No. 130461

IN THE SUPREME COURT OF ILLINOIS

THE VILLAGE OF ARLINGTON HEIGHTS, Respondent-Appellee, v. THE CITY OF ROLLING MEADOWS, Petitioner-Appellant.	On Appeal from the Illinois Appellate Court, First Judicial District, No. 1-22-1729 There on Appeal from the Circuit Court of Cook County, Illinois County Department, Chancery No. 2022 CH 01229 Hon. Thaddeus L. Wilson.

BRIEF AND SUPPORTING APPENDIX FOR PETITIONER-APPELLANT THE CITY OF ROLLING MEADOWS

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POINTS AND AUTHORITIES

NATURE OF THE CASE

This appeal concerns whether, as this Court held as recently as 2019, the Illinois Department of Revenue ("IDOR") has exclusive jurisdiction to resolve disputes concerning the assessment, collection, and distribution of Illinois sales taxes. *See City of Chicago v. City of Kankakee*, 2019 IL 122878, ¶¶ 22-45. The Village of Arlington Heights brought this action against the City of Rolling Meadows to recover seven years of misallocated sales tax revenue after IDOR partially reimbursed Arlington Heights but enforced the six-month statutory limitation on reallocation of tax revenue. Adhering to *City of Chicago*, the circuit court dismissed Arlington Heights's complaint as an impermissible workaround to IDOR's exclusive jurisdiction. The Appellate Court reversed, however, reading into this Court's otherwise clear opinion in *City of Chicago* an ill-defined exception—that IDOR has exclusive jurisdiction only where the underlying issues in a dispute are "complex." This is not an appeal from a jury verdict. The question of jurisdiction is presented on the pleadings.

QUESTION PRESENTED FOR APPEAL

Whether this Court should reverse the decision below because, as this Court held in *City of Chicago*, IDOR has exclusive authority to redistribute tax revenue due to error.

JURISDICTIONAL STATEMENT

On February 14, 2022, Arlington Heights filed a three-count Verified Complaint against Rolling Meadows for seven years of purportedly misallocated

sales tax and statutory interest. *See* Verified Complaint (C8-17, A31-40).[1] As explained below, the circuit court lacked subject matter jurisdiction over that complaint because IDOR has exclusive jurisdiction over the assessment, distribution, and reallocation of sales taxes. *City of Chicago*, 2019 IL 122878, ¶¶ 22-45; *see J & J Ventures Gaming, LLC v. Wild, Inc.*, 2016 IL 119870, ¶ 42 (a comprehensive statutory scheme vesting exclusive jurisdiction in an agency precludes courts from reaching the claims' merits).

On October 20, 2022, the Circuit Court of Cook County granted Rolling Meadows' motion to dismiss, agreeing with Rolling Meadows that IDOR has exclusive jurisdiction. Order (C95-107, A18-30); *see* 735 ILCS 5/2-619.1. On November 17, 2023, Arlington Heights filed a timely notice of appeal to the Appellate Court of Illinois for the First Judicial District. (C108-23, A46-61). On January 12, 2024, the appellate court entered its judgment reversing the circuit court. *See Village of Arlington Heights v. City of Rolling Meadows*, 2024 IL App (1st) 221729 ("the Opinion") (A1-17).

Rolling Meadows filed a timely petition for leave to appeal with this Court on February 16, 2024, which this Court allowed on May 29, 2024. *Village of Arlington Heights v. City of Rolling Meadows*, No. 130461, 2024 WL 2807223 (Ill.

[1] Citations to "A_" are to the appendix attached to this brief; citations to "C_" are to the record on appeal in *Village of Arlington Heights v. City of Rolling Meadows*, No. 2022 CH 01229 (Ill. Cir. Ct.).

May 29, 2024). This Court therefore has appellate jurisdiction under Illinois Supreme Court Rule 315.

CONSTITUTIONAL, STATUTORY, AND ETHICAL PROVISIONS INVOLVED

This appeal involves the whole of Illinois's statutory taxation scheme, including the duties and responsibilities imposed on IDOR in the Department of Revenue Law, 20 ILCS 2505/2505-1 *et seq.*, the State Finance Act, 30 ILCS 105/1 *et seq.*, the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.*, and the Civil Administrative Code of Illinois, 20 ILCS 5/1-1 *et seq.* Of particular importance here are the following:

> Section 2505 of the Civil Administrative Code provides, in pertinent part:
>
> > The Department may ... correct … errors in the distribution, as between municipalities and counties, of taxes that are imposed by those municipalities and counties but collected for them by the Department as agent ... .

20 ILCS 2505/2505-475(i). The same section provides:

> > The [IDOR] has the power to make reasonable rules and regulations that may be necessary to effectively enforce any of the powers herein granted.

20 ILCS 2505/2505-795.

> The Retailers' Occupational Tax Act provides, in pertinent part:
>
> > When certifying the amount of a monthly disbursement to a municipality under Section 8-11-1, 8-11-5, 8-11-6 of this Act or Section 6z-18 of "An Act in relation to State finance", the Department shall increase or decrease such amount by an amount necessary to offset any misallocation of previous disbursements. The

> offset amount shall be the amount erroneously disbursed within the previous 6 months from the time a misallocation is discovered.

65 ILCS 5/8-11-16 (citation omitted).

Section 6z-18 of the State Finance Act provides:

> When certifying the amount of monthly disbursement to a municipality or county under this Section, the [IDOR] shall increase or decrease that amount by an amount necessary to offset any misallocation of previous disbursements. The offset amount shall be the amount erroneously disbursed within the 6 months preceding the time a misallocation is discovered.

30 ILCS 105/6z-18.

INTRODUCTION

This Court should reverse the Opinion of the appellate court because it cannot be reconciled with this Court's ruling in *City of Chicago*.

This Court in *City of Chicago* correctly held that IDOR has exclusive subject-matter jurisdiction over disputes concerning the allocation of sales taxes. As the Court explained, a comprehensive set of state laws, spread across the Finance, Revenue, and Municipalities Codes, grants IDOR expansive power to accept and levy sales taxes; examine, audit, and correct tax returns; investigate and hold hearings; offset previous disbursements if misallocation is discovered; and adopt regulations. *City of Chicago*, 2019 IL 122878, ¶¶ 29-43. Clear from the statutory landscape is that IDOR—not the courts—controls the decision whether to redistribute state taxes, with narrow exceptions not applicable here. *Id.* ¶¶ 42-43. Apart from those exceptions, the General Assembly intended the

municipality's remedy to reside with IDOR. *Id.*

The panel majority of the appellate court crafted an exception to *City of Chicago*'s otherwise bright-line rule based on the complexity of the case: that IDOR has exclusive jurisdiction when the issues are complex, but courts can exercise jurisdiction over more straightforward cases. That decision is wrong, and this Court should reverse it. The decision is wrong because it interjects ambiguity into an inquiry where there was, and should still be, clarity. Under *City of Chicago*, the rule was clear: Allocation disputes regarding sales tax are within IDOR's exclusive jurisdiction. Under the appellate court's approach, by contrast, IDOR's jurisdiction is exclusive only if the dispute is "complex"—a label lacking any discernable contours or guideposts.

The decision also is wrong because it confuses subject-matter and primary jurisdiction. Subject-matter jurisdiction affects the judiciary's "power to hear and determine cases of the general class." *Id.* ¶ 22. It does not permit exceptions. By treating IDOR's jurisdiction as dependent on how straightforward or complex the case is, the Opinion threatens to nullify *City of Chicago*'s clear jurisdictional rule. It also needlessly interjects uncertainty as to whether one municipality may pursue a misallocation claim against another in court. Indeed, whether a litigant can sidestep IDOR's exclusive jurisdiction and pursue state-law claims would depend on little more than how persuasive the litigant is in convincing a court that the court is capable of calculating the refund due.

This Court should reverse to correct the error.

STATEMENT OF THE FACTS

A. The Illinois Sales Tax Regime

1. Retailers' Occupation Tax

The State of Illinois has adopted a comprehensive sales tax revenue system that governs retail sales of merchandise, implemented by the Retailers' Occupation Tax Act ("ROTA"). 35 ILCS 120/1 *et seq*. ROTA imposes a sales tax of 6.25% of the sale price, 5% of which is allotted to the State with the remaining distributed by IDOR to the municipality (1%) and the county (.25%). *See* 35 ILCS 105/3-10; 35 ILCS 120/2-10; 30 ILCS 105/6z-18. In addition, pursuant to its home rule authority, Arlington Heights imposes two local sales taxes: "a home rule municipal retailers' occupation tax in the amount of 1% of gross receipts"; and a "home rule municipal service occupation tax in the amount of 1% of the selling price of all tangible personal property as an incident to a sale of service." Verified Complaint ¶ 12 (C10, A33); 65 ILCS 5/8-11-1; 65 ILCS 5/8-11-5.

2. IDOR's Authority And Responsibilities

The Illinois legislature has implemented what this Court has called a "comprehensive statutory scheme" that imposes duties on IDOR to implement and enforce the sales tax regimes described above. *City of Chicago*, 2019 IL 122878, ¶¶ 22, 30-39. IDOR's duties stem from a combination of the Department of Revenue Law, 20 ILCS 2505/2505-1 *et seq*., the State Finance Act, 30 ILCS 105/1

et seq., the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.*, and the Civil Administrative Code of Illinois, 20 ILCS 5/1-1 *et seq.*, under which IDOR has:

- "[T]he power to administer and enforce all the rights, powers, and duties contained in the [ROTA] to collect all revenues thereunder and to succeed to all the rights, powers, and duties previously exercised by the Department of Finance in connection therewith." 20 ILCS 2505/2505-25.

- "[T]he power to make reasonable rules and regulations that may be necessary to effectively enforce" its powers under ROTA. *Id.* § 2505-795.

- The responsibility to accept state sales tax receipts. *See* 35 ILCS 120/3 (requiring Illinois retailers that sell tangible personal property to remit sales tax to IDOR and to file a tax return that reports address of principal place of business and gross receipts).

- The power to examine and correct tax returns, conduct investigations and hearings, and make corrections in records and disbursements. *E.g.*, 35 ILCS 120/8 (authorizing IDOR to conduct "investigations" related to ROTA); 35 ILCS 120/4 (authorizing IDOR to examine and "correct" returns under ROTA); 20 ILCS 2505/2505-475 (authorizing IDOR "to correct" mistakes in its records); 30 ILCS 105/6z-18 (authorizing IDOR to adjust municipal distributions to correct for "misallocation[s]").

In addition, Section 6z-18 of the State Finance Act controls disbursements by IDOR and imposes on IDOR the following duty:

> When certifying the amount of monthly disbursement to a municipality or county under this Section, the [IDOR] shall increase or decrease that amount by an amount necessary to offset any misallocation of previous disbursements. The offset amount shall be the amount erroneously disbursed within the 6 months preceding the time a misallocation is discovered.

30 ILCS 105/6z-18.

B. The Dispute Between Rolling Meadows And Arlington Heights

Cooper's Hawk Winery and Restaurant is located on West Algonquin Road in Arlington Heights, Illinois. *See* Verified Complaint ¶ 1 (C8, A31). Having mistakenly believed the restaurant was in Rolling Meadows, from January 2012 through June 2019, IDOR distributed sales tax revenue the restaurant generated, totaling approximately $1.1 million, to Rolling Meadows instead of to Arlington Heights. *Id.* ¶¶ 1-2 (C8, A31). Arlington Heights alleges that it discovered the misallocation in March 2020 and notified IDOR. *Id.* ¶¶ 14-15 (C10-11, A33-34).

Pursuant to 30 ILCS 105/6z-18 and 65 ILCS 5/8-11-16, IDOR reimbursed Arlington Heights for the preceding six months of misallocation, in the amount of approximately $109,000. Verified Complaint ¶¶ 4, 18 (C9, 12, A32, 35). IDOR also notified the parties it had corrected the location code so the business would be correctly coded to Arlington Heights moving forward. *Id.*, Ex. A (C19-22, A42-45).

On February 14, 2022, Arlington Heights filed a three-count Verified Complaint in the Circuit Court of Cook County against Rolling Meadows, alleging unjust enrichment and conversion and seeking return of the funds, a declaratory judgment that it was entitled to the total amount of misallocated sales tax, and a judgment against Rolling Meadows for the entire amount of the misallocated sales tax, plus statutory interest. Verified Complaint ¶¶ 20-24 (C12-13, A35-36). Arlington Heights also sought a constructive trust to receive the misallocated funds. *Id.* ¶¶ 25-35 (C13-15, A36-38).

Rolling Meadows moved to dismiss the Complaint pursuant to 735 ILCS 5/2-619.1, arguing, in relevant part, that the circuit court lacked subject-matter jurisdiction. Opinion ¶ 13 (A5). Following briefing and argument, the court granted Rolling Meadows' motion and dismissed the complaint with prejudice. Order (C95-107, A18-30). Pertinent here, the court held that IDOR has exclusive jurisdiction to adjudicate a municipality's claim of misallocated sales tax revenue and to offset that misallocation. *Id.* (citing *City of Chicago*, 2019 IL 122878).

C. The Appellate Court Proceedings.

The appellate court reversed and remanded. Opinion ¶ 4 (A2-3). The two-justice panel majority construed this Court's opinion in *City of Chicago* as "limited to its facts"—a dispute between municipalities that entails a "complex determination" of "the proper tax situs of thousands of ... retail sales stretching back at least 14 years." Opinion ¶¶ 4, 30 (A2-3, 10) (citation omitted); *see also id.* ¶ 30 (A10) (stating that this Court "limited its holding to [*City of Chicago*'s] facts"). The majority reasoned that, where, as here, the misallocation is of "an easily ascertainable amount" and does not involve a "complicated redistribution of use taxes among multiple government entities, including nonparties," IDOR's "expertise" is not needed and therefore IDOR does not have exclusive jurisdiction. *Id.* ¶ 31 (A11). For its distinction between complex and straightforward cases, the majority relied on *Village of Itasca v. Village of Lisle*, 352 Ill. App. 3d 847 (2d Dist. 2004), an intermediate appellate decision holding that a trial court enjoys

jurisdiction over straightforward sales tax disputes not requiring agency expertise.

Justice Johnson dissented. "The majority," she reasoned, "seems to be persuaded by the appellate court case of *Village of Itasca* as opposed to ... the [S]upreme [C]ourt's *City of Chicago* opinion, which did not cite *Village of Itasca* favorably, but found instead that it did not "inform[] [the *City of Chicago*] decision." Opinion ¶ 39 (A13) (Johnson, J., dissenting) (citation omitted). *City of Chicago* unambiguously held that the comprehensive statutory framework governing sales taxes "vested exclusive jurisdiction in IDOR." *Id.* ¶¶ 44, 46 (A15). Justice Johnson also explained that, even if the majority were correct that *City of Chicago* was concerned only with complex disputes, "[t]his is not a simple dispute"; "plaintiff here is still seeking a multi-year calculation with interest." *Id.* ¶ 49 (A17).

Further, Justice Johnson reasoned that, "[f]or a municipality to bring a misallocation suit, it must be given that right by the legislature, and the legislature has permitted suit in only one limited circumstance"—when a municipality seeks reallocation "as a result of a rebate agreement entered after June 1, 2004." *Id.* ¶ 47 (citation omitted) (A16); *see* 65 ILCS 5/8-11-21(a). Where, by contrast, a municipality sues for harm unrelated to an illicit post-2004 rebate agreement, Illinois law provides no cause of action. Opinion ¶ 47 (A16).

STANDARD OF REVIEW

This Court reviews *de novo* matters of law, including whether the circuit court had jurisdiction. *City of Chicago*, 2019 IL 122878, ¶ 20.

ARGUMENT

I. THIS COURT SHOULD CORRECT THE OPINION'S MISREADING OF *CITY OF CHICAGO*.

The panel majority fundamentally misunderstood this Court's opinion in *City of Chicago*. The General Assembly enacted a comprehensive statutory scheme to regulate sales taxes. In doing so, the General Assembly granted IDOR sole authority to determine whether sales taxes were misallocated and to craft a remedy within the confines it specified: reallocation of up to six months. IDOR exercised that exclusive authority in reimbursing Arlington Heights, pursuant to 30 ILCS 105/6z-18 and 65 ILCS 5/8-11-16.

Despite the clarity of this Court's decision in *City of Chicago* and the specific statutory remedies the General Assembly elected to provide for misallocation, the panel majority crafted an exception to IDOR's exclusive jurisdiction based on the nebulous notion of "complexity." That holding cannot be reconciled with this Court's clear dictate that IDOR has exclusive jurisdiction over misallocation disputes. Worse, the appellate court's decision threatens to unbalance the carefully crafted remedial scheme for tax collection and distribution that the General Assembly chose to adopt, in favor of ad hoc litigation between

municipalities without the limitations on available remedies the state legislature saw fit to adopt.

The Court should reverse. It should affirm what *City of Chicago* was intended to resolve: that, without exception, Illinois courts lack jurisdiction over a municipality's cause of action for missourced sales taxes.

A. The Statutory Framework Compelled This Court's Ruling In *City Of Chicago* That IDOR Has Exclusive Jurisdiction Over Sales Tax Misallocation Cases.

"Generally, under the Illinois Constitution, circuit courts have original jurisdiction over all justiciable matters, except in certain circumstances where this court has exclusive and original jurisdiction." *City of Chicago*, 2019 IL 122878, ¶ 22 (citing Ill. Const. 1970, art. VI, § 9). But the General Assembly "may vest original jurisdiction in an administrative agency rather than the courts when it enacts a comprehensive statutory scheme that creates rights and duties that have no counterpart in common law or equity." *Id.* (quoting *Zahn v. N. Am. Power & Gas, LLC*, 2016 IL 120526, ¶ 14). The General Assembly may, in some cases, divest circuit courts of jurisdiction explicitly; but equally true is that a comprehensive statutory administrative scheme may reflect that the "legislature intended to vest the [agency] with exclusive jurisdiction." *J & J Ventures Gaming, LLC v. Wild, Inc.*, 2016 IL 119870, ¶¶ 25, 38-39.

In *City of Chicago*, this Court evaluated the state tax administrative scheme and concluded that the legislature intended to vest "exclusive authority"

in IDOR to audit the allocation of sales taxes and redistribute sales-tax revenue. 2019 IL 122878, ¶¶ 35, 39. Its conclusion dictates reversal of the Opinion below.

At issue in *City of Chicago* was tax revenue purportedly owed to municipalities under the Use Tax Act, 35 ILCS 105/1 *et seq.* 2019 IL 122878, ¶ 1. The City of Chicago and the Village of Skokie claimed that the City of Kankakee and the Village of Channahon had received an undue allocation of use taxes due to the misreporting of the "situs of retail sales." *Id.* ¶ 7. According to Chicago and Skokie, Kankakee and Channahon assisted Internet retailers in misreporting the situs of the sales, for the purpose of swapping use tax for sales tax. *Id.* ¶ 8.

Reversing the appellate court's holding that Illinois courts have subject-matter jurisdiction over this type of tax claim, this Court started with the foundational principle that, by enacting a statutory framework that imposes certain duties on an administrative agency, the legislature can signal its intent to vest exclusive and original subject-matter jurisdiction in the agency rather than in the courts. *Id.* ¶ 22 (citing *Zahn*, 2016 IL 120526, ¶ 14; *J & J Ventures*, 2016 IL 119870, ¶ 23). After *J&J Ventures*, this intent need not be stated explicitly; it "may be discerned by considering the statute as a whole." 2016 IL 119870, ¶¶ 21, 24.

The Court proceeded to consider the tax statutes as a whole, from which it concluded that the legislature has defined IDOR's authority in "such a way as to preclude or limit the circuit court's jurisdiction." *City of Chicago*, 2019 IL 122878, ¶ 22. Pursuant to 35 ILCS 120/3 and 35 ILCS 105/9, "IDOR is responsible for

accepting the receipt of state sales and use taxes." 2019 IL 122878, ¶ 31. "The legislature has also provided IDOR, for purposes of administering and enforcing [sales and use taxes], with the power to examine and correct tax returns, conduct investigations and hearings, and to make corrections in records and disbursements." *Id.* ¶ 32; *see* 35 ILCS 120/8; 35 ILCS 105/11. Further, IDOR was made "responsible for the distribution of the sales and use taxes it collects," and given power to make corrections as needed, including by offsetting misallocations of previous disbursements as specified in 30 ILCS 105/6z-18 and 65 ILCS 5/8-11-16. *City of Chicago*, 2019 IL 122878, ¶¶ 35-37.

From this statutory framework, this Court rightly concluded that IDOR has been vested "exclusive authority to audit the reported transactions that plaintiffs dispute and to distribute or redistribute the tax revenue due to any error"—a conclusion that applies equally to sales and use taxes. *Id.* ¶¶ 39-43. In short, the "circuit court lacks subject-matter jurisdiction to consider [a claim alleging misallocation of tax revenue]." *Id.* ¶ 43.

This is, of course, exactly right. Under the 1970 Illinois Constitution, "[t]he General Assembly has the exclusive power to raise revenue by law except as limited or otherwise provided in this Constitution. The power of taxation shall not be surrendered, suspended, or contracted away." Ill. Const. 1970, art. IX, § 1. A comprehensive set of state laws—spread across Finance, Revenue, and Municipalities Codes—grants IDOR the power to adopt regulations as needed to

enforce its powers; to accept and levy sales and use taxes; to examine, audit, and correct tax returns; to investigate and hold hearings; and to offset previous disbursements if misallocation is discovered. And these provisions use expansive words that signal broad, unfettered authority—for example, that IDOR has "the power to exercise *all* the rights, powers, and duties vested in [IDOR] by" the UTA. 20 ILCS 2505/2505-90, 20 ILCS 2505/2505-25 (emphasis added); *see All*, *Black's Law Dictionary* (6th ed. 1990) (defining "all" as "each one of—used with a plural noun").

This statutory scheme resembles that in *J & J Ventures Gaming*, 2016 IL 119870. The Video Gaming Act, 230 ILCS 40/1 *et seq.*, authorized the operation of video gambling terminals under certain specified conditions and empowered the Illinois Gaming Board to engage in activities not unlike those conducted by IDOR: to investigate, determine eligibility for licensing, and approve applicants, *see* 230 ILCS 40/78(a)(1); to adopt regulations under which gaming is to be conducted, 230 ILCS 40/78(a)(3); and to conduct hearings, 230 ILCS 10/5. *See J & J Ventures Gaming*, 2016 IL 119870, ¶¶ 25-31. This Court held that these provisions are best read to vest exclusive jurisdiction in the Illinois Gaming Board over the placement and operation of video gaming terminals. "By legalizing the use of video gaming terminals for commercial gambling purposes," the Court explained, "the legislature enacted a comprehensive statutory scheme, creating rights and duties that have no counterpart in common law or equity." 2016 IL 119870, ¶ 32. This

scheme, it continued, "demonstrates the legislature's explicit intent that the Gaming Board have exclusive jurisdiction over the video gaming industry ... ." *Id.*

The same conclusion holds here. IDOR's comprehensive authority to remedy the misallocation of sales and use taxes, like the Gaming Board's authority over gaming operations, vests it with exclusive jurisdiction to correct prior disbursements. Although neither the Gaming Act nor the tax laws contain an "explicit" divesture of circuit court jurisdiction, they both reflect "a comprehensive statutory scheme, creating rights and duties that have no counterpart in common law or equity." *Id.*

Simply put, *stare decisis* compels this Court to follow the same path it did in *City of Chicago* and, before that, in *J & J Ventures Gaming*. If it believed that this Court got it wrong in *City of Chicago*, the General Assembly was free to amend the statutory provisions that vest exclusive jurisdiction in IDOR; it has not done so in the five years since.

B. IDOR's Exclusive Jurisdiction Over Sales Tax Misallocation Cases Is Underscored By The General Assembly Crafting Only Limited Remedies For Reallocation Of Sales Tax Revenues.

This Court's conclusion in *City of Chicago* that IDOR has exclusive jurisdiction over tax revenue misallocation comports with the long-standing rule that, where a statute creates a "new right or imposes a new duty or liability, unknown to the common law, and at the same time gives a remedy for its enforcement, the remedy so prescribed is exclusive." *Kosicki v. S.A. Healy Co.*,

380 Ill. 298, 302 (1942).

Arlington Heights's claimed entitlement to the sales tax at issue here is a product of statute, not common law. *See City of Chicago*, 2019 IL 122878, ¶ 23 ("[N]o counterpart [to State's statutory authority to levy, assess, and collect sales taxes] exists at common law."). The "levy, assessment and collection of taxes are purely statutory and the levy, assessment and collection of taxes can only be made as expressly pointed out in the statute." *People ex rel. Shirk v. Glass*, 9 Ill. 2d 302, 311 (1956).

Here, the same statute that conferred the entitlement to sales taxes provided limited remedies for their misallocation. The limited remedies are three-fold: (1) IDOR's reallocation of up to the "full period of the statute of limitations" if the reallocation "occurs as a result of an amended return filed by a taxpayer or an audit of a taxpayer," 50 ILCS 355/10-40(c)[2]; (2) a judicial cause of action for a municipality denied sales tax revenue because of a rebate agreement in violation of the Municipal Code, *see* 65 ILCS 5/8-11-21(a); and (3) a six-month offset of the misallocation, *see* 30 ILCS 105/6z-18; 65 ILCS 5/8-11-16. This diverse array of

[2] Specifically, Section 10-40(c) of the Local Government Revenue Recapture Certified Audit Pilot Program, 50 ILCS 355/10-5, *et seq.* (effective June 1, 2020), provides that if "a reallocation of tax from one unit of local government to another occurs as a result of an amended return filed by a taxpayer or an audit of a taxpayer, the Department shall make the reallocation for the full period of the statute of limitations under the Retailers' Occupation Tax Act, the Use Tax Act, the Service Occupation Tax Act, the Service Use Tax Act, and any applicable local retailer's or service occupation tax Act." 50 ILCS 355/10-40(c).

remedies shows that the legislature well knew how to empower IDOR to make a reallocation exceeding six months. It well knew how to authorize a judicial cause of action for missourced sales taxes. Yet the legislature made those remedies available only in narrow circumstances not present here. Here, there was no reallocation of tax as a result of a taxpayer's amended return, or an audit of a taxpayer, so a reallocation of more than six months is not available. Further, the alleged missourcing was not the result of an illicit rebate agreement, so no judicial remedy is available.[3] The reallocation is instead capped at six months of the misallocated disbursements, as the General Assembly intended.

Although the panel majority believed the lack of a more fulsome remedy for Arlington Heights "gift[ed] a windfall" to Rolling Meadows, Opinion ¶ 32 (A11), any such windfall is the product of a policy choice made by the legislature. *See CitiBank, N.A. v. IDOR*, 2017 IL 121634, ¶ 70 ("The responsibility for the wisdom of legislation rests with the legislature, and courts may not rewrite statutes to make them consistent with the court's idea of orderliness and public policy."). The legislature elected to cap the maximum lookback available for municipal reallocation, and reasonably so. Like lookback periods in other contexts, the six-month limit on sales-tax reallocation facilitates "repose, elimination of stale claims,

[3] Attached to Rolling Meadows' Section 2-619.1 Motion to Dismiss was an affidavit from the City Clerk swearing that Rolling Meadows did not enter into any rebate agreements after June 1, 2004. (C-34-35). Arlington Heights did not contest the affidavit or offer any affidavit in opposition.

and certainty about a plaintiff's opportunity for recovery and a defendant's potential liabilities." *Young v. United States*, 535 U.S. 43, 47–48 (2002) (addressing a bankruptcy lookback period). As Justice Johnson explained in her dissent from the panel's opinion: "The equities have already been weighed, as a policy matter, by our legislature, who determined that a six-month recovery was appropriate. The allocation of resources by the State among municipalities is a policy matter that is best left to the legislature to resolve—which it did." Opinion ¶ 48 (A16) (Johnson, J., dissenting).

C. The Opinion Imported A Limitation Of Its Own Making, Which Is Incompatible With Both Legislative Intent And This Court's Precedent.

To avoid the result *City of Chicago* compels, the panel majority manufactured an unsupported "complexity" exception to this Court's clear jurisdictional holding. The majority deemed *City of Chicago* to be "limited to its facts," applicable only to "complex" claims and not to Arlington Heights's "straightforward" claims. Opinion ¶¶ 4, 10 (A2-3, 4). But this Court has said otherwise. The complexity of a task, or the lack thereof, has no bearing on subject-matter jurisdiction. *City of Chicago*, 2019 IL 122878, ¶ 28. Indeed, this Court could hardly have been more direct:

> *J & J Ventures* illustrates that even if the task before the circuit court is one courts perform frequently, such as interpreting a contract, that is not dispositive of whether the court has jurisdiction. Rather, legislative intent to vest jurisdiction in an administrative agency may be discerned by considering the statutory framework as

a whole.

Id.

The very nature of *City of Chicago*'s holding—that a circuit court lacks subject-matter jurisdiction over a municipal claim regarding the missourcing or misallocation of sales or use taxes—does not permit case-by-case inquiry. This Court has held time and again that when an agency has exclusive subject-matter jurisdiction, there are no exceptions; it instead divests courts of "power to hear and determine cases of the general class to which the proceeding in question belongs." *People ex rel. Madigan v. Burge*, 2014 IL 115635, ¶ 19 (quotation marks omitted); *J & J Ventures Gaming*, 2016 IL 119870, ¶ 23 (same). The general class of proceedings at issue both in *City of Chicago* and in this case is an action to correct a purported error in past sales or use tax distributions. There is no distinction.

In substance, the appellate court treated a rule of subject-matter jurisdiction as a rule of primary jurisdiction. But the two differ fundamentally. Subject-matter jurisdiction refers to the court's power to hear and determine a general class of cases. *McCormick v. Robertson*, 2015 IL 118230, ¶ 19. When the legislature "enacts a comprehensive statutory scheme," it deprives courts of subject-matter jurisdiction. *City of Chicago*, 2019 IL 122878, ¶ 22. By contrast, primary jurisdiction is "a judicially created doctrine that is not technically a question of jurisdiction, but a matter of self-restraint and relations between the

courts and administrative agencies." *W. Bend Mut. Ins. Co. v. TRRS Corp.*, 2020 IL 124690, ¶¶ 33, 39 (quotation marks omitted). When an agency has "special competence" in an area, primary jurisdiction permits a court to "enable a 'referral' to the agency." *Id.*

The appellate court may have seen the value in "enabl[ing] a 'referral' to [IDOR]" to draw on the agency's "special competence" in complex cases. *Id.* But in so doing, the court essentially contorted IDOR's exclusive subject-matter jurisdiction into a discretionary abstention doctrine created from whole cloth.

II. THIS COURT SHOULD REVERSE SO THAT CIRCUIT COURTS WILL NOT BE BOUND TO EXERCISE JURISDICTION WHERE THERE IS NONE.

If left undisturbed, the panel majority's standardless "complexity" exception threatens to nullify *City of Chicago*'s clear jurisdictional rule. Under the majority's view, courts lack jurisdiction over tax misallocation disputes that involve the same facts as *City of Chicago*, but retain jurisdiction when disputes are less "complex." Yet the majority offered no guidance to analyze, and no standard to measure, "complexity" and "straightforwardness." The majority did not say how a court should determine where a tax case lies on the complexity spectrum. The exception could be wholly subjective—subject to a particular judge's views on whether he or she is competent to resolve the matter.

This approach makes no sense. The statutory scheme itself draws no distinction based on complexity, and IDOR's subject-matter jurisdiction permits

no exceptions. Beyond that, the approach deprives IDOR, courts, and municipalities alike of much-needed predictability. For parties, "[c]omplex jurisdictional tests complicate a case, eating up time and money as [they] litigate, not the merits of their claims, but which [forum] is the right [forum] to decide those claims." *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010). For a municipality in particular—which principally relies upon tax revenue to operate and provide public services—this uncertainty can cause unexpected disruption. Municipalities fairly expect, based on the plain language of the revenue statutes, that IDOR can engage in a six-month lookback, but no more. By dramatically expanding the remedy available to municipalities, the appellate court introduced uncertainty into statutory text that contains none.

In addition to being unpredictable, the panel majority's ruling risks a flood of tax and other litigation the Illinois legislature intended to be resolved in an administrative forum. The majority's ruling permits municipalities, or other recipients of use or sales taxes, to pursue reallocation of tax revenue, so long as they can persuasively argue that the reallocation is "straightforward." It thus will serve as a "blueprint for claimants to evade exclusive agency jurisdiction in areas well beyond tax and public finance" so long as they can convince the circuit court that the claim is not complex. Pet. for Leave to Appeal at 21, *City of Chicago v. City of Kankakee*, No. 122878 (Ill. Nov. 3, 2017).

Finally, the majority's ruling creates a risk of inconsistent IDOR and

judicial conclusions and multiple liability. IDOR could reach a conclusion in administrative proceedings; but if the issue is "straightforward," the losing municipality could bring a cause of action against the other municipality in collateral litigation, and the court could reach a conclusion opposite of IDOR as to the same liability. This would turn state courts into quasi-Boards of Review but without any of the restrictions inherent in the ordinary channels for obtaining circuit court review of an administrative action. *E.g.*, 735 ILCS 5/3-110 (permitting review of a final administrative decision but prohibiting "new or additional evidence" and requiring that the court presume the agency's findings and conclusions "to be prima facie true and correct").

This Court recognized in *City of Chicago* that the General Assembly closed the door on such jurisdictional chaos by vesting IDOR with the exclusive jurisdiction to resolve tax misallocation disputes. It should do so again here.

CONCLUSION

For the foregoing reasons, the City of Rolling Meadows respectfully requests that this Court reverse the decision of the Appellate Court and dismiss the complaint.

Dated: July 16, 2024

Respectfully submitted,

THE CITY OF ROLLING MEADOWS

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CERTIFICATE OF COMPLIANCE

I, Andrianna D. Kastanek, hereby certify that this brief conforms to the requirements of Illinois Supreme Court Rules 341(a) and (b). The length of this brief, excluding the pages/words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is 5,585 words.

/s/ Andrianna D. Kastanek
Andrianna D. Kastanek

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INDEX TO APPENDIX OF PETITIONER-APPELLANT

2024 IL App (1st) 221729
No. 1-22-1729
Opinion filed January 12, 2024

Sixth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE VILLAGE OF ARLINGTON HEIGHTS, Plaintiff-Appellant, v. THE CITY OF ROLLING MEADOWS, Defendant-Appellee.	)	Appeal from the Circuit Court of Cook County. No. 2022 CH 001229 The Honorable Thaddeus L. Wilson, Judge, presiding.

JUSTICE HYMAN delivered the judgment of the court, with opinion.
Justice C.A. Walker concurred in the judgment and opinion.
Presiding Justice Oden Johnson dissented, with opinion.

OPINION

¶ 1 Two neighboring municipalities dispute whether over $1 million of sales tax revenue that the Department of Revenue (IDOR) collected and paid for more than eight years to the wrong party can be recovered by its rightful payee.

¶ 2 For years, IDOR sent sales tax revenue to the City of Rolling Meadows (Rolling Meadows) for a restaurant in the Village of Arlington Heights (Arlington Heights). When Arlington Heights notified IDOR of the error, IDOR reimbursed Arlington Heights the misallocated

revenue from the prior six-month period, about $109,000, the maximum allowable under section 8-11-16 of the Illinois Municipal Code (65 ILCS 5/8-11-16 (West 2020)). When Rolling Meadows refused to return the remaining misallocated revenue, over $1 million, Arlington Heights sought a declaration for all the sales tax from the restaurant that should have gone to it. Arlington Heights also sought relief for unjust enrichment and conversion.

¶ 3 Rolling Meadows moved to dismiss, arguing (i) jurisdiction was solely vested in IDOR, (ii) the statute of limitations barred the claim, and (iii) the doctrine of nonliability applied. The trial court granted the motion and dismissed the complaint with prejudice. The trial court found that under our supreme court's holding in *City of Chicago v. City of Kankakee*, 2019 IL 122878, the IDOR had exclusive jurisdiction over Arlington Heights's claims. Alternatively, the trial court dismissed Arlington Heights's claim for declaratory relief under the doctrine of nonliability, which bars a declaratory action for past conduct. The court denied Rolling Meadows's statute of limitations argument.

¶ 4 We disagree with the trial court's finding that *City of Chicago* controls. Unlike this case, *City of Chicago*, which was limited to its facts, involved a complex use tax dispute. The court found that because use taxes from thousands of transactions over more than a decade had to be calculated and redistributed to multiple government entities, IDOR expertise was required. Conversely, Arlington Heights's claims are straightforward; one municipality accepted sales tax, the amount of which can easily be determined, that another municipality should have received. As we held in *Village of Itasca v. Village of Lisle*, 352 Ill. App. 3d 847 (2004), which our supreme court favorably cited in *City of Chicago*, a trial court has jurisdiction involving straightforward sales tax disputes that do not require agency expertise. Further, the doctrine of

nonliability does not apply because the conduct—Rolling Meadows's retention of misdirected sales tax revenue—was ongoing. We reverse and remand for further proceedings.

¶ 5 Background

¶ 6 Sales Tax vs. Use Tax

¶ 7 Under the Retailers' Occupation Tax Act (ROTA), the State levies a sales tax on retail sales of merchandise. 35 ILCS 120/1 *et seq.* (West 2020). Businesses collect sales tax and send it to IDOR, which then allocates a portion monthly to the municipality where the sales occur. Annually, IDOR sends municipalities a list of all registered retail businesses within their boundaries and provides monthly updates showing additions or deletions. Conversely, use tax under the Use Tax Act (35 ILCS 105/1 *et seq.* (West 2020)) deals with the sale of personal property used in Illinois but purchased from an out-of-state retailer by the Internet, telephone, or mail. *Id.* § 3. The use tax aims " 'primarily to prevent avoidance of [the sales] tax by people making out-of-State purchases, and to protect Illinois merchants against such diversion of business to retailers outside Illinois.' " *Performance Marketing Ass'n v. Hamer*, 2013 IL 114496, ¶ 3 (quoting *Klein Town Builders, Inc. v. Department of Revenue*, 36 Ill. 2d 301, 303, 222 N.E.2d 482 (1966)).

¶ 8 The general rate set for both sales and use tax is 6.25% of the item's sale price, with 5% allocated to the State. 35 ILCS 105/3-10 (West 2020); 35 ILCS 120/2-10 (West 2020); 30 ILCS 105/6z-18 (West 2020). Under ROTA, the remaining 1.25% goes to the municipality (1%) and county (0.25%) where the sale of the item actually occurred. 30 ILCS 105/6z-18 (West 2020). As *City of Chicago* explained, the distribution of funds under Use Tax Act is more complicated: "Unlike the local share of sales tax, which is distributed entirely where the sale takes place, under UTA, the remaining 1.25% share of the use tax is distributed in the following

percentages: 20% of the fund goes to Chicago, 10% to the Regional Transportation Authority Occupation and Use Tax Replacement Fund (RTA Fund), 0.6% to the Madison County Mass Transit District, and $3.15 million to the Build Illinois Fund. The balance of the fund is distributed to all other municipalities (except Chicago) based on their proportionate share of the state population. *Id.* § 6z-17. Consequently, a municipality receives a larger amount from a local sale subject to the sales tax than from a comparable sale subject to the use tax." *City of Chicago*, 2019 IL 122878 ¶ 5.

¶ 9 Arlington Height's Sales Tax Claims

¶ 10 Arlington Heights's claims against Rolling Meadows only involve sales taxes. Cooper's Hawk Winery and Restaurant (Cooper's Hawk) opened in Arlington Heights in June 2011. The IDOR mistakenly believed the restaurant was located in Rolling Meadows. (The parties disagree as to whether Rolling Meadows knew of the error. Arlington Heights asserts that Rolling Meadows failed to respond to a letter from IDOR asking for verification that Cooper's Hawk was located in that city. IDOR took the lack of a response as confirmation. Rolling Meadows contends no evidence indicates it received IDOR's letter or intentionally disregarded it.) Nonetheless, the parties agree that IDOR thought the restaurant was in Rolling Meadows, coded it that way in its system, and sent sales tax revenue the restaurant generated to the wrong municipality for more than eight years, totaling over $1.1 million.

¶ 11 When Arlington Heights discovered the error in March 2020, it notified IDOR. According to IDOR, section 8-11-16 of the Municipal Code sets at the previous six months the maximum allowable reimbursement it can make "from the time a misallocation is discovered." 65 ILCS 5/8-11-16 (West 2020). IDOR reimbursed Arlington Heights for the period from July 2019 through December 2019, about $109,000. IDOR also notified the parties it had "corrected the

location code so that the business would be correctly coded to Arlington Heights moving forward."

¶ 12 When Rolling Meadows refused to return the misallocated sales taxes, Arlington Heights filed a three-count verified complaint (i) to declare Arlington Heights entitled to the misallocated sales tax, (ii) to enter a judgment against Rolling Meadows for the amount of the misallocated sales tax plus statutory interest, and (iii) to direct that Rolling Meadows immediately return Arlington Heights the entire amount of misallocated sales tax plus statutory interest. Arlington Heights also brought claims alleging unjust enrichment and conversion, seeking the return of the misallocated funds and asking for a constructive trust to receive those funds.

¶ 13 Rolling Meadows filed a combined motion to dismiss under section 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2020)), arguing the verified complaint should be dismissed because (i) it fails to state a claim for which relief can be granted, (ii) the trial court lacked subject matter jurisdiction under the holding of *City of Chicago*, (iii) the five-year statute of limitations in section 13-205 barred the claims, (iv) Arlington Heights received all of the relief to which the Act entitles it, namely, an offset refund disbursement for the statutorily created lookback period, and (v) the doctrine of nonliability precluded recovery.

¶ 14 After a hearing, the trial court granted the motion, in part, and dismissed the verified complaint with prejudice. The trial court held it lacked subject matter jurisdiction to adjudicate Arlington Height's claims, relying on *City of Chicago* as having settled the issue. Alternatively, the trial court found the doctrine of nonliability germane because Arlington Heights's declaratory judgment claim involved already occurred conduct. See *Adkins Energy, LLC v. Delta-T Corp.*, 347 Ill. App. 3d 373, 378 (2004) ("[t]he doctrine of nonliability for past conduct

bars an action for declaratory judgment when the conduct that makes a party liable, that is, amenable to suit, has already occurred"). The court did not specify what that conduct was. At the pleadings stage, the trial court could not determine whether the statute of limitations pertained to Arlington Heights's claims and denied that part of the motion to dismiss.

¶ 15 Arlington Heights appeals, arguing that the trial court had subject matter jurisdiction or else the doctrine of nonliability permitted its declaratory relief claim to proceed. Rolling Meadows did not cross-appeal the denial of the motion to dismiss on statute of limitations grounds.

¶ 16 Analysis

¶ 17 Standard of Review

¶ 18 Section 2-619.1 combines sections 2-615 and 2-619 of the Code. See 735 ILCS 5/2-615, 2-619, 2-619.1 (West 2020). "A motion to dismiss under section 2-615(a) of the Code (735 ILCS 5/2-615(a) (West [2020])) tests the legal sufficiency of the complaint, whereas a motion to dismiss under section 2-619(a) of the Code (735 ILCS 5/2-619(a) (West [2020])) admits the legal sufficiency of the complaint, but asserts affirmative matter outside the complaint that defeats the cause of action." *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 361 (2009). In reviewing a dismissal under sections 2-615 and 2-619, "we accept all well-pleaded facts in the complaint as true and draw all reasonable inferences from those facts in favor of the nonmoving party." *Dopkeen v. Whitaker*, 399 Ill. App. 3d 682, 684 (2010). Dismissal under either section occurs where a party alleges no set of facts entitling relief. *Id.* We review the judgment on a section 2-619.1 motion *de novo*. *Gatreaux v. DKW Enterprises, LLC*, 2011 IL App (1st) 103482, ¶ 10.

¶ 19 Subject Matter Jurisdiction

¶ 20 Arlington Heights contends the trial court erred in finding that *City of Chicago* disposes of the question of subject matter jurisdiction, as that case is substantially distinguishable on its facts. Instead, Arlington Heights urges us to follow this court's holding in *Village of Itasca* as analogous and having been favorably cited in *City of Chicago*. In response, Rolling Meadows asserts (i) the trial court lacked jurisdiction under the holding of the *City of Chicago*, (ii) the legislature limited Arlington Heights's remedy to the six months before the discovery of the error under section 8-11-16 of the Municipal Code, and (iii) the legislature has broad discretion in this area and courts cannot rewrite legislation to conform to notions of "orderliness or public policy."

¶ 21 *City of Chicago v. City of Kankakee*

¶ 22 In *City of Chicago*, the plaintiffs, including the City of Chicago and other municipalities, sued the City of Kankakee (Kankakee) and the City of Channahon (Channahon), alleging they were unjustly enriched through a "use sale tax swap" scheme that deprived plaintiffs of their statutory share of Illinois use tax. *City of Chicago*, 2019 IL 122878 ¶ 8. Specifically, plaintiffs alleged that defendants had rebate agreements to return a portion of sales taxes to a retailer that would list the defendants as the site of a sale even though little or no sales activity took place in the offices in those cities. *Id.* ¶¶ 8-9. By reporting that the sales took place in Kankakee and Channahon, they were subjected to sales tax rather than use tax, permitting those two cities to retain a higher amount. *Id.* ¶ 9. Plaintiffs sought a constructive trust on all sales tax revenue received by Kankakee and Channahon due to the rebate agreements, equaling the amount of use tax revenue the plaintiffs had been wrongfully deprived. *Id.* ¶ 10.

¶ 23 The trial court dismissed the complaint with prejudice finding, in part, that IDOR had exclusive jurisdiction over tax distribution cases. *Id.* ¶ 12-13. Our supreme court agreed. In

explaining the differences between sales tax and use tax and how a "use sales tax swap" worked to benefit the defendants, the court detailed the powers the legislature vested in IDOR under ROTA and Use Tax Act and the "more complicated" calculation required for use taxes, noting that "[t]o resolve plaintiffs' claims, the circuit court would have to determine the proper tax situs of thousands of *** retail sales stretching back at least 14 years. If plaintiffs prevailed on liability, the circuit court would then have to determine the amount of tax revenues plaintiffs would have received on each of the applicable transactions had the Internet retailers reported use tax rather than sales tax to IDOR." *Id.* ¶ 41. The court disagreed with plaintiffs' assertion that this complicated "determination falls within the conventional competence of the courts and requires mere arithmetic calculations." *Id.* Further, the circuit court would have to redistribute tax revenue collected under Use Tax Act to local governing bodies who are not parties to the case, which the State Finance Act (30 ILCS 105/1 *et seq.* (West 2020)) places within the exclusive jurisdiction of IDOR. *City of Chicago*, 2019 IL 122878, ¶ 42.

¶ 24 The court further held that "section 8-11-21(a) of the Municipal Code (65 ILCS 5/8-11-21(a) (West 2016)) supports our determination that the circuit court lacks subject-matter jurisdiction to consider plaintiffs' claims. This section allows a municipality that has been denied sales tax revenue because of a rebate agreement in violation of the Municipal Code to file an action in the circuit court against only the offending municipality." (Emphasis omitted.) *Id.* ¶ 43. Because "[n]o similar provision authorizes suits for the denial of use tax revenue due to alleged misreporting," IDOR had exclusive jurisdiction. *Id.* ¶ 44-45.

¶ 25 The trial court and the dissent rely on this language in finding the court lacked jurisdiction because Arlington Heights "has failed to plead that the missourced sales taxes at issue here were the result of a rebate agreement entered into after June 1, 2004." But that interpretation

seriously misreads both the court's decision and the statute. (The parties disagree as to whether this part of the court's opinion is *dicta*. We need not address that question, because as discussed below, *City of Chicago* is distinguishable and limited to its facts, so its discussion of rebate agreements is not relevant to our holding.)

¶ 26 Section 8-11-21(a) prohibits municipalities from entering into certain types of tax sharing or rebate agreements with retailers after June 1, 2004, and permits a municipality denied sales tax revenue by reason of an agreement to "file an action in the circuit court against only the offending municipality." *Id.* ¶ 43. The statute says nothing about a municipality suing another municipality in circuit court absent a rebate program. And contrary to the dissent's contention, merely because the legislature provided circuit courts with jurisdiction over disputes involving tax rebate agreements does not preclude the circuit court from exercising jurisdiction over other dispute involving misallocated sales tax. As the dissent notes, the absence of explicit language divesting jurisdiction is not dispositive (*J&J Ventures Gaming, LLC v. Wild, Inc.*, 2016 IL 119870 ¶ 24), but it also does not strip the court of jurisdiction.

¶ 27 Further, this court's decision in *Village of Itasca* refutes the argument that subject matter jurisdiction does not exist. In *Village of Itasca*, the Village of Itasca sued the Village of Lisle to recover sales tax revenue generated by a company that falsely claimed it had moved from Itasca to Lisle. The trial court dismissed the complaint, in part, because it found the IDOR, not the court, had jurisdiction. *Village of Itasca*, 352 Ill. App. 3d at 850.

¶ 28 In reversing, the appellate court held (i) the legislature did not give the IDOR exclusive jurisdiction regarding sales tax issues and (ii) the doctrine of primary jurisdiction applied. The appellate court concluded the trial court had jurisdiction because "the regulations used for

determining the proper tax site of a sale are straightforward and do not require agency expertise for their interpretation." *Id.* at 855.

¶ 29 In *City of Chicago*, our supreme court agreed with the trial court that *Village of Itasca* was distinguishable because it (i) involved taxes other than the use tax, (ii) concerned a considerably simpler fact pattern, and (iii) sought relief available without resorting to the IDOR. The supreme court noted that *Village of Itasca* entailed "the proper situs of sales tax between two municipalities." *City of Chicago*, 2019 IL 122878, ¶ 27. Contrasting the complaints, the supreme court asserted that the *Village of Itasca* complaint did not concern "the proper distribution of use taxes over a multiyear period, impacting multiple municipalities and other entities that receive a proportionate share of use tax receipts." *Id.* Simply put, our supreme court acknowledged *Village of Itasca* but concluded the factual differences did not "inform" the court's decision. *Id.*

¶ 30 Moreover, Rolling Meadows's contention that *City of Chicago* applies broadly to deprive the trial court of jurisdiction is belied by the supreme court's own language that it was addressing whether the circuit court had jurisdiction "to determine the proper tax situs of thousands of pre-*Hartney* retail sales stretching back at least 14 years" or whether that complex determination falls under the exclusive authority of IDOR. *Id.* ¶¶ 21, 41. The court limited its holding to those facts, and we disagree that it applies generally to all other tax disputes between municipalities. We also disagree with the dissent's contention that *City of Chicago* "declined to extend *Village of Itasca*, where the issue would not arise again." *Infra* ¶ 41. As noted, *City of Chicago* involved a complex redistribution of use tax. Thus, the court had no reason to extend *Village of Itasca*, which involved repayment of sales taxes and was plainly distinguished on the facts.

¶ 31 As in *Village of Itasca* (and unlike *City of Chicago*), this dispute involves "the proper situs of sales tax between two municipalities" and potential repayment of an easily ascertainable amount to the correct municipality and not complicated redistribution of use taxes among multiple government entities, including nonparties, which, as noted, is within IDOR's exclusive jurisdiction. See *City of Chicago*, 2019 IL 122878 ¶ 42. The amount can be readily calculated if Arlington Heights can prove that Rolling Meadows improperly retained sales tax generated by the Cooper's Hawk restaurant. Contrary to the dissent's contention, the circuit court need not do anything it does not regularly do in similar cases involving conversion or unjust enrichment. Thus, the trial court can resolve the matter without IDOR's expertise.

¶ 32 In addition, limiting Arlington Height's recovery to the six-month offset gifts a windfall to Rolling Meadows for its failure to timely report sales tax errors, as provided in section 8-11-6 of the Municipal Code. 65 ILCS 5/8-11-16 (West 2020). That section provides that after the IDOR submits to "each municipality each year a list of those persons within that municipality who are registered with the Department under the Retailers' Occupation Tax Act" "[t]he municipal clerk shall forward any changes or corrections to the list to the Department within 6 months." *Id.* Rolling Meadows was obligated to inform the IDOR within six months that the restaurant was not within its city limits.

¶ 33 The dissent notes that section 8-11-16 of the Municipal Act also provides "[t]he offset amount shall be the amount erroneously disbursed within the previous 6 months from the time a misallocation is discovered." *Id.* Based on this provision, IDOR reimbursed Arlington Heights the misallocated sales tax revenue only from July 2019 to December 2019. According to the dissent, the legislature thus has placed a six month limitation on Arlington Heights's recovery. *Infra* ¶ 48. Assuming the statute refers to when the IDOR discovers the

misallocation, it conflicts with the duty to report an error, thereby encouraging municipalities to conceal errors for years, knowing that the offset amount would be limited to the six months. Moreover, section 8-11-16 places a limit on the recovery IDOR can provide but does not preclude a municipality from also bringing a claim in circuit court to recover the remainder owed. Thus, we reverse the trial court's finding that it lacked jurisdiction.

¶ 34 Doctrine of Nonliability

¶ 35 The doctrine of nonliability thwarts a declaratory judgment action when the conduct that makes the party amenable to suit has already occurred. *Adkins Energy, LLC*, 347 Ill. App. 3d at 378. The doctrine usually arises in the context of a breach of contract. As the *Adkins* court explained, "[t]he fact that the amount allegedly owed under a contract is already fixed does not preclude a declaratory judgment action, because a party is not amenable to suit until a breach occurs. Therefore, declaratory judgment could guide future conduct in such a situation because a court could determine whether or not a valid contract exists and, thereby, inform the party that potentially owes the money whether or not it would be in breach of a contract should it refuse to pay." *Id.*

¶ 36 Rolling Meadows contends the doctrine bars Arlington Heights from seeking declaratory relief because the conduct complained of ceased. Rolling Meadows identifies that conduct as IDOR's failure to properly code the Cooper's Hawk restaurant's location, which IDOR has since corrected. We disagree because the wrongful conduct Arlington Heights complains of and for which it seeks declaratory relief is ongoing; Rolling Meadows retains nearly eight years of sales tax allegedly belonging to Arlington Heights. Because the conduct for which Arlington Heights seeks declaratory relief is not in the past but is still occurring, the doctrine of nonliability does not apply and is not grounds for dismissal. See *Brandt Construction. Co. v.*

Ludwig, 376 Ill. App. 3d 94, 103 (2007) (doctrine of nonliability did not apply to bar general contractor's declaratory judgment action against director of the Department of Labor seeking a determination as to whether it needed to reimburse employees for amounts owed due to higher wage rate).

¶ 37 Reversed and remanded.

¶ 38 PRESIDING JUSTICE ODEN JOHNSON, dissenting:

¶ 39 I must respectfully dissent. The majority seems to be persuaded by the appellate court case of *Village of Itasca* as opposed to our superseding authority, namely, the supreme court's *City of Chicago* opinion, which did not cite *Village of Itasca* favorably, but found instead that it did not "inform[ ] our decision." *City of Chicago*, 2019 IL 122878, ¶ 27. As I explain below, the most one can say about *Village of Itasca* is that it was not overturned, since its issue would not arise again.

¶ 40 In *City of Chicago*, our supreme court observed that the *Village of Itasca* opinion "relied on the rule in *Employers Mutual Cos. v. Skilling*, 163 Ill. 2d 284 (1994), that the legislature's divestment of circuit court jurisdiction must be explicit." *Id.* In fact, *Village of Itasca* cited *Skilling* 12 times. However, the supreme court noted that that it had already clarified in a prior case that this statement in *Skilling*—upon which *Village of Itasca* relied—was incorrect. The supreme court stated: "[I]n *J&J Ventures* this court clarified that the absence of an explicit divestiture of circuit court jurisdiction is *not* dispositive." (Emphasis added.) *Id.*

¶ 41 After disparaging the basic underpinning of the *Village of Itasca* opinion—namely, *Skilling*—the supreme court "further" distinguished *Village of Itasca*. *Id.* The supreme court further distinguished it by observing that *Village of Itasca* did not concern "the proper distribution of use taxes over a multiyear period," as did the case before it. *Id.* However, this

further distinction does not change the fact that the supreme court did not cite the case favorably to begin with. A better way to describe the supreme court's treatment of *Village of Itasca* would be to say that it declined to extend *Village of Itasca*, where the issue would not rise again.

¶ 42 The jurisdiction issue in *Village of Itasca* would not rise again, due to an explicit statutory section passed after the actions at issue in *Village of Itasca* occurred. Our legislature passed a statutory section specifically forbidding the type of agreement alleged in *Village of Itasca* and giving courts limited jurisdiction if this forbidden agreement still occurred, after the statute's effective date of June 1, 2004. 65 ILCS 5/8-11-21(a) (West 2020). The section forbids a town from entering a sales-tax rebate agreement if the tax, absent the agreement, would have been paid to another town and if the retailer maintained a retail location or warehouse in that other town (*id.*), which was the type of agreement alleged in *Village of Itasca*. This section also provided its own statutory remedy if this type of agreement, nonetheless, occurred. *Id.* Where our legislature granted courts a limited jurisdiction over this brick-and-mortar issue and specified remedy, the supreme court found that this section further supported its conclusion that courts did not generally have jurisdiction over sales-tax issues. *City of Chicago*, 2019 IL 122878, ¶¶ 43-44.

¶ 43 The majority asserts that the "statute says nothing about a municipality suing another municipality." *Supra* ¶ 26. While the statute does not say that it is the exclusive remedy for misallocated sales taxes, the absence of an explicit divestiture of circuit court jurisdiction is not dispositive—as our supreme court already held in *City of Chicago*, 2019 IL 122878, ¶ 27. Plaintiff here argues that it pled equitable claims not subject to statute. However, in *City of Chicago*, the plaintiffs also pled equitable claims in an effort to escape the statutory framework,

but to no avail. *Id.* ¶ 11 (alleging unjust enrichment and seeking imposition of a constructive trust). In *City of Chicago*, defendants argued that "although plaintiffs attempt to cloak their cause of action in the attire of equity, their claims are purely statutory and under the applicable framework the legislature has vested IDOR with the exclusive authority to act." *Id.* ¶ 24.[1] The supreme court agreed, finding that, "[b]ased upon the statutory framework," IDOR had "been vested, for purposes of plaintiffs' claims, with the exclusive authority" to act. *Id.* ¶¶ 39-40.

¶ 44 While the absence of an explicit divesture is not dispositive, a supreme court case is. Our supreme court found that, while the absence of an explicit divesture was not dispositive, "legislative intent to divest circuit courts of jurisdiction may be discerned by considering the statute as a whole." (Internal quotation marks omitted.) *Id.* ¶ 26. Our supreme court did just that and found that the comprehensive statutory framework vested exclusive jurisdiction in IDOR.

¶ 45 It is not only the supreme court case that is stacked against plaintiff. Plaintiff is out of luck on two counts: (1) an Illinois Supreme Court case that is on point, and (2) a statute's express six-month limit on recovery (which plaintiff already received).

¶ 46 Plaintiff argued, and the majority appears to accept, that the *City of Chicago* opinion is distinguishable because it addressed use taxes rather than the sales taxes at issue here. However, the supreme court began its analysis by observing that "[t]his case concerns *two* types of Illinois *** taxes:" sales tax and use tax. (Emphasis added.) *Id.* ¶ 3. Thus, the supreme court clearly said that the case before it involved two types of taxes—not just the one that the majority seeks to limit it to. [2]

[1]"[T]here is no dispute that the State has the authority to levy, assess, and collect sales taxes and use taxes, and no counterpart exists at common law." *City of Chicago*, 2019 IL 122878, ¶ 23.

[2]The issue before it was a " 'use tax-sales tax swap.' " *Id.* ¶ 8.

¶ 47 The court considered the statutory framework governing *both* sales and use taxes to reach its conclusion about the misallocated sales taxes that were at the heart of that opinion.[3] In particular, the supreme court considered the elaborate statutory framework governing *IDOR's authority* over both sales and use taxes. *Id.* ¶ 29. Paragraph by paragraph, the supreme court quoted first from ROTA, which governs sales taxes, and then from Use Tax Act, which governs use taxes. *Id.* ¶¶ 30-34 (quoting from ROTA and the Use Tax Act). The supreme court then issued its conclusion. *Id.* ¶¶ 43-45. For a municipality to bring a misallocation suit, it must be given that right by the legislature, and the legislature has permitted suit in only one limited circumstance. *Id.* ¶ 44. A municipality may bring a suit for missourced sales tax "only as a result of a rebate agreement entered after June 1, 2004"—which is not the case here. *Id.* Ergo, plaintiffs may not sue.

¶ 48 The equities have already been weighed, as a policy matter, by our legislature, who determined that a six-month recovery was appropriate. The allocation of resources by the State among municipalities is a policy matter that is best left to the legislature to resolve—which it did. There are equities on the other side that the majority overlooks. The citizens of the receiving municipality counted on this money and it has, most likely, already been spent or, at least, earmarked—begging the question of where this money is going to come from if a return is forced. As the majority notes, the error was due to a " 'municipal clerk.' " *Supra* ¶ 32 (quoting 65 ILCS 5/8-11-16 (West 2020)). Additional taxes on unsuspecting citizens due to a clerical error will not bode well.

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[3]In *City of Chicago*, the plaintiffs alleged that little or no sales activity took place at the office sites maintained by Internet retailers in Kankakee or Channahon, and that these sites were "maintained for the sole purpose of having the Internet retailers obtain a tax rebate. *City of Chicago*, 2019 IL 122878, ¶ 9. In its complaint, the plaintiffs sought a constructive trust on *all sales tax revenue* received by Kankakee and Channahon as a result of the agreement, and damages in the amount of use tax revenue that the plaintiffs had been wrongfully deprived. *Id.* ¶ 10.

¶ 49 This is not a simple dispute. Plaintiff argues, and the majority appears to accept, that the distinction between use and sales taxes is significant because calculating use taxes is more complex than calculating sales taxes and, hence, it made more sense in *City of Chicago* to defer to an administrative agency with respect to use taxes. Although use tax calculation may be more complex, plaintiff here is still seeking a multi-year calculation with interest. Plaintiff asks the court to calculate eight years of revenue plus interest and to devise, approve, and supervise a payback plan with interest. As in *City of Chicago*, "plaintiff[ ], in essence, [is] seeking to use the circuit court to conduct a full-scale audit and redistribution of state taxes. IDOR has been given that authority by the legislature, not the circuit court." *City of Chicago*, 2019 IL 122878, ¶ 42. Plaintiff knew that IDOR had jurisdiction which is why it went there first. However, the outcome was not to its satisfaction, so it sought a second bite at the proverbial apple in court.

¶ 50 While I have nothing but respect for my colleagues and sympathy for concerns about a windfall, our legislature anticipated this type of error and anticipated that correcting it would pose a big problem if brought to IDOR's attention years later. Hence, the legislature set a limit, for both us and IDOR to abide by. Thus, I must respectfully dissent.

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

VILLAGE OF ARLINGTON HEIGHTS,	)	
	)	2022 CH 01229
Plaintiff,	)	
	)	Motion to Dismiss
v.	)	
	)	Calendar 1
CITY OF ROLLING MEADOWS,	)	
	)	Hon. Thaddeus L. Wilson
Defendant.	)	Judge Presiding

ORDER

This matter is before the Court on Defendant City of Rolling Meadow's Motion to Dismiss Plaintiff Village of Arlington Height's verified complaint. Defendant filed its Motion to Dismiss as a combined motion pursuant to section 2-619.1 of the Illinois Code of Civil Procedure ("Code") (735 ILCS §5/2-619.1 (West 2022)).

FACTUAL BACKGROUND

Plaintiff filed the instant action alleging that Defendant received over $1.1 million in sales tax revenues generated by the Cooper's Hawk restaurant that should have been paid to Plaintiff. This fact is not disputed. According to Plaintiff, between November 1, 2011 and December 30, 2019, the Illinois Department of Revenue ("IDOR") mistakenly distributed to Defendant all of the revenues of the Plaintiff's local sales tax collected from Cooper's Hawk. The subject Cooper's Hawk restaurant is located at 798 West Algonquin Road, Arlington Heights, Illinois.

Plaintiff discovered the error and notified IDOR of the same on or about March 18, 2020. After being notified of the error, IDOR reimbursed Plaintiff by crediting only those funds misallocated during the six-month portion of the look-back period, from July 2019 through December 2019, totaling $108,934.42—a mere fraction of the total $1,171,566.00 allegedly

misallocated. Plaintiff requested that Defendant return the entire remaining balance of the misallocated sales taxes unpaid by IDOR. However, Defendant has refused to do so.

In its three-count verified complaint, Plaintiff asserts the following claims: Count I for declaratory relief, Count II for unjust enrichment, and Count III for conversion. Under Count I, for declaratory relief, Plaintiff asks that this Court declare that Plaintiff is entitled to the entirety of the misallocated sales taxes, and that judgment should be entered in its favor for those same sums. Under Count II, for unjust enrichment, Plaintiff seeks judgment in its favor for unreimbursed misallocated sales taxes, plus statutory interest and imposition of a constructive trust for receipt of those funds. Under Count III, for conversion, Plaintiff seeks judgment in its favor for the unreimbursed misallocated sales taxes unjustly retained by Defendant.

In response to the verified complaint, Defendant filed a motion to dismiss pursuant to 2-619.1 of the Code, accompanied by an affidavit in support of the motion. Within its motion, Defendant asserts that Plaintiff's verified complaint should be dismissed because (1) under section 2-615(a) of the Code, it fails to state a claim upon which relief may be granted; (2) under section 2-619(a)(1) of the Code, based upon other affirmative matter, this Court lacks subject matter jurisdiction to hear the claim; (3) under section 2-619(a)(5) of the Code, Plaintiff's claims are barred by the five-year statute of limitations; and (4) under section 2-619(a)(9), Plaintiff has received all of the relief it is entitled to, namely, an offset refund disbursement for the statutorily created look-back period, and Plaintiff's attempted recovery is barred by the doctrine of nonliability.

This order follows.

ANALYSIS

Defendant moves to dismiss Plaintiff's complaint pursuant to section 2-619.1 of the Code, which permits combined motions pursuant to section 2-615, section 2-619, and section 2-1005. 735

ILCS 5/2-619.1 (West 2010). Section 2-619.1 of the Code "explicitly requires that a motion combining both sections 2-615 and 2-619 (1) must be in parts, (2) must 'be limited to and shall specify that it is made under' either section 2-615 or 2-619, and (3) must 'clearly show the points or grounds relied upon under the [s]ection upon which it is based.'" *Howle v. Aqua Ill., Inc.*, 2012 IL App (4th) 120207, ¶ 73, (quoting 735 ILCS 5/2-619.1 (West 2010)).

A motion to dismiss under section 2-615 of the Code may be based on defects within the pleading itself, whereas a motion to dismiss under section 2-619 of the Code allows the defendant to go beyond the plaintiff's allegations and present other affirmative defenses pursuant to grounds provided by the statute that may defeat the plaintiff's claims. 735 ILCS 5/2-615 (West 2022); 735 ILCS 5/2-619 (West 2022).

I. Dismissal Under Section 2-615 of the Code

A section 2-615 motion authorizes dismissal where a claim is substantially insufficient in law. *See* 735 ILCS 5/2-615(a) ("The motion [to dismiss] shall point out specifically the defects complained of, and shall ask for appropriate relief," including "that a pleading or portion thereof be stricken because substantially insufficient in law."). Such a motion challenges the legal sufficiency of a complaint by alleging defects on its face. *Quiroz v. Chi. Transit Auth.*, 2022 IL 127603, ¶ 11. Section 2-615 motions argue that the plaintiff has not alleged sufficient facts that would entitle him or her to relief under any circumstances. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). The relevant inquiry is whether the allegations of the complaint are sufficient to state a cause of action upon which relief may be granted. *Rehfield v. Diocese of Joliet*, 2021 IL 125656, ¶ 20.

In ruling on a Section 2-615 motion, courts may only consider the allegations in the complaint, admissions in the record, and judicially noticed facts. *Mt. Zion State Bank & Tr. v.*

Consol. Commc'n, Inc., 169 Ill. 2d 110, 115 (1995). To survive a section 2-615 motion, the complaint must contain well-pleaded facts which, when taken as true and construed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief may be granted. *Loman v. Freeman*, 229 Ill. 2d 104, 109 (2008). "Because Illinois is a fact-pleading jurisdiction, a plaintiff must allege facts, not mere conclusions, to establish his or her claim as a viable cause of action." *DeMeester's Flower Shop & Greenhouse, Inc. v. Florists' Mut. Ins. Co*., 2017 IL App (2d) 161001, ¶ 9. The court will accept as true all well-pleaded allegations, liberally construe those allegations, and draw all reasonable inferences in the plaintiff's favor. *Id.* However, legal and factual conclusions that are unsupported by allegations of fact may be disregarded. *Guinn v. Hoskins Chevrolet*, 361 Ill. App. 3d 575, 586 (2005).

A complaint should be dismissed where it is "substantially insufficient in law." 735 ILCS 5/2-615. Though, courts will often allow plaintiffs to amend their pleadings to correct the defect. 735 ILCS § 5/2-616 (West 2010). Section 2-615 also provides for possible relief other than dismissal, including that: (1) a pleading be stricken in whole or in part because it is substantially insufficient in law; (2) a pleading be made more definite and certain; (3) designated immaterial matter be stricken; (4) necessary parties be added; or (5) designated improperly joined parties be dismissed. 735 ILCS 5/2-615 (West 2010).

Separately, a motion to dismiss under Section 2-619 allows for a disposition of issues of law or easily proved issues of fact at the outset of litigation. *Strauss v. City of Chi.*, 2022 IL 127149, ¶ 54. A 2-619 motion asserts defects, defenses, or other affirmative matters that act to defeat the claim. *Id*.

In its reply brief, Defendant chastises Plaintiff for not properly responding to each aspect of its motion to dismiss under both sections 2-615 and 2-619 of the Code. Section 2-619.1 of the

Code does not authorize the commingling of distinctive claims pursuant to section 2-615, 2-619, or 2-1005. *Howle*, 2012 IL App (4th) 120207, ¶ 72; *Jenkins v. Concorde Acceptance Corp.*, 345 Ill. App. 3d 669, 674 (2003). "[T]rial courts should not—and need not—accept for consideration combined motions under section 2-619.1 that do not meet these statutory requirements." *Howle*, 2012 IL App (4th) 120207, ¶ 73. Where a motion does not comply with section 2-619.1, commingles claims, or creates unnecessary complications and confusion, trial courts should *sua sponte* reject the motion and give the movant the opportunity, should he or she wish, to file a motion that meets the statutory requirements of section 2-619.1. *Id*. Alternatively, the movant may choose to file separate motions under section 2-615 and section 2-619, "thereby avoiding any improper commingling of [his or her] claims." *Id*.

Defendant here is correct in arguing that Plaintiff has not properly responded to the combined motion in its individual parts, though, this Court notes, Defendant's motion is not the bastion of organization and clarity either. However, it should be further noted that both of Defendant's 2-615 and 2-619 motions are really the same motion, asserting the exact same bases under each provision for dismissal. More importantly, Defendant's section 2-615 motion is really premised upon the assertion of other affirmative matter outside of the pleadings. Indeed, each of Defendant's 2-615 defenses turn upon this Court's interpretation of one case: *City of Chicago v. City of Kankakee*, 2019 IL 122878.

For instance, within its section 2-615 motion to dismiss, Defendant argues issues relating to the statute of limitations on Plaintiff's pending claims. "The statute of limitations is normally an affirmative defense appropriate only to motions to dismiss pursuant to section 2-619[. H]owever, where it appears from the face of the complaint that the statute of limitations has run, such a defense can also be raised in a section 2-615 motion to dismiss." *Cangemi v. Advocate S.*

Suburban Hosp., 364 Ill. App. 3d 446, 456 (2006). Consequently, the Court will resolve this matter on Defendant's section 2-619 grounds, and Defendant's section 2-615 motion to dismiss is denied for being premised in large part on affirmative matters outside of the four corners of the complaint.

II. Dismissal Under Section 2-619 of the Code

As earlier recited, a section 2-619 motion asks the court to look outside the four corners of the complaint and consider defenses that completely defeat a cause of action. 735 ILCS 5/2-619. A section 2-619 motion "admits the legal sufficiency of the complaint but asserts affirmative matter to avoid or defeat the claim." *Lamar Whiteco Outdoor Corp. v. City of W. Chi.*, 355 Ill. App. 3d 352, 359 (2005).

A. Failure to State a Claim / Lack of Subject Matter Jurisdiction

Subject matter jurisdiction concerns the authority of the court "'to hear and determine cases of the general class to which the proceeding in question belongs.'" *Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp.*, 2011 IL 111611, ¶ 27 (quoting *In re M.W.*, 232 Ill. 2d 408, 415 (2009)). Trial courts have original jurisdiction of all justiciable matters except those exclusively within the jurisdiction of the Illinois Supreme Court and may review administrative actions "as provided by law." Ill. Const. 1970, art. VI, § 9.

A statute that divests the trial court of original jurisdiction must do so explicitly. *Emps Mut. Cos. v. Skilling*, 163 Ill. 2d 284, 287 (1994). Trial courts may be divested of their original jurisdiction by the legislature where it places original jurisdiction in an administrative agency. *Id*., at 287. Where a statute creating or empowering an administrative agency expressly adopts the Review Act, it governs review of final administrative decisions. 735 ILCS 5/3-102 (West 2010); *Fontana v. Highwood Police Pension Bd.*, 296 Ill. App. 3d 899, 901 (1998).

Defendant asserts that Plaintiff has failed to state a claim upon which relief may be granted and that this Court lacks subject matter jurisdiction over the matter. As support for its assertion, Defendant cites to the case of *City of Chicago*. In particular, Defendant points to the passage of that opinion where the Illinois Supreme Court states as follows:

> We find that section 8-11-21 of the Municipal Code shows that, in order for a municipality to have the right to bring a cause of action in court about missourcing or misreporting of *use* taxes, the municipality must be given that right by the General Assembly. Our legislature, however, has not authorized such suits. It has chosen to only permit municipalities to bring a cause of action in the circuit court for missourced sales tax, and then only as a result of a rebate agreement entered after June 1, 2004. [Citation.] No similar provision authorizes suits for the denial of use tax revenue due to alleged misreporting.
>
> For the foregoing reasons, we hold that IDOR has exclusive authority over plaintiffs' claims against defendants.

2019 IL 122878, ¶¶ 44–45 (internal citation omitted).

Defendant argues that the Illinois Supreme Court has spoken, as quoted above, and that, although Plaintiff attempts to cast its cause of action as one in equity, its claims are purely statutory, and under the applicable framework, the legislature has vested IDOR with the exclusive authority to act. Plaintiff responds that the above passage cited by Defendant is merely *dicta*.

"The distinction between *dictum* and holding is at once central to the American legal system and largely irrelevant." David Klein & Neal Devins, *Dicta, Schmicta: Theory Versus Practice in Lower Court Decision Making*, 54 WM. & MARY L. REV. 2021, 2021 (2013), https://scholarship.law.wm.edu/wmlr/vol54/iss6/6. "Law students are often taught that the American legal system sees dicta as neither binding nor normatively desirable and typically spend significant time and energy looking for the line separating the two." *Id*., at 2028.

In *Lebron v. Gottlieb Mem'l Hosp.*, 237 Ill. 2d 217 (2010), the Illinois Supreme Court explained the following:

> [*D*]*ictum* is of two types: obiter *dictum* and judicial *dictum*. [Citation.] "Obiter *dictum*," frequently referred to as simply "*dictum*," is a remark or opinion that a court uttered as an aside. [Citation.] Obiter *dictum* is not essential to the outcome of the case, is not an integral part of the opinion, and is generally not binding authority or precedent within the *stare decisis* rule. [Citation.] "In contrast, 'an expression of opinion upon a point in a case argued by counsel *and deliberately passed upon by the court*, though not essential to the disposition of the cause, if *dictum*, is a judicial *dictum*. [Citation.] A judicial *dictum* is entitled to much weight, and should be followed[,] unless found to be erroneous.'" [Citation.]

237 Ill. 2d at 236 (internal citation omitted). "'Even *obiter dictum* of a court of last resort can be tantamount to a decision and[,] therefore[,] binding in the absence of a contrary decision of that court.'" *Exelon Corp. v. Dep't of Revenue*, 234 Ill. 2d 266, 282 (2009) (citing *Cates v. Cates,* 156 Ill. 2d 76 (1993)).

Relevant to this case, it is clear that the Illinois Supreme Court's language quoted above in the matter of *City of Chicago* was intentional, deliberative, and instructional on the question before the court, even if perhaps not essential to the court's ruling. Nevertheless, this Court is not in the business of telling the Illinois Supreme Court that they were wrong on a point of law, *dictum* or not.

According to our supreme court, a cause of action for missourced sales tax can be brought in the circuit court only as a result of a rebate agreement entered after June 1, 2004. *City of Chi.*, 2019 IL 122878, ¶ 44. Plaintiff has failed to plead that the missourced sales taxes at issue here were the result of a rebate agreement entered into after June 1, 2004, and affirmative matter proffered by Defendant suggests that there are no set of facts that would allow Plaintiff to replead the same.

B. Statute of Limitations

Defendant next argues that Plaintiff's cause, if not barred for other reasons is at least partially barred by the relevant statute of limitations. Defendant submits that Plaintiff's claims are

governed by a five-year statute of limitations as provided, under section 13-205 of the Code. According to Defendant, that portion of Plaintiff's claims seeking recovery for periods prior to February 14, 2017, five years prior to the date of the complaint, are time-barred. Plaintiff responds by admitting that its unjust enrichment claim is governed by a five-year statute of limitations. However, citing *Frederickson v. Blumenthal*, 271 Ill. App. 3d 738, 741–743 (1995), Plaintiff asserts that limitations period can be tolled for any period during which it was unreasonable for a plaintiff to become aware of the unjust enrichment. Plaintiff further argues that, according to *Burns Philp Food v. Cavela Cont'l Freight*, 135 F.3d 526, 529 (7th Cir. 1998), in determining reasonableness, it was not required to excessively rifle through records unless it has a reason to do so.

Asserting other affirmative matters, Plaintiff also alleges that Defendant disregarded IDOR's 2011 verification letter, which improperly classified the Cooper's Hawk restaurant with Defendant, thereby falsely misrepresenting and confirming the restaurant to be within its boundaries. As an additional basis to toll the statute of limitations, Plaintiff cites to *Guarantee Tr. Life Ins. v. Kribbs*, 2016 IL App (1st) 160672, ¶48, for the proposition that the limitations period for unjust enrichment may be further tolled if a plaintiff faces "an irredeemable lack of information," or if the plaintiff could not learn the identity of proper defendants through the exercise of due diligence. Finally, according to Plaintiff, the limitations period for its unjust enrichment claims should be tolled because Defendant's actions fraudulently concealed Plaintiff's claims, triggering the tolling provision under section 13-205 of the Code.

Section 2-619(a)(5) of the Code permits a court to dismiss a complaint if it was "not commenced within the time limited by law." 735 ILCS 5/2-619(a)(5) (West 2014). Longstanding Illinois common law prohibits tolling of a statute of limitations, absent explicit statutory authority.

See Am. Airlines, Inc. v. Dep't of Revenue, 402 Ill. App. 3d 579, 605 (2009) ("[S]tatutes of limitations continue to run unless tolling is authorized by statute."); *see also IPF Recovery Co. v. Ill. Ins. Guar. Fund*, 356 Ill. App. 3d 658, 665 (2005) ("Illinois law is clear that, as a general rule, the statute of limitations continues to run unless tolling is authorized by a statute.").

This Court finds that the affirmative matter outside of the pleadings cited by both sides highlights material issues of fact that would make a determination of the applicable statute of limitations at the pleading stage inappropriate.

C. Exclusive Remedy and Lack of Standing Under Doctrine of Nonliability

Defendant further argues that, regarding its claim for declaratory relief under Count I, based upon the application of the obscure "doctrine of nonliabilty," Plaintiff is improperly seeking a declaration as to matters that have already occurred. According to Defendant, these claims are barred, based upon these affirmative matters.

Declaratory relief is not available to declare the consequences of past conduct. *See Adkins Energy, LLC v. Delta-T Corp.*, 347 Ill. App. 3d 373, 378 (2004) ("The doctrine of nonliability for past conduct bars an action for declaratory judgment when the conduct that makes the party liable, that is, amenable to suit, has already occurred."). "[The] statute authorizing declaratory judgment actions permits declaratory relief only in justiciable cases, and the existence of an actual controversy is essential." *Howlett*, 69 Ill. 2d at 141. The "'actual controversy' requirement is meant merely to distinguish justiciable issues from abstract or hypothetical disputes and is not intended to prevent resolution of concrete disputes admitting of a definitive and immediate determination of the rights of the parties." *Miller v. Cty. of Lake*, 79 Ill. 2d 481, 487 (1980) (quoting *Ill. Gamefowl Breeders Ass'n v. Block* 75 Ill. 2d 443, 452 (1979) (citing *A. S. & W. Club v. Drobnick* 26 Ill. 2d 521, 524 (1962))). The Illinois Supreme Court has explained the following:

> "'Actual' in this context does not mean that a wrong must have been committed and injury inflicted. Rather, it requires a showing that the underlying facts and issues of the case are not moot or premature, so as to require the court to pass judgment on mere abstract propositions of law, render an advisory opinion, or give legal advice as to future events. [Citations.] The case must, therefore, present a concrete dispute admitting of an immediate and definitive determination of the parties' rights, the resolution of which will aid in the termination of the controversy or some part thereof. [Citations.]"

Howlett, 69 Ill. 2d at 141–142 (quoting *Underground Contractors Ass'n v. City of Chi.*, 66 Ill. 2d 371, 375 (1977) (internal citation omitted)).

In *Miller*, the Court distinguished *Howlett*, finding that, unlike in *Howlett*, there was clear intent to prosecute and the relationship forming the basis of the suit was still ongoing. 79 Ill. 2d at 488. In *Adkins*, the court stated that it "believe[d] that the fact that the relationship was still ongoing in *Miller* was relevant because that meant that the plaintiff could avoid future liability." 347 Ill. App. 3d 378. The court further explained that "[t]he purpose of a declaratory judgment action is to determine the rights of the parties so that the plaintiff can alter his [or her] future conduct to avoid liability." *Id*., 378–79 (citing *Beahringer v. Page*, 204 Ill. 2d 363, 373 (2003)). In *Miller*, the plaintiff could be liable for future acts related to the bank involved in the controversy because he was still involved with the bank. *See* 79 Ill. 2d at 491. Conversely, in *Howlett*, the plaintiff was no longer involved with the entity that was involved in the controversy and, hence, could be liable only for past acts related to that entity. *See* 69 Ill. 2d at 141 ("Normally, a declaration of nonliability for past conduct is not a function of the declaratory judgment statute . . . .").

In *Eyman v. McDonough Dist. Hosp.*, 245 Ill. App. 3d 394, 396 (1993), the appellate court found that declaratory judgment that the plaintiff properly terminated her employment agreement and could keep money advanced to her was not obtainable because the plaintiff was not seeking to learn consequences of future acts. In *Chi. & E. Ill. R.R. Co. v. Reserve Ins. Co.*, 99 Ill. App. 3d

433, 437 (1981), the appellate court reversed the declaratory relief awarded to the plaintiff by the trial court, because the plaintiff sought a declaration that its past conduct did not breach certain insurance policies, rather than a declaration that it would not incur liability for a future course of conduct. These cases turned on whether the act that could be considered the breach of contract had already occurred, not whether the acts that formed the contract had already occurred.

In contrast, the decision in *Roland Mach. Co. v. Reed*, 339 Ill. App. 3d 1093 (2003), demonstrates that, when the potentially breaching act has not yet occurred, a declaratory judgment action is proper. In *Roland* the plaintiff had contracted to sell the defendant a bulldozer. 339 Ill. App. 3d at 1095. The plaintiff delivered the bulldozer, which the defendant accepted. *Id*. After complaining of various defects in the bulldozer, the defendant attempted to revoke his acceptance and obtain a refund of the purchase price. *Id*., at 1096. Instead of denying the defendant's request, the plaintiff brought a declaratory judgment action seeking a declaration that it was not obligated to accept the return of the bulldozer and refund the purchase price. *Id*. The *Roland* court held that the doctrine of nonliability for past conduct was not applicable in that case because, *inter alia*, the plaintiff was seeking guidance on whether he would be obligated under the contract to accept the return and issue a refund. *Roland*, 339 Ill. App. 3d at 1102-03.

The purpose of a declaratory judgment is "'to settle and fix rights before there has been an irrevocable change in the position of the parties that will jeopardize their respective claims of right.'" *Beahringer*, 204 Ill. 2d at 373 (quoting *First of Am. Bank, Rockford, N.A. v. Netsch*, 166 Ill. 2d 165, 174 (1995)). As stated above, the doctrine of nonliability for past conduct bars a declaratory action in a situation where the conduct that makes a party liable has already occurred. *Adkins*, 347 Ill. App. 3d at 378. The issue, then, is whether Plaintiff is seeking an affirmation with respect to past conduct, or whether it is seeking guidance for future conduct. It is clear to this

Court that Plaintiff is seeking a declaration with respect to the past conduct of either Defendant or IDOR. To the extent that the doctrine of nonliability is still viable, it serves to bar Count I of Plaintiff's verified complaint for declaratory relief.

CONCLUSION

For the reasons stated above, **IT IS HEREBY ORDERED**:

1. Defendant's Motion to Dismiss under section 2-615 is DENIED.
2. Defendants' Motion to Dismiss under section 2-619 is DENIED as to the statute of limitations argument, but GRANTED as to all other claims.
2. Plaintiff's complaint is DISMISSED in its entirety, with prejudice.

ENTERED
Judge Thaddeus L. Wilson – 1976
October 20, 2022
IRIS Y. MARTINEZ
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

ENTERED: _____
Hon. Thaddeus L. Wilson
Circuit Court of Cook County

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

THE VILLAGE OF ARLINGTON HEIGHTS,	)	
	)	
Plaintiff,	)	
v.	)	Case No. 2022CH01229
	)	
THE CITY OF ROLLING MEADOWS,	)	
	)	
Defendant.	)	

VERIFIED COMPLAINT

Plaintiff, the Village of Arlington Heights ("Arlington Heights" or "Village"), through its undersigned counsel, Elrod Friedman LLP, for its Verified Complaint against Defendant, the City of Rolling Meadows ("Rolling Meadows" or "City"), alleges as follows:

GENERAL ALLEGATIONS

Overview

1. This matter concerns the failure of the City to return certain misallocated sales tax revenues, earned by and payable to the Village from the operation of the Cooper's Hawk restaurant located at 798 West Algonquin Road within the corporate boundaries of the Village ("Cooper's Hawk"), that were errantly distributed to the City by the Illinois Department of Revenue ("IDOR") during the period between November 1, 2011, and December 30, 2019 ("Misallocation Period").

2. The Village is informed and believes that, during the Misallocation Period, IDOR mistakenly distributed to the City all of the revenues of the Village's local sales tax collected from Cooper's Hawk (collectively, the "Misallocated Village Sales Taxes"); the Village is informed and believes, based on review of ST-1 forms filed by Cooper's Hawk, that the amount of the Misallocated Village Sales Taxes from January 2012 through June 2019 totals approximately $1,171,566.00.

3. The City has no legal right, interest, or claim to any of the Misallocated Village Sales Taxes.

4. After the Village informed IDOR of its error in distributing the Misallocated Village Sales Taxes to the City, IDOR reimbursed the Village only for those funds misallocated during the six-month portion of the Misallocation Period from July 2019 through December 2019, which IDOR asserts is the maximum allowable reimbursement IDOR can provide under Section 8-11-16 of the Illinois Municipal Code, 65 ILCS 5/8-11-16 ("Six-Month Reimbursement").

5. The Village is informed and believes, based on review of ST-1 forms filed by Cooper's Hawk from January 2012 through June 2019, that the remaining amount of the Misallocated Village Sales Taxes after receipt of the Six-Month Reimbursement totals approximately $1,171,566.00. IDOR has not refunded, and has stated that it is statutorily prevented from refunding, any amounts of the Misallocated Village Sales Taxes at issue in this Complaint, other than the Six-Month Reimbursement.

6. The City has continually refused the Village's requests to return the remaining Misallocated Village Sales Taxes to the Village, despite having no right, interest, or claim in the Misallocated Village Sales Taxes.

7. Because of the City's unlawful and unjust retention of the Misallocated Village Sales Taxes, the Village has been forced to file this Complaint.

Parties, Jurisdiction, and Venue

8. The Village is an Illinois home rule municipal corporation duly organized and existing under the laws of the State of Illinois, located in Cook County, and operating under the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.*, and other applicable statutes of the State of Illinois.

9. The City is an Illinois home rule municipal corporation duly organized and existing under the laws of the State of Illinois, located in Cook County, and operating under the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.*, and other applicable statutes of the State of Illinois.

10. This Court has jurisdiction to hear this Complaint pursuant to 735 ILCS 5/2-209 and venue is proper before this Court pursuant to 735 ILCS 5/2-101.

The Collection and Distribution of Village Sales Taxes

11. Illinois home rule municipalities may impose certain taxes on the operation of retail businesses within their corporate limits, pursuant to their home rule authority under Article VII, Section 6 of the Illinois Constitution of 1970, and Sections 8-11-1 and 8-11-5 of the Illinois Municipal Code, 65 ILCS 5/8-11-1, 8-11-5.

12. The Misallocated Village Sales Taxes consist of two local sales taxes the Village imposes pursuant to its home rule authority and as provided in Section 12-1901 of the Village's Municipal Code ("Village Code"): a home rule municipal retailers' occupation tax in the amount of 1% of gross receipts of sales, and a 1% home rule municipal service occupation tax in the amount of 1% of the selling price of all tangible personal property as an incident to a sale of service.

13. Pursuant to Sections 8-11-1 and 8-11-5 of the Illinois Municipal Code, 65 ILCS 5/8-11-1, 8-11-5, and related provisions of the Illinois Revenue Code and state administrative rules, the Illinois Department of Revenue ("IDOR") is responsible for collecting state and local sales taxes from retail businesses within the State, and then disbursing the collected local sales taxes to the taxing municipality on a monthly basis.

IDOR's Error, Notifications, and Partial Refund

14. On or about March 18, 2020, during the course of reviewing information concerning IDOR's collection and distribution of sales taxes for retail businesses within the

Village, the Village determined that Cooper's Hawk was not included in the list of businesses for which IDOR had distributed sales tax revenues to the Village.

15. The Village contacted IDOR via e-mail on March 18, 2020, asking IDOR for further information about IDOR's allocation of the Misallocated Village Sales Taxes for Cooper's Hawk.

16. On March 30, 2020, IDOR wrote to the Village and the City ("March 2020 Letters", attached hereto as Exhibit A), explaining the following:

a. The address for Cooper's Hawk had been "coded" within IDOR's system as being located within the City instead of the Village.

b. IDOR could not determine if this "coding" error resulted from the Restaurant's error or IDOR's error.

c. The City received three different types of notifications from IDOR informing the City that Cooper's Hawk had been wrongfully coded as within the City.

d. Specifically, the City received a tax location verification letter from IDOR dated April 1, 2011 ("2011 Tax Location Verification Letter") seeking to verify the location of Coopers Hawk; on or about May of 2011 the City began receiving tri-annual Allocation Remittance Reports listing Coopers Hawk as within the City; and on or about August of 2011, the City began receiving Annual Taxpayer Listings indicating Coopers Hawk was registered as within the City.

e. The 2011 Tax Location Verification Letter listed all businesses within the City that had been established, reinstated, or discontinued during the previous month, and requested that the City agree or disagree that the businesses listed were within its jurisdiction. The 2011 Tax Location Verification Letter included Cooper's Hawk as one of the businesses that IDOR identified (mistakenly) as being within the City.

f. When a municipality does not respond to a tax location verification letter, IDOR interprets the non-response as an agreement that all business listed in the letter are within

that municipality's jurisdiction.

g. The City did not respond to IDOR's 2011 Tax Location Verification Letter, and, accordingly, IDOR interpreted the City's failure to respond as the City's (fraudulent) agreement that it was entitled to receive distributions of local sales taxes from all businesses listed in the 2011 Tax Location Verification Letter, including Cooper's Hawk.

17. IDOR further stated in the March 2020 Letters that, pursuant to the Illinois Municipal Code, 65 ILCS 5/8-11-16, IDOR was authorized only to refund to the Village the amount of the Misallocated Village Sales Taxes for the Six-Month Reimbursement Period, and that the Village would be required to obtain the remaining Misallocated Village Sales Taxes directly from the City.

18. Subsequently, IDOR provided the Village a payment of the Six-Month Reimbursement in the amount of $108,934.42, constituting IDOR's refund of the portion of the Misallocated Village Sales Taxes for the period between July 2019 and December 2019.

19. Despite requests from the Village, the City has refused to return any of the Misallocated Village Sales Taxes to the Village.

Count One – Declaratory Relief

20. The Village re-alleges paragraphs 1-23 of its general allegations as paragraph 24 of Count One.

21. The Village has a legal tangible interest in the receipt of the Misallocated Village Sales Taxes from the operation of Cooper's Hawk pursuant to the Illinois Municipal Code, Illinois Revenue Code, and the Village Code.

22. By refusing to respond to the 2011 Tax Location Verification Letter, the City fraudulently indicated that Cooper's Hawk is located within the City.

23. The City, by refusing to return the Misallocated Village Sales Taxes, purports that it has an opposing interest in retaining the Misallocated Village Sales Taxes.

24. Based on the City's failure to return the Misallocated Village Sales Taxes to the Village, an actual controversy exists between the Village and the City that this Court may resolve as to the requirement of the City to return the Misallocated Village Sales Taxes to the Village pursuant to the Illinois Municipal Code, Illinois Revenue Code, and the Village Code.

WHEREFORE, Plaintiff, Village of Arlington Heights, respectfully requests that this Court enter an Order:

A. Declaring that the Village is entitled to receipt of the entirety of the Misallocated Village Sales Taxes from the City, pursuant to the Illinois Municipal Code, the Illinois Revenue Code, the Village Code, the Village's home rule authority, and other applicable law;

B. Declaring that the City has no right, title, or interest in any of the Misallocated Village Sales Taxes, pursuant to the Illinois Municipal Code, the Illinois Revenue Code, the Village Code, the Village's home rule authority, and other applicable law;

C. Entering judgment in favor of the Village and against the City in the amount of the Misallocated Village Sales Taxes, plus statutory interest;

D. Directing the City to immediately return to the Village the entire amount of the Misallocated Village Sales Taxes, plus statutory interest;

E. Granting the Village such further or alternative relief as the Court determines to be lawful and proper.

Count Two – Unjust Enrichment

25. The Village re-alleges paragraphs 1-23 of its general allegations as paragraph 28 of

Count Two.

26. The City has been unjustly enriched by errantly receiving distribution of the Misallocated Village Sales Taxes, despite Cooper's Hawk being located in the Village and not the City.

27. The Village's revenues have been unjustly reduced by being denied the benefit of receiving the distribution of the Misallocated Village Sales Taxes from IDOR and the improper retention of the funds by the City, despite Cooper's Hawk being located in the Village and not the City.

28. The City's unjust enrichment through its retention of the Misallocated Village Sales Taxes is the direct cause and sole reason for the unjust reduction in the Village's revenues by not receiving the Misallocated Village Sales Taxes.

29. There is no just basis for the City to retain the Misallocated Village Sales Taxes at the expense of the Village's receipt of the Misallocated Village Sales Taxes.

30. The Village has no adequate remedy available at law to compel the City to release the Misallocated Village Sales Taxes to the Village.

WHEREFORE, Plaintiff Village of Arlington Heights respectfully requests that this Court enter an Order:

A. Entering judgment in favor of the Village and against the City in the amount of the unpaid Village Sales Taxes, plus statutory interest;

B. Imposing a constructive trust for the purpose of receiving the Misallocated Sales Taxes from the City and delivering the Misallocated Sales Taxes to the Village; and

C. Directing the City to immediately return to the Village the entire amount of the Misallocated Village Sales Taxes, with statutory interest; and

D. Granting the Village such further or alternative relief as the Court determines to be lawful and proper.

Count Three - Conversion

31. The Village re-alleges paragraphs 1-23 of its general allegations as paragraph 34 of Count Three.

32. The Village has the right to receipt of the Misallocated Village Sales Taxes under the Illinois Municipal Code, the Illinois Revenue Code, and the Village Code.

33. The Village's right to immediate receipt of the Misallocated Village Sales Taxes from the City is absolute and unconditional.

34. The Village has demanded possession of the Misallocated Village Sales Taxes from the City and the City has refused to return the Misallocated Village Sales Taxes.

35. The City wrongfully and without authorization continues to assert control, ownership, and dominion over the Misallocated Village Sales Taxes.

WHEREFORE, Plaintiff, Village of Arlington Heights, respectfully requests that this Court enter an Order:

A. Entering judgment in favor of the Village and against the City in the amount of the unpaid Misallocated Village Sales Taxes, plus statutory interest;

B. Directing the City to immediately return to the Village the entire amount of the Misallocated Village Sales Taxes, with statutory interest; and

C. Granting the Village such further or alternative relief as the Court determines to be lawful and proper.

Respectfully submitted,

VILLAGE OF ARLINGTON HEIGHTS

By:/s/ Hart M. Passman
One of Its Attorneys

Hart M. Passman
Braeden E. Lord
Elrod Friedman LLP
325 N. La Salle St., Ste. 450
Chicago, IL 60654
(312) 528-5200
hart.passman@elrodfriedman.com
braeden.lord@elrodfriedman.com
Firm No. 64467

VERIFICATION

Under penalties as provided by law pursuant to §1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in the foregoing Verified Complaint are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

VILLAGE OF ARLINGTON HEIGHTS

By: Randall R. Recklaus

Printed Name: Randall R. Recklaus
Title: Village Manager

EXHIBIT A

MARCH 2020 LETTERS

Illinois Department of Revenue
Local Tax Allocation Division (MC 3-500)
101 W. Jefferson St.
Springfield, Illinois 62702

March 30, 2020

The Village of Arlington Heights
Attn: Thomas Kuehne - Finance Director/Treasurer
33 Arlington Heights Road
Arlington Heights, IL 60005

Dear Mr. Kuehne:

In response to Ms. Gallagher's e-mail dated March 26, 2020:

1. When Cooper's Hawk Winery and Restaurants (4023-0740) registered their business with the Illinois Department of Revenue (IDOR) on March 18, 2011, their address was coded as Rolling Meadows. Because of this, Rolling Meadows has been receiving both home rule tax (HMR) and municipal tax (MT) revenues from this business since it began operations on June 1, 2011. Then on March 18, 2020, IDOR received an e-mail from Kevin Baumgartner. Mr. Baumgartner noticed that this business was not listed on the allocation remittance report for Arlington Heights. Upon discovery of this information, the Local Tax Allocation Division (LTAD) made two adjustments. First, the location code was corrected so the business would be correctly coded to Arlington Heights moving forward (i.e. the January return to be allocated in April and all subsequent returns will be allocated to Arlington Heights). Secondly, per statute (65 ILCS 5/8-11-16), IDOR can correct any allocations within six months from the date our office was notified of the error. This means that the business's sales tax returns for July 2019 through December 2019 were moved from Rolling Meadows to Arlington Heights. Both municipalities will see an adjustment to their April allocations to reflect these changes.

2. As mentioned above, this business registered with IDOR on March 18, 2011 and their site was coded to Rolling Meadows. It is not clear if this coding error was caused by the business's registration, or if it was an IDOR error. That being said, there are procedures in place for errors such as this to be discovered, which will be described in more detail below.

3. Each month LTAD sends a tax location verification letter to every local government that had new/reinstated businesses and/or discontinued businesses during the previous month. The local government in receipt of the letter then has the opportunity to review the list and agree or disagree with the jurisdiction of each new/reinstated/discontinued business. If the reviewer disagrees, they have the option to provide the correct jurisdiction. The local government official could either complete this process through the Tax Location Verification Web Application on IDOR's website or mail the letter back to IDOR with notations on the letter. In this case, this letter was sent to Rolling Meadows dated April 1, 2011. IDOR received no response to the letter, which procedurally was viewed as an agreement with all locations listed on the letter.

Another method IDOR uses to locate coding errors is to send an annual taxpayer listing to every local government throughout the state. This document lists every retail business that is registered within that jurisdiction. The state is broken up into twelve zones, with each zone receiving their annual list in a different month. Rolling Meadows and Arlington Heights are both in Zone 1, meaning their annual listing is sent out in August annually. In addition, to the annual taxpayer listing, local governments have the option to contact LTAD and request a taxpayer listing at any time.

The final safeguard in place to help discover coding errors is the allocation remittance report. Initially provided to local governments that imposed a home rule or non-home rule tax, and later provided to any local government that entered into an information exchange agreement with the Department, a CD was sent on a tri-annual basis containing an allocation remittance report. This report listed every business within a given jurisdiction and the sales tax revenue each business generated for the given jurisdiction for each of the four months contained on the CD.

The processes described above have changed slightly over the last year. On June 3, 2019, IDOR launched the new MyLocalTax portal. Users of the portal now receive the tax location verification letters and annual taxpayer listings electronically through their account. They also can respond to the tax location verification letters through the portal. Previously, one copy of these letters was mailed to local governments, typically addressed to the municipal clerk, and it was possible that these letters were not always shared with all interested parties. Another benefit of MyLocalTax is that all users from that local government automatically receive a copy of all correspondence sent. Also, IDOR no longer mails CDs on a tri-annual basis, instead, users of the portal can request these reports at any time and receive the report electronically the next day in their account.

This portal has saved time for LTAD staff, who now review all new/reinstated/discontinued businesses using property tax bills and GIS data before the monthly tax location verification letter is sent. Local governments now only need to agree or disagree with sites that have already been verified by LTAD. If the local government doesn't respond, LTAD staff has already used the resources available to place the business in the proper jurisdiction, greatly reducing the possibility for errors.

LTAD hosts local government workshops throughout the state annually to provide training for local government officials and to inform them of the services that IDOR provides for local governments. Within the last year, IDOR has also established a page on our website dedicated to training materials for local government officials. The purpose is to increase awareness and to emphasize the importance of the processes described above in the hope that errors like the one with Cooper's Hawk decline in frequency moving forward.

4. The amount of sales tax revenue that was allocated incorrectly is confidential information, therefore, that will be sent separately and can only be viewed and discussed by the officials listed on the information exchange agreements for both municipalities. The two municipalities have the option to reach an agreement to rectify this situation financially for periods prior to the six-month adjustment the Department is required by statute to make. For this purpose, the Department is only able to provide the financial information for the last three years. Any financial figures outside of that three-year window will have to be provided by Rolling Meadows, using past allocation remittance reports.

If there are any questions, please contact our office at the address or telephone number listed below.

Sincerely,

Aaron Allen, Division Manager
(217) 785-7116
Aaron.Allen@Illinois.gov

Illinois Department of Revenue
Local Tax Allocation Division (MC 3-500)
101 W. Jefferson St.
Springfield, Illinois 62702

March 30, 2020

The City of Rolling Meadows
Attn: Melissa Gallagher – Finance Director
3600 Kirchoff Road
Rolling Meadows, IL 60008

Dear Ms. Gallagher:

In response to your e-mail dated March 26, 2020:

1. When Cooper's Hawk Winery and Restaurants (4023-0740) registered their business with the Illinois Department of Revenue (IDOR) on March 18, 2011, their address was coded as Rolling Meadows. Because of this, Rolling Meadows has been receiving both home rule tax (HMR) and municipal tax (MT) revenues from this business since it began operations on June 1, 2011. Then on March 18, 2020, IDOR received an e-mail from Kevin Baumgartner with the Arlington Heights Finance Department. Mr. Baumgartner noticed that this business was not listed on the allocation remittance report for Arlington Heights. Upon discovery of this information, the Local Tax Allocation Division (LTAD) made two adjustments. First, the location code was corrected so the business would be correctly coded to Arlington Heights moving forward (i.e. the January return to be allocated in April and all subsequent returns will be allocated to Arlington Heights). Secondly, per statute (65 ILCS 5/8-11-16), IDOR can correct any allocations within six months from the date our office was notified of the error. This means that the business's sales tax returns for July 2019 through December 2019 were moved from Rolling Meadows to Arlington Heights. Both municipalities will see an adjustment to their April allocations to reflect these changes.

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4. The amount of sales tax revenue that was allocated incorrectly is confidential information, therefore, that will be sent separately and can only be viewed and discussed by the officials listed on the information exchange agreements for both municipalities. The two municipalities have the option to reach an agreement to rectify this situation financially for periods prior to the six-month adjustment the Department is required by statute to make. For this purpose, the Department is only able to provide the financial information for the last three years. Any financial figures outside of that three-year window will have to be provided by Rolling Meadows, using past allocation remittance reports.

If there are any questions, please contact our office at the address or telephone number listed below.

Sincerely,

Aaron Allen, Division Manager
(217) 785-7116
Aaron.Allen@Illinois.gov

APPEAL TO THE APPELLATE COURT OF ILLINOIS FIRST DISTRICT
FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

THE VILLAGE OF ARLINGTON HEIGHTS,	)	
	)	Case No. 2022 CH 01229
Plaintiff-Appellant,	)	
v.	)	Honorable Judge
	)	Thaddeus L. Wilson, Presiding
THE CITY OF ROLLING MEADOWS,	)	
	)	Appeal Pursuant to Illinois Supreme
Defendant-Appellee.	)	Court Rules 301 and 303

NOTICE OF APPEAL

Plaintiff-Appellant the Village of Arlington Heights hereby appeals to the Illinois Appellate Court for the First District from the judgment entered in this matter in the Circuit Court of Cook County on October 20, 2022, per the order in Exhibit A attached hereto and made a part hereof ("***Circuit Court Order***"), dismissing with prejudice the Plaintiff-Appellant's Verified Complaint. Specifically, the Plaintiff-Appellant appeals the Circuit Court's granting of the Defendant-Appellee's Motion to Dismiss under Section 2-619 of the Illinois Code of Civil Procedure, and the dismissal with prejudice of Plaintiff-Appellant's Verified Complaint. The Plaintiff-Appellant will ask the Appellate Court to reverse the Circuit Court Order, to remand this matter to the Circuit Court for further proceedings, and for any additional relief that the Appellate Court may find appropriate.

DATE: November 17, 2022

Respectfully submitted,

By: */s/ Hart M. Passman*
Attorney for Plaintiff-Appellant

{00129243.1}

Hart M. Passman (ARDC No. 6287062)
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Firm No. 64467
Attorneys for Plaintiff-Appellant

EXHIBIT A

CIRCUIT COURT ORDER ENTERED
OCTOBER 20, 2022

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

VILLAGE OF ARLINGTON HEIGHTS,	)	
	)	2022 CH 01229
Plaintiff,	)	
	)	Motion to Dismiss
v.	)	
	)	Calendar 1
CITY OF ROLLING MEADOWS,	)	
	)	Hon. Thaddeus L. Wilson
Defendant.	)	Judge Presiding

ORDER

This matter is before the Court on Defendant City of Rolling Meadow's Motion to Dismiss Plaintiff Village of Arlington Height's verified complaint. Defendant filed its Motion to Dismiss as a combined motion pursuant to section 2-619.1 of the Illinois Code of Civil Procedure ("Code") (735 ILCS §5/2-619.1 (West 2022)).

FACTUAL BACKGROUND

Plaintiff filed the instant action alleging that Defendant received over $1.1 million in sales tax revenues generated by the Cooper's Hawk restaurant that should have been paid to Plaintiff. This fact is not disputed. According to Plaintiff, between November 1, 2011 and December 30, 2019, the Illinois Department of Revenue ("IDOR") mistakenly distributed to Defendant all of the revenues of the Plaintiff's local sales tax collected from Cooper's Hawk. The subject Cooper's Hawk restaurant is located at 798 West Algonquin Road, Arlington Heights, Illinois.

Plaintiff discovered the error and notified IDOR of the same on or about March 18, 2020. After being notified of the error, IDOR reimbursed Plaintiff by crediting only those funds misallocated during the six-month portion of the look-back period, from July 2019 through December 2019, totaling $108,934.42—a mere fraction of the total $1,171,566.00 allegedly

misallocated. Plaintiff requested that Defendant return the entire remaining balance of the misallocated sales taxes unpaid by IDOR. However, Defendant has refused to do so.

In its three-count verified complaint, Plaintiff asserts the following claims: Count I for declaratory relief, Count II for unjust enrichment, and Count III for conversion. Under Count I, for declaratory relief, Plaintiff asks that this Court declare that Plaintiff is entitled to the entirety of the misallocated sales taxes, and that judgment should be entered in its favor for those same sums. Under Count II, for unjust enrichment, Plaintiff seeks judgment in its favor for unreimbursed misallocated sales taxes, plus statutory interest and imposition of a constructive trust for receipt of those funds. Under Count III, for conversion, Plaintiff seeks judgment in its favor for the unreimbursed misallocated sales taxes unjustly retained by Defendant.

In response to the verified complaint, Defendant filed a motion to dismiss pursuant to 2-619.1 of the Code, accompanied by an affidavit in support of the motion. Within its motion, Defendant asserts that Plaintiff's verified complaint should be dismissed because (1) under section 2-615(a) of the Code, it fails to state a claim upon which relief may be granted; (2) under section 2-619(a)(1) of the Code, based upon other affirmative matter, this Court lacks subject matter jurisdiction to hear the claim; (3) under section 2-619(a)(5) of the Code, Plaintiff's claims are barred by the five-year statute of limitations; and (4) under section 2-619(a)(9), Plaintiff has received all of the relief it is entitled to, namely, an offset refund disbursement for the statutorily created look-back period, and Plaintiff's attempted recovery is barred by the doctrine of nonliability.

This order follows.

ANALYSIS

Defendant moves to dismiss Plaintiff's complaint pursuant to section 2-619.1 of the Code, which permits combined motions pursuant to section 2-615, section 2-619, and section 2-1005. 735

ILCS 5/2-619.1 (West 2010). Section 2-619.1 of the Code "explicitly requires that a motion combining both sections 2-615 and 2-619 (1) must be in parts, (2) must 'be limited to and shall specify that it is made under' either section 2-615 or 2-619, and (3) must 'clearly show the points or grounds relied upon under the [s]ection upon which it is based.'" *Howle v. Aqua Ill., Inc.*, 2012 IL App (4th) 120207, ¶ 73, (quoting 735 ILCS 5/2-619.1 (West 2010)).

A motion to dismiss under section 2-615 of the Code may be based on defects within the pleading itself, whereas a motion to dismiss under section 2-619 of the Code allows the defendant to go beyond the plaintiff's allegations and present other affirmative defenses pursuant to grounds provided by the statute that may defeat the plaintiff's claims. 735 ILCS 5/2-615 (West 2022); 735 ILCS 5/2-619 (West 2022).

I. Dismissal Under Section 2-615 of the Code

A section 2-615 motion authorizes dismissal where a claim is substantially insufficient in law. *See* 735 ILCS 5/2-615(a) ("The motion [to dismiss] shall point out specifically the defects complained of, and shall ask for appropriate relief," including "that a pleading or portion thereof be stricken because substantially insufficient in law."). Such a motion challenges the legal sufficiency of a complaint by alleging defects on its face. *Quiroz v. Chi. Transit Auth.*, 2022 IL 127603, ¶ 11. Section 2-615 motions argue that the plaintiff has not alleged sufficient facts that would entitle him or her to relief under any circumstances. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). The relevant inquiry is whether the allegations of the complaint are sufficient to state a cause of action upon which relief may be granted. *Rehfield v. Diocese of Joliet*, 2021 IL 125656, ¶ 20.

In ruling on a Section 2-615 motion, courts may only consider the allegations in the complaint, admissions in the record, and judicially noticed facts. *Mt. Zion State Bank & Tr. v.*

Consol. Commc'n, Inc., 169 Ill. 2d 110, 115 (1995). To survive a section 2-615 motion, the complaint must contain well-pleaded facts which, when taken as true and construed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief may be granted. *Loman v. Freeman*, 229 Ill. 2d 104, 109 (2008). "Because Illinois is a fact-pleading jurisdiction, a plaintiff must allege facts, not mere conclusions, to establish his or her claim as a viable cause of action." *DeMeester's Flower Shop & Greenhouse, Inc. v. Florists' Mut. Ins. Co*., 2017 IL App (2d) 161001, ¶ 9. The court will accept as true all well-pleaded allegations, liberally construe those allegations, and draw all reasonable inferences in the plaintiff's favor. *Id.* However, legal and factual conclusions that are unsupported by allegations of fact may be disregarded. *Guinn v. Hoskins Chevrolet*, 361 Ill. App. 3d 575, 586 (2005).

A complaint should be dismissed where it is "substantially insufficient in law." 735 ILCS 5/2-615. Though, courts will often allow plaintiffs to amend their pleadings to correct the defect. 735 ILCS § 5/2-616 (West 2010). Section 2-615 also provides for possible relief other than dismissal, including that: (1) a pleading be stricken in whole or in part because it is substantially insufficient in law; (2) a pleading be made more definite and certain; (3) designated immaterial matter be stricken; (4) necessary parties be added; or (5) designated improperly joined parties be dismissed. 735 ILCS 5/2-615 (West 2010).

Separately, a motion to dismiss under Section 2-619 allows for a disposition of issues of law or easily proved issues of fact at the outset of litigation. *Strauss v. City of Chi.*, 2022 IL 127149, ¶ 54. A 2-619 motion asserts defects, defenses, or other affirmative matters that act to defeat the claim. *Id*.

In its reply brief, Defendant chastises Plaintiff for not properly responding to each aspect of its motion to dismiss under both sections 2-615 and 2-619 of the Code. Section 2-619.1 of the

Code does not authorize the commingling of distinctive claims pursuant to section 2-615, 2-619, or 2-1005. *Howle*, 2012 IL App (4th) 120207, ¶ 72; *Jenkins v. Concorde Acceptance Corp.*, 345 Ill. App. 3d 669, 674 (2003). "[T]rial courts should not—and need not—accept for consideration combined motions under section 2-619.1 that do not meet these statutory requirements." *Howle*, 2012 IL App (4th) 120207, ¶ 73. Where a motion does not comply with section 2-619.1, commingles claims, or creates unnecessary complications and confusion, trial courts should *sua sponte* reject the motion and give the movant the opportunity, should he or she wish, to file a motion that meets the statutory requirements of section 2-619.1. *Id*. Alternatively, the movant may choose to file separate motions under section 2-615 and section 2-619, "thereby avoiding any improper commingling of [his or her] claims." *Id*.

Defendant here is correct in arguing that Plaintiff has not properly responded to the combined motion in its individual parts, though, this Court notes, Defendant's motion is not the bastion of organization and clarity either. However, it should be further noted that both of Defendant's 2-615 and 2-619 motions are really the same motion, asserting the exact same bases under each provision for dismissal. More importantly, Defendant's section 2-615 motion is really premised upon the assertion of other affirmative matter outside of the pleadings. Indeed, each of Defendant's 2-615 defenses turn upon this Court's interpretation of one case: *City of Chicago v. City of Kankakee*, 2019 IL 122878.

For instance, within its section 2-615 motion to dismiss, Defendant argues issues relating to the statute of limitations on Plaintiff's pending claims. "The statute of limitations is normally an affirmative defense appropriate only to motions to dismiss pursuant to section 2-619[. H]owever, where it appears from the face of the complaint that the statute of limitations has run, such a defense can also be raised in a section 2-615 motion to dismiss." *Cangemi v. Advocate S.*

Suburban Hosp., 364 Ill. App. 3d 446, 456 (2006). Consequently, the Court will resolve this matter on Defendant's section 2-619 grounds, and Defendant's section 2-615 motion to dismiss is denied for being premised in large part on affirmative matters outside of the four corners of the complaint.

II. Dismissal Under Section 2-619 of the Code

As earlier recited, a section 2-619 motion asks the court to look outside the four corners of the complaint and consider defenses that completely defeat a cause of action. 735 ILCS 5/2-619. A section 2-619 motion "admits the legal sufficiency of the complaint but asserts affirmative matter to avoid or defeat the claim." *Lamar Whiteco Outdoor Corp. v. City of W. Chi.*, 355 Ill. App. 3d 352, 359 (2005).

A. Failure to State a Claim / Lack of Subject Matter Jurisdiction

Subject matter jurisdiction concerns the authority of the court "'to hear and determine cases of the general class to which the proceeding in question belongs.'" *Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp.*, 2011 IL 111611, ¶ 27 (quoting *In re M.W.*, 232 Ill. 2d 408, 415 (2009)). Trial courts have original jurisdiction of all justiciable matters except those exclusively within the jurisdiction of the Illinois Supreme Court and may review administrative actions "as provided by law." Ill. Const. 1970, art. VI, § 9.

A statute that divests the trial court of original jurisdiction must do so explicitly. *Emps Mut. Cos. v. Skilling*, 163 Ill. 2d 284, 287 (1994). Trial courts may be divested of their original jurisdiction by the legislature where it places original jurisdiction in an administrative agency. *Id*., at 287. Where a statute creating or empowering an administrative agency expressly adopts the Review Act, it governs review of final administrative decisions. 735 ILCS 5/3-102 (West 2010); *Fontana v. Highwood Police Pension Bd.*, 296 Ill. App. 3d 899, 901 (1998).

Defendant asserts that Plaintiff has failed to state a claim upon which relief may be granted and that this Court lacks subject matter jurisdiction over the matter. As support for its assertion, Defendant cites to the case of *City of Chicago*. In particular, Defendant points to the passage of that opinion where the Illinois Supreme Court states as follows:

> We find that section 8-11-21 of the Municipal Code shows that, in order for a municipality to have the right to bring a cause of action in court about missourcing or misreporting of *use* taxes, the municipality must be given that right by the General Assembly. Our legislature, however, has not authorized such suits. It has chosen to only permit municipalities to bring a cause of action in the circuit court for missourced sales tax, and then only as a result of a rebate agreement entered after June 1, 2004. [Citation.] No similar provision authorizes suits for the denial of use tax revenue due to alleged misreporting.
>
> For the foregoing reasons, we hold that IDOR has exclusive authority over plaintiffs' claims against defendants.

2019 IL 122878, ¶¶ 44–45 (internal citation omitted).

Defendant argues that the Illinois Supreme Court has spoken, as quoted above, and that, although Plaintiff attempts to cast its cause of action as one in equity, its claims are purely statutory, and under the applicable framework, the legislature has vested IDOR with the exclusive authority to act. Plaintiff responds that the above passage cited by Defendant is merely *dicta*.

"The distinction between *dictum* and holding is at once central to the American legal system and largely irrelevant." David Klein & Neal Devins, *Dicta, Schmicta: Theory Versus Practice in Lower Court Decision Making*, 54 WM. & MARY L. REV. 2021, 2021 (2013), https://scholarship.law.wm.edu/wmlr/vol54/iss6/6. "Law students are often taught that the American legal system sees dicta as neither binding nor normatively desirable and typically spend significant time and energy looking for the line separating the two." *Id*., at 2028.

In *Lebron v. Gottlieb Mem'l Hosp.*, 237 Ill. 2d 217 (2010), the Illinois Supreme Court explained the following:

> [*D*]*ictum* is of two types: obiter *dictum* and judicial *dictum*. [Citation.] "Obiter *dictum*," frequently referred to as simply "*dictum*," is a remark or opinion that a court uttered as an aside. [Citation.] Obiter *dictum* is not essential to the outcome of the case, is not an integral part of the opinion, and is generally not binding authority or precedent within the *stare decisis* rule. [Citation.] "In contrast, 'an expression of opinion upon a point in a case argued by counsel *and deliberately passed upon by the court*, though not essential to the disposition of the cause, if *dictum*, is a judicial *dictum*. [Citation.] A judicial *dictum* is entitled to much weight, and should be followed[,] unless found to be erroneous.'" [Citation.]

237 Ill. 2d at 236 (internal citation omitted). "'Even *obiter dictum* of a court of last resort can be tantamount to a decision and[,] therefore[,] binding in the absence of a contrary decision of that court.'" *Exelon Corp. v. Dep't of Revenue*, 234 Ill. 2d 266, 282 (2009) (citing *Cates v. Cates,* 156 Ill. 2d 76 (1993)).

Relevant to this case, it is clear that the Illinois Supreme Court's language quoted above in the matter of *City of Chicago* was intentional, deliberative, and instructional on the question before the court, even if perhaps not essential to the court's ruling. Nevertheless, this Court is not in the business of telling the Illinois Supreme Court that they were wrong on a point of law, *dictum* or not.

According to our supreme court, a cause of action for missourced sales tax can be brought in the circuit court only as a result of a rebate agreement entered after June 1, 2004. *City of Chi.*, 2019 IL 122878, ¶ 44. Plaintiff has failed to plead that the missourced sales taxes at issue here were the result of a rebate agreement entered into after June 1, 2004, and affirmative matter proffered by Defendant suggests that there are no set of facts that would allow Plaintiff to replead the same.

B. Statute of Limitations

Defendant next argues that Plaintiff's cause, if not barred for other reasons is at least partially barred by the relevant statute of limitations. Defendant submits that Plaintiff's claims are

governed by a five-year statute of limitations as provided, under section 13-205 of the Code. According to Defendant, that portion of Plaintiff's claims seeking recovery for periods prior to February 14, 2017, five years prior to the date of the complaint, are time-barred. Plaintiff responds by admitting that its unjust enrichment claim is governed by a five-year statute of limitations. However, citing *Frederickson v. Blumenthal*, 271 Ill. App. 3d 738, 741–743 (1995), Plaintiff asserts that limitations period can be tolled for any period during which it was unreasonable for a plaintiff to become aware of the unjust enrichment. Plaintiff further argues that, according to *Burns Philp Food v. Cavela Cont'l Freight*, 135 F.3d 526, 529 (7th Cir. 1998), in determining reasonableness, it was not required to excessively rifle through records unless it has a reason to do so.

Asserting other affirmative matters, Plaintiff also alleges that Defendant disregarded IDOR's 2011 verification letter, which improperly classified the Cooper's Hawk restaurant with Defendant, thereby falsely misrepresenting and confirming the restaurant to be within its boundaries. As an additional basis to toll the statute of limitations, Plaintiff cites to *Guarantee Tr. Life Ins. v. Kribbs*, 2016 IL App (1st) 160672, ¶48, for the proposition that the limitations period for unjust enrichment may be further tolled if a plaintiff faces "an irredeemable lack of information," or if the plaintiff could not learn the identity of proper defendants through the exercise of due diligence. Finally, according to Plaintiff, the limitations period for its unjust enrichment claims should be tolled because Defendant's actions fraudulently concealed Plaintiff's claims, triggering the tolling provision under section 13-205 of the Code.

Section 2-619(a)(5) of the Code permits a court to dismiss a complaint if it was "not commenced within the time limited by law." 735 ILCS 5/2-619(a)(5) (West 2014). Longstanding Illinois common law prohibits tolling of a statute of limitations, absent explicit statutory authority.

See Am. Airlines, Inc. v. Dep't of Revenue, 402 Ill. App. 3d 579, 605 (2009) ("[S]tatutes of limitations continue to run unless tolling is authorized by statute."); *see also IPF Recovery Co. v. Ill. Ins. Guar. Fund*, 356 Ill. App. 3d 658, 665 (2005) ("Illinois law is clear that, as a general rule, the statute of limitations continues to run unless tolling is authorized by a statute.").

This Court finds that the affirmative matter outside of the pleadings cited by both sides highlights material issues of fact that would make a determination of the applicable statute of limitations at the pleading stage inappropriate.

C. Exclusive Remedy and Lack of Standing Under Doctrine of Nonliability

Defendant further argues that, regarding its claim for declaratory relief under Count I, based upon the application of the obscure "doctrine of nonliabilty," Plaintiff is improperly seeking a declaration as to matters that have already occurred. According to Defendant, these claims are barred, based upon these affirmative matters.

Declaratory relief is not available to declare the consequences of past conduct. *See Adkins Energy, LLC v. Delta-T Corp.*, 347 Ill. App. 3d 373, 378 (2004) ("The doctrine of nonliability for past conduct bars an action for declaratory judgment when the conduct that makes the party liable, that is, amenable to suit, has already occurred."). "[The] statute authorizing declaratory judgment actions permits declaratory relief only in justiciable cases, and the existence of an actual controversy is essential." *Howlett*, 69 Ill. 2d at 141. The "'actual controversy' requirement is meant merely to distinguish justiciable issues from abstract or hypothetical disputes and is not intended to prevent resolution of concrete disputes admitting of a definitive and immediate determination of the rights of the parties." *Miller v. Cty. of Lake*, 79 Ill. 2d 481, 487 (1980) (quoting *Ill. Gamefowl Breeders Ass'n v. Block* 75 Ill. 2d 443, 452 (1979) (citing *A. S. & W. Club v. Drobnick* 26 Ill. 2d 521, 524 (1962))). The Illinois Supreme Court has explained the following:

> "'Actual' in this context does not mean that a wrong must have been committed and injury inflicted. Rather, it requires a showing that the underlying facts and issues of the case are not moot or premature, so as to require the court to pass judgment on mere abstract propositions of law, render an advisory opinion, or give legal advice as to future events. [Citations.] The case must, therefore, present a concrete dispute admitting of an immediate and definitive determination of the parties' rights, the resolution of which will aid in the termination of the controversy or some part thereof. [Citations.]"

Howlett, 69 Ill. 2d at 141–142 (quoting *Underground Contractors Ass'n v. City of Chi.*, 66 Ill. 2d 371, 375 (1977) (internal citation omitted)).

In *Miller*, the Court distinguished *Howlett*, finding that, unlike in *Howlett*, there was clear intent to prosecute and the relationship forming the basis of the suit was still ongoing. 79 Ill. 2d at 488. In *Adkins*, the court stated that it "believe[d] that the fact that the relationship was still ongoing in *Miller* was relevant because that meant that the plaintiff could avoid future liability." 347 Ill. App. 3d 378. The court further explained that "[t]he purpose of a declaratory judgment action is to determine the rights of the parties so that the plaintiff can alter his [or her] future conduct to avoid liability." *Id*., 378–79 (citing *Beahringer v. Page*, 204 Ill. 2d 363, 373 (2003)). In *Miller*, the plaintiff could be liable for future acts related to the bank involved in the controversy because he was still involved with the bank. *See* 79 Ill. 2d at 491. Conversely, in *Howlett*, the plaintiff was no longer involved with the entity that was involved in the controversy and, hence, could be liable only for past acts related to that entity. *See* 69 Ill. 2d at 141 ("Normally, a declaration of nonliability for past conduct is not a function of the declaratory judgment statute . . . .").

In *Eyman v. McDonough Dist. Hosp.*, 245 Ill. App. 3d 394, 396 (1993), the appellate court found that declaratory judgment that the plaintiff properly terminated her employment agreement and could keep money advanced to her was not obtainable because the plaintiff was not seeking to learn consequences of future acts. In *Chi. & E. Ill. R.R. Co. v. Reserve Ins. Co.*, 99 Ill. App. 3d

433, 437 (1981), the appellate court reversed the declaratory relief awarded to the plaintiff by the trial court, because the plaintiff sought a declaration that its past conduct did not breach certain insurance policies, rather than a declaration that it would not incur liability for a future course of conduct. These cases turned on whether the act that could be considered the breach of contract had already occurred, not whether the acts that formed the contract had already occurred.

In contrast, the decision in *Roland Mach. Co. v. Reed*, 339 Ill. App. 3d 1093 (2003), demonstrates that, when the potentially breaching act has not yet occurred, a declaratory judgment action is proper. In *Roland* the plaintiff had contracted to sell the defendant a bulldozer. 339 Ill. App. 3d at 1095. The plaintiff delivered the bulldozer, which the defendant accepted. *Id*. After complaining of various defects in the bulldozer, the defendant attempted to revoke his acceptance and obtain a refund of the purchase price. *Id*., at 1096. Instead of denying the defendant's request, the plaintiff brought a declaratory judgment action seeking a declaration that it was not obligated to accept the return of the bulldozer and refund the purchase price. *Id*. The *Roland* court held that the doctrine of nonliability for past conduct was not applicable in that case because, *inter alia*, the plaintiff was seeking guidance on whether he would be obligated under the contract to accept the return and issue a refund. *Roland*, 339 Ill. App. 3d at 1102-03.

The purpose of a declaratory judgment is "'to settle and fix rights before there has been an irrevocable change in the position of the parties that will jeopardize their respective claims of right.'" *Beahringer*, 204 Ill. 2d at 373 (quoting *First of Am. Bank, Rockford, N.A. v. Netsch*, 166 Ill. 2d 165, 174 (1995)). As stated above, the doctrine of nonliability for past conduct bars a declaratory action in a situation where the conduct that makes a party liable has already occurred. *Adkins*, 347 Ill. App. 3d at 378. The issue, then, is whether Plaintiff is seeking an affirmation with respect to past conduct, or whether it is seeking guidance for future conduct. It is clear to this

Court that Plaintiff is seeking a declaration with respect to the past conduct of either Defendant or IDOR. To the extent that the doctrine of nonliability is still viable, it serves to bar Count I of Plaintiff's verified complaint for declaratory relief.

CONCLUSION

For the reasons stated above, **IT IS HEREBY ORDERED**:

1. Defendant's Motion to Dismiss under section 2-615 is DENIED.
2. Defendants' Motion to Dismiss under section 2-619 is DENIED as to the statute of limitations argument, but GRANTED as to all other claims.
2. Plaintiff's complaint is DISMISSED in its entirety, with prejudice.

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ENTERED: _____

Hon. Thaddeus L. Wilson
Circuit Court of Cook County

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE COOK JUDICIAL CIRCUIT
COOK COUNTY, ILLINOIS

THE VILLAGE OF ARLINGTON HEIGHTS
Plaintiff/Petitioner

v.

THE CITY OF ROLLING MEADOWS
Defendant/Respondent

Reviewing Court No: 1-22-1729
Circuit Court/Agency No: 2022CH01229
Trial Judge/Hearing Officer: THADDEUS L. WILSON

E-FILED
Transaction ID: 1-22-1729
File Date: 1/19/2023 3:30 PM
Thomas D. Palella
Clerk of the Appellate Court
APPELLATE COURT 1ST DISTRICT

CERTIFICATION OF RECORD

The record has been prepared and certified in the form required for transmission to the reviewing court. It consists of:

1 Volume(s) of the Common Law Record, containing 130 pages
1 Volume(s) of the Report of Proceedings, containing 57 pages
0 Volume(s) of the Exhibits, containing 0 pages

I hereby certify this record pursuant to Supreme Court Rule 324, this 18 DAY OF JANUARY, 2023

Iris Martinez

(Clerk of the Circuit Court or Administrative Agency)

IRIS MARTINEZ, CLERK OF THE COOK JUDICIAL CIRCUIT COURT ©
CHICAGO, ILLINOIS 60602

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No. 130461

IN THE SUPREME COURT OF ILLINOIS

THE VILLAGE OF ARLINGTON HEIGHTS, Respondent-Appellee, v. THE CITY OF ROLLLING MEADOWS, Petitioner-Appellant.	)	On Appeal from the Illinois Appellate Court, First Judicial District, No. 1-22-1729 There on Appeal from the Circuit Court of Cook County, Illinois County Department, Chancery No. 2022 CH 01229 Hon. Thaddeus L. Wilson.

NOTICE OF FILING

To: See attached Certificate of Service.

PLEASE TAKE NOTICE that on July 16, 2024, undersigned counsel caused the attached **Brief and Supporting Appendix for Petitioner-Appellant The City of Rolling Meadows** in the above captioned case to be submitted to the Clerk of the Supreme Court of Illinois, by using the Court's electronic filing system.

Dated: July 16, 2024

Respectfully submitted,

THE CITY OF ROLLING MEADOWS

By: /s/ Andrianna D. Kastanek
One of its Attorneys

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CERTIFICATE OF SERVICE

I, Andrianna D. Kastanek, an attorney, hereby certify that on July 16, 2024, I caused the **Notice of Filing** and **Brief and Supporting Appendix for Petitioner-Appellant The City of Rolling Meadows** to be submitted to the Clerk of the Supreme Court of Illinois by using the Odyssey eFileIL system. I certify that upon acceptance of the brief for filing, I will cause 13 copies of the above-named brief to be transmitted to the Court via UPS overnight delivery, service charge prepaid within 5 days of that notice date. I further certify that on July 16, 2024, I caused a pdf copy of the above-named filing to be served using the Court's e-file system and via email to the email addresses designated by the parties listed below:

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Certificate of Service are true and correct.

/s/ Andrianna D. Kastanek
Andrianna D. Kastanek

Counsel for Petitioner-Appellant