level of assessment for Class 5a property was around 22% to 25% rather than 38%. These conclusions would in turn support Plaintiff Woodfield's claim that any assessment of its property at the 38% ordinance level for tax years 2004 and 2005 would violate its rights under the uniformity clause within

article IX, section 4(b) of the 1970 Illinois Constitution (Count II) and under the 2 ½-to-1 clause within the same provision (Count III). Therefore, paragraphs 24 through 36 contain allegations that are material or relevant to this litigation and cannot be stricken under 735 ILCS 5/2-615. Finally, these allegations need not be utilized to establish the intent or methodology of the assessor in violation of 35 ILCS 200/23-15 to the extent that they support the mere existence of the aforementioned *de facto* levels of assessment for Class 2 and Class 5a, regardless of intent, which in turn lends support to Plaintiff Woodfield's claims. The motion to strike paragraphs 24 through 36 will be denied accordingly.

Finally, a brief, *ad hoc* discussion of two other paragraphs will resolve their potential relevance to this case. Paragraph 11 alleges that the Cook County Board of Review reviewed, adjusted, and lowered a relatively small percentage of the assessor's total assessments (less than 16%) that would be at issue for the 2004 and 2005 tax years (and also at issue for previous and subsequent tax years establishing any pattern or trend). If all inferences are drawn in favor of the nonmovant, a trier of fact could conclude from this allegation that Cook County - as a whole that includes its subsequent, designated administrative procedure - largely failed to resolve whatever legal problem the county assessor created by assessing certain classes at a percentage level lower than that mandated by the applicable county ordinance, as explained above.

Paragraph 15 alleges that, from 2000 to 2008, the Class 2 residential properties grew to become a higher

and higher percentage of the entire county's assessed-valuation tax base, while the Class 5a commercial property became a lower percentage of the entire assessed valuation of the county's tax base. Although this paragraph does drift away from what the pivotal factual issues will be in this case, if the allegation is construed in the light most favorable to the nonmovant, one could conclude that a class that grew to become a more substantial portion of the base of property being taxed was in fact being given a significant tax break, while certain members of a class that was becoming a diminished portion of the tax base were not given a similar break, leaving them saddled with a larger tax burden. This inference could, in turn, lend support to an explanation of how and why a claim under the 2½-to-1 clause came into existence, making it more plausible.

III. Motion for More Definite Prayers for Relief Pursuant to 735 ILCS 5/2-615 and 2-604

Defendant Pappas has also requested a more definite pleading under 735 ILCS 5/2-615(a), relying on the 5/2-604 regulation of the prayer for relief. Defendant Pappas demands that Plaintiff Woodfield specify the market value, assessment level, assessed valuation, and refund sought under each and every count.

The applicable provision provides as follows:

> Prayer for relief. Every count in every complaint and counterclaim shall contain specific prayers for the relief to which the pleader deems himself

> or herself entitled except that in actions for injury to the person, no *ad damnum* may be pleaded except to the minimum extent necessary to comply with the circuit rules of assignment where the claim is filed. Relief may be requested in the alternative.... In actions for injury to the person, any complaint filed which contains an *ad damnum,* except to the minimum extent necessary to comply with the circuit rules of assignment where the claim is filed, shall, on motion of a defendant or on the court's own motion, be dismissed without prejudice. Except in case of default, the prayer for relief does not limit the relief obtainable, but where other relief is sought the court shall, by proper orders, and upon terms that may be just, protect the adverse party against prejudice by reason of surprise....
>
> Nothing in this Section shall be construed as prohibiting the defendant from requesting of the plaintiff by interrogatory the amount of damages which will be sought.

735 ILCS 5/2-604. Thus, prayers for relief must be "specific," unless the claim is an "action[] for injury to the person," in which case the amount demanded cannot and should not be specified apart from the minimum required for complying with the circuit court rules enabling case assignment within the court. The issue becomes whether an action for injury to the person only contemplates actual physical injury or any form of injury, such as economic or

monetary injury without physical injury. The precedent interpreting 735 ILCS 5/2-604 is not particularly well developed. *Johnson v. Lincoln Christian College,* 150 Ill. App. 3d 733, 747-748 (4th Dist. 1986), compared an application of this rule involving a claim for tortious interference with contractual rights to an application of the rule involving a claim for actual physical, personal injury. The court concluded that a cause of action for tortious interference with contractual rights was governed by the general rule that prayers for relief "must be specific" rather than the exception for an "action[] for injury to the person." The four causes of action in this case demanding monetary relief in the form of a tax refund are more akin to the cause of action for tortious interference with contractual rights than to any cause of action for actual physical injury to a person. Therefore, the Court will apply the general rule that prayers for relief must be specific.

The specificity can but need not include every piece of information demanded by Defendant Pappas in her motion to strike. The prayer for relief must make any specific numeric assertion that could be reasonably deemed "specific" in the context of this type of civil action. As stated in the statute, and as correctly argued by Plaintiff Woodfield in opposition, the relief demanded in the prayer does not limit the ultimate recovery in the event that the evidence at trial justifies a different, greater, or lesser amount. Also, greater specificity can always be sought in an interrogatory, as noted by the rule. Those points being made, at this particular stage of the litigation, Defendant Pappas has posed a valid objection to a pleading based on

735 ILCS 5/2-604, and that objection will be sustained and the pleadings amended accordingly.

ORDER

Having considered the briefs and oral arguments of the parties, the Court hereby orders the following disposition of Defendant Pappas's "Section 2-615 Motions to Strike and for a More Definite Statment [sic] in Plaintiff's First Amended Tax Objection Complaint and Complaint for Declaratory Judgment and Other Relief":

1. The motion to strike allegations pertaining to assessment classes other than Class 2 and Class 5a property is GRANTED.

2. The motion for a more definite statement of the prayer for relief for each count of the tax objection complaint is GRANTED.

3. The remaining portions of the 2-615 motion to strike are DENIED.

Date: July 19, 2011 **Enter:**

/s/_____
Judge Alfred J. Paul

APPENDIX G — MEMORANDUM OPINION AND ORDER IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, COUNTY DEPARTMENT, COUNTY DIVISION, DATED JUNE 2, 2011

**IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT
COUNTY DIVISION**

No. 05 COTO 3938
No. 07 COTO 1618

WOODFIELD REALTY
HOLDING COMPANY, LLC,

Plaintiff-Tax Objector,

v.

MARIA PAPPAS, TREASURER
& COOK COUNTY COLLECTOR,

Defendant.

MEMORANDUM OPINION AND ORDER

I. Background

At issue in this opinion is Defendant Pappas's "Section 2-619.1 Motion to Dismiss Plaintiff's First Amended Tax Objection Complaint and Complaint for Declaratory Judgment and Other Relief Under 42 U.S.C. § § 1983 and 1988." Except as noted in this opinion, the facts,

arguments, and analysis apply to both tax years 2004 and 2005 and both captioned tax objection complaints before this Court.

The "First Amended Tax Objection Complaint, and Complaint for Declaratory Judgment and Other Relief," filed March 10, 2010, for tax year 2004 (No. 05 COTO 3938), and filed March 16, 2010, for tax year 2005 (No. 07 COTO 1618), seeks a partial refund of *ad valorem* real property taxes for land improved with an eleven-story multi-tenant office building, located at 231 N. Martingale Road in Schaumburg, Illinois, and containing 294,329 square feet of rentable area. This complaint makes the following comprehensive allegations:

For the relevant time frame of 2004 and 2005, the Cook County Board of Commissioners passed the Cook County Code of Ordinances designating the following classes and associated percentage levels of assessment to be multiplied (among other factors) by a taxable parcel's full fair market value: Class 2, which includes single-family residential property, is to be assessed at 16%. Class 5a, which includes commercial property and property not included in other classes, is to be assessed at 38%.

Public and private sales ratio studies, which compare assessed valuations to actual sales within the relevant market as the most accurate mass appraisal technique, allegedly reveal that the percentage levels of assessment mandated by the Cook County Code of Ordinances as the *de jure* levels are significantly higher than the *de facto* levels of assessment for Plaintiff Woodfield's own

class, class 5a, and for the lowest class at issue in the complaint, class 2. Allegedly, class 2 residential property is consistently assessed at 9% in spite of the legal mandate that it be assessed at 16%. Plaintiff Woodfield's own class, class 5a commercial property, tends toward assessment at or around 22% for the relevant time period. The statistical analysis forming one evidentiary basis for the facts alleged in the complaint purports to be performed at the 95% probability level.

The complaint alleges that for 2004 and 2005, the assessor assessed Plaintiff Woodfield's property at class 5a commercial levels of 10,943,999 and 10,934,482, respectively. Based on these two assessed valuations, the official *de jure* assessment level (38%) would imply a fair market value of $29,373,471, while the *de facto* assessment level for class 5a (22.5%) would imply a fair market value of $48,597,698. In actuality the property was appraised at a fair market value of $14,700,000 as of the first day of 2004, and it later sold for $17,300,000 in an arm's length transaction in 2006.

Plaintiff Woodfield paid taxes based on the specific assessed valuations above in a timely manner, and the Cook County Board of Review, the administrative agency designated for revisiting the assessor's determinations, later confirmed them.

Count I alleges that the relevant property's assessed valuation reflects a fair market value that is excessive and "incorrect" within the meaning of the Illinois Property Tax Code provision for filing tax objection complaints with

the circuit courts, 3S ILCS 200/23-15, and the taxpayer is therefore entitled to a refund with interest to the extent that the tax paid was based on the excess portion of the assessment.

Count II, also brought by means of the mechanism provided by the Illinois Property Tax Code, 3S ILCS 200/23-15, alleges that the assessed valuation of the relevant property violates the uniformity clause within article IX, section 4(b) of the 1970 Illinois Constitution in that the percentage level applied thereto was in excess of that applied to the majority of other similarly situated property within the same classification category, class 5a, established by the Cook County Code of Ordinances.[1] Although the Cook County Code of Ordinances sets forth a level of assessment at 38% for class 5a, Cook County allegedly maintains a *de facto* assessment system whereby the assessor intentionally and systematically assesses the majority of class 5a property at or around 22%. Plaintiff Woodfield asserts a constitutional right to this same level of assessment, applied to members of the same class of similarly situated property, under the uniformity clause of the state constitution, Ill. Const. 1970, art. IX, § 4(b), in spite of whatever *de jure* level of assessment the Cook County Code of Ordinances sets forth. The taxpayer is therefore entitled to a refund with interest to the extent that the tax paid was based on an assessed valuation

1. The official classification ordinance for real-property assessment and taxation is required by statute enacted by the state legislature, 35 ILCS 200/9-150, pursuant to authority granted in the same constitutional provision, section 4(b), on which Count II is based, see Ill. Const. 1970, art. IX, § 4(b).

that exceeded the lower percentage level required by the uniformity clause of the state constitution.

Count III, also brought by means of the mechanism provided by the Illinois Property Tax Code, 35 ILCS 200/23-15, alleges that the assessed valuation of the relevant property violates the 2 1/2-to-1 clause within article IX, section 4(b) of the 1970 Illinois Constitution, which prohibits a county from maintaining an assessment-classification system whereby the percentage level of assessment applied to the highest class is more than 2 1/2 times that applied to any other lower class. Plaintiff Woodfield asserts that because the Cook County assessor maintains a *de facto* assessment regime in which the majority of class 2 residential property is intentionally and systematically assessed at 9%, no other class or member of a class may be assessed at a rate significantly higher than 22.5%. Because Plaintiff Woodfield has been assessed at higher than 22.5%, its tax bill for 2004 violates the 2 1/2-to-1 clause within the state constitution, and the taxpayer is therefore entitled to a refund, with interest, to the extent that the tax paid was based on an assessed valuation that exceeded the maximum assessment level of 22.5%, as required by article IX, section 4(b) of the 1970 Illinois Constitution.

Count IV, also brought by means of the mechanism provided by the Illinois Property Tax Code, 35 ILCS 200/23-15, states essentially the same claim and theory as Count II, except that the basis for the taxpayer claiming a legal right to have the same lower percentage level of assessment as all other similarly situated property, i.e.,

as other members of the same class, is derived from the federal constitution- the Fourteenth Amendment's Equal Protection Clause, U.S. Const. amend. XIV, § 1 ("No state shall … deny to any person within its jurisdiction the equal protection of the laws.")– rather than from the state constitution's uniformity clauses.

Similarly, Count Vis based on the same underlying legal right under the U.S. Constitution's Equal Protection Clause as is stated in Count IV (and is also similar to Count II in many respects). However, Count V is the only count not brought pursuant to the tax-objection- complaint mechanism provided by the Illinois Property Tax Code, 35 ILCS 200/23-15. Instead, in Count V, Plaintiff Woodfield asserts its rights under federal law, in the alternative to the relief demanded in Count IV, pursuant to the mechanism provided in 42 U.S.C. § 1983, which also potentially triggers attorney's fees and costs pursuant to 42 U.S.C. § 1988 in the event the plaintiff prevails. Because federal law requires that, in the context of state and local taxation, a taxpayer may maintain an action under 42 U.S.C. § 1983 if and when the state fails to provide an adequate remedy at law for vindicating the underlying federal right giving rise to the taxpayer's claim, Plaintiff Woodfield has pled that Count V satisfies this element or requirement in the event that restrictions built into the Illinois Property Tax Code result in the Count IV claim based on the Fourteenth Amendment's Equal Protection Clause being not actionable. Specifically, Plaintiff Woodfield asserts that the Illinois Property Tax Code does not provide an adequate legal remedy for vindicating its federal right to the extent that 35 ILCS 200/23-10 and 23-15 render the federal claim inactionable as a result

of their prohibition against the review of assessment methodologies, techniques, and procedures of assessing officials and of such officials' intent and mental processes.

Defendant Pappas has filed the combined motion now at issue under 735 ILCS 5/2-619.1,[2] attacking every count except for Count I. The different standards for dismissal and arguments pertaining separately to Counts II, III, IV, and V will be discussed in each section as necessary.

II. Motion to Dismiss Count III as Legally Insufficient to State a Cause of Action Under 735 ILCS 5/2-615

Count III of the First Amended Tax Objection Complaint, as detailed above, asserts a right to a tax refund as a result of the county government's alleged violation of article IX, section 4(b) of the 1970 Illinois Constitution, which provides as follows:

2.

> Combined motions. Motions with respect to pleadings under Section 2-615 [735 ILCS 5/2-615], motions for involuntary dismissal or other relief under Section 2-619 [735 ILCS 5/2-619], and motions for summary judgment under Section 2-1005 [735 ILCS 5/2-1 005] may be filed together as a single motion in any combination. A combined motion, however, shall be in parts. Each part shall be limited to and shall specify that it is made under one of Sections 2-615, 2-619, or 2-1005. Each part shall also clearly show the points or grounds relied upon under the Section upon which it is based.

735 ILCS 5/2-619.1.

> (b) Subject to such limitations as the General Assembly may hereafter prescribe by law, counties with a population of more than 200,000 may classify or continue to classify real property for purposes of taxation. Any such classification shall be reasonable and assessments shall be uniform within each class. The level of assessment or rate of tax of the highest class in a county shall not exceed two and one-halftimes the level of assessment or rate of tax of the lowest class in that county. Real property used in farming in a county shall not be assessed at a higher level of assessment than single family residential real property in that county….

Ill. Const. 1970, art. IX, § 4(b). Also relevant to Count III is the Illinois General Assembly's later enactment of the following limitation on a county's ability to classify real property for purposes of taxation:

> Classification of property. Where property is classified for purposes of taxation in accordance with Section 4 of Article IX of the Constitution and with such other limitations as may be prescribed by law, the classification must be established by ordinance of the county board. If not so established, the classification is void.

35 ILCS 200/9-150 (originally enacted as Public Act 78-700, 1973 Ill. Laws 2107-08 (approved September 10, 1973; effective January 1, 1974)). As a consequence

of the timing of this statute, once the ratification of the 1970 Illinois Constitution occurred, tax years 1971, 1972, and 1973 were governed by the above section 4(b) constitutional provision but were not directly governed by any statutes or ordinances. Starting with tax year 1974, 35 ILCS 200/9-150 required a classifying county to classify explicitly by action of the county board. In compliance with this statute, Cook County enacted the Real Property Assessment Classification Ordinance. This ordinance was first effective for tax year 1974. *See People ex rel. Rosewell v. United States Steel Corp.,* 86 Ill. App. 3d 117, 125 (1st Dist. 1980). For tax years 2004 and 2005, the relevant version of the Real Property Assessment Classification Ordinance designated Class 2 as the class containing most single-family residential property, while Class 5a contained property not falling in any other delineated category, including many parcels of commercial-use property such as Plaintiff Woodfield's property. *See* Cook County Real Property Assessment Classification Ordinance, Ordinances & Resolutions of the County of Cook, ch. 13-14 (1990) (assessment classes); *see also Chicagoland Chamber of Commerce v. Pappas,* 378 Ill. App. 3d 334, 338 (1st Dist. 2007). The ordinance mandated that the county assessor and county board of review assess Class 2 at 16% of fair cash value and assess Class 5a at 38% of fair cash value. *See* Ordinances & Resolutions of the County of Cook, ch. 13-15 (1990) (market value percentages).[3]

3. After 1990, an official volume of Cook County ordinances was not republished until 2006, after the tax years at issue herein. The Cook County Real Property Assessment Classification Ordinance was amended several times after 1990 without altering the basic information described in this paragraph.

Appendix G

1. The 2 1/2-to-1 Clause and the Sixth Illinois Constitutional Convention Debates

Defendant Pappas has filed a motion requesting dismissal of Count III pursuant to 735 ILCS 5/2-615 for failure to state a legally cognizable claim. The first major Count III issue raised is whether the 2 1/2-to-1 clause in section 4(b) creates a right that an individual Illinois taxpayer can enforce against the executive branch of the government by resort to a remedy from the judiciary. Defendant Pappas contends that the provision applies only to entire classes of property within a county, not to an individual member of those classes whose particular parcel falls outside the prescribed assessment-level range after the taxpayer's percentage level is compared to a lower class's level. That is, her position is that no private cause of action exists under the 2 1/2-to-1 clause in section 4(b). Defendant Pappas highlights the language of the provision itself to support her argument that the restriction functions only with respect to classes as a whole and not to individual taxpayers: "The level of assessment or rate of tax of *the highest class* in a county shall not exceed two and one-half times the level of assessment or rate of tax of *the lowest class* in that county." Ill. Const. 1970, art. IX, § 4(b) (emphasis added). Similarly, Defendant Pappas relies on statements to the same effect in the legislative history: "The two and one-half to one ratio which is applicable to any county adopting a classification system will act as a safeguard to prevent any class of property from being singled out for repressive taxation." Sixth Illinois Constitutional Convention Committee on Revenue and Finance, *Report*

of the Committee on Revenue and Finance Supporting Recommended Revenue Article Including Dissenting Statements and Minority Proposals: Proposal Number 2, at 58 (1970); *see also* 3 *Record of Proceedings, Sixth Illinois Constitutional Convention* 1904 (John W. Lewis, Secretary of State) (statement of Vice-President Lyons). These passages emphasize the nature of the provision as being one regulating classes and do not specifically address its application in situations involving individual taxpayers demanding relief.

On some level, Defendant Pappas is right: The 2 ½-to-1 clause does put a limit on the percentage level of assessment applied to a class of real property as compared to any class assigned a lower percentage level. It does regulate assessment classes in the aggregate. Defendant Pappas contends that this conclusion ends the analysis in favor of the conclusion that Count III does not state a legally cognizable claim. However, as the Court sees it, the issue is really whether, as part thereof , members of the higher class can assert a right to enforcement of the clause if and when they can establish that they fall above the constitutionally designated range as compared to any aggregated lower class's level of assessment. This statement of the issue is really a subsidiary and more precise question when compared to the issue as Defendant Pappas has framed it and resolved it. Defendant Pappas's view does not necessarily have to be erroneous for Plaintiff Woodfield's view of the issue to also be correct. From time to time, and in different contexts, courts must address whether members of a class can assert rights as a member of that class. *E.g., Duncan v. National Tea Co.,* 14 Ill. App.

2d 280, 294-96 (1st Dist. 1957) (stockholder suing on behalf of other stockholders to enforce a corporation's right,); *Cox v. Shupe,* 41 Ill. App. 2d 413, 420-21 (4th Dist. 1963) (members of unincorporated voluntary associations must sue and be sued separately, not aggregately, at least when the action is at law and not in equity); *Metzger v. DaRosa,* 209 Ill. 2d 30, 36 (2004) (considering the plaintiffs class membership in determining whether he has an implied private right of action under the Illinois Personnel Code); *Fisher v. Lexington Health Care,* 188 Ill. 2d 455, 460 (1999) (same question under the Nursing Home Care Act); *Corgan v. Muehling*, 143 Ill. 2d 296, 313-315 (1991) (same question under the Psychologist Registration Act).

In the case at bar, the constitutional provision at issue does not specify who can enforce the right of the disadvantaged class, under what circumstances a violation of the provision may be rectified, or what remedies or mechanisms would be permissible when a violation of the provision exists. Thus, the 2 1/2-to-1 clause does contain a certain degree of ambiguity, and this ambiguity permits a consideration of the constitutional history of the clause:

> Generally, the rules of statutory construction are applicable to the construction of a constitutional provision. *(People ex rel. Chicago Bar Association v. State Board of Elections* (1990), 136 Ill. 2d 513, 526, 146 Ill. Dec. 126, 558 N.E.2d 89, citing *Coalition for Political Honesty v. State Board of Elections* (1976), 65 Ill. 2d 453, 464, 3 Ill. Dec. 728, 359 N.E.2d 138.) As with statutory construction, this court must construe

> a constitutional provision so as to effectuate the intent of the drafters. *(People v. Turner* (1964), 31 Ill. 2d 197, 199,201 N.E.2d 415.) The best indication of the intent of the drafters of a constitutional provision is the language which they voted to adopt. *(Caryn v. City of Moline* (1978), 71 Ill. 2d 194, 200, 15 Ill. Dec. 776, 374 N.E.2d 211.) And so it is with statutory construction. *(See In re Marriage of Logston* (1984), 103 Ill. 2d 266, 277, 82 Ill. Dec. 633, 469 N.E.2d 167.) Where the statutory language is clear and unambiguous, it will be given effect without resort to other aids for construction. *(People ex rel. Baker v. Cowlin* (1992), 154 Ill. 2d 193, 197, 180 Ill. Dec. 738, 607 N.E.2d 1251.) As for construing the constitution, while the "'true inquiry concerns the understanding of the meaning of its provisions by the voters who adopted it, still the practice of consulting the debates of the members of the convention which framed the constitution has long been indulged in by courts in determining the meaning of provisions which are thought to be doubtful.'" *Board of Education, School District No. 142 v. Bakalis* (1973), 54 Ill. 2d 448, 461-62, 299 N.E.2d 737, quoting *People ex rel. Keenan v. McGuane* (1958), 13 Ill. 2d 520, 527, 150 N.E.2d 168.

Baker v. Miller, 159 Ill. 2d 249, 257 (1994); *see also People ex rel. Mooney v. Hutchinson,* 172 Ill. 486, 497 (1898) ("The general principles governing the construction

of constitutions are the same as those that apply to statutes.").

As detailed further below, the 2 ½-to-1 clause originated in a recognition that Cook County had maintained an unofficial, *de facto* real property classification regime with differing levels of assessment for decades, and the delegates desired that the new constitution would both legalize this practice, also making it potentially available to other counties, and limit it in such a way that no one class could be forced to bear an unreasonable portion of a county's tax burden. As to the specific subsidiary issue of whether a taxpayer, as a member of a disadvantaged class, has a judicially enforceable right, the passages below are enlightening. One passage- the most directly relevant one - contains language assuming, as a background principle, that the Illinois courts would be entertaining litigation and ultimately enforcing the 2 ½-to-1 clause in response to taxpayer challenges: "[I]t may be that the court would sustain an average figure, but I would think, as a lawyer, that you'd have a pretty good case if you had a house at 20 percent and a factory at 80 percent, … that that was a four to one ratio, and the article only called for a two and one-half to one." 3 *Record of Proceedings, Sixth Illinois Constitutional Convention* 1903 (John W. Lewis, Secretary of State) (Delegate Elward's statement).

Other passages embedded in the explanations and discussions of the 2 ½-to-1 clause are fully cognizant of judicial review of individual taxpayers' assessed valuations at inflated percentage levels. Even if the below case references were based on other legal theories of relief

such as uniformity or overvaluation, their occurrence within the context of the debates on the 2½-to-1 clause represents a significant underlying awareness of forced percentage reduction:

> I just wanted to say that the assessments at 125 percent of fair market value will be sustained in the courts, because they have been. Because if there is not the 20 percent differential, the court will uphold the assessor ….

3 *Record of Proceedings, Sixth Illinois Constitutional Convention* 1904 (John W. Lewis, Secretary of State) (Delegate Connor's statement).

> You have to have a much broader span in order to win on appeal than you need to win in the trial courts, at least in Cook County, and I think that is true in most places in the state; but it does depend, to some extent, on the attitude of the trial court.

3 *Record of Proceedings, Sixth Illinois Constitutional Convention* 1904 (John W. Lewis, Secretary of State) (Vice-President Lyons' statement).

> [O]ur supreme court has said for many, many years that you didn't have a case before it … unless you were able to prove fraud in assessment; and that really amounted to that your assessment was over twice what the property would sell for on the open market ….

> But in recent years, and also starting with the railroad cases, there has been sort of a reversal or a downward trend of that opinion. Otherwise the railroads, for example … would not have gotten relief, because some of them proved that they were at a 73 percent level, and not over two times.

3 *Record of Proceedings, Sixth Illinois Constitutional Convention* 1904 (John W. Lewis, Secretary of State) (Delegate Scott's statement).

> Now the question comes to minds, 'Is this [i.e., assessment classification] legal?' Well, some people will say, under the uniformity provision, it is not legal; the court would not hold it constitutional. … I really don't know what way the court would go.
>
> . . . .
>
> Well, where the railroads were able to prove that they were assessed … at a higher ratio to full value than other property locally assessed and equalized by their multiplier – if they could prove that, then, they got relief. And the relief the courts gave them is the difference between what they paid at this high valuation and what they would have paid if they had paid on a 55 percent valuation, which was– at that time – what other property was equalized at.

3 *Record of Proceedings, Sixth Illinois Constitutional Convention* 1893 (John W. Lewis, Secretary of State) (Delegate Scott's statement).

In the aggregate, these passages support a reasonable inference that the delegates believed the 2½-to-1 clause created a judicially enforceable right that a taxpayer could assert against the executive branch of the government administering taxation, and a taxpayer could presumably obtain a reassessment of property at the appropriate percentage level, as required by the clause.

Subsequent case law, though not always precisely on point or abundant, has aligned with this conclusion both generally under article IX, section 4 of the 1970 Illinois Constitution and specifically under the embedded clause at issue in Count III, the 2½-to-1 clause. *People ex rel. Rosewell v. United States Steel Corp.,* 86 Ill. App. 3d 117, 129 (1st Dist. 1980), examined a constitutional claim under the 2½-to-1 clause and affirmed the trial court's rejection of the claim based on the evidentiary record particular to that case. While the precedent does not specifically discuss the judicial enforceability of the clause, it did examine a claim thereunder on the merits. Whatever may be said about the utility of *United States Steel Corp.,* the conclusion Defendant Pappas demands here– that the taxpayer has no right under the 2½-to-1 clause that can be judicially enforced in an individual suit – was not obvious and was not used as a basis for rejecting relief, though the issue is of fundamental importance.

The section 4 right vindicated in *Walsh v. Property Tax Appeal Bd.,* 181 Ill. 2d 228 (1998), was also a right that pertains to any given class as a whole. Generally, the idea behind section 4 constitutional uniformity is that a given class, as a whole, should be assessed at a single

percentage level of full, fair market value. *Id.* at 234. The section 4 right described in *Walsh* applies either on a county-wide basis or within and throughout a given class in a classifying county, and this right could only have been meaningfully evaluated relative to other members within the group; the uniformity right could not have been litigated with respect to the complaining taxpayer in a vacuum. *Id.* at 234-37. Still, the *Walsh* court permitted an assertion of the right on an individual basis, and an individual judicial remedy was available under section 4 against the county at issue (Tazewell County). Defendant Pappas's interpretation would result in a situation where a taxpayer could bring an individual legal action under one sentence within section 4 of article IX but not under another sentence within the same section. The relevant teaching of *Walsh* should be that a taxpayer can assert a section 4 right existing on a class-wide basis, though that right will be applied to the litigants before the Court and asserting the right, not to every potential taxpayer that might have asserted the right or might be asserting it in a parallel proceeding.

Defendant Pappas has also utilized the debates to form several of her own contentions supporting the conclusion that the clause does not create a judicially enforceable right for individual taxpayers.

Defendant Pappas points out that the delegate debates make a reference to a prof essional firm conducting a reappraisal of Peoria County at the request of that county. 3 *Record of Proceedings, Sixth Illinois Constitutional Convention* 1904 (John W. Lewis, Secretary of State)

(statements of Delegate Scott). This actual mass-reappraisal solution utilized at one time in Peoria County dovetails with a similar statutory remedy that the Illinois Department of Revenue can invoke under the current Illinois Property Tax Code. Under 35 ILCS 200/13-10, the Illinois Department of Revenue may "either before or after the original assessment is completed by the local assessment officers, order a reassessment by the local assessing officers for that year of all or any class of the taxable property" when it concludes "that the property in any county … has not been assessed in substantial compliance with law." Defendant Pappas contends that class reassessment ordered by the Department of Revenue was the intended remedy for vindicating the right created by the 2½-to-1 clause and for policing the assessment of classes as a whole, as opposed to having individual taxpayer suits as the intended enforcement mechanism.

The statements of Delegate Scott do not indicate anything other than reappraisal as an example of a solution in a given situation, as compared to an exclusive or officially designated means of vindicating the clause's rights. The debate passage does not support a conclusion that the clause is an inexplicit, unnamed limitation on the text of the provision. As is often true, a given legal right can be enforced in a variety of ways and with an array of remedies. A plaintiff may request declaratory judgment, injunctions or other equitable remedies, compensatory damages, or specified statutory remedies; an attorney general may bring a suit on behalf of the public, or individuals with standing may bring individual suits or at times band together and bring a class action suit.

The mere fact that a remedy or enforcement mechanism exists, without more direction within the applicable legal provision, does not foreclose other means or give guidance as to the scope of the underlying legal right, at least not in the present situation where a direct reference or link between the 2½-to-1 clause and 35 ILCS 200/13-10 is absent.

Second, 35 ILCS 200/13-10 applies, on its face, only to "reassessment by local assessing officers" and leaves unaddressed other legal issues and factors that could affect a property owner's final tax bill, such as the tax rate extended by taxing districts and the equalization factor. By comparison, the 2½-to-1 clause explicitly prohibits any parallel property classification system whereby certain classes are assigned a *tax rate* higher than the 2½-to-1 ratio, as measured against a lower class's rate. Thus, 35 ILCS 200/13-10 could never have been seen by either the enacting legislature or the constitutional convention delegates as the exclusive mechanism for enforcing the 2½-to-1 clause as a whole.

Third, Defendant Pappas's 200/13-10 argument uses a state statute to interpret and limit a constitutional provision. This is a problematic approach to constitutional interpretation and understanding the hierarchy into which different types of laws fall. Illinois statutes are to be interpreted in light of the constitution. *E.g., North Shore Post of American Legion v. Korzen,* 38 Ill. 2d 231, 236 (1967); *Craig v. Peterson,* 39 Ill. 2d 191, 193-202 (1968); *Mashni Corp. v. Laski,* 351 Ill. App. 3d 727, 732 (1st Dist. 2004); *Kaszubowski v. Board of Educ.,* 248 Ill. App. 3d 451,

457 (1st Dist. 1993); *People v. Anderson,* 211 Ill. App. 3d 140, 142 (4th Dist. 1991); *Gadeikis v. Yourell,* 169 Ill. App. 3d 1033, 1034-1035 (1st Dist. 1988); *People v. Stremming,* 167 Ill. App. 3d 578, 581 (4th Dist. 1988); *People v. Price,* 144 Ill. App. 3d 949, 951-952 (1st Dist. 1986); *Estep v. Illinois Dep't of Public Aid,* 115 Ill. App. 3d 644, 648-649 (1st Dist. 1983); *Towns v. Kessler,* 10 Ill. App. 3d 356, 361 (5th Dist. 1973). The Court is not aware of any authority indicating that the converse is true: Constitutional provisions are interpreted in light of and/or limited by statutes. Use of 35 ILCS 200/13-10 to limit the meaning of the constitutional provision is problematic here, because the constitutional provision and its relevant convention history contain no clear reference to the Department of Revenue's power to order reassessment of any property class as the exclusive enforcement mechanism. The existence of the statute itself should not place a limit on the constitutional provision, because rather than having the general assembly's statutes place a limit on the constitution, "the constitution acts as a limitation on the General Assembly's authority." *Maddux v. Blagojevich,* 233 Ill. 2d 508, 527 (2009).

Finally, as an entirely practical matter, it would be impossible not to take notice that an individual taxpayer action enforcing the provision as it affects that taxpayer's property is a far less drastic, demanding, and disruptive remedy than having the entire class of property reassessed pursuant to 35 ILCS 200/13-10. Additional taxpayers belonging to any afflicted class could assert the same right during both the administrative and, if applicable, judicial phases of the tax objection process. While other

members of the class could receive the same benefits by asserting the right, as is often the case, a citizen who does not assert a right will inevitably waive it. In any event, Defendant Pappas's assertion that recognition of the cause of action will benefit the plaintiff and only the plaintiff is not true. The private cause of action will, over time, encourage assessors and county boards of review to maintain regimes with assessment differentials within the prescribed range. In other words, protecting individual members of a class as members of that class will have a long-run tendency to protect the entire class.

Defendant Pappas utilizes the debate passages to form one last argument for finding the nonexistence of an individual right to sue. She urges this finding as a necessary result of the ambiguity found in the phrase "level of assessment" of a class and of the fact that the 2 ½-to-1 clause does not delineate a method for aggregating a class and arriving at a single statistic representing a percentage level of full fair market value. *See* 3 *Record of Proceedings, Sixth Illinois Constitutional Convention* 1903 (John W. Lewis, Secretary of State) (statements of Delegate Connor). This problem is not particular to Plaintiff Woodfield's interpretation permitting individual taxpayer suits, as it also applies, to the extent it is a legitimate criticism or problem, to Defendant Pappas's interpretation of the provision as limited to a regulation of disparate assessments levels for classes as a whole, in theory policed only by the Department of Revenue. If it will become impossible to develop an acceptable statistical measure of a "level of assessment" of a class through the unfolding of precedent or through the

consensus of statisticians, then this will also be true when the Department of Revenue (or anyone else) compares the class levels of assessment to each other only in the aggregate, and the clause will border on being toothless or meaningless. In the same vein, Defendant Pappas urges finding no cause of action based on certain doubts about using the median levels of assessment inferred from the Illinois Department of Revenue's sales ratio studies to define the level of assessment for the relevant classes. She highlights the part of the history of the constitutional provision where a delegate cast doubt on the use of the department's statistics revealing median levels of assessment for different classes, as opposed to the mean or average levels for those classes. 3 *Record of Proceedings, Sixth Illinois Constitutional Convention* 1903 (John W. Lewis, Secretary of State) (statements of Delegate Elward). Under then-existing median assessment levels, the Cook County *de facto* regime would have already been in violation of the 2 1/2-to-1 clause when the 1970 state constitution became effective. Assuming *arguendo* that these statements of Delegate Elward are controlling when evaluating what evidence would be admissible to prove a violation of the "2 1/2 to 1" provision, they do not undermine the Count III claim or generally establish that no taxpayer, as a matter of law, can ever assert a right under the provision that will withstand a motion to dismiss for legal insufficiency. Moreover, the "First Amended Tax Objection Complaint" relies in part on the "weighted mean" levels of assessment used by the McMillen assessment-uniformity studies. It does not rely entirely on revenue department median statistics.

Appendix G

2. The 2 1/2-to-1 Clause and Subsequent Legislative Enactments

The Court previously set forth the progression of legislative enactments subsequent to the ratification of the 1970 Illinois Constitution, including the passage of 35 ILCS 200/9-150 and Cook County's enactment of the Real Property Assessment Classification Ordinance. Defendant Pappas essentially contends that the legislature's later enactment of 35 ILCS 200/9-150, requiring counties to officially establish classification regimes by ordinance, effective in 1974, should be deemed to affect and limit what the previous constitutional provision meant when it was ratified by the voters. An example of this approach is found in the following statement in the motion: "By interpreting Article IX, Section 4(b) without reference to the levels of assessment in the Classification Ordinance enacted by Cook County, Plaintiff defeats the purpose behind Section 9-150, which was to create a classification system that was governed by a duly enacted ordinance -an ordinance enacted by representative government, which provides readily ascertainable provisions defining and describing the classification system." (Section 2-619.1 Motion to Dismiss First Amended Tax Objection Complaint at 24.)

Illinois statutes are to be interpreted in light of the constitution. *E.g., North Shore Post of American Legion v. Korzen,* 38 Ill. 2d 231, 236 (1967); *Craig v. Peterson,* 39 Ill. 2d 191, 193-202 (1968); *Mashni Corp. v. Laski,* 351 Ill. App. 3d 727, 732 (1st Dist. 2004); *Kaszubowski v. Board of Educ.,* 248 Ill. App. 3d 451, 457 (1st Dist. 1993); *People v. Anderson,* 211 Ill. App. 3d 140, 142 (4th Dist. 1991);

Gadeikis v. Yourell, 169 Ill. App. 3d 1033, 1034-1035 (1st Dist. 1988); *People v. Stremming,* 167 Ill. App. 3d 578, 581 (4th Dist. 1988); *People v. Price,* 144 Ill. App. 3d 949, 951-952 (1st Dist. 1986); *Estep v. Illinois Dep't of Public Aid,* 115 Ill. App. 3d 644, 648-649 (1st Dist. 1983); *Towns v. Kessler,* 10 Ill. App. 3d 356, 361 (5th Dist. 1973). The Court is not aware of any authority indicating that the converse is true: Constitutional provisions are interpreted in light of and/or limited by statutes.[4] Thus, the existence of 35 ILCS 200/9-150 does not limit the original scope of the 2 ½-to-1 clause, because rather than having the general assembly's statutes place a limit on the constitution, "the constitution acts as a limitation on the General Assembly's authority." *Maddux v. Blagojevich,* 233 Ill. 2d 508, 527 (2009).

By contrast, according to Defendant Pappas's interpretative approach, 35 ILCS 200/9-150 in essence retroactively limits the meaning of the constitutional provision. Never mind that an assessor's *de facto* classification regime, assuming *arguendo* one were to exist at a 3-to-1 ratio and at variance with a county ordinance, would defeat 1) the spirit of the constitutional provision at issue, 2) the state statute requiring assessment-level differentiation by explicit and clear standards set by county ordinance, 3) the assessment levels actually set forth by

4. Perhaps the only conceivable exception to this principle would be where a statute inspired a later constitutional provision, either in a negative or positive way, and the statute was of historical interest in explaining the origin of the constitutional provision. Even then, the statute would not serve as a limitation on the constitutional provision; it would elucidate the original meaning of the constitutional provision.

the county's classification ordinance, and 4) the clear intent of the "representative government" bodies at both the state and local levels. The irony of this interpretation of the constitutional provision is that in a scenario such as the one alleged in Count III, the taxpayer has the least amount of protection - indeed, it has no right that can be enforced by any court - when the local government, by and through the assessor, violates the maximum number of related legal provisions dealing with the problem of assessment-classification differentiation. Defendant Pappas's solution is to interpret the constitutional provision in a way that largely eliminates the right altogether, even though the situation would otherwise appear to be most in need of rectification.[5] The statute 35 ILCS 200/9-150 does not purport to address the problem created by an assessor's effective utilization of an unofficial assessment classification system at an excessive differential rate of assessment, resulting in a violation of both this statute and also (at least the spirit of) the 2 ½-to-1 clause in article IX, section 4(b). The statute in that instance does not solve the problem of deciphering the meaning of the constitutional provision in the way this Court has been called upon to do so here. It compounds the problem.

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5. Any number of hypotheticals could be posed to demonstrate situations where some but not all of the constitutional, statutory, and ordinance enactments would be transgressed. For instance, a county assessor could maintain an unofficial classification system in the absence of a classification ordinance, though the highest class is assessed at only twice the percentage level of the lowest class. A county assessor could assess the classes at percentages other than those set forth in a county ordinance, though the highest and lowest classes are still within the appropriate range.

The flaw in that interpretive approach is also revealed by any hypothetical Illinois case brought prior to 1974 and requiring a determination of the same issues raised here. That court would necessarily determine the meaning and scope of section 4(b) without reference to 35 ILCS 200/9-150 or to any particular county ordinance, as this Court previously did when reviewing the debates from the constitutional convention. It is fundamental that the General Assembly cannot alter the meaning of a constitutional provision with a later statutory enactment, as explained above. Defendant Pappas's theory of constitutional interpretation essentially puts the state constitution and statutes on the same footing, with statutes acting as amendments altering the meaning of related constitutional provisions, and the Court rejects this approach.

Using 35 ILCS 200/9-150 to retroactively define and shape the meaning of the 2 ½-to-1 clause is problematic for the additional reason that such use of 200/9-150 conflicts with the original meaning of the clause, as explained below. This conflicting interpretation based on 200/9-150 is related to the next major issue raised: whether 1) the 2 ½-to-1 clause is a restriction on both *de facto* and *de jure* schemes with an of fending spread of assessment levels or 2) it is a restriction only on officially enacted *de jure* schemes with an of fending spread. Defendant Pappas urges that the latter position be adopted, contending, "The plain and unambiguous language of Article IX, Section 4(b) makes it clear that any classification that is authorized by the Illinois Constitution is by definition *de jure.*" (Section 2-619.1 Motion to Dismiss Plaintiff's First Amended Tax Objection Complaint at 22-23.)

This last statement is inaccurate. The clause does not define or even mention *de jure* classification. In fact, the plain language of the provision at least leaves open the possibility that a *de facto* classification regime with of fending assessment levels could be unauthorized by the constitutional provision, because it also leaves open the possibility that the state legislature will simply decline to enact any further restrictions on a populous county's power to classify or continue to classify real property for purposes of taxation. Furthermore, the ambiguity in the phrase "level of assessment" of a class, noted earlier as one of Defendant Pappas's arguments against finding an individual right, supports a broader interpretation regulating both *de facto* and *de jure* regimes of classification rather than a narrower interpretation limited to the specific (and unlisted) instance of official classification by the county board.

Moreover, a fair reading of the provision as of the early 1970s would leave open the possibility that a county assessor in a large county could maintain an unpublished classification regime as long as the highest and lowest classes remained within the appropriate range, and he or she could do so without approval from the county board of commissioners because the 2 ½-to-1 clause originally concerned itself with a *de facto* real property classification system in Cook County. As Delegate Scott stated, "So before our committee was this question; and a good number– a good majority of the committee members– agreed that this, if you want to call it *de facto* classification in Cook County, should be made legal. An upsetting of it at this time would cause some chaos in Cook County."

3 *Record of Proceedings, Sixth Illinois Constitutional Convention* 1893 (John W. Lewis, Secretary of State). Within a few years of these statements, *People ex rel. Kutner v. Cullerton,* 58 Ill. 2d 266, 270-71 (1974), and *La Salle Nat'l Bank v. County of Cook,* 57 Ill. 2d 318, 326-28 (1974), confirmed them and specifically described how section 4(b) of article IX retroactively legalized and ratified the Cook County assessor's practice of maintaining a *de facto* real-property classification regime for differential taxation. *See also* 7 *Record of Proceedings, Sixth Illinois Constitutional Convention* 2108-09, 2115-16 (John W. Lewis, Secretary of State). While *Kutner v. Cullerton,* 58 Ill. 2d at 269-72, focused on the portion of section 4(b) permitting the assessor to "continue to classify," thereby ratifying the *de facto* classification regime, the same subsection now at issue in Count III simultaneously limited the otherwise ratified classification scheme, prohibiting an assessment-level spread greater than the 2 ½-to-1 ratio. Additionally, on the state level, *Kutner v. Cullerton,* 58 Ill. 2d at 269-71, indicates that section 4(b) of article IX governs real property classification for taxation regardless of whether the Illinois legislature ever decides to enact legislation. *See also* 3 *Record of Proceedings, Sixth Illinois Constitutional Convention* 2157 (John W. Lewis, Secretary of State) (statements of Delegate Scott) ("The General Assembly may say to a county, 'Here, you classify as you want to, as you see fit'– no limitations other than giving them the authority to do it."). On the local level, both *Kutner v. Cullerton,* 58 Ill. 2d at 269-71, and *La Salle Nat'l Bank v. County of Cook,* 57 Ill. 2d at 325-28, indicate that section 4(b) of article IX governs a county's real-property-taxation classification

even if the county board of commissioners never enacts a classification ordinance, and, thus, the "county" acts to classify only by means of a *de facto* system utilized by the county assessor.

These legal conclusions and origins must be kept in mind while determining the original scope of the 2 ½-to-1 provision, unclouded by subsequent developments under subordinate legal enactments. These legal conclusions also dispel Defendant Pappas's contention that the ratification of section 4(b) of article IX itself somehow made county classification *de jure,* or officially of record, because the provision ratified a classification system that was precisely not *de jure* - a regime that reigned supreme as a *de facto* classification system until 1974. The *American Can* interpretation of section 4(b) on which Defendant Pappas relies would cause the state constitution to mean less now than it did from 1970 through 1973. That is, the provision is allegedly no longer a limit on *de facto* classification regimes violating the clause, even if it originally was. It would seem obvious that the underlying, fundamental meaning of the constitutional provision would remain constant regardless of subsequent legislative developments, which can only carry out the provision consistent with the original principles, not alter it. The delegates could not possibly have understood section 4(b) as a restriction only on a *de jure* classification system because 1) the provision, on its face, does not refer to a specific legal mechanism by which a county achieves a *de jure* classification system (for example, by published assessor policy and practice or by county ordinance), while the legislature could clearly opt to enact no restrictions on classifying real

property for taxation, and 2) the Cook County statistics under discussion were clearly in reference to a *de facto* classification regime that was being both legitimized and limited. Accordingly, the delegates would have been shocked by a later interpretation of the provision holding that the judiciary is powerless to grant relief if and when a taxpayer could establish that a county, in reality, maintained classification with excessive assessment-level spreads, even if that taxpayer were to sustain the rigorous evidentiary burden of proof demanded by any assertion that a government maintains a *de facto* regime that varies from the formal rules. In other words the delegates would have been shocked to learn the clause had virtually no practical meaning for future *de facto* classification regimes presenting the most flagrant violations of the principle behind the 2 1/2-to-1 clause- and existing at variance from a county classification ordinance- because the formality of having the classification ordinance on the books would be deemed to purify even the most egregious violations.

3. Miscellaneous Arguments for Finding the Nonexistence of an Individual Cause of Action

As stated above, Defendant Pappas opposes the "*ad hoc*" application of the constitutional provision in a way that permits an individual taxpayer to challenge its assessment based on a constitutional provision regulating the relationship between classes as a whole. Defendant Pappas alleges that recognition of a constitutional cause of action under the 2 1/2-to-1 clause would permit a taxpayer to create his or her own alternative, *ad hoc* classification system separate from the one established

by elective representatives. The argument is based, in part, on several inaccurate premises and misstatements concerning what the trial on Count III would necessarily entail. First, any assessment-level differentials alleged by the taxpayer would necessarily require competent, legally admissible proof able to withstand scrutiny at trial; truly "*ad hoc*" numbers produced by a taxpayer in support of a desired refund amount will not carry the day at trial. If a taxpayer were, hypothetically, able to meet its burden of proof and show that a county assessor assigned an assessed valuation that in fact was more than two-and-one-halftimes the percentage applied to the lowest class, the demonstrated percentage-level spread would not be *ad hoc;* it would be based on the assessment levels the county's elected officers actually applied at variance from the county ordinance. The taxpayer would not be creating the assessment differential - the county or its representatives would be doing so. Pretending that the county board's assessment classification ordinance, as the only existing reality, rectifies the type of situation alleged in Count III would exacerbate the problem because the set of facts alleged in Count III would violate both the county's classification ordinance and (at least the spirit of) the 2 ½-to-1 clause in the constitution, as explained above. In other words any statistical studies of fered by the taxpayer as evidence and withstanding trial scrutiny might reveal the assessor's *ad hoc* classification system and, as such, would not constitute the taxpayer's own *ad hoc* classification system, as Defendant Pappas alleges.

Defendant Pappas also asserts that a recognition of an individual taxpayer's cause of action here would be a

violation of the uniformity clauses, also contained within section 4,[6] because, in obtaining a percentage level of assessment that complies with the 2 1/2-to-1 clause, a taxpayer could potentially obtain a level of assessment different than other taxpayers in the same class who fail to assert rights under the 2 1/2-to-1 provision. While this prospect raises an interesting question, no violation of the uniformity clause would exist under the facts alleged in this complaint, because taking Plaintiff Woodfield's level of assessment down to 22.5% would satisfy both aspects of section 4, since it consistently contends in Count II that the rest of its own class was uniformly assessed at that percentage level (in spite of the fact that the ordinance requires assessment at 38%). At the same time the 22.5% level would also be in harmony with the maximum spread permitted by the 2 1/2-to-1 provision as alleged in Count III. No conflict between constitutional uniformity and constitutional class-differentiation limits is present under the facts alleged in the complaint at issue herein.

4. Conclusion

The portion of Plaintiff Woodfield's motion requesting dismissal of Count III for legal insufficiency within the meaning of 735 ILCS 5/2-615 will be denied.

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6. The "rule of uniformity" from section 4 of article IX, which is related to the right to equal protection of the law, gives a taxpayer a right to have his real property taxed according to the same proportion/percentage of "true value" that the taxing officials have applied to other property in the same class within the county. *People ex rel. Hawthorne v. Bartlow,* 111 Ill. App. 3d 513, 518-21 (4th Dist. 1983); *Stephens v. State Property Tax Appeal Bd.,* 42 Ill. App. 3d 550, 551-53 (4th Dist. 1976).

Appendix G

III. Motion to Dismiss Counts II and III (No. 05 COTO 3938) and Count IV (No. 07 COTO 1618 and No. 05 COTO 3938) as Being Barred for Failure to Exhaust Administrative Remedies Under 735 ILCS 5/2-619

The tax-year 2004 complaint before the Cook County Board of Review requested that the current assessed value of $10,944,000 be lowered to an assessed valuation of $5,586,000, based on a January 1, 2004, appraisal of fair market value at $14,700,000 using a composite of the cost, income, and sales-comparison (or market) approaches, as opposed to a market value of $28,799,997.

The supporting "Brief and Petition" requested, in addition to an alteration of the fair market value of the property at issue, that the same level of assessment be applied to that fair market value as applied to other property within the county, regardless of what percentage level the ordinance officially designates, as required by cases interpreting the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and the uniformity clause of article IX of the Illinois Constitution, Ill. Const. 1970, art. IX, § 4(a). (Section 2-619.1 Motion to Dismiss Plaintiffs 2004 Tax Objection Complaint Ex. E, "Brief and Petition," at 24-26.) In support of this requested relief, Plaintiff Woodfield attached (as Exhibit F to the Brief and Petition) an "Illinois Department of Revenue Form PTAX- 215" as evidence that actual sales of properties demonstrate that the percentage levels of assessment applied to the full market value of taxable real property are below the required ordinance levels for each class. *(Id.* at 24-25.) Plaintiff Woodfield further stated

that it "is further prepared to submit expert analysis and testimony concerning levels of assessment." *(Id.* at 25.)

The supporting "Brief and Petition" enumerated claims and legal theories under the following constitutional provisions: The assessed valuation assigned by the Board of Review must not violate the 2½-to-one provision in the 1970 Illinois Constitution, Ill. Const. 1970, art. IX, § 4(b), which prohibits the taxpayer's percentage level of assessment from being greater than 2½ times that applied to any of the lower classes. The assessed valuation assigned by the Board of Review must not violate the uniformity provisions in the 1970 Illinois Constitution, Ill. Const. 1970, art. IX, § 4(a)-(b), which prohibits the taxpayer's percentage level of assessment from being significantly greater than that applied to the other real property within the same classification. Finally, Plaintiff Woodfield asserted uniformity and equal-protection rights under the same state constitutional provisions above and under the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution whereby all real property in the county is examined for debasement of value beyond what is required by the ordinance level of assessment; weighted averages are determined for each class of real property; and a composite "total weighted average percentage debasement" allegedly requires the application of a certain level of debasement in favor of the taxpayer beyond the percentage level assigned by the ordinance. (Section 2-619.1 Motion to Dismiss Plaintiff's 2004 Tax Objection Complaint Ex. E, "Brief and Petition," at 25-26.)

Appendix G

1. 2-619 Motion to Dismiss Count IV Claim, Based on the Equal Protection Clause in the U.S. Constitution, Pursuant to the Administrative Exhaustion Doctrine

Defendant Pappas contends that Plaintiff Woodfield's constitutional claim in Count IV based on the Equal Protection Clause in the U.S. Constitution should be dismissed pursuant to 735 ILCS 5/2-619, because it has a valid affirmative defense based on the exhaustion requirement in 35 ILCS 200/23-10, which forecloses the relief sought in Count IV. Specifically, Defendant Pappas contends that the Count IV claim is not identical to the federal constitutional claim asserted before the Cook County Board of Review because the Count IV claim states that the taxpayer's percentage level of assessment was too high when compared to the level applied to its own class (i.e., similarly situated property), (First Amended Tax Objection Complaint ¶ 48, at 19), whereas the constitutional claim exhausted before the administrative body was based on a comparison with all taxable real property in Cook County.

The opening paragraph for the section stating the constitutional claims demands a common, uniform level of assessment for the taxpayer's property in accordance with the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and, specifically, with *Allegheny Pittsburgh Coal Co. v. County Com.*, 488 U.S. 336 (1989), which generally requires classes of similarly situated property to be assessed at substantially similar percentage levels of full fair market value. (Section 2-619.1 Motion to Dismiss Plaintiffs 2004 Tax Objection Complaint

Ex. E, "Brief and Petition," at 24.) *Allegheny Pittsburgh Coal Co.,* as distinct from the Fourteenth Amendment in general, does not require that real property within different classification categories be assessed according to any uniform formula of percentage levels, and the taxpayer demanded an assessment complying with this precedent. In that respect the "Brief and Petition" overlaps the Count IV claim in the case at bar. Additionally, the federal constitutional theory based on the percentage level of assessment for all classes of property within the county necessarily contains, includes, and relies on the class to which the taxpayer's property belongs, a class which would affect any weighted average included among taxable property. In that respect the "Brief and Petition" constitutional claim, albeit not identical, is not entirely factually independent from the Count IV claim now at issue in the case at bar. Accordingly, the Court will conclude that Plaintiff Woodfield exhausted its federal constitutional claim before the Cook County Board of Review as a result of the substantial overlap discussed, and Count IV of the complaint for tax year 2005 (No. 07 COTO 1618) and tax year 2004 (No. 05 COTO 3938) may proceed consistent with 35 ILCS 200/23-10 in spite of the dissimilarity observed by Plaintiff Woodfield. The Court does not have before it any authority demanding or discussing a more strict or rigorous identity of claims when making administrative-remedy exhaustion determinations.

Appendix G

2. 2-619 Motion to Dismiss, Pursuant
to the Administrative Exhaustion Doctrine,
Woodfield's Constitutional Claims:
The Count II Claim Under the Uniformity Clause in the
1970 Illinois Constitution, The Count III Claim Under
the 2 ½-to-1 Clause in the 1970 Illinois Constitution,
and The Count IV Claim Under the Equal Protection
Clause in the U.S. Constitution

Defendant Pappas urges the Court to dismiss the three counts containing the constitutional claims brought directly under the Property Tax Code, Counts II, III, and IV, again based on the exhaustion requirement in 35 ILCS 200/23-10, which allegedly constitutes a valid affirmative defense. Pappas's contention is that Plaintiff Woodfield did not effectively raise the constitutional claims, which all require some type of comparison of the taxpayer's percentage level of assessed valuation to that of other taxpayers in the same or the lowest classification, because the document attached to the administrative complaint as evidence, the Illinois Department of Revenue Form PTAX- 215, had been deemed wholly insufficient to sustain similar constitutional challenges by the Illinois Appellate Court's prior precedent, *Cook County Bd. of Review v. Property Tax Appeal Bd. ("Robert Bosch Corporation" or "Bosch"),* 339 Ill. App. 3d 529 (1st Dist. 2003).

First, as the Court understands the common law administrative-remedy exhaustion doctrine, it does not require the courts to weigh evidence presented to the administrative agency or otherwise perform a qualitative analysis of evidence presented. At least the Court is

not aware of any authority indicating that the doctrine ought to be applied in such a manner. If the rule were otherwise and generally applied in and apart from this case, the Court would essentially be performing a form of administrative or appellate review- a much more involved endeavor- just to determine the threshold question of whether a plaintiff exhausted a particular claim before an administrative agency.

Second, if the doctrine were to be applied in the manner required by the motion to dismiss, it would eventually create a conflict with the situation stemming from the fact that the county board of review is not a body of record, *People ex rel. Devine v. Murphy,* 181 Ill. 2d 522, 535 n.2 (1998), at least in the sense that any live oral proceedings before it are not transcribed or recorded.[7] In all fairness to the taxpayer, if the PTAX-215 document attached to the "Brief and Petition" is considered in determining this issue, then the further written reports and expert testimony, of fered upon request by the same pleading, ought to be similarly evaluated for effectiveness. However, the fact that the board of review is not a body of record makes this evaluation unfeasible. Moreover, the other evidence would need to be considered alongside the "Form PTAX-215" rather than instead of it. While a proper reading of *Bosch,* 339 Ill. App. 3d at 536, 540-44,

7. As the Court explained in March 2, 2010, Memorandum Opinion and Order (No. 05 COTO 1866), a description of the county board of review as being "not a body of record" is only true in a limited sense, because obviously the nature of its work requires some form of written records pertaining to the taxpayers' complaints for relief.

reveals that evidence of Department of Revenue sales-ratio studies is not a proper subject of judicial notice, no part of that precedent's holding states that sales ratio studies are completely inadmissible as evidence submitted by a party. And where *Bosch,* 339 Ill. App. 3d at 544-45, specifically considered the one-page summary of a "Form PTAX-215," it merely indicated that the one page alone was insufficient evidence. It did not indicate that such a page would be inadmissible or could never be considered and weighed alongside more thorough documentation explaining the underlying methodology of the study and qualifying as competent evidence. As a matter of fairness, then, an application of the rule urged by Defendant Pappas would require consideration of other evidence actually presented to the Cook County Board of Review during the hearing, which is not a feasible option.

Furthermore, the Court will apply the form of the rule utilized in the September 15, 2010, Memorandum Opinion and Order (No. 05 COTO 1866), which requires the taxpayer to specifically plead distinct legal theories before the administrative agency to meet the exhaustion requirement. Here, the Court is satisfied that the substance of Counts II, III, and IV of the present 2004 complaint was previously presented to the Cook County Board of Review in the pleading filed with that administrative body.

As one final matter the Court notes that Defendant Pappas has cited no authority for the proposition that, in any context covered by Illinois law, a previously pled or otherwise stated claim or alternative legal theory becomes withdrawn or abandoned if the global prayer for relief

does not somehow mirror every aspect of every claim plead. Ideally, a complaint would have multiple counts, and every count would contain a corresponding prayer for relief. The Court is not aware of such stringent pleading requirements before administrative bodies, and even if they existed, it is not clear that they would or should have ramifications for the administrative-remedy exhaustion doctrine.

3. Conclusion

The 735 ILCS 5/2-619 motion to dismiss Counts II, III, and IV of the 2004 tax objection and Count IV of the 2005 tax objection complaint pursuant to the administrative exhaustion doctrine will be denied.

Appendix G

IV. Motions to Dismiss the Count V Claim Under 42 U.S.C. § 1983 and § 1988

A. Motion to Dismiss Count V Under 735 ILCS 5/2-619(a)(l) Due to the Circuit Court's Lack of Subject Matter Jurisdiction to Decide the Matter

Pursuant to 735 ILCS 5/2-619(a)(1)[8] Defendant Pappas has requested that this Court dismiss the Count V claim under the Civil Rights Act of 1871, 42 U.S.C. § 1983,[9]

8.

> "The purpose of a section 2-619 motion to dismiss is to provide a means to dispose of issues of law or easily proved issues of fact [citation], and such a motion may be granted when the claim asserted against the defendant is barred by other affirmative matter defeating the claim." *(Timberline, Inc. v. Towne* (1992), 225 Ill. App. 3d 433, 438-39.) A motion filed pursuant to section 2-619 of the Code admits, for the purpose of the motion, all facts well pleaded in the complaint. *(Dahl v. Federal Land Bank Association* (1991), 213 Ill. App. 3d 867, 869.) . . . . The motion should be granted if, after construing the documents in the light most favorable to the party opposing the motion, the trial court finds no disputed issues of fact. *(Timberline,* 225 Ill. App. 3d at 439.)

Noesges v. Servicemaster Co., 233 Ill. App. 3d 158, 162 (2d Dist. 1992).

9.

> Civil action for deprivation of rights
>
> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State

because it lacks subject matter jurisdiction over the claim. Generally, an Illinois circuit court's subject matter jurisdiction originates in the following constitutional provision:

> Circuit Courts -- Jurisdiction
> Circuit Courts shall have original jurisdiction of all justiciable matters except when the Supreme Court has original and exclusive jurisdiction relating to redistricting of the General Assembly and to the ability of the Governor to serve or resume of fice. Circuit Courts shall have such power to review administrative action as provided by law.

Ill. Const., art. VI, § 9.

> or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress ….

42 U.S.C. § 1983. As detailed *supra,* Count V alleges that the deprivation of the taxpayer's rights under the U.S. Constitution's Fourteenth Amendment Equal Protection Clause occurred when Cook County maintained a *de facto* assessment system whereby the county assessor intentionally and systematically assessed the majority of class 5a property at or around 22%, while Plaintiff Woodfield was singled out and illegally subjected to the higher *de jure* level of assessment the Cook County Code of Ordinances sets forth, 38%.

Appendix G

Defendant Pappas combines several legal authorities to come to the conclusion that, in entertaining the Count V § 1983 claim, the Court would be conducting administrative review of a final agency action (the county board of review) and, as such, would be reviewing the agency's action according to its more limited "power to review administrative action as provided by law," Ill. Const., Art. VI, § 9, rather than its more comprehensive general jurisdiction to entertain "all justiciable matters." *See generally Belleville Toyota v. Toyota Motor Sales, USA.,* 199 Ill. 2d 325, 334-41 (2002). Because its jurisdiction supposedly falls in the administrative-review category of article VI, section 9, the Court's jurisdiction becomes known as "special statutory jurisdiction," *see generally Belleville Toyota,* 199 Ill. 2d at 336-40, or "limited jurisdiction," *see generally KT Winneburg, LLC v. Calhoun County Bd. of Review,* 403 Ill. App. 3d 744, 750-51 (4th Dist. 2010). Application of these concepts would mean that the Court's power to entertain the claim is transcribed precisely by the terms set forth in the statute the Illinois General Assembly enacted to enable judicial review of administrative decisions, here, the portion of the Property Tax Code governing tax-objection complaints (Title 8) following an administrative county-board-of -review proceeding (Title 5). In *People ex rel. Devine v. Murphy,* 181 Ill. 2d 522, 529 (1998), the Illinois Supreme Court recognized that the tax-objection-complaint mechanism for reviewing board-of -review agency action is at least a form of administrative review in a constitutional sense, even if it is not formal statutory administrative review pursuant to the Administrative Review Law, 735 ILCS 5/3-102 to -110. When the constitutionality of a tax-

objection-complaint provision, 35 ILCS 200/23-15(b), was at issue in *Devine v. Murphy,* the Illinois Supreme Court held that the legislature did have the authority to give the circuit courts the power to revisit administrative valuation for taxation precisely because the state constitution provided that they "shall have such power to review administrative action as provided by law," Ill. Const. 1970, art. VI, § 9, which gave the legislature authority to pass a statute that "provide[d] for a direct standard of judicial review of property tax assessments," *Murphy,* 181 Ill. 2d at 529. As such, Defendant Pappas contends that because the tax-objection complaint under the Property Tax Code is a form of administrative review in the constitutional sense, the Court's authority to entertain Count V is negated by "special statutory jurisdiction" or other notions of "limited jurisdiction" and by that statute's lack of authorization to entertain an action under 42 U.S.C. § 1983. Specifically, this Circuit Court's subject matter jurisdiction over Count V has supposedly been stripped away by the statute's declaration that a tax objection complaint should resolve "all objections" and "provide a complete remedy for any claims with respect to those taxes [or] assessments," 35 ILCS 200/23-15(b)(l), leaving no broader or alternative source of jurisdiction to consider a related § 1983 claim. Similarly, the Court's authority to even consider the question of whether a state statute such as 35 ILCS 200/23-15(b) impermissibly alters the nature of a federal constitutional claim is allegedly stripped away by the Illinois General Assembly's enactment of the clause, also contained within 35 ILCS 200/23-15(b), prohibiting the consideration of the assessor's or board of review's assessment methodology, intent, and/or motivation.

Appendix G

Defendant Pappas relies heavily on a certain mantra lifted from a series of cases: Because the taxation of property is a legislative rather than judicial function under the state constitution, the Illinois courts do not have authority to determine or redetermine the value of property already assessed by designated administrative officers, except to the extent that the general assembly enacts a statute specifically permitting the same. Most of the cases Defendant Pappas cites for this mantra are not cases about subject matter jurisdiction *per se,* and, in particular, they also tend to avoid discussions of jurisdiction to entertain constitutional questions pertaining to taxation and (with one exception) discussion of constitutional issues in any form. *Village of Niles v. K mart Corp.,* 158 Ill. App. 3d 521 (1st Dist. 1987), presented a straightforward statutory question of whether a municipality could sue a private entity for a sales tax that the Department of Revenue had allegedly incorrectly redirected to other nearby municipalities; the precedent contains neither constitutional issues nor discussion of subject matter jurisdiction. Similarly, *People ex rel. Shirk v. Glass,* 9 Ill. 2d 302, 310-11 (1956), considered an issue regarding late assessment of omitted property under the statute and did not discuss the subject matter jurisdiction or power of the trial court. It also did not consider any issues from the standpoint of the state or federal constitution. *People ex rel. Eitel v. Lindheimer,* 371 Ill. 367 (1939), dealt with the retroactivity of a repeal of a statutory provision that would otherwise have given rise to a tax refund in one case and a tax credit in a companion case; however, the taxpayers did not have vested rights under the previous version of the statute, and the repeal was

applied retroactively according to legislative intent. *Eitel* does not delve into the topic of subject matter jurisdiction or constitutionality of taxation, at least not apart from incidental references to the constitution in discussing various issues. *White v. Board of Appeals,* 45 Ill. 2d 378, 380 (1970), was similarly silent on issues of subject matter jurisdiction, constitutionality, and jurisdiction to consider constitutionality, because Count I of the complaint in that case was a garden-variety claim of overvaluation pled as constructive fraud. *Jones v. Department of Revenue,* 60 Ill. App. 3d 886 (1st Dist. 1978), likewise does not concern subject matter jurisdiction in taxation cases. Rather, it presented a straightforward question on the merits: whether state use and occupation taxes should be calculated on a base that includes federal gasoline taxes but that excludes the state motor fuel tax. The appellate court reversed a judgment over a disagreement with the trial court's resolution of that issue, not over its power to entertain it. *Jones,* 60 Ill. App. 3d 886, did consider a somewhat vaguely described claim that "gasoline users are unconstitutionally discriminated against," though it rejected the claim on the merits and did not consider what authority the circuit court would have had to declare that the Department of Revenue or the statute itself had violated the taxpayer's constitutional rights. *Id.* at 891-93. Overall, these cases present and answer straightforward taxation questions without discussing the power of the circuit courts to entertain and decide related yet distinct classes of disputes, including taxation disputes implicating federal statutes or the U.S. Constitution. The mantra chosen could just as easily have stated that the obligation to pay or be refunded a tax under a taxation statute will

be strictly construed and limited to the precise statutory language, rather than being liberally construed to effectuate some designated purpose.

The principles encompassed by the mantra have the clearest application with respect to Count I of the amended complaint, where the taxpayer has called upon the Court to determine that the property's assessed valuation reflects a fair market value that is "incorrect" and should be adjusted to a value of $14,700,000, in accordance with the Property Tax Code. The scope of the mantra in the above cases is less clear when deciding whether it should have a jurisdictional spin whenever compliance with federal constitutional standards is fairly raised. The contention that the circuit courts may only exercise certain powers as delineated by the taxation statute is absolutely true only with respect to certain types of valuation and legal classification issues that the assessor and related administrative agencies have been fully empowered to determine. It is not a complete description of the law with respect to the full range of legal issues that could conceivably touch upon such taxation, nor is it a complete description of the relationship between the judicial, legislative, and executive branches in Illinois or the state and federal government when constitutional issues are joined.

To complete the picture, the following considerations must be present. First, the legislature's statutes must themselves be in harmony with the 1970 Illinois Constitution and the U.S. Constitution. Any substantial question to the contrary would create a justiciable matter over which the

circuit courts have subject matter jurisdiction. Second, the executive branch must administer the laws of taxation in harmony with the state and federal constitutions. Any fairly raised question to the contrary again would create a justiciable matter" over which the circuit courts have subject matter jurisdiction. Importantly, *Allegheny Pittsburgh Coal Company,* in permitting taxpayer relief under the federal Equal Protection Clause, did not deem any portion of a state statute unconstitutional; rather, the constitutional transgression related to the way in which West Virginia, by and through the county assessor, had *administered* the assessment of real property for taxation in an unequal manner. *Allegheny Pittsburgh Coal Co. v. County Com.,* 488 U.S. 336, 338 (1989) ("This *practice* resulted in gross disparities in the assessed value of generally comparable property, and we hold that it denied petitioners the equal protection of the laws guaranteed to them by the Fourteenth Amendment."(emphasis added)); *see also id.* at 344 n.4. When a court determines whether a taxing authority has applied a substantially uniform percentage level of assessment to a complaining taxpayer's class of real property as required by federal law under *Allegheny Pittsburgh Coal Co.,* it is not necessarily reviewing or redetermining the full fair market value of property set by administrative officials according to the parameters set by the Property Tax Code (represented by Count I in the case at bar). In reality, then, the authority of Illinois circuit courts to review the taxation of real property extends beyond the mere redetermination of value as permitted by the legislative grace of the tax-objection-complaint mechanism or, during the previous era, by the doctrines of the fraud and constructive-fraud

exceptions. The authority to conduct other types of review is limited by the content of the constitutional legal principles themselves. For instance, the legal principle underlying *Allegheny Pittsburgh Coal* would entitle a taxpayer to relief, even if the determination of full fair market value had been correct, when other taxpayers within the same class were assessed at a lower percentage level. With respect to these types of outer-perimeter issues, the circuit courts in Illinois have subject matter jurisdiction over "all justiciable matters" pursuant to the 1970 Illinois Constitution. A single case or controversy could conceivably present both inner- and outer perimeter jurisdictional issues. If this approach to jurisdiction over a single case involving both types of issues were not correct, then the state legislature could simply write into any given statute, taxation or otherwise, that either the statute or the executive branch's administration thereof was immune from review under the state or federal constitution's standards, in essence exempting itself from review under any superior and external standards.

Although Defendant Pappas contends that jurisdiction over taxation is somehow unusual or special, the fact that the Illinois General Assembly alone has the constitutional authority to establish taxation laws, Ill. Const. 1970, art. IX, § 1, does not distinguish the area of taxation from any other area of law for which only the legislative branch can create a statute governing the same, be it criminal law or any one of a myriad of civil statutes. Even in the criminal context, the circuit courts' subject matter jurisdiction flows from the constitution. *People v. Gilmore,* 63 Ill. 2d 23, 26-27 (1976); *People v. Benitez,* 169 Ill. 2d 245, 255-256

(1996); *In re Marriage of Heady,* 115 Ill. App. 3d 126, 128 (5th Dist. 1983) (noting that "subject matter jurisdiction is not conferred upon the circuit courts by an information or indictment but by the constitution of the State"). With respect to any statute utilized by the government in civil or criminal litigation, the General Assembly's enactment must itself comply with both the state and federal constitutions, as must the executive branch's administration thereof. Legislatures write statutes and establish taxation rates and procedures; the judiciary does not. Section 1 of article IX, though fundamental, is not extraordinary in this regard.

Defendant Pappas contends that the broader category of jurisdiction does not govern Count V in place of special statutory jurisdiction because she concludes that Count V falls within the category of administrative review. To evaluate this contention, we must begin with the axiomatic principle that separate counts may state different legal theories and find a basis in different statutory and constitutional provisions. 735 ILCS 5/2-613; *Dubey v. Public Storage, Inc.,* 395 Ill. App. 3d 342, 349 (1st Dist. 2009) ("A plaintiff may plead and prove multiple causes of action, though she may obtain only one recovery for an injury."). In the case at bar, Plaintiff Woodfield brings Counts I through IV by means of the procedural mechanism found in the Illinois Property Tax Code. Plaintiff Woodfield, as master of its own complaint, alternatively brings Count V by means of 42 U.S.C. § 1983, and Count V, by its own terms, is ultimately governed by a federal statute, the U.S. Constitution, and the U.S. Supreme Court's interpretations of both. Count V is not

governed by the Illinois Property Tax Code and, in fact, calls into question the legality of its strict application. The rule of decision for Count V is not contained within the Illinois Property Tax Code, instead requiring that both the statute and the executive branch's administration thereof be tested under a federal standard, part of which comes from the U.S. Constitution and part of which comes from § 1983. Because issues have been raised under a distinct source of law, the Court's basis for subject matter jurisdiction is also distinct. When viewed in this proper light, the § 1983 action is not an administrative review of the assessor's or county board of review's work (which does not include constitutional adjudications in any event) but an independent determination of whether the executive branch of state government has complied with federal standards required by the U.S. Constitution, to the extent that a taxpayer has substantially pled lack of compliance.[10] When viewed in this proper light, a § 1983 action is not a form of administrative review in either the constitutional sense, *People ex rel. Devine v. Murphy,* 181 Ill. 2d 522, 529 (1998), or a strict statutory sense, 35 ILCS 200/16-195. It is a distinct vehicle for reviewing

10. The additional issue of whether, in spite of the complaint's allegations, the Illinois General Assembly has provided a parallel mechanism for reviewing substantial questions of compliance with the U.S. Constitution by means of the Property Tax Code- thereby creating an adequate remedy at law for vindicating any federal rights goes to the ultimate merits of one element of the § 1983 claim, *see Nat'l Private Truck Council v. Okla. Tax Comm'n,* 515 U.S. 582 (1995), and not to this Court's subject matter jurisdiction to simply consider the claim, including the adequacy element, in the first instance.

government-official compliance with a federal statute not enacted or controlled by the Illinois General Assembly, but grafted onto the tax objection complaint as a result of age-old principles demanding that courts hear matters based on a common core of operative facts as a single unit for purposes of both economy and consistency. For the sake of judicial economy and consistency of outcome, Illinois courts will entertain all issues and theories arising from a single core of operative facts in a single civil action.[11] 735 ILCS 5/2-613; *Dubey,* 395 Ill. App. 3d at 349; *Mitchell v. Skubiak,* 248 Ill. App. 3d 1000, 1010 (1st Dist. 1993); *Stillo v. State Ret. Sys.,* 366 Ill. App. 3d 660, 664 (1st Dist. 2006); *Bagnola v. Smithkline Beecham Clinical Labs.,* 333 Ill. App. 3d 711, 717-718 (1st Dist. 2002). A party omits a legal theory at the peril of later being subjected to the doctrine of *res judicata* and claim preclusion. *Stillo,* 366 Ill. App. 3d at 664; *Bagnola,* 333 Ill. App. 3d at 717-718.

In some sense, the Court does agree with Defendant Pappas that special statutory jurisdiction does not encompass or permit Count V. Though one basis for subject matter jurisdiction may be nonexistent or faulty, an alternative basis might be considered to provide an Illinois court with the authority to entertain a matter. *E.g., In re Marriage of Diaz,* 363 Ill. App. 3d 1091, 1094 (2d Dist. 2006); *People v. Leonard M (In re T.M.),* 302 Ill. App. 3d 33 (1st Dist. 1998). The Court must have an affirmative source of subject matter jurisdiction over Count V to entertain it,

11. "Separate counts and defenses. (a) Parties may plead as many causes of action, counterclaims, defenses, and matters in reply as they may have, and each shall be separately designated and numbered." 735 ILCS 5/2-613.

and that authority must come from a source other than the authority "to review administrative action as provided by law," Ill. Const., art. VI, § 9. In the real-property-taxation context, the appellate courts have specifically stated, "It is not disputed that Illinois courts have concurrent jurisdiction with [f]ederal courts to hear claims founded upon alleged violations of section 1983." *Beverly Bank v. Board of Review,* 117 Ill. App. 3d 656, 660 (3d Dist. 1983); *see also Tampam Farms v. Supervisor of Assessments,* 271 Ill. App. 3d 798, 803 (2d Dist. 1995)[12]. Illinois circuit courts have, in other contexts, properly maintained jurisdiction over claims sounding under 42 U.S.C. § 1983. *C.J. v. Dep't of Human Servs.,* 331 Ill. App. 3d 871, 875-878 (1st Dist. 2002); *Bohacs v. Reid,* 63 Ill. App. 3d 477, 482 (2d Dist. 1978). Even ifnot specifically delineated, such § 1983 jurisdiction would necessarily be according to the circuit courts' general jurisdiction to entertain "all justiciable matters." Furthermore, the Illinois circuit courts have subject matter jurisdiction to review government action for compliance with standards under the U.S. Constitution, using the mechanism provided by 42 U.S.C. § 1983, as part of the ir general jurisdiction to adjudicate "all justiciable

12. Additionally, in the context of challenging the assessment of real-property taxes, *Boughton Trucking & Materials, Inc. v. County of Will,* 229 Ill. App. 3d 576 (3d Dist. 1992), and *Raschke v. Blancher,* 141 Ill. App. 3d 813 (3d Dist. 1986), tend to imply that Illinois circuits courts can and will entertain those challenges in the form of a § 1983 action if and when the exhaustion requirement is satisfied, as it has been for the 2004 and 2005 cases now under consideration, because those courts would have needed to have subject matter jurisdiction to reach the exhaustion issue and dismiss on that ground.

matters." This includes government action in the form of taxing real property.

The existence of a statute that appears to cover parallel territory does not alter this jurisdictional conclusion (although that statute and its adequacy may have an impact on the ultimate resolution of Count Von the merits). *Blount v. Stroud*, 232 Ill. 2d 302, 305-11 (2009), is instructive in this regard. *Blount v. Stroud* dealt with 775 ILCS 5/8-111(C) (West 2000) of the Illinois Human Rights Act, which had previously been interpreted to strip Illinois circuit courts of their subject matter jurisdiction to adjudicate alleged federal civil-rights violations under the act, instead giving the Human Rights Commission power to entertain such matters. As an alternative to that act, the plaintiff had maintained a successful claim of retaliatory employment termination against an employer under the federal Civil Rights Act of 1866, 42 U.S.C. § 1981 (2000), although the Illinois Human Rights Act created an analogous cause of action for retaliation against an employee who opposes or testifies against unlawful discrimination in employment, 775 ILCS 5/6-101(A) (West 2000). *See Blount v. Stroud*, 232 Ill. 2d 302, 305-11 (2009). The appellate courts had been holding that the comprehensive nature of the state legislation essentially consumed the entire area of state and federal civil rights law, leaving 1) the Human Rights Commission with the jurisdiction to resolve all claims according to administrative procedures and 2) the circuit courts without subject matter jurisdiction to adjudicate any of them, regardless of whether the plaintiff brought the action pursuant to state or federal law. *Blount v.*

Stroud, 232 Ill. 2d at 320-23. Though the claim under the federal civil rights statute had substantially similar characteristics to the parallel retaliation claim created by the state legislature, the *Blount v. Stroud* court overruled those appellate-court holdings and ultimately relied on and recognized the independent character of claims under federal civil rights statutes, which have different objectives. *Blount,* 232 Ill. 2d at 325-27. Finally, the *Blount v. Stroud* court upheld the jury verdict under 42 U.S.C. § 1981 because the circuit court did indeed have subject matter jurisdiction over the federal claim: "Circuit courts are courts of general jurisdiction … and are presumptively competent to adjudicate claims arising under the laws of the United States." *Blount,* 232 Ill. 2d at 382. The same is true here with respect to the Count V claim under 42 U.S.C. § 1983. The maintenance of "general jurisdiction" over the federal claim here and in *Blount* is also consistent with the "deeply rooted presumption that Congress must affirmatively oust or divest the State courts of jurisdiction over a Federal claim in order to vest Federal courts with exclusive jurisdiction." *Grotemyer v. Lake Shore Petro Corp.,* 235 Ill. App. 3d 314, 316 (1st Dist. 1992).

As Defendant Pappas points out, § 1983 claims in the taxation context come equipped with certain special rules, including the rule that an additional element of the claim is the requirement that the state must fail to provide an adequate remedy at law for adjudicating the federal right allegedly violated by the tax extended. And, of course, under the Property Tax Code, a tax objection complaint appears to implicate that issue to the extent it should resolve "all objections" and "provide a complete

remedy for any claims with respect to those taxes [or] assessments." 35 ILCS 200/23-15(b)(1). Nevertheless, using these arguments to resolve the challenge to subject matter jurisdiction would be erroneous because it would require the consideration of issues pertaining to the merits of Count V *before* making a determination as to subject matter jurisdiction. In other words, the analysis would be proceeding in the wrong order. To proceed in the correct order, we must start with first principles: First, proper jurisdiction stems from the fact that "the plaintiff's case, *as framed by the complaint or petition,* presents a justiciable matter"; the defendant's preference for stating her own version of the case and her own defenses does not factor in. *Blount v. Stroud,* 232 Ill. 2d at 316 (emphasis added); *see also Belleville Toyota v. Toyota Motor Sales,* U.S.A., 199 Ill. 2d 325, 334-35 (2002). Additionally, "[s]ubject matter jurisdiction does not depend upon the ultimate outcome of the suit. A party may bring unsuccessful as well as successful suits in the circuit court." *Blount,* 232 Ill. 2d at 316; *see also Belleville Toyota,* 199 Ill. 2d at 340-41. Finally, "[s]ubject matter jurisdiction does not depend upon the legal sufficiency of the pleadings." *Belleville Toyota,* 199 Ill. 2d at 340.

Applying these principles to the case at bar reveals the following: The Count V claim under 42 U.S.C. § 1983, at its core, claims that the taxpayer's rights under the U.S. Constitution's Fourteenth Amendment Equal Protection Clause have been violated in that Cook County maintains a *de facto* assessment system whereby the assessor intentionally assesses the majority of class 5a property at or around 22%, while Plaintiff Woodfield

has been illegally subjected to the higher *de jure* level of assessment the Cook County Code of Ordinances sets forth, 38%. As an alternative to relying on the statutory tax-objection-complaint procedure, 35 ILCS 200/23-10 to -15, to vindicate this right, Count V calls it into question in the event that 35 ILCS 200/23-10 and 23-15 render the parallel Count IV federal claim inactionable as a result of their prohibition against the review of assessment methodologies, techniques, and procedures of assessing officials and of such officials' intent and mental processes. In that instance, the complaint alleges that Illinois law has failed to provide an adequate remedy at law for vindicating a federal constitutional right. The allegations as framed by the complaint's master call into question both the taxpayer's treatment within its own class under the U.S. Constitution and the ability of the Illinois Property Tax Code to effectively deal with that issue. These allegations present a question appropriate for review and determination by the court, touching upon the legal relations of parties having adverse legal interests, i.e., a justiciable matter. This conclusion will remain true even if the Court later disagrees and finds that the Property Tax Code provides a remedy at law that is adequate for vindicating the federal constitutional right, because jurisdiction does not turn on the ultimate outcome of the suit, which necessarily includes success or failure on individual elements comprising a plaintiffs cause of action.

In support of her theory of subject matter jurisdiction, Defendant Pappas does cite two cases that specifically discuss circuit court jurisdiction in the context of a dispute over real property taxation. *People v. Illinois Women's*

Athletic Club, 360 Ill. 577 (1935); *KT Winneburg, LLC v. Calhoun County Bd. of Review,* 403 Ill. App. 3d 744 (4th Dist. 2010). The above federal questions involving 1) the adequacy of the state statutory remedy under 42 U.S.C. § 1983 and 2) the constitutionality of underassessing other taxpayers within the same class under the federal Equal Protection Clause render these two cases distinguishable. The merits of *KT Winneburg, LLC, v. Calhoun County Bd. of Review,* 403 Ill. App. 3d 744 (4th Dist. 2010), had the appellate court found subject matter jurisdiction in the circuit court, involved a question of statutory interpretation affecting property classification, which in turn affects the level of assessment. *Id.* at 745-46. No federal constitutional (or other federal) questions were presented to the circuit court in *KT Winneburg.* While the precedent goes to impressive lengths to set forth a comprehensive regime under the Property Tax Code, which includes one track ending in formal statutory administrative review and another track ending with the tax-objection-complaint procedure, it had no reason to consider every conceivable scenario that could stem from disputes over real-property taxation. The court had no occasion to consider if and how a circuit court might obtain jurisdiction to hear disputes 1) in the nature of *Allegheny Pittsburgh Coal Co. v. County Com.,* 488 U.S. 336, 343 (1989), which is based on a right from a federal constitutional amendment that was ratified in 1868, or 2) under 42 U.S.C. § 1983, which is derived from the enactment of the Civil Rights Act of 1871. The longstanding nature of these federal claims presents a sharp contrast to the portion of the *KT Winneburg* precedent commenting on the novelty of the tax-objection complaint and stating that "the tax-

objection complaint has no counterpart in common law or equity." *KT Winneburg, LLC,* 403 Ill. App. 3d at 751. The statement would indicate that *KT Winneburg* did not consider every conceivable taxation dispute (and had no reason to do so), including the addition of a count under federal law and/or an attack on the tax-objection-complaint mechanism itself. *People v. Illinois Women's Athletic Club,* 360 Ill. 577 (1935), which considered subject matter jurisdiction over taxation before the Illinois Property Tax Code existed and under the previous constitution, does not prevent this Court from entertaining Count V for essentially the same reasons: The circuit court had considered no federal constitutional challenge to a taxation statute or administrative regime, instead considering the correctness of valuation as it related to calculating the volume of the building being taxed. *Id.* at 579. The substance of the dispute in *Illinois Women's Athletic Club* is analogous to the Count I assertion that the Woodfield assessed valuation is "incorrect" within the meaning of the Property Tax Code, and Defendant Pappas has not contested this Court's jurisdiction over Count I under the modem statute.

The jurisdictional confusion caused by stretching issues such as valuation too far is further apparent in Defendant Pappas's reliance on other legal authorities. She relies on the following constitutional provision as a form of a jurisdictional limitation affecting Count V:

> (a) Except as otherwise provided in this Section, taxes upon real property shall be levied uniformly by valuation ascertained as the General Assembly shall provide by law.

Ill. Const. 1970, art. IX, § 4(a). Whatever effect this provision may have on the jurisdiction of the courts to determine or redetermine real property "**valuation** ascertained as the General Assembly shall provide by law," Ill. Const. 1970, art. IX, § 4(a) (bold emphasis added), (here exercised pursuant to Count I of the complaint), Defendant Pappas over-reads that effect beyond "valuation" and into other counts and legal issues. It should be evident that whatever effect that clause has, it does not prohibit the Illinois courts from interpreting the section 4 constitutional uniformity provision, without basing that decision on statutory language, as in *Walsh v. Property Tax Appeal Bd.,* 181 Ill. 2d 228 (1998), and applying the same against the government. It should be evident that whatever effect it has, it does not prohibit the Illinois circuit courts from interpreting the Fourteenth Amendment (or § 1983) and applying the same to an individual taxpayer's case. *See* Ill. Const., art. VI, § 9; *Allegheny Pittsburgh Coal Co. v. County Com.,* 488 U.S. 336 (1989); *Blount v. Stroud,* 232 Ill. 2d 302 (2009); *Beverly Bank v. Board of Review,* 117 Ill. App. 3d 656, 660 (3d Dist. 1983); *Tampam Farms v. Supervisor of Assessments,* 271 Ill. App. 3d 798, 803 (2d Dist. 1995). In conclusion, it is not a precise statement of the law to say that "in real estate tax matters, the circuit court only has the subject matter jurisdiction to hear what our legislature has specifically authorized by statute." (Section 2-619.1 Motion to Dismiss Plaintiff's First Amended Tax Objection Complaint at 38.)

Defendant Pappas also maintains that compliance with the Property Tax Code is a prerequisite to obtaining relief thereunder in the form of a statutorily mandated

refund, and § 1983 and the taxpayer do not adhere to these requirements in Count V. The inclusion of Count V as an alternative count does not necessarily mean that the taxpayer has not otherwise complied with the Property Tax Code,[13] and, in any event, the Court has previously explained how and why Count V does not represent administrative review in any form, resulting in a different test for subject matter jurisdiction- the ordinary "justiciable matter" test. Additionally, focusing on the statutory-refund remedy fails to acknowledge what the defendant must acknowledge: 42 U.S.C. § 1983 is an entirely different statute than the Illinois Property Tax Code with different rules and legal standards, so the remedies available are likewise governed by different rules. A successful claimant under § 1983 can obtain monetary damages.[14]

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13. The taxpayer in this case has complied with the Property Tax Code by filing a tax objection complaint within the required time frame, and this Court previously determined that the statutory exhaustion requirement has been satisfied with respect to Count IV when the substance of that count was presented to the county board of review in a timely petition. By satisfying the 35 ILCS 200/23-10 exhaustion requirement with respect to the federal claim in Count IV, the taxpayer also satisfied the exhaustion requirement for the parallel federal claim under § 1983, which is subject to a different exhaustion requirement stemming entirely from case law. Thus, the taxpayer here has complied with the Property Tax Code to the extent necessary to reach this Circuit Court and to be entitled, as any other civil litigant, to state an alternative theory of recovery under a distinct law.

14. While Count V of the amended complaint and the parties' arguments tend to focus on requests for declaratory and equitable relief in the prayer for relief, Count V also contains a general prayer "[t]hat Plaintiff be granted such other and further relief

42 U.S.C. § 1983 ("Every person who … subjects … any citizen of the United States … to the deprivation of any rights … secured by the Constitution … shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress ….*");see, e.g., Baker v. F & F Inv.,* 420 F.2d 1191, 1193 (7th Cir. 1970); *Roybal v. City of Albuquerque,* 2009 U.S. Dist. LEXIS 45663, *27-*28 (D.N.M. Feb. 2, 2009); *Phelps v. Kapnolas,* 2005 U.S. Dist. LEXIS 45581, at *12 (W.D.N.Y. May 31, 2005); *Mirin v. Justices of Supreme Court,* 415 F. Supp. 1178, 1191 (D. Nev. 1976). To a successful claimant entitled to a § 1983 damages award in an Illinois court, the authority or lack of authority to grant refunds under the Illinois Property Tax Code becomes irrelevant, including case law standing for the proposition that tax refunds are strictly and precisely limited by the Illinois statute.

As another matter related to cases addressing strict refund procedures, the voluntary-tax payment cases likewise do not pose an obstacle to subject matter jurisdiction over the federal claim in Count V (and are likely not relevant in the case at bar in any event). A common pattern in the voluntary-tax-payment cases occurs when a taxpayer pays a tax without protesting the constitutionality of the tax through designated mechanisms, while a *different taxpayer* goes through the effort of litigating and succeeding on the constitutional challenge to the tax. Then, the taxpayer at issue in the case attempts to ride the coattails of the other taxpayer

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as the Court may deem to be equitable and just." (First Amended Tax Objection Complaint ¶ 55.d., at 21.)

who eventually succeeded, and the courts deny relief. For instance, the taxpayers in *Chicago Motor Club v. Kinney,* 329 Ill. 120 (1928), and *Board of Junior College v. Carey,* 43 Ill. 2d 82 (1969), received relief from an unconstitutional tax, while the subsequent taxpayers in *Richardson Lubricating Co. v. Kinney,* 337 Ill. 122 (1929), and *S.A.S. Co. v. Kucharski,* 53 Ill. 2d 139 (1972), did not. Furthermore, a taxpayer can and should be able to obtain relief from an unconstitutional tax in his own timely protest case (whatever the current statutory mechanism is) in spite of the voluntary-tax-payment cases. Here, the taxpayer filed a timely petition before the Cook County Board of Review and the timely complaint that is now before this Circuit Court of Cook County, raising constitutional issues throughout.

The consideration of Count V under the Court's authority to adjudicate "all justiciable matters" is also in harmony with the principle that, while administrative agencies are allowed and encouraged to consider constitutional doctrines and arguments in fashioning relief (hopefully) acceptable to a taxpayer, they ultimately have no power or authority to declare statutes or executive administration unconstitutional under either the state or federal constitution, *see Carpetland USA. v. Ill. Dep't of Empl. Sec.,* 201 Ill. 2d 351, 396-97 (2002); *Home Interiors & Gifts v. Dep't of Revenue,* 318 Ill. App. 3d 205, 210 (1st Dist. 2000). Thus, in a hypothetical scenario in which the Illinois General Assembly amended the Property Tax Code in such a way that the county boards of review were the bodies of final resort in all property tax matters, leaving no form of administrative review or tax-objection

complaint, the Illinois circuit courts would still have power to determine whether the state's taxation regime complied with applicable standards under the U.S. Constitution. In that scenario, not only would the circuit courts of general jurisdiction have subject matter jurisdiction to address the constitutional question as a justiciable matter (as here), but the taxpayer would also have no adequate remedy at law to adjudicate the federal right, and the adequacy element of the § 1983 cause of action would be satisfied in any consideration of the merits of the claim. It is untenable that a state legislature could leave the final determination of constitutional claims with quasi-judicial bodies that are unable to adjudicate them or attempt to effectively exempt the state or county from federal law. These ideas must factor into any consideration of subject matter jurisdiction over Count V,[15] though the adequacy question involving the existing alternative under the Property Tax Code is a question the Court will consider on the merits and not at this stage.

Any further arguments in the motion concerning the lack of "equity jurisdiction" over Count V are not true arguments about subject matter jurisdiction *per se,* and

15. An interesting related question might be whether the Court's jurisdiction over the federal and state constitutional issues in Counts II, III, and IV falls under "special statutory jurisdiction" or the more general type of jurisdiction over "all justiciable matters." The question, however, is presently academic inasmuch as Defendant Pappas has not contested jurisdiction over those counts, and the Court is satisfied that it does have subject matter jurisdiction over those counts under one or the other theory, or both.

especially not so since the merger of law and equity. As an appellate authority aptly explained:

> At the outset, we note that Black's Law Dictionary provides the following definition of equity jurisdiction:
>
> > "In a common-law judicial system, the power to hear certain civil actions according to the procedure of the court of chancery, and to resolve them according to equitable rules.
> >
> > > '[T]he term equity jurisdiction does not refer to jurisdiction in the sense of the power conferred by the sovereign on the court over specified subject-matters or to jurisdiction over the res or the persons of the parties in a particular proceeding but refers rather to the merits. The want of equity jurisdiction does not mean that the court has no power to act but that it should not act, as on the ground, for example, that there is an adequate remedy at law.'"

Searles v. Bd. of Educ., 369 Ill. App. 3d 500, 505 (1st Dist. 2006) (quoting *Black's Law Dictionary* 869 (8th ed. 2004) (quoting deFuniak, *Handbook of Modem Equity* 38 (2d ed. 1956))).

For to foregoing reasons, the principles of "limited jurisdiction" or "special statutory jurisdiction" do not apply to substantially raised questions under the U.S. Constitution and 42 U.S.C. § 1983, even if they may apply to taxation questions of overvaluation, misclassification, or other nonconstitutional issues contained in separate counts. The circuit courts of Illinois can exercise general jurisdiction to consider such questions according to their constitutionally granted authority to adjudicate "all justiciable matters," even in the context of taxation. The circuit courts may obtain jurisdiction over taxation, apart from special statutory jurisdiction related to administrative review, in situations that otherwise qualify as "justiciable matters."

Defendant Pappas's motion to dismiss Count V for lack of subject matter jurisdiction pursuant to 735 ILCS 5/2-619(a)(l) will be denied.

B. Motion to Dismiss Count V Under 735 ILCS 5/2-615 Due to the Existence of an Adequate Remedy at Law in the Illinois Property Tax Code

Defendant Pappas has also moved to dismiss Count V as being legally insufficient under 735 ILCS 5/2-615,[16]

16. A complaint is 1) legally sufficient when it sets forth a legally recognized cause of action and 2) factually sufficient when it contains well-pled facts bringing the allegations within such cause of action. *Lester v. Chicago Park Dist.,* 159 Ill. App. 3d 1054, 1057 (1st Dist. 1987). "If, without considering the conclusions that are pleaded, there are not sufficient allegations of fact to state a cause of action, a motion to dismiss will properly be granted, no matter

because an adequate remedy at law exists in the form of the Property Tax Code's tax-objection-complaint procedure, 35 ILCS 200/23-10 and -15. The Court notes as an initial matter that Defendant Pappas would, out of necessity, have to be wrong about the Court's subject matter jurisdiction over Count V for the Court to even consider and agree with her various arguments pertaining to Count V, most of which contend that the claim should be defeated on the merits, as a matter of law, at this stage of the litigation. As the Court is satisfied that the motion has erroneously evaluated this Court's subject matter jurisdiction, it will proceed to consider those arguments.

The Court will continue to adhere to the September 15, 2010, ruling for the companion 2003 tax-objection case (No. 05 COTO 1866), marked as Defendant Pappas's Exhibit "B" and designated as the "2003 Reconsideration Opinion and Order," on the issue of the adequacy of the Property Tax Code as a remedy at law for vindicating the federal constitutional right at issue. The Illinois Property Tax Code provides an adequate remedy at law for adjudicating a claim under the U.S. Constitution's Equal Protection Clause because, if and when a taxpayer

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how many conclusions may have been stated and regardless of whether they inform the defendant in a general way of the nature of the claim against him." *Adkins v. Sarah Bush Lincoln Health Center,* 129 Ill. 2d 497, 519-20 (1989). The existence of an adequate remedy at law, which can affect the validity of a claim for which the absence of the same is an element, may be considered as part of a 5/2-615 motion to dismiss challenging the legal sufficiency of the claim. *Rodgers v. Whitley,* 282 Ill. App. 3d 741, 745-46, 748 (1st Dist. 1996).

demonstrates that, over time, other similarly situated property was underassessed in light of objective, market-based measures of fair market value, as it must, the taxpayer has already effectively proven that it was intentionally singled out for disparate treatment relative to other class members, i.e., illegal discrimination. In this unique area of the law, the taxpayer can prevail by simply showing such a disparate impact as a proxy for the unlawful (general) intent to discriminate otherwise required. And further, because this required showing is also sufficient without an inquiry regarding methodology used to create the previous assessments for the class at issue, the Illinois remedy is adequate even if the taxpayer is not permitted to discover all of the evidence it would have otherwise desired, due to countervailing interests. As this Court has previously indicated, in resolving the potential dilemma created by 35 ILCS 200/23-15, it follows the approach taken by the U.S. Court of Appeals for the Second Circuit:

> Intentional discrimination also follows from evidence that the assessing authority repeatedly applied greatly disparate assessment ratios to similarly situated properties in violation of state law. *Louisville & Nashville Railroad Co. v. Public Service Commission of Tennessee,* 249 F. Supp. 894, 899-902 (M.D.Tenn. 1966), *affd,* 389 F.2d 247 (6th Cir. 1968). Thus, because proof that the assessment method results in disparate treatment of similarly situated taxpayers is all that is required for LILCO to succeed in a declaratory judgment action on its equal

> protection claim, *see Allegheny Pittsburgh,* 109 S. Ct. at 639; *Louisville & Nashville Railroad,* 249 F. Supp. at 899-902, and because such proof not only may be presented, but is essential to success in such an action, the issue of subjective intent as a separate inquiry simply evaporates.

Long Island Lighting Co. v. Brookhaven, 889 F.2d 428, 432 (2d Cir. 1989). Another way of restating this approach is by pointing out that proven disparate-impact damages and the claim of unlawful discrimination resulting in a disparate impact are the same creature. The monetary damages from discrimination are the violation of the federal constitutional right. For that reason, the Property Tax Code provides an adequate remedy at law in spite of 35 ILCS 200/23-15(b). Although legal theories can be pled in the alternative, *Broadnax v. Morrow,* 326 Ill. App. 3d 1074, 1081 (4th Dist. 2002), and the taxpayer relies on this fact, pleading a count in the alternative does not subject it to a lesser standard under 735 ILCS 5/2-615, especially if the Court disagrees with a legal conclusion on which one element is based, and the count cannot stand on its own two feet without success on that element.

Having dismissed the Count V claim under § 1983, the Court will consider the ongoing controversy over 35 ILCS 200/23-15(b) as specific disputes arise under the federal Equal Protection Clause claim in Count IV, and it will, according to the facts and circumstances present, determine whether the provision is constitutional or unconstitutional as applied to those facts and circumstances under the federal Supremacy Clause,

U.S. Const. art. VI, cl. 2.[17] The Court will consider or reconsider the enforceability of 35 ILCS 200/23-15(b), for example, if Defendant Pappas defends on the ground of the assessor having committed a clerical or calculation error that caused the disparity otherwise shown by Plaintiff Woodfield's evidence, thereby negating any inference of intent to discriminate under federal law. More generally, the Court will consider or reconsider the enforceability of 200/23-15(b) if Defendant Pappas, as part of her defense, does anything that could be reasonably deemed to open the door on issues such as prior methodology, intent, or motivation. If, however, Defendant Pappas merely defends by attacking, for example, the weight, persuasiveness, or admissibility of the taxpayer's evidence (on other grounds), then a constitutional dilemma is less likely.

Pursuant to 735 ILCS 5/2-615, Defendant Pappas's motion to dismiss Count V for legal insufficiency resulting from the existence of an adequate remedy at law in the form of the Illinois Property Tax Code will be granted.

ORDER

Having considered the briefs and oral arguments of the parties, the Court hereby orders the following disposition of Defendant Pappas's "Section 2-619.1 Motion

17. In light of the previous discussion about the Court's jurisdiction over "all justiciable matters," the Court will necessarily have subject matter jurisdiction to consider all issues that arise under all applicable laws and sources of law, including those that are outside the four comers of the Illinois Property Tax Code that otherwise governs Count IV.

to Dismiss Plaintiff's First Amended Tax Objection Complaint and Complaint for Declaratory Judgment and Other Relief Under 42 U.S.C. § § 1983 and 1988":

1. The motion to dismiss Count III as legally insufficient to state a cause of action under 735 ILCS 5/2-615 is DENIED.

2. The motion to dismiss Counts II and III (No. 05 COTO 3938) and Count IV (No. 07 COTO 1618 and No. 05 COTO 3938) under 735 ILCS 5/2-619 as being barred for failure to exhaust administrative remedies is DENIED.

3. The motion to dismiss Count V under 735 ILCS 5/2-619(a)(l) due to the Circuit Court's lack of subject matter jurisdiction to decide the matter is DENIED.

4. The motion to dismiss Count V for legal insufficiency under 735 ILCS 5/2-615 due to the existence of an adequate remedy at law, the Illinois Property Tax Code, is GRANTED.

Date: June 2, 2011 **Enter:**

/s/_____
Judge Alfred J. Paul

APPENDIX H — REPORT OF THE TASK FORCE ON REFORM OF THE COOK COUNTY TAX APPEALS PROCESS AS REVISED AND ADOPTED BY THE REAL ESTATE TAX COMMITTEE OF THE CHICAGO BAR ASSOCIATION DATED FEBRUARY 22, 1995, AS ADOPTED BY THE CHICAGO BAR ASSOCIATION REAL ESTATE COMMITTEE ON MARCH 2, 1995

REPORT OF THE TASK FORCE
ON
REFORM OF THE COOK COUNTY
PROPERTY TAX APPEALS PROCESS
AS REVISED AND ADOPTED
BY THE
REAL ESTATE TAX COMMITTEE
OF THE
CHICAGO BAR ASSOCIATION

PROPOSED AMENDMENTS
TO THE PROPERTY TAX CODE
AND
COMMENTARY

Report of the Civic Federation Task Force Dated February 22, 1995, As Revised and Adopted by the Chicago Bar Association Real Estate Committee March 2, 1995

[TABLES INTENTIONALLY OMITTED]

Appendix H

I. INTRODUCTION AND EXECUTIVE SUMMARY

The Civic Federation Task Force on Reform of the Cook County Property Tax Appeals Process was formed in response to concerns raised during the passage of Public Act 88-642, which took effect September 9, 1994. This act, commonly known by its bill number as "Senate Bill 1336," resulted from a consensus among taxpayers, the organized bar, taxpayer watchdog organizations, taxing officials, and state legislators that the procedure for judicial review of real estate taxes in Cook County was imperiled by recent court decisions.

Over many years, the process for judicial review of real property taxes, and particularly tax assessments, has been the subject of considerable debate. Most of the debate has centered around the doctrine of "constructive fraud," which forms the current basis for review of assessments through tax objections in the circuit court. While tax objections are available throughout Illinois, they are little used outside Cook County because review of assessments through the state Property Tax Appeal Board is available and is preferred by most taxpayers. In Cook County, however, objections in court based on constructive fraud have been the taxpayer's only option.

Historically, the main criticism directed at the law of constructive fraud was its unpredictability. In the 19th century the Illinois courts, which had been initially reluctant to review assessments in the absence of actual fraud or dishonesty on the part of assessing officials,

developed the concept of constructive fraud to extend relief to a slightly larger class of cases. Theoretically, although no actual dishonesty was alleged or proven, the courts declared that the taxpayer might recover upon proof of an extreme overassessment, a valuation "so grossly out of the way" that it could not reasonably be supposed to have been "honestly" made. See *Pacific Hotel Co. v. Lieb,* 83 Ill. 602,609-10 (1876). However, no clear definition of a "grossly excessive" assessment ever emerged, and court decisions in this century produced dramatically disparate results. (See cases cited in Ganz, Alan S., "Review of Real Estate Assessments - Cook County (Chicago) versus Remainder of Illinois," 11 John Marshall Journal of Practice and Procedure, 17, 19 (1978.)

Recently, the constructive fraud debate has intensified because of the Illinois Supreme Court's interpretation of the doctrine in *In Re Application of County Treasurer, etc. v. Ford Motor Company,* 131 Ill.2d 541, 546 N.E.2d 506 (1989), a decision which has been strictly followed by subsequent courts. See *In Re Application of County Collector, etc. v. Atlas Corporation,* 261 Ill.App.3d 494, 633 N.E.2d 778 (1993), *lv. to app. den.* 155 Ill.2d 564 (1994); and *In Re Application of County Collector, etc. v. J.C. Penney Company, Inc.,* Circuit Court of Cook County, County Division, Misc. No. 86-34 (tax year 1985), Objection No. 721 (Memorandum Decision of June 15, 1994, Judge Michael J. Murphy; appeal pending.) These decisions refocused the issue in tax objection cases challenging assessments, from emphasizing discrepancies in value to emphasizing circumstances purporting to show misconduct or "dishonesty" by assessing officials.

The result has been to divert the attention of courts and litigants away from the question of the accuracy and legality of the assessment and tax.

In the view of its legislative sponsors, Senate Bill 1336 was intended to overrule that portion of *Ford* dealing with the question of the assessor's exercise of honest judgment. However, it was not intended to work a comprehensive change in the shape and scope of the tax objection procedure. From its inception the bill was intended to be a stopgap, providing some relief until a panel representing all interested parties could be convened to draft a more comprehensive and lasting statutory reform. See *88th General Assembly House Transcription Debate, SB 1336, June 9, 1994,* at 1-3 (remarks of Representatives Currie, Kubik and Levin). Such a panel was convened as the Civic Federation Task Force.

The stopgap nature of SB 1336 was given new emphasis by a recent decision of the Cook County Circuit Court declaring the provision unconstitutional. *In Re Application of County Collector, etc. v. J.C. Penney Company, Inc.,* Misc. Nos. 86-34, 87-16, 88-15 (various objections for tax years 1985-1987) *("J.C. Penney II")* (Memorandum Opinion of December 6, 1994, Judge Michael J. Murphy). This decision appears to rest primarily on the circuit court's view that SB 1336 abandoned the traditional rule of constructive fraud, yet failed to replace it with a clearly defined alternative rule.

The Task Force believes that the alternative legislation proposed in this report supplies the clearly defined rules

which the court found lacking in SB 1336. Further, it is hoped that the prompt enactment of this alternative legislation will best address the underlying problems in the tax appeals process which led to SB 1336 and will obviate the lengthy and uncertain appellate review of SB 1336 which has now begun.

The Task Force based its work on five principles or goals. To be effective, the tax appeals process must: (1) be clearly defined; (2) afford a complete remedy to aggrieved taxpayers; (3) focus on the accuracy and legality of the challenged tax or assessment, not on collateral issues; (4) balance the public's interest in relief from improper taxes with its interest in stable property tax revenues for the support of local government and (5) not seek structural changes in the current functioning of the Cook County Assessor's office or the Cook County Board of Appeals.

The Task Force concluded that these goals would best be accomplished by reforming the applicable court proceedings (i.e., the judicial tax objection process), rather than the other alternative, namely, extending the Property Tax Appeal Board's jurisdiction to Cook County.

The proposed legislation streamlines tax objection procedure, clarifies the hearing process, and makes significant changes in the standard of review applied in challenges to assessment valuations. The key features of the proposal are:

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General Provisions

• Standard of Review. In assessment appeals, the doctrine of constructive fraud is expressly abolished. Where the taxpayer meets the burden of proof and overcomes the presumption that the assessment is correct, the court is directed to grant relief from an assessment that is incorrect or illegal. The standard makes clear that in cases which allege overvaluation of the taxpayer's property, it will be unnecessary to prove that the assessment resulted from any misconduct or improper practices by assessing officials.

• Presumptions and Burden of Proof. As under existing law, the assessments, rates and taxes challenged in an objection are presumed correct. The taxpayer will have the burden of proof by "clear and convincing evidence" -- the highest burden applicable in civil cases -- in order to rebut this presumption and obtain a tax refund.

• Scope of the Tax Objection Remedy. The reformed tax objection procedure will preserve the broad scope of the remedy under existing law. Thus, not only incorrect assessments, but also statutory misclassifications, constitutional violations, illegal levies or tax rates, and any other legal or factual claims not exclusively provided for in other parts of the Property Tax Code, will fall within the ambit of a tax objection complaint.

• Conduct of Hearings. As under existing law, tax objections will be tried to the court without a jury, and the court will hear the matter *de novo* rather than as an

appeal from the action of the assessing officials. Appeals from final judgments may be taken to the appellate court as in other civil cases.

• Prerequisites to Objection. There is no change in the existing law that taxes must be paid in full as a pre-condition to filing a tax objection in court. Similarly, the requirement that the taxpayer exhaust its administrative remedy by way of appeal to the county board of appeals or review prior to proceeding in court will continue to apply; but this requirement is now specifically spelled out in the statute.

Procedural Reforms

• Payment Under Protest. The current requirement that a separate letter of protest be filed with the county collector at the time of payment is eliminated.

• Time of Payment and Filing. Both payment of the tax and filing of the tax objection complaint are keyed to the due date of the second (i.e. final) installment tax bill. To meet the condition for filing an objection, payment in full must occur no later than 60 days from the first penalty date for this installment, and the objection must be filed within 75 days from that penalty date.

• Separation from Collector's Application. Tax objections will be initiated by the taxpayer as a straightforward civil complaint, naming the county collector as defendant. This ends the anomalous current practice in which objections technically must be interposed

in response to the collector's application for judgment and order of sale against delinquent properties.

Burden of Proof and Standard of Review in Assessment Cases

In resolving the questions of the standard of review and burden of proof in assessment challenges, the Task Force was required to balance the need to provide effective taxpayer relief against the need to avoid opening up the process so widely that the courts could potentially be called on to reassess any or all property in the county. The consensus on the Task Force was to provide for a standard of review permitting recovery upon proof of an incorrect or illegal assessment, but to require the taxpayer to meet a burden of proof by "clear and convincing" evidence (the highest burden applied in civil litigation, but clearly not the criminal burden, "beyond a reasonable doubt") in order to establish that such an incorrect or illegal assessment bas occurred. This choice of balance was preferred over the alternative of choosing the lower burden of proof and then attempting the seemingly impossible task of defining an enhanced standard of review, in which the "degree of incorrectness" would be in issue.

This balance is illustrated by a case in which the outcome turns solely on the competing opinions of equally compelling witnesses. It is expected that in such a case, the assessment would be sustained since such evidence would not constitute clear and convincing proof that the assessment is incorrect. On the other hand, where the evidence does clearly and convincingly demonstrate the

existence of an incorrect assessment it is expected that the court would grant relief.

Scope of Proposed Reform; No Change in PTAB Procedure

In order to solve the problems arising in the aftermath of the *Ford* case, the proposed legislation is designed to take effect immediately and to apply to all pending cases.

Additionally, although the proposed draft is of statewide application, it must be emphasized that appeals to the state Property Tax Appeal Board (PTAB), which are currently the vehicle for most cases of assessment review outside Cook County, are not changed in any way by the draft legislation. The Task Force concluded that a proposal for statewide application was preferable to attempting to limit the reform to Cook County, for several reasons.

The tax objection provisions of the Property Tax Code which would be amended have always applied throughout Illinois. While non-Cook County taxpayers have had and will continue to have, as an alternative, an administrative appeal remedy through the PTAB, the judicial tax objection process has always been available to these taxpayers. The Task Force sees no valid reason to deprive non-Cook County taxpayers of this alternative or to deprive them of the benefit of a reform in it. Indeed, either deprivation presents potential constitutional problems.

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II. PROPOSED PROPERTY TAX CODE AMENDMENTS AND COMMENTARY

Following is a section-by-section analysis of the Task Force's proposed legislative changes to the Property Tax Code. Deletions from the existing text of the Code are indicated by overstrikes, and new language is highlighted by shading. Each quotation from the Code is followed by a brief commentary explaining the changes. The changes in several other sections are omitted from this analysis since the proposed amendments are primarily technical in nature. These are detailed at the end of this report, at which place the full text of all the proposed amendments is reproduced, without commentary, as an appendix.

§ 21-175 Proceedings By Court

Defenses to the entry of judgment against properties included in the delinquent list shall be entertained by the court only when: (a) the defense includes a writing specifying the particular grounds for the objection; and (b) except as otherwise provided in Section 14-15, 14-25, 23-5, and 23-25, the ~~writing is accompanied by an official original or duplicate receipt of the tax collector showing that the taxes to which objection is made have been fully paid under protest. All tax collectors shall furnish the necessary duplicate receipts without charge. The court shall hear and determine the matter as provided in Section 23-15~~ taxes to which objection is made are paid

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under protest pursuant to Section 23-5 and a tax objection complaint is filed pursuant to Section 23-10.

* * *

This section and Section 23-10 of the Code currently embody the basic provisions for tax objections, requiring that the objections be filed only as responses ("defenses") within the annual county collector's application for judgment and order of sale of delinquent properties. Thus, although in modern times objections by definition relate to taxes which are fully paid, by historical accident the objection process is relegated to judicial proceedings whose primary purpose is collection of unpaid taxes. This produces an anomalous situation in which the objecting taxpayer, for practical purposes the plaintiff in the lawsuit and the party with the burden of proof, is technically a defendant against the "application" or complaint commenced by the county collector. See *In Re Application of County Collector (etc.) v. Randolph-Wells Building Partnership,* 78 Ill. App. 3d 769, 397 N.E.2d 232 (1st Dist. 1979).

The Task Force found no reason for this procedural anomaly to continue. Therefore, changes in Section 23-10, cross-referenced in this section, would permit tax objections to be commenced as a straightforward complaint filed by the taxpayer. In theory the tax objection complaint process should be divorced for most purposes from the collector's application and judgment proceedings. However, although filed as a complaint separately from

the collector's application, the new form of tax objection may nonetheless still be construed as an objection to the annual tax judgment to the extent any part of the Code may logically require this result (e.g. exemption claims). Therefore the terminology of tax "objection" has been retained in order to weave the new procedure into the existing fabric of the Code.

The Code currently provides for two other types of tax objection which are left essentially unchanged, although some minor modifications in statutory language have been proposed. First, Section 14-15 permits adjudication of certificates of error by an "assessor's objection" to the collector's application. A number of such certificates correct assessment valuation errors for each tax year in Cook County through such objections by the assessor, and the courts have recognized the efficacy and convenience of this procedure. See, e.g., *Chicago Sheraton Corporation v. Zaban,* 71 Ill. 2d 85, 373 N.E. 2d 1318 (1978). Under Section 14-25 and related sections, certificates of error are also employed to establish exemptions.

Second, this Section 21-175, together with Sections 23-5 and 23-25, provide a limited but important role for exemption objections filed by taxpayers: permitting the taxpayer to block a tax sale of its property while an application for exemption is being adjudicated on the merits by the Department of Revenue or the courts. Since the law does not require payment of the taxes while an exemption claim is decided, the amendments to this section will continue to permit exemption objections directly within the collector's application proceeding without

this pre-condition. Alternatively, the exemption claimant may accomplish the same result (forestalling a tax sale) indirectly by filing a separate tax objection complaint under Sections 23-5 and 23-10.

§ 23-5 Payment Under Protest

> If any person desires to object ~~under Section 21-175~~ to all or any part of a property tax for any year, for any reason other than that the property is exempt from taxation ~~and that a proceeding to determine the tax exempt status of such property is pending under Section 16-70 or Section 16-130 or is being conducted under Section 8-35 or Section 8-40~~, he or she shall pay all of the tax due ~~prior to the collector's filing of his or her annual application for judgment and order of sale of delinquent properties~~ within sixty days from the first penalty date of the final installment of taxes for that year. ~~Each payment shall be accompanied by a written statement substantially in the following form:~~ Whenever taxes are paid in compliance with this Section and a tax objection complaint is filed in compliance with Section 23-10, one hundred percent of such taxes shall be deemed paid under protest without the filing of a separate letter of protest with the county collector.

The Requirement of Protest

Payment of taxes in full is retained as a requirement of the tax objection process. However, the necessity of

presenting a separate letter of protest to the county collector at the time of payment has been eliminated. The new language makes clear that the combination of the full payment of the tax within the statutory qualifying time limit and the timely filing of a tax objection complaint constitutes the act of "protest" that distinguishes such payment from a "voluntary payment" and its consequences under existing case law.

Under current law (Section 23-10), the "protest" (effected by timely payment and the contemporaneous filing of a "letter of protest") is automatically waived if the taxpayer fails to perfect it by filing a timely tax objection in court. Each year several thousand taxpayers file protest letters on pre-printed forms along with their payments, unaware that these protests are nullified by their failure to pursue objections in court. To this segment of the public, the separate protest letter is at best meaningless and at worst deceptive. For county collectors, receiving separate protest letters is simply a useless burden upon already busy staff.

They do not even aid the collector in complying with the provisions of Section 20-35 of the Code, which establishes a "Protest Fund" in which the collector must deposit certain amounts of taxes withheld from distribution to taxing bodies under Section 23-20. Although the "total amount of taxes paid under protest" is one of three alternative measures for the amount of deposits to the Protest Fund, letters of protest cannot help the collector determine this total since, under Section 23-10, the letters are null and void if not followed up by the filing of objections in court.

Therefore, the filing of the tax objection is currently, and will remain, the crucial act permitting the taxpayer to challenge and claim a refund of "protested" taxes, and also permitting the collector to ascertain the "total amount of taxes paid under protest." This is why the amendments provide that the qualifying tax payment plus the objection complaint itself will constitute the taxpayer's protest.

Time of Payment

Current law provides for the taxpayer to pay taxes subject to objection "prior to the collector's filing of his or her annual application for judgment and order of sale." This is a cause of confusion, and occasionally leads taxpayers to lose their right to object as a result of missing the last date for payment, because the time of the collector's application fluctuates from one year to another. The only ways for taxpayers or their counsel to become aware of the date for a given year are to discover it in the boiler plate legal notices published in local newspapers, or to call the collector's office repeatedly until the date has been set. The Task Force concluded that establishing a definite time period of sixty days, measured from the first penalty date (i.e., the due date) for the final installment tax bill for the year in question, would key the payment deadline to the event which is most likely to be known to the taxpayer. This period allows ample time for payment, yet also allows the cutoff date for tax objection complaints to fall prior to the annual tax judgment as under current law. As under current law, taxes must be paid in full (including any penalty which may have accrued if the bill is paid late) in order to acquire the right to file a tax objection complaint.

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§ 23-10 Tax Objections and Copies

~~Once a protest has been filed with the with the county collector, in all counties~~ The person paying ~~under protest~~ the taxes due as provided in Section 23-5 ~~shall appear in he next application for judgment and order of sale and~~ may file a~~n~~ tax objection complaint pursuant to Section 23-15 within seventy-five days from the first penalty date of the final installment of taxes for the year in question. ~~Upon failure to do so, the protest shall be waived, and judgment and order of sale entered for any unpaid balance of taxes.~~ Provided, however, that no objection to an assessment for any year shall be allowed by the court where an administrative remedy was available by complaint to the board of appeals or review under Section 16-55 or Section 16-115, unless such remedy was exhausted prior to the filing of the tax objection complaint.

When any tax ~~protest is filed with the county collector and an~~ objection complaint is filed with the court in a county with less than 3,000,000 inhabitants, the following procedures shall be followed. The plaintiff ~~person paying under protest~~ shall file 3 copies of the ~~objection~~ complaint with the clerk of the circuit court. Any tax objection complaint or amendment thereto shall contain on the first page a listing of the taxing districts against which the objection is directed. Within 10 days after the ~~objection~~

> complaint is filed, the clerk of the circuit court shall deliver one copy to the State's Attorney and one copy to the county clerk, taking their receipts therefor. The county clerk shall, within 30 days from the last day for the filing of objections, notify the duly elected or appointed custodian of funds for each taxing district that may be affected by the objection, stating that an objection has been filed * * *

The proposed amendments to this section govern the time and prerequisites for filing tax objection complaints. Timing is again keyed to the first penalty date (i.e., the due date) of the final installment tax bill, just as in the case of the qualifying payment. However, the complaint filing may be made within seventy-five, rather than sixty, days of that due date, thus creating a fifteen-day grace period between the last qualifying payment date and the last day to file complaints.

The provision of the current law that, upon failure to appear in the collector's application and object, the taxpayer's protest "shall be waived, and judgment and order of sale entered for any unpaid balance of taxes" is deleted as inappropriate and superfluous. The elimination of the separate protest letter under the proposed amendments makes its explicit ''waiver" unnecessary; and since the objection complaint itself constitutes the "protest," the right to protest or object is obviously waived when no complaint is filed. Moreover, the Clause referring to "judgment and order of sale for any unpaid balance" is generally inoperative under current law (except for

exemption objections), since taxes subject to an objection complaint must, by definition, be fully paid. In any event, this clause was considered to be redundant by the Task Force in view of the provision for entry of judgment which is contained in Section 21-175.

The requirement that a taxpayer exhaust available administrative remedies by appeal to the local board of appeals or review prior to filing an objection in court is a judicially created rule under current law. In the judgment of the Task Force the rule performs an important function and should be retained. It allows the administrative review agencies to reduce the burden of objections on the courts by granting relief which may obviate further appeals. The amendatory language also makes explicit the current assumption that exhaustion is not required at the assessor level, but only at the board level. This language also alerts the non-professional to the exhaustion rule, of which he or she may otherwise be unaware at the critical time in the assessment cycle.

By codifying the rule in this section, it is intended to adopt rather than to alter existing judicial interpretations. E.g., *People a rel. Nordlund v. Lans,* 31 Ill.2d 477, 202 N.E.2d 543 (1964) (taxpayer cannot object to excessive valuation in Collector's proceeding without first pursuing his administrative remedies at the Board); *People ex rel. Konen v. Fulton Market Cold Storage Company,* 62 Ill.2d 443, 343 N.E.2d 450 (1976) (same, where taxpayer's issue is classification/assessment level); *In Re Application of the County Collector, etc. v. Heerey,* 173 lli.App.3d 821, 527 N.E.2d 1045 (1st Dist. 1988) (the objecting taxpayer

need not exhaust the administrative remedy personally, provided the subject property was brought before the board of appeals by another interested party); *In Re Application of Pike County Collector, etc. v. Carpenter*, 133 Ill.App.3d 142, 478 N.E.2d 626 (3d Dist. 1985) (filing written complaint with board of review suffices for exhaustion without appearance for oral hearing on complaint). The exhaustion requirement is limited to tax objections challenging assessments, since prior administrative review is unavailable in cases challenging taxing body budgets and levies (tax rate objections).

The requirement under current law that tax objections outside Cook County provide for notice to interested taxing bodies is unchanged in these amendments. The terminology used in this section is altered simply to conform to the new procedure for filing the tax objection as a complaint separate from the collector's application for judgment and order of sale, and to the new provisions abolishing the protest letter requirement.

§ 23-15 Tax Objection Procedure and Hearing

(a) A tax objection complaint under Section 23-10 shall be filed in the circuit court of the county in which the subject property is located. The complaint shall name the county collector as defendant and shall specify any objections which the plaintiff may have to the taxes in question. No appearance or answer by the county collector to the tax objection complaint, nor any further pleadings, need be filed.

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Amendments to the complaint may be made to the same extent which, by law, could be made in any personal action pending in the court.

(b)(1) The court, sitting without a jury, shall hear and determine all objections specified to the taxes, assessments or levies in question. This Section shall be construed to provide a complete remedy for any claims with respect to such taxes, assessments or levies, excepting only matters for which an exclusive remedy is provided elsewhere in this Code.

(2) The taxes, assessments and levies which are the subject of the objection shall be presumed correct and legal, but the presumption shall be rebuttable. The plaintiff shall have the burden of proving any contested matter of fact by clear and convincing evidence.

(3) Objections to assessments shall be heard *de novo* by the court. The court shall grant relief in such cases where the objector meets the burden of proof under this Section and shows an assessment to be incorrect or illegal. Where an objection is made claiming incorrect valuation, the court shall consider such objection without regard to the correctness of any practice, procedure, or method of valuation followed by the assessor or board of appeals or review in making or reviewing the assessment, and without regard to the intent or motivation of

any assessing official. The doctrine known as constructive fraud is hereby abolished.

(c) If the court shall order a refund of any part of the taxes paid, it shall also order the payment of interest as provided in Section 23-20. Appeals may be taken from final judgments as in other civil cases.

This section is completely rewritten, with all present language deleted. The new language contains provisions for the form of tax objection complaints, the conduct of hearings, presumptions and the burden of proof, the standard of review to apply in cases challenging assessments, and appellate review of final judgments.

Subsection (a)
Form of Complaint and Initial Procedure: Venue

Because tax objections are to be filed as complaints separate from the collector's application, their form and certain basic procedural matters are set forth in some detail. As discussed below, it is intended that certain features of the current procedure which are working well, such as avoiding the need for extensive pleadings in routine cases, will be continued under the new procedure.

Venue is confined to the county where the subject property is located, to the same effect as the existing law. Similarly, the county collector remains the party opposing the taxpayer's request for a tax refund. As under current law, no particular form of complaint is

required; the plaintiff taxpayer must simply and clearly "specify" his or her objections to the taxes in question. The collector is not required to file an appearance or answer to the tax objection complaint, nor is a reply or any further pleading required. Summons is unnecessary and the state's attorney, as counsel for the collector, will receive copies of the objection complaints directly from the clerk of the circuit court as is the case under current law. The provision for amendments is identical to the existing law under language contained in Section 21-180, which applies to the prior form of objections within the collector's application. See *People ex rel. Harris v. Chicago and North Western Railway Co.,* 8 Ill.2d 246, 133 N.E.2d 22 (1956).

While this procedure is simple in order to accommodate efficiently the many routine objections which are filed each year, it is designed to be flexible enough to accommodate more complex matters as well. Thus, while pleadings subsequent to the objection complaint will not normally be filed, it is expected that the courts and litigants will employ the common devices of civil practice, such as motions to dismiss or for summary judgment, as may be appropriate to the issues in particular cases. This continues the practice followed under existing law. See *People et rel. Southfield Apartment Co. v. Jarecki,* 408 Ill. 266, 96 N.E.2d 569 (1951) (procedure under civil practice law applies to matters under Revenue Act (now the Property Tax Code) except where the. Act specifically provides contrary procedural rules); 735 ILCS 5/1-108(b) (1994) (Article II of the Code of Civil Procedure governs except where separate statutes provide their own contrary procedures).

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Control of Discovery

In proposing a revised standard of review, another important goal of the Task Force, in addition to the goals discussed below in subsection (b), is to provide a foundation for judicial control of the time-consuming, unproductive discovery contests which have plagued tax objection litigation under the current constructive fraud standard.

As in any civil litigation, the scope of discovery in tax objection matters must be determined according to the nature of the legal and factual issues which are actually in dispute. See Illinois Supreme Court Rule 201(b)(1) (relevant discovery "relates to the claim or defense" of a party). Under the constructive fraud doctrine as interpreted in the *Ford* case, even in the most typical overvaluation claims, taxpayers have of necessity been forced to focus on alleged errors in the assessment process; and a flurry of discovery has inevitably followed. Under the draft standard of review in subsection (b)(3), constructive fraud is abolished and the statutory language makes it clear that such overvaluation claims (which constitute the vast majority, although not all, of the court's tax objection caseload) will focus on the accuracy of the assessed value instead of on the assessment process which established that value. In the typical overvaluation case under the new standard, where the "practice, procedure or method of valuation" and the "intent or motivation of ... assessing official[s]" are expressly made irrelevant to recovery, the need for discovery will be limited by curtailing inquiry into these irrelevant factors.

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The judicial tools for control of discovery already exist under Illinois Supreme Court Rule 201(c)(2), providing for court supervision of "all or any part of any discovery procedure"; Supreme Court Rule 218, providing the court with express authority to conduct a pre-trial conference, and to enter an order following the conference which "specifies the issues for trial," simplifies the issues, determines admissions or stipulations, limits the number of expert witnesses, and so forth; and, Supreme Court Rule 220(b), which similarly provides express authority to structure discovery as to experts. The court may use these rules, either *sua sponte* or on motion of a party, to set guidelines for appropriate discovery in tax objection cases. Such guidelines will be set at an early point in the life of the case, based on the actual contested issues (as opposed to general allegations in the complaint, which are often far broader than the issues that are contested), so that discovery may proceed promptly and efficiently.

Subsection (b)
Scope and Conduct of Hearings;
Presumptions and Burden of Proof: Standard of Review

Subsection (b)(1) codifies several features of existing tax objection law for purposes of the proposed procedure, including the requirement that cases be tried to the bench rather than a jury. As under current law, the court will hear tax objections *de novo* rather than as appeals from the decision of the board of appeals or review. Such direct appeal (under the Administrative Review Law) is barred under *White v. Board of Appeals,* 45 Ill.2d 378, 259 N.E.2d 51 (1970).

This subsection also emphasizes that tax objections are intended to provide a complete remedy, excepting only matters for which an exclusive remedy is provided elsewhere (as in Section 8-40 governing judicial review under the Administrative Review Law of certain final decisions of the Department of Revenue). The broad scope of the tax objection remedy is an essential feature of the reform scheme. In its review of the Cook County tax objection process some fifteen years ago, the U.S. Supreme Court held that the taxpayer must be afforded "a full hearing and judicial determination at which she may raise any and all constitutional objections to the tax" in order for the process to pass muster under federal law. *Rosewell v. LaSalle National Bank,* 450 U.S. 503, 514, 516, n. 19 (1981). Of course, as under existing law, the reformed tax objection process will not permit counterclaims by the collector or a judgment by the court increasing the taxpayer's assessment or tax.

Tax objection procedure encompasses, in addition to valuation objections, the so-called rate objections (challenging the legality of certain portions of the tax levies that ultimately determine the tax rate), as well as other legal challenges. No change is intended that would affect the standards applied in rate litigation or other legal challenges.

Subsection (b)(2) provides for a presumption of the correctness of challenged taxes, assessments and levies, which the taxpayer may rebut with proof (as to any contested factual matter) by clear and convincing evidence. The application of these provisions to assessment appeals,

under the standard of review of contested assessments set forth in subsection (b)(3), required the Task Force to strike a balance between the public's interest in relief from improper taxes and its interest in stable property tax revenues. (It should be emphasized that the balance of these public interests simply informed the choice of the appropriate legal standard to be written in the Property Tax Code; such general policy concerns are *not* intended to be weighed in the balance by courts when the standard is applied to individual cases.) Much of the Task Force's work was devoted to this single issue.

The use of "constructive fraud" in earlier tax litigation was an attempt to provide for such a balance, on the one hand permitting at least some relief in serious cases (without having to prove actual fraud), and, on the other hand, avoiding the situation where every taxpayer is able to ask the court to revalue its property. With the apparent closing off of the first of these desiderata in the *Ford* case and its sequels, the Task Force proposal now attempts to make the former trade-off explicit, and more fairly balanced than it was under the hodge-podge of rulings which resulted from the constructive fraud doctrine. This is sought to be accomplished by providing for an appropriate burden of proof, separately from the question of the appropriate standard of review.

As to the burden of proof, the choice came down to "a preponderance of the evidence" (the ordinary plaintiff's burden in civil litigation), or "clear and convincing evidence" (the highest burden in civil litigation, but clearly not the criminal burden, "beyond a reasonable doubt"). As

to the standard of review, for valuation issues, the choice was whether to make it "incorrect," or whether it should be some form of words attempting to indicate a requirement to show a higher degree of inaccuracy (such as "grossly excessive" or "substantially erroneous").

The consensus of the Task Force was to require the higher burden of proof coupled with the less restrictive standard of review. Thus, for a taxpayer to overcome the presumption of validity of the assessment, he or she would have to prove an incorrect assessment by clear and convincing evidence. The proposed new language also expressly eliminates the doctrine of "constructive fraud" from the court's consideration. (Of course, this is not intended to affect the general law of fraud, actual or constructive, outside of the context of real property tax matters.) Further, the new language negatives the judicial requirement, enunciated in the *Ford* case, that in order to prevail the taxpayer must prove that the assessing officials or their staff made some specific and demonstrable error in arriving at the assessment.

The Task Force consensus reflects its judgment that the attempt to define, let alone to prove, an elevated degree of assessment inaccuracy is inherently speculative and cannot be reconciled with the need for a clear standard of review. Moreover, the public interest in avoiding a flood of questionable judicial reassessments is not appropriately addressed by denying recovery for some inaccuracies, and allowing recovery for others whose parameters can only be vaguely defined. Rather, it is appropriately addressed by an elevated level of proof required to show that an incorrect assessment has occurred.

The Task Force therefore concluded that the public interest is best served by an initial presumption of correctness of the challenged assessment, and then a burden on the taxpayer to prove by clear and convincing evidence that the assessment is incorrect. For example, should a trial outcome tum solely on valuation evidence, if the competing valuation conclusions are determined by the court to be equally compelling, it is expected that the assessment would be sustained since the evidence would not constitute clear and convincing proof that the assessed value is incorrect. On the other hand, relief would be granted where there is a clear and convincing showing of incorrectness.

It must be remembered that actual damage is an essential element of the taxpayer's cause of action under any standard of review. Thus, although a taxpayer might prove that a "mistake" in his assessed valuation has occurred in the abstract sense, if the "mistaken" valuation and resulting tax is not shown to exceed the proper valuation and its resulting tax, then the assessment is not incorrect within the meaning of the law, and no recovery may be had. E.g. *In Re Application of Rosewell (etc.) v. Bulk Terminals Company,* 73 Ill.App.3d 225, 238 (1st Dist. 1979) (leasehold assessment by a legally incorrect computation is not subject to challenge where an assessment by the legally corrbct computation would be higher). The proposed legislation is not intended to depart from this "no harm, no foul" rule. To the contrary, the revised standard strengthens the rule by explicitly providing for valuation objections "without regard to the correctness of any practice, procedure or method

of valuation" or the "intent or motivation of ... assessing official[s]." (Subsection (b)(3).)

Subsection (c)
Final Judgments and Appellate Review

The provisions of this subsection, requiring interest to be paid upon any taxes which the court may order the collector to refund to the plaintiff taxpayer, and providing for appeals from final judgments as in other civil actions, are essentially identical to the existing law.

§ 23-25 Tax Exempt Property; Restriction on Tax Objections

No taxpayer may ~~pay under protest as provided in Section 23-5 or~~ file an objection as provided in Section 21-175 or Section 23-10 on the grounds that the property is exempt from taxation, or otherwise seek a judicial determination as to tax exempt status, except as provided in Section 8-40 and except as otherwise provided in this Section and Section 14-25 and Section 21-175. Nothing in this Section shall affect the right of a governmental agency to seek a judicial determination as to the exempt status of property for those years during which eminent domain proceedings were pending before a court, once a certificate of exemption for the property is obtained by the governmental agency under Section 8-35 or Section 8-40. This Section shall not apply to exemptions granted under Sections 15-165 through 15-180.

The limitation in this Section shall not apply to court proceedings relating to an exemption for 1985 and preceding assessment years. However, an order entered in any such proceeding shall not preclude the necessity of applying for an exemption for 1986 or later, assessment years in the manner provided by Sections 16-70 or 16-130.

The proposed changes to this section are technical in nature. Minor variations in language and statutory cross-references are made to accommodate the abolition of the separate protest letter, and to recognize that either the traditional objection or the new objection complaint procedure may be used to withdraw a property from the tax sale pending the determination of an exemption claim. (See commentary to Section 21-175 above.) The second paragraph restores language formerly included in the statute, which was unintentionally deleted during the recent Property Tax Code recodification project despite the legislature's purpose to avoid any substantive changes in the meaning or application of the law.

§ 23-30 Conference on Tax Objection

~~Upon~~ Following the filing of an objection under Section ~~21-175~~ 23-10, the court ~~must, unless the matter has been sooner disposed of, within 90 days after the filing~~ may hold a conference with ~~between~~ the objector and the State's Attorney. ~~If no agreement is reached at the conference, the court must, upon the demand of either the~~

~~taxpayer or the State's attorney, set the matter for hearing within 90 days of the demand.~~ Compromise agreements on tax objections reached by conference shall be filed with the court, and the ~~State's Attorney~~ parties shall prepare an order covering the settlement and ~~file~~ submit the order ~~with the clerk of~~ to the court ~~within 15 days following the conference~~ for entry.

This section of the Code recognizes the authority of the courts to conduct pre-trial conferences with a view to resolving tax objections by compromise, and provides for orders to effectuate any resulting settlements. Caselaw has made it clear that there is inherent as well as statutory authority for settlement of tax matters. See *In Re Application of County Collector (etc.), J&J Partnership v. Laborers' International Union Local No. 703,* 155 Ill.2d 520, 617 N.E.2d 1192 (1993); *People ex rel. Thompson v. Anderson,* 119 Ill.App.3d 932, 457 N.E.2d 489 (3d Dist. 1983). Compromise is to be encouraged in any litigation and, under the proposed legislation, it is anticipated that settlements will still be the rule rather than the exception.

The time limits in the current provision, although framed in ostensibly peremptory terms, have been construed as directory rather than mandatory by the Illinois Attorney General. 1975 Opin. Atty. Gen. No. S-1011. Moreover, the time limits have not been observed in any court proceeding in Cook County within the memory of any lawyer now practicing, as near as the Task Force can determine. The proposal therefore deletes these limits

as unrealistic. Of course, the courts retain their inherent authority to schedule pretrial conferences, to encourage settlements, and to establish rules and procedures to accomplish these ends. (For an example of the exercise of this authority, see Rules of the Circuit Court of Cook County, Rule 10.6, "Small Claims Proceedings for Real Estate Tax Objections.")

Provision for Effective Date and Application to Pending Cases (Uncodified)

§ __. This amendatory Act of 1995 shall take effect immediately upon becoming law and shall apply to all tax objection matters still pending for any tax year, provided that the procedures and time limitations for payment of taxes and filing tax objection complaints under amended Property Tax Code Sections 23-5 and 23-10 shall apply only to tax year 1994 and subsequent tax years.

Given the subject matter of the proposed amendments to the Property Tax Code, it is likely that courts would construe them to have retroactive effect upon pending tax objections filed under the current procedure in any event. For the authority to make the provisions retroactive, see *Schenz v. Castle,* 84 Ill.2d 196, 417 N.E.2d 1336, 1340 (1981); *People ex rel. Eitel v. Lindheimer,* 371 Ill. 367, 371 (1939); *Isenstein v. Rosewell,* 106 Ill.2d 301, 310 (1985); (no vested right in continuation of tax statute, therefore amendments are retroactive). However, in order to address the concerns which led to the proposed reform,

the Task Force believes that it is essential to avoid any unclarity as to the effectiveness and application of the amendments. Accordingly, this section, which need not be codified, is proposed to make unmistakable the legislative intent that these amendments take effect immediately and that they govern the disposition of all tax objection matters not previously disposed of by final judgment (i.e., matters which remain pending either at the circuit court level or on appeal).

The proposed amendments have been drafted with a view to immediate enactment. Accordingly, the filing requirements are proposed to be first applied to tax year 1994 (as to which payment will be due and objections will be filed the latter part of calendar year 1995) and then to later tax years. Payments under protest and tax objection filings for tax year 1993 and prior years have been completed under the current procedure. Of course, as stated above, the hearing of objections for all tax years prior to 1994 would be governed in all other respects by the new amendments.

Appendix H

APPENDIX

CIVIC FEDERATION TASK FORCE ON REFORM OF THE COOK COUNTY TAX APPEALS PROCESS

PROPOSED AMENDMENTS TO PROPERTY TAX CODE

Part I: Principal Provisions

§ 21-175. Proceedings by court. Defenses to the entry of judgment against properties included in the delinquent list shall be entertained by the court only when: (a) the defense includes a writing specifying the particular grounds for the objection; and (b) except as otherwise provided in Section 14-15, 14-25, 23-5, and 23-25, the ~~writing is accompanied by an official original or duplicate receipt of the tax collectors showing that the taxes to which objection is made have been fully paid under protest. All tax collectors shall furnish the necessary duplicate receipts without charge. The court shall hear and determine the matter as provided in Section 23-15~~ taxes to which objection is made are paid under protest pursuant to Section 23-5 and a tax objection complaint is filed pursuant to Section 23-10.

If any party objecting is entitled to a refund of all or any part of a tax paid ~~under protest~~, the court shall enter judgment accordingly, and also shall enter judgment for the taxes, special assessments, interest and penalties as appear to be due. The judgment shall be considered as a

several judgment against each property or part thereof, for each kind of tax or special assessment included therein. The court shall direct the clerk to prepare and enter an order for the sale of the property against which judgment is entered. However, if a defense is made that the property, or any part thereof, is exempt from taxation and it is demonstrated that a proceeding to determine the exempt status of the property is pending under Section 16-70 or 16-130 or is being conducted under Section 8-35 or 8-40, the court shall not enter a judgment relating to that property until the proceedings being conducted under Section 8-35 or Section 8-40 have been terminated.

§ 23-5. Payment under protest. If any person desires to object ~~under Section 21-175~~ to all or any part of a property tax for any year, for any reason other than that the property is exempt from taxation ~~and that a proceeding to determine the tax exempt status of such property is pending under Section 16-70 or Section 16-130 or is being conducted under Section 8-35 or Section 8-40~~ he or she shall pay all of the tax due ~~prior to the collector's filing of his or her annual application for judgment and order of sale of delinquent properties~~ within sixty days from the first penalty date of the final installment of taxes for that year. ~~Each payment shall be accompanied by a written statement substantially in the following form:~~ Whenever taxes are paid in compliance with this Section and a tax objection complaint is filed in compliance with Section 23-10, one hundred percent of such taxes shall be deemed paid under protest without the filing of a separate letter of protest with the county collector.

[*Delete all other text in existing section including statutory protest form.*]

§ 23-10. Tax objections and copies. ~~Once a protest has been filed with the with the county collector, in all counties~~ The person paying ~~under protest~~ the taxes due as provided in Section 23-5 ~~shall appear in he next application for judgment and order of sale and~~ may file a~~n~~ tax objection complaint pursuant to Section 23-15 within seventy-five days from the first penalty date of the final installment of taxes for the year in question. ~~Upon failure to do so, the protest shall be waived, and judgment and order of sale entered for any unpaid balance of taxes.~~ Provided, however, that no objection to an assessment for any year shall be allowed by the court where an administrative remedy was available by complaint to the board of appeals or review under Section 16-55 or Section 16-115, unless such remedy was exhausted prior to the filing of the tax objection complaint.

When any tax ~~protest is filed with the county collector and an~~ objection complaint is filed with the court in a county with less than 3,000,000 inhabitants, the following procedures shall be followed: ~~t~~The plaintiff ~~person paying under protest~~ shall file 3 copies of the ~~objection~~ complaint with the clerk of the circuit court. Any tax objection complaint or amendment thereto shall contain on the first page a listing of the taxing districts against which the objection is directed. Within 10 days after the ~~objection~~ complaint is filed, the clerk of the circuit court shall deliver one copy to the State's Attorney and one copy to the county clerk, taking their receipts therefor. The county clerk shall, within 30 days from the last day for the filing of objections, notify the duly elected or appointed custodian of funds for each taxing district that may be affected by the objection, stating that an objection has been filed. * * *

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[*Continue with existing text regarding notice to affected taxing districts.*]

§ 23-15. Tax objection procedure and hearing.

[*Delete all language presently in this section and replace with the following.*]

(a) A tax objection complaint under Section 23-20 shall be filed in the circuit court of the county in which the subject property is located. The complaint shall name the county collector as defendant and shall specify any objections which the plaintiff may have to the taxes in question. No appearance or answer by the county collector to the tax objection complaint, nor any further pleadings, need be filed. Amendments to the complaint may be made to the same extent which, by law, could be made in any personal action pending in the court.

(b)(1) The court, sitting without a jury, shall hear and determine all objections specified to the taxes, assessments or levies in question. This Section shall be construed to provide a complete remedy for any claims with respect to such taxes, assessments or levies, excepting only matters for which an exclusive remedy is provided elsewhere in this Code.

(2) The taxes, assessments and levies which are the subject of the objection shall be presumed correct and legal, but the presumption shall be rebuttable. The plaintiff shall have the burden of proving any contested matter of fact by clear and convincing evidence.

(3) Objections to assessments shall be heard *de novo* by the court. The court shall grant relief in such cases where the objector meets the burden of proof under this Section and shows an assessment to be incorrect or illegal. Where an objection is made claiming incorrect valuation, the court shall consider such objection without regard to the correctness of any practice, procedure, or method of valuation followed by the assessor or board of appeals or review in making or reviewing the assessment, and without regard to the intent or motivation of any assessing official. The doctrine known as constructive fraud is hereby abolished.

(c) If the court shall order a refund of any party of the taxes paid, it shall also order the payment of interest as provided in Section 23-20. Appeals may be taken from final judgments as in other civil cases.

§ 23-25. Tax exempt property; restriction on tax objections. No taxpayer may ~~pay under protest as provided in Section 23-5 or~~ file an objection as provided in Section 21-175 or Section 23-10 on the grounds that the property is exempt from taxation, or otherwise seek a judicial determination as to tax exempt status, except as provided in Section 8-40 and except as otherwise provided in this Section and Section 14-25 and Section 21-175. Nothing in this Section shall affect the right of a governmental agency to seek a judicial determination as to the exempt status of property for those years during which eminent domain proceedings were pending before a court, once a certificate of exemption for the property is obtained by the governmental agency under Section 8-35 or Section

8-40. This Section shall not apply to exemptions granted under Section 8-35 or Section 8-40. This section shall not apply to exemptions granted under Sections 15-165 through 15-180.

The limitation in this Section shall not apply to court proceedings relating to an exemption for 1985 and preceding assessment years. However, an order entered in any such proceeding shall not preclude the necessity of applying for an exemption for 1986 or later assessment years in the manner provided by Sections 16-70 or 16-130.

§ 23-30. Conference on tax objection. ~~Upon~~ Following the filing of an objection under Section ~~21-175~~ 23-10, the court ~~must, unless the matter has been sooner disposed of, within 90 days after the filing~~ may hold a conference with ~~between~~ the objector and the State's Attorney. ~~If no agreement is reached at the conference, the court must, upon the demand of either the taxpayer or the State's attorney, set the matter for hearing within 90 days of the demand.~~ Compromise agreements on tax objections reached by conference shall be filed with the court, and the ~~State's Attorney~~ parties shall prepare an order covering the settlement and ~~file~~ submit the order ~~with the clerk of~~ to the court ~~within 15 days following the conference~~ for entry.

[*Provision for Effective Date and Application to Pending Cases (Uncodified)*]

§ __. This amendatory Act of 1995 shall take effect immediately upon becoming law and shall apply to all tax objection matters still pending for any tax year, provided

that the procedures and time limitations for payment of taxes and filing tax objection complaints under amended Property Tax Code Sections 23-5 and 23-10 shall apply only to tax year 1994 and subsequent tax years.

Part II: Additional Provisions

§ 14-15. Certificate of error; counties of 3,000,000 or more.

(a) In counties with 3,000,000 or more inhabitants, if, at any time before judgment is rendered in any proceeding to collect or to enjoin the collection of taxes based upon any assessment of any property belonging to any taxpayer, the county assessor discovers an error or mistake in the assessment, the assessor shall execute a certificate setting forth the nature and cause of the error. The Certificate when endorsed by the county assessor, or when endorsed by the county assessor and board of appeals for the tax year for which the certificate is issued, may be received in evidence in any court of competent jurisdiction. When so introduced in evidence such certificate shall become a part of the court records, and shall not be removed from the files except upon the order of the court.

A certificate executed under this Section may be issued to the person erroneously assessed, or a list of the tax parcels for which certificates have been issued, may be presented by the assessor to the court as an objection in the application for judgment and order of sale for the year in relation to which the certificate is made. The state's attorney of the county in which the property is situated

shall mail a copy of any final judgment entered by the court regarding the certificate to the taxpayer of record for the year in question.

Any unpaid taxes after the entry of the final judgment by the court on certificates issued under this Section may be included in a special tax sale, provided that an advertisement is published and a notice is mailed to the person in whose name the taxes were last assessed, in a form and manner substantially similar to the advertisement and notice required under Sections 21-110 and 21-135. The advertisement and sale shall be subject to all provisions of law regulating the annual advertisement and sale of delinquent property, to the extent that those provisions may be made applicable.

A certificate of error executed under this Section allowing homestead exemptions under Sections 15-170 and 15-175 of this Code no previously allowed shall be given effect by the county treasurer, who shall mark the tax books and, upon receipt of the following certificate from the county assessor or supervisor of assessments, shall issue refunds to the taxpayer accordingly:

"CERTIFICATION

> I . . . . county assessor or supervisor of assessments, hereby certify that the Certificates of Error set out on the attached list have been duly issued to allow homestead exemptions pursuant to Sections 15-170 and 15-175 of the Property Tax Code which should have been

previously allowed; and that a certified copy of the attached list and this certification have been served upon the county State's Attorney."

The county treasurer has the power to mark the tax books to reflect the issuance of homestead certificates of error from and including the due date of the tax bill for the year for which the homestead exemption should have been allowed until ~~2~~ three years after the first day of January of the year after the year for which the homestead exemption should have been allowed. The county treasurer has the power to issue refunds to the taxpayer as set forth above from and including the first day of January of the year after the year for which the homestead exemption should have been allowed until all refunds authorized by this Section have been completed.

The county treasurer has no power to issue refunds to the taxpayer as set forth above unless the Certification set out in this Section has been served upon the county State's Attorney.

(b) Nothing in subsection (a) of this Section shall be construed to prohibit the execution, endorsement, issuance and adjudication of a certificate of error where the annual judgment and order of sale for the tax year in question is reopened for further proceedings upon consent of the county collector and county assessor, represented by the State's Attorney, and where a new final judgment is subsequently entered pursuant to the certificate. This subsection (b) shall be construed as declarative of the existing law and not as a new enactment.

(c) No certificate of error, other than a certificate to establish an exemption pursuant to Section 14-25, shall be executed for any tax year more than three years after the date on which the annual judgment and order of sale for that tax year was first entered.

§ 21-110. Published notice of annual application for judgment and sale; delinquent taxes. At any time after all taxes have become delinquent ~~or are paid under protest~~ in any year, the Collector shall publish an advertisement, giving notice of the intended application for judgment and sale of the delinquent properties ~~and for judgment fixing the correct amount of any tax paid under protest.~~ Except as provided below, the advertisement shall be in a newspaper published in the township or road district in which the properties are located. If there is no newspaper published in the township or road district, then the notice shall be published in some newspaper in the same county as the township or road district, to be selected by the county collector. When the property is in a city with more than 1,000,000 inhabitants, the advertisement may be in any newspaper published in the same county. When the property is in an incorporated town which has superseded a civil township, the advertisement shall be in a newspaper published in the incorporated town or if there is not such newspaper, then in a newspaper published in the county.

The provisions of this Section relating to the time when the Collector shall advertise intended application for judgment for sale are subject to modification by the governing authority of a county in accordance with the provision of subsection (c) of Section 21-40.

§ 21-115. Times of publication of notice. The advertisement shall be published once at least 10 days before the day on which judgment is to be applied for, and shall contain a list of the delinquent properties upon which the taxes of any part thereof remain due and unpaid, the names of owners, if known, the total amount due, and the year or years for which they are due. In counties of less than 3,000,000 inhabitants, advertisement shall include notice of the registration requirement for persons biding at the sale. ~~Properties upon which taxes have been paid in full under protest shall not be included in the list.~~ The collector shall give notice that he or she will apply to the circuit court on a specified day for judgment against the properties for the taxes, and costs and for an order to sell the properties for the satisfaction of the amount due~~, and for a judgment fixing the correct amount of any tax paid under protest.~~

The Collector shall also give notice that on the . . . . Monday next succeeding the date of application all the properties for the sale of which an order is made, will be exposed to public sale at a location within the county designated by the county collector, for the amount of taxes, and cost due. The advertisement published according to the provisions of this section shall be deemed to be sufficient notice of the intended application for judgment and of the sale of properties under the order of the court~~, or for judgment fixing the correct amount of any tax paid under protest.~~ Notwithstanding the provision of this Section and Section 21-110, in the 10 years following the completion of a general reassessment of property in any county with 3,000,000 or more inhabitants, made under

any order of the Department, the publication shall be made not sooner than 10 days nor more than 90 days after the date when all unpaid taxes or property have become delinquent.

§ 21-150. Time of applying for judgment. Except as otherwise provided in this Section or by ordinance or resolution enacted under subsection (c) of Section 21-40, all applications for judgment and order of sale for taxes and special assessments on delinquent properties ~~and for judgment fixing the correct amount of any tax paid under protest~~ shall be made during the month of October. In those counties which have adopted an ordinance under Section 21-40, the application for judgment and order of sale for delinquent taxes ~~or for judgment fixing the correct amount of any tax paid under protest~~ shall be made in December. In the 10 years next following the completion of a general reassessment of property in any county with 3,000,000 or more inhabitants, made under an order of the Department, applications for judgment and order of sale ~~and for judgment fixing the correct amount of any tax paid under protest~~ shall be made as soon as may be and on the day specified in the advertisement required by Section 21-110 and 21-115. If for any cause the court is not held on the day specified, the cause shall stand continued, and it shall be unnecessary to re-advertise the list or notice.

Within 30 days after the day specified for the application for judgment the court shall hear and determine the matter. If judgment is rendered, the sale shall begin on the Monday specified in the notice as provided in Section 21-115. If the collector is prevented

from advertising and obtaining judgment during the month of October, the collector may obtain judgment at any time thereafter; but if the failure arises by the county collector's not complying with any of the requirements of this Code, he or she shall be held on his or her official bond for the full amount of all taxes and special assessments charged against him or her. Any failure on the part of the county collector shall not be allowed as a valid objection to the collection of any tax or assessment, or to entry of a judgment against any delinquent properties included in the application of the county collector~~, or to the entry of a judgment fixing the correct amount of any tax paid under protests.~~

§ 21-160. Annual tax judgment, sale, redemption, and forfeiture record. The collector shall transcribe into a record prepared for that purpose, and known as the annual tax judgment, sale, redemption and forfeiture record, the list of delinquent properties ~~and of properties upon which taxes have been paid under protest~~. The record shall be made out in numerical order, and contain all the information necessary to be recorded, at least 5 days before the day on which application for judgment is to be made.

The record shall set forth the name of the owner, if known; the description of the property; the year or years for which the tax, or in counties with 3,000,000 or more inhabitants, the tax or special assessments, are due ~~or for which the taxes have been paid under protest; the amount of taxes paid under protest~~; valuation on which the tax is extended; the amount of the consolidated and other

taxes or in counties with 3,000,000 or more inhabitants, the consolidated and other taxes and special assessments; the costs; and the total amount of the charges against the property.

The record shall also be ruled in columns, to show in counties with 3,000,000 or more inhabitants the withdrawal of any special assessments from collection and in all counties to show the amount paid before entry of judgment; the amount of judgment and a column for remarks; the amount paid before sale and after entry of judgment; the amount of the sale; the amount of interest or penalty; amount of cost; amount forfeited to the State; date of sale; acres or part sold; name of purchaser; amount of sale and penalty; taxes of succeeding years; interest and when paid, interest and cost; total amount of redemption; date of redemption; when deed executed; by whom redeemed; an a column for remarks or receipt of redemption money.

The record shall be kept in the office of the county clerk.

§ 21-170. Report of payments and corrections. On the day on which application for judgment on delinquent property is applied for, the collector, assisted by the county clerk, shall post all payments compare and correct the list, and shall make and subscribe an affidavit, which shall be substantially in the following form:

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State of Illinois)
) ss.
County of _____)

I . . ., collector of the county of . . ., do solemnly swear (or affirm, as the case may be), that the foregoing is a true and correct list of the delinquent property within the county of . . ., upon which I have been unable to collect the taxes (and special assessment, interest, and printer's fees, if any), charged thereon, as required by law, for the year or years therein set forth; ~~and of all of the properties upon which the taxes have been paid under protest;~~ and that the taxes now remain due and unpaid, to the best of my knowledge and belief.

Dated . . . . . .

The affidavit shall be entered at the end of the list, and signed by the collector.

§ 23-35. Tax objection based on budget or appropriation ordinance. Notwithstanding the provisions of Section ~~21-175~~ 23-10, no objection to any property tax levied by any municipality shall be sustained by any court because of the forms of any budget or appropriation 'ordinance, or the degree of itemization or classification of items therein, or the reasonableness of any amount budgeted or appropriated thereby, if: * * *

[*Continue with existing text of section.*]

Appendix H

MAJOR PROVISIONS OF AMENDMENTS 1 AND 2 TO HOUSE BILL 1465

Status: passed Senate 5/23/95 on strict party-line vote, 33 in favor, 25 against.

I. Tax Objection Provisions.

A. Civic Federation Task Force draft adopted.

B. Only changes are clarifications requested by the DuPage County Treasurer:

(1) Objection complaints must be filed prior to annual tax judgment to avoid risk of tax sale. § 23-10.

(2) No objection complaints to be filed as class action. § 23-15.

C. Task Force Report adopted as legislative history of tax objection provisions in Senate floor debate.

II. Abolition of Board of Appeals and Selection of Interim and Permanent Boards of Review.

A. Board of Appeals abolished as of 1/1/96. § 5-5(a).

B. 3-Member Interim Board of Review as of 1/1/96 through 12/98. § 5-5(b)(l).

(1) Selection:

(a) Appointed by members of General Assembly whose districts lie all or in part within Cook County. § 5-5(b)(1).

(b) Majority and minority leaders of each house choose 2 members each of General Assembly to serve as selection committee. § 5-5(b)(2).

(c) Committee selects 4 candidates by 10/1/95. No party qualification. *Id.*

(d) If committee fails, Governor selects 4 candidates by 10/15/95. *Id.* No more than 2 from one political party.

(e) Members of General Assembly with Cook County Districts cast votes weighted by turnout in last gubernatorial election, each member voting for only one candidate. Highest 3 vote-getters are selected. §5-5(6)(3).

(2) All action of the Board is by majority vote. § 5-5(b)(3).

B. 3-Member Permanent Board of Review as of 12/98. § 5-5(c).

(1) Selection:

(a) General Assembly to establish 3 compact, contiguous election districts of substantially equal population by 6/1/96. *Id.*

(b) Members elected for four-year terms; chair to rotate. *Id.*

(2) All action of the Board is by majority vote. *Id.*

Ill. Powers and Duties of Interim and Permanent Boards.

A. Same powers as current Board of Appeals to "revise and correct" assessment "as shall appear to ... be just," on "taxpayer's" formal complaint that property is overassessed, underassessed, or exempt. §§ 16-115, 16-120.

B. Expanded (apparently plenary) power to "revise, correct, alter, or modify" and assessment for "good cause" upon:

(1) "Written complaint" by "any taxpayer" or interested taxing district;

(2) "Request" by "any taxpayer" or interested taxing district;

(3) "Written motion" of any one or more Board member(s);

(4) The prior restriction to proceedings by "complaint" only is expressly rejected. § 16-95.

C. Notice required to all affected taxpayers, Assessor, taxing districts prior to increasing or reducing any assessments. §§ 12-50 (note references to equalization changes), 16-95; see also §§ 16-120, 16-125 (as under Board of Appeals).

D. May have *power,* but not explicit mandatory *duty*, to alter assessments through intra-county equalization. §§ 16-95, 12-50; note also basic duties as described in §§ 5-10, 16-150; compare downstate intra-county equalization provisions, §§ 16-60, 16-65.

E. The Board is not restricted to directing the Assessor to carry out its decisions, but apparently may enter the altered assessments directly on the books. §§ 5-15, 9-85 (Amendment 2).

F. The Board is to have the use of, and the Assessor shall furnish, "information utilized in the assessment of property, including, but not limited to, reports generated from the multiple regression equation and sales/ratio studies, if any," and underlying data. The Department of Revenue is to provide their ratio studies. § 6-20(b) (Amendment 2).

G. Assessment reductions granted on homestead (owner occupied residential) property are frozen for balance of the assessment period in the absence of a showing of substantial cause why the reduced value should not be maintained by Assessor or taxpayer or "other interested party." Note this has been added through the downstate provision rather than a new provision (was to have been § 16-103). § 16-80 (Amendment 2).

IV. Triennial Reassessment Districts and Reassessment Schedule.

A. Cook County Board authority over reassessment districts and the (current) triennial cycle terminates 1/1/96. § 9-220.

B. Triennial districts and cycle are established in similar form to those under the current county ordinance. *Id.*

V. PTAB Jurisdiction Extended to Cook County

A. Residential property of 6 or less units as of 1996 tax year;

B. All other property as well as of 1997 tax year. § 16-160.

C. Note taxpayers may elect PTAB or tax objection, and taxing bodies may appeal to PTAB, under original language currently applicable only downstate.

Appendix H

AN ACT in relation to property taxes.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Property Tax Cede is amended by changing Sections 4-10, 5-5, 5-10, 5-15, 6-10, 6-20, 6-40, 6-45, 9-5, 9-85, 9-220, 9-260, 9-265, 12-50, 14-10, 14-15, 14-35, 16-5, 16-10, 16-80, 16-95, 16-100, 16-105, 16-110, 16-115, 16-120, 16-125, 16-130, 16-135, 16-140, 16-145, 16-150, 16-155, 16-160, 18-170, 21-110, 21-115, 21-135, 21-150, 21-160, 21-170, 21-175, 23-5, 23-10, 23-15, 23-25, 23-30, and 23-35 and adding Section 32-17 as follows:

(35 ILCS 200/4-10)

Sec. 4-10. Compensation for Certified Illinois Assessing Officers. Subject to the requirements for continued training, any supervisor of assessments, assessor, deputy assessor or member of a board of review <u>or interim board of review in any county</u> who has earned a Certified Illinois Assessing Officers Certificate from the Illinois Property Assessment Institute shall receive from the State, out of funds appropriated to the Department, additional compensation of $500 per year.

To receive a Certified Illinois Assessing Officer certificate, a person shall complete successfully and pass examinations on a basic course in assessment practice approved by the Department and conducted by the Institute and additional courses totaling no less than 60 class hours that are designated and approved by the

Department, on the cost, market and income approaches to value, mass appraisal techniques, and property tax administration.

To continue to be eligible for the additional compensation, a Certificate Illinois Assessing Officer must complete successfully a minimum of 15 class hours requiring a written examination, and the equivalent of one seminar course of 15 class hours which does not require a written examination, in each year for which additional compensation is sought after receipt of the certificate. The Department shall designate and approve courses acceptable for additional training, including courses 1n business and computer techniques, and class hours applicable to each course. The Department shall specify procedures for certifying the completion of the additional training.

The courses and training shall be conducted annually at various convenient locations throughout the State. At least one course shall be conducted annually in each county with more than 400,000 inhabitants.
(Source: P.A. 85-974; 88-455.)

(35 ILCS 200/5-5)

Sec. 5-5. Election of board of review: appeals countries of 3,000,000 or more.

(a) In counties with 3,000,000 or more inhabitants, on the first Tuesday after the first Monday in November 1994, ~~and every 4 years thereafter,~~ 2 commissioners of the

board of appeals shall be elected to hold office ~~for a term of 4 years~~ from the first Monday in December following their election and until January 1, 1996 ~~their respective successors are elected and qualified~~. In case of any vacancy, the chief judge of the circuit court or any judge of that circuit designated by the chief judge shall fill the vacancy by appointment ~~until the next county election when a successor commissioner shall be elected for the unexpired term or for the fall term~~. The commissioners shall be electors in the particular county at the time of their election or appointment and shall hold no other lucrative public office or public employment. Each commissioner shall receive compensation fixed by the county board, which shall be paid out of the county treasury and which shall not be changed during the term for which any commissioner is elected or appointed. Effective January 1, 1996, the board of appeals is abolished.

The board of appeals shall maintain sufficient evidentiary records to support all decisions made by the board of appeals. All records, date, sales/ratio studies, and other information necessary fro the interim board of review appointed under subsection (b) to perform its functions and duties shall be transferred by the board of appeals to the interim board of review on January 1, 1996.

(b)(1) Effective January 1, 1996, in each county with 3,000,000 or more inhabitants there is created an interim board of review. The interim board of review shall consist of 3 members who are residents of the county, appointed by the members of the General Assembly whose legislative districts lie, in whole or in part, within a county with

3,000,000 or more inhabitants, in the manner provided in this subsection, to hold office for a term beginning January 1, 1996 and until the first Monday in December of 1998.

(2) The President of the Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives, and the Minority Leader of the House of Representatives shall each appoint 2 members of the General Assembly who are residents of a county with 3,000,000 or more inhabitants to a selection committee. The committee shall select 4 persons, who are residents of the county, to be considered for appointment to the interim board of review. Selections shall be made by the committee by October 1, 1995. The committee shall establish rules of conduct for the election of members to the interim board of review under paragraph (3) of this subsection, which shall be held no later than December 1, 1995. Action of the committee shall be taken upon the vote of 5 members of the committee. If the committee fails to select 4 persons by October 1, 1995, the Governor shall select 4 persons by October 15, 1995, not more than 2 of whom are from the same political party, who are residents of the county to be considered for appointment to the interim board of review.

(3) Each member of the General Assembly whose legislative district lies, in whole or in part, within a county with 3,000,000 or more inhabitants is entitled to vote for members of the interim board of review, from among the persons selected under paragraph (2) of this subsection. Each such member of the General Assembly may cast the number of votes equal to the number of votes cast for Governor in the 1994 general election in that portion

of the legislative district of the member of the General Assembly that lies within a county with 3,000,000 or more inhabitants. A member of the General Assembly may cast his or her votes for only one candidate. The 3 persons receiving the highest number of votes shall be deemed appointed to the interim board of review shall be filled in the same manner as original appointments; however, the selection committee shall select only 2 persons, from the same political party as the member of the interim board of review whose vacancy is being filled, for consideration for appointment and the person receiving the most votes shall be deemed to be appointed to fill the vacancy. The chair of the interim board of review shall be selected from among its members by lot. No member may serve as chair for consecutive years.

All action of the interim board of review shall be by a majority vote of its members. Compensation for members of the interim board of review shall be established by the county board. The county shall provide suitable offices for the interim board of review. For the period beginning January 1, 1996 and ending the first Monday in December of 1998, any reference in this Code to a board of appeals shall mean the interim board of review.

(c) In each county with 3,000,000 or more inhabitants, there is created a board of review. The board of review shall consist of 3 members, on elected from each election district in the county at the general election in 1998 to hold office for a term beginning on the first Monday in December following their election and until their respective successors are elected and qualified.

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No later than June 1, 1996, the General Assembly shall establish the boundaries for the 3 election districts in each county with 3,000,000 or more inhabitants. The election districts shall be compact, contiguous, and have substantially the same population based on the 1990 federal decennial census. One district shall be designated as the first election district, one as the second election district, and one as the third election district. The member from each district shall be elected to a term of 4 years.

In the year following each federal decennial census, the general Assembly shall reapportion the election districts to reflect the results of the census. The reapportioned districts shall be compact, contiguous, and contain substantially the same population. The member from the first district shall be elected to terms of 4 years, 4 years, and 2 years. The member from the second district shall be elected to terms of 4 years, 2 years, and 4 years. The member from the third district shall be elected to terms of 2 years, 4 years, and 4 years.

In case of vacancy, the chief judge of the circuit court or any judge of the circuit court designated by the chief judge shall fill the vacancy by appointment of a person from the same political party. If the vacancy is filled with more than 28 months remaining in the term, the appointed member shall serve until the next general election, at which time a member shall be elected to serve for the remainder of the term. If a vacancy is filled with 28 months or less remaining in the term, the appointment shall be for the remainder of the term. The members shall be electors within their respective election district at the time of their

election or appointment and shall hold no other lucrative public office or public employment.

Each member shall receive compensation fixed by the county board, which shall be paid from the county treasury. Compensation for each member shall be equitable and shall not be changed during the term for which that member is elected or appointed. The county shall provide suitable office space for the board of review.

For the year beginning on the first Monday in December 1998 and ending the first Monday in December 1999, and every fourth year thereafter, the chair of the board shall be the member elected from the first district. For the year beginning the first Monday in December 1999 and ending the first Monday in December 2000, and every fourth year thereafter, the chair of the board shall be the member elected from the second district. For the year beginning the first Monday in December 2000 and ending the first Monday in December 2001, and every fourth year thereafter, the chair shall be the member elected from the third district. For the year beginning the first Monday in December 2001 and ending the first Monday in December 2002, and every fourth year thereafter, the chair of the board shall be determined by lot.

On and after the first Monday in December, 1998, any reference in this Code to a board of appeals shall mean the board of review created under this subsection. All action of the board of review shall be by a majority vote of its members.
(Source: P.A. 80-551; 88-455.)

Appendix H

(35 ILCS 200/5-10)

Sec. 5-10. Oath of office. Each member of the board of review, interim board of review, or commissioner of the board of appeals created by this Code shall, before entering upon the duties of his or her office, take and subscribe to the following oath:

State of Illinois County of . . . .

I do solemnly swear (or affirm) that I will as (a member of the board of review) (a commissioner of the board of appeals faithfully perform all the duties of that office as required by law; that I will fairly and impartially review the assessments of all property to the extent authorized by this Code; that I will correct all assessments which should be corrected; that I will raise or lower (or in the case of commissioners of the board of appeals, will direct the county assessor to change, correct, alter or modify) assessments as justice may require; and that I will do all acts necessary and within my authority to procure a full, fair and impartial assessment of all property.

Dated . . . .
(Source: P.A. 78-387; 88-455.)

(35 ILCS 200/5-15)

Sec. 5-15. Board employees. In counties with 3,000,000 or more inhabitants, the board of appeals (until January 1, 1996, the interim board of review beginning January 1, 1996 and until the first Monday in December 1998,

and the board of review beginning on the first Monday in December 1998 and thereafter) shall appoint a Chief Clerk, a Secretary, and a deputy in charge of complaints. The Board may also employ deputies and other staff as may be necessary to assist the Board in the proper discharge of its duties. The Chief Clerk, the Secretary and the deputies shall have authority to administer oaths and examine under oath those persons who appear for a hearing. The Board may assign any matter to a deputy for preliminary nearing. With respect to applications for exemption reviewed under Section 16-130, the Secretary shall prepare and forward to the Department a full and complete statement of all the facts together with documents in each case and shall also forward a statement of the facts to the county assessor. Except as provided in Section 9-85, in all other instances the board shall certify its action and orders to the county assessor and the county assessor shall carry out the orders under the direction of the board. Employees of the board of appeals (until January 1, 1996, the interim board of review beginning January 1, 1996 and until the first Monday in December 1998, and the board of review beginning on the first Monday in December 1998 and thereafter) shall receive compensation fixed by the county board upon the recommendation of the board of appeals, payable from the county treasury.
(Source: P.A. 83-1362; 88-455.)

(35 ILCS 200/6-10)

Sec. 6-10. Examination requirement – Counties of 100,000 or more. In any county to which Section 6-5 applies and which has 100,000 or more inhabitants, no

person may serve on the board of review who has not passed an examination prepared and administered by the Department to determine his or her competence to hold the office. The examination shall be conducted by the Department at some convenient location in the county. The Department may provide by rule the maximum time that the name of a person who has passed the examination will be included on a list of persons eligible for appointment or election. The county board of any other county may, by resolution, impose a like requirement in its county. In counties with less than 100,000 inhabitants, the members of the board of review shall within one year of taking office successfully complete a basic course in assessment practice approved by the Department. In counties with 3,000,000 or more inhabitants, the members of the board of review or interim board of review shall successfully complete a basic course in assessment practice, approved by the Department, within one year after taking office. (Source: P.A. 87-1189; 88-455; incorporates 88-221; 88-670, eff. 12-2-94.)

(35 ILCS 200/6-20)

Sec. 6-20. Clerk of the board of review.

(a) In counties with a board of review appointed under Section 6-5, the clerk of the board of review shall collect and analyze property transfers and property appraisals, and pursue other activities the board considers proper and necessary to aid the board in the determination of the percentage relationship, for each assessment district, between the valuations at which locally assessed property

is listed and 33 1/3% of the estimated fair cash value of such property, or the values determined in accordance with Sections 10-110 through 10-140, or the percentages provided by a county ordinance adopted under Section 4 of the Article IX of the Constitution of Illinois.

(b) In counties with 3,000,000 or more inhabitants, the county assessor shall annually make available to the board of review or interim board of review information utilized in the assessment of property, including, but not limited to, reports generated from the multiple regression equation and sales/ratio studies, if any. The county assessor shall make available to the board of review or interim board of review, upon request by any member of the board, data used in compilation of the reports and studies. The Department shall make available to the board of review or interim board of review sales/ratio studies conducted by the Department.
(Source: P.A. 86-905; 87-1189; 88-455.)

(35 ILCS 200/6-40)

Sec. 6-40. Election from districts. In all counties which elect a board of review, except counties with a county assessor elected under Section 3-45 and except counties with a board of review elected under Section 5-5, members shall be elected from 3 districts which are substantially equal in number of inhabitants and, to the extent practicable, equal in geographic area. On or before January 1 of the first year following a decennial census in which board members will be elected, the supervisor of assessments shall prepare and submit to the county

board a map of the districts, designating each district as 1, 2 or 3. The county board shall adopt the map or make changes as it deems necessary and adopt the revised map on or before January 31. If no map is adopted by January 31, the map initially submitted by the supervisor of assessments shall constitute the districts from which members of the board of review shall be elected. As each term of a member of the board of review expires, a new member shall be elected from a district, beginning with district 1 and proceeding through district 3.
(Source: P.A. 86-181; 88-455.)

(35 ILCS 200/6-45)

Sec. 6-45. Abolition of elected board of review. If any county contains within its limits 3,000,000 or more inhabitants, as determined by the last federal decennial or special census, that county shall at once come under the provisions of this Code relating to counties of that population, and at the next ensuing regular election of county officers, ~~a board of appeals and~~ a county assessor shall be elected, and all provisions of this Code relating to counties with 3,000,000 or more inhabitants shall than immediately apply to that county.

In counties having an elected board of review as provided by law for counties with 150,000 or more but less than 3,000,000 inhabitants, the county board may by resolution have submitted to the legal voters of the county at any regular election, the question of abolishing the elected board of review. The county board shall certify the question to the proper election officials, who shall

submit the question to the voters. Such referendum shall be held and returns made all in the manner now provided by the general election law and the question shall be in substantially the following form:

Shall the elected board of review be abolished and be replaced by an appointed board?	YES
	NO

If a majority of the voters voting on the question vote in favor of the proposition, the elected board of review shall be abolished to take effect on June 1 following the election. On that date, all records, books and papers pertaining to the elected board shall be transferred and delivered by the board to its successor in office. Thereafter all the powers and duties conferred upon appointed boards of review in counties with less than 3,000,000 inhabitants shall be exercised and performed in such counties so voting, by appointed boards of review as provided by law for counties with less than 3,000,000 inhabitants.
(Source: P.A. 81-1489; 88-455.)

(35 ILCS 200/9-5)

Sec. 9-5. Rules. Each county assessor, board of appeals, interim board of review, and board of review shall make and publish reasonable rules for the guidance of persons doing business with them and for the orderly dispatch of business.

In counties with 3,000,000 or more inhabitants, the county assessor and board of appeals (until January 1,

1996, the interim board of review beginning January 1, 1996 and ending the first Monday in December 1998, and the board of review beginning the first Monday in December 1998 and thereafter), jointly shall make and prescribe rules for the assessment of property and the preparation of the assessment books by the township assessors in their respected townships and for the return of those books to the county assessor.
(Source: P.A. 76-1322; 88-455.)

(35 ILCS 200/9-85)

Sec. 9-85. Revision of assessments by county assessor and board of review: Counties of 3,000,000 or more. In counties with 3,000,000 or more inhabitants, the county assessor shall have authority annually to review the assessment books and correct them as appears to be just; and on complaint in writing in proper form by any taxpayer, and after affording the taxpayer an opportunity to be heard thereon, he or she shall do so at any time, until the assessment is verified. An entry upon the assessment books does not constitute an assessment until the assessment is verified. When a notice is to be mailed under Section 12-55 and the address that appears on the assessor's records is the address of a mortgage lender or the trustee, where title to the property is held in a land trust, or in any event whenever the notice is mailed by the assessor to a taxpayer at or in care of the address of a mortgage lender or a trustee where the title to the property is held in a land trust, the mortgage lender or the trustee within 15 days of the mortgage lender's or the trustee's receipt of such notice shall mail a copy of the

notice to each mortgagor of the property referred to in the notice at the last known address of each mortgagor as shown on the records of the mortgage lender, or to each beneficiary as shown on the records of the trustee.

All changes and alternations pursuant to Section 16-95 or Section 16-120 in the assessment of property shall be subject to revision and entry into the assessment books by the board of review or interim board of review in the same manner as the original assessments.
(Source: P.A. 84-222; 88-455.)

(35 ILCS 200/9-220)

Sec. 9-220. Division into assessment districts; assessment years; counties of 3,000,000 or more.

(a) Notwithstanding any other provision in this Code to the contrary, until January 1, 1996, the county board of a county with 3,000,000 or more inhabitants may by resolution divide the county into any number of assessment districts. If the county is organized into townships, the assessment districts shall follow township lines. The assessment districts shall divide, as near as practicable, the work of assessing the property in the county into equal parts but neither the area nor the number of parcels need be equal in the assessment districts. The resolution shall number the assessment districts. The resolution shall number the assessment districts and provide for a general reassessment of each districts and provide for a general reassessment of each district at regular intervals determined by the county board.

(b) Beginning January 1, 1996, in counties with 3,000,000 or more inhabitants, assessment districts shall be subject to general reassessment according to the following schedule:

(1) The first assessment district shall be subject to the general reassessment in 1997 and every 3 years thereafter.

(2) the second assessment district shall be subject to general reassessment in 1998 and every 3 years thereafter.

(3) The third assessment district shall be subject to general reassessment in 1996 and every 3 years thereafter.

The boundaries of the 3 assessment districts are as follows: (i) the first assessment district shall be that portion of the county located within the boundaries of a municipality with 1,000,000 or more inhabitants, (ii) the second assessment district shall be that portion of the county that lies north of State Route 64 (North Avenue) and outside the boundaries of a municipality with 1,000,000 or more inhabitants, and (iii) the third assessment districts shall be that portion of the county that lies south of State Route 64 (North Avenue) and outside the boundaries of a municipality with 1,000,000 or more inhabitants.
(Source: P.A. 86-1481; 87-1189; 88-455.)

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(35 ILCS 200/9-260)

Sec. 9-260. Assessment of omitted property; counties of 3,000,000 or more. After signing the affidavit, the county assessor shall have power, when directed by the board of appeals (until January 1, 1996, the interim board of review beginning January 1, 1996 and until the first Monday in December 1998, and the board of review beginning the first Monday in December 1998 and thereafter) ~~under Section 16-148~~, or on his or her own initiative, to assess properties which may have been omitted from assessments for the current year or during any year or years for which the property was liable to be taxed, and for which the tax has not been paid, but only on notice and an opportunity to be heard in the manner and form required by law, and shall enter the assessments upon the assessment books. No charge for tax of previous years shall be made against any property if (a) the property was last assessed as unimproved, (b) the owner of such property gave notice of subsequent improvements and requested a reassessment as required by Section 9-180, and (c) reassessment of the property was not made within the 16 month period immediately following the receipt of that notice. The assessor shall have no power to change the assessment or alter the assessment books in any other manner or for any other purpose so as to change or affect the taxes in that year, except as ordered by the board of appeals. The county assessor shall make all changes and corrections ordered by the board of appeals (until January 1, 1996, the interim board of review beginning January 1, 1996 and until the first Monday in December 1998, and the board of review beginning the first Monday in December 1998

and thereafter). The county assessor may for the purpose of revision by the board of appeals (until January 1, 1996, the interim board of review beginning January 1, 1996 and until the first Monday in December 1998, and the board of review beginning the first Monday in December 1998 and thereafter) certify the assessment books for any town or taxing district after or when such books are completed. (Source: P.A. 84-222; 88-455.)

(35 ILCS 200/9-265)

Sec. 9-265. Omitted property; interest; change in exempt use or ownership. If any property is omitted in the assessment of any year or years, so that the taxes, for which the property was liable, have not been paid, or if by reason of defective description or assessment, taxes on any property for any year or years have not been paid, or if any taxes are refunded under subsection (b) of Section 14-5 because the taxes were assessed in the wrong person's name, the property, when discovered, shall be listed and assessed by the board of review or, in counties with 3,000,000 or more inhabitants ~~having a board of appeals~~, by the county assessor either on his or her own initiative or when so directed by the board of appeals, interim board of review, or board of review. For purposes of this Section, "defective description or assessment" includes a description or assessment which omits all the improvements thereon as a result of which part of the taxes on the total value of the property as improved remain unpaid. In the case of property subject to assessment by the Department, the property shall be listed and assessed by the Department. All such property

shall be placed on the assessment and tax books. The arrearages of taxes which might have been assessed, with 10% interest thereon for each year or portion thereof from 2 years after the time the first correct tax bill ought to have been received, shall be charged against the property by the county clerk.

When property or acreage omitted by either incorrect survey or other ministerial assessor error is discovered and the owner has paid its tax bills as received for the year or years of omission of the parcel, then the interest authorized by this Section shall not be chargeable to the owner. However, nothing in this Section shall prevent the collection of the principal amount of back taxes due and owing.

If any property listed as exempt by the chief county assessment officer has a change in use, a change in leasehold estate, or a change in titleholder of record by purchase, grant, taking or transfer, it shall be the obligation of the transferee to notify the chief county assessment officer in writing within 30 days of the change. The notice shall be sent by certified mail, return receipt requested, and shall include the name and address of the taxpayer, the legal description of the property, and the property index number of the property when an index number exists. If the failure to give the notification results in the assessing official continuing to list the property as exempt in subsequent years, the property shall be considered omitted property for purposes of this Code. (Source: P.A. 86-180; 88-455.)

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(35 ILCS 200/12-50)

Sec. 12-50. Mailed notice to taxpayer after change by board of review or interim board of review. If final board of review or interim board of review action regarding any property, including equalization under Section 16-60 or Section 16-65, results in an increased or decreased assessment, the board ~~of review~~ shall mail a notice to the taxpayer, at his or her address as it appears in the assessment records, whose property is affected by such action, and in the case of a complaint filed under Section 16-25, to the taxing body filing the complaint. A copy shall be given to the assessor or chief county assessment office ~~supervisor of assessments~~ if his or her assessment was reversed or modified by the board ~~of review~~. Written notice shall also be given to any taxpayer who filed a complaint in writing with ~~to~~ the board ~~of Review~~ and whose assessment was not changed. The notice shall set forth the assessed value prior to the board ~~of review~~ action; the assessed value after final board ~~of review~~ action but prior to any equalization; and the assessed value as equalized by the board ~~of review~~, if the board ~~of review~~ equalizes. This notice shall state that the value as certified to the county clerk by the board ~~of review~~ will be the locally assessed value of the property for that year and each succeeding year, unless revised in a succeeding year in the manner provided in this Code. The written notice shall also set forth specifically the facts upon which the board's decision is based and shall also contain the following statement: "You may appeal this decision to the Property Tax Appeal Board by filing a petition for review with the Property Tax Appeal Board within 30 days after this notice is mailed

to you or your agent, or is personally served upon you or your agent": except that, in counties with 3,000,000 or more inhabitants the statements shall be included in the written notice (i) for residential property with 6 units or less beginning with assessments made for the 1996 assessment year and (ii) for all other property in counties with 3,000,000 or more inhabitants beginning with assessments made for the 1997 assessment year. (Source: P.A. 84-1454; 87-1189; 88-455.)

(35 ILCS 200/14-10)

Sec. 14-10. Certificate of correction; counties of 3,000,000 or more. If the county assessor in counties with 3,000,000 or more inhabitants, at any time prior to the time the board of appeals (until January 1, 1996, the interim board of review beginning January 1, 1996 and until the first Monday in December 1998, and the board of review beginning the first Monday in December 1998 and thereafter) is required to complete its work and adjourn under Section 16-150, certifies to the board that there is a mistake or error (other than a mistake or error of judgment) in the valuation or assessment of any property, or in the entry of any assessment in the assessment books, the county assessor shall set forth the nature and cause of the mistake or error. The board of appeals (until January 1, 1996, the interim board of review beginning January 1, 1996 and until the first Monday in December 1998, and the board of review beginning the first Monday in December 1998 and thereafter) shall give the person affected by the assessment notice an opportunity to be heard. If the board of appeals (until January 1, 1996, the

interim board of review beginning January 1, 1996 and until the first Monday in December 1998, and the board of review beginning the first Monday in December 1998 and thereafter) is satisfied that a mistake or error has occurred, the majority of the members ~~both commissioners~~ shall endorse it by signing the certificate and shall order the assessor to correct the mistake or error.
(Source: P.A. 83-121; 88-455.)

(35 ILCS 200/14-15)

Sec. 14-15. Certificate of error; counties of 3,000,000 or more.

(a) In counties with 3,000,000 or more inhabitants, if, at any time before judgment is rendered in any proceeding to collect or to enjoin the collection of taxes based upon any assessment of any property belonging to any taxpayer, the county assessor discovers an error or mistake in the assessment, the assessor shall execute a certificate setting forth the nature and cause of the error. The certificate when endorsed by the county assessor, or when endorsed by the county assessor and board of appeals (until January 1, 1996, the interim board of review beginning January 1, 1996 and until the first Monday in December 1998, and the board of review beginning the first Monday in December 1998 and thereafter) where the certificate is executed for any assessment which was the subject of a complaint filed in the board of appeals (until January 1, 1996, the interim board of review beginning January 1, 1996 and until the first Monday in December 1998, and the board of review beginning the first Monday in December 1998 and thereafter) for the tax year for which the certificate

is issued, may be received in evidence in any court of competent jurisdiction. When so introduced in evidence such certificates shall become a part of the court records, and shall not be removed from the files except upon the order of the court.

A certificate executed under this Section may be issued to the person erroneously assessed. A certificate executed under this Section or a list of the parcels for which certificates have been issued or may be presented by the assessor to the court as an objection in the application for judgment and order of sale for the year in relation to which the certificate is made. The State's Attorney of the county in which the property is situated shall mail a copy of any final judgment entered by the court regarding the certificate to the taxpayer of record for the year in question.

Any unpaid taxes after the entry of the final judgment by the court on certificates issued under this Section may be included in a special tax sale, provided that an advertisement is published and a notice is mailed to the person in whose name the taxes were last assessed, in a form and manner substantially similar to the advertisement and notice required under Sections 21-110 and 21-135. The advertisement and sale shall be subject to all provisions of law regulating the annual advertisement and sale of delinquent property, to the extent that those provisions may be made applicable.

A certificate of error executed under this Section allowing homestead exemptions under Sections 15-170 and

15-175 of this Act (formerly Sections 19.23-1 and 19.23-1a of the Revenue Act of 1939) not previously allowed shall be given effect by the county treasurer, who shall mark the tax books and, upon receipt of the following certificate from the county assessor, shall issue refunds to the taxpayer accordingly:

"CERTIFICATION

> I, ... county assessor, hereby certify that the Certificates of Error set out on the attached listed have been duly issued to allow homestead exemptions pursuant to Sections 15-170 and 15-175 of the Property Tax Code (formerly Sections 19.23-1 and 19.23-1a of the Revenue Act of 1939) which should have been previously allowed; and that a certified copy of the attached list and this certification have been served upon the county State's Attorney."

The county treasurer has the power to mark the tax books to reflect the issuance of homestead certificates of error from and including the due date of the tax bill for the year for which the homestead exemption should have been allowed until 2 years after the first day of January of the year after the year for which the homestead exemption should have been allowed. The county treasurer has the power to issue refunds to the taxpayer as set forth above from and including the first day of January of the year after the year for which the homestead exemption should have been allowed until all refunds authorized by this Section have been completed.

The county treasurer has no power to issue refunds to the taxpayer as set forth above unless the Certification set out in this Section has been served upon the county State's Attorney.

(b) Nothing in subsection (a) of this Section shall be construed to prohibit the execution, endorsement, issuance and adjudication of a certificate error if (i) the annual judgment and order of sale for the tax year in question is reopened for further proceedings upon consent of the county collector and county assessor, represented by the State's Attorney, and (ii) a new final judgment is subsequently entered pursuant to the certificate. This subsection (b) shall be construed as declarative of existing law and not as a new enactment.

(c) No certificate of error, other than a certificate to establish an exemption under Section 14-25, shall be executed for any tax year more than 3 years after the date on which the annual judgment and order of sale for that tax year was first entered.
(Source: P.A. 88-225; 88-455; 88-660, eff. 9-16-94; 88-670, eff. 12-2-94.)

(35 ILCS 200/14-35)

Sec. 14-35. Hearings by county assessor; counties of 3,000,000 or more. In counties; with 3,000,000 or more inhabitants, the county assessor each year shall sit for the purpose of revising the assessments. The time of the sittings shall be set by the county assessor by notice as herein provided after the assessment books for one or more

townships or taxing districts have been completed. The assessments for one or more townships or taxing districts may be revised at any sitting which may be adjourned from day to day as necessary. At least one week before each sitting the county assessor shall publish a notice, in some newspaper of general circulation published in the county, of the time and place of the sitting, the township or townships, taxing district or taxing districts for which the assessments will be considered at the sitting, and the time within which applications for revisions of assessment may be made by taxpayers. The county assessor shall, upon completion of the revision of assessments for any township or taxing district, deliver the assessment books for the township or taxing district to the board of appeals (until January 1, 1996, the interim board of review beginning January 1, 1998 and until the first Monday in December 1998, and the board of review beginning on the first Monday in December 1998 and thereafter).
(Source: P.A. 83-121; 88-455.)

(35 ILCS 200/16-5)

Sec. 16-5. Information from assessors to board of review, interim board of review, and board of appeals. The chief county assessment officer shall furnish to the board of review, interim board of review, or board of appeals all books, papers and information in his or her office requested by the board to assist it in the proper discharge of its duties.
(Source: Laws 1939, p. 886; P.A. 88-455.)

Appendix H

(35 ILCS 200/16-10)

Sec. 16-10. Summons by the board of review, interim board of review, or board of appeals. A board of review, interim board of review, or board of appeals may summon any assessor, deputy, or other person to appear before it to be examined under oath concerning the method by which any evaluation has been ascertained, and its correctness. Any person so summoned who fails, without good cause, to appear or appearing refuses to submit to the inquiry or answer questions asked by any member of the board, or any attorney representing the board, shall be guilty of a petty offense.
(Source: P.A. 78-387; 88-455.)

(35 ILCS 200/Division 3 heading)

Division 3. Board of Review; Counties of 3,000,000 or more ~~Appeals~~

(35 ILCS 200/16-95)

Sec. 16-95. Powers and duties of board of appeals or review; Complaints. In counties with 3,000,000 or more inhabitants, until January 1, 1996, the board of appeals in any year shall, on complaint that any property is overassessed or underassessed, or is exempt, review and order the assessment corrected.

Beginning January 1, 1996 and until the first Monday in December 1998, in counties with 3,000,000 or more inhabitants, the interim board of review, and beginning

the first Monday in December 1998 and thereafter, the board of review:

(1) shall, upon written complaint or request of any taxpayer, or any taxing district that has an interest in the assessment, and upon good cause shown, revise, correct, alter, or modify any assessment (or part of an assessment) of any real property; nothing in this Section, however, shall be construed to require a taxpayer to file a complaint with the board; and

(2) may, upon written motion of any one or more members of the board and upon good cause shown, revise, correct, alter, or modify any assessment (or part of an assessment) of real property regardless of whether the taxpayer or owner of the property has filed a complaint or request with the board.

An assessment shall not be increased until the person to be affected has been notified and given an opportunity to be heard. Before making any reduction in assessments of its own motion, the board shall give notice to the assessor or chief county assessment officer who certified the assessment, and give the assessor or chief county assessment officer an opportunity to be heard thereon. All taxing districts shall have an opportunity to be heard on the matter.
(Source: P.A. 83-121; 88-455.)

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(35 ILCS 200/16-100)

Sec. 16-100. Correction orders. In counties with 3,000,000 or more inhabitants, the board of appeals (until January 1, 1996, the interim board of review beginning January 1, 1996 and until the first Monday in December 1998, and the board of review beginning the first Monday in December 1998 and thereafter) in any year shall order the county assessor to correct any mistake or error (other than mistakes or errors of judgment as to the valuation of any property) in the manner provided in Sections 14-10 and 16-145.
(Source: P.A. 83-121; 88-455.)

(35 ILCS 200/16-105)

Sec. 16-105. Time of meeting – Public records. In counties with 3,000,000 or more inhabitants, the board of appeals (until January 1, 1996, the interim board of review beginning January 1, 1996 and until the first Monday in December 1998, and the board of review beginning the first Monday in December 1998 and thereafter) shall meet on or before the second Monday in September in each year for the purpose of revising the assessment of property as provided for in this Code. The meeting may be adjourned from day to day as may be necessary.

All hearings conducted by the board ~~of appeals~~ under this Code shall be open to the public. All files maintained by the board relating to the matters specified in Sections 16-95, 16-100, and 16-140 shall be available for public inspection during regularly office hours. However, only

the actual portions of the income tax return relating to the property for which a complaint has been filed shall be a public record. Copies of such records shall be furnished upon request. The board may charge for the costs of copying, at 35¢ per page of legal size or smaller and $1 for each larger page.
(Source: P.A. 79-1454; 88-455.)

(35 ILCS 200/16-110)

Sec. 16-110. Notice of meetings – Filing complaints. In counties with 3,000,000 or more inhabitants, at least one week before its meeting to revise and correct assessments, the board of appeals (until January 1, 1996, the interim board of review beginning January 1, 1996 and until the first Monday in December 1998, and the board of review beginning the first Monday in December 1998 and thereafter) shall publish a notice of the time and place of that meeting. The board shall, from time to time, publish notices which shall specify the date and place at which complaints may be filed for those townships or taxing districts for which property assessments have been completed by the county assessor, and which will then be considered for revision and correction at that time. All notices quired by this Section may provide for a revision and correction at the specified time of one or more townships or taxing districts. All such notices shall be published once in at least one newspaper of general circulation published in the county. The board ~~of appeals~~ at the time and place fixed, and upon notice as provided in this Section, may receive and hold hearings on all those complaints and revise and correct assessments within

those township or taxing districts. Taxpayers shall have at least 20 days after the date of publication of the notice within which to file complaints.
(Source: P.A. 83-121; 88-455.)

(35 ILCS 200/16-80)

Sec. 16-80. Reduced assessment of homestead property. In any county, if the board of review or interim board of review lowers the assessment of a particular parcel on which a residence occupied by the owner is situated, the reduced assessment, subject to equalization, shall remain in effect for the remainder of the general assessment period as provided in Sections 9-215 through 9-225, unless the taxpayer, county assessor, or other interested party can show substantial cause why the reduced assessment should not remain in effect, or unless the decision of the board is reversed or modified upon review.
(Source: P.A. 86-345; 86-413; 86-1028; 86-1481; 88-455.)

(35 ILCS 200/16-115)

Sec. 16-115. Filing complaints. In counties with 3,000,000 or more inhabitants, complaints that any property is overassessed or underassessed or is exempt may be made by any taxpayer. All complaints shall be in writing, identify and describe the particular property, otherwise comply with the rules in force, be signed by the complaining party or his or her attorney, and be filed with the board of appeals (until January 1, 1996, the interim board of review beginning January 1, 1996 and

until the first Monday in December 1998, and the board of review beginning the first Monday in December 1998 and thereafter) in at least duplicate. The board ~~of appeals~~ shall forward one copy of each complaint to the county assessor.

Complaints by taxpayers and certificates of correction by the county assessor as provided in this Code shall be filed with the board ~~of appeals~~ according to townships on or before the dates specified in the notices given in Section 16-110.
(Source: P.A. 83-121; 88-455.)

(35 ILCS 200/16-120)

Sec. 16-120. Decision on complaints. In counties with 3,000,000 or more inhabitants, at its meeting for the purpose of revising and correcting the assessments, the board of appeals (until January 1, 1996, the interim board of review beginning January 1, 1996 and until the first Monday in December 1998, and the board of review beginning the first Monday in December 1998 and thereafter), upon complaint filed by a taxpayer as prescribed in this Code, may revise the entire assessment of any taxpayer, or any part thereof, and correct the same as shall appear to the board to be just. The assessment of the property of any taxpayer shall not be increased unless that taxpayer or his agent shall first have been notified in writing and been given an opportunity to be heard.
(Source: P.A. 76-2254; 88-455.)

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(35 ILCS 200/16-125)

Sec. 16-125. Hearings. In counties with 3,000,000 or more inhabitants, complaints filed with the board of appeals (until January 1, 1996, the interim board of review beginning January 1, 1996 and until the first Monday in December 1998, and the board of review beginning the first Monday in December 1998 and thereafter) shall be classified by townships. All complaints shall be docketed numerically, in the order in which they are presented, as nearly as possible, in books or computer records kept for that purpose, which shall be open to public inspection. The complaints shall be considered by townships until they have been heard and passed upon by the board.

A hearing upon any complaint shall not be held until the taxpayer affected and the county assessor have each been notified and have been given an opportunity to be heard. All hearings shall be open to the public and the board ~~of appeals~~ shall sit together and hear the representations of the interested parties or their representatives. An order for a correction of any assessment shall not be made unless both commissioners of the board, or a majority of the members in the case of a board of review or interim board of review, concur therein, in which case, an order therefor shall be made in open session and entered in the records of the board. When an assessment is ordered corrected, the board ~~of appeals~~ shall transmit a computer printout of the results, or make and sign a brief written statement of the reason for the change and the manner in which the method used by the assessor in making the assessment was erroneous, and shall deliver a copy of the statement

to the county assessor. Upon request the board shall hear any taxpayer in opposition to a proposed reduction in any assessment.

The board ~~of appeals~~ may destroy or otherwise dispose of complaints and records pertaining thereto after the lapse of 10 years from the date of filing.
(Source: P.A. 83-1362; 88-455.)

(35 ILCS 200/16-130)

Sec. 16-130. Exemption procedures; board of appeals; board of review. Whenever the board of appeals (until January 1, 1996, the interim board of review beginning January 1, 1996 and until the first Monday in December 1998, and the board of review beginning the first Monday in December 1998 and thereafter) in any county with 3,000,000 or more inhabitants determines that any property is or is not exempt from taxation, the decision of the board shall not be final, except as to homestead exemptions. Upon filing of any application for an exemption which would, if approved, reduce the assessed valuation of any property by more than $100,000, other than a homestead exemption, the owner shall give timely notice of the application by mailing a copy of it to any municipality, school district and community college district in which such property is situated. Failure of a municipality, school district or community college district to receive the notice shall not invalidate any exemption. The board shall give the municipalities, school districts and community college districts and the taxpayer an opportunity to be heard. In all exemption cases other than homestead exemptions,

the secretary of the board ~~of appeals~~ shall comply with the provisions of Section 5-15. The Department shall then determine whether the property is or is not legally liable to taxation. It shall notify the board ~~of appeals~~ of its decision and the board shall correct the assessment accordingly, if necessary. The decision of the Department is subject to review under Sections 8-35 and 8-40. The extension of taxes on any assessment shall not be delayed by any proceedings under this paragraph, and, in case the property is determined to be exempt, any taxes extended upon the unauthorized assessment shall be abated or, if already paid, shall be refunded.
(Source: P.A. 86-413; 88-455.)

(35 ILCS 200/16-135)

Sec. 16-135. Omitted property; Notice provisions. In counties with 3,000,000 or more inhabitants, the owner of property and the executor, administrator, or trustee of a decedent whose property has been omitted in the assessment in any year or years or on which a tax for which the property was liable has not been paid, and the several taxing bodies interested therein, shall be given at least 5 days notice in writing by the board of appeals (until January 1, 1996, and the interim board of review beginning January 1, 1996 and until the first Monday in December 1998, and the board of review beginning the first Monday in December 1998 and thereafter) or county assessor of the hearing on the proposed assessments of the omitted property. The board or assessor shall have full power to examine the owner, or the executor, administrator, trustee, legatee, or heirs of the decedent,

or other person concerning the ownership, kind, character, amount and the value of the omitted property.

If the board determines that the property of any decedent was omitted from assessment during any year or years, or that a tax for which the property was liable, has not been paid, the board shall direct the county assessor the assess the property. However, if the county assessor, on his or her own initiative, makes such a determination, then the assessor shall assess the property. No charge for tax of previous years shall be made against any property prior to the date of ownership of the person owning the property at the time the liability for such omitted tax is first ascertained. Ownership as used in this Section refers to bona fide legal and equitable titles or interests acquired for value and without notice of the tax, as may appear by deed, deed of trust, mortgage, certificate of purchase or sale, or other form of contract. No such charge for tax of previous years shall be made against any property if

(a) the property was last assessed as unimproved,

(b) the owner of the property, gave notice of subsequent improvements and requested a reassessment as required by Section 19-180, and

(c) reassessment of the property was not made within 16 months of receipt of that notice.

The assessment of omitted property by the county assessor may be reviewed by the board ~~of appeals~~ in the same manner as other assessments are reviewed under

the provisions of this Code and when so reviewed, the assessment shall not thereafter be subject to review by any succeeding board.

For the purpose of enforcing the provisions of this Code, relating to the property omitted from assessment, the taxing bodies interested therein are hereby empowers to employ counsel to appear before the board or assessor (as the case may be) and take all necessary steps to enforce the assessment on the omitted property.
(Source: P.A. 83-121; 88-455.)

(35 ILCS 200/16-140)

Sec. 16-140. Omitted property. In counties with 3,000,000 or more inhabitants, the board of appeals (until January 1, 1996, the interim board of review beginning January 1, 1996 and until the first Monday in December 1998, and the board of review beginning the first Monday in December 1998 and thereafter) in any year shall direct the county assessor, in accordance with Section 16-135, when he or she fails to do so on his or her own initiative, to assess all property which has not been assessed, for any reason, and enter the same upon the assessment books and to list and assess all property that has been omitted in the assessment of any year or years. If the tax for which that property was liable has not been paid or if any property, by reason of defective description or assessment thereof, fails to pay taxes for any year or years, the property, when discovered by the board shall be listed and assessed by the county assessor. The board may order the county assessor to make such alterations in the description of property as

it deems necessary. No charge for tax of previous years shall be made against any property if

(a) the property was last assessed as unimproved,

(b) the owner of the property gave notice of subsequent improvements and requested a reassessment as required by Section 9-180, and

(c) reassessment of the property was not made within 16 months of receipt of that notice.

The board ~~of appeals~~ shall hear complaints and revise assessments of any particular parcel of property of any person identified and described in a complaint filed with the board and conforming to the requirements of Section 16-115. The board shall make revisions in no other cases.
(Source: P.A. 83-121; 88-455.)

(35 ILCS 200/16-145)

Sec. 16-145. Assessment list charges. In counties with 3,000,000 or more inhabitants, the board of appeals (until January 1, 1996, the interim board of review beginning January 1, 1996 and until the first Monday in December 1998, and the board of review beginning the first Monday in December 1998 and thereafter), in revising assessments in any year, shall require the county assessor to note all changes in the valuation of property upon an assessment list and books certified by the county assessor.
(Source: P.A. 83-121; 88-455.)

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(35 ILCS 200/16-150)

Sec. 16-150. Certification of assessment books. In counties with 3,000,000 or more inhabitants, the board of appeals (until January 1, 1996, the interim board of review beginning January 1, 1996 and until the first Monday in December 1998, and the board of review beginning the first Monday in December 1998 and thereafter) shall, on or before the annual date for final adjournment as fixed by this Section, complete its work, and order the county assessor to make those entries in the assessment books and lists as may be required to make the assessments conform with the changes directed to be made therein by the board ~~of appeals~~. The county assessor and a majority of the members ~~commissioners~~ of the board ~~of appeals~~ shall attach to each of the assessment books in the possession of the county assessor and the county clerk an affidavit signed by the county assessor and a majority of the members ~~commissioners~~ of the board ~~of appeals~~, which affidavit shall be in substantially the following form:

State of Illinois)
) ss.
County of . . . . .)

We, and each of us, as county assessor and as members ~~commissioners~~ of the (board of appeals, interim board of review, or board of review) of the County of . . . . . in the State of Illinois, do solemnly swear that the books . . . . in number . . . . to which this affidavit is attached, contain a full and complete list of all the property in this county subject to taxation for the year 19. . so far as we have been able to ascertain them, and that the assessed value

set down in the proper column opposite the several kinds and descriptions of property, is, in our opinion, a just and equal assessment of the property for the purposes of taxation according to law, and that the footings of the several columns in these books are correct to the best of our knowledge and belief.

The final date of adjournment of the board ~~of appeals~~ shall be 60 days after the date of the last delivery to it of the assessment books for any township or taxing district. (Source: P.A. 83-121; 88-455.)

(35 ILCS 200/16-155)

Sec. 16-155. Use of certified assessments. In counties with 3,000,000 or more inhabitants, the assessments of property after review by the board of appeals (until January 1, 1996, the interim board of review beginning January 1, 1996 and until the first Monday in December 1998, and the board of review beginning the first Monday in December 1998 and thereafter) shall be certified to the county clerk and shall be the basis of that clerk's reports of assessments to the Department and, as equalized, shall be used by the county clerk in ascertaining tax rates and extending taxes.
(Sources: P.A. 83-121; 88-455.)

(35 ILCS 200/16-160)

Sec. 16-160. Property Tax Appeal Board – Process. In counties with 3,000,000 or more inhabitants, beginning with assessments made for the 1996 assessment year for residential property of 6 units or less and beginning with

assessments made for the 1997 assessment year for all other property, and for all property in any county other than a county with 3,000,000 or more inhabitants, any taxpayer dissatisfied with the decision of the board of review as such decision pertains to the assessment of his or her property for taxation purposes, or any taxing body that has an interest in the decision of the board of review on an assessment made by any local assessment officer, may, within 30 days after the date of written notice of the decision of the board of review, appeal the decision to the Property Tax Appeal Board for review. In any appeal where the board of review has given written notice of the hearing to the taxpayer 30 days before the hearing, failure to appear at the board of review hearing shall be grounds for dismissal of the appeal unless a continuance is granted to the taxpayer. If an appeal is dismissed for failure to appear at a board of review hearing, the Property Tax Appeal Board shall have no jurisdiction to hear any subsequent appeal on that taxpayer's complaint. Such taxpayer or taxing body, hereinafter called the appellant, shall file a petition with the clerk of the Property Tax Appeal Board, setting forth the facts upon which he or she bases the objection, together with a statement of the contentions of law which he or she desires to raise, and the relief requested. If a petition is filed by a taxpayer, the taxpayer is precluded from filing objections based upon valuation, as may otherwise be permitted by Sections 21-175 and 23-5. However, any taxpayer not satisfied with the decision of the board of review as such decision pertains to the assessment of his or her property need not appeal the decision to the Property Tax Appeal Board before seeking relief in the courts.
(Source: P.A. 87-1189; 88-455.)

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(35 ILCS 200/18-170)

Sec. 18-170. Enterprise zone abatement. In addition to the authority to abate taxes under Section 18-165, any taxing district, upon a majority vote of its governing authority, may order the county clerk to abate any portion of its taxes on property, or any class thereof, located within an Enterprise Zone created under the Illinois Enterprise Zone Act, and upon which either new improvements have been constructed or existing improvements have been renovated or rehabilitated after December 7, 1982. However, any abatement of taxes on any parcel shall not exceed the amount attributable to the construction of the improvements and the renovation or rehabilitation of existing improvements on the parcel. In the case of property within a redevelopment area created under the Tax Increment Allocation Redevelopment Act, the abatement shall not exceed the amount of taxes allocable to the taxing district. However, within a county economic development project area created under the County Economic Development Project Area Property Tax Allocation Act, any municipality or county which has adopted tax increment allocation financing under the Tax Increment Allocation Redevelopment Act or the County Economic Development Project Area Tax Increment Allocation Act may abate any portion of its taxes as provided in this Section. Any other taxing district within the county economic development project area may order any portion or all of its taxes abated as provided above if the county or municipality which created the tax increment district has agreed, in writing, to the abatement.

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A copy of an abatement order adopted under this Section shall be delivered to the county clerk and to the board of review, interim board of review, or board of appeals not later than July 1 of the assessment year to be first affected by the order. If it is delivered on or after that date, it will first affect the taxes extended on the assessment of the following year. The boord of review, interim board of review, or board of appeals shall, each time the assessment books are delivered to the county clerk, also deliver a list of parcels affected by the abatement and the assessed value attributable to the new improvements or to the renovation or rehabilitation of existing improvements.
(Source: P.A. 86-1388; 88-455.)

(35 ILCS 200/21-110)

Sec. 21-110. Published notice of annual application for judgment and sale; delinquent taxes. At any time after all taxes have become delinquent taxes. At any time after all taxes have become delinquent ~~or are paid under protest~~ in any year, the Collector shall publish an advertisement, giving notice of the intended application for judgment and sale of the delinquent properties~~, and for judgment fixing the correct amount of any tax paid under protest~~. Except as provided below, the advertisement shall be in a newspaper published in the township or road district in which the properties are located. If there is no newspaper published in the township or road district, then the notice shall be published in some newspaper in the same county as the township or road district, to be selected by the county collector. When the property is in a city with more

than 1,000,000 inhabitants, the advertisement may be in any newspaper published in the same county. When the property is in an incorporated town which has superseded a civil township, the advertisement shall be in a newspaper published in the incorporated town or if there is no such newspaper, then in a newspaper published in the county.

The provisions of this Section relating to the time when the Collector shall advertise intended application for judgment for sale are subject to modification by the governing authority of a county in accordance with the provisions of subsection (c) of Section 21-40.
(Source: P.A. 87-1189; 88-455; 88-518.)

(35 ILCS 200/21-115)

Sec. 21-115. Times of publication of notice. The advertisement shall be published once at least 10 days before the day on which judgment is to be applied for, and shall contain a list of the delinquent properties upon which the taxes or any part thereof remain due and unpaid, the names of owners, if known, the total amount due, and the year or years for which they are due. In counties of less than 3,000,000 inhabitants, advertisement shall include notice of the registration requirement for persons bidding at the sale. Properties upon which taxes have been paid in full under protest shall not be included in the list. The collector shall give notice that he or she will apply to the circuit court on a specified day for judgment against the properties for the taxes, and costs, and for an order to sell the properties for the satisfaction of the amount due~~, and for a judgment fixing the correct amount of any tax paid under protest~~.

The Collector shall also give notice that on the . . . . Monday next succeeding the date of application all the properties for the sale of which an order is made, will be exposed to public sale at a location within the county designated by the county collector, for the amount of taxes, and cost due. The advertisement published according to the provisions of this section shall be deemed to be sufficient notice of the intended application for judgment and of the sale of properties under the order of the court~~, or for judgment fixing the correct amount of any tax paid under protest~~. Notwithstanding the provisions of this Section and Section 21-110, in the 10 years following the completion of a general reassessment of property in any county with 3,000,000 or more inhabitants, made under an order of the Department, the publication shall be made not sooner than 10 days nor more than 90 days after the date when all unpaid taxes on property have become delinquent.
(Source: P.A. 87-1189; 88-455.)

(35 ILCS 200/21-135)

Sec. 21-135. Mailed notice of application for judgment and sale. Not less than 15 days before the date of application for judgment and sale of delinquent properties, the county collector shall mail, by registered or certified mail, a notice of the forthcoming application for judgment and sale to the person shown by the current collector's warrant book to be the party in whose name the taxes were last assessed and, if applicable, to the party specified under Section 15-170. The notice shall include the intended dates of application for judgment and sale and commencement of the sale, and

a description of the properties. The county collector must present proof of the mailing to the court along with the application for judgment.

In counties with less than 3,000,000 inhabitants, a copy of this notice shall also be mailed by the county collector by registered or certified mail to any lienholder of record who annually requests a copy of the notice. The failure of the county collector who annually requests a copy of the notice. The failure of the county collector to mail a notice or its non-delivery to the lienholder shall not affect the validity of the judgment.

In counties with 3,000,000 or more inhabitants, notice shall not be mailed to any person when, under Section 14-15, a certificate of error has been executed by the county assessor or by both the county assessor and board of Appeals (until January 1, 1996, the interim board of review beginning January 1 ,1996 and until the first Monday in December 1998, and the board of review beginning the first Monday in December 1998 and thereafter), except as provided by court order under Section 21-120.

The collector shall collect $10 from the proceeds of each sale to cover the costs of registered or certified mailing and the costs of advertisement and publication. (Source: P.A. 85-1359; 88-455.)

(35 ILCS 200/21-150)

Sec. 21-150. Time of applying for judgment. Except as otherwise provided in this Section or by ordinance or

resolution enacted under subsection (c) of Section 21-40, all applications for judgment and order of sale for taxes and special assessments on delinquent properties ~~and for judgment fixing the correct amount of any tax paid under protest~~ shall be made during the month of October. In those counties which have adopted an ordinance under Section 21-40, the application for judgment and order of sale for delinquent taxes ~~or for judgment fixing the correct amount of any tax paid under protest~~ shall be made in December. In the 10 years next following the completion of a general reassessment of property in any county with 3,000,000 or more inhabitants, made under an order of the Department, applications for judgment and order of sale ~~and for judgment fixing the correct amount of any tax paid under protest~~ shall be made as soon as may be and on the day specified in the advertisement required by Section 21-110 and 21-115. If for any cause the court is not held on the day specified, the cause shall stand continued, and it shall be unnecessary to re-advertise the list or notice.

Within 30 days after the day specified for the application for judgment the court shall hear and determine the matter. If judgment is rendered, the sale shall begin on the Monday specified in the notice as provided in Section 21-115. If the collector is prevented from advertising and obtaining judgment during the month of October, the collector may obtain judgment at any time thereafter; but if the failure arises by the county collector's not complying with any of the requirements of this Code, he or she shall be held on his or her official bond for the full amount of all taxes and special assessments charged against him or her. Any failure on the part of the

county collector shall not be allowed as a valid objection to the collection of any tax or assessment, or to entry of a judgment against any delinquent properties included in the application of the county collector~~, or to the entry of a judgment fixing the correct amount of any tax paid under protest~~.
(Source: P.A. 88-455; 88-518.)

(35 ILCS 200/21-160)

Sec. 21-160. Annual tax judgment, sale, redemption, and forfeiture record. The collector shall transcribe into a record prepared for that purpose, and known as the annual tax judgment, sale, redemption and forfeiture record, the list of delinquent properties ~~and of properties upon which taxes have been paid under protest~~. The record shall be made out in numerical order, and contain all the information necessary to be recorded, at least 5 days before the day on which application for judgment is to be made.

The record shall set forth the name of the owner, if known; the description of the property; the year or years for which the tax or, in counties with 3,000,000 or more inhabitants, the tax or special assessments is~~, are due or for which the taxes have been paid under protest, the amount of taxes paid under protest~~; the valuation on which the tax is extended; the amount of the consolidated and other taxes or in counties with 3,000,000 or more inhabitants, the consolidated and other taxes and special assessments; the costs; and the total amount of charges against the property.

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The record shall also be ruled in columns, to show in counties with 3,000,000 or more inhabitants the withdrawal of any special assessments from collection and in all counties to show the amount paid before entry of judgment; the amount of judgment and a column for remarks; the amount paid before sale and after entry of judgment; the amount of the sale; amount of interest or penalty; amount of cost; amount forfeited to the State; date of sale; acres or part sold; name of purchaser; amount of sale and penalty; taxes of succeeding years; interest and when paid, interest and cost; total amount of redemption; date of redemption; when deed executed; by whom redeemed; and a column for remarks or receipt of redemption money.

The record shall be kept in the office of the county clerk.
(Source: P.A. 76-2254; 88-455.)

(35 ILCS 200/21-170)

Sec. 21-170. Report of payments and corrections. On the day on which application for judgment on delinquent property is applied for, the collector, assisted by the county clerk, shall post all payments compare and correct the list, and shall make and subscribe an affidavit, which shall be substantially in the following form:

State of Illinois)
) ss.
County of . . . . .)

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I . . . . , collector of the county of . . . ., do solemnly swear (or affirm, as the case may be), that the foregoing is a true and correct list of the delinquent property within the county of . . . ., upon which I have been unable to collect the taxes (and special assessments, interest, and printer's fees, if any), charged thereon, as required by law, for the year or years therein set forth; ~~and of all of the properties upon which the taxes have been paid under protest,~~ and that the taxes now remain due and unpaid, to the best of my knowledge and belief.

Dated . . . . . .

The affidavit shall be entered at the end of the list, and signed by the collector.
(Source: P.A. 76-2254; 88-455.)

(35 ILCS 200/21-175)

Sec. 21-175. Proceedings by court. Defenses to the entry of judgment against properties included in the delinquent list shall be entertained by the court only when: (a) the defense includes a writing specifying the particular grounds for the objection; and (b) except as otherwise provided in Sections 14-15, Section 14-25, 23-5, and 23-25, the taxes to which objection is made are paid under protest under Section 23-5 and a tax objection complaint is filed under Section 23-10. ~~Writing is accompanied by an official original or duplicate receipt of the tax collector showing that the taxes to which objection is made have been fully paid under protest. All tax collectors shall furnish the necessary duplicate receipts without charge.~~

~~The court shall hear and determine the matter as provided in Section 23-45.~~

If any party objecting is entitled to a refund of all or any part of a tax paid ~~under protest~~, the court shall enter judgment accordingly, and also shall enter judgment for the taxes, special assessments, interest and penalties as appear to be due. The judgment shall be considered as a several judgment against each property or part thereof, for each kind of tax or special assessment included therein. The court shall direct the clerk to prepare and enter an order for the sale of the property against which judgment is entered. However, if a defense is made that the property, or any part thereof, is exempt from taxation and it is demonstrated that a proceeding to determine the exempt status of the property is pending under Section 16-170 or 16-130 or is being conducted under Section 8-35 or 8-40, the court shall not enter a judgment relating to that property until the proceedings being conducted under Section 8-35 or Section 8-40 have terminated.
(Source: P.A. 88-455; 88-642, eff. 9-9-94.)

(35 ILCS 200/23-5)

Sec. 23-5. Payment under protest. Beginning with the 1994 tax year in counties with 3,000,000 or more inhabitants and beginning with the 1995 tax year in all other counties, if any person desires to object ~~under Section 21-175~~ to all or any part of a property tax for any year, for any reason other than that the property is exempt from taxation ~~and that a proceeding to determine the tax exempt status of such property is pending under Section~~

~~16-70 or Section 16-130 or is being conducted under Section 8-35 or Section 8-40~~, he or she shall pay all of the tax due within 60 days from the first penalty date of the final installment of taxes for that year. Whenever taxes are paid in compliance with this Section and a tax objection complaint is filed in compliance with Section 23-10, 100% of the taxes shall be deemed paid under protest without the filing of a separate letter of protest with the county collector. ~~, prior to the collector's filing of his or her annual application for judgment and order of sale of delinquent properties. Each payment shall be accompanied by a written statement, substantially in the following form:~~

~~Payment under protest.~~

~~Vol. No. . . . . Item No. . . . (as each appears on the General Tax Bill). Original amount of tax $. . . . Amount of payment $ . . . This payment shall be applied to the taxes of all taxing bodies ratably, subject to refund of . . . % of the tax, which is objected to on the ground (here set forth ground of objection) and is, accordingly, made under protest.~~

Name of taxpayer . . . . . .

Address . . . . . .

~~The person protesting shall sign the written protest and present to the collector 2 copies. The collector shall write or stamp upon the copies the date of receipt, and sign them, retaining one copy and returning the other to the person making the payment under protest.~~

~~In counties with 3,000,000 or more inhabitants, and in other counties which have adopted the method provided for in Section 21-30, any such written protest, whether of all or any part of a property tax, shall be presented to the Collector at the time of payment of the last installment of the tax and at no other time.~~
(Source: P.A. 87-17; 88-455.)

(35 ILCS 200/23-10)

Sec. 23-10. Tax objections and copies. Beginning with the 1994 tax year in counties with 3,000,000 or more inhabitants, and beginning with the 1995 tax year in all other counties, ~~Once a protest has been filed with the county collector, in all counties~~ the person paying the taxes due as provided in Section 23-5 may ~~under protest shall appear in the next application for judgment and order of sale and~~ file a tax ~~an~~ objection complaint under Section 23-15 within 75 days after the first penalty date of the final installment of taxes for the year in question. However, in cases in which the complaint is permitted to be filed without payment under Section 23-5, it must be filed prior to the entry of judgment under Section 21-175. In addition, the time specified for payment of the tax provided in Section 23-5 shall not be construed to delay or prevent the entry of judgment against, or the sale of, tax delinquent property if the taxes have not been paid prior to the entry of judgment under Section 21-175. An objection to an assessment for any year shall not be allowed by the court, however, if an administrative remedy was available by complaint to the board of appeals or board of review under Section 16-55 or Section 16-115, unless that remedy

was exhausted prior to the filing of the tax objection complaint. ~~Upon the failure to do so, the protest shall be waived, and judgment and order of sale entered for any unpaid balance of taxes.~~

When any ~~tax protest is filed with the county collector and an objection~~ complaint is filed with the court in a county with less than 3,000,000 inhabitants, the plaintiff ~~person paying under protest~~ shall file 3 copies of the complaint ~~objection~~ with the clerk of the circuit court. Any complaint ~~objection~~ or amendment thereto shall contain on the first page a listing of the taxing districts against which the complaint ~~objection~~ is directed. Within 10 days after the complaint ~~objection~~ is filed, the clerk of the circuit court shall deliver one copy to the State's Attorney and one copy to the county clerk, taking their receipts therefor. The county clerk shall, within 30 days from the last day for the filing of complaints ~~objections~~, notify the duly elected or appointed custodian of funds for each taxing district that may be affected by the complaint ~~objection~~, stating that a complaint ~~an objection~~ has been filed. Any amendment to a complaint ~~an objection~~, except any amendment permitted to be made in open court during the course of a hearing on the complaint ~~objection~~, shall also be filed in triplicate, with one copy delivered to the State's Attorney and one copy delivered to the county clerk by the clerk of the circuit court. The State's Attorney shall within 10 days of receiving his or her copy of the amendment notify the duly elected or appointed custodian of funds for each taxing district whose tax monies may be affected by the amendment, stating that the amendment has been filed. The State's Attorney shall also notify the custodian and

the county clerk in writing of the date, time and place of any hearing before the court to be held upon the complaint ~~objection~~ or amended complaint ~~objection~~ not later than 4 days prior to the hearing. The notices provided in this Section shall be by letter addressed to the custodian or the county clerk and may be mailed by regular mail, postage prepaid, postmarked within the required period, but not less than 4 days before a hearing.
(Source: P.A. 87-17; 88-455.)

(35 ILCS 200/23-15)

Sec. 23-15. Tax objection procedure and hearing.

(a) A tax objection complaint under Section 23-10 shall be filed in the circuit court of the county in which the subject property is located; provided, however, that no complaint shall be filed as a class action. The complaint shall name the county collector as defendant and shall specify any objections that the plaintiff may have to the taxes in question. No appearance or answer by the county collector to the tax objection complaint, nor any further pleadings, need be filed. Amendments to the complaint may be made to the same extent which, by law, could be made in any personal action pending in the court.

(b)(1) The court, sitting without a jury, shall hear and determine all objections specified to the taxes, assessments, or levies in question. This Section shall be construed to provide a complete remedy for any claims with respect to those taxes, assessments, or levies, excepting only matters for which an exclusive remedy is

provided elsewhere in this Code.

(2) The taxes, assessments, and levies that are the subject of the objection shall be presumed correct and legal, but the presumption is rebuttable. The plaintiff has the burden of proving any contested matter of fact by clear and convincing evidence.

(3) Objections to assessments shall be heard de novo by the court. The court shall grant relief in the cases in which the objector meets the burden of proof under this Section and shows an assessment to be incorrect or illegal. If an objection is made claiming incorrect valuation, the court shall consider the objection without regard to the correctness of any practice, procedure, or method of valuation followed by the assessor, board of appeals, or board of review in making or reviewing the assessment, and without regard to the intent or motivation of any assessing official. The doctrine known as constructive fraud is hereby abolished for purposes of all challenges to taxes, assessments, or levies.

(c) If the court orders a refund of any part of the taxes paid, it shall also order the payment of interest as provided in Section 23-20. Appeals may be taken from final judgments as in other civil cases.

(d) This amendatory Act of 1995 shall apply to all tax objection matters still pending for any tax year, except as provided in Sections 23-5 and 23-10 regarding procedures and time limitations for payment of taxes and filing tax objection complaints. ~~In all counties, when the taxpayer~~

~~appears and files objection, the court shall, after first determining that due notice, if required, has been given to the taxing district, hear and determine the matter according to the right of the case and enter judgment for any part of the taxes, or order a refund of any part of the taxes paid under protest, with interest as provided in Section 23-20. The court shall have and exercise jurisdiction in the matter without requiring proof that the assessment was not made on the basis of honest judgment and to the extent case law, including *In Re Application of the County Treasurer (Ford Motor Company)*, 131 Ill.2d 541 (1989) holds to the contrary, it is overruled. Appeals may be taken from such orders of the court as in other cases of objection to judgment and order of sale for taxes. Proceedings upon objections filed under this Section are subject to Section 23-30.~~

~~When any tax is paid in full and protested as provided in Section 23-5 before the delinquent taxes are transcribed into the tax judgment, sale, redemption and forfeiture record, and the taxpayer appears and files objection, the collector, within such time as may be fixed by the court, shall file a transcript from the tax warrant book showing the tax. The transcript shall be an amendment to the tax judgment, sale, redemption and forfeiture record, and the case shall proceed as if the tax had been originally transcribed therein.~~

(Source: P.A. 87-17; 88-455; 88-642, eff. 9-9-94.)

Appendix H

(35 ILCS 200/23-25)

Sec. 23-25. Tax exempt property; restriction on tax objections. No taxpayer may ~~pay under protest as provided in Section 23-5 or~~ file an objection as provided in Section 21-175 or Section 23-10 on the grounds that the property is exempt from taxation, or otherwise seek a judicial determination as to tax exempt status, except as provided in Section 8-40 and except as otherwise provided in this Section and Section 14-25 and Section 21-175. Nothing in this Section shall affect the right of a governmental agency to seek a judicial determination as to the exempt status of property for those years during which eminent domain proceedings were pending before a court, once a certificate of exemption for the property is obtained by the governmental agency under Section 8-35 or Section 8-40.

This Section shall not apply to exemptions granted under Sections 15-165 though 15-180.

The limitation in this Section shall not apply to court proceedings relating to an exemption for the 1985 assessment year and preceding assessment years. However, an order entered in any such proceeding shall not preclude the necessity of applying for an exemption for 1986 or later assessment years in the manner provided by Section 16-70 or 16-130.
(Source: P.A. 84-1275; 88-455.)

Appendix H

(35 ILCS 200/23-30)

Sec. 23-30. Conference on tax objection. Following ~~Upon~~ the filing of an objection under Section 23-10 ~~21-175~~, the court may ~~must, unless the matter has been sooner disposed of, within 90 days after the filing~~ hold a conference with ~~between~~ the objector and the State's Attorney. ~~If no agreement is reached at the conference, the court must, upon demand of the taxpayer or the State's Attorney, set the matter for hearing within 90 days of the demand.~~ Compromise agreements on tax objections reached by conference shall be filed with the court, and the parties ~~State's Attorney~~ shall prepare an order covering the settlement and submit ~~file~~ the order to ~~with the clerk of~~ the court for entry ~~within 15 days following the conference~~. (Source: Laws 1967, p. 230; P.A. 88-455.)

(35 ILCS 200/23-35)

Sec. 23-35. Tax objection based on budget or appropriation ordinance. Notwithstanding the provisions of Section 23-10 ~~21-175~~, no objection to any property tax levied by any municipality shall be sustained by any court because of the forms of any budget or appropriation ordinance, or the degree of itemization or classification of items therein, or the reasonableness of any amount budgeted or appropriated thereby, if:

(a) A tentative budget and appropriation ordinance was prepared at the direction of the governing body of the municipality and made conveniently available to public inspection for at least 30 days prior to the public hearing specified below and to final action thereon.

(b) At least one public hearing has been held by the governing body as to the tentative budget and appropriation ordinance prior to final action thereon, and notice of the time and place where copies of the tentative budget and appropriate ordinances are available for public inspection, and the time and place of the hearing, has been given by publication in a newspaper published in the municipality at least 30 days prior to the time of the hearing, or, if there is no newspaper published in the municipality, notice of the public hearing has been given by publication in a newspaper of general circulation in the municipality; and

(c) The budget and appropriation ordinance finally adopted is substantially identical, as to the matters to which objection is made, with the tentative budget and appropriation ordinance submitted at the public hearing, unless the taxpayer making the objection has made the same objection in writing with the same specificity to the governing body of the municipality prior to the adoption of the budget and appropriation ordinance.

"Municipality," as used in this Section, means all municipal corporations in, and political subdivisions of, this State except the following: counties; cities, villages and incorporated towns; sanitary districts created under the Metropolitan Water Reclamation District Act; forest preserve districts having a population of 3,000,000 or more, created under the Cook County Forest Preserve Park District Act; boards of education of school districts in cities exceeding 1,000,000 inhabitants; the Chicago Park District created under the Chicago Park District Act; and

park districts as defined in subsection (b) of Section 1-3 of the Park District Code.
(Source: P.A. 87-895; 88-455.)

(35 ILCS 200/32-17 new)

Sec. 32-17. Severability. The provisions of this amendatory Act of 1995 are severable under Section 1.31 of the Statute on Statutes.

Section 95. The State Mandates Act is amended by adding Section 8.19 as follows:

(30 ILCS 805/8.19 new)

Sec. 8.19. Exempt mandate. Notwithstanding Sections 6 and 8 of this Act, no reimbursement by the State is required for the implementation of any mandate created by this amendatory Act of 1995.

Section 99. Effective date. This Act takes effect upon becoming law.